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ADVOCATES & SOLICITORS

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

February 20, 2013

Dear Sirs,

Collateral Analyser Library

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

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

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

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

1. **TERMS OF REFERENCE AND DEFINITIONS**

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

1.1.1 persons which are companies incorporated under the Companies Act, 1956 ("**Companies Act**") (excluding Sovereign and Public sector entities described in Schedule 7); and

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

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



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1.2 However, this opinion is also given in respect of Counterparties providing Collateral to a Firm that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the applicable Schedule:

1.2.1 Banking companies (excluding Co-operative Banks and Regional Rural Banks) incorporated pursuant to Banking Regulation Act, 1949 and Companies Act, 1956 and Government Banks (Schedule 1);

1.2.2 Investment firms/broker dealers (Schedule 2);

1.2.3 Partnerships (Schedule 3);

1.2.4 Insurance companies (Schedule 4);

1.2.5 Individuals (Schedule 5);

1.2.6 Trustees of Mutual Funds (Schedule 6);

1.2.7 Sovereign and Public sector entities (Schedule 7)

1.2.8 Trustees of Trusts (Schedule 8);

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

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

1.4 In this opinion letter:

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

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

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



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- (a) which is governed by the law of England and Wales;
- (b) which has broadly similar function to any of the Agreements listed in Annex 1;
- (c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
- (d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement; References to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments.

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

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

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

in either case in accordance with the Security Interest Provisions.

1.4.6 in other instances other than those referred to at 1.4.5 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.



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- 1.4.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.8 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.4.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.4.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws. That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.3 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 Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction. That the Counterparty in particular has obtained all such authorizations, approvals, licences and consents as may be required by exchange control regulations applicable in this jurisdiction from time to time in connection with (i) the entry into and performance of obligations under the Agreement and the Transactions and (ii) the creation and enforcement of Security Interest over the Collateral.
- 2.4 That the Agreement has been properly executed by both Parties.



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- 2.5 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.
- 2.6 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- 2.7 That the Agreement accurately reflects the true intentions of each Party.
- 2.8 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.9 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.10 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- 2.11 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.12 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.
- 2.13 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

In addition to the assumptions listed from 2.1 to 2.13, we make the following assumptions:

- 2.14 That the constitutional and charter documents (such as trust deeds or similar documents in case of trusts and mutual funds, and partnership agreements in case of partnerships) of the Parties do not prohibit or restrict the relevant Party from entering



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into agreements in the nature of the Agreements or transactions in the nature of the Transactions.

- 2.15 That all statements as to matters of fact contained within the Agreement are true, accurate and complete.
- 2.16 That there are no facts or circumstances in existence and no events have occurred which render the Agreement void or voidable, or repudiated or frustrated, or capable of rescission for any reason (under the laws of any jurisdiction excluding this jurisdiction), and in particular but without limitation by reason of the lack of consideration, default, fraud or misrepresentation.
- 2.17 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. **OPINIONS**

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

3.1 **Valid Security Interest**

- 3.1.1 The Security Interest Provisions would create a valid security interest over the Collateral.
- 3.1.2 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.
- 3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.
- 3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, there are no rules of law of this jurisdiction which would affect the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to



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the interests of the Counterparty and any other person. However, as explained in paragraph 4, the courts of this jurisdiction may give effect to the insolvency laws of the Counterparty's home jurisdiction, where different from this jurisdiction.

3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.3 Foreign Collateral Providers

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

3.4 Right of re-use

With respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement 2011 (or an Equivalent Agreement in the form of one of the foregoing), the Rehypotheication Clause may not be effective in accordance with its terms and the Firm may not be entitled to borrow, lend, appropriate, dispose of or otherwise use for its own purposes all non-cash Collateral as set out in the Rehypotheication Clause. We are of this opinion because there is no legislation in India which specifically permits the arrangement contemplated under the Rehypotheication Clause and the Security Interest Provisions (which precede the arrangement under the Rehypotheication Clause and involve the creation of a first fixed security interest over the non-cash Collateral by the Counterparty in favour of the Firm) are not expressly excluded under such an arrangement.

4. QUALIFICATIONS

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

- 4.1 The Security Interest in, so far as applicable, any account-held securities comprising Collateral to the extent that such account-held securities, consist of: (a) corporate securities issued by a corporate entity; (b) securities issued by the government of



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India (“**Indian G-Sec**”); (c) securities issued by the government of a member of the “G-10” group of countries (“**Foreign G-Sec**”), since additional steps may be required for the creation of Security Interest over other types of securities.

- 4.2 **Security Interest and ranking of security:** The security of every secured creditor will be deemed, pursuant to Section 529A of the Companies Act, to be subject to a *pari passu* charge in favour of the employees of the Company. In a winding-up under the Companies Act, pursuant to Section 531 of the Companies Act any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up (i.e., the date of the filing of the winding up petition as the order of the winding up petition relates back to the date of filing the winding up petition) which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is judged insolvent, would be deemed in his insolvency as a fraudulent preference, may in the event of the company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly. In any case the provisions of Section 531 of the Companies Act are not intended to apply to transfer arising out of enforcement of a pre-existing security or other arrangement. Further, any transfer of property, movable or immovable, or any delivery of goods made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up or the passing of a resolution for voluntary winding up of the company, shall be void against the Insolvency Representative. Where payments were made to the creditor to avoid winding up or other legal proceedings, the same have been held not to constitute a fraudulent preference as they were deemed as not being voluntary acts. Similarly, the courts have held that the fact that the payment resulted in a preference is not enough. Rather, such payment should have been made with the intent to prefer the creditor benefiting from the same.



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- 4.3 Under Section 535 of the Companies Act, the Insolvency Representative has the right to disclaim unprofitable contracts (with the leave of the court). However, if the court comes to the conclusion that the contract had already been rescinded, it would have no power to pass an order on such application and the applicant would have to be relegated to the ordinary procedure provided by the Companies Act for proving any debt in winding up.
- 4.4 Section 536 of the Companies Act stipulates that any disposal of property (including actionable claims) of the company, made after the commencement of winding up shall, unless otherwise ordered by the court, be void.
- 4.5 The following are some of the charges/priority created by various statutes in India:
- (i) The Income Tax Act, 1961 (“**IT Act**”) (under Section 281 of the IT Act).
 - (ii) The Contract Act, 1872 (particular and general lien).
 - (iii) Sale of Goods Act, 1930 (rights of an unpaid seller).
- 4.6 *Creation of charge during pendency of IT Proceedings:* Section 281 under the IT Act provides that if during the pendency of any proceedings under the IT Act, an assessee creates a charge on or parts with possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets, such charge or transfer is void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the proceedings. Therefore, when procuring a security interest over the assets of the Counterparty, a no-objection certificate may be procured from the assessing officer. The object of obtaining such a certificate under Section 281(1) of the IT Act is to ascertain that such proceedings are not in fact pending against the assessee as the existence of such claim would affect the enforceability of the Security Interest to that extent and/or obtain a waiver from the assessing officer.
- 4.7 In the bankruptcy of a company, a secured creditor ‘stands outside the insolvency proceedings’. A secured creditor has three options available to him:
- (i) he may realise his security and then provide for the balance;
 - (ii) he may surrender his security and prove for the whole debt; or



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- (iii) he may state in his proof, the value at which he assesses the security and prove for the balance after deducting the assessed value.
- 4.8 In relation to the balance owed to a secured creditor, (after realising his security), he is effectively an unsecured creditor. Statutory dues, salaries, wages and other dues (upto certain specified amounts/ periods) have priority to all other unsecured debts.
- 4.9 As between secured creditors, the following principles apply:
- (i) subject to what is stated below, the priority will be determined by contractual provisions;
 - (ii) as between agreements relating to security created over the same assets (which is, wherever applicable, required to be registered under the (Indian) Registration Act, 1908), the agreement which has been entered into prior in time shall have priority over other security interest created over those assets irrespective of the date of registration (assuming however that it has been validly registered);
 - (iii) fixed charge will have priority over a floating charge and a first charge will have priority over a second charge and a second charge will have priority over a third charge and so on.
- 4.10 Whether statutory charges will have priority or be *pari passu* with the dues of secured creditors will depend on the concerned legislation. Furthermore, it is not well settled law as to whether any such statutory charge will attach even in the hands of a *bona fide* purchaser without notice.
- 4.11 **Moratorium and Stays:** Under Indian law, certain provisions exist for moratorium and modification/reduction of creditor's rights.
- (a) ***Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA")***
- (i) Section 22(3) effectively provides for a 'standstill' i.e. on an order or declaration being issued by the Board of Industrial and Financial Reconstruction ("BIFR"), the operation of rights, obligations, etc., as specified (in such order or declaration) shall be suspended (or enforced only to the extent and in the manner provided for by the BIFR). However and



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unlike under BRU Act (please see paragraph below, SICA applies only to actual industrial undertakings (in the true sense of the term), and therefore its applicability is accordingly restricted. BIFR has not been vested with the right to suspend statutory or common law rights or obligations. In other words, except to the extent provided for in Section 22(1), even if an order under Section 22(3) of SICA is passed, the statutory or common law rights of the Secured Party or the obligations of the Counterparty shall not be, per se, defeated or suspended.

(b) *BRU Act*

The provisions of the BRU Act apply to the state of Maharashtra and Gujarat. Certain other States like Rajasthan, Kerala, and Andhra Pradesh have similar or analogous legislations. The BRU Act will apply to an entity that has an 'undertaking' in Maharashtra or Gujarat and not just entities incorporated in Maharashtra or Gujarat. Please note, however, that the BRU Act will apply only as against such an 'undertaking' of the entity and not against the entity as a whole.

(c) *Indian G-Sec:*

The Reserve Bank of India ("RBI") regulates the Indian G-Sec market and there exists a risk that it may issue moratorium in relation to Indian G-Secs which may affect rights of enforcement *vis-à-vis* such Collateral.

4.12 Further Acts and power of sale:

- (a) Indian law will require the Firm to provide to the Counterparty, 'reasonable' notice prior to invocation of a Security Interest created by way of a pledge over non-cash Collateral.
- (b) The Firm would be required to instruct its depository participant to invoke Security Interest created by way of a pledge over non-cash Collateral by submitting the invocation request.
- (c) As regards Indian G-Secs, the G-Sec Regulations provide that:
 - (i) The Firm would have to submit the relevant forms for the invocation of the



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pledge along with the stock certificate (if any) of such Indian G-Sec to the RBI/its agent.

(ii) On invocation, the RBI/its agent will record in its books the invocation of the pledge, and transfer the Indian G-Sec in favour of the Firm.

(iii) As regards dematerialised Indian G-Sec, the relevant provisions of the Depositories Regulations may also be required to be adhered to.

4.13 Valuation:

Following the occurrence of an Event of Default, the Firm may sell non-cash Collateral to another person and appropriate the proceeds of such sale towards satisfaction of the debt due to itself. While doing so, under certain circumstances, the Firm could be required to ensure that such Collateral is sold at a fair market value and is likely to be required to return to the Counterparty, any excess amounts received by it under such sale. Further, an approval from the RBI would be required if the sale of the Collateral is not in accordance with the provisions Foreign Exchange Management, 1999 (“FEMA”) and rules and regulations issued thereunder (as amended from time to time).

4.14 General:

- (a) The RBI, in the imminence of or during a foreign exchange crisis or in times of national emergency, has the power to temporarily suspend or restrict sales of foreign exchange, subject all transactions in foreign exchange to licensing by the RBI, and require any person residing in or entity operating in this jurisdiction to deliver any foreign exchange obtained by such person or entity to the RBI, or to any bank or agent designed by the RBI, at the then effective rate of exchange.
- (b) Pursuant to Section 41 of FEMA, the Central Government may give general or special directions to the RBI as it thinks fit and the RBI shall comply with any such directions. Such directions may include regulating / prohibiting foreign exchange remittance and / or contracting cross border contractual liabilities by the Indian entities.



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- (c) Under the law of this jurisdiction, a term of an agreement may be amended orally by the parties despite provisions in such an agreement to the contrary.
- (d) If the Court were to decide that a foreign law has been chosen as the law of the contract to avoid or evade any provisions of the laws of India, then in such cases the choice of law clause may be constituted as being against public policy. If a party challenges the choice of law, Indian courts may examine the contract as a whole to determine whether the choice of law by the parties to the contract is bona fide and legal or only “eccentric” or “capricious”.
- (e) Any of the approvals, consents or permits or filing which are required under the law of this jurisdiction in connection with any of the above obligations, may be revoked or cancelled by the granting authority.
- (f) In any proceedings in this jurisdiction to enforce the Agreement, the law governing the contractual aspects of Security Interest in the Collateral posted by a Counterparty would be recognized. However, as per Section 13 of the G-Sec Regulations, the rights of all persons holding Indian G-Sec shall be determined in accordance with Indian law and the courts of India. Therefore, all contractual aspects of Security Interest in relation to the Collateral comprising of the Indian G-Sec in so far as they relate to transfers, pledge, hypothecation, certain mandatory provisions of Indian law would apply irrespective of the choice of law specified in the Agreement.
- (g) As a general principle, Indian law requires that the determination of substantive rights in relation to securities constituting non-cash Collateral be determined by the laws of the jurisdiction of incorporation of the issuer of such securities.
- (h) In our opinion, Indian courts would recognize the security interests (except for pledge over cash) created pursuant to the Agreement, provided the security interest is valid under the governing law of the Agreement and provided that any perfection requirements in relation to the Collateral have been complied as per the location of the Collateral.
- (i) The procedure for the creation and the invocation of the Security Interest in relation to dematerialised non-cash Collateral (located in India) would be



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required to be in accordance with and the Depositories Act and the Depositories Regulations.

- (j) While the G-Sec Regulations provides that any transfer other than a purported transfer of full title in Indian G-Sec is invalid, Section 28 of the Government Securities Act, 2006 provides *inter alia* for creation of Security Interest over Indian G-Sec (other than government securities issued in the form of government promissory notes and bearer bonds). The procedure prescribed for creation of Security Interest over the Indian G-Sec as per the provisions of the G-Sec Regulations.
- (k) Where the Counterparty is a company in India, the provisions of the Companies Act are relevant. It is critical to ascertain whether the Security Interest created is required to be registered with the relevant Registrar of Companies. The requirement of such registration is dependent on the type of Collateral as well as the type of Security Interest sought to be created. Where registration is required, failure to so register renders the Security Interest (but not the underlying obligation) void against the liquidator and the creditors of the company. Even a charge created by a foreign company (a company incorporated abroad having a place of business in India) on properties in India are required to be registered with the registrar of Companies.
- (l) The charge is to be registered within 30 (thirty) days from the date of creation of the charge (or within a further period of 30 (thirty) days subject to payment of additional fees). If the charge is not so registered even within the further (second) period of 30 (thirty) days, an application may be made to the Company Law Board (the Central Government after the Companies (Second Amendment) Act, 2002 comes into force) for the extension of time to register the charge.
- (m) In any proceedings in this jurisdiction to enforce the Agreement,
 - (i) the choice of law which is not the law of this jurisdiction, as the governing law thereof should be recognized, and
 - (ii) the law which is not the law of this jurisdiction should be applied,



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- (iii) the irrevocable submission of the parties to the Agreement to the exclusive jurisdiction of English courts should be legal, valid, binding and enforceable;
- (iv) a judgment obtained in England will (if passed by a superior court) be recognized and enforced by the courts in India (subject to the provisions of Section 13 of the (Indian) Code of Civil Procedure, 1908 of India) without a detailed re-examination of the facts and subject to the provisions of the Indian Limitation Act, 1963 and further subject to payment of any statutory fee payable in this regard; and

subject to the exceptions contained in Section 13 of the CPC. Section 13 of the CPC provides that in a suit filed to enforce a foreign judgment that judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title except (1) where the judgment has not been pronounced by a court of competent jurisdiction, (2) where it has not been given on the merits of the case, (3) where it appears on the face of the judgment to be founded on an incorrect view of international law or a refusal to recognize the law of this jurisdiction in cases in which such law is applicable, (4) where the proceedings in which the judgment was obtained are opposed to natural justice, (5) where it has been obtained by fraud or (6) where it sustains a claim founded on a breach of any law in force in this jurisdiction. The suit must be brought in this jurisdiction within three years from the date of the judgment in the same manner as any other suit filed to enforce a civil liability in this jurisdiction. It is unlikely that a court in this jurisdiction would award damages on the same basis as a foreign court if an action were brought in this jurisdiction. Furthermore, it is unlikely that a court in this jurisdiction would enforce foreign judgments if it viewed the amount of damages awarded as excessive or inconsistent with Indian practice.

- (n) The qualifications at paragraph 4 apply in respect of a Counterparties established or resident in this jurisdiction and qualifications at paragraph 4.5, 4.10, 4.12, 4.13, 4.14 (excluding qualification (l) and (m)) apply in respect of a Counterparty that is not established or resident in this jurisdiction.



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- (o) The qualifications at paragraph 4 apply in respect of Collateral comprising accounts and assets located in this jurisdiction. The same comment applies to any additional qualifications made in the Schedules. The qualifications at paragraph 4 (excluding qualifications 4.14 (l) and 4.14 (m)) apply in respect of Collateral comprising accounts and assets located outside this jurisdiction. The same comment applies to any additional qualifications made in the Schedules.
- (p) It is possible that fixed security interests expressed to be created by the Agreement could be characterised as floating charges. The risk of recharacterisation of the Security Interest as a floating charge depends on whether the Firm has the requisite degree of control over the Collateral. To the extent that the Counterparty is able to deal with the assets subject to the Security Interest without the Firm's consent, the court is likely to hold that the Security Interest constitutes a floating charge. If the Security Interest is characterized as a floating charge then the risks set out below might apply:
 - (i) the floating charge would, in certain circumstances, rank behind the preferential creditors; and
 - (ii) the Counterparty would be able to grant fixed charges and effect other dispositions of the relevant assets which would rank higher than the Firm's Security Interest.
- (q) In respect of our opinion at paragraph 3.1.4, where Collateral is situated outside this jurisdiction, then the ranking of the Firm's rights under the Security Interest Provisions in respect of the Collateral and the proceeds of realisation thereof compared with other creditors may be further affected or compromised by provisions of the law of, or of laws having effect in, the jurisdiction where such Collateral is located.
- (r) Where a company having a place of business in India is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent



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per annum or such other rate as may for the time being be notified by the Central Government in this behalf.

- (s) Where a company having a place of business in India is being wound up by or subject to the supervision of the Court then any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up; or any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement, shall be void

There are no other material issues relevant to the issues addressed in this opinion that we believe are required to be brought 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,

Ashwin Ramanathan

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SCHEDULE 1
BANKS

Subject to the modifications and additions set out in this Schedule 1 (*Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 1 (*Banks*), "Banks" means

- (1) Banking companies (excluding Co-operative Banks and Regional Rural Banks) incorporated pursuant to Banking Regulation Act, 1949 and Companies Act, 1956.
- (2) Banks nationalized and constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (the "**Nationalization Acts**");
- (3) State Bank of India ("**SBI**") constituted under the State Bank of India Act, 1955; and
- (4) Subsidiary / Affiliate banks of SBI constituted under the State Bank of India (Subsidiary Banks) Act, 1959.

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

1. ADDITIONAL QUALIFICATIONS

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

- (i) In terms of Section 35A of the Banking Regulation Act, 1949 ("**BR Act**"), the RBI could take certain measures in relation to the same including issuing such directions to the bank as it may deem fit, so as to ensure that the interest of the public, the banking system and the depositors in this jurisdiction are protected, and the bank would be under an obligation to comply with such directions.
- (ii) Pursuant to the BR Act, the RBI has wide discretionary powers to issue various kinds of directions, if it deems that this is necessary. In particular, it can revoke the banking licence; prohibit the bank from receiving fresh



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deposits; apply to the court for winding up the bank; may prohibit a bank from entering into any particular transaction.

- (iii) Additionally, where the Counterparty is a Banking company, it is relevant to note that, Section 14A of the BR Act provides that no Banking company shall create a floating charge on the undertaking or any property of the Banking company unless prior to the creation of such floating charge a certificate in writing is obtained from the RBI that such a charge is not detrimental to the interest of the depository of such Banking company.



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SCHEDULE 2

Investment Firms/Broker Dealers

Subject to the modifications and additions set out in this Schedule 2 (*Investment Firms/Broker Dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms/Broker Dealers. For the purposes of this Schedule 2 (*Investment Firms/Broker Dealers*), "**Investment Firms/Broker Dealers**" means Investment firms/broker dealers means a company incorporated or existing under the laws of India, an individual, or a partnership registered with the Securities Exchange Board of India pursuant to Securities Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

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.



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SCHEDULE 3
Partnerships

Subject to the modifications and additions set out in this Schedule 3 (*Partnership*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships. For the purposes of this Schedule 3 (*Partnership*), "**Partnership**" means relation between persons who have agreed to share profits of a business carried on by all or any of them acting for all and constituted under the Partnership Act, 1932 or a partnership formed under the Limited Liability Partnership Act, 2008.

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

1. ADDITIONAL ASSUMPTIONS

We assume:

That where the Agreement is entered into with a partnership, during the life of the Agreement, the members of the partnership will remain unchanged. In relation to this assumption, where there is a change in partnership, incoming partners may have no liability for the acts of their predecessor partner(s) unless they expressly undertake such liability. Section 31 of the Partnership Act 1932 provides that an incoming partner does not become liable to the creditors of the partnership for anything done before he became a partner. Under the laws of this jurisdiction the introduction of a new partner will constitute a new partnership. Accordingly, it might be argued (a) that the Agreement is not binding on the incoming partner(s), or (b) that Transactions entered into by the former partners are not binding on incoming partner(s).

2. ADDITIONAL QUALIFICATIONS

2.1 In the case of Partnerships which are not unregistered companies (as defined under the Companies Act) , the additional qualifications set out at section 4 of Schedule 5 (Individuals) shall apply as if set out herein (including the modifications of paragraph 4 of this opinion letter).

2.2 In the case of Partnerships which are unregistered companies,

Paragraph 4 of the opinion letter shall be construed such that references to a "Company" shall be read as being to a "partnership wound up as an unregistered company".



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SCHEDULE 4

INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 4 (*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 4 (*Insurance Companies*), "**Insurance companies**" means an insurer which is a company formed and registered under the Companies Act, and registered with the Insurance Regulatory and Development Authority.

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

1. ADDITIONAL QUALIFICATIONS

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

- (a) Under Section 52(A) of the Insurance Act the Central Government may, based on the report of the Insurance Regulatory and Development Authority, appoint an administrator ("**Administrator**"), in respect of any insurance company carrying on the life insurance business if the insurance company is carrying on business in manner likely to be prejudicial to the interest of the holders of life insurance policies. Under Section 52C of the Insurance Act the Administrator has the power to cancel or vary any contract or agreement (other than a policy) between the insurance company and any other person, which the Administrator is satisfied, is prejudicial to the interest of the holders of life insurance policies.
- (b) Section 38 of the Life Insurance Corporation Act, 1956 provides that no provision of law relating to the winding-up of companies shall apply to the Life Insurance Corporation of India ("**LIC**") and LIC will not be placed in liquidation except by the order of the Government of India and in such manner as the Government of India may direct.



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SCHEDULE 5
Individuals

Subject to the modifications and additions set out in this Schedule 5 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 5 (*Individuals*), "**Individuals**" means means individuals resident in India.

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

1. ADDITIONAL QUALIFICATIONS

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

- (a) The lack of a comprehensive registration system in relation to security created by an individual means that it is not possible to assume that significant creditors of the individual will be on notice of any security created by virtue of having checked the individual's records. This means that security created by an individual is likely to be far more vulnerable to other parties taking a legitimate interest in the property concerned.
- (b) Under the Presidency Town Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 any transfer of property not being a transfer made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the Insolvency Representative. Further, a transfer of property with a view to giving a creditor a preference over the other creditors shall, if the transferor is adjudged insolvent on a petition presented within three months after the date hereof, be deemed fraudulent and void as against the Insolvency Representative.

2. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the following qualifications at paragraph 4 are deemed to be deleted.

- a) Paragraph 4.2;



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- b) Paragraph 4.3;
- c) Paragraph 4.4;
- d) Paragraph 4.11 (a);
- e) Paragraph 4.11 (b);
- f) Paragraph 4.14 (l);
- g) Paragraph 4.14 (m).



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SCHEDULE 6

Mutual Funds

Subject to the modifications and additions set out in this Schedule 6 (Mutual Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Mutual Funds. For the purposes of this Schedule 6 (Mutual Funds), "**Mutual funds**" means scheme of funds established in the form of trust (to raise monies through the sale units to public or a section of the public under one or more schemes for investing in securities including money market instruments or gold or gold related instruments or real estate assets) constituted under the Securities Exchange Board of India (Mutual Funds) Regulations, 1996 ("**Mutual Funds Regulations**").

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

1. ADDITIONAL QUALIFICATIONS

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

Schedule 3 to the Mutual Funds Regulations prescribes the clauses that must form a part of the trust deed and requires that the trust deed shall not contain any clause which has the effect of "limiting or extinguishing the obligations and liabilities of the trust in relation to any mutual fund or the unit holders". Further, the Mutual Funds Regulations require that the trust deed should explicitly forbid the acquisition of any asset out of the trust property which involves the assumption of any liability which is unlimited and shall not result in the encumbrance of the trust property in any way.

While the Mutual Funds Regulations explicitly permit the Mutual Funds to deal in financial derivatives, the aforesaid provisions restrict the ability of a Mutual Fund to post collateral.



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SCHEDULE 7

Sovereign and Public Sector Entities

Subject to the modifications and additions set out in this Schedule 7 (Sovereign and public sector entities), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sovereign and public sector entities. For the purposes of this Schedule 7 (Sovereign and public sector entities), "**Sovereign and public sector entities**" means (a) entities (incorporated as companies pursuant to the Companies Act) in which at least 51 % of the paid up share capital is held by the Central Government or by any State Government or Governments or partly by the Central government and partly by one or more of State Governments ("**Government Companies**") and (b) entities set up under special statutes such as Government Banks as listed under Schedule 1 of this opinion letter.

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

1. ADDITIONAL QUALIFICATIONS

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

We have for the purposes of this opinion not identified all the (a) Government Companies and (b) entities that are set up under special statutes (other than Government Banks). In this regard, we recommend that prior to entering into an Agreement or Transactions with any of the aforesaid specified entities, a case by case analysis should be carried out to identify any restrictions in relation to the netting provisions, set-off provisions, and title collateral provisions together with other related issues.



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SCHEDULE 8
Trustees of Trusts

Subject to the modifications and additions set out in this Schedule 8 (Trust), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 5 (*Individuals*)) in the case of a Trustee that is an Individual) will also apply in respect of Parties which are Trust. For the purposes of this Schedule 8 (Trust), "**Trust**" means a trust set up pursuant to the Indian Trust Act, 1882 and a "**Trustee**" means an individual or a company acting as trustee of a Trust.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule (or of Schedule 5 (*Individuals*)) in the case of a Trustee that is an individual, as applicable).

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

- 1.1 To the extent this opinion relates to Trustees, it is given in respect of a Party which, in entering into the Agreement, acts as Trustee in respect of a single Trust. Where a Party acts as Trustee of more than one Trust, no opinion is expressed in relation to the Agreement except to the extent that the terms of the Agreement apply separately in relation to each Trust.
- 1.2 A defaulting Party may for the purposes of this opinion be regarded as acting as Trustee only if it com That each Party has the capacity, power and authority under the terms of any applicable Trust of which a Party is a Trustee to enter into the Agreement and Transactions; to perform its obligations under the Agreement and Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

2. **ADDITIONAL ASSUMPTIONS**

We assume:

- 2.1 That during the life of any Transaction, the Trustee(s) of the relevant Trust in respect of which a Party is acting as Trustee will remain unchanged.
- 2.2 prises a single trustee or a body of trustees.

3. **ADDITIONAL QUALIFICATIONS**



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

- 3.1 Where there is a change of trustees in respect of a Trust, incoming trustees will have no liability for the acts of their predecessors in office unless they undertake such liability. Under the laws of this jurisdiction trustees' obligations under contracts which they enter into are owed by them personally. An incoming trustee, therefore, will not become liable to discharge obligations owed by a former trustee, such as obligations incurred by other trustees before the incoming trustee's appointment, but may agree to undertake such obligations. Accordingly, it might be argued that the Agreement is not binding on the incoming trustees. If, following a change of trustees, the incoming trustees do not adopt the Agreement it could be the case that the Security Provisions would be ineffective. We express no opinion as to the effectiveness of the Security Interest Provisions in respect of any assets posted as margin or in respect of any Transactions entered into after the time of a change of trustees where no such adoption has occurred.



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ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")
2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")
3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")
4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")
5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")
6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")
7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")
8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")
9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

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

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**FOA Published Form Agreement**") expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such



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deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

Each of the Agreements listed in this Annex 1 may be deemed to include Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement.



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ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
4. An "**Equivalent 2011 Agreement without Core Rehypotheication Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypotheication Clause.
5. "**Core Provisions**" means:
 - (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
 - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypotheication Clause), the Rehypotheication Clause.
6. "**Rehypotheication Clause**" means:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (*Rehypotheication*);
 - (ii) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (*Rehypotheication*);



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- (iii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (*Rehypothecation*); and
- (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

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

- (a) the **"Security Interest Clause"**, being:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the



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foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

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

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (***Power to charge***);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (***Power to charge***);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (***Power to charge***);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (***Power to charge***);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (***Power to charge***);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (***Power to charge***);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (***Power to charge***);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (***Power to charge***);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (***Power to charge***); and
- (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

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

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



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- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); and
 - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (***Power of appropriation***);



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- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (*Power of appropriation*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (*Power of appropriation*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (*Power of appropriation*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (*Power of appropriation*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (*Power of appropriation*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (*Power of appropriation*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (*General lien*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (*General lien*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (*General lien*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);



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- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);



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- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).
8. **"Two Way Clauses"** means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.



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ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as “you”, “Counterparty”, “Party A/Party B”) provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.
4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.
5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.
6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.



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7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.



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7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.