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Legal collateral opinion- Situs Version

The Futures & Options Association
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January 28th, 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of Greece ("**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.

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 This opinion is given in respect of

1.1.1 persons which are companies incorporated under law 2190/1920 on sociétés anonymes, law 3190/1955 on companies of limited liability or law 4072/2012 on Private companies and having the centre of their main interests in Greece (Regulation 1346/2000 on insolvency proceedings[1], article 3); and

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

1.1.3 Banks (credit institutions)/financial institutions incorporated either as sociétés anonymes or as banking cooperatives and organized in accordance with law 3601/2007 which transposed into Greek law Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions;

[1] The '**Insolvency Regulation**'.

1.1.4 Investment firms including security dealers incorporated as sociétés anonymes and organized in accordance with law 3606/2007, which incorporated into Greek law Directive 2004/39/EC on the markets in financial instruments (MiFiD);

1.1.5 Partnerships (unlimited and limited liability partnerships) organised under law 4072/2012 and having the centre of their main interests in Greece;

1.1.6 Insurance companies/providers incorporated either as sociétés anonymes or as mutual insurance co-operatives and organized in accordance with legislative decree 400/1970;

1.1.7 Individuals who are merchants (i.e. whose regular occupation is to undertake originally commercial acts) and have the centre of their main interests (place of business) in the meaning of the Insolvency Regulation in Greece. Natural persons can be classified as merchants under either the substantive or the formal system, as described in the Greek commercial legislation;

1.1.8 Hedge Funds to the extent that they fall under point 1.1.1. or 1.1.5. above and mutual funds, as defined in law 3283/2004, which transposed into Greek law Directive 2001/107/EC on UCITS ;

1.1.9 Sovereign and public sector entities, namely Greek public law entities, such as the Greek State and public law funds, which are not however subject to any insolvency proceedings;

1.1.10 Charitable institutions organised under GCC 108-126;

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.2.) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

1.2 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.

1.3 In this opinion letter:

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

1.3.2 "**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;

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

1.3.4 "**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.

1.3.5 in other instances other than those referred to at 1.3.4 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.

1.3.6 "**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).

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

1.3.8 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;

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

1.3.10 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.

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, bankruptcy or analogous proceedings in respect of either Party[2].

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] According to article 3 of the Bankruptcy Code, the cessation of payments is either actual or constructive. An actual cessation of payments is deemed to exist, according to case law and legal writing, if the debtor, due to an inability of a permanent nature, fails to pay all or a significant proportion of its due and payable monetary obligations that derive from its commercial business. A constructive cessation of payments exists if the debtor continues to make payments "through destructive means", i.e. through a distress sale of assets, through borrowing at exorbitant rates etc.

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.

2.15 That the private individual entering into the Documents is not a consumer neither in the sense of Rome I Regulation nor the in the sense of the Brussels I Regulation.

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 The Security Interest Provisions would create a valid security interest over the Collateral.

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 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.

3.1.4 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, provided that, where applicable, the secured party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of another jurisdiction, which according to Greek law governs the creation and/or perfection of such security interest.

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 considered to be located within this jurisdiction. As far as the insolvency proceedings are concerned, Greek law would apply when the insolvent party has either the centre of its main interests in Greece or a secondary permanent establishment in Greece, in the sense of the Insolvency Regulation[3].

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 in this opinion letter are subject to the following qualifications:

I. Governing law (validity and enforceability of the Security Interest Provisions)[4]

Under Greek conflict of laws rules, and specifically according to article 3 of either the Rome Convention (1980 Rome Convention on the law applicable to contractual obligations) or the Rome I Regulation (Regulation 593/2008 on the law applicable to contractual obligations)[5]

[3] To be noted that in this case, foreign law might govern the validity of the Security Provisions in accordance with article 14 of Rome I Regulation (please refer to qualification 4.I. below). *Vice versa,* if foreign law would apply to insolvency proceedings, Greek law might govern the validity of the Security Provisions in accordance with article 14 of Rome I Regulation.

[4] Qualification I is of central importance for points 3.1.1., 3.1.2., 3.1.4, 3.3. above.

[5] Rome Convention applies to contracts concluded before 17 December 2009 whereas Rome I Regulation applies to contracts concluded after 17 December 2009.

contractual issues pertinent to the Security Interest provisions will be governed by the law chosen by the parties. This choice of law (i.e. Greek or foreign law) would be upheld by a Greek court, in accordance with article 3 paragraph 1 of the Rome Convention and Rome I Regulation, as the case may be, subject only to:

(i) the rights *in rem* over the Collateral, which would be governed by the law of the relevant objects' location (*lex rei sitae*) or, in case of registered debt securities, the conflict of laws rules of the law of the assignment contract;

The location of the Collateral (and the applicable *lex rei sitae* thereof) depends on the type of the Collateral. Under the Greek conflict of laws rules, the applicable *lex rei sitae* shall be:

- in case of securities in paper form held either directly by the collateral taker or by an Intermediary, the law of the place where the securities are held, which would in practice be the law of the location of the collateral taker or the intermediary, respectively;
- in case of securities in dematerialized form held in the name of the collateral provider/ taker, the law of the place where the electronic register is maintained (Place of the Relevant Intermediary Approach-PRIMA);

If such securities are indirectly held by the collateral provider / taker through the use of various Intermediaries, other laws may apply, such as the law of each relevant intermediary;

- in case of registered securities, the notion of *lex rei sitae* does not apply under Greek law; According to article 14 paragraph 1 of Rome I Regulation, the relationship between assignor and assignee under the assignment is governed by the law that applies to the contract between the assignor and assignee under the Rome I Regulation. Furthermore, recital 38 of the Rome I Regulation provides that the term 'relationship' covers also the property aspects of an assignment as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. According to our reading of the relevant provisions of the Rome I Regulation, any rights *in rem* referring to the assignment (other than those provided for in article 14 paragraph 2 of the Rome I Regulation) should be governed by the law applicable to the contract between the assignor and assignee. According to article 14 paragraph 2 of Rome I Regulation (see also article 12 paragraph 2 of the 1980 Rome I Convention), the law governing the right (or claim) to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged. In light of all the above, it appears that the decision as to the law which will govern the rights *in rem* over the Collateral, would qualify as an incidental question which would be decided by the conflict of law rules of the *lex causae*[6]. Thus, it would be the conflict of laws rules of the law of the assignment contract which would determine which law will govern the rights *in rem* over the Collateral, i.e. the law governing the right or the *lex rei sitae* (either the law of the location of the register (dematerialised securities) or the location of the debt security (securities in paper form)) in case of cash, the law governing the agreement under which the specific bank account (to which the cash collateral has been credited) was opened and is operated, i.e. the law governing the contract from which the claim of the holder of the specific account against the bank holding the specific account for the specific amount of cash credited therewith arises.

[6] According to another view incidental questions are decided in accordance with the conflict of law rules of the forum.

(ii) Greek public order (article 16 of the Rome Convention or article 21 of Rome I Regulation, as the case may be); and

(iii) Greek or foreign overriding mandatory provisions in the sense of article 7 of the Rome Convention or article 9 of Rome I Regulation, as the case may be.

Furthermore, according to article 3 paragraph 3 of the Rome Convention or the Rome I Regulation, as the case may be, if the parties chose the law of a country, other than the country where all the other elements relevant to the situation at the time of the choice are connected, the Greek courts will apply the law chosen by the parties, but without prejudice to the application of rules of the law of that country which cannot be derogated from by contract. To the same effect, paragraph 4 of article 3 of the Rome I Regulation provides that where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement (i.e. "mandatory rules").

As to the question of which aspects of a Security Interest in the various forms of Collateral deliverable under the Agreement are considered contractual instead of "*in rem*" it should be noted that, under generally applicable law, it is unclear whether the necessary steps to render the collateral security effective, its validity and its compulsory sale proceedings would be classified as contractual (i.e. governed by the law chosen by the parties in the Agreement) or as *in rem* issues (i.e. governed by the *lex rei sitae* as defined above).

But, to the extent that the Collateral law applies (see qualification 4.II below), article 9 paragraph 2(d) of the Collateral Law provides that the following issues are governed by the law of the country in which the account of the book entry securities collateral is maintained:

(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 more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;

(c) whether a person's 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;

(d) the steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event.

Article 9 of the Collateral Law thus settled the issue in favour of the view that the said issue involves rights "*in rem*" issues[7]. Likewise, article 9 paragraph 4 of Greek law 2789/2000 (transposing into Greek law Directive 1998/26/EC), as amended by virtue of article 42 of

[7] Provided that no specific provision exists. Article 9 of the Collateral Law shall apply in analogy in case of securities in dematerialized form, i.e. even when the specific requirements set by the Collateral law are not met.

Greek law 4021/2011, provides that where securities or rights on securities provided as collateral security to participants, system operators or to central banks of the Member States or the European Central Bank are legally recorded on a system, register, account or centralized deposit system, the necessary steps to render the collateral security effective, its validity and its compulsory sale proceedings are determined by the law of the member state where the system, register, account or centralized deposit system is located. This applies also to cases where the person who takes the collateral is acting on behalf of the secured party (i.e. it is not itself the secured party).

II. Creation of a Security Interest under Greek law[8]

The following requirements shall be met, to the extent that Greek law would apply and govern the creation of security interest in accordance with qualification I above (i.e. if Greek law would apply as the lex rei sitae or as the law of the assignment contract in case of registered debt securities).

Articles 1209-1256 of the Greek Civil Code provide for the validity under Greek law of the agreement by which the parties create a security interest (a pledge) over an object, a right or a claim, subject to the requirements set out therein.

The validity of a pledge created under the Greek Civil Code is subject to two preconditions:

- the pledgor and the pledgee must enter into a pledge agreement which must either be a notarial deed or a private agreement bearing a certain date. The pledged asset must be described in the pledge agreement (or a respective list must be attached thereto) [9] and the claim (for the security of which the pledge is perfected) must be also mentioned in the agreement;
- the object with respect to which the pledge is perfected must be delivered to the pledgee. The delivery as such may be replaced by any other appropriate means (registration in public book, delivery to a third person), in order for the pledged object not to be in the possession of the pledgor. In case of pledge of claims (article 1248 of the Greek Civil Code), the pledgor must also notify the debtor of the respective claim on the pledge effected on such claim.

  Please note that the requirement to deliver the object of the pledge is not satisfied by merely executing the Security Interest Provisions. Also, the Agreement must either be executed as a notarial deed or obtain a certain date[10].

The pledge is perfected as security for the full extent of the claim, especially interest accrued, any penal clause and expenses incurred from the delivery of the pledged object. The privilege

[8] Qualification II is of central importance for point 3.1.1. above.

[9] It suffices that the description of the pledged asset is specific and not vague, i.e. one could indisputably identify which the pledged asset is. To be noted, that from a language perspective. The security interest clauses of the agreement along with a client statement stating the margin balance would suffice to identify the pledged asset.

[10] The most cost effective and practical solution in order to obtain a certain date is to execute a written pledge agreement and then serve it, by a court bailiff to the custodian of the charged assets and/or as the case may be to the registry to which the account, in which the relevant securities are held, is maintained.

attributed to the pledgee with respect to the satisfaction of its claims under the pledge agreement exists from the date of perfection of the pledge (i.e. both the above mentioned conditions are met), even if the pledge was created as a security for a future or a conditional claim.

The pledgee is obliged to safeguard the pledged object. Use of such object is permitted only with the pledgor's prior consent.

When the pledgee's claim becomes due and payable the pledgee can either hold an auction to sell the pledged object (if the pledgee has an enforceable title) or apply for the issue of a court decision, in order to hold an auction to sell the pledged object. The sale of the pledged object is conducted, as if the pledged object had been confiscated, while objects traded on an exchange market are sold through such market.

An agreement entered into between the pledgor and the pledgee before the claim of the pledgee is due and payable that would provide for either (a) the acquisition by, or transfer to, the pledgee of ownership of the pledged asset, or the sale of the pledged asset, without observing the formalities required for the realisation of the pledged object, or (b) the release of the pledgee from such formalities, would be null and void according to article 1239 of the Greek Civil Code[11].

It must be noted that under the Greek Civil Code the transfer of ownership of an object (including cash and financial instruments, but excluding immovable assets), a right or a claim by way of security shall not be considered as an outright transfer and the rules on the enforcement of pledges will apply by way of analogy.

Application of Directive 2002/47/EC (the "Collateral Directive")

Greek law 3301/2004, as amended and in force, (the "Collateral Law") transposed into Greek law Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (the "Collateral Directive").

Article 1 paragraph 2 of the Collateral Law lists the entities to the collateral transactions of which it applies, as follows:

"(a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (e)) including:

(i) public sector bodies of Member States charged with or intervening in the management of public debt, and

(ii) public sector bodies of Member States authorised to hold accounts for customers;

[11] If such agreement is concluded between the parties after the pledgee's claim has become due and payable, then the agreement is valid and enforceable.

(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank as defined in the Act of the Governor of the Bank of Greece no 2588/2007 (B' 1758/4.9.2007) under "Standardized Approach", Section E', paragraph 6, as well as in Annex VI, Part 1, section 4 of in the Directive 2006/48/EC as transposed into the legislation of the member states, the International Monetary Fund and the European Investment Bank;

(c) a financial institution subject to prudential supervision including:

(i) a credit institution as defined in article 2 paragraph 1 of Greek law 3601/2007;

(ii) an investment company as defined in article 2 paragraph 1 of Greek law 3606/2007;

(iii) a financial institution as defined in article 2 paragraph 11 of Greek law 3601/2007;

(iv) an insurance undertaking as defined in article 2a(a) of Greek Legislative Decree 400/1970 (A'10) and a life assurance undertaking as defined in the same provision of the aforementioned law;

(v) mutual fund management company, an undertaking for collective investment in transferable securities (UCITS), mutual funds as defined in law 3283/2004 (A' 210);

(vi) a leasing company in accordance with Greek law 1665/1986 (A' 194);

(d) a central counterparty, settlement agent or clearing house, as defined respectively in article 1 paragraph 4(c), (d), and (e) of Greek law 2789/2000, as well as in Article 2(c), (d) and (e) of Directive 98/26/EC as transposed into the domestic legislation of other member states, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by that Directive, and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d);

(e) any legal person provided that the other party is an institution as defined in points (a) to (d)"[12].

For a collateral arrangement to fall within the scope of the Collateral Law, it is sufficient for only one of the parties to be an institution, as defined in points (a) to (d) of the aforementioned article.

The Collateral Law lays down the regime applicable to financial collateral arrangements and to financial collateral. For the purpose of this law the term "financial collateral arrangement" means, according to article 2 paragraph 1 of the Collateral Law "a title transfer financial collateral arrangement or a security financial collateral arrangement notwithstanding whether these are covered by a master agreement or general terms and conditions". The financial collateral to be provided must consist of cash, financial instruments or credit claims, while the

[12] The Collateral Law in the aforementioned article repeated almost *verbatim* the relevant provisions of the Collateral Directive, adding only references to the relevant Greek laws implementing the directives to which the provision makes reference.

financial collateral arrangement itself as well as the provision of the financial collateral under such arrangement must be evidenced in writing, or in a legally equivalent manner (as opposed to pledges perfected under the Greek Civil Code, for which a notarial deed or an agreement bearing certain date is required). The evidencing of the provision of the financial collateral must allow for the identification of the financial collateral to which it applies. For this purpose, it is sufficient to prove that the book-entry securities collateral has been credited to, or forms a credit in, a designated account[13].

The Collateral Law prevails over all previous laws in its field of application, including all general and specific insolvency law provisions.

III. Enforcement requirements[14]

The following requirements shall be met, to the extent that Greek law would apply and govern the enforcement of security interests in accordance with qualification I above (i.e. if Greek law would apply as the lex rei sitae or as the law of the assignment contract in case of registered debt securities according to the PRIMA rule).

In case the Collateral does not fall within the scope of application of the Collateral Law, under article 1237 of the Greek Civil Code, the pledgee has the right, after its secured claim has become due and payable, to sell the pledged object through an auction, if it has an enforceable title (i.e. a payment order or a court decision) or to apply for the issue of a court order for the selling of a pledged object through an auction. The secured party would only have the right to sell the Collateral, if listed, on the relevant market, and if not, through a public auction.

Please refer to qualification I above on the issue whether this is a contractual issue governed by the law chosen by the parties or an issue pertinent to rights *in rem*.

If, however, the Collateral and the perfection thereon of a financial collateral arrangement falls within the scope of application of the Collateral Law, then, according to article 4 of the Collateral Law, on the occurrence of an enforcement event, the secured party is able to realise in the following manners, any financial collateral provided under, and subject to the terms agreed in, a security financial collateral arrangement:

(a) financial instruments by sale or appropriation by means of setting off their value against, or applying their value in discharge of, the relevant financial obligations;

(b) cash by setting off the amount against or applying it in discharge of the relevant financial obligations.

Appropriation is possible only if (a) this has been agreed by the parties in the security financial collateral arrangement[15] and (b) the parties have agreed in the security financial collateral arrangement on the method of valuation of the financial instruments.

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[13] For the purposes of the Collateral Law and with regards to collateral provided on dematerialised securities under a financial collateral arrangement, a '*designated account*' is the registry or the account kept or held, as the case may be, by the collateral taker or an Intermediary acting for the collateral taker under which registrations are made and by means of which the collateral on the dematerialised securities is provided to the collateral taker.

[14] Qualification III is of central importance for points 3.1.2. and 3.1.4 above.

The aforementioned article further provides that, to the contrary of the respective provisions of the Greek Civil Code on pledges, for the manners of realising the financial collateral as referred above and subject to the terms agreed in the respective agreement, the following are not required:

(a) prior notice of the intention to realise;

(b) approval by any court, public officer or other person of the terms of the realisation;

(c) realisation by public auction or in any other prescribed manner; or

(d) elapse of any additional time period.

The Collateral to be realised and the relevant mutual obligations must have been valued in a commercially reasonable way according to article 7a of the Collateral Law.

IV. Insolvency proceedings[16]
Application of the Greek Bankruptcy Code – Insolvency and Reorganization Proceedings under Greek law

Pursuant to the Greek Bankruptcy Code (hereinafter referred to as the **Bankruptcy Code**) (Greek law 3588/2007, published in the Government's Gazette bulletin 153A/10.07.2007), which entered into force on September 16, 2007 and applies to proceedings commencing after that date (article 180 of the Bankruptcy Code), the only insolvency proceedings to which a Local Counterparty would be subject in Greece are the following:

- **Bankruptcy proceedings** under articles 1-98 and 107-177 of the Bankruptcy Code, which replaced the provisions of articles 525-707 of the Greek Commercial Law; The Bankruptcy Proceedings apply to all corporate entities, including investment companies and insurance undertakings, partnerships and natural persons who are considered to be merchants under the Bankruptcy Code and who have the centre of their main in Greece or when they have the centre of their main interests outside Greece but have a secondary permanent establishment in Greece. Pursuant to article 68 of Greek Law 3601/2007 (as amended by Greek law 4021/2011), Bankruptcy Proceedings cannot apply to Greek credit institutions;

- **Special liquidation Proceedings** in accordance with the provisions of any of:

- articles 10 and 12a of Greek legislative decree 400/1970 (on insurance undertakings);
- article 68 of Greek law 3601/2007 (on liquidation of credit institutions which constitutes the only winding up proceeding applicable to credit institutions); and
- article 22 of Greek law 3606/2007 (on special liquidation of investment companies);

[15] Such agreement would have been null and void under the generally applicable law (article 1239 of the Greek Civil Code).

[16] Qualification IV is of central importance for point 3.1.3. above.

➢ article 106(k) of the Bankruptcy Code, as amended by Greek law 4013/2011 and in force[17].

(all of the above referred to collectively as **Special Liquidation Proceedings** and together with the Bankruptcy Proceedings, **Insolvency Proceedings or Insolvency**).

- Reorganization Proceedings in accordance with the provisions of any of:

- Articles 99-106(j) of Greek Bankruptcy Code on reorganization measures applicable to all corporate entities, partnerships and natural persons as amended by Greek law 4013/2011 and in force (**"General Reorganization Measures"**)[18]. The debtor and its creditors may reach an agreement[19] on the restructuring of the assets and liabilities of the former (**"Reorganization Plan"**) which is further ratified by the bankruptcy court and becomes binding towards all creditors[20];
- Articles 62-63E of Greek law 3601/2006 as introduced by Greek law 4021/2011 provide for certain reorganization measures which may be imposed on credit institutions by the Bank of Greece for the protection of the financial stability and the enhancement of the public's confidence in the financial system (**"Credit Institution Reorganization Measures"**). The Credit Institution Reorganization Measures are as follows:

(i) *The appointment of a commissioner*: This measure also existed under the previous law, but now it is significantly enhanced. In particular, the commissioner not only has a veto right on decisions, but also the Bank of Greece may provide that the commissioner will manage the credit institution, effectively replacing the board of directors regarding all matters related to the management of the credit institution. Further, the commissioner has the right to appoint external advisors and to take in the name and on behalf of the credit institution any legal measures against the directors and executives for their actions or omissions that have caused losses to the credit institution;

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[17] The special liquidation of article 106(k) of the Bankruptcy Code is applicable to all corporate entities, partnerships and natural persons. In order for an entity to be subject to special liquidation, two of the following three economical criteria have to be met: (i) total balance sheet of €2.500.000, (ii) net turnover of €5.000.000, (iii) average employed personnel during the last financial year of 50 persons.

[18] Reorganization measures do not apply to article 68 of law 3601/2007, as amended and in force credit institutions.

[19] For such agreement a majority of 60% of the claims of the creditors participating in the relevant meeting, including at least 40% of the existing secured claims is required.

[20] The Reorganization Plan may provide for any kind of restructuring including in particular the following: (i) amendment of the terms of the debtor's obligations (e.g. change of duration, change of payable interest rate, replacement of security rights etc.); (ii) debt to equity swaps; (iii) modification of the inter-creditor relationships following execution of the Agreement, in their capacity either as creditors or as potential shareholders of the debtor. In particular, the Reorganization Plan may indicatively provide that a class of creditors is not entitled to payment of its claims before another class of creditors has been fully satisfied; (iv) haircuts; (v) disposal of debtor's assets; (vi) outsourcing of the debtor's management to a third party;(vii) full or partial transfer of the debtor's business to a third party;(viii) suspension of individual creditors' enforcement rights following execution of the Reorganization Plan. In case of dissenting creditors such suspension can be only imposed for a period which does not exceed 6 months; (ix) appointment of a person acting as observer in order to safeguard the implementation of the terms of the Reorganization Plan.

(ii) *Extension of the maturity of the credit institution's obligations*: In case the credit institution presents significantly low liquidity, the Bank of Greece may, following the appointment of a commissioner, extend the maturity of all or part of the credit institution's obligations of the credit institution by up to 20 business days, extendable only once by up to 10 business days. However, this article explicitly provides for the exemption of "*the obligations of the credit institution deriving from transactions in financial instruments entered into in capital or money markets, as well as the interbank market and including obligations to any participant in a system*".

(iii) *Mandatory Share Capital Increase*: the commissioner may decide to proceed to a share capital increase which shall be at least equal to the minimum capital required in order for the credit institution to maintain own funds corresponding to the capital requirements of Greek law 3601/2007;

(iv) *Mandatory transfer of assets and liabilities:* The Bank of Greece may require that the credit institution transfers to another credit institution or third party some of its assets and liabilities;

(v) *Establishment of a bridge credit institution:* By virtue of a decision of the Minister of Finance, following a proposal of the Bank of Greece, a bridge credit institution may be established to which all or part of the assets and liabilities of the credit institution are transferred, whereas the initial credit institution is placed into special liquidation.

- Articles 2, 9 and 17(c) of Greek legislative decree 400/1970 on insurance undertakings (the **"Insurance Undertaking Reorganization Measures"**). The administrative authorities may impose any measures necessary to ensure or restore the financial situation of the insurance undertaking.

(all of the above referred to collectively as **Reorganization Proceedings).**

The applicable rules

The objective pre-condition for a debtor to be declared bankrupt is being in a state of cessation of payments. According to article 3 of the Bankruptcy Code[21] the cessation of payments is either actual or constructive. An actual cessation of payments is deemed to exist if the debtor fails to pay due to an inability of a permanent nature all or a significant proportion of its due and payable monetary obligations that derive from its commercial business. A constructive cessation of payments exists if the debtor continues to make payments "through destructive means", i.e. through a distress sale of assets, through borrowing at exorbitant rates etc.

Upon commencement of Insolvency Proceedings the following apply with respect to the contractual obligations of the insolvent entity:

- article 29 of the Bankruptcy Code provides for the cherry-picking right of the bankruptcy official in charge of the insolvent entity ("*syndikos*" in Greek) as to which pending contracts will be performed by the insolvent entity. Such right, however, does not apply with respect to rights and obligations under a single contract;

[21] Article 3 of the Bankruptcy Code repeated the existing definition given to the cessation of payments by the previous law as interpreted by the Greek case law and legal writing.

- bankruptcy is validly agreed by the contracting parties as a termination event (article 32 of the Bankruptcy Code);
- the declaration of bankruptcy does not affect the creditor's right to set-off its claim against the claims of the bankrupt debtor, provided that the pre-conditions for a valid and enforceable set-off claim existed before the bankruptcy declaration (e.g. if Greek law is applicable, according to article 440 of the Greek Civil Code, reciprocal, due and payable obligations can be set-off). Furthermore, in article 36 of the Bankruptcy Code it is explicitly provided (as opposed to the abolished provisions of the Greek Commercial Law) that the set-off of claims deriving from OTC derivatives transactions or in accordance with close-out netting provisions under financial collateral arrangements will be regulated by the relevant special legislation, as in force (i.e. under Greek law, by Greek law 3156/2003 (the "**Bond Loan Law**") and Greek law 3301/2004 (the "**Collateral Law**"). Please also note that the enforcement of close-out netting provisions under Greek law are also indirectly secured by Regulation 1346/2000 (the **Insolvency Regulation**), Greek law 3458/2006 (which transposed into Greek law directive 2001/24/EC on the reorganization and winding up of credit institutions) and presidential decree 332/2003 (on insurance undertakings));
- articles 41 and 42(c)and 42(d) of the Bankruptcy Code provides, among other things, for the obligatory revocation of:

(i) the payment of claims which are not yet due and payable;

(ii) and the provision of collateral, in order for the insolvent entity to secure pre-existing claims for which the insolvent entity had not assumed such obligation *ab initio* or in order to secure new claims assumed by the insolvent entity in replacement of those pre-existing, in both cases where the payment, or the provision of the collateral, respectively, were performed within the suspect period[22] (the suspect period commences on the date of cessation of payments, which is defined by the court order declaring bankruptcy and ends the date on which the entity is declared bankrupt). Such payment and/ or provision of collateral are deemed to be to the detriment of the insolvent entity's creditors.

However, according to article 45 of the Bankruptcy Code acts of the insolvent creditor that are explicitly exempted by law from the aforementioned absolute prohibition are not revoked and are valid and enforceable

With respect to the pending contractual obligations of a Local Counterparty under Credit Institution Reorganization Measures, article 63B paragraph 4 of Greek law 3601/2007 provides that Credit Institution Reorganization Measures do not constitute credit events and, therefore, do not trigger any contractual arrangements otherwise triggered in case of bankruptcy or insolvency. It is our opinion, however, that this provision does not set any limitations as to the satisfaction of the secured party's rights arising from a financial collateral arrangement or a close-out netting provision. The relevant matter in case of application of the General Reorganization Measures is resolved under the amended article 103 of the Bankruptcy Code. The relevant provisions of the Insurance Undertaking Reorganization Measures do not include any special reference on the above matter and there is no relevant case law, to the best of our knowledge.

[22] According to article 7 of the Bankruptcy Code, the duration of the suspect period is defined by the court order declaring bankruptcy. Such period shall not exceed 2 years from the date on which the entity is declared bankrupt. The said article reiterates the respective provisions applicable under the previous regime.

Insolvency proceedings and the enforcement of the Collateral

In case of initiation of Bankruptcy proceedings against the Defaulting Party, if the financial collateral provided is governed by the Greek Civil Code, in which case the exemptions from the bankruptcy provisions, as provided by article 8 of the Collateral Law, would not apply, the Non-Defaulting party could not immediately proceed with the realisation of the Collateral. The Non-Defaulting Party would have to announce its claim/s to the bankruptcy officer, as well as the financial collateral which secures the claim. Its claims would be satisfied as described below in qualification V[23].

Where the Collateral falls within the scope of application of the Collateral Law, according to article 4 paragraph 5 of the Collateral Law, the realisation of the financial collateral takes effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the Collateral provider or the secured party.

In relation to transfers of Collateral made to the secured party during a certain "suspect period" [24] preceding the date of the insolvency the following apply.

To the extent that the Collateral is governed by generally applicable law (provisions of the Greek Civil Code), article 42 (d) of the Bankruptcy Code will apply (please refer above under the section Application of the Greek Bankruptcy Code – Insolvency and Reorganization Proceedings under Greek law-Applicable laws).

If the Collateral law is governed by the Collateral law, then the respective issue would be decided in accordance with article 8 of the Collateral Law.

Specifically, article 8 paragraph 3 of the Collateral Law provides as follows:

"Where a financial collateral arrangement contains:

(a) an obligation to provide financial collateral or additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations, or

(b) a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value,

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[23] The potential limitation to the right of the Secured Party to satisfy his claims that previously resulted from the poor wording of article 26 of the Bankruptcy Code has been removed by a recent amendment of this article (which was effected by virtue of Greek law 4013/2011). According to the new wording of article 26, the claims of the creditors of the insolvent entity which are secured by a special privilege or collateral on an asset included in the bankruptcy assets, are exclusively satisfied by the realization of such asset, according to the generally applicable law, unless the Bankruptcy Code provides for otherwise, while collateralized creditors can be satisfied by the total of the bankruptcy assets, only in case they waive their privilege or collateral or the collateral does not suffice to satisfy all its claims.

[24] For the definition of suspect period see before where it is stated that the suspect period commences on the date of cessation of payments, which is defined by the court order declaring bankruptcy and ends the date on which the entity is declared bankrupt.

then the provision of financial collateral or of additional financial collateral or the substitution or the exchange of the financial collateral under such an obligation or right is not invalid or reversed or declared void on the sole basis that:

(i) such provision was made on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement or within the suspect period and generally in a prescribed period prior to, and defined by reference to, the commencement of winding-up proceedings or reorganisation measures or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such proceedings or measures; or

(ii) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, or of additional financial collateral or the substitution or replacement of the financial collateral."

Accordingly, the Collateral provider (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) will not be able to recover any transfers of Collateral made to the secured party during the "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference" (however called and whether or not fraudulent) in favor of the secured party on this or on any other basis.

Please note, however, that while the Collateral Law dissappplies the relevant provisions of the Bankruptcy Code, fraudulent transactions may also constitute a tort and, therefore, in this case, creditors may have a claim for damages against the parties participating in such fraud.

In relation to General Reorganization Measures, Insolvency and Reorganization Proceedings under Greek law, the Reorganization Plan (which upon ratification by the bankruptcy court becomes binding towards all creditors, even the dissenting) may provide, among others, for the amendment of the terms of the obligations of the entity under Reorganization Proceedings, such as the interchange of the secured creditors' pledge rank in favour of new creditors. However, it is explicitly stated in articles 103 paragraph 3 and 106e paragraph 1[25] of Bankruptcy Code that such interchange may not affect any claims secured by a financial collateral arrangement within the meaning of Collateral law. Therefore, in cases where the Collateral falls outside the scope of application of the Collateral law, the satisfaction of the Secured Creditor claims may be subordinated to the claims of a new creditor.

In relation to Credit Institution Reorganization Measures, article 63B paragraph 4 of Greek Law 3601/2007 states verbatim that "without prejudice to any more specific provisions, the reorganization measures for credit institutions do not constitute an insolvency proceeding of the credit institution to be reorganized which may be invoked by its creditors. Any contractual arrangements which are triggered in case of bankruptcy or insolvency or in case of any other event which is considered a "credit event" or equivalent to insolvency are not triggered by the application of reorganization measures." Nevertheless, we consider this article as setting no limitations to the right of the secured party to satisfy its claims since it explicitly states to be without prejudice to any specific provisions, which in our opinion include the provisions of the Collateral law and Greek law 3458/2006 on the reorganization and winding up of credit institutions (transposing into Greek law directive 2004/24/EC). In particular, as advised above

[25] As amended by Greek law 4013/2011 and in force.

article 4 paragraph 5 of the Collateral law provides for the realization of the financial collateral in accordance with its terms whereas article 7 paragraph 1 of the Collateral law and article 27 of Greek law 3458/2006 stipulate that the close out netting takes effect in accordance with its terms and it is governed exclusively by the law governing the relevant agreement. Furthermore, unless article 63B paragraph 4 specifically amended the aforementioned provisions, the obligation to interpret domestic laws in accordance with the EU law, would also lead us to the same conclusion.

V. Ranking of Claims[26]

To the extent that the enforcement of the Security Interest will be made in accordance Greek Civil Code (see before qualifications II, III, IV), the privileges introduced by the Greek Code of Civil Procedure for the satisfaction of creditor's claims would need to be respected.

According to article 975 of the Greek Code of Civil Procedure, following a mandatory auction, the claims of creditors are ranked in the following order, after deduction of enforcement costs (including, without limitation, legal and notarial fees) (general privileges):

(i) claims for hospitalisation and interment costs of the individual against whom execution was forced, his/her spouse and children, if such costs arose during the last 12 months prior to the mandatory auction;

(ii) costs for the nourishment of the individual against whom execution was forced, his/her spouse and children, if such costs arose during the last 6 months prior to the mandatory auction;

(iii) claims arising from labour agreements, including claims by teachers and lawyers regarding their fees and expenses for the provision of services (provided such claims relate to services provided during the two (2) years preceding the date of the auction). The claims of the social security organizations that arose until the date of the auction (or of the declaration of Bankruptcy Proceedings, as the case may be) are also included in this class[27];

(iv) claims by farmers or farming partnerships arising from sale of agricultural goods if such costs arose during the last 24 months prior to the mandatory auction or declaration of bankruptcy;

(v) claims of the Greek state or public sector entities arising from taxes on the auctioned property if the relate the year of the mandatory auction or the previous year;

(vi) claims of social security funds, provided they took place up to the day of the auction;

(vii) claims by the collective guarantees fund (if the debtor is or was a investment firm in the meaning of Greek law 2396/1996), that arose two years prior to the day of the auction.

[26] Qualification V is of central importance for points 3.1.3, 3.1.4 and 3.4. above.

[27] By virtue of Greek law 3863/2010 and Greek law 4055/2012.

According to article 976 of the Greek Code of Civil Procedure, the claims that have a special privilege on certain movable asset or cash are ranked as follows, where the product from the liquidation of the specific asset shall be distributed (special privileges):

(1) claims that have derived from expenses incurred for maintaining the asset;

(2) claims in favour of which a pledge has been effected;

(3) claims that have derived from expenses incurred for the production and harvesting of crops.

According to article 977 of the Greek Code of Civil Procedure, if claims with special privileges under (1) and (2) of article 976 of the Greek Code of Civil Procedure exist (and after deduction of the aggregate amount for enforcement expenses from the proceeds of the auction), a maximum of 1/3 of the aforementioned remaining proceeds of the auction of the asset in question is allocated to the creditors of the list of article 975 of the Greek Code of Civil Procedure, while the 2/3 of the said proceeds are allocated to the specially privileged creditors of article 976 of the Greek Code of Civil Procedure. However, if claims with general privileges under 975 (iii) exist, the allocation of the proceeds of the action pursuant to article 977 of the Greek Code of Civil Procedure takes place only after the satisfaction of such claims. Privileged creditors of articles 975 and 976 of the Greek Code of Civil Procedure, in cases where more than one claims exist per class of privilege, receive proceeds in accordance with their class of privilege (i.e. with respect to either the general privileges or the special privileges, the claim of the previous class is preferred against the claim of the next class of privilege)[28], while creditors whose claims belong to the same class of privilege are satisfied pro rata. The remaining amount, after satisfying, as above, the privileged creditors of articles 975 and 976 of the Greek Code of Civil Procedure, is distributed pro rata to non-privileged creditors.

The entry into force of the Collateral Law disapplied (among others) articles 975, 976 and 977 of the Greek Code of Civil Procedure, in cases falling under its scope of application. Thus, where the Collateral falls within the scope of application of the Collateral Law, article 4 of the Collateral Law will apply and the above restrictions/privileges will not apply.

Competing creditors after the commencement of an Insolvency proceeding

In case the Collateral falls within the scope of application of the Collateral Law, article 4 paragraph 4 provides that the financial collateral arrangement takes effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider or collateral taker. Thus, no competing priorities will apply and the secured party will satisfy its claims according to article 4 paragraphs 1, 2 and 3 of the Collateral Law.

[28] In cases where both special and general privileges apply only 1/3 of the proceeds in question shall be designated for the satisfaction of claims under general privileges and 2/3 for the satisfaction of claims under special privileges. In cases where more than one claims of either general or special privileges apply, and always under the aforementioned distribution of the proceeds in question, the claims are satisfied "*in accordance with their class of privilege*", i.e. class 1 is satisfied ahead of class 2 and so on.

In case the Collateral falls outside the scope of application of the Collateral Law, competing priorities between creditors to be satisfied after the Commencement of an Insolvency Proceeding are described in articles 154-156 of the Bankruptcy Code. According to article 154 of the Bankruptcy Code the claims of creditors having general privileges are to be satisfied in the following order, after deduction of judicial costs and management of the bankrupt entity's assets (including fees paid to the representative in charge of the insolvent entity) (general privileges):

(i) claims for any type of financing of the insolvent entity, in order for its operation and payments to continue, within the framework of an agreement with its creditors or a reorganization scheme; this privilege refers also to the claims of persons, who, in accordance with the reorganization scheme, contributed goods or services in order for the operation and payments of the entity to continue and to claims arising from any type of funding, provision of goods or services which took place during the period between the filing for the commencement of reorganization procedures and the declaration of the reorganization agreement to the extent provided for in the reorganization procedures. This privilege does not refer to shareholders or unit holders for the contributions effected within the context of the share capital increase.

(ii) claims for hospitalisation and interment costs of the insolvent debtor, his/her spouse and children, if such costs arose during the last 6 months prior to the declaration of bankruptcy;

(iii) claims arising from labour agreements, including claims by lawyers regarding their retainer and periodically paid fees (provided such claims arose during the two (2) years preceding the declaration of bankruptcy), compensation claims for termination of employment agreements or termination of retainer agreements with respect to lawyers, irrespective of the time they arose, claims by lawyers for expenses, fees and compensations (in case the lawyers are paid by case), if such claims arose during the last 6 months prior to the declaration of bankruptcy;

(iv) claims by farmers or farming partnerships arising from sale of agricultural goods if such costs arose during the last 24 months prior to the declaration of bankruptcy;

(v) claims of the Greek state or public sector entities arising from taxes on the auctioned property if they relate to the year of the auction or the previous year;

(vi) claims of social security organization, provided they took place during the last 24 months prior to the declaration of bankruptcy (without any future compounding increases taking into account).

Article 155 of the Greek Bankruptcy Code provides for the ranking of the special privileges of claims on specific movable or immovable asset or on cash as follows (special privileges):

(1) claims that derived from expenses incurred for the maintenance of the specific asset during the last six months before the declaration of bankruptcy;

(2) claims for capital and interest thereon for the last two (2) years in favour of which a pledge, or a mortgage or a mortgage pre-notation has been granted, if the case involves real estate;

(3) claims that derived from expenses incurred for the production and harvesting of crops during the last six (6) months before the declaration of bankruptcy;

Article 977 of the Greek Code of Civil Procedure, with respect to the applicable priorities when satisfying claims of general and special privileges, in cases where both such claims exist, and priorities with respect to creditors whose claims belong to the same class of privilege, applies also, in cases of Insolvency Proceedings where the Collateral Law does not apply, according to article 156 of the Greek Bankruptcy Code.

VI. Right of re-use

According to article 1224 of the Greek Civil Code, the secured party (the pledgee) is obliged to safeguard the Collateral (the pledged object). Furthermore, the secured party is not permitted to use or re-pledge the Collateral without the pledgor's consent.

According to article 5 of the Collateral Law, it is possible for the parties to agree that the secured party may use the Collateral, in which case, the secured party would also be obliged to return the same amount of Collateral and not the same Collateral. Where the secured party exercises such right of use, it thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the security financial collateral arrangement. Such use of financial collateral by the secured party according to article 5 of the Collateral Law does not render invalid or unenforceable the rights of the secured party under the security financial collateral arrangement in relation to the financial collateral transferred by the secured party in discharge of its obligation to transfer equivalent collateral, as mentioned above. Please further note that according to paragraph 5 of article 5 of the Collateral Law, if an enforcement event occurs while an obligation on the secured party to deliver equivalent collateral remains outstanding, the obligation (converted to a cash value) may be the subject of a close-out netting provision.

In view of the wording of the provision of article 5 of the Collateral Law, the financial collateral arrangement itself must provide for the right of use of the Collateral by the secured party; such use is permitted by law, when agreed between the parties.

VII. Fluctuating Collateral

The concept of a floating charge exists generally under Greek law. However, Greek law 2844/2000 on floating charges does not apply to cash or securities as mentioned above.

In view of the above, if the perfection of a floating charge over cash and/ or securities is governed by Greek law, such perfection will be governed by the generally applicable Greek law, i.e. it would be permissible to create a floating charge over cash or securities, as long as the amount of cash or the securities that are pledged are identifiable either one by one or the pledge is perfected over a specific account.

In the case of dematerialized securities, the creation of a security interest would need to be registered with the securities depositary and it depends on the rules applying to such depositary whether one can create a security interest only over a specific number of securities, or whether it is possible to create a security interest over all securities deposited from time to

time in a specific securities account. Such rules would also govern the proper recording by the secured party of the delivery to the secured party and return by the secured party of Collateral.

In case of bearer securities in paper form either held directly by the Collateral taker or by an intermediary on behalf of the collateral taker, *lex rei sitae* will govern the validity and enforceability of the creation of a floating charge over these securities. Such law would also govern the proper recording of deliveries to and returns by the secured party, each time a delivery to the secured party and return by the secured party is effected.

In case of registered securities, the law governing the right of the security collateral provider over the debt security will govern the validity and enforceability of the creation of a floating charge over these securities. Such case law would also govern the proper recording of deliveries to and returns by the secured party, each time a delivery to the secured party and return by the secured party is effected.

In the case of cash, it is possible to create a security interest over a bank account and, therefore, such security interest would extend to any new deposits made into the relevant bank account. The above apply both to security constituted in the form of a pledge and to security created through outright transfer.

The Collateral Law, despite the fact that it aims to limit administrative burdens for parties using financial collateral falling within its scope, requires that the cash amount, in case the Collateral consists of cash, and/ or the number of the securities of which the Collateral is consisted are, in any case, traceable, i.e. they can be identified. For example, if it is stated that a specific bank account is subject to a security interest, the amount of cash being subject to the security interest is always identifiable, as it is the balance of the account.

In case the collateral is governed by a law other than Greek law, this issue will be governed by such law.

VIII. Substitution of Collateral

In case the Collateral includes a right of the pledgor to substitute Collateral, the following apply:

If the Collateral Law applies to the Collateral, the right of the pledgor to substitute Collateral has no effect on the validity, continuity, perfection or priority of a security interest in the Collateral under the Agreement.

With respect to the priority, the Collateral (i.e. the one given in substitution) will be ranked for the satisfaction of the claim according to the date of provision of the initial Collateral in substitution of which it was provided.

In view of the wording of article 8 of the Collateral Law, according to which the substitution of collateral is permitted, the financial collateral arrangement must include the agreement of the parties for the substitution of the Collateral. The fact that the law permits such agreement does not preclude the right of a party to the Agreement not to agree on this specific provision.

IX. This opinion is confined to matters of the laws of Greece in force at the date hereof and no opinion is expressed as to the laws of any other jurisdiction;

X. We express no opinion on the interpretation that a court or authority of competent jurisdiction would give to any particular wording in any of the documents mentioned herein above;

XI. No opinion is expressed on matters of application of Greek consumer protection laws, Greek data protection laws or of business conduct rules pertaining to non professional clients under the Market in Financial Instruments Directive (the MiFID).

XII. A Greek court may not apply a clause of a foreign (i.e. other than Greek) law governed contractual arrangement and may not enforce a foreign judgment, to the extent that such application or enforcement would be contrary to the Greek public order.

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 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 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,

For Karatzas & Partners

Alexander Metallinos

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 ements 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.