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NETTING ANALYSED LIBRARY

The Futures & Options Association
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December 09, 2013

Dear Sirs,

FOA netting opinion issued in relation to the FOA Netting Agreements, FOA Clearing Module and ISDA/FOA Clearing Addendum

You have asked us to give an opinion in respect of the laws of Greece ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement.

We understand that your fundamental requirement is for the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision to be substantiated by a written and reasoned opinion. Our opinions on the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision are given in paragraph 3 of this opinion letter.

Further, this opinion letter covers the enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 As detailed further in paragraphs 1.2 and 1.3 below, this opinion is given in respect of persons which are incorporated under the laws of this jurisdiction (namely Parties listed herein below under paragraph 1.3.4) or persons which maintain the centre of their main interests in this jurisdiction (irrespective of the laws under which they are incorporated), according to article 3 of Regulation 1346/2000 on insolvency proceedings (the **Insolvency Regulation**) (in case of any of the Parties listed herein below under paragraphs 1.2.1, 1.2.2 and 1.3.3) or which have been licensed to pursuit their

professional activities by the applicable Greek regulatory authority, the **Home Country** (in case of any of the Parties listed herein below under paragraphs 1.3.1 and 1.3.2[1]).

1.2 Subject as provided at paragraph 1.3, this opinion is given in respect of:

1.2.1 persons which are Commercial Corporates incorporated and organised under Greek law 2190/1920, as amended and currently applicable, as societes anonymes or under Greek law 3190/1955, as amended and currently applicable, as limited liability companies or under Greek law 4072/2012, as amended and currently applicable, as private companies or as general and limited liability partnerships organised under the Greek Commercial Law;

1.2.2 individuals who are merchants (i.e. whose regular occupation is to undertake originally commercial acts);

1.2.3 banks incorporated under Greek law 2190/1920, as amended and currently applicable, as societes anonymes or under Greek law 1667/1986, as amended and currently applicable, as credit cooperatives and organised under Greek law 3601/2007, which transposed into Greek law Directive 2006/48/EC on the taking up and pursuit of the business of credit institutions (the **Credit Institution Law**); and

1.2.4 branches located in this jurisdiction of foreign banks and other corporations.

1.3 This opinion is also given in respect of Parties 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:

1.3.1 Investment firms and broker dealers incorporated under Greek law 2190/1920, as amended and currently applicable, as societes anonymes and organised under Greek law 3606/2007, which transposed into Greek law Directive 2004/39/EC on markets in financial instruments (the **MiFID**) (**Schedule A**);

1.3.2 Insurance companies incorporated under Greek law 2190/1920, as amended and currently applicable, as societes anonymes or under Greek law 1667/1986, as amended and currently applicable, as mutual insurance cooperatives and organised under legislative decree 400/1970 (**Schedule B**);

1.3.3 Funds organised under Greek law 4099/2012, which replaces the relevant provisions of the previously applicable Greek law 3283/2004, transposing into Greek law Directive 2009/65/EC on UCITS as Mutual Funds or companies of varied capital in the form of a société anonyme (**Schedule C**) or other funds and

[1] Please note that such entities are in any case obliged under Greek law to maintain their central management offices in the country in which they have their registered seat, which is the country that granted the authorisation for the taking up and pursuit of the relevant business activities.

management companies that fall within the scope of application of Greek law 4209/2013 (which transposed into Greek law Directive 2011/61 on alternative investment funds), including the investment companies that are individually listed in article 53 of Greek law 4209/2013 (i.e. investment companies of Greek law 3371/2005, real estate investment companies of Greek law 2778/1999, management companies of real estate mutual funds of Greek law 2778/1999, management companies of Greek law 2367/1995 and of Greek law 2992/2002);

1.3.4 Sovereign and Greek public sector entities, namely the Greek Public Law Entities, including the Greek State, Greek local authorities (O.T.A., in Greek), Greek pension funds, and Greek enterprises (**Schedule D**).

1.4 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the Netting Agreement and the Clearing Agreement are expressed to be governed by English law.

1.5 This opinion covers all types of Transaction.

1.6 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision.

1.7 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.8 We have not considered for the purposes of this opinion any rule or procedure issued by a clearing house (including any rule governed by Greek law).

1.9 **Definitions**

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

1.9.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

1.9.2 "**Insolvency Representative**" means a liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction;

1.9.3 "**FOA Member**" means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion); and

1.9.4 A reference to a "**paragraph**" is to a paragraph of this opinion letter.

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

1.10 No opinion is expressed herein on matters of fact.

2. ASSUMPTIONS

We assume:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration.

2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are legally binding and enforceable against both Parties under their governing laws.

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

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

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party and neither of the Parties is in a state of cessation of payments[2].

2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.

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

2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.

2.9 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are "mutual" between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.

2.10 In relation to the opinions set out at paragraphs 3.4, 3.5, 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.

2.11 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a bank or an investment services firm.

2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third

[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. The said article repeated the existing definition given to the cessation of payments by the previous law, the Greek case law and legal writing.

person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

2.13 That all margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of margin pursuant to the Title Transfer Provisions will have been effectively carried out.

2.14 That any cash provided as margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

2.15 The Client cannot be considered as a consumer neither in the sense of the Rome I Regulation nor in the sense of the Brussels Regulation.

3. OPINION

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

3.1 Insolvency Proceedings

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

A) Bankruptcy Proceedings under articles 1-98 and 107-177[3] of the Greek Bankruptcy Code

Greek law 3588/2007 (the **Bankruptcy Code**) applies to all commercial corporates, insurance companies, investment firms, companies of varied capital of Greek law 4099/2012, as currently applicable, and natural persons who are merchants.

The objective pre-condition in order for a debtor to be subject to the bankruptcy proceedings of articles 1-98 and 107-177 of the Bankruptcy Code (the **Bankruptcy Proceedings**) is the debtor being in a state of cessation of payments[4]. To the extent that special legal provisions do not apply, as set out below in this paragraph 3.1., the following apply with respect to the contractual obligations of a bankrupt entity, upon commencement of Bankruptcy Proceedings:

1. article 29 of the Bankruptcy Code provides for the cherry-picking right of the bankruptcy official in charge of the insolvent entity ("*σύνδικος*" in Greek) as to which pending

[3] The Bankruptcy Code entered into force in September 16, 2007, (replacing the provisions of articles 527 – 707 of the Greek Commercial Law) and applies to proceedings commencing after that date (Bankruptcy Code, Articles 180, 182).

[4] Please refer to footnote 3 herein above.

contracts will be performed by the insolvent entity. Such right, however, does not apply with respect to rights and obligations under a single contract;

2. articles 41 and 42 of the Bankruptcy Code provide, among other things, for the obligatory revocation of:

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

   (ii) the provision of collateral, in order for the bankrupt entity to secure pre-existing claims for which the above mentioned entity had not assumed such obligation *ab initio* or in order to secure new claims assumed by the bankrupt entity in replacement of those pre-existing,

where (in both cases) the payment or the provision of collateral, respectively, were performed within the suspect period[5],

   (iii) the payment of due and payable obligations but not in cash.

The payments and/ or provision of collateral listed herein above under (i) to (iii) are deemed by the Bankruptcy Code as acts to the detriment of the creditors of the bankrupt entity.

3. acts of the bankrupt debtor which entail all sorts of reciprocal results ("*αμφοτεροβαρής πράξη*", in Greek) or every payment of due and payable debts during the suspect period may be revoked (optional revocation), if the counterparty of the bankrupt debtor knew at the time of the act/payment that the debtor had ceased its payments and that the relevant act was detrimental to the creditors of the bankrupt creditor (article 43 of the Bankruptcy Code).

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. Among those are the exceptions particularly regarding set-off under article 36 of the Bankruptcy Code as detailed below.

B) Special liquidation Proceedings in accordance with the provisions of any of:

- article 106 (ia) of the Bankruptcy Code[6];
- article 68 of the Credit Institution Law on special liquidation of credit institutions. According to article 68 of the Credit Institution Law (as amended by Greek law

[5] According to article 7 of the Bankruptcy Code, the duration of the suspect period is defined by the court order declaring **B**ankruptcy. This period commences on the date of cessation of payments, as defined by the court, and ends the date on which the entity is declared bankrupt. Such period shall not exceed 2 years from the date on which the entity is declared bankrupt.

[6] The special liquidation of article 106 (ia) of the Bankruptcy Code is applicable to all commercial corporates, partnerships and individuals that are merchants. In order for an entity to be subject to such 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.

4021/2011 and Greek law 4172/2013, and currently applies), Greek banks cannot be subject to Bankruptcy Proceedings (as defined in paragraph 3.1. herein above); the only winding up proceeding currently applicable to Greek banks is the special liquidation proceeding provided for in article 68 of the Credit Institution Law and Decision 2124/2011 of the Committee on Credit and Insurance Matters of Bank of Greece (BoG), both as amended and currently in force.;

- article 22 of Greek law 3606/2007 on special liquidation of investment services firms (please refer to Schedule A / Investment Firms);
- articles 9 and 12a of Greek legislative decree 400/1970 on special liquidation of insurance companies (please refer to Schedule B / Insurance Companies);

and

C) **Reorganization Proceedings** in accordance with the provisions of any of:

- Articles 99-106(i) of the Greek Bankruptcy Code on reorganization measures ('**General Reorganization Measures**'). This process allows companies either being in a cessation of payments status or facing an imminent threat of cessation of payments[7], to avoid statutory bankruptcy and to remain operational on the basis of a reorganization plan ('**Reorganization Plan**')[8] agreed with creditors representing the majority[9] of claims against the debtor or approved by them. The Reorganization Plan is ratified by the competent court, if the statutory requirements are met, and then becomes binding upon all creditors;

- Articles 62-63E of the Credit Institution Law provide for certain reorganization measures which may be imposed on credit institutions by the BoG for the protection of the financial

[7] Briefly, this will be the case when the company lacks liquidity and is or will be generally and permanently unable to meet due and payable financial obligations.

[8] 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 on them for a period which does not exceed 3 months since the ratification of the Reorganization Plan; (ix) appointment of a person acting as observer in order to safeguard the implementation of the terms of the Reorganization Plan (x) subsequent payment of additional amounts in .case the debtor's financial status improves.

[9] For such agreement a majority of 60% of the claims of the creditors, including at least 40% of the existing secured claims is required.

stability and the enhancement of the public's confidence in the financial system ("**Credit Institution Reorganization Measures**").

Greek law 4021/2011 introduced articles 62-63E to the Credit Institution Law, which provide for certain reorganization measures (as defined in article 3 of Greek law 3458/2006, which transposed into Greek law Directive 2001/24/EC on credit institution insolvency proceedings, the **Credit Institution Insolvency Law**) that may be imposed on Greek banks by the BoG for the protection of the financial stability and the enhancement of the public's confidence in the financial system (the "**Credit Institution Reorganization Measures**").

- The Credit Institution Reorganization Measures are the following:
- (a) *The appointment of a commissioner*: This measure also existed under the previous regime, but it is now 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. According to article 63 paragraph 7 of the Credit Institution Law, the appointment of a commissioner does not entail the annulment, termination or amendment of contracts, or the acceleration of any claim against the credit institution in question or the suspension of individual enforcement measures against the same;
- (b) *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. According to article 63A paragraph 2 of the Credit Institution Law, the above extension will not apply to "*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 as defined in article 1 of Greek law 2789/2000*[10]".
- (c) *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

[10] i.e. securities clearing and payment systems

requirements of the Credit Institution Law. Pre-emption rights of existing shareholders are abolished by law in case of such a share capital increase;

- (d) *Mandatory transfer of assets and liabilities*: The Bank of Greece may require that the credit institution transfers to another credit institution or any other third party some of its assets and liabilities. According to article 63D paragraph 9 of the Credit Institution Law, provides that in case the mandatory transfer includes netting agreements as defined in the Credit Institution Insolvency Law or financial collateral as defined in the Collateral Law, then, such agreements are mandatorily transferred in their entirety (i.e. not specific transactions concluded thereunder);
- (e) *Establishment of a bridge credit institution*: By virtue of a decision of the Greek 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 insolvent credit institution are transferred, whereas the latter is placed into special liquidation in accordance with article 68 of the Credit Institution Law. According to the relevant provisions, the issuance of the aforementioned administrative decision is not considered as an insolvency proceeding against the bridge credit institution that the creditors (the claims of which are being transferred to the bridge credit institution) may claim against it. Any contractual clauses triggered in case of bankruptcy or insolvency or occurrence of any other event which is characterized as a "*credit event*" or an equivalent to insolvency are not triggered *vis-à-vis* the bridge credit institution and the application of any relevant terms is reviewed against the bridge credit institution and not against the credit institution under special liquidation.
- The matter whether Credit Institution Reorganization Measures qualify as an Insolvency Event of Default or as any other event of default is a matter of the governing law of the Agreement to determine (namely, English law according to paragraph 1.3.).

- Articles 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. (please refer to Schedule B / Insurance Companies for the description of the relevant measures)

Bankruptcy Proceedings, General Reorganization Measures and Special Liquidation of article 106(ia) of the Bankruptcy Code are initiated through the issuance of a court decision upon application of the insolvent debtor or its creditor/s, whereas the Special Liquidation Proceedings

applicable to banks, investment firms and insurance companies, as well as Credit Institution Reorganization Measures commence through the issuance of an administrative act of the competent supervisory body.

Whether Reorganization Proceedings qualify as an Insolvency Event of Default is a matter of the governing law of the Agreement to determine (namely, English law, according to paragraph 2.2. herein above).

D) Secondary / Separate Insolvency Proceedings

D1) Regulation 1346/2000 (the Insolvency Regulation)

Under the Insolvency Regulation, a person maintaining the centre of its main interests within the European Union may be subject to (i) main insolvency proceedings in accordance with the laws of the jurisdiction in which such person maintains the centre of its main interest and (ii) to secondary proceedings in EU jurisdictions where they maintain a secondary establishment (recital 12 of the Insolvency Regulation). Such secondary proceedings may be initiated following the recognition of the main insolvency proceedings (by means of a court decision, which is, however, a typical procedure) and will refer only to the assets of the insolvent debtor located in Greece. The Insolvency Regulation defines the secondary establishment as "*any place of operations where the debtor carries out a non-transitory economic activity with human means and goods*".

D2) Implementation in Greece of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law in 1997

The 1997 UNCITRAL Model Law on Cross-Border Insolvency has been implemented in Greece by Greek law 3858/2010. The provisions of Greek law 3858/2010 (the **Greek Model Law on Cross-Border Insolvency**) are drafted generally in line with the provisions of the 1997 UNCITRAL Model Law on Cross-Border Insolvency (though the provisions of the latter are not reiterated verbatim in Greek law 3858/2010).

The Greek Model Law on Cross-Border Insolvency mainly provides for (a) recognition of foreign bankruptcy proceedings in Greece, in which case the foreign bankruptcy representative may have direct access to Greek courts and the right to ask for the initiation of concurrent bankruptcy proceedings in Greece, in cases where assets of the insolvent debtor are located in Greece; (b) the equal treatment of Greek and foreign creditors; such equality shall not be extended to the matter of the ranking of the claims of Greek and foreign creditors.

Under article 28 of the Greek Model Law on Cross-Border Insolvency, separate proceedings may be initiated in Greece, only after the recognition of the main insolvency proceedings and only in case where the insolvent debtor has assets in Greece. This means that if there is a Greek branch

with no assets in Greece, there will be no grounds on initiating separate insolvency proceedings under the Greek Model Law on Cross-Border Insolvency. The results of such separate proceedings shall be restricted only to the assets located in Greece, and to the extent necessary, according to the provisions of Greek law 3858/2010, to other assets as well.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions.

3.2 **Recognition of choice of law**

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction in accordance with article 3 of the 1980 Rome Convention on the law applicable to contractual obligations (the **Rome Convention**) and article 3 of Regulation 593/2008 on the law applicable to contractual obligations (the **Rome I Regulation**), even if neither Party is incorporated or established in England, subject to paragraph 4.e. herein below.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard exclusively to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions, subject to paragraph 4.e. herein below.

3.3 **Enforceability of FOA Netting Provision**

In relation to an FOA Netting Agreement, or in relation to a Clearing Agreement where the Defaulting Party acts as Client, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

3.3.1 the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

3.3.2 the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because:

Under Greek law, there are two effects of the Netting Provisions of the Agreement: (a) all Transactions are terminated, either through an Automatic Termination (if the parties have made selected it), or by virtue of a termination by the Non-Defaulting Party and (b) all claims deriving from such Transactions are valued as of the Liquidation Date (or as of any other date provided thereunder) and the parties' obligations are set-off against each other[11], so that only one net claim remains.

i) Termination

Under the principle of freedom of contract enshrined in article 361 of the Greek Civil Code, the parties may agree on any grounds of termination (for example Insolvency Proceedings, as defined herein above) for their contracts. This general principle of civil law is explicitly reiterated in article 32 paragraph 2 of the Bankruptcy Code, which provides for the right of the party to terminate the agreement under a clause permitting the termination in event of bankruptcy or submission to collective insolvency proceedings. This in our opinion covers cases of both automatic and non automatic termination.

ii) Set-off

With respect to the enforceability of set-off of parties' obligations in the event of the one party's insolvency, article 36 paragraph 1 of the Bankruptcy Code[12] provides that the creditor (i.e. the Non-Defaulting Party) may exercise its right to set off its claims against its counterparty's reciprocal claims, if the requirements for set-off under Greek Law (i.e. under article 440 of the Greek Civil Code) have been fulfilled prior to the declaration of insolvency. According to article 440 of the Greek Civil Code in order for claims to be set-off, they need to be (i) reciprocal, (ii) of the same kind and (iii) due and payable[13].

Notwithstanding the above, articles 36 and 46 of the Bankruptcy Code detail specific instances where set – off as envisaged in the Netting Provisions (which correspond to a standard close-out netting clause, namely termination and set off in the event of

[11] Netting (as contemplated in the Agreement) could be considered under Greek law implying the performance (even as an accounting and not an actual act) of a set off between claims owed.

[12] To be noted that before the introduction of the Bankruptcy Code and the special provisions analysed below, there was uncertainty as to the enforceability of a set-off of the parties' obligations and different opinions were expressed as to the enforceability of set-off in the case of Insolvency.

[13] It has been argued by legal commentators that close-out netting is not enforceable in the event of insolvency under the general provisions of set-off, because the requirements of set-off and particularly (iii) as listed above (i.e. due and payable claims) are fulfilled upon termination of the relevant transactions, which occurs after bankruptcy. There are significant counter arguments in legal theory, but one cannot assess whether the competent Greek court in a case brought before it will rule in favour of those counter arguments, as there is a possibility that a standard close-out netting clause of an English law governed agreement is considered by the Greek court as an effort to circumvent the relevant Greek Bankruptcy Code rules.

insolvency either by way of notice or automatically) is explicitly recognized, particularly regarding the set-off effect. More specifically:

According to article 36 paragraphs 2 and 3 and article 46 of the Bankruptcy Code, the set-off of claims deriving from any OTC transaction in derivatives or under a close-out netting provision within the framework of a financial collateral arrangement or from transfer orders on settlement of payments and financial instruments systems, shall be performed in accordance with such special legislation. Thus, the FOA Netting Provisions will be enforceable in this jurisdiction by virtue of any of the following provisions:

A) Article 16 of Greek law 3156/2003 (on Bond loans, securitisation of claims and claims from real estate and other provisions) (the "Bond Loan Law")

Article 16 of the Bond Loan Law provides as follows:

"SET-OFF AND OTC DERIVATIVE PRODUCTS

In the case of insolvency or other collective measures or procedures, which have the effect of prohibiting or restricting the disposal [of assets], the set-off of reciprocal claims, including multilateral set-off and close out netting, which derives from transactions of any kind, as well as [including] set-off of claims deriving from transactions, in OTC derivatives between parties, one at least of which is an institution in the sense of paragraph 5 article 2 of law 2396/1996[14] (government gazette facsimile 73 A) or the State, is valid and enforceable and may be opposed against all creditors provided that it is governed by a contract between the creditors of the claims being set-off concluded through a document of certain date, [which is] prior to the declaration of insolvency or the commencement of the collective measure or procedure."

[14] Articles 1 to 31 of Greek law 2396/1996 were abolished by Greek law 3606/2007, which implemented Directive 2004/39/ EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID). According to the abolished article 2 of law 2396/1996 and for the purposes thereof, an institution meant either an investment services firm or a credit institution and in our view, taking into account the definitions of credit institution and investment services firm set out in article 2 of L. 3606/2007, the Greek courts would interpret the specific references to include credit institutions and investment services firms as defined in that article. Namely, investment services firms shall mean every legal entity whose regular occupation or business is the provision of one or more investment services to third parties and shall also include natural persons who have obtained a relevant license by another Member State in accordance with MiFID. Accordingly, a credit institution is defined as an undertaking the business activity of which is the taking of deposits or other refundable funds from the public and the provision of loans or other forms of credit or the issuing of electronic money, if licensed in Greece and as an undertaking whose business is the one described in the banking Directive 2006/48/EC if licensed in the EU. It should be accepted that the term investment services firm and credit institution include entities authorised to act as such in EU or EEA member state as well as non-EU entities licensed to undertake the above activities.

The definition of a document of certain date[15] is contained in article 446 of the Greek Code of Civil Procedure, which provides as follows:

"A private document acquires a certain date as to third parties only if it is certified [as to the date] by a public notary or by another public servant having such authority according to law, or if one of those signing it has died, or if its material contents are referred to in a public document, or if there is another event that creates certainty as to the date in an analogous manner. The certification is effected through a notation on the document of the word "certified" and of the date." The certain date must precede the date of the declaration of Insolvency or the commencement of the collective measure or procedure.

It should be noted that the provisions of article 16 of the Bond Loan Law apply to agreements that were in place on the date it entered into force, as well as those executed after the date of its entry into force, provided that relevant Insolvency Proceedings commenced after such date.

In conclusion, it is clear that, according to the Bond Loan Law, set-off of claims between a Party, which becomes insolvent, and another Party deriving from the Transactions under the Agreement is valid, provided the Agreement has a certain date that pre-dates the date of initiation of Insolvency Proceedings, at least one of the parties is an institution in the sense of article 2 paragraph 5 of Greek law 2396/1996 or the Greek State (even if one of the Parties is an individual).

B) Greek law 3301/2004 (on Financial collateral agreements, application of International Financial Reporting Standards and other provisions)

Greek law 3301/2004 as amended and currently in force (the '**Collateral Law**'), which transposed into Greek law Directive 2002/47/EC as amended by Directive 2009/44/EC on financial collateral arrangements (the **Collateral Directive**), provides that within its scope of application close out netting provisions will be recognized and given effect in case of Insolvency Proceedings. As the Collateral Directive contains no condition corresponding to the date certification, after the entry into force of the aforementioned

[15] The most practical way to create a certain date is to have a court bailiff to serve a copy of the relevant document to one of the parties. A foreign notary or public authority can also perform the certification provided that it will be possible immediately or at a later stage (i.e. even after the declaration of insolvency) to attach Apostille on such certification, in accordance with the Hague Convention of 1961.

law, close out netting provisions falling within its scope of application are recognised without the requirement that the relevant agreements bear a certain date. The Collateral Law prevails over all previous laws in its field of application, including all general and specific insolvency law provisions.

Even though there is no express provision regarding the application of the Collateral Law to existing close-out netting agreements, it is our reasoned opinion that the Collateral Law applies to close-out netting agreements, which existed when it entered into force, provided Insolvency Proceedings commenced after its entry into force.

The Collateral Law lays down the regime applicable to financial collateral arrangements and to the provision of financial collateral. For the purpose of the Collateral 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 whether or not these are covered by a master agreement or general terms and conditions*".

In order to fall within the scope of application of the Collateral Law, according to article 1 paragraph 5 of the Collateral Law, the financial collateral itself as well as the provision of the financial collateral under such arrangement must be evidenced in writing or in a legally equivalent manner.

The wording of the aforementioned provision resolves the issue as to whether the Collateral Law, and in particular its provisions on netting, apply in cases where a collateral agreement has been signed, but no collateral has been provided, since paragraph 5 of article 1 of the Collateral Law renders such law applicable to collateral arrangements irrespective of the actual provision of collateral, to the extent that such collateral arrangement is entered with the serious intention to provide collateral in the future and not simply as a technique to cause the Collateral Law to apply to the netting provisions of the Agreement. However, in cases where no collateral has been actually provided, an argument could be made, in particular circumstances, that the collateral document was only executed, in order to circumvent the provisions of the Bond Loan Law. Since there is no case-law and limited legal writing on the Collateral Law it is difficult to quantify the risk of courts accepting such argument. Therefore, in cases where no collateral is

provided, it may be prudent to also comply with the provisions of Bond Loan Law (*date certification*).

Furthermore, according to article 1 paragraph 3 of the Collateral Law, the financial collateral to be provided must consist of cash, financial instruments or credit claims.

Article 1 paragraph 2 of the Collateral Law lists the entities to the financial 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;

(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, as well as in Annex VI of the Directive 2006/48/EC, 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 the law 3601/2007, as it is currently in force;

(ii) an investment firm as defined in Article 2 paragraph 1 of the law 3606/2007;

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

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

(v) an undertaking for collective investment in transferable securities (UCITS) as defined in law 3283/2004;

(vi) a leasing company as defined in law 1665/1986;

(d) a central counterparty, settlement agent or clearing house, as defined respectively in Article 1 paragraph 4 (c),(d), and (e) of law 2789/2000, as well as in Article 2(c), (d) and (e) of Directive 98/26/EC as transposed into the national 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) a legal person, including unincorporated firms and partnerships, provided that the other party is an institution as *defined in points (a) to (d).*"

It is obvious that collateral taken by a foreign legal entity falling under (e) above, against a Greek individual shall not fall within the scope of Collateral law.

According to article 2 paragraph 1 of the Collateral Law and for the purpose of this law, "close out netting provision" is *defined*, as "*a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms a part, or in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise:*
(i) the obligation of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or
(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party".

According to article 7 of the Collateral Law, a close-out netting provision can take effect in accordance with its terms:

(a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or
(b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights.

Apart from article 16 of the Bond Loan Law and the provisions of the Collateral Law, the enforceability of the Netting Provisions can also be assured through a number of other special provisions. This is significant for cases not covered by article 16 (i.e. in cases where none of the counterparties is the Greek State or a credit institution or an investment services firm or where the Agreement has not acquired a certain date) or cases not covered by the Collateral Law (cases where there is no financial collateral

arrangement has been entered into or where one of the counterparties to the financial collateral arrangement is a Greek individual).

C) Article 3 of Greek law 2789/2000 (on settlement finality in payment and securities settlement systems)

Article 3 of Greek law 2789/2000, which transposed into Greek law Directive 98/26/EC on settlement finality in payment and securities settlement systems as amended and currently applicable by Directive 2009/44/EC, provides as follows:

"*Article 3*

1. The Transfer Orders and the Set-Off are valid and binding on any third party even in the event of Insolvency Proceedings against a participant (in the system), provided that these Transfer Orders were entered into the system before the commencement of the Insolvency Proceedings, as this is defined in article 5 of the law[16].

If the Transfer Orders are entered in the system after the commencement of the Insolvency Proceedings and provided that their settlement begins on the day of commencement of the Insolvency Proceedings, these Transfer Orders are valid and binding on any third party, under the condition that the Administrator of the system (a settlement agent or a central counterparty or a clearing house) proves that it had no knowledge of the commencement of the Insolvency Proceedings, in accordance with article 6 of the law[17].

2. The validity of the Set-Off is not challenged by provisions that provide for the annulment of legal actions/ deeds that have been concluded before the commencement of the Insolvency Proceedings, as this is defined in article 5 of the law.

3. National Systems are subject to rules that determine the time of entering of a Transfer Order in the System, as well as the time after which this Order cannot be revoked neither by the participant nor by any other third party.

A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system.

In the case of interoperable systems, each system determines in its own rules the moment of irrevocability, in such a way as to ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated in this regard. Unless expressly provided for by the rules of all the systems that are party to the interoperable

[16] According to article 5 of Greek law 2789/2000, the commencement of the Insolvency Proceedings occurs when the respective decision of the competent court or the administrative authority is published.

[17] According to article 6 of Greek law 2789/2000, Bank of Greece notifies immediately to the national systems the commencement of Insolvency Proceedings of a participant (in the system).

systems, one system's rules on the moment of irrevocability shall not be affected by any rules of the other systems with which it is interoperable.

4. In the case of interoperable systems, each system determines in its own rules the moment of entry into its system, in such a way as to ensure, to the extent possible, that the rules of all interoperable systems concerned are coordinated in this regard. Unless expressly provided for by the rules of all the systems that are party to the interoperable systems, one system's rules on the moment of entry shall not be affected by any rules of the other systems with which it is interoperable."

D) Article 6 of the Insolvency Regulation

If the Defaulting Party is an individual or a commercial corporate having the centre of its main interests in the European Union, its insolvency will be governed by the Insolvency Regulation. In accordance with article 6 of the Insolvency Regulation, even if set-off (netting) is not permitted by the law governing Insolvency, it is still enforceable, if it is permitted by the law governing the insolvent debtor's claim.

The Insolvency Regulation applies to proceeding listed as Annex A thereto. As far as Greece is concerned these include Bankruptcy Proceedings and the Special Liquidation Proceedings of the Bankruptcy Code. Based on the ratio of the respective provisions and their categorisation within the system of collective insolvency proceeding, Reorganization Proceedings should fall under the currently applicable Greek collective insolvency proceedings and the respectively applicable insolvency proceedings of the Insolvency Regulation.

E) Insurance companies are not subject to the Insolvency Regulation, but to EU Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings (the **Insurance Insolvency Directive**). Article 22 of the Insurance Insolvency Directive contains a rule practically identical to that of article 6 of the Insolvency Regulation. Therefore, since the Insurance Insolvency Directive has been transposed into Greek law by presidential decree 332/2003, in case the Defaulting Party is an insurance company, paragraph (C) above will apply.

F) Credit institutions are also not subject to the Insolvency Regulation, but to EU Directive 2001/24/EC on the reorganisation and winding-up of credit institutions (the **Credit Institution Insolvency Directive**), which has been implemented by Greek law

3458/2006 (the **Credit Institution Insolvency Law**). Article 23 of the Credit Institution Insolvency Directive contains a rule practically identical to that of article 6 of the Insolvency Regulation. Article 24 of the Credit Institution Insolvency Law repeated verbatim article 23 of the Credit Institution Insolvency Directive. Additionally, article 25 of the Credit Institution Insolvency Directive and article 27 of the Credit Institution Insolvency Law provide that netting agreements are governed exclusively by the law applicable to the relevant contracts.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

In this context it must be noted that the competent bankruptcy court may impose, under the interim measures procedure, a moratorium on individual legal actions against the debtor prior to the declaration of bankruptcy proceedings (article 10 of the Bankruptcy Code) or prior to the ratification of the Reorganization Plan (article 103 of the Bankruptcy Code). Please note that, prior to the reformation of the pre-bankruptcy proceedings by Greek law 4013/2011 and the replacement of reconciliation proceedings by the reorganization proceedings as analyzed above, there was one, to the best of our knowledge, interim measures decision issued within the context of reconciliation proceedings which provided for the prohibition of the unilateral termination or amendment of existing contracts having been entered into by the insolvent person. The above issue has been resolved under the new wording of article 103 of the Bankruptcy Code (as amended by Greek law 4013/2011); according to the latter, "*interim measures are without prejudice to any rights arising from a financial collateral arrangement or a close-out netting provision, regardless of whether the close-out netting provision is included in the financial collateral arrangement or in another agreement part of which is the collateral agreement*".

Furthermore, it must also be noted that article 63B paragraph 4 of the Credit Institution Law, states *verbatim* that "*without prejudice to any more specific provisions, reorganization measures against credit institutions do not constitute an insolvency proceeding of the credit institution to be reorganized that can be invoked by its creditors. Any contractual clauses which are triggered in case of bankruptcy or insolvency or in case of any other event which is considered "credit event" or equivalent to insolvency are not triggered by the application of reorganization measures.*" We consider this article as setting no limitations to the close out netting right of the Non Defaulting Party, since it explicitly states to apply without prejudice to any

specific provisions, which in our opinion include the provisions of the Collateral law and the Credit Institution Insolvency Law. In particular, 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 the Credit Institution Insolvency Law stipulate that close out netting takes effect in accordance with its terms and governed exclusively by the law governing the relevant agreement. Furthermore, unless article 63B paragraph 4 of the Credit Institution Law 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. Apart from the above mentioned, the enforceability of the close out netting provisions of is also protected by article 30 of the Credit Institution Insolvency Law whereunder, the Greek rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors of an insolvent Greek debtor as a whole shall not apply, where the beneficiary of such acts provides proof that (i) such act is subject to the law of another member state of the European Union other than Greek law (in this case English law, according to assumption 2.2. herein above) and (ii) such law does not allow any means of challenging the act in question

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3.1 to apply.

3.4 **Enforceability of the Clearing Module Netting Provision**

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because, as discussed under paragraph 3.3. herein above, the Netting Provision will be enforced in accordance with its terms under the Collateral Law, and, to the extent that that Collateral Law cannot apply, in accordance with the law governing the agreement to which the Netting Provision forms part, whereunder, according to assumptions 2.2. and 2.3. herein above, the Netting Provision is legally binding and enforceable..Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the

exercise of rights under the Clearing Module Netting Provision. (please also refer to the relevant discussion made in this context in paragraph 3.3. herein above)

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

3.5 **Enforceability of the Addendum Netting Provision**

In relation to a Clearing Agreement which includes the Addendum Netting Provision, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because, as extensively discussed under paragraph 3.3. herein above and reiterated in paragraph 3.4., Greek law would refer to the law governing the agreement to which the Netting Provision form part to ascertain its legally binding nature and enforceability.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provisions. (please also refer to the relevant discussion made in this context in paragraph 3.3. herein above)

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

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

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

be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 **Enforceability of the FOA Set-Off Provisions**

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

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

(a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Defaulting Party); or

(b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Non-Defaulting Party); or

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

We are of this opinion because there are Greek law provisions that secure the enforceability of set-off irrespective of the initiation of Insolvency Proceedings (please refer to paragraph 3.3. herein above for the relevant analysis).

No amendments to the General set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.1 to apply.

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

rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

(i) where the FOA Set-Off Provisions includes the General Set-Off Clause:

(a) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such liquidation amount is owed by the Client); or

(b) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such liquidation amount is owed by the Firm or, as the case may be, the Clearing Member); or

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

We are of this opinion because of the Greek law provisions that secure the enforceability of set-off irrespective of the initiation of Insolvency Proceedings (please refer to paragraph 3.3. herein above for the relevant analysis).

No amendments to the General set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.2 to apply.

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

3.8.1 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions is a Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, upon the exercise of such rights:

(a) if the Client is a Defaulting Party, so that the value of any cash balance owed by the Firm to the Client would be set-off against any Liquidation Amount owed by the Client to the Firm; and

(b) if there has been a Firm Trigger Event or a CCP Default, so that the value of any cash balance owed by one Party to the other would, insofar as not already brought into account as part of the Relevant Collateral Value, be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance.

We are of this opinion because of the Greek law provisions that secure the enforceability of set-off irrespective of the initiation of Insolvency Proceedings (please refer to paragraph 3.3. herein above for the relevant analysis).

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8.1 to apply [*please specify*.

3.8.2 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision for which the FOA Set-Off Provision (insofar as constituting part of the FOA Netting Agreement) is not a Disapplied Set-Off Provision, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.8.1 above; and the FOA Set-Off Provision will, to the extent that set-off is not already covered by the Clearing Module Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.7.1 above.

3.9 **Set-Off under a Clearing Agreement with an Addendum Set-Off Provision**

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following (i) a CM Trigger Event (as defined in the ISDA/FOA Clearing Addendum) or (iii) a CCP Default (as defined in the ISDA/FOA Clearing Addendum):

(a) in the case of a CM Trigger Event, the Client (as defined in the ISDA/FOA Clearing Addendum); or

(b) in the case of a CCP Default, either Party (the "**Electing Party**"),

would be immediately entitled to exercise its rights under the Addendum Set-Off Provision, and in particular so that, upon the exercise of such rights, in the case of a CM Trigger Event, any Available Termination Amount would be reduced by its set-off against any cash balance which constitutes a termination amount payable by (or to) the Party which is owed (or owes) the Available Termination Amount, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because of the Greek law provisions that secure the enforceability of set-off irrespective of the initiation of Insolvency Proceedings (please refer to paragraph 3.3. herein above for the relevant analysis).

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

3.10 **Enforceability of the Title Transfer Provisions**

3.10.1 In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.10.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value.

3.10.3 The courts of this jurisdiction would not recharacterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.

3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

We are of this opinion because:.

Prior to the entry into force of the Collateral Law there was a risk that a transfer under a Title Transfer Provision could be recharacterised by a Greek court as an agreement for transfer by way of security, which would lead (in the case of financial collateral located (or considered to be located) in Greece whereunder rights *in rem* over such financial

collateral would be governed by Greek law) to the application by way of analogy of Greek law provisions relating to pledges[18].

The Collateral Law resolved the issue of re-characterization within its scope of application, as its article 6 paragraph 1 states that "*Title transfer financial collateral arrangements take effect in accordance with their terms*". This conclusion is also supported by recital 13 of the Collateral Directive, which states that "*this Directive seeks to protect the validity of financial collateral arrangements which are based upon the transfer of the full ownership of the financial collateral, such as by eliminating the so-called re-characterization of such financial collateral arrangements (including repurchase agreements) as security interests*". Also, the introductory note to the Collateral Law states that article 6 eliminates the risk of re-characterization of such agreements. To the extent that the Collateral Law does not apply the constraints applicable to pledges governed by Greek law will apply.

In particular, in cases where the Collateral Law does not apply (practically, in Agreements where the Client is a Greek individual or neither the collateral taker nor the collateral provider is located within the European Union or the Title Transfer Provision refers to an asset that does not fall within the scope of application of the Collateral Law), Transfers of Margin under the Title Transfer Provisions of a FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions may be recharacterised as creating a security interest. Specifically, in cases where the Margin transferred is governed by Greek law[19], the following could apply:

- provisions of the Title Transfer Provision which essentially introduce enforcement requirements without abiding by the procedure of article 1237 of the Greek Civil Code or of article 40 of the Greek legislative decree of 1923 (where the transferee is a bank)20,

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[18] Article 9 of the Collateral Law has resolved the matter whether enforcement is a contractual or a proprietary natter in favour of the latter; thus relevant matters will be governed, under the relevant Greek conflict of laws rules, by the relevant *lex rei sitae*. According to the same article, in cases of securities in book entry form, all proprietary matters will be governed by the law of the country in which the relevant account (where the securities in question are registered) is maintained; in cases of cash, it would be the law governing the account to which the relevant Cash Margin has been credited.

[19] Based on the footnote above, this would be the case where the book entry securities transferred as margin are held in an account in Greece and where the cash transferred as margin are credited to an account governed by Greek law.

[20] 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 has the right to sell the pledged assets on the market, in case they are listed (otherwise, through a public auction).

If the margin transferee is a credit institution, it also has the right according to article 40 of Greek legislative decree of 1923 to issue and deliver a performance order (*επιταγή προς εκτέλεση*, in Greek) instead of an

will be considered under Greek law as null and void (article 1239 of the Greek Civil Code) and the Greek rules on enforcement of pledges would thereof apply by way of analogy. In cases where the Margin consists in cash, the application of the above mentioned rules should not substantially affect the opinions expressed in paragraphs 3.10.1. and 3.10.2., as according to article 1254 of the Greek Civil Code, in case of a due debt secured by a pledge on a monetary claim, the secured creditor has the right to collect the pledged claim to the extent necessary to repay the secured debt and return the remainder to the pledgor. In light of article 1254 of the Greek Civil Code and taking into account the Greek law provisions that secure the enforceability of close out netting provisions (in this case, article 6 of the Insolvency Regulation), the "*use*" of the transferred Margin in order to calculate the Liquidation Amount or the Relevant Collateral Value should not be considered as violating article 1237 of the Greek Civil Code.

In case of Margin consisting of listed securities, article 1237 (paragraph 2) of the Greek Civil Code permits the sale of the charged asset on the market.

- competing priorities over the charged assets need also to be taken into account.

Irrespective of whether the Collateral Law applies or not, the collateral taker will have the right to use the transferred asset, according to the relevant agreement made by the Parties.

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

3.11 **Use of security interest margin not detrimental to Title Transfer Provisions**

In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.10 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

(i) a provision in the form of, or with equivalent effect to, Clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously

enforceable title or a court decision ordering the performance of a sale auction for the specific asset, which is a less time consuming procedure.

specifies the circumstances in which the security interest provisions or the Title Transfer Provisions apply in respect of any given item of margin so that it is not possible for both the security interest provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and

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

3.12 **Single Agreement**

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

3.13 **Automatic Termination**

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, the Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned.

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**"), there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction, in case of a Foreign Defaulting Party which is either

a bank or an insurance company that is established and licensed by a competent authority of an EU member state.

The Foreign Defaulting Party can be subject to secondary / separate Insolvency Proceedings in Greece only in the following cases:

- under the Insolvency Regulation, against a Foreign Party which is either an individual or a commercial corporate that maintain the centre of their main interests in the European Union or an investment firm that does not undertake the activity of holding funds or securities on behalf of third parties but is established and licensed by a competent authority of an EU member state;
- under the Greek Model Law on Cross-Border Insolvency against a Foreign Party which individuals and commercial corporate that do not maintain the centre of their main interests in the European Union, against investment firms that undertake the activity of holding funds or securities on behalf of third parties and against banks and insurance companies that are established and licensed by a competent authority of a non-EU member state.

In any of the above cases, the creditors would have the right to present all of its claims irrespective of whether they have been booked or not with the Greek branch / offices. Furthermore, the Greek law provisions that secure the enforceability of the Netting Provisions would still apply in case of separate / secondary proceedings.

3.16 **Special legal provisions for market contracts**

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

There is, though, a special Greek law provision applicable in cases of a default (including Insolvency) of a clearing member of the AthexClear (the company that manages the Clearing System of Transactions on Book Entry Form). Specifically, under article 79 of the MiFID Law, the ATHEXClear has certain rights (apart from its rights for taking measures against a clearing member in default according to relevant Rules Set, in case of default with regards to the specific member's clearing and settlement obligations resulting from the clearing account maintained by the latter) as administrator of the above mentioned system. In particular, depending on the default, the ATHEXClear shall have the right to: (a) carry out coverage transactions to cover any pendings in the settlement resulting from the default of the clearing member (including lending and repurchase agreements); (b) to enforce close out netting provisions applicable under the Collateral

Law; c) to use collateral already provided to the ATHEXClear; d) to collect the required amounts from the account kept for the relevant member with the Mutual-Insurance Clearing Guarantee Fund. There is no explicit provision in the MiFID Law that provides for the dissapplication of legal provisions applicable to the Insolvency Proceedings by the Rules Set of the AthexClear or the porting of the transactions of the defaulting clearing member to the ATHEXClear; it is clear though that the provisions of the above mentioned article as well as the relevant provisions of the Rules Set of the ATHEXClear will apply in case of a default of a clearing member of the ATHEXClear, irrespective of the default of the clearing member referring to the Insolvency of the latter.

4. QUALIFICATIONS

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

a. 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.

b. 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.

c. No opinion is expressed on matters of application of Greek consumer protection laws, Greek data protection laws or of business conduct rules applicable to cases referring to non professional clients under the MiFID.

d. Under Greek conflict of laws rules, and, specifically, under article 3 of the Rome Convention or Rome I Regulation[21] contractual issues will be governed by the law chosen by the parties. Such choice of law will be upheld by a Greek court, subject only to:

(i) any rights *in rem* will be governed by the law of the relevant objects' location (*lex rei sitae*);

(ii) Greek public order (article 16 of the Rome Convention or article 21 of Rome I Regulation, as the case may be). In particular, a Greek court will not apply a clause of a foreign 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; and

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

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

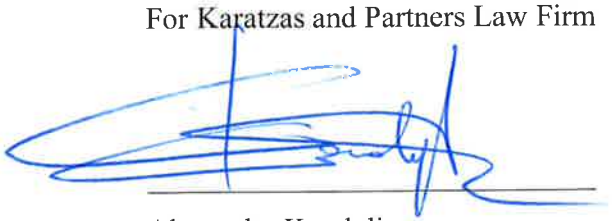
Furthermore, according to article 3 paragraph 3 of the Rome Convention or the Rome I Regulation, as the case may be, if the parties chose the law of a country, other than the country where all the other elements relevant to the situation at the time of the choice are connected, the Greek courts will 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*").
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 which we wish to 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 and Partners Law Firm



Alexandra Kondyli

SCHEDULE A

Investment Firms

Subject to the modifications and additions set out in this Schedule A / Investment Firms, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms. For the purposes of this Schedule A / Investment Firms, "***Investment Firms***" means corporates established in Greece under Greek law 2190/1920, as amended and currently applicable, as societes anonymes and licensed by the Hellenic Capital Market Commission to engage on a professional basis in the provision of investment services.

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

1. **MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.6.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in paragraph 3.1. as Bankruptcy Proceedings and section 3.1 of Schedule A / Investment Firms*".

2. **ADDITIONAL ASSUMPTIONS**

No additional assumptions.

3. **MODIFICATIONS TO OPINIONS**

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 **Insolvency Proceedings: Investment Firms**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Firm could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are (a) the Bankruptcy Proceedings discussed in paragraph 3.1.A and (b) the special liquidation proceedings described in article 22 of Greek law 3606/2007.

The latter is triggered in case the operation license of the Greek investment firm is revoked. It would, thus, seem that the application of Bankruptcy Proceedings to Greek investment firms is more a theoretical scenario, as the Hellenic Capital Market Commission would make sure that the operation license of an investment firm against which a bankruptcy application has been filed be immediately revoked.

There is no special provision in articles 22 *et seq.* of Greek law 3606/2007 regarding the enforceability of close out netting provisions in case of initiation of Special Liquidation Proceedings against a Greek investment firm. It is though explicitly provided that a Greek

investment firm is required to keep segregated client and own assets so that the former are separated from its own assets in case of initiation of Special Liquidation Proceedings or Bankruptcy Proceedings.

4. **ADDITIONAL QUALIFICATIONS**

No additional qualifications.

5. **MODIFICATIONS TO QUALIFICATIONS**

No modifications to the qualifications at paragraph 4.

SCHEDULE B

Insurance Companies

Subject to the modifications and additions set out in this Schedule B / Insurance Companies, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies. For the purposes of this Schedule B / Insurance Companies, "***Insurance Companies***" means corporates established in Greece under Greek law 2190/1920, as amended and currently applicable, as societes anonymes or under Greek law 1667/1986, as mutual insurance cooperatives, and licensed to pursue the respective business by the Greek competent authorities.

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

1. **MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

   Paragraph 1.6.1 is deemed deleted and replaced with the following:

   ""*Insolvency Proceedings" means the procedures listed in paragraph 3.1. as Bankruptcy Proceedings and section 3.1 of Schedule B / Insurance Companies*".

2. **ADDITIONAL ASSUMPTIONS**

   No additional assumptions.

3. **MODIFICATIONS TO OPINIONS**

   On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 **Insolvency Proceedings: Insurance Companies**

   The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Insurance Company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are (a) the Bankruptcy Proceedings discussed in paragraph 3.1.A, (b) the Special Liquidation Proceedings described in articles 9, 10 and 12a of Greek presidential decree law 400/1970 and (c) the Insurance Undertaking Reorganization Measures of articles 9 and 17c of Greek presidential decree 400/1970.

4. **ADDITIONAL QUALIFICATIONS**

   No additional qualifications.

5. **MODIFICATIONS TO QUALIFICATIONS**

   No modifications to the qualifications at paragraph 4.

SCHEDULE C

Greek mutual funds

Subject to the modifications and additions set out in this Schedule C / Greek Mutual Funds, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Greek mutual funds. For the purposes of this Schedule C / Greek mutual funds, "**Greek mutual funds**" means, as defined in article 4 of Greek law 4099/2012 (which transposed into Greek law Directive 2009/65/EC on UCITS), groups of assets (such assets consisting of securities, financial instruments and cash) belonging to more than one unit-holder in co-ownership, established pursuant to the respective permission issued by the Hellenic Capital Market Commission (the "**HCMC**"). Greek mutual funds are managed by a specially regulated type in Greece Société Anonyme the Société Anonyme of Mutual Funds Management (*Α.Ε.Δ.Α.Κ.*, in Greece), whose registered seat and central management is located in Greece and whose sole object as a corporate is to manage (a) mutual fund(s). Greek mutual funds are not *per se* legal entities. The HCMC issues the permission for a Greek mutual fund to be constituted, only after it has ascertained that the specific AEDAK that will manage the fund, the custodian of the specific mutual fund and the regulation[22] of the mutual fund in question fulfils the requirements set by Greek law 4099/2012.

An AEDAK may enter into transactions on behalf of a specific mutual fund and can also provide assets of this mutual fund as collateral for these transactions entered into on behalf of this specific mutual fund. Given that an AEDAK may manage more than one mutual fund, it is imperative to clarify on whose behalf each transaction is being entered into[23].

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[22] According to article 5 of Greek law 4099/2012 on Greek mutual funds, the minimum content of the regulation of a Greek law mutual fund, includes, *inter alia*,:
a) the name and duration of the mutual fund in question, and the corporate name of its custodian and AEDAK;
b) its investment purpose, its investment policy and limitations, the methods under which its portfolio shall be administered, the extent of investment risks to be undertaken, the characteristics of the average investor to who such mutual fund shall address;
c) possible guarantee on the assets of the mutual fund;
d) the type of investments in which the mutual fund in question has the right to invest its assets;
e) price of the units of the mutual fund at the time of its incorporation;
f) commissions, expenses and remunerations and their way of calculation as well as clarifications on which of them are paid by the unitholders and which by the mutual fund;
g) time and procedure for distributing the profits of the mutual fund;
h) terms of participation in the mutual fund and buying out units of the mutual funds.
The said regulation is amended jointly by the custodian and the AEDAK of the mutual fund in question; the prior permission of the HCMC is required for any amendment of the regulation of a mutual fund. Such amendments must be also communicated immediately to the respective unitholders.

[23] In light of the above, it would be preferable that separate agreements be entered into in respect of each fund where an AEDAK acts on behalf of more than one mutual funds.

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

1. **MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

   Paragraph 1.6.1 is deemed deleted and replaced with the following:

   ""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule C / Insurance Companies*".

2. **ADDITIONAL ASSUMPTIONS**

   No additional assumptions.

3. **MODIFICATIONS TO OPINIONS**

   On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 **Insolvency Proceedings: Greek mutual funds**

3.2 Greek mutual funds cannot be subject to Insolvency Proceedings.

Greek law 4099/2012 does not provide for the implications on the Greek law mutual fund's assets, in case the AEDAK (the societe anonyme managing (a) mutual funds) is subject to Insolvency Proceedings. However, as the mutual fund is a distinct group of assets from the assets owned by the AEDAK entity, if the AEDAK becomes bankrupt, the group of assets of which the mutual fund is consisted, shall not be regarded as liable for the AEDAK's debts / obligations according to the Greek Bankruptcy Code, and vice versa; the AEDAK shall not be regarded as liable with its own assets for obligations undertaken on behalf of the mutual fund it manages. It is, further, expressly stated in Greek case law that the bankruptcy of the AEDAK managing the mutual fund/s (or even the bankruptcy of the custodian of the mutual fund/s) has no effect on the group of assets of which the mutual fund/s is/are consisted, as they are not included in the "bankruptcy assets", according to the Greek Bankruptcy Code.

The bankruptcy of the AEDAK should not per se be regarded as a reason for the liquidation of the mutual fund (unless the Regulation of the mutual fund expressly provides AEDAK's bankruptcy as a liquidation event for the mutual fund). According to article 9 paragraph 1(f) of Greek law 4099/2012, in case the AEDAK managing a mutual fund becomes bankrupt, the HCMC has the right to liquidate such mutual fund, only if it is not possible for the HCMC to appoint a new AEDAK.[24]

4. ADDITIONAL QUALIFICATIONS

No additional qualifications.

5. MODIFICATIONS TO QUALIFICATIONS

No modifications to the qualifications at paragraph.

[24] From a drafting perspective, we consider that the definition of the Insolvency Event of Default, as currently drafted, covers the Insolvency Proceedings against an *Α.Ε.Δ.Α.Κ* or the liquidation of a Greek mutual fund.

SCHEDULE D

Public Law Entities

Subject to the modifications and additions set out in this Schedule D / Greek Public Law Entities, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Greek Public Law Entities. For the purposes of this Schedule D / Greek Public Law Entities, "**Greek Public Law Entities**" means the Greek State, Greek public law persons (Ν.Π.Δ.Δ., in Greek), Greek local Authorities, as well as Greek corporates which are controlled by the Greek State but are organised in accordance with Greek private law (the **Greek Public Enterprises**), and Greek private law corporates partially owned by the Greek State (**Greek Mixed Enterprises**).

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

1. **MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

   Paragraph 1.6.1 is deemed deleted and replaced with the following:

   ""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule D / Greek Public Law Entities*".

2. **ADDITIONAL ASSUMPTIONS**

   No additional assumptions.

3. **MODIFICATIONS TO OPINIONS**

   On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 **Insolvency Proceedings: Greek Public Law Entities**

According to article 2 paragraph 2 of the Bankruptcy Code, Greek public law entities, local authorities and public organisations cannot be declared bankrupt. Thus, the abovementioned entities cannot be subject to Insolvency Proceedings, as defined in paragraph 3.1. The above does not apply to Greek Public Enterprises and Greek Mixed Enterprises which are formed as Greek corporates and pursue commercial corporate objectives, and may, thus, become subject to Insolvency Proceedings.

In particular, Greek Public Enterprises are Greek corporates wholly owned by the Greek State or a governmental body and formed as a commercial corporation and are sui generis entities, in the sense that (i) operationally and typically they are formed as Greek sociétés anonymes; but (ii) they are governed, with respect to certain aspects, by Greek public/administrative law. For example, Greek Public Enterprises may operate under a

constitutional document drafted almost identically to that of a société anonyme; such constitutional document and possible amendments thereto, however, are issued and performed by Greek administrative acts, for example, laws, ministerial decisions or presidential decrees and not by private law acts, as it is the case in all other ordinary Greek law commercial corporations. In cases of Greek Public Enterprises, only the Greek State, or other public law entities and/or other Greek local authorities are permitted to participate as shareholders in the said enterprises; private (natural or legal) persons are not permitted to participate in such entities. According to the respective Greek legal writing, such entities should be considered as Greek Public Law Entities (and, thus, may not be subject to Insolvency Proceedings).

Notwithstanding the above, there are also enterprises which are partially owned by the Greek State or other Greek public law entities and/or other Greek local authorities, to which the participation of private law entities and natural persons is permitted (the so called Greek Enterprises of Mixed Economy, Greek Mixed Enterprises); depending upon the percentage of the participation of the Greek State or of any other Greek Public Law Entity in such enterprise's share capital/ assets (if such participation extensively exceeds the public's participation or permits the public law entity or the Greek State to appoint the management of such entity) such enterprise should be considered as a Greek Public Law Entity; if the aforementioned instances do not apply, then the enterprise should be considered as a commercial corporation, and the participation of the Greek State or any other Greek public law entity must be considered solely as a means for serving specific public interest.

4. **ADDITIONAL QUALIFICATIONS**

No additional qualifications.

5. **MODIFICATIONS TO QUALIFICATIONS**

No modifications to the qualifications at paragraph 4.

ANNEX 1

FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")
2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")
3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")
4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")
5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")
6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")
7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")
8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")
9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")
10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")
11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")
12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")
13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")
14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")
15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")
16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex

to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")

17. Professional Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")

18. Professional Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")

19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")

20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")

21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")

22. Retail Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")

23. Retail Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")

24. Retail Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")

26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")

27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

28. Eligible Counterparty Agreement (2007 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")

29. Eligible Counterparty Agreement (2009 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2009**")

30. Eligible Counterparty Agreement (2011 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2011**")

Where an FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

ANNEX 2

List of Transactions

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

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

(i) a contract made on an exchange or pursuant to the rules of an exchange;

(ii) a contract subject to the rules of an exchange; or

(iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

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

(iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or

(v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

ANNEX 3

DEFINITIONS RELATING TO THE AGREEMENTS

"**Addendum Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum) Clause 1(b) (i) of the ISDA/FOA Clearing Addendum.

"**Addendum Netting Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum):

(a) Clause 8(b) (*Clearing Member Events*), 8(c) (CCP Default) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum; or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

(a) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 8 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

"**Adverse Amendments**" means (a) any amendment to a Core Provision and/or (b) any other provision in an agreement that may invalidate, adversely affect, modify, amend, supersede, conflict or be inconsistent with, provide an alternative to, override, compromise or fetter the operation, implementation, enforceability or effectiveness of a Core Provision (in each case in (a) and (b) above, excepting any Non-material Amendment).

"**Clearing Agreement**" means an agreement:

(a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;

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

(c) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

"**Clearing Module Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 1.2.1 of the FOA Clearing Module.

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

(a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

(a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

"**Client**" means, in relation to an FOA Netting Agreement or a Clearing Agreement, the Firm's or, as the case may be, Clearing Member's counterparty under the relevant FOA Netting Agreement or Clearing Agreement.

"**Core Provision**" means those parts of the clauses or provisions specified below in relation to a paragraph of this opinion letter (and any equivalent paragraph in any Schedule to this opinion letter), which are highlighted in Annex 4:

(a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;

(b) for the purposes of paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

(c) for the purposes of paragraph 3.5 (*Enforceability of the Addendum Netting Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

(d) for the purposes of paragraph 3.7.1, the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;

(e) for the purposes of paragraph 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-

off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;

(f) for the purposes of paragraph 3.8.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;

(g) for the purposes of paragraph 3.8.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;

(h) for the purposes of paragraph 3.9 (*Set-Off under a Clearing Agreement with Addendum Set-Off Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision;

(i) for the purposes of paragraph 3.10.1, (i) in relation to an FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions; and

(j) for the purposes of paragraphs 3.10.3 and 3.10.4, the Title Transfer Provisions;

in each case, incorporated into an FOA Netting Agreement or a Clearing Agreement together with any defined terms required properly to construe such provisions, in such a way as to preserve the essential sense and effect of the highlighted parts.

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

"**Defaulting Party**" includes, in relation to the One-Way Versions, the Party in respect of which an Event of Default entitles the Non-Defaulting Party to exercise rights under the FOA Netting Provision.

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty (with Security Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Security Provisions) Agreement 2009, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009, the Eligible Counterparty

(with Security Provisions) Agreement 2011 or the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Firm**" means, in relation to an FOA Netting Agreement or a Clearing Agreement which includes an FOA Clearing Module, the Party providing the services under the relevant FOA Netting Agreement or Clearing Agreement which includes an FOA Clearing Module.

"**FOA Clearing Module**" means the FOA Client Cleared Derivatives Module as first published on 9 October 2013 or any subsequent published version up to the date of this opinion letter.

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

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

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

(c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provision, and with or without the Title Transfer Provisions, with no Adverse Amendments.

"**FOA Netting Agreements (with Title Transfer Provisions)**" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1) or an FOA Netting Agreement which has broadly similar function to any of the foregoing.

"**FOA Netting Provision**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);

(b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);

(c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;

(d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);

(e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);

(f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or

(d) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**FOA Published Form Agreement**" means a document listed at Annex 1 in the form published by the Futures and Options Association on its website as at the date of this opinion.

"**FOA Set-off Provisions**" means:

(a) the "**General Set-off Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (***Set-off***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (***Set-off***);

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (***Set-off***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (***Set-off***);

(vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***);

(viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***); or

(ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (***Set-off on default***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (***Set-off upon default or termination***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (***Set-off on default***),

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (***Set-off upon default or termination***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (***Set-off on default***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (***Set-off upon default or termination***); or

(vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

(a) where the FOA Member's counterparty is not a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);

(iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);

(iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive); or

(vi) provided that any modification of such clauses include at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and

(b) where the FOA Member's counterparty is a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);

(iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); or

(iv) any modified version of such clauses provided that it includes at least those parts of paragraph 4(b) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**ISDA/FOA Clearing Addendum**" means the ISDA/FOA Client Cleared OTC Derivatives Addendum as first published on 11 June 2013, or any subsequent published versions up to the date of this opinion letter.

"**Limited Recourse Provision**" means Clause 8.1 of the FOA Clearing Module or Clause 15(a) of the ISDA/FOA Clearing Module.

"**Long Form Two-Way Clauses**" means each of the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Master Netting Agreements**" means each of the One-Way Master Netting Agreement 1997 and the Two-Way Master Netting Agreement 1997 (each as listed and defined at Annex 1).

"**Non-Defaulting Party**" includes, in relation to the One-Way Versions, the Party entitled to exercise rights under the FOA Netting Provision.

"**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 4.

"**One-Way Versions**" means the Long Form One-Way Clauses 2007, the Short Form One-Way Clauses, the One-Way Master Netting Agreement 1997, and the FOA Netting Provision as published in the Retail Client Agreements and the Professional Client Agreements in each case in the form of an FOA Published Form Agreement.

"**Party**" means a party to an FOA Netting Agreement or a Clearing Agreement.

"**Professional Client Agreements**" means each of the Professional Client (with Security Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement

2007, the Professional Client (with Security Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Security Provisions) Agreement 2011 or the Professional Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Rehypothecation Clause**" means:

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

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

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

(h) any modified version of such clauses provided that it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Retail Client Agreements**" means each of the Retail Client Agreement (with Security Provisions) Agreement 2007, the Retail Client Agreement (with Title Transfer Provisions) Agreement 2007, the Retail Client Agreement (with Security Provisions) Agreement 2009, the Retail Client Agreement (with Title Transfer Provisions) Agreement 2009, the Retail Client Agreement (with Security Provisions) Agreement 2011 or the Retail Client Agreement (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Non-Cash Security Interest Provisions**" means:

(a) the "**Non-Cash Security Interest Clause**", being:

  (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);

  (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);

  (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);

  (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);

  (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);

  (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

(b) the "**Power of Sale Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Client Money Additional Security Clause**" means:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Short Form One Way-Clauses**" means each of the Short-Form One-Way Clauses 2007, the Short-Form One-Way Clauses 2009 and the Short-Form One-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Short Form Two Way-Clauses**" means each of the Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009 and the Short-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Title Transfer Provisions**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

ANNEX 4
PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

a) "**Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "**Non-Defaulting Party**") may, by notice to the party in default (the "**Defaulting Party**"), specify a date (the "**Liquidation Date**") for the termination and liquidation of Netting Transactions in accordance with this clause.

b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:

i. neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;

ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and

iii. the Non-Defaulting Party shall treat each such cost or loss to it as a positive amount and each such gain by it as a negative amount and aggregate all such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "**Liquidation Amount**").

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party

shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. **General Set-Off Clause:**

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

3. **Margin Cash Set-Off Clause:**

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

4. **Insolvency Events of Default Clause:**

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

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

ii. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "**Custodian**") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;

iii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency,

regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

b) In the case of a Counterparty that is a natural person:

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

ii. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)."

5. Title Transfer Provisions:

a) "**Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date *will* be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a mortgage, charge,

lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. **Clearing Module Netting Provision / Addendum Netting Provision:**

a) [Firm Trigger Event/CM Trigger Event]

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

(a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

(b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B)

any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

(d) if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable in accordance with this [Module/Addendum].

b) CCP Default

Upon the occurrence of a CCP Default, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Cor Provisions of the relevant] Rule Set, be dealt with as set out below:

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP

Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];

2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid

at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

4. if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable, in accordance with this [Module/Addendum].

c) Hierarchy of Events

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the clause pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

d) Definitions

"**Aggregate Transaction Value**" means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or

negative or zero) equal to the aggregate of the [Firm/CM]/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set or, if there is just one [Firm/CM]/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such [Firm/CM]/CCP Transaction Value.

"**[Firm/CM]/CCP Transaction Value**" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount equal to the value that is determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction or group of related [Firm/CM]/CCP Transactions in accordance with the relevant Rule Set following a [Firm/CM] Trigger Event or CCP Default (to the extent such Rule Set contemplates such a value in the relevant circumstance). If the value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set reflects a positive value for [Firm/Clearing Member] vis-à-vis the Agreed CCP, the value determined in respect of such terminated Client Transaction(s) will reflect a positive value for Client vis-à-vis [Firm/Clearing Member] (and will constitute a positive amount for any determination under this [Module/Addendum]) and, if the value determined in respect of the related terminated [Firm/CCP]/CCP Transaction(s), under the relevant Rule Set reflects a positive value for the relevant Agreed CCP vis-à-vis [Firm/Clearing Member], the value determined in respect of [or otherwise ascribed to] such terminated Client Transaction(s) will reflect a positive value for [Firm/Clearing Member] vis-à-vis Client (and will constitute a negative amount for any determination under this [Module/Addendum]). The value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set may be equal to zero.

"**Relevant Collateral Value**" means, in respect of the termination of Client Transactions in a Cleared Transaction Set, the value (without applying any "haircut" but otherwise as determined in accordance with the [Agreement/Collateral Agreement]) of all collateral that:

(a) is attributable to such Client Transactions;

(b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or

reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and

(c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

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

7. **Clearing Module Set-Off Provision**

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

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

8. **Addendum Set-Off Provision**

(i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("**CM Other Amounts**"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "**X**" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("**EP Other Amounts**" and together with CM Other Amounts, "**Other Amounts**"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off,

where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

(ii) For the purposes of this Section 8(ii):

(A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

(B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and

(C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

(iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

PART 2

NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B", using synonyms, changing the order of the words) provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions for the purposes of correct cross-referencing or by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the agreement provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.
4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.
5. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), where such addition may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, and such addition may be expressed to apply to one only of the Parties.
6. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the agreement, Transactions, or both, is endangered.

7. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

8. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.

9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).

10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.

11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.

14. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the

application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.

15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.

16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).

18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:

- more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
- more than one FOA Clearing Module or Clearing Module Netting Provision
- one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in an FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.

23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3

SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

"As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf."

2. **Power of Sale Clause:**

"If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations."

3. **Client Money Additional Security Clause**

"As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid."

4. **Rehypothecation Clause**

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as

reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5

NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

   None.

2. Desirable amendments

   None.

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

   None.