

NETTING ANALYSER LIBRARY

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4 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 the Republic of Finland ("**this jurisdiction**") as to 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. Our opinions on the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision are given in paragraph 3 of this opinion letter.

Further, our opinions cover also the enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions.

References herein to "**this opinion**" and "**our opinion**" are to the opinions given in paragraph 3 on the basis of the terms of reference and assumptions set out above and in paragraphs 1 and 2 below and subject to the qualifications set out in paragraph 4 below.

1. Terms of reference and definitions

- 1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of Parties to the Agreement which are:
 - 1.1.1 companies incorporated or organised under the Finnish Companies Act (2006, as amended) that do not carry on regulated business and that are incorporated, organised, established or formed under the laws of Finland;
 - 1.1.2 banks incorporated or organised under the Finnish Credit Institutions Act (2007, as amended, the "**CIA**"), either as a commercial or similar bank under the Finnish Act on Commercial Banks (2001, as amended, the "**Commercial Banks Act**"), as a savings bank under the Finnish Act on Savings Banks (2001, as amended) or as a co-operative or

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similar bank under the Finnish Act on Co-operative Banks (2001, as amended), in each case incorporated, organised, established or formed under the laws of Finland;

- 1.1.3 mortgage banks incorporated or organised as a mortgage bank under the Finnish Act on Mortgage Banks (2010), as a credit institution under the Finnish Credit Institutions Act (2007, as amended) and as a commercial or similar bank under the Finnish Act on Commercial Banks (2001, as amended), in each case incorporated, organised, established or formed under the laws of Finland;
- 1.1.4 branches established or located in Finland of foreign entities of the type referred in 1.1.1 above;
- 1.1.5 branches established or located in Finland of foreign entities of the type referred in 1.1.2 incorporated outside the EEA;
- 1.1.6 branches established or located in Finland of foreign entities of the type referred in 1.1.2 incorporated in a member state of the EEA;
- 1.1.7 partnerships and limited partnerships organised under the Act on Partnerships and Limited Partnerships (1988, as amended) that do not carry on regulated business, in each case incorporated, organised, established or formed under the laws of Finland;
- 1.1.8 branches established or located in Finland of foreign entities of the type referred in 1.1.7;
- 1.1.9 investment funds (including mutual funds and hedge funds) represented by fund management companies, each incorporated or organised under the Finnish Investment Funds Act (1999, as amended), in each case incorporated, organised, established or formed under the laws of Finland;
- 1.1.10 branches established or located in Finland of foreign investment funds of the type referred in 1.1.9;
- 1.1.11 securities dealers incorporated or organised under the Finnish Act on Investment Services (2012), incorporated, organised, established or formed under the laws of Finland; and
- 1.1.12 branches established or located in Finland of foreign entities of the type referred in 1.1.11.
- 1.2 This opinion is also given in respect of parties to the Agreement 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 insurance companies incorporated or organised under the Finnish Insurance Companies Act (2008, as amended) (Schedule 1);
- 1.2.2 private individuals domiciled or resident in Finland (Schedule 2);
- 1.2.3 municipalities and governmental bodies of Finland that are not subject to specific legislation (Schedule 3);
- 1.2.4 (limited liability or mutual) pension insurance companies incorporated or organised under the Act on Pension Insurance Companies (1997, as amended), pension funds incorporated or organised under the Employee Benefit Funds Act (1992, as amended) and pension foundations incorporated or organised under the Pension Foundation Act (1995, as amended) (Schedule 4); and
- 1.2.5 the Mortgage Society of Finland incorporated or organised under the Act of Mortgage Societies (1978, as amended) (Schedule 5).

The Parties listed in 1.1 and, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the applicable Schedules, in 1.2 are in this opinion referred to as the “**Relevant Counterparties**” and this opinion is not given in respect of any other parties.

- 1.3 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the Netting Agreement and the Clearing Agreement are expressed to be governed by English law.
- 1.4 This opinion covers all types of Transactions listed in Annex 2 (and in respect of item (v) of Annex 2 only such Transactions that can be considered financial instruments), whether entered into on a recognized investment exchange, any other form of organized market place or multilateral trading facility or over the counter, except for Transactions which relate to commodities and are
 - (a) neither: (i) traded on a regulated market or a multilateral trading facility; nor (ii) cash settled; or
 - (b) neither: (i) made for investment or hedging purposes in the form of a typical hedging contract nor (ii) cash settled.
- 1.5 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision.
- 1.6 In this opinion, references to the word “**enforceable**” and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.
- 1.7 The opinion at paragraph 3.10 in respect of the Title Transfer Provisions is given only in respect of margin consisting of securities located outside this jurisdiction (i.e. are either dematerialised securities registered or held in a book-entry account outside

Finland or bearer instruments physically located outside Finland) or cash on an account located outside of this jurisdiction.

1.8 Definitions

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

- 1.8.1 **"Agreement"** means the FOA Netting Agreement or the Clearing Agreement, as applicable.
- 1.8.2 **"Insolvency Proceedings"** means the procedures listed in paragraph 3.1;
- 1.8.3 **"Insolvency Representative"** means a liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction;
- 1.8.4 **"FOA Member"** means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion); and
- 1.8.5 A reference to a **"paragraph"** is to a paragraph of this opinion letter.

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

2. Assumptions

We assume:

- 2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose. 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.
- 2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions or, as the case may be, the Client Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security under the Agreement are legally binding and enforceable against both Parties under their governing laws and all other laws which are otherwise applicable to them (other than 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 and the Title Transfer Provisions under Finnish law).

- 2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder; and that each Party has taken all necessary steps to execute, deliver and perform FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder.
- 2.4 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents and complied with laws required to enable it lawfully to enter into and perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder in this jurisdiction.
- 2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and (except where expressly stated otherwise) the Transactions and all transfers under the Title Transfer Provisions and other transfers of margin and granting of security thereunder are 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, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.
- 2.7 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein and each transfer under the Title Transfer Provisions and each other transfer of margin and granting of security thereunder is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- 2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.
- 2.9 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions are 'mutual' between the Parties, in the sense 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 meaning also that neither party has assigned any benefit of obligations owed to it by the other 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 entity referred to in 1.1.1, 1.1.2, 1.1.7 or 1.1.11. That neither Party is a recognised investment exchange or recognised clearing house or a CCP (as defined in EMIR).
- 2.11 In relation to the opinions set out at paragraphs 3.4, 3.5, 3.8, 3.9 and 3.15 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.
- 2.12 That each Party when transferring margin pursuant to the Title Transfer Provisions and when transferring otherwise margin under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, 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 and margin otherwise transferred under the FOA Netting Agreement or, as the case may be, the Clearing Agreement is freely transferable and all acts or things required by the laws of this or any other jurisdiction (and in any event in respect of securities transferred as margin by the laws of the jurisdiction where dematerialised securities are registered or held in a book-entry account or bearer instruments physically located) to be done to ensure the validity and effectiveness against third parties of each transfer of margin pursuant to the Title Transfer Provisions and each other transfer of margin or granting of security under the FOA Netting Agreement or, as the case may be, the Clearing Agreement will have been effectively carried out prior to the formal commencement of any Insolvency Proceedings against either Party.
- 2.14 That any cash provided as margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.15 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.
- 2.16 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into between two parties one of which is a Relevant Counterparty.

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 opinion that under Finnish law as in force on the date hereof:

3.1 Insolvency Proceedings

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

- (a) bankruptcy under the Finnish Bankruptcy Act (2004, as amended, the “**Bankruptcy Act**”), with regard to banks and mortgage banks as supplemented by the provisions of the CIA and the Finnish Act on Commercial Banks (2001, as amended), the Finnish Act on Co-operative Banks (2001, as amended) and the Finnish Act on Savings Banks (2001, as amended) as applicable;
- (b) company reorganisation under the Finnish Act on Company Reorganisation (1993, as amended, the “**Reorganisation Act**”) (applicability to banks organised as deposit banks under the CIA is subject to the provisions of the Finnish Act on Temporary Interruption of Operations of Deposit Banks (2001, as amended)); and
- (c) temporary interruption of the operations of a deposit bank under the Act on Temporary Interruption of Operations of Deposit Banks (2001, as amended, the “**Temporary Interruption Act**”). A deposit bank is obliged to file a notification with the Finnish Ministry of Finance, the Bank of Finland and the Finnish Financial Supervisory Authority (the “**FSA**”) if the deposit bank is unable to pay its debts as they become due, and the Bank of Finland or the FSA must notify the Ministry of Finance if they are of the opinion that it is likely that a deposit bank is unable to pay its debts as they become due. The Ministry of Finance may make a decision to temporarily interrupt the operations of a deposit bank in which case the FSA shall immediately appoint an administrator the duties of which include the supervision of the bank. Applicability of this proceeding to branches established or located in Finland of foreign banks incorporated outside the EEA is subject to, and amended by, the provisions of the CIA.

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.

On 29 May 2000 the Council of the European Union adopted Council Regulation (EC) No 1346/2000 on insolvency proceedings (the “**Regulation**”) which entered into force on 31 May 2002. Denmark (pursuant to recital 33 of the Regulation) is not participating in the adoption of the Regulation and is therefore not bound by it nor subject to its application. The objective of the Regulation is to establish common rules on cross-border insolvency proceedings, based on principles of mutual recognition and co-operation. The Regulation applies to “collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator” (Article 1(1)); the Regulation lists the relevant insolvency proceedings to which it applies in each Member State in Annex A thereto (the insolvency proceedings to which the Regulation applies are referred to below as “**EU Regulation Insolvency Proceedings**”; these are not identical to the Insolvency Proceedings referred to above in this paragraph 3.1 but identical to the Insolvency Proceedings that are applicable to the Relevant Counterparties to which the Regulation applies). Certain types of entities are

specifically excluded from its operation (for example credit institutions, insurance companies, investment undertakings which provide services involving the holding of funds or securities for third parties and collective investment undertakings (Article 1(2)).

The Commercial Banks Act applicable to banks and mortgage banks however contains provisions corresponding to some of the articles of the Regulation.

Broadly, the Regulation serves to grant the courts of the Member State (other than Denmark) within the territory of which the centre of a debtor's main interests are located jurisdiction to open [EU Regulation Insolvency Proceedings] in respect of such debtor. These proceedings are, with regards to other Member States, international in scope, to be governed by the law of the Member State where proceedings are opened and are to be effective in all Member States, unless secondary proceedings are opened in another Member State. In the case of companies, the place of the registered office of such company is presumed to be the centre of the company's main interests in the absence of proof to the contrary (Article 3(1)).

Even if the centre of a debtor's main interests are in a Member State, the courts of another Member State may open secondary proceedings in the event that such debtor possesses an establishment (being any place of operations where the debtor carries out a non-transitory economic activity with human goods and means) in the territory of such other Member State (Article 3(2)). The applicable law will be the law of that other Member State. However, secondary proceedings are territorial in scope and so will not extend beyond the Member State where they are opened, save in respect of creditors who have given their consent. Generally they will be opened following the opening of the main proceedings, but there are exceptions to this principle.

Finland has entered into a bankruptcy treaty with the following countries:

The Nordic Bankruptcy Treaty among Finland, Denmark, Iceland, Norway and Sweden entered into effect on 7 November 1933 (as amended, the "**Treaty**").

The effect of the Treaty is as follows:

The provisions of the Treaty provide that bankruptcy proceedings commenced in one of the contracting states shall also include the assets of the bankrupt party located in the other contracting states, provided that such bankrupt party upon commencement of the bankruptcy proceedings was domiciled in, i.e. incorporated or organised under the laws of, the contracting state in which the bankruptcy proceedings were commenced.

For instance, bankruptcy proceedings commenced in Finland in respect of a party incorporated or established under the laws of Finland would prevent commencement of bankruptcy proceedings in respect of such party's branch established or located in one of the other contracting states, whereas bankruptcy proceedings commenced in one of the other contracting states in respect of such branch would not prevent commencement of bankruptcy proceedings in Finland in respect of such party incorporated or established under the laws of Finland.

The Treaty is, according to its wording, also applicable to the liquidation proceedings of a bank. We believe that the proceedings referred to in paragraph 3.1(c) above would be held to constitute such liquidation proceedings. The Regulation has replaced, in respect of matters referred to therein, the Treaty in the relations between Member States (except for Denmark to which the Regulation does not apply). The provisions of the Commercial Banks Act referred to above are likely to have replaced, in respect of matters referred to therein, the Treaty in the relations between the members of the European Economic Area.

3.2 Recognition of choice of law

- 3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England, subject to the below.

Pursuant to the Rome Convention on Applicable Law to Contractual Obligations (1980, as amended), ratified by Finland, and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), as amended, an agreement shall be governed by the law of the state chosen by the parties. Insofar as the application of the law of a foreign state would result in an outcome which would be contrary to the public policy (*ordre public*) of the Finnish legal system, the law of Finland shall be applied instead. In addition, irrespective of the fact that the law of a foreign state shall govern a contract, mandatory rules of Finnish law shall, nevertheless, be applied where, considering the public nature of, or other general interest connected with the rules, they shall be deemed applicable to the contract irrespective of the law otherwise governing such contract. If requested by the court, it is up to the parties to provide the court with satisfactory evidence of the contents of the governing law and if they fail to do so, the Finnish court may apply Finnish law instead.

The Rome I regulation also enables a Finnish court of law to set aside the choice of law by the Parties in the following circumstances:

- (a) Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the Parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement; and
 - (b) Where all other elements relevant to the situation at the time of the choice are located in one or more the Member State of the European Union (a “**Member State**”), the Parties’ choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.
- 3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law as the governing law of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, in determining the enforceability or effectiveness of (i) the FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title

Transfer Provisions, in the event that Insolvency Proceedings have been initiated against a Relevant Counterparty in Finland but Finnish law would determine the enforceability or effectiveness of (i) the FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions against the Relevant Counterparty in Insolvency Proceedings unless the applicability of Finnish law insolvency rules on such enforceability and effectiveness has been disapplied (a) by the Regulation (and corresponding provisions of the Commercial Banks Act) or (b) in respect of entities of the type referred in 1.1.2, 1.1.3, 1.1.5 and 1.1.6 by the Commercial Banks Act (implementing the EU Directive 2001/24/EC and applicable by reference to savings banks and co-operative banks) to the effect that legal implications of netting agreements are determined solely on the basis of the law applicable to such agreements.

3.3 **Enforceability of FOA Netting Provisions**

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 fulfillment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

We are of this opinion because:

In this jurisdiction the Netting Act (as defined below) protects certain close-out netting arrangements. Based on our understanding of the effect under English law of the operation of the FOA Netting Provisions we believe that the Netting Act would protect the enforceability of the FOA Netting Provisions as described below.

Generally under Finnish law the Parties have the freedom of contract to agree on netting procedures applicable under the FOA Agreement or as the case may be the Clearing Agreement. Where, however, netting under the Agreement occurs as a result of Insolvency Proceedings in respect of a Relevant Counterparty contractual netting is subject to the effects of Insolvency Proceedings. The laws in this jurisdiction provide for the netting of positions after the commencement of Insolvency Proceedings in respect of Transactions provided that the netting under the FOA Netting Provisions falls within the meaning of netting under the Netting Act (as defined below) as described below:

The Finnish Act on Certain Conditions of Securities and Currency Trading as well as of a Settlement System (1999, as amended, the “**Netting Act**”) applies to netting and other settlement of payments in a settlement system as well as netting and other settlement

in a settlement system of delivery obligations relating to (i) trading in financial instruments referred to in the Finnish Act on Investment Services (2012), as well as to other trading in equivalent securities and derivatives contracts (the “**Financial Transactions**”); or (ii) trading in currency or currency units legal in Finland or in another country. Also, the Netting Act applies to netting of payment and delivery obligations relating to the Financial Transactions, which are not executed in a settlement system (i.e. between contracting parties) as well as to collateral security provided to a settlement system or a contracting party in connection with netting or settlement of the Financial Transactions.

For purposes of the Netting Act and where the Netting Act is applicable as described above, “**netting**” shall mean that, according to a customary provision in an agreement:

- (a) the opposite payment or delivery obligations of two parties to an agreement are, based upon the due date, aggregated into one payment obligation or into an obligation to deliver a financial instrument (such as securities) of the same class; or
- (b) the obligations of several parties are, in the manner described in item (a), aggregated in a clearing system; or
- (c) all the payment and delivery obligations of the parties become due or may be accelerated and aggregated in a manner agreed upon, if insolvency proceedings are commenced with respect to one party.

Neither the Netting Act nor the preparatory works thereof explicitly define when, at the latest, optional netting (as opposed to automatic netting) shall be effected in order to be valid and effective. However, we believe that such netting, in order to be valid and effective, shall be effected either (i) before, (ii) upon or (iii) without undue delay after the commencement of insolvency proceedings.

In our opinion, the FOA Netting Provisions are customary netting provisions as required under the Netting Act and set-off pursuant to the FOA Netting Provisions would be treated as netting for the purposes of the Netting Act, to the extent such set-off involves opposite payment obligations under the Agreement that relate to Financial Transactions or trading of currency or currency units legal in Finland or in another country. As regards the applicability of the Netting Act on the Transactions, the Transactions as listed in Annex 2 to this Opinion, in our view, would qualify as Financial Transactions and therefore fall under the scope of application of the Netting Act, except for the following types of Transactions:

- (a) future, option, contract for difference, spot and forward contracts in relation to commodity or metal, under the terms of which delivery is contemplated, such contract is not subject to regulated trading in an exchange in an EEA country and such contract is not made for investment or hedging purposes;
- (b) any other Transaction which the parties agree to be a Transaction; and

- (c) commodities Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product, to the extent that these are not derivatives contracts.

Even where transactions of the type described above are entered into under the Agreement, the FOA Netting Provision would, in our opinion, continue to be effective in respect of the Transactions in respect of which this opinion is given (please see 1.4).

“Commencement of insolvency proceedings” includes, for the purposes of the Netting Act, the Insolvency Proceedings.

Where the Netting Act is applicable, obligations created before the commencement of insolvency proceedings may be netted in accordance with a customary provision in an agreement regardless of the Insolvency Proceedings and the netting shall be binding in the Insolvency Proceedings of a Relevant Counterparty.

The mitigating effects of the applicability of the Netting Act on the Finnish law clawback rules are set out in the fifth and sixth paragraph of qualification 4.(b) and on the attachment relating to the Agreement in qualification 4.(s).

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 the rights by the Non-Defaulting Party referred to above under the FOA Netting Provisions.

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

3.4 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 to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because:

In this jurisdiction the Netting Act protects certain close-out netting arrangements. Based on our understanding of the effect under English law of the operation of the Clearing Module Netting Provision we believe that the Netting Act would protect the enforceability of the Clearing Module Netting Provisions as described in paragraph 3.3 above.

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 rights under the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply.

3.5 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 to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because:

In this jurisdiction the Netting Act protects certain close-out netting arrangements. Based on our understanding of the effect under English law of the operation of the Addendum Netting Provision we believe that the Netting Act would protect the enforceability of the Addendum Module Netting Provisions as described in paragraph 3.3 above.

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 rights under the Addendum Netting Provisions.

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

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

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

3.7 Enforceability of the FOA Set-Off Provisions

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

- (a) where the FOA Set-Off Provisions include the General Set-Off Clause:

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

We are of this opinion because:

In this jurisdiction the Netting Act protects certain collateral granted in respect of netting agreements. Based on our understanding of the effect under English law of the operation of the FOA Set-Off Provisions we believe that the Netting Act would protect the enforceability of the FOA Set-Off Provisions as described below.

According to the Netting Act, the Act applies also to collateral granted pursuant to a customary contract provision for the obligations under Financial Transactions in relation to a netting agreement and the exercise of rights to such collateral is protected under the Netting Act regardless of the Insolvency Proceedings. The applicability of the Netting Act to margin collateral requires that such margin collateral is granted in relation to a netting agreement. In the context of the Agreement this would require that the Agreement contains the FOA Netting Provisions or other netting provisions that can be considered customary.

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.1 to apply.

- 3.7.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

Liquidation Amount (where such liquidation amount is owed by the Firm or, as the case may be, the Clearing Member); or

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

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.2 to apply.

We are of this opinion because:

In this jurisdiction the Netting Act protects certain collateral granted in respect of netting agreements. Based on our understanding of the effect under English law of the operation of the FOA Set-Off Provisions we believe that the Netting Act would protect the enforceability of the FOA Set-Off Provisions as described in 3.7.1.

3.8 Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision

- 3.8.1 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.

We are of this opinion because:

In this jurisdiction the Netting Act protects certain collateral granted in respect of netting agreements. Based on our understanding of the effect under English law of the operation of the Clearing Module Set-Off Provision we believe that the Netting Act would protect the enforceability of the Clearing Module Set-Off Provision as described in 3.7.1.

No amendments to the Clearing Module Set-Off Provision 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 Clearing Module Set-Off Provision for which the FOA Set-Off Provision (insofar as constituting part of the FOA Netting Agreement) is not a Disapplied Set-Off Provision, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.8.1 above; and the FOA Set-Off Provision will, to the extent that set-off is not already covered by the Clearing Module Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.7.1 above.

3.9 **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 (as defined in the ISDA/FOA Clearing Addendum) or (iii) a CCP Default (as defined in the ISDA/FOA Clearing Addendum):

- (a) in the case of a CM Trigger Event, the Client (as defined in the ISDA/FOA Clearing Addendum); or
- (b) in the case of a CCP Default, either Party (the "**Electing Party**"),

would be immediately entitled to exercise its rights under the Addendum Set-Off Provision, and in particular so that, upon the exercise of such rights, 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 (or to) the Party which is owed (or owes) the Available Termination Amount, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because:

In this jurisdiction the Netting Act protects certain collateral granted in respect of netting agreements. Based on our understanding of the effect under English law of the operation of the Addendum Set-Off Provision we believe that the Netting Act would protect the enforceability of the Addendum Set-Off Provision as described in 3.7.1.

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.9 to apply.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply.

3.10 **Enforceability of the Title Transfer Provisions**

3.10.1

- (a) 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;

- (b) 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 be taken into account as part of the Relevant Collateral Value;
- (c) 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; and
- (d) 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:

In this jurisdiction the Finnish Financial Collateral Act (2004, as amended, the “**Financial Collateral Act**”) protects certain collateral arrangements and also the Netting Act protects certain collateral granted in respect of netting agreements. We believe that the Financial Collateral Act and the Netting Act would protect the enforceability of the Title Transfer Provisions as described in qualification 4.(t).

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

3.11 **Use of security interest margin not detrimental to 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 3.10 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement 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:

- (i) 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 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

- (ii) the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

3.12 **Single Agreement**

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

3.13 **Automatic Termination**

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, 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, the Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

3.14 **Multibranch Parties**

Although the matter is unclear under Finnish law in the absence of explicit statutory provisions, we do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, 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. We wish to draw your attention to the discussion below in respect of the Regulation.

The provisions of the Regulation dealing with set-off and those dealing with the interaction between primary and secondary proceedings are not clear. The precise interaction between main and secondary proceedings in the event of conflicting legal systems' approach on insolvency is also unclear. Although the Regulation does allow the secondary proceedings to be stayed at the request of the liquidator in the main proceedings, any such request being very difficult to refuse, this remains subject to such liquidator taking any suitable measure to guarantee the interests of the creditors in the secondary proceedings. It is unclear what result would follow were set-off applied by operation of law in the Member State where secondary proceedings are opened but not permitted by the applicable law in the main proceedings.

3.15 **Insolvency of Foreign Parties**

Where a Party is a Relevant Counterparty 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 (a "**Foreign Defaulting Party**")

the Foreign Defaulting Party could become subject to one or more of the Insolvency Proceedings in this jurisdiction if it's centre of main interests (within the meaning of the Regulation)¹ is in this jurisdiction and/or it has an establishment² or qualifying assets in this jurisdiction, subject to *inter alia* the following restrictions (as applicable):

- (a) Relevant Counterparties referred to in 1.1.6 above cannot become subject to bankruptcy proceedings in Finland; and
- (b) if the centre of main interests of the Foreign Defaulting Party is in a country other than a Member State (other than Denmark), a Finnish court is not competent to initiate bankruptcy proceedings if bankruptcy proceedings against the debtor have been initiated in Iceland, Norway or Denmark and the debtor's domicile has been in that country.

3.16 Special legal provisions for market contracts

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

4. Qualifications

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

- (a) pursuant to the Netting Act, if an entity governed by Finnish law is party to a settlement system falling within the scope of the Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or to a corresponding system of a country outside the European Economic Area, which settlement system is not governed by Finnish law, rights and obligations arising out of, or in connection with, the participation in such settlement system after the commencement of insolvency proceedings against the party shall, for purposes of Finnish conflict of law rules, be governed by the laws governing the settlement system;
- (b) pursuant to the Finnish Act on Recovery to a Bankruptcy Estate (758/1991, as amended, the "**Recovery Act**"), a transaction can be revoked by the debtor's bankruptcy estate, by the administrator of the debtor in reorganisation or by a creditor of the debtor in connection with bankruptcy, reorganisation or execution proceedings (each, a "**Recovery Claimant**") if the transaction unduly favors a particular creditor to the detriment of another creditor or transfers property out of the reach of the creditors or increases the debts of the debtor

¹ The Regulation does not contain a definition for the concept "centre of main interests" but pursuant to recital 13 of the Regulation the concept "should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties". Pursuant to Article 3(1) "[i]n the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary".

² Pursuant to the Regulation "establishment" means "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods".

to the detriment of the creditors, always provided that (i) the debtor was insolvent at the time the transaction was concluded or the transaction contributed to the debtor's insolvency, and that (ii) the other party knew or should have known of the insolvency or of the impact of such transaction on the debtor's financial state as well as of the circumstances due to which the transaction was unsuitable. If such a transaction was concluded earlier than five years prior to date (the "**Decisive Date**") on which the application for bankruptcy, reorganisation or execution was filed with the competent court, the transaction may be revoked only if the secured party was someone closely related to the debtor.

Further pursuant to the Recovery Act, a payment of debt can be recovered by a Recovery Claimant against the debtor's assets if such payment was made later than three months prior to the Decisive Date and provided that the payment was made by unusual means or prematurely or in an amount that must be considered substantial in consideration of the debtor's assets, unless the payment can be considered ordinary taking into account the circumstances. If such payment was made earlier than three months but later than two years before the Decisive Date, the payment may be revoked only if such creditor was someone closely related to the debtor, and further provided that it cannot be evidenced that the grantor was not insolvent and did not become insolvent as a result of the payment. An exercise by a creditor of its set-off right against a debtor may be recovered similarly if the creditor would not be entitled to exercise the set-off right in bankruptcy proceedings initiated against the debtor.

Further pursuant to the Recovery Act, any security interest granted can be recovered by the Recovery Claimant against the grantor's assets if such security interest was perfected later than three months prior to the Decisive Date, if (i) such security interest was not agreed on at the time the debt came into existence, or (ii) the transfer of possession, notice of assignment or other means of perfecting the security interest was not carried out without undue delay after the origination of the debt.

Further pursuant to the Recovery Act, a gift-like transaction and a payment of debt received by a creditor through an execution action (Fi: *ulosmittaus*) can, subject to certain pre-requisites (which vary depending on the type of transaction and the parties thereto), be revoked if the transaction was concluded within a certain period of time (the length of which varies depending on the type of transaction and the parties thereto) before the Decisive Date.

A transaction constituting netting under the Netting Act cannot be recovered on the basis of the recovery rules set out in the second and third paragraph of this qualification (b).

A transaction constituting netting under the Financial Collateral Act cannot be recovered on the basis of:

- (i) the recovery rule set out in the second paragraph of this qualification (b) but instead (i) a claim that was part of the netting may be recovered if the creditor of such claim acquired the claim later than three months before the Decisive Date and (ii) an undertaking that was part of the netting and to which the creditor has become bound later than three months before the Decisive Date in a way corresponding to a payment of debt; may be recovered, unless such acquisition or undertaking can be considered customary; and
 - (ii) the recovery rule set out in the third paragraph of this qualification (b) provided that the parties have agreed (i) that the grantor is obliged to grant security or additional security as a result of the change in the value of a debt or previously granted security and that the granting of such security can be considered customary or (ii) that the grantor is entitled to replace a previously granted security with another security with a value not exceeding that of the previous security;
- (c) the term “perfection”, when used herein, refers to measures undertaken in order to make security enforceable in relation to third parties (e.g. in the bankruptcy of the security provider) (referred to as “*julkivarmistus*” in Finnish law and legal doctrine);
- (d) enforcement in Finland of the right of a party under any agreement or instrument may be limited by general time bar provisions (Finnish: *vanhentuminen*);
- (e) pursuant to Section 36 of the Finnish Contracts Act (228/1929, as amended), if a contract term is unfair or its application would lead to an unfair outcome, the term may be adjusted or set aside. Consequently, enforcement of the Agreement may be limited by general principles of equity; in particular, equitable remedies (such as an order for specific performance or an injunction) are discretionary remedies and may not be available under the laws of Finland where damages are considered to be an adequate remedy, and nothing in this opinion should be taken to indicate that any particular remedy would be available with respect to any particular provision of the Agreement in any particular instance. Moreover, the effectiveness of terms in the Agreement exculpating a party from liability or duty otherwise owed may be limited by law or subject to mitigation;
- (f) any provision in the Agreement which involves an indemnity for costs of litigation or enforcement is subject to the discretion of the court to decide whether and to what extent a party to litigation or enforcement should be awarded the costs incurred by it in connection therewith, where the court applies Finnish law as mentioned in 3.2.1 above and where such matters fall under the statutory Finnish procedural rules;
- (g) there may be circumstances in which a Finnish court would not treat as conclusive certificates and determinations which according to the Agreement are stated to be so treated;

- (h) the right to recover damages may be limited to the extent the aggrieved party could have avoided or mitigated the damages using reasonable efforts;
- (i) where any party is vested with a discretion or may determine a matter in its opinion, Finnish law may require that such discretion is exercised reasonably or that such opinion is based on reasonable grounds;
- (j) Finnish courts will not give effect to obligations, the performance of which would be illegal under the laws of the jurisdiction in which they are to be performed, nor will they give effect to contractual provisions purporting to constitute a waiver of applicable mandatory provisions of law;
- (k) the question of whether or not any provisions of the Agreement which may be invalid on account of illegality may be severed from the other provisions thereof in order to save those other provisions would be determined by a Finnish court in its discretion;
- (l) as regards jurisdiction, a Finnish court may stay proceedings if concurrent proceedings are being brought elsewhere;
- (m) if requested by the court, it is up to the parties to prepare an adequate translation into the Finnish language or the Swedish language of the Agreement, in order for the court to rule on the issues brought before it;
- (n) in any proceedings before a Finnish court for the enforcement of the Agreement, the proceedings would be conducted in accordance with the statutory Finnish procedural rules and the court would not be obliged to give effect to provisions in the Agreement, such as agreements regarding the manner in which service of process is carried out, to the extent in conflict with such statutory rules;
- (o) the Agreement allows a party to declare an event of default before formal insolvency or enforcement proceedings are commenced. These events would most likely not qualify as insolvency proceedings under the Netting Act (nor do they appear to correspond to the definition set out in Article 2 (j) of the Settlement Finality Directive to which the government bill for the Netting Act refers), in which case close-out netting after a termination on these grounds and in the absence of Insolvency Proceedings would not fall within the definition of netting as used in the Netting Act. However, we believe that the wording of the Netting Act is an indication of the most likely scenario in which close-out netting would occur rather than a strict rule on applicability, and an exclusion of close-out netting in other circumstances could be argued to be contrary to the stated purpose of the Netting Act, nor is such an exclusion discussed in the government bill or in the Settlement Finality Directive;
- (p) in respect of entities of the type referred in 1.1.2, 1.1.3, 1.1.5 and 1.1.6 this opinion is not given to the extent Finnish law is not applicable as a result of the application of the provisions set out in the Commercial Banks Act (implementing the EU Directive 2001/24/EC and applicable by reference to savings banks and co-operative banks) to the effect that legal implications of

netting agreements are determined solely on the basis of the law applicable to such agreements and that (with the exception that rights relating to securities and derivatives contracts the creation or transfer of which is registered on an account, register or centralised custody arrangement are determined in accordance with the law of the EEA state in which the account or register is held or the custody arrangement kept) legal implications of bankruptcy proceedings on transactions entered into in a regulated market as well as legal implications of repurchase agreements are determined solely on the basis of the law applicable to such agreement;

- (q) the Financial Collateral Act does not protect netting of payments and delivery obligations relating to (i) a claim acquired by the creditor later than three months before the Decisive Date (as defined in qualification 4.(b)) or (ii) an undertaking to which the creditor has become bound later than three months before the Decisive Date in a way corresponding to a payment of debt;
- (r) the Financial Collateral Act provides that the assets included in netting are valued by using the current price of such assets and that the liquidation and valuation methods agreed to be used will be upheld unless they infringe the interests of the other party;
- (s) outside Insolvency Proceedings a creditor of the relevant party may, under the Finnish Enforcement Code (2007, as amended, the “**Enforcement Code**”) apply for an execution proceeding for the payment of a debt owed by the relevant party to that creditor. An execution officer may attach (and liquidate) an asset of the relevant party for the payment of the debt that is subject to the procedure. It cannot be ruled out that the asset would be a receivable under the Agreement (or an asset subject to a security interest under the Agreement).

If the asset to be attached is a receivable under the Agreement the execution officer would deliver a payment order to the counterparty of the Agreement instructing the counterparty to make payment of the receivable only to the execution officer. Upon receipt of a payment order the counterparty to the Agreement would not as a matter of Finnish law as a result of an express restriction in the Enforcement Code be entitled to exercise any set-off in relation to such receivable:

- (i) unless, at the time of receipt of the payment order, the general requirements for set-off (the receivables to be set off are enforceable (i.e. valid, due and payable), mutual and in the same currency) were met and that counterparty had an enforceable execution title (e.g. a non-appealable court judgment) to its receivables to be used for set-off; or
- (ii) unless this restriction is disapplied by the Netting Act or the Financial Collateral Act as discussed below, in which case the restriction is likely to apply only to obligations that arise after the counterparty was informed of the attachment.

Payment orders under the Enforcement Code may be delivered also to counterparties outside Finland.

If the asset to be attached is subject to a security interest in favor of a counterparty, the counterparty may have to transfer the security asset to the execution officer for liquidation. The counterparty would however continue to have priority to the net liquidation proceeds at least in relation to obligations that have arisen before the counterparty was informed of the attachment.

The Financial Collateral Act and the Netting Act provide for certain exceptions to the express set-off restriction referred to above. The Financial Collateral Act and the Netting Act implement the EU Directives 2002/47/EC and 1998/26/EC, respectively, and both Acts have been amended pursuant to the implementation of the Directive 2009/44/EC.

The general set-off restriction set out in the Enforcement Code is overridden by the more specific rules of the Financial Collateral Act and the Netting Act in situations where either of the Acts is applicable to the netting in question. As a result of such rules, netting should despite the express set-off restriction under the Enforcement Code be allowed against obligations that have arisen **before** the counterparty was notified of the execution procedure (and the accompanying prohibition on payment), subject however to the slight ambiguity of such rules discussed below.

Both Acts provide that, where netting has been completed before the counterparty was notified of the execution procedure (and the accompanying prohibition on payment) under the Enforcement Code of a receivable owed by that counterparty, the execution procedure will apply only to the net payment.

Further, pursuant to Section 10 of the Financial Collateral Act and Section 7 of the Netting Act a receivable that is subject to an enforcement procedure may not be netted against an obligation that has arisen **after** the counterparty was notified of the execution procedure (and the accompanying prohibition on payment). The sections do not contain a clear statement on whether a receivable that is subject to an enforcement procedure could be netted against an obligation that has arisen **before** the counterparty was notified of the execution procedure and the prohibition on payment. The absence of a clear rule could imply that the main rule, which would generally not permit netting in this scenario, would apply.

The preparatory works for the Financial Collateral Act are clearer than the preparatory works for the Netting Act in this respect and state that a counterparty may net or set off obligations that have arisen **before** it was notified of the execution procedure and the prohibition on payment. According to the preparatory works, a counterparty may invoke a close-out netting provision notwithstanding any attachment, as required by the Directive 2002/47/EC. Therefore, netting where the Financial Collateral Act is applicable should despite the express set-off restriction under the Enforcement Code be allowed against obligations that have arisen **before** the counterparty was

notified of the execution procedure (and the accompanying prohibition on payment).

The preparatory works for the Netting Act are silent with regard to the application of Section 7 of the Act. The Directive 1998/26/EC only governs collective insolvency proceedings, but in connection with its implementation in Finland by the Netting Act it was stated that the rules concerning netting in bankruptcy would also be applied to netting in the execution proceedings regulated by the Enforcement Code.

The preparatory works for the Financial Collateral Act directly state that Section 10 of the Financial Collateral Act corresponds to Section 7 of the Netting Act. Other sections of the preparatory works also support the view that Section 7 of the Netting Act should be interpreted similarly to Section 10 of the Financial Collateral Act, and as the scope of application of each Act may overlap the scope of application of the other, it is likely that Section 7 of the Netting Act would be applied similarly to Section 10 of the Financial Collateral Act. Hence, the netting of a receivable that is subject to an enforcement procedure against an obligation that has arisen *before* the counterparty was notified of the execution procedure and the prohibition on payment should be possible also where only the Netting Act applies;

- (t) Under the Financial Collateral Act the parties may agree on an arrangement which results in a title transfer of securities or cash by the collateral provider and also agree that the recipient has to transfer equivalent securities to the collateral provider under the agreed terms at the latest on the due date unless it has been agreed that the value of the securities will be set off against the secured obligation. Where the Financial Collateral Act applies, the title transfer collateral arrangement, under which the Relevant Counterparty transfers full ownership of the Acceptable Margin for the purpose of securing the performance of the Relevant Counterparty's obligations under the Agreement, would be upheld in accordance with its terms and the Non-Defaulting Party would be entitled to set off the Default Margin Amount against amounts payable by the Relevant Counterparty to the Non-Defaulting Party under the Agreement. The title transfer collateral arrangement under the Title Transfer Provisions would under Finnish law constitute a security interest within the wider meaning of the concept but where the Financial Collateral Act applies it would be held as collateral based on title transfer (*omistusoikeuden siirtoon perustuva vakuus*) within the meaning of the Financial Collateral Act resulting in the title being able to be effectively transferred to the recipient.

To the extent that the transactions entered into under the Agreement and the Parties thereto meet the following criteria, the provisions of the Financial Collateral Act shall become applicable:

1. the transactions entail a transfer of securities (as defined in the SMA) or other comparable securities or derivative instruments that are customarily traded in the financial market), a receivable based on a monetary loan granted by a credit institution (or an entity referred to

in the EU Directive 2002/47/EC Article 2, Section 1, Sub-section o) or cash on an account as security, and

2. the security provider qualifies as an “institution” (see below) or the recipient of the security qualifies as an “institution” but then provided that the security provider is a person, other than a natural person, and further provided that the securities so transferred as security, in the case of equity securities, are the subject of public trading (which for the purposes of the Financial Collateral Act mean securities and derivatives that are freely transferable and commonly traded in the securities markets) which requirement does not apply to non-equity securities.

“Institution” means, for purposes of the Financial Collateral Act, any of the following: (i) a public institution as defined in more detail in the Financial Collateral Act, (ii) the Bank of Finland, the European Central Bank, the Bank for International Settlements, the International Monetary Fund, the European Investment Bank, the Nordic Investment Bank or other multilateral development banks, (iii) licensed credit institution, financial institution, investment firm, fund manager, securities depository, insurance company, pension insurance company, (iv) clearing entity (a Finnish limited company which has a license to carry out clearing operations professionally and on a regular basis) and clearing party (authorized pursuant to industry specific legislation to enter transactions into a clearing entity or equivalent foreign entity) and (v) other domestic or foreign entity, which is engaged in comparable activities as those specified above as well as entity which qualifies as an institution under the EU Directive 2002/47/EC Article 1, Section 2, Sub-section a-d.

The Relevant Counterparties referred to in 1.1.2, 1.1.3, 1.1.5, 1.1.6, 1.1.11 and 1.1.12 qualify as Institution for the purposes of the Financial Collateral Act.

For purposes of the Financial Collateral Act and where the Financial Collateral Act is applicable as described above, **“netting”** shall mean that upon the due date the opposite payment or delivery obligations of the security provider and recipient are aggregated into one payment or other obligation, as agreed between the parties.

Where the Financial Collateral Act is applicable, obligations created before the commencement of Insolvency Proceedings may be netted in accordance with a customary provision in an agreement regardless of the Insolvency Proceedings and the netting shall be binding in the Insolvency Proceedings of a Relevant Counterparty. Inclusion of the Default Margin Amount in the netting under the FOA Netting Provisions would be treated as netting for the purposes of the Financial Collateral Act, if the conditions specified above are satisfied.

We believe that the arrangement under the Title Transfer Provisions qualifies for the Financial Collateral Act provided that:

- (i) the margin referred to in the Title Transfer Provisions is securities (as defined in the Finnish Securities Market Act (2012, as amended, the “SMA”) or other comparable securities or derivative instruments that are customarily traded in the financial market) or cash on an account; and
- (ii) either
 - (A) the transferor of the margin is a Relevant Counterparty that is a bank, a mortgage bank or a securities dealer; or
 - (B) the transferor of the margin is another Relevant Counterparty, the Firm or, as the case may be, the Clearing Member is an Institution (as defined below) and if the margin consists of equity securities such securities are the subject of public trading; and
- (iii) the obligations to be netted were created before the commencement of Insolvency Proceedings; and
- (iv) the margin has been transferred as collateral for the obligations under the Agreement (regardless of whether the Transactions are Financial Transactions).

“Commencement of insolvency proceedings” includes, for the purposes of the Financial Collateral Act, the Insolvency Proceedings.

The arrangement under the Title Transfer Provisions may however in any event be held to constitute a collateral arrangement for the purposes of the Recovery Act (as defined in qualification 4.(b)). The mitigating effects of the applicability of the Financial Collateral Act on the Finnish law clawback rules are set out in the sixth paragraph of qualification 4.(b).

To the extent that the Financial Collateral Act is not applicable, the characterization of the arrangement under the Title Transfer Provisions may be questioned in Insolvency Proceedings. Other than the Financial Collateral Act, there are no express provisions of Finnish law or relevant case law setting out the grounds that may give rise to a recharacterisation of a particular transaction. Transfers of title in situations where the intention is deemed to have been to create a security interest rather than a final transfer of all of the risks and benefits associated with ownership have been frequently discussed in Finnish legal literature. Generally, the perceived intention of the parties is deemed decisive for the legal outcome, rather than the form of the transaction. This means that where the arrangement under the Title Transfer Provisions is recharacterised as a security arrangement e.g. the requirements applicable to the creation and perfection of security and the pledgee’s/transferee’s obligation to account for excess value would nonetheless apply.

To the extent that the Financial Collateral Act is not applicable (either because the parties or the asset transferred as Acceptable Margin do not meet the requirements of the Financial Collateral Act) and the arrangement under the Title Transfer Provisions is recharacterised as a security arrangement and such security is created and perfected as required under the law of the location of the securities (the *lex rei sitae* principle), the inclusion of the Default Margin Amount in the netting under the FOA Netting Provisions would be susceptible to the effects of the Insolvency Proceedings, unless such netting falls within the scope of the Netting Act. The Netting Act should apply, if margin is provided for the purpose of credit support in respect of the Transactions and netted against obligations of the Relevant Counterparty under Transactions that relate to Financial Transactions or currency units legal in Finland or in another country. The applicability of the Netting Act does not however remove the recharacterisation risk.

In the case of recharacterisation, where the securities transferred under the Title Transfer Provisions are located outside Finland and are held being subject to a perfected security arrangement pursuant to the law of the jurisdiction in which the securities are located and pursuant to such law the secured party would in such security arrangement be entitled to use or invest for its own benefit, without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an Agreement (with Title Transfer Provisions), Finnish law should not affect such right;

- (u) the Netting Act protects close-out netting meaning that upon the commencement of Insolvency Proceedings it would be permitted to terminate all Financial Transactions and aggregate the payment and delivery obligations relating to such Financial Transaction and collateral granted for the same into a net sum. It could be argued that a netting provision does not contemplate close-out netting within the meaning of the Netting Act if it enables netting to be applied in respect of some but not all termination amounts. If the netting right is in the Insolvency Proceedings of a Relevant Counterparty exercised in respect of all termination amounts and collateral in connection with the termination of all Transactions with the Relevant Counterparty, netting should nevertheless be protected under the Netting Act despite it being able to be exercised only in respect of some termination amounts;
- (v) set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision after the commencement of Insolvency Proceedings would only be effective where:
 - (i) In relation to paragraph 3.7.1, 3.7.2, 3.8.1, 3.8.2 and 3.9, each cash balance and cash margin amount that is to be set off consists only of cash that has been (a) granted as collateral for the obligations forming the Liquidation Amount (b) pursuant to margin obligation or collateral provisions that can be considered customary;
 - (ii) each Default Margin Amount and Transferred Margin referred to in paragraph 3.10 consists only of cash or securities that has been (a) granted as collateral for the obligations forming the Liquidation

Amount (b) pursuant to margin obligation or collateral provisions that can be considered customary;

- (iii) each Liquidation Amount and Available Termination Amount referred to in paragraphs 3.7.1, 3.7.2, 3.8.2, 3.9 and 3.10 relates only to the Transactions; and
- (iv) the FOA Netting Agreement or, as the case may be, the Clearing Agreement contains the FOA Netting Provisions or other netting provisions that can be considered customary.

If there are in existence between the Parties some cash claims that are not within the scope of sub-paragraph (i) to (iii) above, the mere existence of such cash claims will not prevent cash claims that do fall within the scope of sub-paragraph (i) from being set off against such claims falling within the scope of sub-paragraph (iii) after the commencement of Insolvency Proceedings; and

- (w) we express no opinion as to any law other than the law of Finland as presently in force and we have assumed that there is nothing in any other law that affects our opinion stated herein; in particular, we have made no independent investigation of the laws of England and Wales as a basis for the opinion stated herein and do not express or imply any opinion thereon; legal concepts expressed or described herein shall be governed by and words and expressions used herein shall be construed in accordance with Finnish law notwithstanding that original Finnish terms and definitions may not always have been used.

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

This opinion is governed by and construed in accordance with the laws of Finland.

* * *

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 Future and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,

Roschier, Attorneys Ltd.


Gunnar Westerlund


Helena Viita

SCHEDULE 1

Insurance companies

Subject to the modifications and additions set out in this Schedule 1 (*Insurance companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are:

- (a) insurance companies incorporated or organised under the Finnish Insurance Companies Act (2008, as amended) incorporated, organised, established or formed under the laws of Finland;
- (b) branches established or located in Finland of foreign entities of the type referred in (a) incorporated outside the EEA, established in accordance with the Finnish Act on Foreign Insurance Companies (1995, as amended, the “**FICA**”); and
- (c) branches established or located in Finland of foreign entities of the type referred in (a) incorporated in a member state of the EEA, established in accordance with the FICA.

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 1.8.2 is deemed deleted and replaced with the following:

“Insolvency Proceedings” means the laws and procedures listed in section 3.1 of Schedule 1 (Insurance companies)”

2. Additional Assumptions

n/a

3. Modifications to Opinions

- 3.1 The first sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

“The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Relevant Counterparty could be subject under the laws of this jurisdiction, and which is relevant for the purposes of this opinion letter, is:

*bankruptcy under the Finnish Bankruptcy Act (2004, as amended, the “**Bankruptcy Act**”), with regard to insurance companies as supplemented by the provisions of the Finnish Insurance Companies Act (2008, as amended, the “**ICA**”) and the Finnish Act on Foreign Insurance Companies (1995, as amended, the “**FICA**”).”*

- 3.2 The fourth sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

“The ICA however contains provisions corresponding to some of the articles of the Regulation.”

- 3.3 The last sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

“The Regulation has replaced, in respect of matters referred to therein, the Treaty in the relations between Member States (except for Denmark to which the Regulation does not apply). The provisions of the ICA referred to above are likely to having replaced, in respect of matters referred to therein, the Treaty in the relations between the members of the European Economic Area.”

- 3.4 The reference in item (a) of paragraph 3.2.2 to “the Commercial Banks Act” is replaced by a reference to the ICA and item (b) of paragraph 3.2.2 is replaced with the following:

“in respect of entities of the type referred in (a) and (c) in Schedule 1 of this opinion by the provisions set out in the ICA and the FICA (implementing the EU Directives on Reorganisation and Winding-Up of Insurance Undertakings) to the effect that the rights and obligations relating to securities recorded in a register maintained in an EEA member state are determined by the laws of such EEA member state and that the legal implications of bankruptcy and liquidation proceedings on transactions entered into on regulated markets are determined on the basis of the law which is applied to transactions entered into on such markets.”

- 3.5 Paragraph 3.15 is deemed deleted and replaced with the following:

*“Where the Defaulting Party is a Relevant Counterparty incorporated or formed under the laws of another jurisdiction (a “**foreign Defaulting Party**”) the foreign Defaulting Party could become subject to one or more of the Insolvency Proceedings in this jurisdiction if it has an establishment or qualifying assets in Finland, subject to inter alia the following restriction: Relevant Counterparties referred to in (c) of Schedule 1 (Insurance companies) cannot become subject to bankruptcy proceedings in Finland.”*

4. Additional Qualifications

n/a

5. Modifications to Qualifications

- 5.1 Paragraph 4(p) is deemed deleted and replaced with the following:

“In respect of entities of the type referred in (a) and (c) in Schedule 1 of this opinion is not given to the extent Finnish law is not applicable as a result of the application of the provisions set out in the ICA and the FICA (implementing the EU Directives on Reorganisation and Winding-Up of Insurance Undertakings) to the effect that the rights and obligations relating to securities recorded in a register maintained in an EEA

member state are determined by the laws of such EEA member state and that the legal implications of bankruptcy and liquidation proceedings on transactions entered into on regulated markets are determined on the basis of the law which is applied to transactions entered into on such markets.”

- 5.2 Sub-paragraph (ii) of paragraph 4(t) is deemed deleted and replaced with the following:

“the transferor of the margin is the Relevant Counterparty; and”

- 5.3 The fourth sub-paragraph of qualification 4(t) is replaced with the following:

“The Relevant Counterparty qualifies as institution under the Financial Collateral Act.”

Private individuals

Subject to the modifications and additions set out in this Schedule 2 (*Private individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are private individuals domiciled or resident in Finland.

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 1.8.2 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the laws and procedures listed in section 3.1 of Schedule 2 (Private individuals)"

2. Additional Assumptions

2.1 The following assumption is added in paragraph 2:

"Either the Relevant Counterparty enters into the Agreement as merchant (i.e. mainly for business purposes and not as a consumer) or the Agreement, the Transactions and all transfers of margin have been entered into in compliance with the Finnish Consumer Protection Act (1978, as amended) as well as other laws regulating securities trade and the Relevant Counterparty has not exercised his/her right that he/she may have under the said acts to withdraw from the transactions under the Agreement."

2.2 In paragraph 2.7 " , where the Relevant Counterparty is acting mainly for its business (i.e. not as a consumer under Finnish law)," is added after "on arms' length commercial terms and".

3. Modifications to Opinions

3.1 The first sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

"The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Relevant Counterparty could be subject under the laws of this jurisdiction, and which is relevant for the purposes of this opinion letter, is:

- (i) *bankruptcy proceedings under the Finnish Bankruptcy Act (2004, as amended, the "**Bankruptcy Act**");*
- (ii) *adjustment of debts under the Act on the Adjustment of the Debts of a Private Individual (1993, as amended, the "**Debt Adjustment Act**");* and

- (iii) *reorganisation under the Finnish Act on Company Reorganisation (1993, as amended, the “Reorganisation Act”).”*

3.2 The following paragraph is deemed added at the end of 3.2.1:

“Where the Relevant Counterparty is acting mainly for a purpose other than its business (i.e. as a consumer under Finnish law), the Rome (I) regulation also enables a Finnish court as a main rule to set aside the choice of law by the parties and apply instead the law of the jurisdiction where the Relevant Counterparty has his/her habitual residence if the application of the chosen law would have the result of depriving the consumer of the protection afforded to him/her by provisions that cannot be derogated from by agreement, in the absence of the choice of law.”

3.3 Paragraph 3.15 is deemed deleted as it is not applicable to the Relevant Counterparties.

4. Additional Qualifications

The following qualification is deemed added:

“the Finnish consumer protection laws may override the law selected to govern the Agreement and the transactions thereunder to the extent the Finnish consumer protection laws better protect the consumer. Where the Agreement is entered into by the Relevant Counterparty mainly for a purpose other than for the business of the Relevant Counterparty, the Finnish Consumer Protection Act (1978, as amended) provide protection to the Relevant Counterparty by requiring that the terms used with the Relevant Counterparty are reasonable to the Relevant Counterparty which in relation to the close-out netting under the Agreement may limit the other party’s termination right under the Agreement to substantial breaches of contract and the other party’s right to damages resulting from e.g. early termination. Pursuant to the Finnish Consumer Protection Act, if a contract term is unfair or its application would lead to an unfair outcome from the perspective of the consumer, the term may be adjusted or set aside, which may limit the enforcement of the Agreement;”

5. Modifications to Qualifications

With respect to qualification 4.(t), the Financial Collateral Act is not applicable to the Agreement to which the Relevant Counterparty is party or netting, set-off, title transfers or security thereunder.

Municipalities and governmental bodies that are not subject to specific legislation

Subject to the modifications and additions set out in this Schedule 3 (*Municipalities and governmental bodies of Finland that are not subject to specific legislation*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are:

municipalities and governmental bodies of Finland that are not subject to specific legislation.

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

n/a

2. Additional Assumptions

n/a

3. Modifications to Opinions

3.1 This opinion is applicable to the Relevant Counterparties with the modification that the Relevant Counterparties cannot be subject to any Insolvency Proceedings. Pursuant to the Bankruptcy Act a state, a municipality or a governmental body cannot become subject to bankruptcy proceedings thereunder and pursuant to the Reorganisation Act the Relevant Counterparties are not listed as types of entities that could benefit from the proceedings thereunder. Neither the Relevant Counterparties nor their assets enjoy immunity from suit and their assets could be subject to attachment under the Enforcement Code. We wish to draw your attention to qualification 4.(s).

3.1.1 Paragraph 3.15 is deemed deleted as it is not applicable to the Relevant Counterparties.

4. Additional Qualifications

n/a

5. Modifications to Qualifications

5.1 Sub-paragraph (ii) of qualification 4(t), is deemed deleted and replaced with the following:

"the transferor of the margin is the Relevant Counterparty; and"

5.2 The fourth sub-paragraph of qualification 4(t) is replaced with the following:

“The Relevant Counterparty qualifies as institution under the Financial Collateral Act.”

Pension entities

Subject to the modifications and additions set out in this Schedule 4 (*Pension entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are:

- (a) (limited liability or mutual) pension insurance companies incorporated or organised under the Act on Pension Insurance Companies (1997, as amended);
- (b) pension funds incorporated or organised under the Employee Benefit Funds Act (1992, as amended); and
- (c) pension foundations incorporated or organised under the Pension Foundation Act (1995, as amended),

in each case incorporated, organised, established or formed under the laws of Finland.

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 1.8.2 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 4 (Pension entities)".

2. Additional Assumptions

n/a

3. Modifications to Opinions

- 3.1 The first sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

"The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Relevant Counterparty could be subject under the laws of this jurisdiction, and which is relevant for the purposes of this opinion letter, is:

*bankruptcy under the Finnish Bankruptcy Act (2004, as amended, the "**Bankruptcy Act**"), with respect to pension insurance companies as supplemented by certain provisions of the Finnish Insurance Companies Act (2008, as amended, the "**ICA**")."*

- 3.2 The fourth sub-paragraph and the last sub-paragraph of paragraph 3.1 are deemed deleted and replaced with the following respectively:

“To the extent the Regulation is not applicable to the Relevant Counterparties, the ICA incorporates provisions implementing the EU Directives on Reorganisation and Winding-Up of Insurance Undertakings addressing competence to initiate insolvency proceedings against certain Relevant Counterparties as well as conflicts of laws rules applicable inter alia to set-off and security arrangements including provisions corresponding to the articles of the Regulation with the exception that where reference is in the Regulation made to a Member State reference is instead made to a member of the European Economic Area.”

“The Regulation has replaced, in respect of matters referred to therein, the Treaty in the relations between Member States (except for Denmark to which the Regulation does not apply). The provisions of the ICA referred to above are likely to having replaced, in respect of matters referred to therein, the Treaty in the relations between the members of the European Economic Area.”

- 3.3 The reference in item (a) of paragraph 3.2.2 to “the Commercial Banks Act” is replaced by a reference to the ICA and item (b) of paragraph 3.2.2 is replaced with the following:

“by the provisions set out in the ICA (implementing the EU Directives on Reorganisation and Winding-Up of Insurance Undertakings) to the effect that the rights and obligations relating to securities recorded in a register maintained in an EEA member state are determined by the laws of such EEA member state and that the legal implications of bankruptcy and liquidation proceedings on transactions entered into on regulated markets are determined on the basis of the law which is applied to transactions entered into on such markets.”

- 3.4 Paragraph 3.15 is deemed deleted as it is not applicable to the Relevant Counterparties.

4. Additional Qualifications

n/a

5. Modifications to Qualifications

- 5.1 Paragraph 4(p) is deemed deleted and replaced with the following:

“this opinion is not given to the extent Finnish law is not applicable as a result of the application of the provisions set out in the ICA to the effect that the rights and obligations relating to securities recorded in a register maintained in an EEA member state are determined by the laws of such EEA member state and that the legal implications of bankruptcy and liquidation proceedings on transactions entered into on regulated markets are determined on the basis of the law which is applied to transactions entered into on such markets.”

- 5.2 Sub-paragraph (ii) of qualification 4(t), is deemed deleted and replaced with the following:

“the transferor of the margin is the Relevant Counterparty; and”

5.3 The fourth sub-paragraph of qualification 4(t) is replaced with the following:

“In our view, it is clear that out of the Relevant Counterparties mentioned above, (limited liability or mutual) pension insurance companies qualify as “institution” under the Financial Collateral Act. In our view while the specific wording of the Financial Collateral Act or the preparatory works thereof do not expressly address pension foundations or pension funds, there are good reasons to argue that these Relevant Counterparties should qualify as “institution” under the Financial Collateral Act on the basis that they are “engaged in comparable activities” as (limited liability or mutual) pension insurance companies. Finally, even where the latter types of Relevant Counterparty would not qualify as “institution” under the Financial Collateral Act, it would be sufficient that the Non-Defaulting Party so qualifies and further provided that any securities transferred as security – in the case of equity securities only – are the subject of public trading.”

The Mortgage Society of Finland

Subject to the modifications and additions set out in this Schedule 5 (*The Mortgage Society of Finland*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party which is:

the Mortgage Society of Finland incorporated or organised under the Finnish Act on Mortgage Societies (1978, as amended) incorporated, organised, established or formed under the laws of Finland.

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 1.8.2 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 5 (The Mortgage Society of Finland)".

2. Additional Assumptions

n/a

3. Modifications to Opinions

- 3.1 The first sub-paragraph of paragraph 3.1 is deemed deleted and replaced with the following:

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

bankruptcy under the Finnish Bankruptcy Act (2004, as amended, the "Bankruptcy Act"), as supplemented by the provisions of the Finnish Act on Mortgage Societies, the CIA and the Finnish Act on Savings Banks (2001, as amended)."

- 3.2 What is stated in paragraphs 3.1-3.16 as regards banks is applicable to the Relevant Counterparty.
- 3.3 The reference in item (b) of paragraph 3.2.2 to certain entity types is replaced with a reference to the Relevant Counterparty.
- 3.4 Paragraph 3.15 is deemed deleted as it is not applicable to the Relevant Counterparty.

4. Additional Qualifications

n/a

5. Modifications to Qualifications

5.1 Qualification 4(p) is also applicable to the Relevant Counterparty.

5.2 Sub-paragraph (ii) of qualification 4(t), is deemed deleted and replaced with the following:

“the transferor of the margin is the Relevant Counterparty; and”

5.3 The fourth sub-paragraph of qualification 4(t) is replaced with the following:

“The Relevant Counterparty is a credit institution and therefore qualifies as institution under the Financial Collateral Act.”

Forms of FOA 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 Provisions 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.

List of Transactions

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

- (a) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:
 - (i) a contract made on an exchange or pursuant to the rules of an exchange;
 - (ii) a contract subject to the rules of an exchange; or
 - (iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

 - (iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or
 - (v) any other Transaction which the parties agree to be a Transaction;
- (b) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;
- (c) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;
- (d) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.
- (e) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

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):

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

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

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

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

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

"Client" means, in relation to 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 3.3 (*Enforceability of FOA Netting Provision*) and 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.4 (*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";
- (c) for the purposes of paragraph 3.5 (*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";
- (d) for the purposes of paragraph 3.7.1, 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;
- (e) for the purposes of paragraph 3.7.2, 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;
- (f) for the purposes of paragraph 3.8.1, 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;

- (g) for the purposes of paragraph 3.8.2, 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;
- (h) for the purposes of paragraph 3.9 (*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;
- (i) for the purposes of paragraph 3.10.1, (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; and
- (j) for the purposes of paragraphs 3.10.3 and 3.10.4, 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 (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 on 9 October 2013 or any subsequent published version up to the date of this opinion letter.

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

- (a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;
- (b) which is governed by the law of England and Wales; and

- (c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off 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*); or
- (g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"FOA Published Form Agreement" means a document listed at Annex 1 in the form published by 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*); or
- (ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

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

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

(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); or
- (vi) provided that any modification of such clauses include 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); or
- (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 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
- (d) 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:

- (i) 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);
- (ii) 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);
- (iii) 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);
- (iv) 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);
- (v) 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);
- (vi) 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);
- (vii) 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);
- (viii) 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);
- (ix) 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
- (x) 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 Provisions" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

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

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

Part 1: Core provisions

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

1. FOA Netting Provision:

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

2. General Set-Off Clause:

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

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

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

5.2 "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:

5.3 "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).”

5. Title Transfer Provisions:

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

6. Clearing Module Netting Provision / Addendum Netting Provision:

- (a) [Firm Trigger Event/CM Trigger Event]

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

- (i) 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)];
- (ii) 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;
- (iii) 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]);

- (iv) 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:

- (i) 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)];

- (ii) 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;
- (iii) 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]));
- (iv) 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:

- (i) is attributable to such Client Transactions;
- (ii) 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
- (iii) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

- (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).

(c) 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.³
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.⁴
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.⁴
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.

³ It being understood that such amendment would have the effect of an Insolvency Proceeding not been considered covered by the Insolvency Event of Default until conditions referred have been satisfied.

⁴ It being understood that such amendment may have the effect of an Insolvency Proceeding not been considered covered by the Insolvency Event of Default.

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.⁵
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
 - (d) 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.
- (c) 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,

⁵ Paragraph 3.3 assumes that obligations to be netted pursuant to the FOA Netting Provisions all relate to the Transactions. To the extent amounts not related to Financial Transactions are added such amounts would not enjoy the protections under the Netting Act and paragraph 3.3 would not apply. Removal of amounts from the Liquidation Amount would make the netting under the FOA Netting Provisions susceptible to qualification 4.(u).

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).

- (d) 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).
- (e) Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.
- (f) 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:

None

2. Desirable amendments:

None

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

- i. For the purposes of paragraphs 3.7.1 and 3.7.2 the underline wording below should be treated as part of the Margin Cash Set-Off Clause:

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.]"

- ii. For the purposes of paragraph 3.9 the underlined wording below should be treated as part of the Core Provisions:

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).
- (c) 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.