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Legal collateral opinion – Non Situs Version

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

24th January 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of Gibraltar ("**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 persons which are companies incorporated under the Companies Act 1930 ("Companies Act") of Gibraltar

1.1.2 foreign companies under Part X of the Companies Act ,

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:

1.2.1 Banks/financial institutions incorporated under the Companies Act and authorised under the Financial Services (Banking Act) 1992 (Schedule 1);

1.2.2 Investment firms/broker dealers incorporated under the Companies Act and/or authorised under the Financial Services (Investment and Fiduciary Services) Act 1989 and/or the Financial Services (Markets for Financial Instruments) Act 2006 (**"Investment firms"**) (Schedule 2);

1.2.3 Partnerships organised under the Partnerships Act 1895 and/or Limited Partnerships Act 1928 (**"Partnerships"**) (Schedule 3);

1.2.4 Insurance companies incorporated under the Companies Act, the Protected Cell Companies Act 2001 and authorised under the Financial Services (Insurance Companies) Act 1987 (**"Insurance Companies")** (Schedule 4);

1.2.5 Individuals (Schedule 5);

1.2.6 Funds organised as either authorised funds, recognised funds or experienced investor funds under the Financial Services (Collective Investment Schemes) Act 2011 and the various regulations made thereunder including but not limited to the Financial Services (Collective Investment Schemes) Regulations 2011 or the Financial Services (Experienced Investor Funds) Regulations 2012 (Schedule 5) and incorporated either under the Companies Act, the Protected Cell Companies Act or the Limited Partnerships Act (**"Funds"**) (Schedule 6);

1.2.7 Parties acting as trustees of Trusts (excluding trustees for charitable trusts and pensions schemes) and authorised to do so under the Financial Services (Investment and Fiduciary Services) Act 1989 and the Trustees Act 1895 (**"Trustees"**) (Schedule 7).

Parties acting as Trustees of pension schemes authorised under the Financial Services (Occupational Pensions Institutions) Act 2006 (**"Trustees of Pension Schemes")** (Schedule 8) insofar as each may act as a Counterparty to a Firm under an Agreement.

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 In this opinion letter:

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

1.4.2 "**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 Amendment s (as defined herein);

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

1.4.4 "**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;

1.4.5 "**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 Default under the Agreement);

1.4.6 in other instances other than those referred to at 1.4.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;

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

1.4.8 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;

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

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

1.4.11 a **"foreign company"** is a company (other than a *"Societeas Europaea"* established pursuant to EU Council Regulation No. 2157/2001 of 8 Octobet 2001 on the European Company Statute) which is incorporated or formed under the laws of another jurisdiction with a branch or branches established or located in this jurisdiction;

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

1.4.13 a reference to the **"FCA"** is to the Financial Collateral Arrangements Act 2004 of Gibraltar;

1.4.14 the opinions are not given in respect of any person found or alleged to be a trustee of a constructive, implied, resulting or other trust constituted by operation of law, nor are they given in respect of a person who is a trustee in bankruptcy, or a personal representative as defined in the Trustee Act acting in that capacity;

1.4.15 this opinion letter relates solely to matters of Gibraltar law and does not consider the impact of any laws (including insolvency laws) other than Gibraltar law, even where, under Gibraltar law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by Gibraltar law and relate only to Gibraltar law as applied by the Gibraltar 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 Gibraltar law. We express no opinion in this opinion on the laws of any other jurisdiction; and

1.4.16 The opinion given in this opinion letter are given on the basis of the assumptions set out in paragraph 2 and are subject to the qualifications set out in paragraph 4 of this opinion letter. The opinions given in this opinion letter are strictly limited to the matters stated in paragraph 3 and do not extend to any other matters.

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 the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.

2.4 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.

2.5 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.

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

2.7 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.

2.8 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.

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

2.10 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.

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

2.12 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.

2.13 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.

2.14 That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.

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

2.16 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 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.

3.1.2 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party 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 ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated.

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.

4. QUALIFICATIONS

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

4.1.1 Registration of charges at the Registrar of Companies

Section 128 of the Companies Act 1930 of Gibraltar ("Companies Act") governs this matter. Failure to comply with this provision will render the charge void as against any liquidator of the Counterparty or its creditors (if the Counterparty is a company incorporated under the Companies Act of Gibraltar or a foreign company with a branch in Gibraltar). The process of registration involves the filing of prescribed particulars of the mortgage or charge, together with the original charge instrument, at the Companies Registry within 21 days of its creation. Section 128 applies to:

(a) a charge for the purpose of securing any issue of debentures;
(b) a charge on uncalled share capital of the company;
(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
(d) a charge on land, wherever situate, or any interest therein;
(e) a charge on book debts of the company;
(f) a floating charge on the undertaking or property of the company;
(g) a charge on calls made but not paid;
(h) a charge on a ship or any share in a ship;
(i) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

It is to be noted that the provisions are similar to those under the Companies Act (England). The same legal considerations as those that apply under English law (for example, in respect of registration requirements under the Companies Act 1985) would therefore be relevant under Gibraltar law.

The forms used to notify the Registrar vary with the type of charge and various forms can be found in the Statutory Rules and Orders of the Companies Act 1929.

The form must state the name and incorporation number of the company creating the charge and must also include the date of creation of the charge, the amount secured by the charge, a short description of the property charged and the persons entitled to the charge.

The form of registration must be accompanied by the original instrument creating the charge, together with the relevant filing fee. If a registrable charge or mortgage is created by a Gibraltar company outside Gibraltar and it relates to property situated outside Gibraltar, the time limit for registration is 21 days after the date on which the document creating or evidencing it (or, in this case, a certified true copy) could in due course of post and, if dispatched with due diligence, have been received in Gibraltar.

4.1.2 Where a charge is created in Gibraltar but comprises of property outside Gibraltar, the instrument creating or purporting to create the charge may be sent for registration under the above section, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

4.1.3 The provisions of the above part of the Companies Act extend to security created over property in Gibraltar by foreign companies registered under Part X, that is companies incorporated outside Gibraltar but which have an established place of business in Gibraltar. Accordingly, such charges on property in Gibraltar must be registered in the same way as described above.

The qualifications in paragraphs 4.1.1 to 4.1.3 are subject to our qualifications at paragraphs 4.1.4 below relating to financial collateral arrangements (which may render any such registration with the Registrar of Companies unnecessary.

4.1.4 Financial Collateral Arrangement Act 2004 ("FCA")

Gibraltar law would recognise the transfer and set off collateral provided that the obligations of the parties under the Agreement are created by contract. Gibraltar law would recognise these contractual obligations to the same extent as the English common law. A contract will have to satisfy the normal contractual rules as to formalities under Gibraltar law and assuming that it is also legally binding and enforceable under English law, Gibraltar courts will uphold these contractual obligations.

In addition, Gibraltar has given effect to the EU Collateral Directive 2002. The said Directive was implemented into our national laws in 2004 under the Financial Collateral Arrangements 2004 (**"FCA"**) as amended. FCA came into effect on the 24th of November 2004 and it provides for the recognition of financial collateral arrangements whether (i) in the case of a title transfer financial collateral arrangement, an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of, or full entitlement to, financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations; or (ii) in the case of security financial collateral arrangement, an arrangement under which a collateral provider provides financial collateral by way of security for the purpose of securing or otherwise covering the performance of relevant financial obligations to or in favour of a collateral taker, and where the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established.

Consequently, if the obligations of the parties under the Security Interest Provisions fall within the meaning of a financial collateral arrangement under the FCA, the enforcement and recognition of the collateral transfer and set off would be upheld in Gibraltar. Section 10(1) of the FCA provides that "a

financial collateral arrangement shall be valid and enforceable in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganization measures in respect of the collateral provider or collateral taker".

4.1.5 If non-cash assets expressed to be the subject to a Security Interest in the Security Interest Provisions comprised of *"book entry securities collateral"* (as defined under the FCA) and cash constituting collateral under the Clients Money Additional Security Clause are in the "possession" or "control" (as such terms are used in the FCA) of the Firm, we would be of the view that the Agreement and the Transactions contemplated thereunder would be regarded as a financial collateral arrangement (as defined in the FCA). However, please note that there is currently no decided case law on this in Gibraltar but Gibraltar Courts would be persuaded by English case law in this respect or expert views on this.

If the Agreement were regarded by the Gibraltar courts as a financial collateral arrangement, any question regarding the following matters such as:

(a) The legal nature and proprietary effects of book entry securities collateral;

(b) The requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book entry securities collateral under such an arrangement, and the completion of steps necessary to render such an arrangement and provision effective against third parties;

(c) A person title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred; and

(d) The steps required for the realization of book entry securities collateral following the occurrence of an enforcement event;

shall be governed by the domestic law of the country in which the relevant account is maintained.

Section 5 of the FCA provides that if the Security Interest constitutes a financial collateral arrangement, no acts of formality and conditions would be required to be performed or fulfilled in respect of its creation, validity,

perfection, enforceability or admissibility in evidence of the Security Interest in order to ensure the recognition, effectiveness and perfection of the Security Interest in accordance with the Agreement.

Section 2(2) of the FCA states that references in the FCA to financial collateral being "provided" or to the "provision" of financial collateral are references to financial collateral being delivered, transferred, held, registered or otherwise designated so as to be in the *possession* or under the *control* of the collateral taker or of a person acting on the collateral taker's behalf. The Act goes further to provide that any right of substitution, right to withdraw excess financial collateral, right to give instructions in relation to an account until an event of default occurs, any right to exercise rights or receive the fruits attaching to or in respect of the financial collateral in favour of the collateral provider or in the case of credit claims, any right to collect the proceeds thereof until further notice shall not prejudice the financial collateral having been provided to the collateral taker as mentioned in the FCA (Section 2(3) of FCA).

However, the case of *Gray v G-T-P Group Limited, Re F2G Realisations Limited (In Liquidation) [2010] EWHC 1772 (Ch)* ("Gray"), the English courts found that the collateral taker must have, in addition to "administrative" control, a legal right to prevent the collateral provider from dealing with the collateral; the chargor's right to draw on the sums in the account in question meant that the charge was not a financial collateral arrangement within the scope of the FCA. In view of the decision in Gray, we are of the opinion that Gibraltar Courts may be persuaded by the same and therefore, Agreements that do not contain the Rehypothecation Clause do not contain a right for the Firm to use or rehyhothecate charged Collateral prior to enforcement. Accordingly, on interpretation of the decision in Gray, this may prevent the Security Interest from constituting a financial collateral arrangement for the purposes of the FCA.

4.1.6. In the event that the Security Interests were deemed not to be a security financial collateral arrangement within the meaning of the FCA, we would like to specifically draw your attention to the following:

(a) where the Counterparty is a Gibraltar incorporated company or a foreign company under Part X of the Companies Act, the Security Interest would be void against a liquidator or creditor of the charger unless it has been registered under Section 128 of the Companies Act (see: paragraph 4.1.1.);

(b) the Firm would not have the benefit of Section 7 of the FCA which provides that the rights of use over financial collateral provided under a financial collateral arrangement are effective in accordance with its terms.

We note that the decision in Gray has been heavily criticized and it is a first instance decision which is not binding on the higher courts in England. The issues in the case relate to cash rather than securities collateral and therefore, its decision may not apply in relation to securities collateral. It is however, the only jurisprudence currently available on *"possession"* and *"control"* under the FCA. We are not aware of any existing case law in Gibraltar on this point and therefore, Gibraltar Courts may be persuaded by the decision in Gray.

(c) *Financial Collateral Arrangement *where relevant account" is located in the EU, outside Gibraltar)*

It may also be possible that an arrangement could qualify as a financial collateral arrangement pursuant to the relevant laws of another EU jurisdiction, like the FCA, having implemented the EU Directive on Financial Collateral Arrangements 2002/65/EC but not under Gibraltar law. If the collateral posted to accounts maintained in another jurisdiction, there are arguments that *"possession"* and *"control"* will be determined pursuant to the laws of the *lex situs* jurisdiction, where the *"relevant account"* is located in this jurisdiction.

4.2. **Limitations Arising From Insolvency Law**

4.2.1 In view of the decision in the *National Westminster Bank plc v Spectrum Plus Limited [2005] UK HL 41* (which is of highly persuasive authority in Gibraltar since it was a House of Lords decision), it is possible that fixed security interests expressed to be created by the Agreement could be characterised as floating charges. The risk of re-characterisation of the Security Interest as a floating charge depends on whether the Firm has the requisite degree of control over the Collateral. To the extent that the Counterparty is able to deal with the assets subject to Security Interest without the Firm's consent, the Gibraltar court is likely to hold that the Security Interest constitutes a floating charge. If the Security Interest is characterized as a floating charge then the risks set out below might apply:

(a) the floating charge would, in certain circumstances, rank behind the preferential creditors; and
(b) The Counterparty would be able to grant fixed charges and effect other dispositions of the relevant assets which would rank higher than the Firm's Security Interest.

4.2.2. Furthermore, to the extent that the Security Interest is not a "financial collateral arrangement" pursuant to the FCA the following issues (which are disapplied under the FCA in respect of financial collateral arrangements) may apply:

(a) a floating charge on the undertaking or property of a Counterparty created within 6 months of the commencement of the winding up shall unless it is proved that the Counterparty immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the Counterparty at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on the amount at the rate of 5percent per annum.

(b) a floating charge created by a Gibraltar company and or a foreign company under Part X of the Companies Act of Gibraltar must comply with the registration requirement under Section 128(2)(f) of the Companies Act, otherwise it would be void as against the Liquidator and creditors of the company.

(c) under section 225 of the Companies Act, in a winding up by the courts of a Gibraltar incorporated company, any disposition of the company's property, including things in action, and any transfer of shares (including the creation of a Security Interest) made after the commencement of the winding up, unless the court orders otherwise, shall be void.

4.2.3 In addition to the above, the opinion set out in paragraph 3.1 (*Valid Security Interest)* of this opinion letter is subject to the following:

(a) the security interest created by a company pursuant to the Agreement may be held to be wholly or partly invalid as a result of any of the following sections of the Companies Act (if the circumstances described in any of these sections is applicable):

(i) Section 225 of the Companies Act (see: paragraph 4.2.2(c) above), this being disapplied in the case of financial collateral arrangements under the provisions of the FCA);

(ii) Section 306(1) of the Companies Act provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being

wound up, a fraudulent preference of its creditors, and be invalid accordingly. The hardening period in this respect is three months after the commencement of winding up petition (see Section 44 of the Bankruptcy Act which applies in respect of Gibraltar incorporated companies as prescribed in Section 304 of the Companies Act).

4.2.4. where a Party is not a credit institution, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and the centre of its main interests is an EU Member State other than Gibraltar or Denmark, the EU Insolvency Regulations will apply. In such a case, the Gibraltar courts have no jurisdiction in respect of insolvency proceedings other than receivership and, where the Party has a sufficient connection to Gibraltar, schemes of arrangement, except in a case where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement certain secondary proceedings governed by Gibraltar law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction. Where the EU Insolvency Regulation applies, the law of the Member State opening insolvency proceedings shall determine the conditions for the opening of those proceedings, their conduct and closure and, in particular, this shall determine the rules relating to voidness, voidability or unenforceability of legal acts detrimental to all creditors (except where the person benefitting from such detrimental act provides such act is subject to the law of another EU Member State and that such law does not allow challenge of such act);

However, where secondary insolvency proceedings are opened in this jurisdiction (i.e. in respect of assets located in this jurisdiction), Gibraltar courts shall apply Gibraltar law to such secondary proceedings.

In any event, pursuant to article 5.1 of the EU Insolvency Regulation third parties' rights in rem in respect of assets with a certain Member State shall be unaffected (i.e. where the Collateral assets are located in England, English law shall apply to rights in rem over such assets).

4.3 **Right of re-use**

Section 7 of the FCA provides that, where a security financial collateral arrangement provides for the collateral taker to use and dispose of any financial collateral provided under the arrangement, as if it were the owner of it, the collateral taker may do so in accordance with the terms of the arrangement.

Therefore, to the extent that the non-cash Collateral that is subject to the Security Interest is not a "financial collateral arrangement" pursuant to the FCA, the Firm would not have the benefit of Section 7 of the FCA with respect to the effectiveness of the Rehypothecation Clause. This might expose the Firm to the risk of successful challenge of the exercise of its purported rights pursuant to the Rehypothecation Clause.

4.4 **Effectiveness of Security**

4.4.1 We express no opinion as to:

(a) whether any Counterparty has good legal or other title to the assets or rights which are expressed to be subject to the Security Interest, or as to the existence or value of any such assets or rights;

(b) whether the Security Interest constitutes a legal or equitable security interest or a fixed or specific (rather than a floating) charge;

(c) whether any events in relation to the Collateral or issuer of Collateral may devalue the Collateral or impair the Firm's ability to enjoy such Collateral or the full value thereof (for example, where such Collateral loses value following a default or failure of the issuer thereof;

(d) whether the Agreement breaches any other agreement or instrument.

(e) whether any other creditor of, or claimant in respect of, the Counterparty or its assets could assert superior title in respect of the Collateral, for example on the grounds of its prior acquisition of an interest in the Collateral, its acquisition of legal title to the Collateral or its having a fixed charge interest over the Collateral.

4.5 **Other Qualifications**

4.5.1 Where any party to the Agreement is vested with a discretion or may determine a matter in its opinion, that party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds.

4.5.2 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or Gibraltar sanctions or other similar measures implemented or effective in Gibraltar with respect to any party to the

Agreement which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

4.5.3 Any provision of the Agreement stating that a failure or delay, on the part of any party, in exercising any right or remedy under the Agreement shall not operate as a waiver of such right or remedy may not be effective.

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

Yours faithfully,

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SCHEDULE 1

BANKS/FINANCIAL INSTITUTIONS

Subject to the modifications and additions set out in this Schedule 1 (*Banks/Financial Institutions*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are Banks/Financial Institutions. For the purpose of this Schedule 1 (*Banks/Financial Institutions*), a "Bank/Financial Institution" incorporated under the Companies Act 1930 of Gibraltar and authorised under the Financial Services (Banking) Act 1992 (**"Banking Act"**) to conduct deposit taking business (as the term is defined under the Banking Act.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The following additional term of reference shall apply:

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

1.1.1 a reference to the "**Capital Adequacy Rules**" is to the Financial Services (Capital Adequacy of Credit Institutions) Regulations 2007;

2. ADDITIONAL QUALIFICATIONS

2.1 In order to meet its capital adequacy requirement, a Bank/Financial Institution in Gibraltar will have to comply with the rules set out in Capital Adequacy Rules on credit risk mitigation. This may affect the ability of the Bank/Financial Institution in granting or taking any Security Interests from its counterparty. The credit institution is expected to:

2.1.1. fulfil any contractual or statutory requirements in respect of, and take all steps necessary to ensure, the enforceability of the collateral arrangements under the law applicable to their interest in the collateral. The Bank/Financial Institution is also expected to conduct sufficient legal review confirming the enforceability of the collateral arrangements in all relevant jurisdictions (for instance, where the collateral is located and the country of incorporation of the counterparty) and they will have to re-conduct such review as necessary to ensure continuing enforceability; and

2.1.2 the collateral arrangements are properly documented, with a clear and robust procedure for the timely liquidation of collateral (see:Part II section,1.3, Schedule 8 of the Capital Adequacy Rules.

SCHEDULE 2
INVESTMENT FIRMS/BROKER DEALERS

Subject to the modifications and additions set out in this Schedule 2 (*Investment firms/broker dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are investment firms. For the purposes of this Schedule 2 (*Investment Firms/broker dealers*), an "Investment Firm" or a "Broker Dealer" means an investment firm incorporated under the Companies Act 1930 of Gibraltar and licensed under the Financial Services (Investment and Fiduciary Services) Act 1989 and/or the Financial Services (Markets in Financial Instruments) Act 2006 and the regulations made thereunder.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The following additional term of reference shall apply:

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

1.1.1 a reference to the "**Capital Adequacy Investment Firms Rules**" is to the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007;

2. ADDITIONAL QUALIFICATIONS

2.1 In order to meet its capital adequacy requirement, an investment firm/broker dealer in Gibraltar must comply with the rules set out in Capital Adequacy Investment Firms Rules on credit risk mitigation. Accordingly, this may affect the ability of the Investment Firm in granting or taking any Security Interests from its counterparty;

2.2 The Capital Adequacy Investment Firms Rules provide that an investment firm/broker dealer shall at all times, have own funds amounting to or exceeding the capital requirements, calculated in accordance with methods and options provided under the Rules.

SCHEDULE 3
PARTNERSHIPS (INCLUDING LIMITED PARTNERSHIPS)

Subject to the modifications and additions set out in this **Error! Reference source not found.** (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are "**Partnerships**". For the purposes of this **Error! Reference source not found.** (*Partnership*), a Partnership means either a partnership or a limited partnership formed under the Partnerships Act 1895 and/or Limited Partnerships Act 1928 and which is organised, established or formed under the laws of this jurisdiction.

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

1.1 That where the Agreement is entered into with a partnership (other than a limited partnership established under the Limited Partnerships Act 1928 of Gibraltar), during the life of the Agreement, the members of the partnership will remain unchanged. In relation to this assumption, where there is a change in partnership, incoming partners may have no liability for the acts of their predecessor partner(s) unless they expressly undertake such liability. Section 19 of the Partnership Act 1895 provides that an incoming partner does not become liable to the creditors of the partnership for anything done before he became a partner. Gibraltar law follows English law principles in that the introduction of a new partner will constitute a new partnership. Accordingly, it might be argued (a) that the Agreement is not binding on the incoming partner(s), or (b) that Transactions entered into by the former partners are not binding on incoming partner(s), with the consequence that not all obligations are subject to the Agreement or not all obligations are mutual, so that the Netting Provisions would be

ineffective to achieve (a) aggregation of values attributable to Transactions entered into after the change in partners; or (b) aggregation of values attributable to Transactions entered into before the change in partners against values attributable to Transactions entered into after such change.

2. MODIFICATIONS TO QUALIFICATIONS

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

2.1 Paragraph 4.1.1 shall be deleted and replaced with the following:

"Section 13A(2) of the Limited Partnerships Act provides that *"every charge created after the commencement of this section by a limited partnership registered in Gibraltar and being a charge to which this section applies shall, so far as any security on the limited partnership's property or under is conferred thereby, be void against any liquidator or creditor of the partnership, unless the specified particulars of the charge, together with the instrument by which the charge is created or evidenced are delivered to or received by the Registrar for recording in manner required by this Act within twenty-one days after the date of its creation, without prejudice to any contract or obligation for repayment of money thereby secured, and when the charge becomes void under this section, the money secured thereby will immediately become payable."*

The security interests that the section applies are (including but not limited) as follows:

(a) A charge created or evidenced by an instrument which require registration such as a bill of sale;
(b) A charge on land, wherever situate or any interest therein;
(c) A charge on book debts;
(d) A floating charge on the undertaking or property of the chargor;
(e) A charge on goodwill, on a patent or a licence under a patent, a trademark or on a copyright or a licence under a copyright.

Therefore, as a general rule, the Security interests created under the Agreement would need to be perfected by way of registration under the above provisions under Limited Partnerships Act within the time prescribed thereunder. This rule does not apply, however in respect of a security financial collateral arrangement or any charge provided under a security financial collateral arrangement (as defined under the FCA).

2.2 The following paragraphs shall be deleted in its entirety:

(i) Paragraph 4.2.1;

(ii) Paragraph 4.2.3;

(iii) Paragraph 4.2.4.

3. ADDITIONAL QUALIFICATIONS

3.1 a limited partnership formed under the Limited Partnership Act 1927 in Gibraltar shall have a separate legal personality with perpetual succession but with such liability on the part of the partners to contribute to the assets of the limited partnership in the event of its winding up to the extent of their contributions. Accordingly, it is arguable that the admission of new partners into the limited partnership would alter the binding effect of the Agreement entered by the limited partnership as the limited partnership has a separate legal personality from its limited partners and therefore it is able to enter into the Transactions contemplated under the Agreement in its own right unlike a partnership which does not have a separate personality from its partners.

3.2 Paragraph 4 herein shall be construed such that references to "*Company*" shall read as being to a *"partnership"*.

SCHEDULE 4
INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 1 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are Insurance Companies. For the purpose of this Schedule 1 (*Insurers*), an "**Insurance Company**" means an insurance company incorporated under the Companies Act of Gibraltar and authorised to conduct business under the Financial Services (Insurance Companies) Act 1987 (**"ICA"**). If the Insurance Company is structured as a protected cell company, the Protected Cell Companies Act 2001 (**"PCCA"**) would also apply.

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

1. **Modifications to Terms of Reference and Definitions.**

   The following additional terms of reference and definitions shall apply:

   "PCC" means a reference to an insurance company structured as a protected cell company incorporated under the Companies Act 1930 and PCCA.

2. **Additional Qualifications**

   2.1 that the Insurance Company does not undertake any activities in Gibraltar other than that of insurance (as defined in the ICA);

   2.2 that the Transactions contemplated under the Agreement are entered into for the purposes of management of the Insurance Company's investments or to hedge its interest or its currency liabilities and that they are entered into purely to support the Insurance Companies' investment activities,

   2.3 that the provision of the financial collateral by the Insurance Company will not affect the solvency margin required to be maintained by the Insurance Company under the provisions of the ICA;

   2.4 In respect of a PCC, it will have the duty to inform the Firm that it is dealing with a PCC and for the purposes of the Transactions, it must identify and specify the cell in which the person is transacting. Failure to do may render the directors of the PCC to be personally liable and any indemnity provision in favour of any directors would be void.

2.5 Cellular assets attributable to a cell of a PCC (a) shall only be available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled under the PCCA to have recourse to the cellular assets attributable to that cell, (b) shall be absolutely protected from the creditors of the PCC who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

SCHEDULE 5
INDIVIDUALS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The following additional terms of reference and definitions shall apply:

"**Bills of Sale Act**" means the Bills of Sale Act 1961 of Gibraltar.

2. ADDITIONAL QUALIFICATIONS

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

2.1 Pursuant to section 43(1) of the Bankruptcy Act 1934, where a person is engaged in any business and makes a "general assignment" to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt, the assignment is void against the trustee of his estate as regards any book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for payment of a sum of money under the Bills of Sale Act. The Client Money Additional Security Clause might constitute a charge over, and therefore an assignment of, a class of book debts. If this is the case, the Client Money Additional Security Clause would be void against the trustees of a Counterparty's estate, if it had not been registered properly pursuant to the Bills of Sale Act.

2.2 The lack of a comprehensive registration system in relation to security created by an individual means that it is not possible to assume that significant creditors of the individual will be on notice of any security created by virtue of having checked the individual's records. In addition, registration of a bill of sale in relation to chattels does not constitute constructive or deemed notice to third parties. This means that

security created by an individual is likely to be far more vulnerable to other parties taking a legitimate interest in the property concerned.

2.3 In a bankruptcy of an individual, any dispositions of the insolvent Party's property (which would include the creation of a security interest pursuant to the Security Provisos) made after the day of presentation of a bankruptcy petition in respect of such Party are void under section 44 of the Bankruptcy Act 1934 unless the court otherwise orders.

2.4 Under section 44 of the Bankruptcy Act 1934 anything done or suffered to be done by an individual within 3 months from the date of the presentation of a bankruptcy petition to the date on which the individual is adjudged bankrupt be set aside as a voidable preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that individual was insolvent within the meaning of section 3(1) of the Bankruptcy Act 1934 or became insolvent within the meaning of that section in consequence of the thing done or suffered, and that thing has the effect of putting any person in a better position, in the event of that individual's bankruptcy, than that person would have been in if the thing had not been done. However, the court would not make such an order if it was satisfied that the transaction was entered into was bona fide and for value and the individual who gave the preference was not influenced to give it by a desire to put that person in such better position.

2.5 There is provision in the Bankruptcy Act 1984 for individual voluntary arrangements in respect of individuals to be agreed by creditors of the insolvent Party. A creditor can be bound by the arrangement even if he has not been given notice of the creditors' meeting to approve the arrangement. Approval at the creditors' meeting does not require unanimity of the affected creditors, whether or not present at the meeting.

3. MODIFICATION TO QUALIFICATIONS

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

3.1 The following paragraphs are deemed deleted:

(a) paragraph 4.1.1

(b) paragraph 4.1.2

(c) paragraph 4.1.3

(d) paragraph 4.1.4

(e) paragraph 4.1.5

(f) paragraph 4.1.6

(g) paragraphs 4.2 and 4.3.

3.2 Paragraph 4.2 be replaced with the following:

The FCA does not apply to an arrangement which is a financial collateral arrangement if one of the parties is an individual.

SCHEDULE 6
Funds

Subject to the modifications and additions set out in this Schedule 6 (*Funds*) the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are funds/collective investment schemes in Gibraltar. For the purposes of this Schedule 5 (funds/collective investment schemes) means Funds incorporated under the Companies Act and/or Protected Cell Companies Act or the Limited Partnerships Act and authorised under Financial Services (Collective Investments Schemes) Act 2011 ("**CIS Act**") and the regulations made thereunder such as the Financial Services (Collective Investments Schemes) Regulations 2011 or the Financial Services (Experienced Investor Funds) Regulations 2012.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The following additional terms of reference and definitions shall apply:

"PCC" means a reference to a fund that is structured as a protected cell company incorporated under the Companies Act 1930 and PCC Act;

"CIS Regulations" means a reference to the Financial Services (Collective Investment Schemes) Regulations 2011.

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 That the Fund complies with the investment objectives and policy of its scheme as stated in its most recently published prospectus and that the scheme property of the scheme aims to provide a prudent spread of risk.

3. ADDITIONAL QUALIFICATIONS

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

2.1 Section 2.4 and Section 2.5 of Schedule 4 are incorporated herein if the Fund is structured as a PCC.

2.2 In the case where the Fund is structured as a limited partnership, section 2.1 of the Schedule 3 on registration of a charge by a limited partnership is deemed to be incorporated herein in respect of any security interest created by the Fund that does not fall within the meaning of the financial collateral arrangement, under the FCA.

2.3 The scheme property of a Fund must be invested only in accordance with the provisions of the CIS Act and the relevant regulations thereunder and up to the maximum limit specified but the constituting instrument of the Fund may further restrict:

(a) The kind of property in which the scheme property may be invested;

(b) The proportion of the capital property of the scheme that may be invested in assets of any description;

(c) The descriptions of transactions permitted; and

(d) The borrowing powers of the Fund.

As such, this may affect the eligibility of any Collateral subject to the Security Interest Provisions under the Agreement which may be posted by the Fund in respect of the Transactions.

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

Subject to the modifications set out in this 0 (*Trustees*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 1 (*Individuals*) in the case of a Trustee that is an Individual) will also apply in respect of Counterparties which are acting as Trustees of a Trust (other than a Charitable Trust or Pension Scheme).

For the purpose of this 0 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*), a "**Trust**" means an express trust validly constituted under Gibraltar law; and "**Trustee**" means a person who is an individual, a Gibraltar company or a foreign company and acting as trustee of a Trust. Except where the context otherwise requires, references in this Schedule to "paragraph" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "sections" are to sections of this Schedule (or of Schedule 1 (*Individuals*) in the case of a Trustee that is an individual, as applicable).

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

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

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

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1.1. That each Party has the capacity, power and authority under the terms of any applicable Trust of which a Party is a Trustee to enter into the Agreement and Transactions; to perform its obligations under the Agreement and Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

2.1.2. That during the life of any Transaction, the Trustee(s) of the relevant Trust in respect of which a Party is acting as Trustee will remain unchanged.

3. ADDITIONAL QUALIFICATIONS

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

3.1.2 In relation to the assumption at section 2.1.11.2 of this 0 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*) where there is a change of trustees in respect of a Trust, incoming trustees will have no liability for the acts of their predecessors in office unless they undertake such liability. Under Gibraltar law trustees' obligations under contracts which they enter into are owed by them personally. An incoming trustee, therefore, will not become liable to discharge obligations owed by a former trustee, such as obligations incurred by other trustees before the incoming trustee's appointment, but may agree to undertake such obligations (for example, by novation of contracts entered into by the former trustee). Accordingly, it might be argued that the Agreement is not binding on the incoming trustees. If, following a change of trustees, the incoming trustees do not adopt the Agreement it could be the case that the Security Provisions would be ineffective. We express no opinion as to the effectiveness of the Netting Provision in relation to the effectiveness of the Security Provisions in respect of any assets posted as margin or in respect of any Transactions entered into after the time of a change of trustees where no such adoption has occurred.

SCHEDULE 8
TRUSTEES OF PENSION SCHEMES

Subject to the further additions and modifications set out in this 0 (*Trustees of Pension Schemes*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to 0 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*)) will also apply in respect of Counterparties which are acting as Trustees of pension schemes.

For the purposes of this 0 (*Trustees of Pension Schemes*), a "**Pension Scheme**" means an occupational pension scheme within the meaning of the Financial Services (Occupational Pension Institutions) Act 2006 and which is established as a trust under the laws of this jurisdiction and which is not established by or pursuant to any enactment and which is not sectionalised such that the assets of one section of the scheme may not be used for the purposes of another section of the scheme (and for the avoidance of doubt, excluding personal pension schemes within the meaning of section 1 aforesaid).

Except where the context otherwise requires, references in this Schedule to "paragraph" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "sections" are to sections of this Schedule or of 0 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*)), as applicable.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The words "*a pension scheme*," are deemed deleted from 0 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*) for the purpose of this 0.

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 That the Trustee has not and does not have an immediate right to wind up the pension scheme nor has exercised such right.

2.2 That the additional provisions contained in section 3 of this 0 (*Trustees of Pension Schemes*) have been included in the Agreement.

3. ADDITIONAL EVENTS OF DEFAULT WHERE PARTY IS A TRUSTEE OF A PENSION SCHEME

3.1.1 When a freezing order is obtained from the Supreme Court freezing the assets of an institution in Gibraltar.

Additional definition:

Pension Scheme means a contract, an agreement, a trust deed or rules stipulating which retirement benefits are granted and under which conditions.

Reference to "***institution***" in this Schedule 8 means "*institution for occupational retirement provisions*" which is an institution irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking, or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed (i) individually or collectively between the employer and the employee (s) or their respective representatives, or (ii) with self-employed persons, in compliance with the relevant legislation of Gibraltar and the Member State where the institution is established and which carries out activities arising therefrom.

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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:

   (i) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (***Rehypothecation***);

   (ii) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (***Rehypothecation***);

   (iii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (***Rehypothecation***); and

(iv) 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 event the death or incapacity of a Party or its general partner 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.