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Legal collateral opinion– Situs Version

The Futures & Options Association
2nd Floor
36–38 Botolph Lane
London EC3R 8DE

28 February2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of France ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below).

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 3 of this opinion letter.

References herein to "*this opinion*" are to the opinions given in paragraph 3.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of

1.1.1 private commercial legal entities organised or incorporated under the laws of France having one of the forms referred to in Book II of the Commercial Code and being *sociétés en nom collectif* (SNC), *sociétés en commandite simple* (SCS), *sociétés à responsabilité limitée* (SARL), *sociétés anonymes* (SA), *sociétés par actions simplifiées* (SAS) and *sociétés en commandite par actions* (SCA) which is not any of the entities referred to in paragraph 1.2 below (each, a "**Company**"); and

1.1.2 in respect of paragraph 3.3, the entities referred to in such paragraph,

CLIFFORD CHANCE EUROPE LLP EST UN CABINET DE SOLICITORS INSCRIT AU BARREAU DE PARIS EN APPLICATION DE LA DIRECTIVE 98/5/CE, ET UN LIMITED LIABILITY PARTNERSHIP ENREGISTRÉ EN ANGLETERRE ET AU PAYS DE GALLES SOUS LE NUMÉRO OC312404, DONT L'ADRESSE DU SIÈGE SOCIAL EST 10 UPPER BANK STREET, LONDON, E14 5JJ

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

1.2 However, this opinion is also given in respect of Counterparties providing Collateral to a Firm 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 (if any):

1.2.1 Credit Institutions (Schedule 1);

1.2.2 Investment Firms (Schedule 2);

1.2.3 Insurance Companies (Schedule 3);

1.2.4 French collective investment schemes organised as OPCVMs (*Organismes de placement collectif en valeurs mobilières*) under the Financial Code (Schedule 4) which include SICAVs (*Sociétés d'investissement à capital variable*) and FCPs (*fonds communs de placement*); and

1.2.5 natural persons acting in the capacity as merchant (*commerçant*) or craftsperson (*artisan*) (Schedule 5),

insofar as each may act as a Counterparty to a Firm under an Agreement.

However, the following entities are expressly excluded from the this opinion, as their inclusion in the scope of this opinion letter would require a bespoke analysis: central banks (which notably include the *Banque de France*, the *Institut d'émission des departments d'outre–mer*, the *Institut d'émission d'outre–mer*); international organisations or EU institutions or bodies (*e.g.* the International monetary fund (IMF), the European Central Bank, the European financial stability fund (EFSF), etc.); the states and its subdivisions (e.g. *Trésor Public*, *Agence France Trésor*, etc.), public bodies and local authorities including municipalities (such as *communes, départements, régions, syndicats intercommunaux*) and more generally public sector entities (including in particular, the *Fonds stratégique d'investissement* (FSI) or the *Caisse des dépôts et consignations* (CDC)); pension funds (unless they take the form of an OPCVM), investment companies (*sociétés d'investissement*) governed by the ordinance n°45–2710 of 2 November 1945; French *fiducies* (and *fiduciaires*) governed by articles 2011 *et seq.* of the Civil Code; unincorporated partnerships, pension funds, trusts, economic interest groups or European economic interest groups (*groupements d'intérêts économiques* and *groupements d'intérêts économiques européens*) or any similar form of organisation under French law; non–profit organisations (*associations à but non lucratif*).

1.3 This opinion is given in respect of cash and account–held securities which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra–day basis.

1.4 This opinion relates solely to matters of French law and does not consider the impact of any laws other than French law, even where, under French law, any foreign law

falls to be applied. This opinion letter and the opinions given in it are governed by French law and relate to French law as applied by French courts as at today's date. All non contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by French law. For the purposes of this opinion letter, the term "France" refers (and the term "French" shall be construed accordingly) to the metropolitan territory of the French Republic and all overseas departments (*départments d'outre–mer*) and overseas provinces (*régions d'outre–mer*) but excludes overseas collectivities (*collectivités d'outre–mer*), Nouvelle Calédonie and the Austral and Antartic territories. For the avoidance of doubt, Monaco is also excluded.

1.5 This opinion expresses and describes French legal concepts in the English language rather than in their original form and such expressions and/or descriptions may not be fully identical in their meaning to the underlying French law concepts. Any issues of interpretation arising in respect of the Agreements or this opinion will be determined by the French courts in accordance with French law and we express no opinion on the interpretation that the French courts may give to such expressions or descriptions.

1.6 In this opinion letter:

1.6.1 "**ACP**" means the *Autorité de contrôle prudentiel*;

1.6.2 "**AMF**" means the *Autorité des Marchés Financiers*;

1.6.3 "**Civil Code**" means the French *code civil*;

1.6.4 "**Collateral Directive**" means the directive No. 2002/47/EC of the European parliament and of the Council of 6 June 2002, as amended;

1.6.5 "**COMI**" means in relation to a party to the Agreement or a Transaction, the "centre of its main interests", for the purposes of the EU Insolvency Regulation.

1.6.6 "**Commercial Code**" means the French *code de commerce*;

1.6.7 "**Credit Institution**" bears the meaning ascribed thereto in Schedule 1;

1.6.8 "**Credit Institution WUD**" means the directive No. 2001/24/EC of the European Parliament and of the Council of 4 April 2001, as implemented into French law under articles L. 613–31–1 *et seq.* of the Financial Code;

1.6.9 "**Defaulting French Party**" means a Defaulting Party that is a French Party.

1.6.10 "**enforcement**" means, in the relation to the Security Interest, the act of:

(i) sale and application of proceeds of the sale of Collateral against monies owed, or

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.6.11 in other instances other than those referred to at 1.6.10 above, references to the word "**enforceable**" is 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 and shall have, under French law, the meaning of "*opposable*". We do not opine on the availability of any judicial remedy. Concerning limitations to enforceability under French law generally, please refer to our observations made in paragraph 4.9 below;

1.6.12 "**Equivalent Agreement**" means an agreement:

(a) which is governed by the law of England and Wales;

(b) which has broadly similar function to any of the Agreements listed in Annex 1;

(c) which contains the Core Provisions (with no amendments, or with Non–material Amendments); and

(d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non–material Amendments);

References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;

References to "**Core Provisions**" include Core Provisions that have been modified by Non–Material Amendments.

1.6.13 "**EU Insolvency Regulation**" means the Council regulation (EC) No.°1346/2000 of 29 May 2000 on insolvency proceedings, as amended by Regulation n° 694/2006 dated 27 April 2006;

1.6.14 "**Financial Code**" means the French *code monétaire et financier*;

1.6.15 "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement);

1.6.16 "**Insurance Code**" means the French *code des assurances*;

1.6.17 "**Insurance Companies**" bears the meaning ascribed thereto in Schedule 3 (*Insurance companies*);

1.6.18 "**Insurance WUD**" means the directive No. 2001/17/EC of the European Parliament and of the Council of 19 March 2001, as transposed into French law under articles L. 326–20 *et seq.* of the Insurance Code;

1.6.19 "**Investment Firms**" bears the meaning ascribed thereto in **Error! Reference source not found.** (*Investment Firms*);

1.6.20 A "**Non–material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

1.6.21 "**OPCVMs**" means *organismes de placement collectif en valeurs mobilières*, (undertakings for collective investment in transferable securities), within the meaning of articles L. 214–2 *et seq.* of the Financial Code (including, in particular, "coordinated" UCITS authorised pursuant to directive No. 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS));

1.6.22 A "**Qualifying Entity**" means:

(a) a credit institution (*établissement de crédit*), which, in compliance with article L. 511–9 of the Financial Code, may be licensed either as a bank, a mutual or cooperative bank (*banque mutualiste ou coopérative*), a pawn broker (*caisse de crédit municipal*), a finance company (*société financière*)[1], or a specialised financial institution (*institution financière spécialisée*);

(b) an investment undertaking (*entreprise d'investissement*) which, in accordance with article L. 531–4 of the Financial Code, are legal entities, other than credit institutions, which provide investment services in the normal course of their business, and duly licensed as such ;

(c) a public establishment (*établissement public*);

(d) a territorial authority (*collectivité territoriale*);

(e) an institution, a person or an entity referred to in paragraphs (1) and (2) of article L. 531–2, *i.e.*:

(i) the French State, the *Caisse de la dette publique* and the *Caisse d'amortissement de la dette sociale*;

(ii) the *Banque de France*;

(iii) the *Institut d'émission des départements d'outre–mer* (IEDOM) and the *Institut d'émission d'outre–mer* (IEOM);

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[1] The category of *sociétés financières* includes pursuant to articles L. 515-1 *et seq.* of the Financial Code the *sociétés de crédit bail mobilier et immobilier*, the *sociétés de caution mutuelle* and *the sociétés de crédit foncier*.

(iv) insurance and reinsurance companies governed by the Insurance Code;

(v) undertakings for collective investment referred to in article L. 214–1 of the Financial Code, as well as their management companies referred to in paragraphs 2, 3 and 4 of article L. 214–1–I of the same code;

(vi) institutions for occupational retirement provision (*institutions de retraites professionelles*) referred to in article L. 370–1 of the Insurance Code in relation to those transactions set out in article L. 370–1 of such code which they undertake, as well as those legal persons administering an institution for occupational retirement provision referred to in article 8 of the ordinance n° 2006–344 of 23 March 2006 relating to supplementary occupational retirement schemes;

(vii) persons who only provide investment services to legal entities controlling them, to those the latter controls, as well as those they are controlling themselves. For the purposes of this paragraph, "control" shall be construed as direct or indirect control within the meaning of article L. 233–3 of the Commercial Code;

(viii) companies whose investment services activities are limited to the management of employee saving schemes (*système d'épargne salariale*)

(ix) companies whose activities are limited to those referred to in paragraphs 1.6.22(xii) and 1.6.22(xiii) below;

(x) persons who provide investment advice services or services or reception and transmission of orders for the account of third parties as an accessory activity and within the framework of a professional and non–financial activity or a public accountant activity (*expert comptable*), to the extent it is governed by statutory or regulatory provisions or by a code of conduct (*code de déontologie*) approved by a public authority which do not formally prohibit it;

(xi) persons who do not provide investment services but dealing on own account, unless they are market makers (*teneurs de marchés*) or deal in their own account outside a regulated market or a multilateral trading facility on an organized, frequent and systematic basis, by providing as system accessible to third parties in order to engage in dealings with them. For the purposes of this paragraph, a market maker means a person who intervenes on the financial markets on a continuing basis for dealing on own account by buying and

selling financial instruments against its proprietary capital at prices defined by such person;

(xii) persons dealing financial instruments on own account or providing investment services on commodities futures or other futures specified by decree, to the clients of their main business, provided that this is an ancillary activity to their main business, when considered on a group basis within the meaning of paragraph III of article L. 511–20 of the Financial Code, and that main business does not consist of providing investment, banking or payment services;

(xiii) financial investment advisers (*conseillers en investissements financiers*), within the conditions and limits set out in chapter 1 of title IV of the Financial Code;

(xiv) persons other than financial investment advisers providing investment advice in the course of carrying out another professional activity which is not regulated by title III (investment service providers) of book V of the Financial Code, provided that the provision of such advice is not remunerated per se;

(xv) persons whose main business consists of dealing on own account in commodities or commodity derivatives. This exception shall not apply where the persons that deal on own account in commodities or commodity derivatives are part of the group within the meaning of paragraph III of article L. 511–20 of the Financial Code, the main business of which is the provision of investment, banking and payment services;

(xvi) firms which provide investment services exclusively in dealing on own account on markets in futures (*marchés d'instruments financiers à terme*) or on spot markets (*marchés au comptant*) for the sole purpose of hedging positions on derivative markets or which deal for the account of other members of those markets or make prices for them (*participent à la formation des prix*) and which are guaranteed by a clearing member (*adhérent d'une chambre de compensation*), where responsibility for ensuring the performance of contracts entered into by such firms is assumed by a clearing member;

(f) a clearing house;

(g) a non–resident establishment with a comparable status which shall mean in relation to credit institutions, as defined above, shall mean, subject to the others terms of this opinion letter, an entity that is effectively subject to prudential supervision similar to the supervisions which the credit institutions are subject to in France by French authorities in accordance with the Financial Code ; or

(h) an international financial organisation or body of which France or the European Union is member.

1.6.23 "**Relevant Account**" has the meaning set forth in article 1(5) and 2(1)(h) of the Collateral Directive;

1.6.24 "**Rome I**" means the regulation (EC) No. 593/2008 dated 17 June 2008 on the law applicable to contractual obligations;[2]

1.6.25 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;

1.6.26 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

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

1.6.28 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and

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

2. ASSUMPTIONS

We assume the following:

2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.

2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

2.4 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.

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[2] The Rome I Regulation applies to contracts concluded on or after 17 December 2009 (Article 28 of the Rome I Regulation). A choice of English law made in a contract prior to 17 December 2009 will be subject to the 1980 Rome Convention on the law applicable to contractual obligations.

2.5 That the Agreement has been properly executed by both Parties.

2.6 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings against any Party and neither Party at such time: (i) has ceased its payments (*cessation des paiements*) within the meaning of article L. 631–1 of the Commercial Code or article L. 613–26 of the Financial Code as applicable; or (ii) is or can be deemed to be, whether directly or indirectly, aware that the other party has ceased its payments (*cessation des paiements*) or, while it has not ceased its payments, faces difficulties that it is not able to overcome within the meaning of article L. 620–1 of the Commercial Code.

2.7 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.8 That the Agreement accurately reflects the true intentions of each Party.

2.9 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.

2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

2.11 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

2.12 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.

2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.

2.14 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions. Such currency is not that of a country which is subject to United Nations' sanctions.

2.15 That each Counterparty will have full legal title to any Collateral, free and clear of any lien, claim, charge or encumbrance or any other interest of the Counterparty or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system), including, without limitation, any restriction arising from any applicable client asset rules.

2.16 That any Transaction secured by a Collateral consists in one of the following transactions on financial instruments (a **"Qualifying Transaction"**):

2.16.1 options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

2.16.2 options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise by reason of a default or other termination event);

2.16.3 options, futures, swaps, and any other derivative contract relating to commodities that can physically be settled provided that they are traded on a regulated market and or a multilateral trading facility;

2.16.4 options, futures, swaps forward and any other derivative contracts relating to commodities that can physically be settled, which are not otherwise mentioned in paragraph 2.16.3 above and not being for commercial purposes, which bear the characteristics of other derivative contracts (*instruments financiers à terme*) taking account of the fact that, among other things, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;

2.16.5 derivative instruments for the transfer of credit risk;

2.16.6 financial contracts for differences;

2.16.7 options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event); and

2.16.8 any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in paragraphs 2.16.1 through 2.16.7 above, which bear the characteristics of other derivative contracts (*instruments financiers à terme*), taking account of the fact that, among other things, they are traded on a regulated market or a multilateral trading facility, they are cleared and settled through recognized clearing houses or are subject to regular margin calls, all within the meaning of article D. 211–1–A of the Financial Code; and

2.16.9 option contracts, forward contracts, swap contracts and any other forward contracts other than those mentioned in paragraphs 2.16.1 through 2.16.7 above, under the condition that when they shall be settled physically, they are either recorded with a recognized clearing house or subject to regular margin calls, which are referred to in article L. 211–36–II of the same code.

2.17 That the obligations assumed under the Agreement and the Transactions are 'mutual' (*réciproques*) between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and solely entitled to the benefit of obligations owed to it.

2.18 That the provision of Collateral can be evidenced in writing or by electronic means and any other durable medium and such evidencing allows for the identification of the Collateral (provided that, for this purpose, it is sufficient to prove that the book entry securities collateral has been credit to, or forms a credit in, the Relevant Account and that the cash collateral has been credited to, or forms a credit in, a designated account).

2.19 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. OPINIONS

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

3.1 Valid Security Interest

3.1.1 The Security Interest Provisions would be recognised (*reconnue*) under French law as creating a valid security interest over the Collateral, provided that such Security Interest takes one of the forms prescribed by French law, as described in paragraph 4.3.3(b) below.

3.1.2 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non–Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein.

3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non–Defaulting Party to enforce the Security Interest in respect of the Collateral (but to the extent, concerning Collateral held in France, that the security itself takes one of the forms prescribed by French law, as described in paragraph 4.3.3(b) below).

3.3 Foreign Collateral Providers

Moreover, the opinions given at paragraphs 3.1 and 3.2 also apply in respect of any Counterparty that is not established or resident in this jurisdiction, where any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located within this jurisdiction.

3.4 **Right of re–use**

With respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement 2011 (or an Equivalent Agreement in the form of one of the foregoing), the Rehypothecation Clause would be effective in accordance with its terms, such that that Firm is entitled to borrow, lend, appropriate, dispose of or otherwise use for its own purposes all non–cash Collateral, subject to the further rights and obligations set out in the Rehypothecation Clause.

The opinion given at this paragraph 3.4 does not apply in respect of an Equivalent 2011 Agreement without Core Rehypothecation Clause.

4. QUALIFICATIONS

The opinions expressed in paragraph 3 above are subject to the following qualifications:

4.1 Financial collateral arrangement

4.1.1 Our opinions only apply in the event the Security Interest is a financial collateral arrangement benefiting from the provisions of article L. 211–36 *et seq* of the Financial Code (being part of the French provisions having introduced the Collateral Directive into French law). Such provisions set out a number of rules applicable to close–out netting of financial transactions and to enforcement of certain type of security which derogate [3] from generally applicable French insolvency and security laws, pursuant to article L. 211–40 of the Financial Code, provided that certain conditions are met and subject to the reservations set out below: (i) condition relating to the status of the parties to the transactions concerned; and /or (ii) legal characterization of obligations arising thereunder (the "**Financial Netting and Collateral Regime**").

4.1.2 In order for the Security Interest to benefit from the Financial Netting and Collateral Regime, it is required that:

(a) one of the Parties is a Qualifying Entity and the financial obligations which are owed by Counterparty to the relevant Firm and are secured by Security Interest, have arisen from Transactions which qualify as "transactions on financial instruments" (*opérations sur instruments financiers*); or

(b) both parties to the Agreement are Qualifying Entities (but other than one of those entities referred to in paragraphs 2(c) to 2(n) of article L. 531–2) and the financial obligations which are owed by Counterparty to the relevant Firm and are secured by Security Interest, have arisen from a contract giving a right to a settlement in cash (*règlement en espèces*) or a delivery of financial instruments

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[3] The provisions of laws governing insolvency proceedings would not impede (*faire obstacle*) the termination, valuation, netting and set–off procedures provided for by the netting provisions and enforceability of the Security Interest.

(*instruments financiers*). In such case indeed, it is not necessary that the financial obligations arise from transactions on financial instruments.

4.1.3 There is no definition under French law of the concept of "transaction on financial instruments". It is meant to include derivative contracts generally and securities repurchase or lending transactions (repos). Whilst we believe that all Qualifying Transactions listed in paragraph 2.16 above would qualify as "transactions on financial instruments" within the meaning of article L. 211–36–1° of the Financial Code, generally, such opinion is qualified by the fact that the question of whether a Transaction so qualifies will very much depends on its actual characteristics and the factual pattern surrounding it. Pursuant to article 12 of the French *code de procédure civile*, a French court is vested with the power to recharacterise a contract or transaction, notwithstanding the characterization given to such agreement or transaction by the parties thereto.

4.1.4 In the event that the Financial Netting and Collateral Regime does not apply, the provisions of French insolvency laws (Book VI of Commercial Code) would affect the Security Interest generally, whether or not (but subject however, to our observations set out in paragraph 4.2 below) it is located in France. In particular (but without prejudice to the generality of the foregoing):

(a) Pursuant to articles L. 632–1 and L. 632–2 of the Commercial Code, any *in rem* security (*sûreté réelle*) granted, substituted or topped–up by the insolvent party in respect of any of its assets (*e.g.* securities or cash) during the fraudulent conveyance period would be declared void mainly on the following grounds:

(i) if the same is provided as security for pre–existing transactions;

(ii) if it entails a significant undervalue for the provider of collateral; or

(iii) if it is a payment of debts that are not yet due and payable.

The same security may also be voidable if the counterparty (*i.e.* Firm) of the debtor (*i.e.* the Counterparty being subject to insolvency proceedings) was aware, at the time of conclusion of such acts, that the debtor was in the state of cessation of payments;

(b) the opening of an insolvency proceeding prevents a creditor or any third party to enforce actions against the insolvent party, including enforcement of any security and taking possession of (or more generally appropriating the) secured asset;

(c) no security can be given or registered after the opening of Insolvency Proceedings and no disposal of property of the company can be made outside the ordinary course of business after the making of a safeguard or rehabilitation order, save with the prior leave of the court; and

the opening of insolvency proceedings prevents a secured creditor from appropriating the secured asset. The right of re–use provided for by the Rehypothecation Clause will not be valid, unless in accordance with article 2341 of the Civil Code, the pledge agreement exempts the creditor (*créancier gagiste*) from the obligation to keep the fungible assets separate from the assets of the same nature which belong to him. Pursuant to this provision, when the pledge agreement provides for such exemption, the creditor (*créancier gagiste*) acquires the ownership of the pledged assets on condition to return the same quantity of equivalent assets.

4.2 EU Insolvency Regulation

4.2.1 However, by exception to paragraph 4.1.4 above where Insolvency Proceedings are either of those listed in Annex A and Annex B of the EU Insolvency Regulation, as amended by Regulation n° 694/2006 dated 27 April 2006, the EU Insolvency Regulation provides (article 5(1) (*rights in rem*) thereof) that the opening of insolvency proceedings shall not affect the rights *in rem* of creditors or third parties (which includes *in rem* security interests) in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the debtor which are situated within the territory of another Member State (other than Denmark) at the time of the opening of proceedings. Pursuant to such provision, such rights shall in particular mean the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage or the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled.

Note that if the assets are not located in a EU Member State or are located in Denmark, the exception provided for by article 5 will not be available and, accordingly, French insolvency laws will affect the security interests granted in relation to such assets as aforesaid.

As to the question of whether the Collateral would be considered as being held outside France, please see our observations set out in paragraph 4.3.3.

4.2.2 Having said that, pursuant to article 5(4) of the EU Insolvency Regulation, where the Collateral would benefit from the right *in rem* exception provided for by article 5(1) thereof, it may still be vulnerable to the application of the fraudulent conveyance rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors under French insolvency laws, provided, however, that such rules may not apply where the person who benefited from an act detrimental to all the creditors provides proof that: (i) the said act is subject to the law of a Member State other than

that of the state of the opening of proceedings, and (ii) that law does not allow any means of challenging that act in the relevant case[4].

4.3 Validity and perfection of the Security Interests

4.3.1 *Conflict of laws situation: lex contractus vs lex situs*

In an international context, the question of the validity and perfection of a security interest from a French law perspective is subject to the application of several conflict of laws rules. Indeed, if, pursuant to article 3(3) of Rome I, the Parties may freely chose the laws of England and Wales to govern the Agreement (and, accordingly, the Security Interest Provisions) and a French court may give effect to such choice (the *lex contractus*), based on article 3 al. 2 of the Civil Code, French case law traditionally holds that rights *in rem* created over assets located in France are exclusively governed by French law, as being the *lex rei sitae* (or *lex situs*).[5] Accordingly, French case law[6] draws a distinction between the "acquisition" and the "content" of the right *in rem*, where the *lex situs* determines the scope and prerogatives of the holder of the right *in rem*, whilst the acquisition thereof, which results from a contractual document, is subject to the *lex contractus*. Nothwithstanding such distinction, it must also be noted that the effectiveness (*opposabilité*) of a security interest against third parties is also traditionally subject to the completion of the perfection formalities prescribed by the *lex situs*.

Whilst the above conclusions would be relevant where the collateral assets are securities or in the case of title transfer cash, Rome I, which took into effect in relation to contracts entered into on or after 17 December 2009 raises some legal uncertainty where the collateral takes the form of a bank account pledge (*i.e.* the depositor's claim against the bank for the refund of the deposit made with it. Article 14(3) of Rome I indeed contains the new conflict of laws provisions for security assignments and pledges over contractual claims. Article 14(1) of Rome I provides that the relationship between assignor and assignee shall be governed by the law that applies to the contract between the assignor and assignee under Rome I, *i.e.* the parties may choose the governing law under article 3(1) of Rome I. Recital 38 of Rome I makes it clear that this also covers the property aspects of the assignment in countries such as France where these aspects are legally separate from the law governing the contractual obligations. The same applies in respect of pledgor and pledgee in case a claim is pledged (article 14(3) of Rome I). The law governing the assigned claim is relevant in determining its assignability, the relationship between the assignee (pledgee) and the debtor, the conditions under which the assignment or pledge can be invoked against the debtor and whether the debtor's obligations have been discharged (article 14(2) of the Rome I. However, Rome I remains silent as to the law which shall govern the perfection formalities as against third parties other than the debtor. Under the French conflict of law rules, the law of the jurisdiction where the debtor has its domicile is relevant to determine the completion of such formalities.

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[4] Article 13 of EU Insolvency Regulation.

[5] Cass. Com. 3 February 2010.

[6] Civ. 1, 21 July 1987.

4.3.2 *Recognition of the choice of law governing the Security Interest Provisions (lex contractus)*

As mentioned above, the French courts will generally recognise the validity of the obligation to create the Security Interest under an Agreement in accordance with article 3(1) of Rome I. French courts may, however:

(a) give effect to mandatory provisions of the law of the country where the obligations arising out of the Agreement have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the Agreement unlawful (article 9(3) of Rome I);[7]

(b) apply overriding mandatory provisions of French law (article 9(2) of Rome I) irrespective of the choice of the laws of England and Wales under the Agreements which is the case of article 3 of the Civil Code as interpreted by French Courts, which provide that the *lex situs* is solely applicable to rights *in rem* created over movables located in France as aforesaid in paragraph 4.3.1 above;

(c) refuse to apply the laws of England and Wales to the Agreements, to the extent the application of such laws is manifestly incompatible with French public policy (article 21 of Rome I);

(d) have regard to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance (article 12 (2) of Rome I); and

(e) apply the provisions of the law of another Member State which cannot be derogated from by agreement, if English law was chosen to govern the Agreement but all elements relevant to the situation at the time that the Agreement was entered into were located in another Member State than the United Kingdom (article 3(3) of Rome I).

In addition, it should be noted that the scope and effect of a choice of law made by the parties is likely to be limited or contained by special conflict of laws rules applicable to specific matters and/or to specific situations, in particular in the context of insolvency proceedings[8].

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[7] In accordance with Art. 9 (1) of Rome I, mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under Rome I.

[8] Please see for example article 4.1 of the EU Insolvency Regulation on the scope of the *lex fori concursus* or article 9 of the same regulation on the law governing the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market.

4.3.3 *Validity and perfection of the Security Interest under the lex situs*

(a) **Locality of the Collateral assets**

The determination of the *lex situs* depends on the locality of the Collateral. Concerning intangible movables, the analysis must be distinguished whether the security interest is created over securities or cash.

(i) Securities

Pursuant to article L. 211–39 of the Financial Code, the rights and obligations of the collateral provider (*i.e.* the Counterparty), of the collateral taker (*i.e.* the Firm) and of any third parties, in respect of the collateral including securities materialised by a book entry and falling within the scope of the French law provisions implementing the Collateral Directive are governed by the law of the country where the account recording the securities provided as collateral is located.

The letter of article L. 211–39 is not fully in line with those provisions of the Collateral Directive, which such article aims to implement, *i.e.* article 9 of the directive. If one would have to abide by the sole letter of such article, the Agreement should be governed by French law rather than by English law, as even the very rights of the collateral provider and the collateral taker should be determined by French law, pursuant to the letter of article L. 211–39. However, since the aim of article L. 211–39 is to implement article 9 and the French legislator has shown no intention to depart from the scope of such article, we believe that the fact that the Agreement is governed by English law is not incompatible with article L. 211–39, to the extent that French law will govern the matters referred to in article 9.2 of the Collateral Directive (as the Collateral Directive provides that it is French law which would govern such matters – legal nature and proprietary effects of book entry securities collateral, etc. –, as the law of the country where the account recording the Securities provided as collateral will be located).

(ii) Cash

For the reasons and subject to the qualifications mentioned below, there would be legal grounds to consider that under French law, the law governing the validity and the enforceability of the Security Interest over cash held in a bank account would be deemed to be governed by the law of the jurisdiction of incorporation of the bank holding such cash account. Accordingly if the bank account is held with a bank licensed and incorporated in France, the Security Interest would

not be validly created unless the formalities prescribed by French law are duly complied with.

The question of the locality of intangible assets, like a cash account, is, as a matter of French law, subject to legal uncertainty, as, in the absence of statutory provisions dealing with the question (contrary to securities accounts) no decisive case law really address the question. To determine the locality of an account, we believe that a French court would first legally characterise the account as the depositor's claim against the bank for the refund of the deposit[9]. The question therefore relates to the locality of a claim. In the absence of a legislative text, a French court might seek to determine the locality of a claim by referring to general principles of French civil or private international law. Whilst Rome 1 Regulation (and formerly the Rome Convention dated 19 June 1980) refers, in a number of issues relating to assignment of debts, to the governing law of the debt, the preceding French case law referred numerous issues to be determined by the law of the domicile of the debtor.

We note that most French legal scholars conclude that a debt is situated at the place of domicile of the debtor (*i.e.*, the bank account keeper). In addition, article 1247 of the French Civil Code provides that payment must be made in the place specified in the agreement giving rise to the debt and, in the absence of express agreement, says this would be the place of domicile of the debtor.

However, if the contract specifies a specific place of payment, the payment must be made there – as confirmed by a decision of 2005 regarding payment by swift where the underlying contract required payment to be made into a specified account of the creditor. There is however recent case law (14 February 2008) on attachment of bank accounts which also supports the analysis that debts are located in the domicile (*i.e.* head office) of the debtor bank. In addition, the EU Insolvency Regulation which applies to unregulated corporates, but which does not apply to banks, provides for a choice of law test, which localises a debt at the centre of main interest (*i.e.*, primarily, its domicile or head office) of the debtor (article 2(g)). The above factors mean that, in our opinion, the *lex situs* of an account is likely to be the domicile or the head office of its obligor

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[9] Essentially because French insolvency laws treat the depositor's right over the credit balance of its account as a claim against the bank holding the account, but not as a property right which may be asserted before the insolvency court (*revendication*). Additionally, under the Civil Code, a pledge over a bank account takes the form a of a pledge over a claim (article 2360 of the Civil Code).

(although it cannot be fully avoided that a judge might consider the place of payment test as being relevant as well).

Now, as mentioned in paragraph 4.3.1 above, it may be the case that, in respect of claims, the lex situs is replaced with the law governing the claim pursuant to the provisions of article 14 of Rome I. However, as explained above, there is no legal certainty concerning such conclusion.

Note that the question of the locality of the account will also have a direct impact on the potential application of the so–called "*right in rem*" exemption provided for by various EU insolvency legislations[10].

(b) **Collateral assets located in France**

Where the Collateral is held in France, the Security Interest Provisions will not be sufficient to validly create the security unless the security itself would take the form of:

(i) in respect of securities, either: (x) a pledge over a securities account (*nantissement de compte–titres*), governed by articles L. 211–20 *et seq.* of the Financial Code, in which case the security will only be created and effective (*opposable*) against third parties once the collateral provider shall have executed and delivered to the collateral taker a statement of pledge (*déclaration de nantissement de compte de titres financiers*) containing those specifications in the French language prescribed by article D. 211–10 of the Financial Code (including among other things: the details concerning the secured claim, the securities account, the nature and the number of securities initially credited to the securities account, etc.); or (y) where both the collateral taker and the collateral provider are Qualifying Entities (other than one of those entities listed in paragraphs 2(c) to 2(n) of article L. 532–1 of the Financial Code), a security interest in the form set out in article L. 211–38–II of the same code. In such latter case, the perfection of such Security Interest and its effectiveness (*opposabilité*) against third parties result from the transfer of the relevant assets and rights, the dispossession of their constituent, or their control by the collateral taker or a person acting on its behalf. The identification of the relevant assets and rights, their transfer, their dispossession by the collateral provider or their control by the beneficiary must be capable of being evidenced in writing. The enforcement of the security takes place under normal market conditions, by set–off, appropriation or sale, without

[10] Article 5, Regulation 1346/2000, article 21 Directive 2001/24/EC and article 20 of the Directive 2001/17/EC.

any prior notice (*mise en demeure*), pursuant to those valuation methods which have been agreed upon between the parties provided that the hereunder financial obligations shall have become due and payable;

(ii) in respect of cash deposited into an account, a bank account charge (*nantissement de solde de compte*) governed by articles 2360 *et seq.* of the Civil Code[11]; or (iii) where both the collateral taker and the collateral provider are Qualifying Entities (other than one of those entities listed in paragraphs 2(c) to 2(n) of article L. 532–1 of the Financial Code), a security interest in the form set out in article L. 211–38–II of the same code.

(c) **Collateral assets located outside France**

French law is not relevant to determine the perfection requirements in respect of Collateral held outside France and French law would not interfere with the relevant *lex situs*, provided that such law deems itself applicable.

4.4 **Clearing house collateral and margin requirements ("*règles de couvertures*")**

4.4.1 Pursuant to article L. 440–7 of the Financial Code, regardless of their nature, deposits made by clients with investment service providers or members of a clearing house, or made by such members with a clearing house to cover or guarantee positions taken on a financial instruments market, are transferred by the operation of law with full title ("*sont transférés en pleine propriété*") to the service provider or the member, or to the clearing house concerned, as soon as they are made, for the purpose of being settled, on the one hand, against the debit balance established upon automatic settlement of the positions and, on the other hand, against any other sum due to the service provider or the member, or to that clearing house.

4.4.2 Accordingly, in such case, although the Collateral would be granted in the form of a pledge, title to the Collateral assets would automatically and without further formalities be transferred from the Counterparty to the Firm. Pursuant to such provision, no creditor of a member of a clearing house, a service provider referred to in the previous paragraph, or, if applicable, the clearing house itself, may avail himself of any right whatsoever over such deposits, even on the basis of Part I or Part II of Book VI of the Commercial Code.

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[11] On the assumption that Collateral in cash is not granted by way of title transfer, the Collateral will not take the form of a cash collateral (*gage espèces*). The bank account charge will only be effective (*opposable*) against the bank with whom such account is maintained upon such charge being notified to such bank, in accordance with article 2362 of the Civil Code.

4.5 **Re–use**

Pursuant to article L. 211–38–III of the Financial Code, the right for the collateral taker to reuse Collateral assets is subject to the following conditions:

4.5.1 the right of re–use must be expressly set out in the collateral agreement; or

4.5.2 the collateral taker must return equivalent Collateral assets, *i.e.*:

(a) In respect of securities, the securities returned to the collateral provider has an obligation to return securities issued by the same issuer or debtor, forming part of the same issue or category and of the same nominal amount, currency and description or other assets, when the parties so provide, following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral; and

(b) In respect of cash, the same amount in the same currency.

4.6 **Enforcement**

Where the security benefits from the Financial Netting and Collateral Regime, and:

4.6.1 both parties qualify as a Qualifying Entity (other than one of those entities listed in paragraphs 2(c) to 2(n) of article L. 532–1 of the Financial Code), then no specific formalities are required for the sake enforcing the Collateral, save however that article L. 211–38–II–3° of the Financial Code imposes that the enforcement is made at normal market conditions in accordance with valuation terms that shall have been agreed upon the parties in the collateral arrangement.

4.6.2 only one of the parties qualify as a Qualifying Entity, the following observations would apply to the enforcement of Collateral.

(a) **Bank account charge**

Upon the collateral provider's default, and following an eight day formal notice (*mise en demeure*) served on it by the collateral taker as prescribed by article 2364 of the Civil Code, the collateral taker, may depending on the terms of the relevant security agreement either: (i) allocate to the credit balance of the pledged account to the satisfaction of its claim without further formalities (article 2364 of the same code); or (ii) apply for a court order to foreclose the account (article 2365 of the same code).

(b) **Securities account pledge**

Upon the collateral provider's default, the collateral taker must serve an eight day (or less)[12] formal notice (*mise en demeure*) complying with

12 The parties may provide, in their agreement, for a shortest notice delay than 8 days. Scholars generally believe that, since the law refers to a "delay", there must be at least one day notice period. However there is

the requirements of article D. 211–II of the Financial Code (failing which such notice would be void). Concerning the enforcement process itself, French law makes the following distinctions depending on the features of the pledged assets:

(i) with respect to securities traded on a regulated market, the collateral taker may either procure for their sale on the exchange or directly foreclose them up to the amount of its claim on the basis of the last available closing price of such securities on the market (article D. 211–12 of the Financial Code);

(ii) with respect to securities which are not traded on a regulated market, the provisions of article L. 521–3 of the Commercial Code would apply. Pursuant to such provisions, the collateral taker may, after eight days following the aforementioned notice procure the sale of the securities by way of public auction without being required to obtained a court decision beforehand to approve the same. Provided the collateral arrangement so provides, the collateral taker may also forclose the securities on the basis of a valuation (made on the day on which such foreclosure takes place) by a expert appointed by the parties or by the court. Finally, the collateral taker may also apply for a court order to forclose the securities;

(iii) with respect to shares and units of collective investment schemes (CIS) referred to in article L. 211–1–II–3° of the Financial Code, enforcement would be operated by way of their repurchase by the CIS on the basis of the last available valuation. The collateral taker may forclose such share or units on the same basis without further formalities; and

(iv) with respect to any cash amounts (irrespective of their currency of denomination) which may be credited to the securities account, the collateral taker may directly appropriate them up to the amount of its claim.

4.7 Default interests and indemnities

4.7.1 Pursuant to article L. 622–28 of the Commercial Code interest ceases to accrue as of the date of the court decision ordering the commencement of the insolvency proceedings. This applies to contractual and statutory rates of interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more. Accordingly, the inclusion in the calculation provided for in the Netting

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no case law regarding the minimum delay which the parties must provide in their agreement. If no specific delay has been provided, then the eight days delay is applicable.

Provisions of interest accrued after the commencement of the insolvency proceedings might not be enforceable.

4.7.2 Under article 1152 of the Civil Code, French courts have discretion to decrease the amount of those agreed indemnities, damages and penalties which they regard as manifestly excessive.

4.7.3 A French court may in its discretion decline to give effect to any indemnity for legal costs incurred by an unsuccessful litigant.

4.8 Foreign law and jurisdiction

4.8.1 If the performance of the provisions of the Agreement is contrary to French public policy as applicable in international matters (*ordre public international*), then French courts would refuse to give effect to those provisions. French Law does not provide for a definition of French public policy as applicable in international matters (*ordre public international*) or of French mandatory rules (*lois de police*). Whether a rule belongs to one of these categories would be determined ex–post and on a case by case basis, by the courts and such a determination reflects a very unpredictable vision of what French courts consider public policy in international matters should be in the absence a general theory that may sustain the analysis.

4.8.2 Despite the parties' submission to the jurisdiction of the courts of England, the parties to the Agreement may apply to French courts for such provisional or protective measures as may be available (such as provisional attachments on assets located in France, or summary proceedings to obtain an order for payment).

4.9 Enforceability of claims

An enforceable obligation is an obligation of a type which the French courts enforce. This does not mean however that a French court would always order the defaulting party to comply with its obligations in accordance with the exact terms of the Agreement.

4.9.1 *Specific performance*

Depending on the circumstances and the characteristics of a non–monetary obligation, the remedy of specific performance (*exécution en nature*) of that obligation may not be available in a French court, which often will only give remedies culminating in a judgment for the payment of money.

4.9.2 *Good faith and abuse of rights*

The principles concerning *inter alia* good faith (*bonne foi*) and abuse of rights (*abus de droit*) in the performance of contracts governed by French law may operate to limit the exercise of rights and powers under the Agreement or in certain cases may operate to impose liability on the party acting in breach of such principles.

4.9.3 *Debt rescheduling*

In respect of payment obligations, a French court has power under articles 1244–1 to 1244–3 of the Civil Code to grant time to a debtor or reschedule its debts (in either case for a maximum period of two years), taking into account the position of the debtor and the needs of the creditor.

4.9.4 *Judgment currency*

In the event of any proceedings being brought in a French court in respect of a monetary obligation expressed to be payable in a currency other than euro, a French court would probably render a judgment expressed as an order to pay, not such currency, but its euro equivalent at the exchange rate prevailing on the date of the judgment or, if the Court so decides at the request of the plaintiff, at the date of payment. French law requires that all debt claims in insolvency proceedings be converted into euro at an exchange rate determined by the court at the date of commencement of the proceedings.

4.9.5 *Force majeure, etc.*

Enforcement of non–monetary obligations may be restricted by certain general principles of French law including the rules relating to *force majeure* or *exception d'inexécution*.

4.9.6 *Judge's interpretation*

The judge in interpreting a contract is not limited to considering its express terms but may also take into account all relevant circumstances; his interpretation cannot, save in exceptional circumstances, be set aside by the *Cour de cassation*.

4.9.7 *Claims under French law*

Under French law, claims may become barred by effluxion of time (*prescription*) or may be or become subject to a defense of set–off (compensation) or counterclaim (*demande reconventionnelle*).

4.9.8 The Agreement as well as any Transactions documents, where not in the French language, may need to be translated into French by an official sworn translator (*traducteur juré*) if submitted as evidence in any proceedings before a French court.

4.9.9 Pursuant to article 55 of decree n° 2005–1677 of 28 December 2005, the court decision opening an insolvency proceeding enters into effect on the date when such judgment is rendered in public hearing. This has the effect of implementing such judgment as of 00:00 a.m. of such date of entry.

4.9.10 In respect of the entering of any Party into the Transaction, our opinion (including on the enforceability and effectiveness of the Security Interest Provisions) only relates to the situation where at the time it entered into the Transaction or at the time it has delivered or transferred any Collateral or

made the payments thereunder and in each case before the formal commencement of any Insolvency Proceedings, neither Party: (i) has ceased its payments (*cessation des paiements*) within the meaning of article L. 631–1 of the Commercial Code or article L. 613–26 of the Financial Code as applicable; or (ii) was or could be deemed to be, whether directly or indirectly, aware that the other party has ceased its payments (*cessation des paiements*) or, while it had not ceased its payments, faced difficulties that it was not able to overcome within the meaning of article L. 620–1 of the Commercial Code.

4.9.11 We express no opinion as to the effect of the provisions of the Agreement which entitle a party to determine facts unilaterally and conclusively, or entitle it to act on the basis of such determinations; a French court may, therefore, not consider as conclusive the certificates, calculations or determinations which the Agreement provides are to be conclusive.

4.9.12 No opinion (other than where expressly opined upon herein) is expressed or implied in relation to the accuracy of any representation or warranty given by or concerning any of the parties to the Agreement or whether such parties or any of them have complied with or will comply with any covenant or undertaking given by them or the terms and conditions of any obligations binding upon them.

4.9.13 We express no opinion as to whether any Party has complied with any applicable provisions of Title II of Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and any delegated or implementing acts adopted thereunder in respect of anything done by it in relation to or in connection with any of the Agreement. However, article 12(3) of EMIR provides that any infringement of the rules under Title II of EMIR "shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract", consequently any failure by a party to so comply should not make the Agreement invalid or unenforceable.

4.9.14 We express no opinion as to any liability arising from any Collateral. Specific rules and case law apply in relation to the obligation to provide for such Collateral in certain cases and liability may arise in relation to the fulfilment of such obligation.

4.9.15 Accounts to which the book–entry securities will be transferred pursuant to the Title Transfer Provisions will from time to time be credited are deemed to constitute at all time, for the purposes of this opinion letter, the "relevant" accounts within the meaning of article 1(5) and 2(1)(h) ('relevant account') of the Collateral Directive.

4.9.16 The provision of Collateral must be evidenced in writing or by electronic means and any other durable medium and such evidencing allows for the identification of the Collateral, failing which a court may consider that no collateral has been provided.

4.9.17 When a party to an agreement governed by French law is vested with discretion as to the performance of its obligations and such discretion is not constrained by reference to objective factors or standards (e.g. an independant third party or commonly accepted market practice), such obligations may be nullified on the ground that they were assumed subject to a "*condition purement potestative*" or for lack of determination. If such *purement potestative* condition were considered to be an essentiel obligation of the agreement, such agreement may itself be considered invalid notwithstanding any provision to the contrary.

4.9.18 In addition to the foregoing, in a decision dated 26 September 2012, the French supreme court (*Cour de cassation*) held that a jurisdiction clause giving, for the sole benefit of one party, an unrestricted right to select the courts of its choice, was contrary to the purpose of article 23 of EC Regulation 44/2001, on the basis that such provision was "*potestative*". The supreme court confirmed the decision of the Paris court of appeal that considered the jurisdiction clause (even though inserted in a contract governed by foreign law) to be without effect. The scope of such decision is yet to be ascertained and therefore there is some doubt as to whether jurisdiction clauses of this kind will be found to be effective by French courts. Based on the French supreme court decision mentioned above, where a party to an agreement (even though governed by foreign law) is vested with discretion as to the performance of its obligations and such discretion is not constrained by reference to objective factors or standards (e.g. an independent third party or commonly accepted market practice), such obligations may be nullified on the ground that they were assumed subject to a "*condition purement potestative*" or for lack of determination. The Supreme court casts also some doubts as to whether the enforceability of unbalanced clauses such as one–way netting clauses could be challenged on the ground of "*potestativité*", although, as already mentioned above, it is not possible to draw firm conclusions as the exact scope of such decision.

4.9.19 Under French law, the validity of any agreement is subject to the general rules of public order as to, in particular, the absence of breach of consent, certainty of object, legality of cause and the absence of fraud.

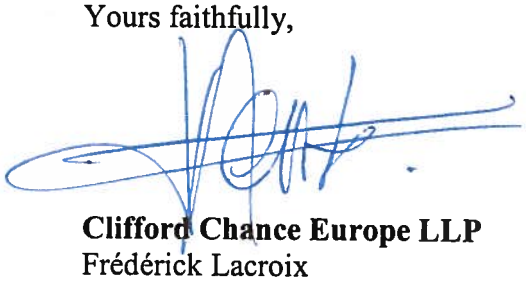
4.9.20 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or French sanctions or other similar measures implemented or effective in France with respect to any party to the Agreement or which is controlled by or otherwise connected with a person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

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribers to the Futures 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 its 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,



Clifford Chance Europe LLP
Frédérick Lacroix
Avocat à la Cour, associé

SCHEDULE 1
CREDIT INSTITUTIONS

Subject to the modifications and additions set out in this Schedule 1 (*Credit Institutions*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Credit Institutions. For the purposes of this Schedule 1 (*Credit Institutions*), a "**Credit Institution**" means a credit institution within the meaning of directive n° 2006/48/EC of the European Parliament and of the Council dated 14 June 2006 (the "**BCD**") whether: (i) established under French law and duly authorised under French law pursuant to articles L. 511–1 *et seq.* of the Financial Code; or (ii) under the laws of any other state being a party to the agreement on the European economic area (EEA) (an "**EEA Member State**"), acting in France in accordance with the rules of European passport set forth in the aforementioned directive as implemented into French law under articles L. 511–21 *et seq.* of the Financial Code.

By way of the exception to the foregoing, covered bond issuers (being *sociétés de credit foncier* (SCF) and *sociétés de financement à l'habitat* (SFH)) respectively governed by articles L. 515–13 *et seq.* and article L. 515–34 *et seq.* of the Financial Code, as well as those credit institutions being public bodies (such as municipal credit banks (*crédit municipaux*), local development banks (*sociétés de développement régional*), etc.), are expressly excluded from the scope of this opinion letter.

1. MODIFICATIONS TO QUALIFICATIONS

The qualifications at paragraph 4 are deemed modified as follows. Paragraph 4.2 is replaced with the following paragraph:

4.2 ***"Credit Institution WUD***

4.2.1 *However, by exception to paragraph 4.1.4 above, the Credit Institution WUD notably provides (article 21 (rights in rem) thereof, as implemented by article L. 613–31–6–I.–1° of the Financial Code)) that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties (which includes in rem security interests) in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.*

As to the question of whether the Collateral would be considered as being held outside France, please see our observations set out in paragraph 4.3.3.

4.2.2 *Having said that, pursuant to article 21(3) of the Credit Institution WUD as implemented by article L. 613–31–6–II. of the Financial Code, where the Collateral would benefit from the right in rem exception provided for by article 21 thereof, it may still be vulnerable to the application of the fraudulent conveyance rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors under French insolvency laws,*

provided, however, that such rules may not apply where the person who benefited from an act detrimental to all the creditors provides proof that: (i) the said act is subject to the law of a Member State other than that of the state of the opening of proceedings, and (ii) that law does not allow any means of challenging that act in the relevant case[13].

4.2.3 *Additionally, pursuant to article 24 of the Credit Institution WUD (as implemented by article 613–31–5° of the Financial Code), the enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located."*

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[13] Article 30 of the Credit Institution WUD, as implemented by article L. 613-31-7° of he Financial Code..

SCHEDULE 2
INVESTMENT FIRMS

Subject to the modifications and additions set out in this **Error! Reference source not found.** (*Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms. For the purposes of this **Error! Reference source not found.** (*Investment Firms*), "**Investment Firms**" refers to investment firms within the meaning of MiFID, *i.e.* legal entities whether: (i) established under French law and duly authorised under French law pursuant to articles L. 531–1 of the Financial Code to carries out investment services within the meaning of MiFID on a professional basis; or (ii) under the laws of any other EEA Member State, having a branch in France and acting in France in accordance with the rules of European passport set forth in the aforementioned directive as implemented by French law under articles 532–16 *et seq.* of the Financial Code.

1. MODIFICATIONS TO QUALIFICATIONS

When relevant to an Investment Undertaking (i.e. when such Investment Undertaking does not hold client assets), the qualifications at paragraph 4 are deemed modified as follows.

Paragraph 4.2 is replaced with the following paragraph:

4.3 "EU Insolvency Regulation

4.3.1 However, by exception to paragraph 4.1.4 above, the EU Insolvency Regulation notably provides (article 5 (Third parties' rights in rem)) that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties (which includes in rem security interests) in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

As to the question of whether the Collateral would be considered as being held outside France, please see our observations set out in paragraph 4.3.3.

4.3.2 Having said that, pursuant to article 5(4) of the EU Insolvency Regulation, where the Collateral would benefit from the right in rem exception provided for by article 5(1) thereof, it may still be vulnerable to the application of the fraudulent conveyance rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors under French insolvency laws, provided, however, that such rules may not apply where the person who benefited from an act detrimental to all the creditors provides proof that: (i) the said act is subject to the law of a Member State other than that of the state of the opening of proceedings, and (ii) that law does not allow any means of challenging that act in the relevant case."

SCHEDULE 3
INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 3 (*Insurance companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies. For the purposes of this Schedule 3 (*Insurance companies*), "**Insurance Companies**" means insurance undertakings within the meaning of article L. 310–1 of the Insurance Code, whether: (i) established under French law and duly authorised by the ACP under French law pursuant to article L. 321–1 of the Insurance Code; or (ii) under the laws of any other EEA Member State, having a branch in France and acting in France in accordance with the rules of European passport set forth in the aforementioned directive as transposed into French law under articles L. 310–2 of the Insurance Code.

1. MODIFICATIONS TO QUALIFICATIONS

The qualifications set out in paragraph 4 are deemed modified as follows.

"*As a general rule, assets that are pledged are not eligible to cover insurance technical provisions. Consequently, although a pledge over a deposit security account owned by an insurer may be granted, it would need to be taken over this insurer's free reserves.*

Insurance Company may constitute cash deposit account with a bank. However in order to be eligible to cover insurance technical provisions, a deposit account must comply with certain requirements (e.g. the account must be opened with French or EEA credit institution, not be pledged, etc).

Please also note that in application of article L. 327–2 of the Insurance Code movable and immovable assets of the insurance company shall be encumbered by a general lien to guarantee: (i) settlement of their undertakings with regard to the insured and beneficiaries of contracts; and (ii) repayment first and foremost of premiums paid by the persons who exercised their cancellation right."

In addition, by exception to paragraph 4.1.4 above, the Insurance WUD (article 20 (rights in rem), as implemented under French law by article L. 326–22 of the Insurance Code provides thereof, provides that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties (which includes in rem security interests) in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

As to the question of whether the Collateral would be considered as being held outside France, please see our observations set out in paragraph 4.3.3.

Having said that, pursuant to article 21(3) of the Insurance WUD, where the Collateral would benefit from the right in rem exception provided for by article 20

thereof, it may still be vulnerable to the application of the fraudulent conveyance rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors under French insolvency laws, provided, however, that such rules may not apply where the person who benefited from an act detrimental to all the creditors provides proof that: (i) the said act is subject to the law of a Member State other than that of the state of the opening of proceedings; and (ii) that law does not allow any means of challenging that act in the relevant case.

SCHEDULE 4
OPCVMS

Subject to the modifications and additions set out in this Schedule 4 (*OPCVMs*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are OPCVMs. For the purposes of this Schedule 4 (*OPCVMs*), **"OPCVMs"** means *organismes de placement collectif en valeurs mobilières*, undertakings for collective investment in transferable securities, organised under articles L. 214–2 and *seq*. and R. 214–2 and seq. of the Financial Code (including, in particular, UCITS, authorised pursuant to directiveNo. 2009/65/EC).

There is no legal definition of an OPCVM. However, it stems from the enumeration of categories of OPCVMS provided by the Financial Code, that this category includes various categories of OPCVMs in terms of setting up and applicable requirements. Enumeration of various categories of OPCVMs include, in particular, UCITS, authorised pursuant to directive 2009/65/EC.

Therefore the statements made under this Schedule can only be of a general nature and an assessment of the rules applicable to each category of OPCVM must be made on a case by case basis.

1. ADDITIONAL ASSUMPTIONS

We assume that:

The OPCVM and its management company is duly authorised by the AMF or, as the case be, passported in accordance with UCITS IV Directive.

The entering into Agreement by an OPCVM is made in compliance with applicable rules, its by–laws and prospectus.

The management company of an OPCVM enters into a separate Agreement for the account of each OPCVM.

2. ADDITIONAL QUALIFICATIONS

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

2.1 OPCVM may be set up:

- as *société d'investissement à capital variable* (SICAVs), authorised by the AMF pursuant to article L. 214–3 of the Financial Code and registered with the French Commercial Registry*; or*
- as *fonds communs de placement* (FCPs), authorised by the AMF pursuant to article L. 214–3 of the Financial Code which have no legal personality and are co–ownerships of securities.

2.2 French OPCVM generally constitute regulated entities which are subject to strict regulatory constraints with respect to, *inter alia*, their ability to enter into derivatives contracts and temporary transfers of securities (such as repos or securities lending transactions), and to grant security or collateral. Such restrictions include specific requirements in terms of valuation, investment restrictions, eligible counterparties etc. In addition, an OPCVM's constitutive documents and prospectus may include specific conditions and restrictions with respect to such (and other types of) agreements and transactions. It would therefore be necessary to review these specific regulations and documents for any restrictions before entering into an Agreement and with an OPCVM.

As a matter of principle, such transactions may be concluded only under the conditions contemplated in the Financial Code and in particular the following provisions: articles R. 214–15, R 214–15–1, R. 214–15–2, R. 214–16, R. 214–17 and R. 214–30 of the Financial Code. Additional provisions may apply in relation to the specific legal nature of the OPCVM.

Pursuant to article R. 214–19 of the Financial Code, an OPCVM may not act as guarantor on behalf of third parties.

2.3 A OPCVM may, for the purposes of achieving it's management objective, receive or grant the guarantees referred to in article L. 211–38, under the following conditions:

When the guarantees granted by an OPCVM create a security interest over its assets, the constitutive deed of these security shall set forth:

1° The nature of goods or rights that the beneficiary of the security may use or dispose, failing that the beneficiary may only use or dispose deposits, cash or financial instruments referred to in 1°, 2° or 3° of I of article L. 214–20 of the Financial Code;

2° the maximum amount of goods or rights that the beneficiary of the securities may use or provide shall not exceed 100% of the beneficiary's claim against the OPCVM. The general regulations (*réglement général*) (**"General Regulations"**) of the AMF set forth the methods of calculation of the beneficiary's claim against the OPCVM.

The methods of assessments of the goods and rights provided by a OPCVM as security interest are defined in the constituting act of guarantees or in an ancillary agreement entered into between parties. In case of failure to comply with this requirement, enforcement of security interest could only be made with respect to deposits remitted as security interest, cash or financial instruments referred to in 1°, 2° or 3° of I of article L. 214–20 of the Financial Code. The General Regulations of the AMF specifies the methods of assessment of the goods and rights provided by the fund.

When guarantees take the form of cash deposits, such deposits shall be made with a credit institution mentioned in article R. 214–14 (credit institution

which has its headquarter within the EEA or an non EEA credit institution provided that it complies with certain rules including being subject to prudential rules of an equivalent level to those in force in EU).

Pursuant to article R. 214–20 of the Financial Code, an OPCVM could not enter into short selling of financial instruments referred to in article L. 214–20 of the Financial Code (including shares and assimilated instruments, and bonds, money market instruments, shares or units of French or foreign funds which are proposed to redemption to shareholders/unitholders, deposits made with French or foreign credit institutions, financial contracts within the meaning of article L. 211–1 (see Annex 3).

In addition to the foregoing, specific conditions may apply depending on the legal nature of the OPCVM.

SCHEDULE 5
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 5 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 5 (*Individuals*), "**Individuals**" means natural persons who are merchants (*commerçants*) and craftsmen (*artisans*).

Merchants are persons other than Companies who carry out, on a professional basis, commercial transactions listed in articles L. 110–1 and L. 110–2 of the Commercial Code.

According to the article 19–I of the law N 96–603 of 5 July 1996, craftsmen are the natural persons and legal entities who employ no more than ten (10) employees and who exercise in main or secondary title a professional activity independent from production, from transformation(processing), from repair or from service offer recovering from the small business sector (crafts) and appearing on a list established by decree in *Conseil d'état* after consultation of the permanent assembly of professional associations, chamber of business and industry (*chambre de commerce et de l'industrie*) and the representative professional organizations. Craftsmen must be registered in the trade directory or in the register of companies aimed at IV of this law.

ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")

2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")

3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")

4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")

5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")

6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")

7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")

8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")

9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**").

For the avoidance of doubt none of the forms of the Agreements listed at this Annex 1 include or incorporate the Title Transfer Securities and Physical Collateral Annex to the Netting Modules published by the Futures and Options Association.

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**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).

Each of the Agreements listed in this Annex 1 may be deemed to include 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.

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).

2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).

3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).

4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.

5. "**Core Provisions**" means:

   (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and

   (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.

6. "**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***); and

   (d) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross–referencing purposes).

7. "**Security Interest Provisions**" means:

   (a) the "**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***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes);

(b) the "**Power to Charge Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (***Power to charge***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (***Power to charge***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (***Power to charge***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (***Power to charge***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (***Power to charge***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (***Power to charge***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (***Power to charge***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (***Power to charge***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (***Power to charge***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes);

(c) 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***); and

(x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes);

(d) the "**Power of Appropriation Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (***Power of appropriation***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (***Power of appropriation***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (***Power of appropriation***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (***Power of appropriation***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (***Power of appropriation***)

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (***Power of appropriation***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (***Power of appropriation***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes);

(e) the "**Lien Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (***General lien***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (***General lien***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (***General lien***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (***General lien***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (***General lien***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes); and

(f) the "**Client Money Additional Security Clause**", being:

(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); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross–referencing purposes).

8. "**Two Way Clauses**" means each of the Futures and Options Association's Short–Form Two–Way Clauses 2007, the Short–Form Two–Way Clauses 2009, the Short–Form Two–Way Clauses 2011, the Long–Form Two–Way Clauses 2007, the Long–Form Two–Way Clauses 2009 and the Long–Form Two–Way Clauses 2011.

ANNEX 3
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") 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 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. 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 events the death or incapacity of a Party or its general partners any default under a specified transaction or a specified master agreement), such change 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, such change may be expressed to apply to one only of the Parties.

4. 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.

5. 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.

6. 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.

7. 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).

8. Any change to the Agreement requiring the Non–Defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non–Defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.

ANNEX 4

DEFINITION OF FINANCIAL INSTRUMENTS WITHIN THE MEANING OF ARTICLE L. 211–1 AND D. 211–1 A OF THE FINANCIAL CODE

Article L. 211–1

I. Financial instruments are securities and financial contracts.

II. Securities are:

1. Shares instruments issued by the joint stock companies;

2. Debt instruments, with the exception of bills of exchange and certificates of deposit;

3. Unit trust units or shares.

III. Financial contracts, also named "forward financial instruments" (*instruments financiers à terme*), are the forward contracts appearing on a list established by decree."

Article D. 211–1 A

"I. The forward financial instruments referred to in III of article L.211–1 are:

1. Put and call options, forward contracts, exchange contracts, future rate agreements and any other forward contracts on financial instruments, currencies, interest rates, returns, financial indexes or financial measures which can be settled in cash or in kind;

2. Put and call options, forward contracts, exchange contracts, future rate agreements and any other forward contracts on commodities which must be cash settled or may be cash settled at the request of one of the parties otherwise than in case of a default or any other incident leading to termination;

3. Put and call options, forward contracts, exchange contracts and any other contracts on commodities which may be settled in kind, provided that they are traded on a regulated market or a multilateral trading facility;

4. Put and call options, forward contracts, exchange contracts and any other contracts on commodities which may be settled in kind, in other respects not referred to in 3, and not intended for commercial purposes, which present the characteristics of other forward financial instruments, provided that they are, among others, set–off and cleared through a recognised clearing house or that they are the subject of periodic margin calls.

5. Forward contracts hedging a credit risk;

6. Financial contracts with payment of a differential;

7. Put and call options, forward contracts, exchange contracts, future rate agreements and any other forward contracts on climatic variables, freight fares, emission authorisations or inflation rates or any other official economic statistics which must be cash settled or may be cash settled at the request of one of the parties otherwise than in case of a default or any other incident leading to termination;

8. Any other forward contract on assets, rights, obligations, indexes and measures, not referred in 1 to 7 above, which present the characteristics of other forward financial instruments, provided that it is, among others, traded on a regulated market or a multilateral trading facility, is set–off and cleared through a recognised clearing house or is the subject of periodic margin calls.