14 February 2013

File No: 32724

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

Dear Sirs,

NETTING ANALYSER LIBRARY: FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of the State of Israel ("**Israel**" or ("**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 Parties which are companies formed and registered under the Companies Ordinance (New Version), 1983 (the "**Companies Ordinance**") or the Companies Law, 1999 (the "**Companies Law**"); 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.

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 Schedule 1:

1.2.1 Banks/financial institutions;

1.2.2 Investment firms/broker dealers;

1.2.3 Partnerships;

1.2.4 Insurance companies/providers;

1.2.5 Individuals;

1.2.6 Funds;

1.2.7 Sovereign and public sector entities;

1.2.8 Pension funds;

1.2.9 Charitable trusts.

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

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

1.4 In this opinion letter:

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

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

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

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

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

(d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the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

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

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

1.4.4 "**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)."

1.4.5 "**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.

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.

1.4.11 references to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments.

2. ASSUMPTIONS

We assume the following:

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

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

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the

Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

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

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

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

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

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

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

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

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

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

2.13 That, except with respect to our opinion at paragraph 3.3 or as otherwise expressly noted, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located outside this jurisdiction.

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

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, our opinion is set forth below.

As a preliminary comment, we note that the field of private international law is not well developed in Israel and there is no substantial body of case law on the subject. Such case law as there is tends, though not exclusively, to follow English law. Since the answers to the questions addressed below depend, in part, on principles of private international law, it is not possible to give an unqualified opinion on these points. The following opinions are based on our best understanding of current Israeli statute and case law.

3.1 Valid Security Interest

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

The opinion stated in this paragraph 3.1.1 is based on the following legal analysis. Under Israel's Pledge Law, 1967 (the "Pledge Law"), a security interest is created by agreement between the debtor and the creditor (Section 3(a) of the Pledge Law).There are no further formal or procedural requirements for the creation of a security interest. Accordingly, the Security Interest Provisions would create a valid Security Interest over the Collateral. In order for the Security Interest to be enforceable against third party creditors or a liquidator of the Counterparty it is necessary for the Security Interest to be perfected under Israeli law. The perfection of the Security Interest is addressed in paragraph 3.2 below.

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

Under Israeli law, the enforcement of a Security Interest must, subject to certain exceptions, be effected through the Israeli court system (either by order of the court or by order of the court's execution office). Enforcement of a Security Interest by self-help is generally not permitted under Israeli law. One exception to this rule is the enforcement of a security interest by an "institutional entity" (including a licensed banking corporation) (Section 17(3) of the Pledge Law). The term "institutional entity" only applies to entities licensed or regulated in Israel, however, and therefore the provisions of Section 17(3) of the Pledge Law will generally not apply to Firms. Another exception to the general rule concerns the enforcement of a security interest over an asset which consists of rights against a third party (Section 20 of the Pledge Law). It is generally thought that where a Security Interest is taken over a bank account, for example, it is possible to enforce the security interest directly since the asset in

question is a debt owed by the account-holding bank. It is unclear whether Section 20 of the Pledge Law applies to the enforcement of a Security Interest over a securities account.

A critical question here is therefore whether an Israeli court would consider the enforcement of the Security Interest to be governed by Israeli law or by the law of another jurisdiction (for example, the law chosen by the parties to govern the Agreement or the law of the country in which the relevant account is held). To the best of our knowledge, there is no directly relevant case law on the question of the law governing the enforcement of a security interest over dematerialised or indirectly held securities. As noted above, the Israeli courts have tended to follow the decisions of the English courts in the field of private international law. Prior to the implementation of the EC Financial Collateral Directive under the Financial Collateral Arrangements (No. 2) Regulations 2003, Dicey & Morris, The Conflict of Laws (at paragraph 24-064) opined that the better view was that "the investor's proprietary rights are located at the place where his account with the depositary is maintained, and that the law which governs dealings with these rights is the law which governs his relationship with the broker". The EC Financial Collateral Directive and the Financial Collateral Arrangements (No. 2) Regulations 2003 adopt the approach that questions of the validity, enforceability, perfection etc. of "book entry securities collateral" are governed by the law of the country in which the account is maintained with the relevant intermediary. In our opinion, it is highly likely that an Israeli court would adopt one or another of these approaches with respect to the law governing the enforcement of the Security Interest, and accordingly, where the account over which the Security Interest is taken is outside Israel, would acknowledge that the Firm is not required to enforce the Security Interest through the Israeli courts.

In the context of Insolvency Proceedings against the Counterparty, the Israeli court has held that it is necessary to determine whether the foreign law confers a benefit on the creditor which is not available to him under the laws of Israel and, if so, whether the benefit is "material and conflicts with fundamental principles of Israeli insolvency law (e.g., an attempt to confer upon a creditor a priority over other creditors of similar status, or an attempt to validate undue preferences, etc.) or conflicts with general principles of justice prevailing under Israeli law (e.g., unjust enrichment of one creditor at the expense of other creditors, etc.)" or whether the benefit "relates merely to differences in calculations, or in other consequences that do not contradict basic principles of Israeli insolvency law, or if the creditor would be unfairly and materially prejudiced if the foreign law is not applied". In the latter case, the court will consider enforcing the choice of foreign law notwithstanding the existence of Insolvency Proceedings. (Bankruptcy Application 001361/02 Warner Bros v. The Trustee of Tevel. The quotations above are from the decision of the District Court. The decision was appealed to the Supreme Court, but not on the issues described here.)

In the present instance it is strongly arguable that to the extent the enforcement (as defined above) of the Security Interest confers a benefit on the Firm which is not available to it under Israeli law (for example, the ability to liquidate the collateral immediately without the need to apply to the Israeli court), this benefit is not material or fundamental, and moreover that failure to recognise the foreign law in this instance would materially prejudice the Firm. This indeed appears to be implicit in the fact that, as noted above, Israeli institutions are permitted to enforce a security interest over traded securities by self-help. The preceding comments assume that the Security Interest over the non-cash collateral is enforced by means of an on-exchange sale or in an otherwise commercially reasonable manner.

The preceding comments apply to the enforcement of a Security Interest over non-cash collateral. In the case of cash collateral, in our opinion the Firm will be able to enforce the Security Interest in accordance with the terms of the Agreement.

3.1.3 It is unlikely that an order of an Israeli court imposing a moratorium or stay with respect to the Counterparty would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

Section 267 of the Companies Ordinance [New Version], 1983 (the "Companies Ordinance") states that once a liquidation order is given or a temporary liquidator appointed, no procedure against the company shall be commenced or continued without the authorisation of the court and according to the terms set by it. Under Section 264 of the Companies Ordinance, the court may order a stay of all pending proceedings after the application for liquidation has been filed with the court. However, these stays do not apply to the enforcement of a security interest. The same rules apply under the Bankruptcy Ordinance [New Version], 1980 (the "Bankruptcy Ordinance") which governs insolvency proceedings with respect to individuals and partnerships.

Under Section 350 of the Companies Law, 1999 (the "Companies Law"), the court has the right, within the context of a shareholders' or creditors' scheme of arrangement, to order a stay on proceedings against the company for up to nine months. During this period, the court may permit a holder of a fixed or floating charge to enforce its security, if it is satisfied either that adequately protection of the secured creditor's rights has not been guaranteed or that enforcement of the security interest would not jeopardize the creditors' arrangement. Pursuant to Amendment No. 19 to the Companies Law, which was passed in July 2012 and will come into effect in mid-January 2013, Section 350 of the Companies Law will be replaced by a new statutory regime for corporate recovery which is set out in Chapter 3 of Part 9 of the Companies Law. The new statutory regime includes provisions regarding the impact of a stay order on the enforcement of a security interest that are broadly equivalent to those currently found in Section 350.

In our opinion, it is highly likely that following a stay of proceedings order made by an Israeli court with respect to the Counterparty under Section 350, or Chapter 3 of Part 9, of the Companies Law, an Israeli court would permit the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral. It is likely that both criteria for permitting the enforcement of a security interest notwithstanding a stay order – namely, the "adequate protection" test and the "jeopardizing the recovery" test – are satisfied in the case of Collateral delivered under the Agreement. It is hard to conceive that a portfolio of cash and non-cash margin is the type of asset liquidation of which could jeopardize a corporate recovery. Moreover, since the value of securities is subject to rapid fluctuation, it is strongly arguable that a delay in enforcement of the Security Interest could leave the Firm's rights inadequately protected by the Collateral.

Moreover, the arguments adduced at paragraph 3.1.2 above in support of the conclusion that the Security Interest should be enforceable in accordance with foreign law notwithstanding the existence of Insolvency Proceedings against the Counterparty apply mutatis mutandis to corporate recovery proceedings under Section 350 or Chapter 3 of Part 9 of the Companies Law. In relation to Section 350 of the Companies Law, the Israeli court has drawn a parallel between corporate insolvency and recovery proceedings and has stated that same general principles should apply to each. This general equivalence is now expressly acknowledged in the new Chapter 3 of Part 9 of the Companies Law. On the face of it, this argument is less compelling in the context of a stay of proceedings than in the context of insolvency proceedings. In an insolvency context, the application of foreign law rather than Israeli law to the enforcement of the Security Interest is likely at most affect the price at which the Collateral is realised; in the context of a stay, the application of foreign rather than Israeli law has the effect of depriving the Counterparty of the pledged assets at a time when it is undergoing a corporate recovery. However, since in the present case the Collateral comprises assets which the Counterparty is in any event not free to use or dispose of, the argument continues to hold that enforcement of the Security Interest in accordance with foreign law would not conflict with fundamental principles of Israeli insolvency (or, in this context, corporate recovery) law.

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

The opinion set forth above is based on, and subject to the qualifications set out in, the following legal analysis.

3.1.4.1 Under Israeli law, the order of priority of claims in an insolvency places the following claims ahead of those of a creditor whose debt is secured by a fixed charge:

(i) A statutory charge over certain assets (e.g. a real estate asset) in favour of the tax authorities for tax owed in respect of that asset. Cash and securities are not subject to a statutory charge in favour of the tax authorities.

(ii) A possessory lien over movable property under Section 11 of the Movable Property Law, 1971. Such a lien is not relevant to dematerialised or indirectly held securities.

3.1.4.2 A debt secured by a fixed charge only enjoys priority if the charge is duly perfected. (On this point, see paragraph 3.2 below.) If the fixed charge is not perfected, the debt will rank as an unsecured debt in the insolvency.

3.1.4.3 The opinion set forth in paragraph 3.1.4 assumes that the charge created under the Security Interest Provisions will be recognised under Israeli law as a fixed charge, rather than a floating charge. In the order of priority of claims in an insolvency, a debt secured by a floating charge ranks beneath a debt secured by a fixed charge, as well as beneath the expenses of the liquidation, certain preferred claims (e.g., wages (up to a certain limit), certain taxes and certain rental payments in respect of a lease of land).

3.1.4.4 In our opinion, it is likely that the Security Interest Provisions will be regarded as creating a fixed charge under Israeli law, and that substitution of Collateral, subject to the consent of the Firm in accordance with the provisions of the Agreement, will not result in the Security Interest Provisions being regarded as creating a floating charge. Although Israeli court decisions have in the past emphasised the ability to identify the charged assets as being the decisive criterion in determining whether a charge is a fixed or a floating charge, and have tended to regard a charge over a fluctuating pool of assets as a floating charge, in the present instance the Collateral is at any given moment in time clearly identifiable.[1] Moreover, recent English court decisions have emphasised the "control" test (i.e. the ability of the charge holder to supervise and control the charged assets) test, as being the decisive test of whether a charge over a fluctuating pool of assets is a fixed or a floating charge. Although, to the best of our knowledge, there is no case law in Israel that expressly supports this view, this approach is supported by leading Israeli scholars.[2]

3.2 **Further acts**

In order for the Non-Defaulting Party to obtain a Security Interest over the Collateral that is valid vis-a-vis third party creditors of the Counterparty, Israeli law requires that the Security Interest is duly perfected. The steps that are required in order to prefect a Security Interest under Israeli law are described below.

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[1] This may be distinguished from the facts in The First International Bank v. Pan-El International Trade P.E Ltd. (in liquidation), in which the Supreme Court recharacterised a "first priority fixed pledge" over a fluctuating pool of movable assets deposited in a bonded warehouse as a floating charge. In this case, charger kept no proper record of the charged assets and was unable to identify which assets were subject to the charge.

[2] Shalom Lerner, Company Charges (1996), 7.31-7.32.

The question of how the Non-Defaulting Party enforces its Security Interest over the Collateral, and whether Israeli law requires further acts to be done or conditions to be satisfied before the Security Interest may be enforced, has been addressed at paragraph 3.1.2 above.

We believe that an Israeli court is likely to take the view that the perfection requirements under Israeli law with respect to a security interest granted by an Israeli Counterparty are mandatory, notwithstanding the parties' choice of governing law under the Agreement. The method of perfection of a Security Interest under Israeli law is registration of the Security interest at the appropriate Israeli registry – the Companies Registry in the case of a Counterparty which is a company registered in Israel, the Pledges Registry in other cases (Section 4 of the Pledge Law and Section 178 of the Companies Ordinance).

The Pledge Law governs the perfection of security interests where no other law makes special provision. For companies, the rules regulating the perfection of Security Interests are set out in the Companies Ordinance and these rules therefore, according to the better view, supersede the provision of the Pledge Law. Section 178 of the Companies Ordinance provides that perfection of a Security Interest requires registration at the Companies Registry only in the case of specifically listed types of asset. However, the Israeli courts have interpreted this section in a broad fashion. The upshot of Israeli case law and academic discussion is that, in practice, the rules under the Pledge Law and under the Companies Ordinance are virtually indistinguishable. Accordingly, the rule for perfection of Security Interests, of corporate and non-corporate entities alike, is that perfection requires registration at the appropriate registry unless the Collateral comprises movable property or bearer securities which have been deposited with the Secured Party or with a third party on behalf of the Secured Party. It is generally believed that perfection of a Security Interest by physical deposit is not possible in the case of registered securities, or dematerialised or indirectly held securities, and moreover that transfer of such securities into the name of the secured creditor is not the functional equivalent of physical deposit. Accordingly, the method of perfection for such securities is registration of the Security Interest. Although it is arguable that cash constitutes movable property for these purposes, there is no definitive answer to this question and the prudent approach is therefore to register a security interest in respect of cash collateral as well.

A fixed charge registered at the Companies Registry must be registered within 21 days of the creation of the charge although the Registrar has discretion to extend this period. If it is registered within the 21 day period, it is valid against a third party or liquidator from the date of its creation and will take priority over a charge created after the date of its creation. If the Registrar grants permission for late registration he may do so subject to conditions, for example that the registration does not prejudice the rights of third parties created prior to the registration (e.g. the rights of a charge holder under a charge created prior to the registration). There is no time limit for registering a fixed charge at the Pledges Registry. However, the charge will only bind a third party or bankruptcy official from the date of registration.

Registration at the Companies Registry requires the filing of a registration notice, signed by the Counterparty, together with the document that creates the Security Interest. The practice of the Companies Registrar in recent years has been to require the filing of a Hebrew-language security instrument, or a Hebrew language translation where the instrument creating the Security Interest is a non-Hebrew document. Registration of a Security Interest at the Pledges Registry does not require filing of the instrument creating the Security Interest, only the notice of registration.

Regarding the question of whether a fresh registration is required each time new Collateral is delivered to the Firm (e.g. under mark-to-market collateral provisions, or following a substitution of collateral), there is no definitive answer under Israeli law. The leading textbook on the subject (Shalom Lerner, Company Charges, 1996, 7.32) notes that common practice in Israel is to make a one-off registration of a charge over the securities account and its contents, and that such a charge is likely to be recognised as a fixed charge.

3.3 **Foreign Collateral Providers**

In the case of a foreign company that maintains a fixed place of business in Israel, Section 187 of the Companies Ordinance expressly provides that the requirement to make a registration at the Companies Registry in order to perfect the Security Interests applies with respect to Collateral that comprises assets located Israel. If the Counterparty is not established or resident, nor maintains a fixed place of business, in Israel, and the only Israeli nexus is the location of the assets subject to the Security Interest, there is no clear rule of law. The prudent course of action is to perfect the Security Interest by registration in Israel. In such a case, the registration is made at the Pledges Registry.

With regard to the enforcement of the Security Interest, the opinions given at paragraphs 3.1 and 3.2 also apply, with the addition of the following comment. In practice, it is highly unlikely that a situation would arise with respect to a foreign Collateral provider in which an Israeli court would question the applicability of foreign law to the enforcement of the Security Interest. We noted at paragraph 3.1 that, in the context of Israeli insolvency or corporate recovery proceedings, the Israeli court is likely to accept that enforcement of the Security Interest will be governed by foreign law unless the foreign law materially conflicts with fundamental principles of Israeli insolvency law or general principles of justice. To this should be added that although the Israel court in principle has jurisdiction to conduct insolvency proceedings against a foreign company which has assets in Israel, in practice this will only occur in highly exceptional circumstances. Where insolvency proceedings have been commenced against the foreign company in its jurisdiction of incorporation and the foreign court has asserted its jurisdiction to manage the overall international insolvency, the Israeli courts will recognize the foreign court's jurisdiction and will not allow ancillary insolvency proceedings to be instituted in Israel unless the foreign judgment could undermine an important element of Israeli public policy.

3.4 **Right of re-use**

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

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

The opinion set forth in this paragraph 3.4 is based on the following considerations. It is likely that an Israeli court will regard the effectiveness of the Rehypothecation Clause as being governed by the contractually agreed governing law of the Agreement. Insofar as Israeli law is held to apply, the Pledge Law does not specifically address the question of rehypothecation of securities (including the sale of the securities to a third party) and, to the best of our knowledge, there is no case law in Israel on this question. However, Section 10 of the Pledge Law provides that the holder of a pledge is permitted to make use of the pledged asset or to benefit from the income deriving from it if the pledgor has expressly permitted this either in the pledge agreement or afterwards. Where the pledgor has allowed the pledgee to make use of the pledged assets or to benefit from its income, the pledgee must pay the pledgor an appropriate consideration unless otherwise agreed. In addition, there is some support in the academic literature for the view that if the parties expressly agree, the holder of the pledged assets may sell the assets and replace them with substitute assets; however, there is no case law to support this opinion. On the basis of these considerations, we are of the opinion that an Israeli court would regard the Rehypothecation Clause as being effective in accordance with its terms.

4. QUALIFICATIONS

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

4.1 The qualifications to this opinion have been set forth in the body of the opinion itself.

4.2 The opinions stated above regarding the enforceability of the Security Interest Provisions assume that transfers or deliveries of cash or non-cash collateral by the Israeli Counterparty will not be invalidated by virtue of having been made after the commencement of liquidation or corporate recovery proceedings, or within a "suspect" period prior to the commencement of such proceedings. In this connection, the following provisions of Israeli insolvency law should be noted.

Section 268 of the Companies Ordinance treats as void any transaction in the assets of a company made after the presentation of a winding up petition against the company, although the court has discretion to enforce such a transaction. The court may, for example, exercise the discretion whether the transaction is for full consideration and does not prejudice the creditors of the

company. Chapter 3 of Part 9 of the Companies Law applies the provisions of Section 268 to the presentation of a petition for a stay of proceedings order in the context of a corporate recovery.

Section 98 of the Bankruptcy Ordinance (as applied to companies under Section 355 of the Companies Ordinance) provides that where a transfer of property, charge, payment etc. is made by a person at a time when he is unable to pay his debts as they fall due, in favour of a creditor with a view to giving a preference to the creditor or as a result of coercion or undue influence exercised by that creditor, and the debtor is declared a bankrupt pursuant to a bankruptcy petition filed within three months of the transfer etc., this is deemed to be a fraudulent preference and is void against the liquidator. In the case of a company liquidation, one looks back three months from the date on which the liquidation petition was filed in the case of a court winding-up or from the date of the company's winding-up resolution in the case of a voluntary liquidation. Under Chapter 3 of Part 9 of the Companies Law these provisions will apply also to the three month period prior to the presentation of a petition for a stay of proceedings order in the context of a corporate recovery. Any payment or delivery of margin within the "suspect" period, including payments pursuant to the mark-to-market provisions, will be at risk of being challenged by a liquidator. However, in order to set aside the payment, the liquidator would need to show that the insolvent party made the payment with a view to giving the Firm a preference over other creditors. The normal burden of proof applicable in civil cases would apply.

Regarding the requirement for the payment to have been made with a view to giving a preference to the creditor, a series of Supreme Court decisions have established that the burden of proof is on the liquidator and the standard of proof demanded by the court is high. The liquidator must prove that not only does the payment in fact benefit the creditor over the counterparty's other creditors but that the counterparty had a positive intention to benefit the creditor in this way and this intention to prefer the creditor must have been the counterparty's dominant intention in making the payment. The fact that a due date for payment has arisen under the Agreement is an indicator that the counterparty was making the payment merely with a view to fulfilling its routine business obligations and not with the view to giving the creditor a preference. Also, the fact that the payment forms part of an ongoing financial relationship or transaction between the counterparty and the Firm is also strongly indicative that the payment is not being made with the dominant intention of giving a preference to the creditor.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any

competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,

Herzog, Fox & Neeman

SCHEDULE 1

Subject to the modifications and additions set out in this Schedule 1, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are of the types listed below.

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. Banks/financial institutions: The term "banking corporation" as defined in the Banking (Licensing) Law, 1981 includes an Israeli bank, a foreign bank which holds a "foreign bank" licence from the Bank of Israel, a mortgage bank, an investment finance bank, a merchant bank, a financial institution and a joint services company. The Banking Ordinance, 1941 (the "Banking Ordinance") confers on the Governor and the Superviser of Banks at the Bank of Israel certain powers to intervene in the management of the business affairs of a banking corporation where they are of the view that its affairs are not being conducted properly. In particular, Section 8D of the Banking Ordinance authorises the Governor to appoint a special administrator to manage the bank, or a special supervisor to supervise the management of the bank, where the Governor is of the view that the bank "is unable to meet its obligations, or is unable to return an asset that was deposited with it on account of having managed its business in a manner that deviates from proper banking conduct, or if members of its board of directors or its business managers have acted in a manner that is liable to prejudice the proper conduct of the bank's business". Section 8J of the Banking Ordinance authorizes the special administrator to direct that the bank will not discharge its liabilities for a period of up to 10 days (which period may be extended by the Governor for a further 10 days) ("moratorium period"). During the moratorium period, no winding up or receivership order may be made against the bank, no resolution may be passed fo voluntary liquidation and no enforcement proceedings (including enforcement of a security interest) may be taken against the bank, except on the petition of or with the written approval of the Attorney General (Section 8L of the Banking Ordinance). It is unclear to what extent the legal arguments advanced in paragraphs 3.1.2 and 3.1.3 of this opinion letter apply in the circumstances of a moratorium imposed by a special administrator, and therefore whether a Firm would be entitled to enforce its Security Interest collateral in these circumstances.

2. Partnerships: The opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of partnerships, except that partnerships are not subject to Israeli company law and are therefore not subject to corporate recovery proceedings under Section 350, or Chapter 3 of Part 9, of the Companies Law.

3. Insurance companies/providers: An insurance company, as defined in the Supervision of Financial Services (Insurance) Law, 1981, is subject to a special administration regime similar to that applicable to banking corporations. Section 68 of the Supervision of Financial Services (Insurance) Law, 1981 (the "Insurance Law") authorises the Supervisor of Insurance Business to appoint a special administrator over a failing insurance company. The special administrator has the power, inter alia, to prepare a recovery programme, to be approved by the court. Within the context of the recovery programme, the special administrator may request the court to approve a moratorium on continuing or initiating proceedings (including enforcement of a security interest) against the insurance company (Section 70A(f) of the Insurance Law). It is unclear to what extent the legal arguments advanced in paragraphs 3.1.2 and 3.1.3 of this opinion letter apply in the circumstances of a

moratorium imposed by a special administrator, and therefore whether a Firm would be entitled to enforce its Security Interest collateral in these circumstances.

4. Individuals: The opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of individuals, except of course that the corporate recovery proceedings under Section 350, or Chapter 3 of Part 9, of the Companies Law are not relevant to individuals.

5. Provident Funds: A provident fund (including a pension fund) may or may not be established as a corporation. In the past, some pension funds were established as corporate entities, although under the current regime, provident funds do not have their own legal personality. Such funds are, however, managed by fund management companies, which enter into agreements on behalf of the fund. The provisions of the Insurance Law summarised at Section 3 above regarding the appointment of a special administrator and the special administrator's power to impose a moratorium, apply mutatis mutandis to the management company of a provident fund. As noted above, it is unclear to what extent the legal arguments advanced in paragraphs 3.1.2 and 3.1.3 of this opinion letter apply in the circumstances of a moratorium imposed by a special administrator, and therefore whether a Firm would be entitled to enforce its Security Interest collateral in these circumstances.

6. Funds: A mutual fund registered under the the Joint Investment Trusts Law, 1994 (the "Funds Law") is not organized as a separate legal entity. However, the fund management company, which enters into agreements on behalf of the mutual fund, is a corporation and is subject to the insolvency and corporate recovery proceedings described in this opinion letter.

A mutual fund may be wound up, *inter alia*, in accordance with the fund agreement or by a special resolution of unit-holders of a closed-end fund. A closed-end fund may also be wound up if the TASE has decided to delist its units. In addition, a mutual fund is subject to court liquidation proceedings that may be initiated by the unit-holders or by the Israel Securities Authority (Section 104 of the Funds Law). Although the Funds Law applies various provisions relating to the conduct of a liquidation contained in the Companies Ordinance to the liquidation of mutual funds, such court proceedings are not conducted under the Companies Ordinance. However, the same principles should apply to the winding up of a fund as apply to a corporate liquidation, as described in this opinion letter. A mutual fund is not subject to corporate recovery proceedings under Section 350, or Chapter 3 of Part 9, of the Companies Law.

7. Sovereign and public sector entities: Neither the State of Israel nor the Bank of Israel is subject to the insolvency regime of Israeli law, as set out in the Bankruptcy Ordinance and the Companies Ordinance. Government-owned companies are established as regular companies and are subject to the insolvency regime and corporate recovery regime of Israeli law, as set out in the Bankruptcy Ordinance, the Companies Ordinance and the Companies Law in the same manner as any other company.

8. Charitable Trusts: Under Israeli law a trust is not a legal entity but rather defines the legal relationship between the trustee and the trust asset. A trustee may be either an individual or a corporate entity. Where the trustee grants a security interest over trust assets, the appropriate registry for registration of the security interest will be in accordance with the legal status of the trustee, i.e. the Companies Registry where the trustee is an Israeli company and the Pledges Registry in other cases.

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

6. "**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B") provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.

4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.

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

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

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

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

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