NETTING ANALYSER LIBRARY

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

11 December 2013

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 persons which are companies formed and registered under the Companies Ordinance (New Version), 1983 (the "**Companies Ordinance**") or the Companies Law, 1999 (the "**Companies Law**");

1.1.2 banks incorporated under the Companies Ordinance or the Companies Law and which are licensed under the Banking (Licensing) Law, 1981; and

1.1.3 branches in this jurisdiction of foreign banks or other corporations.

1.2 This opinion is also given in respect of Parties that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in Schedule 1:

1.2.1 Investment firms/broker dealers;

1.2.2 Partnerships;

1.2.3 Insurance companies/providers;

1.2.4 Individuals;

1.2.5 Funds;

1.2.6 Sovereign and public sector entities;

1.2.7 Pension funds;

1.2.8 Charitable Trusts.

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

This opinion covers all types of Transaction whether entered into an exchange, any other forms of organised market place or multilateral trading facility, or over the counter, subject to the qualifications mentioned in the body of the opinion below.

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

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

1.5 **Definitions**

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

as the case may, the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or this opinion letter, this opinion letter may be read as if terms used herein were the terms as so changed.

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

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

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

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

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

2. ASSUMPTIONS

We assume:

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

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

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

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

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party.

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

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

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

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

2.10 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates and (b) a company incorporated and registered in Israel which is a member of the Tel Aviv Stock Exchange.

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

2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

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

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

3. OPINION

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

3.1 The Financial Assets Law

(a) The opinions set forth below are based on the provisions of the Contracts in Financial Assets Law, 2006 (the "**Financial Assets Law**") and are given only in respect of Agreements that fall within the scope of the Financial Assets Law. (In this opinion, the term "**Eligible Agreement**" refers to an Agreement to which the Financial Assets Law applies.) The provisions of the Financial Assets Law are set out in Annex 6 below. In order to be considered an Eligible Agreement, it is necessary (a) for the Agreement to include specified provisions, (b) for the Parties to satisfy certain conditions and (c) for the Transactions governed by the Agreement to satisfy certain conditions. Each of these points is considered in turn below.

In order to be considered an Eligible Agreement, it is necessary for the Agreement to include the following provisions: (A) a "single agreement" clause, (B) early termination provisions, (C) a termination netting clause that provides for the netting of rights and liabilities and (D) provisions stipulating the method for calculating the fair value of rights and liabilities for the purpose of termination netting. In our opinion, the FOA Netting Provision contained in a FOA Netting Agreement, read in conjunction with the "single agreement" clause (e.g. Clause 11.10 of the Professional Client Agreement, July 2011), satisfies this requirement. The question of whether the Clearing Module Netting Provision and the Addendum Netting Provision contained in a Clearing Agreement satisfy these requirements is considered in paragraphs 3.5 and 3.6 below.

(b) In order to be considered an Eligible Agreement, both Parties to the Agreement must be "corporations" and at least one Party must be a "financial institution" (as that term is defined in the Financial Assets Law) or the State of Israel. If the Firm is itself a financial institution, it is only necessary for the Israeli counterparty to satisfy the "corporation" test. If the Firm is not a financial institution, it is necessary for the Israeli counterparty to satisfy both the "corporation" test and the financial institution (or State of Israel) test. The term "corporation" is defined in Israel's Interpretation Law, 1981 as "a legal person, capable of bearing rights and liabilities and of performing legal actions". The question of whether or not the "corporation" test and the "financial institution" (or State of Israel) test are satisfied by each of the categories of Party specified in paragraph 1.2 above is addressed in Schedule 1.

(c) In order to be considered an Eligible Agreement, the Transactions governed by the Agreement must be "derivatives" transactions (or repo transactions of the type covered by the Financial Assets Law). In our opinion, the Transactions listed in Annex 2 qualify as "derivatives" transactions, as that term is defined in the Financial Assets Law, subject to the following qualifications: (a) There is some question as to whether spot transactions constitute "derivatives" under the Financial Assets Law. In our opinion, a spot transaction falls within the scope of the definition unless it is a same-day swap. (b) The list of Transactions in Annex 2 includes (at paragraph (A)(v)) "any other transaction" which the parties agree to treat as a Transaction for the purposes of the Agreement. To the extent the parties agree to treat a transaction

which is not a "derivative" transaction (as defined in the Financial Assets Law) as a Transaction for the purposes of the Agreement, the provisions of the Financial Assets Law will not apply to it. (c) To the extent the Transactions listed in paragraphs (B), (C) and (D) in Annex 2 are not "derivative" transactions (as defined in the Financial Assets Law), the provisions of the Financial Assets Law will not apply to them.

(d) In our opinion, where the Transactions entered into under an Agreement include both transactions to which the Financial Assets Law applies and transactions to which the Financial Assets Law does not apply, the Agreement will be regarded as an Eligible Agreement to the extent it relates to Transactions covered by the Financial Assets Law.

3.2 **Insolvency Proceedings**

The term "insolvency proceedings" is defined in the Financial Assets Law to mean "liquidation and receivership proceedings, under the Companies Ordinance (New Version), 1983 (the "**Companies Ordinance**") and proceedings under Chapter 3 of Part 9 of the Companies Law, 1999 (the "**Companies Law**")." Chapter 3 of Part 9 of the Companies Law is the Israeli corporate recovery regime under which the creditors or shareholders of a distressed company may apply to the court for a stay of proceedings and the appointment of an administrator. Chapter 3 of Part 9 was introduced into the Companies Law pursuant to Amendment No. 19 to the Companies Law, which was enacted in July 2012 and came into effect in mid-January 2013. (The same definition of "insolvency proceedings" is, incidentally, adopted under Chapter 3 of Part 9 of the Companies Law.)

In addition to the insolvency proceedings under the Companies Ordinance and the Companies Law, banks and insurance companies may be subject to special arrangements under legislation applicable to them, under which the relevant regulatory authority (i.e. the Bank of Israel or the Supervisor of Insurance Business at the Ministry of Finance) has the power to appoint a special administrator to manage the business of the bank or insurance company, if that regulator believes that the bank's or insurance company's affairs are not being conducted properly or that it is experiencing financial difficulty. 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 bank 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". The Israeli insurance legislation makes similar provision for the special administration of a distressed insurance company.

In our opinion, the events specified in the Insolvency Events of Default Clause adequately cover all Insolvency Proceedings, as described above, without the need for any additions.

3.3 **Recognition of choice of law**

3.3.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction, even if neither Party is incorporated or established in England. Generally, the courts of Israel recognise the choice of foreign law to govern a contract unless it conflicts with any mandatory provision of Israeli law that involves a matter of public policy or a "fundamental principle of justice."

3.3.2 The question of whether and in what circumstances an Insolvency Representative or court in this jurisdiction would have regard exclusively to English law, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions, is addressed in detail below. To summarise: (a) As a general rule, to the extent these provisions are inconsistent with the provisions of Israeli insolvency law, in the sense of conferring rights and benefits on the Firm that it would not otherwise enjoy under Israeli insolvency law, Israeli law will prevail. (b) As a general rule, the Title Transfer Provisions may be recharacterised under Israeli law as creating a security interest. (c) The risk of both (x) Israeli insolvency law prevailing over FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision and (y) the Title Transfer Provisions being recharacterised as a security interest, are mitigated where the Agreement is an Eligible Agreement.

3.4 **Enforceability of FOA Netting Provision**

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

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

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

We are of this opinion because:

When the FOA Netting Provision is triggered by an Event of Default that is not an Insolvency Event of Default, the question of the validity and enforceability of the FOA Netting Provision will be determined under the governing law of the Agreement. As noted above, we believe that an Israeli court would uphold the parties' choice of English law to govern the Agreement. Moreover, insofar as the question falls to be determined under Israeli law, Section 53 of the Contracts (General Part) Law 1973 (the "**Contracts Law**") allows for contractual set-off by one party upon giving notice to the other party, subject to the conditions specified in that section. However it is possible to derogate from the provisions of Section 53 and to make a contrary stipulation in the contract (for example, dispensing with the need for a set-off notice). In our view, therefore, the FOA Netting Provision would be enforceable when it is triggered by an Event of Default that is not an Insolvency Event of Default.

When the FOA Netting Provision is triggered by an Insolvency Event of Default, it is necessary to consider the validity and enforceability of the FOA Netting Provision under Israeli insolvency law because, to the extent the FOA Netting Provision contradicts Israeli law, the latter would govern. In the case of an Eligible Agreement, the FOA Netting Provision will be enforceable in accordance with its terms notwithstanding the existence of "insolvency proceedings" (as that term is defined in the Financial Assets Law) in accordance with provisions of Section 2 of the Financial Assets Law.

As noted at paragraph 3.2 above, the term "Insolvency Event of Default" as used in the Agreement is broader than the term "insolvency proceedings", as defined in the Financial Assets Law. For example, the term "Insolvency Event of Default" as used in the Agreement covers the appointment of a special administrator over a bank or insurance company under the Israeli banking and insurance legislation. In our opinion, the existence of such proceedings does not impair the enforceability of the FOA Netting Provision. The Banking Ordinance authorizes the special administrator to impose a moratorium with respect to the distressed bank (for a period of up to 10 days, which period may be extended by the Governor for a further 10 days) during which no enforcement proceedings may be taken against the bank, except on the petition of or with the written approval of the Attorney General (Sections 8K and 8L of the Banking Ordinance). Similar provisions exist under the insurance legislation. 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 against the insurance company (Section 70A(f) of the Insurance Law). However, the term "proceedings" does not include a unilaterally exercisable contractual remedy such as the rights conferred on the Non-Defaulting Party under the FOA Netting Provision.

3.5 Enforceability of the Clearing Module Netting Provision

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

This opinion is based on the same legal analysis as set forth in paragraph 3.4 above, but is subject to the following qualifications.

3.5.1 In order for termination and netting provisions in a master agreement to be considered "early termination provisions" as defined in the Financial Assets Law, it is necessary that they include, inter alia, (a) a "single agreement" provision stipulating that the master agreement constitutes a single agreement with respect to *all* transactions included in it, (b) a provision stipulating that upon the occurrence of specified events, *all* transactions included in the master agreement shall or may be terminated, and (c) a provision stipulating that upon early termination of all the transactions included in the master agreement, the value of the rights or liabilities of one party to the other shall be calculated on a net basis. (See paragraph 3.1(b) above and the definition of "early termination provisions" in Annex 6 below.) On the face of it, the Clearing Module Netting Provision does not satisfy this definition since it calls for the termination and netting of a subset only of the transactions under the Agreement.

In our opinion, there appears to be no reason in principle why the Financial Assets Law should provide statutory protection to early termination provisions which apply to all transactions entered into under a master agreement but not to early termination provisions which apply to a subset only of such transactions. The defect identified above is therefore, in our opinion, technical and may be cured by replacing the third paragraph of the preamble to the FOA Clearing Module with the following paragraph (or wording to the equivalent effect).

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for

the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

3.5.2 To the extent that, pursuant to the Clearing Module Netting Provision, the terminated Client Transactions are valued for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values, as of a date later than the date of a liquidation order or a stay of proceedings order made against the Firm, the valuation may not be recognised by an Israeli court and may be replaced by a valuation as of such earlier date. This follows from Section 2 of the Financial Assets Law which states that although early termination provisions in a master agreement to which that law applies will be effective notwithstanding the commencement of insolvency proceedings, this does not derogate from the provisions of general Israeli insolvency law regarding the date for the submission of debt claims and the date for determining their value. In this connection, it should also be noted that where a creditors' arrangement is approved by the court under Chapter 3 of Part 9 of the Companies Law, a creditor is not entitled to submit a debt claim after the date of such court approval.

3.5.3 It is emphasised that the qualifications stated in paragraphs 3.5.1 and 3.5.2 above are relevant where the *Firm* is subject to insolvency proceedings in Israel. In all other cases where the Clearing Module Netting Provision applies – e.g., where an Event of Default occurs for reasons other than the Firm's insolvency, or the insolvency proceedings against the Firm are not conducted in Israel or the Clearing Module Netting Provision is triggered by a CCP Default – the qualifications stated above should not be relevant and the Clearing Module Netting Provision will be effective in accordance with its terms. Accordingly, our recommendation in paragraph 3.5.1 to amend the wording of the preamble to the FOA Clearing Module only applies where the Firm is an Israeli resident entity.

3.6 Enforceability of the Addendum Netting Provision

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

This opinion is based on the same legal analysis and subject to the same qualifications as set forth in paragraph 3.5 above.

On the basis of the qualification set out in paragraph 3.5.1 above as it applies mutatis mutandis to the Addendum Netting Provision, we are of the opinion that in order for

the opinion expressed in this paragraph 3.6 to apply in circumstances where the Clearing Member is subject to insolvency proceedings in Israel, the following paragraph (or wording to the equivalent effect) should replace the third paragraph of the preamble to the ISDA/FOA Clearing Addendum.

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

For the reasons set out in paragraph 3.5.3 above, our recommendation to amend the wording of the preamble to the ISDA/FOA Clearing Addendum only applies where the Firm is an Israeli resident entity.

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

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.4 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. In a case where a Party, who would (but for the use of the FOA Clearing Agreement or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

In paragraphs 3.5 and 3.6 above, we proposed language to ensure that the Clearing Module Netting Provision and the Addendum Netting Provision could be regarded as "early termination provisions" under the Financial Assets Law. The proposed

language is drafted with a view to ensuring that the FOA Netting Provision also continues to satisfy the definition of "early termination provisions" where the FOA Netting Agreement is used in conjunction with the FOA Clearing Module or the ISDA/FOA Clearing Addendum. The opinion set out in this paragraph 3.7 is therefore given whether or not such language is included in the FOA Clearing Module or the ISDA/FOA Clearing Addendum. (That is to say, the language proposed in paragraphs 3.5 and 3.6 above is intended to ensure the effectiveness of the Clearing Module Netting Provision and the Addendum Netting Provision, and does not affect the effectiveness of the FOA Netting Provision.)

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

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

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

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

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

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

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

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

(a) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off

against the Liquidation Amount (where such liquidation amount is owed by the Client); or

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

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

The opinions set forth in paragraphs 3.8.1 and 3.8.2 above are subject to the qualifications set forth in paragraph 3.8.4(f) and 3.8.5 below.

In addition, in order for the opinions expressed in this paragraph 3.8 with regard to the Margin Cash Set-Off Clause to apply, the following amendments are necessary:

(a) The amendments set forth in paragraph 3.8.6 below, namely:

Move the Margin Cash Set-off Clause to the Default, Netting and Termination Module (the "Netting Module") and re-word along these lines:

"If there is an Event of Default or this Agreement terminates, we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance of cash margin delivered by you to us after all Obligations have been taken into account. The net balance, if any, shall take into account the Liquidation Amount payable under this Netting Module of this Agreement."

Alternatively, the last (i.e. the square bracketed) sentence of the Margin Cash Set-off Clause could be replaced by the following:

"Accordingly, upon the occurrence of a Liquidation Date in accordance with clause 11.4 below, the balance of cash margin will be treated as a negative amount in the determination of the Liquidation Amount."

(b) The amendment set forth in paragraph 3.5.1 above, namely:

The replacement of the third paragraph of the preamble to the FOA Clearing Module by the following paragraph (or wording to the equivalent effect).

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

(c) The amendment set forth in paragraph 3.6 above, namely:

The replacement of the third paragraph of the preamble to the ISDA/FOA Clearing Addendum with the following paragraph (or wording to the equivalent effect).

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

The foregoing opinion is based on the legal analysis set forth in paragraphs 3.8.3 to 3.8.6 below.

3.8.3 The following legal analysis is relevant to circumstances in which the Defaulting Party is subject to insolvency proceedings under Israeli law. The General Set-Off Clause applies to any mutual indebtedness between the Firm and the Counterparty and is not restricted to indebtedness arising under Transactions executed under the Agreement. Moreover, the General Set-Off Clause applies to any indebtedness including contingent debts.

3.8.4 In view of the fact that the General Set-off Clause is not restricted to indebtedness arising upon early termination of Transactions executed under the Agreement, the General Set-off Clause cannot be regarded as an "early termination provision" under the Financial Assets Law and the provisions of that law will not apply to it. The enforceability of the General Set-off Clause will therefore be governed by general principles of Israeli contract and insolvency law, as summarised below.

(a) When the set-off rights under the General Set-Off Clause are exercised prior to the commencement of insolvency proceedings against the counterparty, the legal analysis will be the same as set forth in paragraph 3.4 above with respect to set-off under contract law.

(b) When the set-off rights under the General Set-Off Clause are exercised after the commencement of insolvency proceedings against the counterparty, the question of their enforceability will be determined in accordance with general principles of Israeli insolvency law. Section 74 of the Bankruptcy Ordinance (New Version), 1980 (the "**Bankruptcy Ordinance**"), which applies to companies by virtue of Section 353 of the Companies Ordinance, provides as follows:

"Where there have been mutual credits, mutual debts or other mutual dealings between a debtor over whose assets a receiver has been appointed and a person proving a debt under the order of appointment, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid respectively. The

provisions of this Section shall not entitle a person to set-off against the property of the debtor if, at the time of giving credit to the debtor, he had notice of an act which at the date of the delivery of the petition on which adjudication was made was available for a bankruptcy petition against the debtor.

"The transactions capable of being set off under this Section shall be determined according to the status of the transactions between the parties at the date of appointment of the receiver."

These provisions override any contractual arrangement between the parties.

(c) A number of Supreme Court decisions have held that the statutory bankruptcy set-off rules apply only to a debt which is certain at the date of commencement of the bankruptcy, not to a debt which is contingent or uncrystallised as at that date, even if the debt arises under a contract that was in existence prior to that date.

(d) The Supreme Court has held that date of commencement of liquidation for the purposes of Section 74 is the date of the liquidation order. The new corporate recovery regime of Chapter 3 of Part 9 of the Companies Law expressly provides that the insolvency law provisions under the Companies Ordinance (with limited exceptions, which do not include the insolvency set-off rules) also apply to corporate recovery proceedings and that the provisions that apply with respect to a liquidation order will apply also to a stay of proceedings order.

(e) Moreover, even though the appointment of a receiver is not a determining date for the purposes of Section 74, Israeli case law has established that the appointment of a receiver may be construed as an assignment of the debtor's rights in the assets that are the subject of the receivership and accordingly that the mutuality condition under Section 74 is lacking with respect to debts of a creditor to the debtor arising prior to the appointment of the receiver and debts of the debtor to the creditor arising after the appointment of the receiver.

(f) To summarise: (a) To the extent the set-off rights under the General Set-off Clause are exercised before the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the General Set-off Clause will be enforceable. (b) To the extent the set-off rights under the General Set-off Clause are exercised after the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the General Set-off Clause will not be enforceable in relation to debts which were contingent as at the date Section 74 became applicable or to debts of the debtor of the insolvent company arising after the appointment of a receiver.

3.8.5 The Margin Cash Set-off Clause applies to "Obligations" of the Counterparty, which term includes, in addition to obligations arising under Transactions,

obligations "designated by us in writing for these purposes". Accordingly, to the extent the Margin Cash Set-off Clause applies to obligations that do not arise under Transactions, the provisions of the Financial Assets Law will not apply to it and the enforceability of the Margin Cash Set-off Clause will be governed by general principles of Israeli contract and insolvency law, as summarised at paragraph 3.8.4 above.

3.8.6 To the extent the Margin Cash Set-off Clause applies to obligations arising under Transactions, it is necessary to consider whether the Margin Cash Set-off Clause may be considered an, or part of an, "early termination provision" as defined in the Financial Assets Law. It is arguable that Margin Cash Set-off Clause falls within the scope of the Financial Assets Law, but the point is not beyond doubt. On the other hand, if the Margin Cash Set-off Clause were moved to the Netting Module and re-worded along the lines suggested below, we believe that it would be regarded as forming part of an "early termination provision", as defined in the Financial Assets Law, and therefore enforceable in accordance with the provisions of that law, notwithstanding the existence of insolvency proceedings against the Counterparty. The suggested re-wording is as follows:

"If there is an Event of Default or this Agreement terminates, we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance of cash margin delivered by you to us after all Obligations have been taken into account. The net balance, if any, shall take into account the Liquidation Amount payable under this Netting Module of this Agreement."

Alternatively, the last (i.e. the square bracketed) sentence of the Margin Cash Set-off Clause could be replaced by the following:

"Accordingly, upon the occurrence of a Liquidation Date in accordance with clause 11.4 below, the balance of cash margin will be treated as a negative amount in the determination of the Liquidation Amount."

3.9 Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision

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

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

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

The foregoing opinion is subject to the qualification set forth in paragraph 3.9.2 below.

3.9.2 To the extent that the Clearing Module Set-Off Provision is not restricted to indebtedness arising upon the early termination of Transactions executed under the Agreement, the Clearing Module Set-Off Provision cannot be regarded as an "early termination provision" under the Financial Assets Law and the provisions of that law will not apply to it. In this connection, we note that the Clearing Module Set-Off Provision refers to "any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise" and is therefore not restricted to indebtedness arising upon the early termination of Transactions executed under the Agreement.

Accordingly, where one Party is subject to insolvency proceedings under Israeli law: (a) To the extent the set-off rights under the Clearing Module Set-Off Provision are exercised before the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the Clearing Module Set-Off Provision will be enforceable. (b) To the extent the set-off rights under the Clearing Module Set-Off Provision are exercised after the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the Clearing Module Set-Off Provision will not be enforceable in relation to debts which were contingent as at the date Section 74 became applicable or to debts of the debtor of the insolvent company arising after the appointment of a receiver. The legal analysis on which this conclusion is based is set forth in paragraph 3.8.4 above.

3.9.3 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision for which the FOA Set-Off Provision (insofar as constituting part of the FOA Netting Agreement) is not a Disapplied Set-Off Provision, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.9.1 above; and the FOA Set-Off Provision will, to the extent that set-off is not already covered by the Clearing Module Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.8.1 above.

The foregoing opinion is subject to the qualification set forth in paragraph 3.9.2 above (and the opinion regarding the enforceability of the FOA Set-Off Provision is subject to the qualification set forth in paragraph 3.8.4(f) above).

3.9.4 Please note that the qualifications to the effectiveness of the Clearing Module Set-Off Provision described in paragraphs 3.9.2 and 3.9.3 above only apply in the context of insolvency proceedings conducted under Israeli law. Since set-off in the context of insolvency proceedings against the Client is covered

by the FOA Set-Off Provisions, the Clearing Module Set-Off Provision is primarily relevant in circumstances in which a termination amount arises under the Clearing Agreement – that is to say, following a Firm Trigger Event or a CCP Default. The qualifications will therefore only be relevant in circumstances where the Firm is subject to insolvency proceedings in Israel. In other cases, the qualifications described in paragraphs 3.9.2 and 3.9.3 above should not be relevant and the Clearing Module Set-Off Provision will be effective in accordance with its terms.

3.10 Set-Off under a Clearing Agreement with an Addendum Set-Off Provision

3.10.1 In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, it is unclear whether the Addendum Set-Off Provision could be regarded as, or as forming part of, an "early termination provision" under the Financial Assets Law. The Addendum Set-Off Provision purports to allow set-off of an Available Termination Amount only against other termination amounts payable under the Clearing Agreement. As such, it is a mechanism for determining a net value of the rights or liabilities of one party to the other under the Clearing Agreement following the terminations of Transactions under the Clearing Agreement. However, since it is not a prerequisite to the application of the Addendum Set-Off Provision that all Transactions under the Clearing Agreement have been terminated, it is uncertain whether it could be regarded as an "early termination provision" under the Financial Assets Law and therefore whether the provisions of that law apply to it. (To recap, were the Addendum Set-Off Provision to be regarded as an "early termination provision" under the Financial Assets Law, it would be enforceable in accordance with its terms notwithstanding the commencement of insolvency proceedings against a Party, as discussed in paragraph 3.5 above.)

3.10.2 Insofar as the Addendum Set-Off Provision does not constitute an "early termination provision" under the Financial Assets Law, the opinions set forth in paragraph 3.8.4 above regarding the effectiveness of set-off provisions following the commencement of insolvency proceedings, including the qualifications set out in that paragraph, apply equally to the Addendum Set-Off Provision. That is to say, where one Party is subject to insolvency proceedings under Israeli law: (a) To the extent the set-off rights under the Clearing Module Set-Off Provision are exercised before the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the Clearing Module Set-Off Provision will be enforceable. (b) To the extent the set-off rights under the Clearing Module Set-Off Provision are exercised after the date on which Section 74 of the Bankruptcy Ordinance becomes applicable, the Clearing Module Set-Off Provision will not be enforceable in relation to debts which were contingent as at the date Section 74 became applicable or to debts of the debtor of the insolvent company arising after the appointment of a receiver.

3.10.3 Please note that the qualifications to the effectiveness of set-off provisions described in paragraph 3.10.2 above only apply in the context of insolvency

proceedings conducted under Israeli law. Since set-off in the context of insolvency proceedings against the Client is covered by the FOA Set-Off Provisions, the Addendum Set-Off Provision is primarily relevant in circumstances in which a termination amount arises under the Clearing Agreement – that is to say, following a Clearing Member Event or a CCP Default. The qualifications will therefore only be relevant in circumstances where the Clearing Member is subject to insolvency proceedings in Israel. In other cases, the qualifications described in paragraph 3.10.2 above should not be relevant and the Addendum Set-Off Provision will be effective in accordance with its terms.

3.11 Enforceability of the Title Transfer Provisions

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

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

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

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

The opinions set forth in this paragraph 3.11 are based upon section 4(a) of the Financial Assets Law which provides that a "transfer to limit exposure", as defined in the Financial Assets Law, shall be considered for all purposes as a transfer of title, notwithstanding the provisions of the Pledge Law, 1967 (the "Pledge Law"). Section 2(b) of the Pledge Law states that the provisions of the Pledge Law apply to every transaction the purpose of which is to charge an asset as security for an obligation irrespective of the description which is given to the transaction. It should be noted in this connection that in order to fall within the definition of "transfer to limit exposure", the Transferred Margin must comprise only cash or securities. It should

also be noted that in order to be recognised as a transfer of title and not to be subject to the recharacterisation rule under Section 2(b) of the Pledge Law, the Agreement should not contain any contrary stipulation regarding the Transferred Margin (for example, a provision, such as that found in Clause 8.7 of the Professional Client Agreement, July 2011 granting a security interest over the non-cash margin).

The amendments to the Clearing Agreement referred to in paragraphs 3.5 and 3.6 above are necessary in order for the opinions expressed in this paragraph 3.11 to apply, namely:

(a) The replacement of the third paragraph of the preamble to the FOA Clearing Module with the following paragraph (or wording to the equivalent effect):

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

(b) The replacement of the third paragraph of the preamble to the ISDA/FOA Clearing Addendum with the following paragraph (or wording to the equivalent effect):

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

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

In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.11 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use of the Security Interest Provisions (whether in respect of non-cash margin and/or cash margin) as part of an FOA Netting Agreement (with Title Transfer Provisions), or as part of a Clearing Agreement which includes the Title Transfer Provisions, provided always that:

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

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

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

3.13 Single Agreement

Under the laws of this jurisdiction, one of the conditions under the Financial Assets Law to qualify as an Eligible Agreement is that the Agreement includes a "single agreement" clause. The FOA Netting Agreement includes such a clause (e.g., Clause 11.10 of the Professional Client Agreement, July 2011) and therefore satisfies this condition.

The Clearing Agreement also contains a single agreement provision. However, as noted at paragraphs 3.5 and 3.6 above, in order to satisfy the definition of "early termination provisions" under the Financial Assets Law, it is necessary for the termination and netting provisions under a master agreement to apply to all transactions included within the single agreement. For this reason, at paragraphs 3.5 and 3.6 above, we have proposed language that deems the early termination provisions of the Clearing Agreement to constitute separate "single agreements" with respect to each Cleared Transaction Set. As noted above, this amending language is only relevant where the Firm / Clearing Member may be subject to insolvency proceedings in Israel.

It is not a requirement of either the contractual set-off rule (under Section 53 of the Contracts Law) or the insolvency set-off rule (under Section 74 of the Bankruptcy Ordinance) that the obligations to be set-off or netted against each other arise under a single agreement. Accordingly, the opinions set forth in paragraphs 3.8, 3.9 and 3.10 above regarding the enforceability of the set-off rights under the General Set-Off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision are not dependent on the Transactions and the Agreement or the Clearing Agreement (as the case may be) forming part of a single agreement. In this connection we note that Section 53 of the Contracts Law makes provision for set-off of mutual obligations that do not arise under a single agreement only where the amounts are determinate. However, the provisions of Section 53 of the Contracts Law are not mandatory and it is possible to derogate from these provisions by agreement between the Parties.

3.14 Automatic Termination

Where the Agreement is an Eligible Agreement, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting

Agreement or, as the case may be, the Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

Where the Firm / Clearing Member may be subject to insolvency proceedings in Israel, the amendments to the Clearing Agreement referred to in paragraphs 3.5 and 3.6 above are necessary in order for the opinions expressed in this paragraph 3.14 to apply, namely:

(a) The addition of the following sentence (or wording to the equivalent effect) to the end of the third paragraph of the preamble to the FOA Clearing Module:

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

(b) The replacement of the third paragraph of the preamble to the ISDA/FOA Clearing Addendum with the following paragraph (or wording to the equivalent effect):

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same

date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

Having said that, where automatic termination is selected under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision, in our opinion, the automatic termination provision would be enforceable under Israeli law. Under Section 27(a) of the Contracts Law, parties to a contract may agree that such contract "may cease upon the fulfilment of a condition." As such, there is no difficulty associated with the parties to agreeing to automatic termination under these netting provisions.

3.15 Multibranch Parties

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

3.16 Insolvency of Foreign Parties

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event

occurs in respect of such Party (a "**Foreign Defaulting Party**"), Section 380 of the Companies Ordinance provides that liquidation by the court or under court supervision in accordance with the provisions of the Companies Ordinance may be carried out against the Foreign Defaulting Party if it has assets in Israel, and whether or not the Foreign Defaulting Party is registered or has a branch in Israel. In practice, a number of Israeli court decisions have established the principle that where insolvency proceedings have been commenced against the foreign party 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 separate insolvency proceedings to be instituted in Israel unless the foreign judgment could undermine an important element of Israeli public policy, in particular where the court is persuaded that the Israeli creditors are not being treated equally in the foreign liquidation proceedings and separate liquidation proceedings are needed to protect the Israeli creditors' rights. In the event that separate liquidation proceedings against a Foreign Defaulting Party are conducted in Israel, we believe that an Israeli court would respect the global nature of the netting provisions in the Agreement and not "ring fence" the rights and liabilities associated with an Israeli branch or the Israeli assets of the party.

3.17 **Special legal provisions for market contracts**

There are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back to back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty. The opinion stated in this paragraph 3.17 assumes that the nothing in this fact pattern undermines the assumption that the Transactions are entered into between the Parties on a principal-to-principal basis or the "mutuality" assumption referred to in paragraph 2.9 above.

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. In particular, it is noted that the opinion only addresses Eligible Agreements (i.e. agreements to which the provisions of the Financial Assets Law apply). In this connection, particular attention should be paid to the qualifications set forth in Schedule 1 regarding the status of the types of Party referred to therein, and the types of insolvency proceeding to which they may be subject. The enforceability of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision and the Title Transfer Provisions under an Agreement to which the Financial Assets Law does not apply (a "Non-Eligible Agreement") will be determined under general principles of Israeli contract, insolvency and pledge laws.

4.2 In this connection – i.e. in relation to a Non-Eligible Agreement - particular attention should be paid to the provisions of the new corporate recovery regime under Chapter 3 of Part 9 of the Companies Law. (In relation to an eligible Agreement, these provisions are overridden by the Financial Assets Law, as discussed above.) Inter alia, the new corporate recovery regime provides that an "existing contract" may not be terminated on "grounds of insolvency" (Section 350H(b) of the Companies Law). With respect to such contracts, the court appointed administrator may affirm or disclaim the contract as required in order to facilitate the recovery of the company against which a stay order has been made (i.e. the administrator has the right to "cherry pick") (Section 350H(c)). Affirmation of the contract where the other party has a right to terminate, or has terminated shortly before the commencement of the recovery proceedings, for breach of contract, or disclaimer of the contract require court consent. The term "existing contract" refers to a contract to which the company subject to a stay order is party, which was executed prior to the date of commencement of the recovery proceedings and performance of which has not yet been completed by both parties as of that date, even if the contract was lawfully terminated shortly before that date". The term "grounds of insolvency" means a term in the contract granting a right of termination, or automatic termination, on account of insolvency proceedings against the company or financial difficulties of the company. These provisions do not apply, inter alia, to a "contract for the grant of credit". There is to date no case law on the meaning of the term "contract for the grant of credit". In our opinion, it is likely that the Transactions do not constitute a "contract for the grant of credit" for these purposes. However, the point is not beyond doubt and it is possible to argue that to the extent Transactions create a credit exposure for the Firm/Clearing Member, they could be regarded as "contract for the grant of credit".

It follows from the above that if the Agreement is a Non-Eligible Agreement and the counterparty is subject to recovery proceedings under Chapter 3 of Part 9 of the Companies Law, the Firm's right to terminate the Transactions under the FOA Netting Provision, Clearing Module Netting Provision or Addendum Netting Provision by reason of the counterparty's financial difficulties or the commencement of insolvency proceedings against the counterparty will not be enforceable under Israeli law. Likewise, the Firm's ability to effect set-off under the Margin Cash Set-off Clause will be affected to the extent the valuation of the Obligations against which the cash margin is set off purport to take into account the Liquidation Amount payable under these Netting Provisions.

In connection with the potential implications of Chapter 3 of Part 9 of the Companies Law for both Eligible and Non-Eligible Agreements, the comments in paragraph 4.3 below, regarding the application of various insolvency law provisions to the commencement of corporate recovery proceedings, should also be noted.

The enforceability of the General Set-Off Clause, and the Margin Cash Set-off Clause (insofar as this clause does not rely upon the termination of the Transactions, regarding which see the immediately preceding paragraph), in a Non-Eligible Agreement is subject to the qualifications set forth in paragraph 3.8.2 above.

The enforceability of the Title Transfer Provisions in a Non-Eligible Agreement is subject to Section 2(b) of the Pledge Law, referred to in paragraph 3.11 above, pursuant to which the Title Transfer Provisions are at risk of recharacterisation as a security interest.

4.3 The opinions stated above regarding the enforceability of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision and the Title Transfer Provisions contained in the Agreement 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 which we wish to draw to your attention.

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

Yours faithfully,

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: A "banking corporation" as defined in the Banking (Licensing) Law, 1981 (the "Licensing Law") is a "financial institution" for the purposes of the Financial Assets Law. The term "banking corporation" as defined in the Licensing Law, 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. Such institutions are also "corporations" for the purpose of the Financial Assets Law.

2. Investment firms/broker dealers: Investment firms and broker dealers are corporations for the purpose of the Financial Assets Law. Such firms will not automatically qualify as a "financial institution" under the Financial Assets Law unless they are members of the Tel Aviv Stock Exchange ("TASE") or a manager of a provident fund or a mutual fund.

3. Partnerships: Section 66 of the Partnerships Ordinance [New Version], 1975 (the "Partnerships Ordinance") states that a registered partnership is a body corporate and may sue and be sued in its own name. The Partnerships Ordinance also states that a limited partnership is not permitted to commence business until it has registered. A registered partnership (including a limited partnership) therefore satisfies the "corporation" test under the Financial Assets Law. Whether or not it satisfies the "financial institution" test will depend on the nature of the partnership. Having said that, even if an Agreement with an Israeli partnership qualifies as an Eligible Agreement (because, for example, the partnership is also a financial institution or because the Firm is a financial institution), the definition of "insolvency proceedings" under the Financial Assets Law only covers proceedings under the Companies Ordinance and the Companies Law and does not cover insolvency proceedings with respect to partnerships. Accordingly, Section 2 of the Financial Assets Law, pursuant to which the Netting Provision in an Eligible Agreement is enforceable notwithstanding the existence of "insolvency proceedings", does not, apparently, cover insolvency proceedings with respect to partnerships. The enforceability of the Netting Provision in an Eligible Agreement with an Israeli partnership will therefore, apparently, be determined in accordance with general principles of Israeli law and the opinion set forth in paragraph 3.4 above does not apply to it. The corporate recovery regime under Chapter 3 of Part 9 of the Companies Law does not apply to partnerships.

4. Insurance companies/providers: An insurance company, as defined in the Supervision of Financial Services (Insurance) Law, 1981 is a "financial institution" for the purposes of the Financial Assets Law.

5. Individuals: An Agreement with an individual is not an Eligible Agreement. The corporate recovery regime under Chapter 3 of Part 9 of the Companies Law does not, of course, apply to individuals.

6. **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 manager of a provident fund is also a "financial institution" under the Financial Assets Law. An Agreement entered into with a provident fund manager would therefore qualify as an Eligible Agreement (provided the other relevant conditions are satisfied).

Regarding the "mutuality" assumption in paragraph 2.9 of this opinion, we note that where a fund manager manages more than one fund, the mutuality condition will be satisfied only with respect to indebtedness of the fund manager incurred on behalf of a specific fund, on the one hand, and indebtedness of the Firm towards the fund manager, acting on behalf of that fund, on the other.

Provident funds that are not established as companies are not subject to insolvency proceedings (including the corporate recovery regime under Chapter 3 of Part 9 of the Companies Law).. When such a fund effectively becomes insolvent, a special administrator is appointed to take over management of the fund. Such a procedure is covered by the term "Insolvency Event of Default" as used in the Agreement but not by the definition of "insolvency proceedings" under the Financial Assets Law. The appointment of a special administrator over a provident fund does not prevent the exercise, or invalidate the enforceability, of the rights conferred on the Non-Defaulting Party under the Netting Provisions.

7. 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 also a "financial institution" under the Financial Assets Law. An unregistered investment fund, to the extent it is not organized as a separate legal entity, such as a company or a registered partnership, will not be a "corporation" for the purposes of the Financial Assets Law. The corporate recovery regime under Chapter 3 of Part 9 of the Companies Law does not apply to a fund which is not organized as a company.

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. Therefore, to the extent the Insolvency Event of Default clause in the Agreement refers to insolvency proceedings against the mutual fund itself (as opposed, or in addition, to the fund management company), it is unclear whether the provisions of the Financial Assets Law will apply. It is possible to argue, based on a purposive reading of the Financial Assets Law, that the provisions of the law should apply in these circumstances, but the position is not beyond doubt.

8. Sovereign and public sector entities: An Agreement entered into by a corporation with the State of Israel will be an Eligible Agreement (provided the other relevant conditions are satisfied). The Bank of Israel is a "financial institution" under the Financial Assets Law, and

therefore an Agreement entered into by a corporation with the Bank of Israel will be an Eligible Agreement (provided the other relevant conditions are satisfied). Government-owned companies are established as regular companies but are not "financial institutions" (unless they qualify by virtue of falling within one of the categories in the definition of that term). A local authority may qualify as a "corporation" if it is "a legal person, capable of bearing rights and liabilities and of performing legal actions" but it is not a "financial institution". Therefore an Agreement with a local authority will not qualify as an Eligible Agreement unless the Firm is a "financial institution".

9. 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 is an individual and the beneficiary under the trust is a company, or vice versa, or where the trustee is a company and the trust is for general charitable purposes, it is unclear whether it would be regarded as a "corporation" for the purposes of the Financial Assets Law and no opinion is expressed on this point.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")

2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")

3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")

4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")

5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")

6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")

7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")

8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")

9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")

10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")

11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")

12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")

13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")

14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
List of Transactions

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

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

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

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

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

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

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

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

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

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

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

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

[1] Non-EU counsel should discuss with Clifford Chance if clarification is needed.

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

"**Addendum Netting Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum) Clause 8(b) (*Clearing Member Events*), 8(c) (*CCP Default*) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum, together with the defined terms required properly to construe such Clauses.

"**Addendum Set-Off Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement, together with the defined terms required properly to construe such Clause.

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

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

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

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

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

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

"**Clearing Module Netting Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module, together with the defined terms required properly to construe such Clauses.

"**Clearing Module Set-Off Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 5.5 (*Set-Off*) of the FOA Clearing Module together with the defined terms required properly to construe such Clause.

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

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

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

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

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

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

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

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

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

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

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

Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

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

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

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

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

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

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

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

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

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

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

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

"**FOA Netting Agreements (with Title Transfer Provisions)**" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions)

Agreement 2011 (each as listed and defined at Annex 1) or an FOA Netting Agreement which has broadly similar function to any of the foregoing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d).

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

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

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

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

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

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

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

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

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

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

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

"**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***); and

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

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

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

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

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

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

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

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

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

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

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

(x)

(c) 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); and

(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).

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

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

"**Title Transfer Provisions**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version).

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

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

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

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

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

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

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. General Set-Off Clause:

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or

contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

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

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

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

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

"The following shall constitute Events of Default:

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

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

iii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

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

"The following shall constitute Events of Default:

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

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

5. Title Transfer Provisions:

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

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

6. Clearing Module Netting Provision / Addendum Netting Provision:

a) [Firm Trigger Event/CM Trigger Event]

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

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

payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

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

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

(d) if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the

Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable in accordance with this [Module/Addendum].

b) CCP Default

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

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

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

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections

8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

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

"**[Firm/CM]/CCP Transaction Value**" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount equal to the value that is determined in respect of or otherwise ascribed to the

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

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

(a) is attributable to such Client Transactions;

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

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

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

7. Clearing Module Set-Off Provision

Firm may at any time and without notice to Client, set-off any Available Termination Amount against any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise. For these purposes, Firm

may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

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

8. Addendum Set-Off Provision

(i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("**CM Other Amounts**"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "**X**" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("**EP Other Amounts**" and together with CM Other Amounts, "**Other Amounts**"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

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

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

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

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.

4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.

5. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), where such addition may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, and such addition may be expressed to apply to one only of the Parties.[2]

6. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the agreement, Transactions, or both, is endangered.[3]

7. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.[3]

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

---

[2] Counsel to delete and if any such provisions would alter agreement so as to prevent opinion from applying.

9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).[3]

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

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

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

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

14. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.

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

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

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

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

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

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

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

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

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

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

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

PART 3
SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

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

2. Power of Sale Clause:

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

3. Client Money Additional Security Clause

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

4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

(a) For the purposes of paragraphs 3.5, 3.7, 3.8.2, 3.11 and 3.14:

The replacement of the third paragraph of the preamble to the FOA Clearing Module with the following paragraph (or wording to the equivalent effect).

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

(b) For the purposes of paragraphs 3.6, 3.7, 3.8.2, 3.11 and 3.14:

The replacement of the third paragraph of the preamble to the ISDA/FOA Clearing Addendum with the following paragraph (or wording to the equivalent effect).

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "Cleared Transaction Set Agreement");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a separate single agreement for the purposes of the Israeli Contracts in Financial Assets Law, 2006;

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement; and

(iv) notwithstanding the above, for the purpose of any provision of the Agreement which entitles the Firm to terminate all transactions or which automatically terminates all transactions, and which provides for the calculation of any amount payable by either party following such early termination, the Firm has entered into all Transactions under the Agreement in reliance on the fact that the Agreement and all such Transactions constitute a single agreement, and the parties would not otherwise enter into any Transactions."

(c) For the purposes of paragraph 3.8:

Move the Margin Cash Set-off Clause to the Netting Module and re-word along these lines:

"If there is an Event of Default or this Agreement terminates, we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance of cash margin delivered by you to us after all Obligations have been taken into account. The net balance, if any, shall take into account the Liquidation Amount payable under this Netting Module of this Agreement."

Alternatively, the last (i.e. the square bracketed) sentence of the Margin Cash Set-off Clause could be replaced by the following:

"Accordingly, upon the occurrence of a Liquidation Date in accordance with clause 11.4 below, the balance of cash margin will be treated as a negative amount in the determination of the Liquidation Amount."

ANNEX 6
CONTRACTS IN FINANCIAL ASSETS LAW, 5766-2006

Definitions

1. In this Law –

"Official" - official receiver or liquidator, including a temporary liquidator that have been appointed in accordance with the Companies Ordinance, and an official that has been appointed in accordance with section 350 of the Companies Law.

"early termination provisions" within a framework agreement – the provisions are as follows:

(1) Provision stipulating that the framework agreement constitutes a single agreement regarding all transactions included in it;

(2) Provision stipulating terms under which all transactions included in the framework agreement shall come to early termination or if the aforesaid terms take place – each party to the agreement is allowed to bring to early termination all of the aforesaid transactions;

(3) Provision stipulating that at the time of early termination of transactions included in the framework agreement, as aforesaid in clause (2), the value of rights or liabilities of one of the parties to the agreement toward another party shall be equal to its rights or liabilities, with deduction of rights or liabilities of the other party toward it;

(4) Provision stipulating ways of calculating fair value of rights and liabilities of parties to the framework agreement, at the time of early termination of transactions included in it, as aforesaid in subsections (2) and (3), including ways of value estimation of alternative transactions on the market where the aforesaid transactions take place, provided these ways are based on acceptable trading rules for estimation of rights and liabilities of parties on the aforesaid market;

(5) Provision stipulating the way of calculating conversion of each value that was calculated according to subsection (4) into particular currency;

"Insolvency procedures" – liquidation and receivership procedures, according to Companies Ordinance, or procedure according to section 350 of the Companies Law;

"Framework agreement" - agreement, including association between a clearing house and a member of the clearing house that regulates a number of transactions in derivatives or sale and repurchase transactions in securities, and that includes all regulations listed under subsections (1) to (4) of the early termination provisions, regarding these transactions, provided that parties to the aforesaid agreement are corporations and at least one of them is a financial institution or the State of Israel;

"transfer to limit exposure" - transfer of money or securities (in this Law – transferred asset) from one party to the agreement (under this definition – the transferor) to another party to the same agreement (under this definition – the receiver), according to the terms of the agreement, on the date stipulated under the agreement or when conditions stipulated under the agreement are compiled with, are carried out in order to limit exposure of the receiver and which is not a prepayment of any liability of the transferor toward the receiver according to the agreement; provided the receiver is entitled to carry out any transaction in the transferred asset, including its sale to another;

In this definition *"exposure"* – a sum that a transferor must transfer to a receiver, on the date of conclusion of the transaction according to the agreement or on the date of early termination of all transactions a aforesaid under the definition of subsection (2) of "early termination provisions"; however for this purpose the parties are entitled to stipulate ways of fair value calculation of rights and liabilities of the parties, which differ from ways stipulated for the purpose of calculating actual early termination as aforesaid under the definition of subsection (4) of "early termination provisions", provided these different ways of calculation are based on acceptable commercial rules for the estimation of rights and liabilities of parties on the market where the aforesaid transactions are carried out as aforesaid;

"Companies Law" - Companies Law, 5759-1999[4]

"Joint Investment Trust Law" - Joint Investment Trust Law, 5755-1994[5]

"Securities Law" - Securities Law, 5728-1968[6]

"Rules of the Clearing House" - Regulations stipulated by the clearing house, which regulate the interaction between the clearing house and its members, as has been published on the Internet site of the Stock Exchange as defined under the Securities Law;

"Financial institution" - each one of the following:

(1) A Banking Corporation as defined under the Banking Law (Licensing) 5741-1981[7], including an auxiliary corporation as defined under the aforesaid Law;

(2) Insurer as defined under the Supervision of Financial Services Act (Insurance) 5741-1981[8];

(3) Bank of Israel as defined under the Bank of Israel Law, 5714-1954[9];

(4) Member of the stock exchange according to the regulations of the stock exchange as defined under section 46 of the Securities Law;

---

[4] Book of Laws 5759-1999, p. 189

[5] Book of Laws 5755-1994, p.308

[6] Book of Laws 5728-1968, p.234

[7] Book of Laws 5741-1981, p.232

[8] Book of Laws 5741-1981, p.208

[9] Book of Laws 5741-1981, p.192

(5) Managing company as defined under the Supervision of Financial Services Act (Provident Funds) 5765-2005[10];

(6) Fund Manager as defined under the Joint Investment Trusts Law, 1994;

(7) Entity similar to the entities listed under subsections (1) to (6), that has been incorporated outside Israel and is supervised by the Authorities certified for that purpose in the country on incorporation;

(8) Other entities that come under supervision by law, stipulated by the Minister of Finance, by Ordinance, by the authorization of the Minister of Justice

"Financial instruments" - "financial asset", "financial obligation" or "capital instrument" as defined according to accepted rules of accounting;

"Clearing house" and "Member of a clearing house" – as defined under section 50 of the securities Law;

"Derivative" – financial instrument, whose value is derived from the value of a base asset, as well as a future contract and option as defined under section 64(b) of the Joint Investment Trust Law, of the type by means of which financial institutions connect during regular business transactions and for which a market exists where it is possible to evaluate it;

"Base asset" – including currency, loan, liability of payment, interest, exchange rate, products and services traded on the Commodities market, securities traded in Israel or outside Israel, price indexes and securities indexes;

"Sale and repurchase agreement" – a transaction, parties to which are corporations and at least one of them is a financial institution or the State of Israel, where a party to the transaction (in this definition – the transferor) transfers to another party (in this definition – the receiver) securities, for consideration according to which;

(1) The receiver is entitled to carry out any transaction in securities, including their sale to another;

(2) At the end of the period agreed upon in advance, or when a particular circumstance – agreed upon in advance – occurs, the receiver shall transfer to the transferor securities of the same type , or securities that have been transferred to him as part of the aforesaid transaction, as much as he has retained, or the receiver or the transferor are imparted with the right to transfer or receive, accordingly, aforesaid securities, all for consideration stipulated in advance or according to a calculation system that was stipulated in advance;

"Securities", for the purpose of the *"Sale and repurchase agreement in securities"* – every one of the following:

---

[10] Book of Laws 5765-2005, p.889

(1) Obligation or certificate, which is not convertible into shares, registered for trade on a regulated market as defined under the Joint Investment Trust Law, issued by a corporation in a series and that confer a right to claim money from a corporation on a stipulated date or when a particular circumstance occurs and which do not confer membership or participation in a corporation;

(2) Obligation or certificate, as stipulated under clause (1) issued by a Government;

(3) Securities as defined under the Companies Law, stipulated by the Minister of Finance, by means of Ordinance;

"Companies Ordinance" – Companies Ordinance (New Version) 5743-1983[11]

Coming into effect of early termination provisions at the time of insolvency

2. Early termination provisions in a framework agreement, including provisions stipulating that transactions included in the agreement shall come to an early termination due to insolvency proceedings against one of the parties to the agreement, will be effective notwithstanding the insolvency proceedings; nothing in these regulations comes to derogate from the provisions of the law regarding the date for the submission of debt claims and the date for determining their value.

Disclaimer of onerous asset

3. An official is not entitled to disclaim part of the transactions included in the framework agreement by virtue of his authority to disclaim an onerous asset according to any law, including sections 360 through 365 of the Companies Ordinance.

Classification of a sale and repurchase transaction in securities and transfer to limit exposure

4. (a) A sale and repurchase transaction in securities and transfer to limit exposure shall be considered for all means and purposes as a sale transaction, and the provisions of the Mortgage Law 5727-1967[12], shall not apply to it even though the transferor has retained certain rights in the transferred securities or assets after their transfer, unless the parties explicitly stipulate otherwise in the agreement that yielded the transaction or the aforesaid transfer.

(d) Nothing in the provisions of this section detracts from the classification of the sale and purchase transaction, which does not fall under this Law, as a sale transaction according to the provisions of any law.

Application and Regulations

[11] State of Israel Laws, New Version 37, p.761

[12] Book of Law 5727-1967, p.48

5. The Minister of Justice is in charge of the application of this Law and he is entitled to regulate application regulations.

Amendment to the Tax Ordinance

6. In Tax Ordination[13], in section 101(a), after subsection (12) shall come:

"(13) conditions and circumstances under which , if they occur, a sale and repurchase transaction in securities or a transfer to limit exposure – as defined under the Contracts in Financial Assets Law 5766-2006, notwithstanding regulations under subsection 4 of the aforesaid Law, shall be seen as loan and not as sale of securities."

[13] State of Israel Laws, New Version 6, p. 120, Book of Laws 5765-2005, p. 935