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NETTING ANALYSER LIBRARY

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6 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 Italy ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement.

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 persons which are commercial corporation, meaning joint stock companies (*società per azioni*) incorporated under Articles 2325 et seq. of the Civil Code, limited liability companies (*società a responsabilità limitata*) incorporated under Articles 2462 et seq. of the Civil Code, unlimited liability companies (*società in nome collettivo*) incorporated under Articles 2291 et seq. of the

Civil Code or limited joint stock companies (*società in accomandita per azioni*) incorporated under Articles 2452 et seq. of the Civil Code; and

1.1.2 Banks and financial intermediaries incorporated under the laws of Italy and licensed under the Consolidated Banking Act

1.1.3 branches in this jurisdiction of foreign banks and 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 the applicable Schedule:

1.2.1 Investment firms incorporated under the laws of Italy and licensed under the Consolidated Financial Act as a SIM (*società di intermediazione mobiliare*) or a SGR (*società di gestione del risparmio*) and *società di investimento a capitale variabile* (SICAVs) under Article 43 of the Consolidated Financial Act, subject to Schedule 1 to this opinion letter;

1.2.2 Partnerships (*associazioni*) organised under Article 14 of the Civil Code, subject to Schedule 2 to this opinion letter;

1.2.3 Individuals, including individuals qualifying as "entrepreneurs" (*imprenditori*) within the meaning of Article 2083 of the Civil Code, subject to Schedule 3 to this opinion letter;

1.2.4 Funds organised as collective investment schemes (*fondi comuni di investimento*) under Article 36 of the Consolidated Financial Act, subject to Schedule 4 to this opinion letter;

1.2.5 Sovereign and public sector entities, namely the Republic of Italy, regions (*regioni*) and local authorities (*enti locali*) as defined in the Local Authorities Act, subject to Schedule 5 to this opinion letter;

1.2.6 Pension funds pursuant to Decree 252, subject to Schedule 6 to this opinion letter; and

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.

1.4 This opinion covers all types of Transaction.

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.

1.5 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.

1.6 **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.

1.6.1 In respect of each counterparty type, the laws and procedures referred to in paragraph 1.1 of the relevant counterparty-specific Schedule are together called "**Insolvency Proceedings**".

1.6.2 A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**".

1.6.3 "**Banking Institutions**" means the entities under paragraph 1.1.2;

1.6.4 "**Bankruptcy Law**" means royal decree no. 267 of 16 March 1942;

1.6.5 "**Civil Code**" means the Italian Civil Code as enacted by means of royal decree no. 262 of 16 March 1942;

1.6.6 "**Commercial Corporation**" means any of the entities specified in paragraph 1.1.1.

1.6.7 "**Consolidated Banking Act**" means Legislative Decree no. 385 of 1 September 1993;

1.6.8 "**Consolidated Financial Act**" means Legislative Decree no. 58 of 24 February 1998;

1.6.9 "**Decree 170**" means legislative decree no. 170 of 21 May 2004;

1.6.10 "**Decree 210**" means legislative decree no. 210 of 12 April 2001;

1.6.11 "**Decree 252**" means legislative decree no. 252 of 5 December 2005;

1.6.12 "**EMIR**" means Regulation 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

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

1.6.14 "**Financial Institutions**" means the entities under paragraph 1.2.1.

1.6.15 "**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

1.6.16 "**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;

1.6.17 "**Funds**" means the entities under paragraph 1.2.4;

1.6.18 "**Liquidation Proceedings**" means the proceedings under paragraph 1(b) of Schedule 1 (*Financial Institutions*), sub-paragraphs (a) and (b) of paragraph 3.1.1 and sub-paragraph (b) of paragraph 3.1.2 of this opinion letter;

1.6.19 "**Local Authorities**" means "*enti locali*" as defined in the Local Authorities Act.

1.6.20 "**Local Authorities Act**" means Legislative Decree no. 267 of 18 August 2000;

1.6.21 "**Partnerships**" means the entities under paragraph 1.2.2;

1.6.22 "**Pension Funds**" means the entities under paragraph 1.2.6;

1.6.23 "**Public Entities**" means the entities under paragraph 1.2.5;

1.6.24 "**Rehabilitation Proceedings**" means the proceedings under paragraph 1(a) of Schedule 1 (*Financial Institutions*), sub-paragraphs (c), (d) and (e) of paragraph 3.1.1 and sub-paragraphs (a) and (c) of paragraph 3.1.2 of this opinion letter; and

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

2.11 That 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).

2.12 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.

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

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

2.15 In respect of the opinions expressed under paragraphs 3.4 and 3.5 only, that the Client is not an individual.

3. OPINION

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

3.1 Insolvency Proceedings

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Commercial Corporation could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *fallimento* (bankruptcy) under Title II of the Bankruptcy Law

(b) *liquidazione coatta amministrativa* (compulsory administrative liquidation) applicable to Commercial Corporations under Title V of the Bankruptcy Law;

(c) *concordato preventivo* (composition with creditors) under Title III of the Bankruptcy Law;

(d) *amministrazione straordinaria delle grandi imprese insolventi* (extraordinary administration for large insolvent companies) under Legislative Decree No. 270/1999;

(e) amministrazione *straordinaria per la ristrutturazione industriale delle grandi imprese insolventi* (extraordinary administration for the industrial restructuring of large insolvent companies) under Decree

Law No. 347/2003 as converted into law by means of Law No. 39/2004.

3.1.2 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Credit Institution could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *amministrazione straordinaria* (extraordinary administration) under Articles 70 to 77 of the Consolidated Banking Act;

(b) *liquidazione coatta amministrativa* (compulsory administrative liquidation) under Articles 80 to 97 of the Consolidated Banking Act;

(c) *gestione provvisoria* (temporary management) under Article 76 of the Consolidated Banking Act.

3.1.3 We confirm that the events specified in the Insolvency Events of Default Clause - because of the general language used to define the events relating to insolvency of a Party, although such language is not specific to Italian Insolvency Proceedings – should capture all Insolvency Proceedings.

3.2 Recognition of choice of law

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction subject to the application of any mandatory provisions of Italian law.

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

3.3 Enforceability of FOA Netting Provision

3.3.1 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:

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

(b) 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.

3.3.2 We are of this opinion in the light of the provisions of Decree 170. Decree 170 applies if a "financial collateral arrangement" within the meaning is in place between the parties. Under Decree 170, "financial collateral arrangement" means a title transfer financial collateral arrangement or a security financial collateral arrangement (*pegno*), including repo transactions, and any other arrangement relating to financial assets and designed to secure exposure under a financial obligation, where either:

(i) both parties are public bodies, central banks or entities subject to prudential supervision (i.e. Credit Institutions, Financial Institutions, Funds, insurance companies or clearing houses); or

(ii) one party is one of the entities listed in (i) and the other is a corporate entity (i.e. any entity other than an individual).

The Title Transfer Provisions, if incorporated in an agreement between parties of the types specified under sub-paragraphs (i) and (ii) above, would constitute a financial collateral arrangement for the purposes of Decree 170.

If Decree 170 is applicable, the FOA Netting Provision would qualify as "close-out netting clauses" under Article1.1(f) of Decree 170. Pursuant to Article 7 of Decree 170, close-out netting clauses are enforceable in accordance with their terms, including in the event of the insolvency of one of the parties.

3.3.3 **Analysis in respect of Commercial Corporations when Decree 170 does not apply**

In circumstances where Decree 170 does not apply (i.e. if there is no financial collateral arrangement in place, or if the counterparty of the Commercial Corporation is not a public body, a central bank or an entity subject to prudential supervision), please note the following commentary.

(i) Liquidation Proceedings

In the case of Liquidation Proceedings applicable to Commercial Corporations, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.

Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements.

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

(ii) Rehabilitation Proceedings (other than Composition with Creditors)

In the case of Rehabilitation Proceedings applicable to Commercial Corporations, other than composition with creditors, the statute under Article 203 of the Consolidated Financial Act would not apply unless and until the Rehabilitation Proceedings are converted into Liquidation Proceedings.

The Insolvency Representative would have the option to either terminate or continue the outstanding Transactions.

If the Insolvency Representative elects to continue the outstanding Transactions, the Solvent Party may rely on the FOA Netting Provision should an Event of Default occur in the future that is not related to insolvency (e.g. failure to pay).

If the Insolvency Representative elects to terminate the outstanding Transactions, a termination process along the lines of Article 203 of the Consolidated Financial Act is likely to apply.

(iii) Composition with Creditors

In the case of composition with creditors, which does not appear to affect ongoing contractual relationships to which the Solvent Party is a party, the FOA Netting Provision should be enforceable, including to seek early termination (and subsequent netting) of the Transactions on the basis of the initiation of the composition with creditors proceedings.

3.3.4 **Analysis in respect of Credit Institutions when Decree 170 does not apply**

In circumstances where Decree 170 does not apply, please note the following commentary.

Under Article 95 *ter* of the Consolidated Banking Act, which applies to Insolvency Proceedings affecting Credit Institutions, "agreements for set-off and novation are subject to the relevant contract's governing law".

This statute stems from Directive 2001/24/EC on the winding-up of credit institutions (the "*Winding-up Directive*"), whose Article 25 provides that "netting agreements shall be governed solely by the law of the contract which governs such agreements".

Since Article 95 *ter* of the Consolidated Banking Act refers to agreements "for set-off and novation" rather than to "netting" agreements (which imply early termination of outstanding transactions, as well as their set-off, upon termination), it is open to debate whether or not Article 95 *ter* of the Consolidated Banking Act should be construed as to recognise the effectiveness also of the early termination mechanics as part of a netting arrangement.

The fact that Article 95 *ter* of the Consolidated Banking Act is intended to implement in Italy Article 25 of the Winding-up Directive, which explicitly covers "netting arrangements", including the relevant early termination feature, suggests that also Article 95 *ter* of the Consolidated Banking Act should be interpreted as also covering the entire "netting" process, including early termination. If this interpretation is followed, then the FOA Netting Provision would be enforceable in accordance with their terms if they are enforceable under the relevant governing law.

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

3.3.6 No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

3.4 Enforceability of the Clearing Module Netting Provision

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

We are of this opinion in the light of the following reasoning.

3.4.1 *Operation of the Clearing Module Netting Provision following a Firm Trigger Event*

In the first place, it should be established whether Article 7 of Decree 210 (implementing Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems) could be deemed applicable.

Article 7 of Decree 210 provides that "*in the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system*".

While this provision certainly applies to the rights and the obligations arising between the Firm and the clearing house, it is unclear whether the rights and obligations arising between the Client and the Firm under the Clearing Agreement should also be captured by the provision, on the grounds that they should be seen as "arising in connection with" the participation of the Firm to the clearing system.

On the one hand, the Clearing Module Netting Provision is a contractual arrangement entered into outside the system and as such it cannot be regarded as a direct component of the system; on the other hand, however, it can be noted that the Clearing Module Netting Provision is an arrangement which is consequential to the participation of the Firm to the clearing system, and one which is required for the Firm to comply with the framework applicable to clearing members under EMIR. This could suggest that the Clearing Module Netting Provision should indeed be regarded as an arrangement entered into "in connection with" the Firm's participation to the system for the purposes of Article 7 of Decree 210; this would also help ensuring a consistent treatment of the positions opened between the Client and the Firm, on the one hand, and the positions opened between the Firm and the clearing house, on the other hand, as it would cause both sets of positions to be subject to the same law in the insolvency of the Firm.

If Article 7 of Decree 210 is deemed applicable to the Clearing Module Netting Provision, then the Clearing Module Netting Provision would be enforceable if it is enforceable under the law governing the clearing system.

That said, the position as to whether Article 7 of Decree 210 should apply to the Clearing Module Netting Provision remains unclear, also due to the absence of relevant case law and/or official guidance.

Should Article 7 of Decree 210 be deemed not applicable, or in circumstances where Italian law is the law applicable to the system, please note the following commentary.

In our view, the margining provisions under the Clearing Agreement are to be regarded as a "financial collateral arrangement" for the purposes of Decree 170. It follows that Decree 170 will apply to the question whether the Clearing Module Netting Provision would be enforceable upon the occurrence of a Firm Trigger Event.

Pursuant to Decree 170, close-out netting clauses can be enforced even in an insolvency scenario. It is therefore to be investigated whether the Clearing Module Netting Provision can be regarded as a "close-out netting clause" for the purposes of Decree 170.

A "close-out netting clause" under Decree 170 is a clause whereby:

(i) the obligations of the parties are accelerated so as to be immediately due and converted into an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; or

(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.

In our view, the reference to a "net sum" being calculated should not stand in the way of the envisaged netting mechanism under the Clearing Module Netting Provision – whereby a separate amount is calculated in respect of each set of trades – being characterized as a close-out netting clause. The protection granted to netting mechanisms under Decree 170 is clearly afforded in the interest of the solvent party; therefore, if the solvent party opts for a lower degree of protection (where netting operates only at the level of separate sub-sets of trades rather than in respect of all outstanding transactions), we believe that the protection granted by Decree 170 must still be available to it, as such an arrangement would not conflict with the rationale underpinning the provision in question.

Moreover, this construction of Decree 170 also ensures that the Italian framework is consistent with the EMIR framework insofar as the obligations of clearing members are concerned, which further reinforces the conclusion

that the Clearing Module Netting Provision is indeed a close-out netting clause for the purposes of Decree 170.

3.4.2 *Operation of the Clearing Module Netting Provision following a CCP Default*

If the CCP Default is acted upon at a point in time when the Firm has not yet become subject to Insolvency Proceedings, the Clearing Module Netting Provision will be enforceable. If the CCP Default is acted upon after the Firm has become subject to Insolvency Proceedings, the discussion under paragraph 3.4.1 above will apply.

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

3.5 **Enforceability of the Addendum Netting Provision**

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

We are of this opinion in the light of the following reasoning.

3.5.1 *Operation of the Clearing Module Netting Provision following a Firm Trigger Event*

In the first place, it should be established whether Article 7 of Decree 210 (implementing Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems) could be deemed applicable.

Article 7 of Decree 210 provides that "*in the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system*".

While this provision certainly applies to the rights and the obligations arising between the Firm and the clearing house, it is unclear whether the rights and obligations arising between the Client and the Clearing Member under the Clearing Agreement should also be captured by the provision, on the grounds that they should be seen as "arising in connection with" the participation of the Clearing Member to the clearing system.

On the one hand, the Addendum Netting Provision is a contractual arrangement entered into outside the system and as such it cannot be

regarded as a direct component of the system; on the other hand, however, it can be noted that the Addendum Netting Provision is an arrangement which is consequential to the participation of the Clearing Member to the clearing system, and one which is required for the Clearing Member to comply with the framework applicable to clearing members under EMIR. This could suggest that the Addendum Netting Provision should indeed be regarded as an arrangement entered into "in connection with" the Firm's participation to the system for the purposes of Article 7 of Decree 210; this would also help ensuring a consistent treatment of the positions opened between the Client and the Clearing Member, on the one hand, and the positions opened between the Clearing Member and the clearing house, on the other hand, as it would cause both sets of positions to be subject to the same law in the insolvency of the Clearing Member.

If Article 7 of Decree 210 is deemed applicable to the Addendum Netting Provision, then the Addendum Netting Provision would be enforceable if it is enforceable under the law governing the clearing system.

That said, the position as to whether Article 7 of Decree 210 should apply to the Addendum Netting Provision remains unclear, also due to the absence of relevant case law and/or official guidance.

Should Article 7 of Decree 210 be deemed not applicable, or in circumstances where Italian law is the law applicable to the system, please note the following commentary.

In our view, the margining provisions under the Clearing Agreement are to be regarded as a "financial collateral arrangement" for the purposes of Decree 170. It follows that Decree 170 will apply to the question whether the Addendum Netting Provision would be enforceable upon the occurrence of a CM Trigger Event.

Pursuant to Decree 170, close-out netting clauses can be enforced even in an insolvency scenario. It is therefore to be investigated whether Addendum Netting Provision can be regarded as a "close-out netting clause" for the purposes of Decree 170.

A "close-out netting clause" under Decree 170 is a clause whereby:

(i) the obligations of the parties are accelerated so as to be immediately due and converted into an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; or

(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.

In our view, the reference to a "net sum" being calculated should not stand in the way of the envisaged netting mechanism under the Addendum Netting Provision – whereby a separate amount is calculated in respect of each set of trades – being characterized as a close-out netting clause. The protection granted to netting mechanisms under Decree 170 is clearly afforded in the interest of the solvent party; therefore, if the solvent party opts for a lower degree of protection (where netting operates only at the level of separate sub-sets of trades rather than in respect of all outstanding transactions), we believe that the protection granted by Decree 170 must still be available to it, as such an arrangement would not conflict with the rationale underpinning the provision in question.

Moreover, this construction of Decree 170 also ensures that the Italian framework is consistent with the EMIR framework insofar as the obligations of clearing members are concerned, which further reinforces the conclusion that the Addendum Netting Provision is indeed a close-out netting clause for the purposes of Decree 170.

3.5.2 *Operation of the Clearing Module Netting Provision following a CCP Default*

If the CCP Default is acted upon at a point in time when the Clearing Member has not yet become subject to Insolvency Proceedings, the Addendum Netting Provision will be enforceable. If the CCP Default is acted upon after the Clearing Member has become subject to Insolvency Proceedings, the discussion under paragraph 3.5.1 above will apply.

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

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

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

3.7 Enforceability of the FOA Set-Off Provisions

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

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

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

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

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

We are of this opinion because the FOA Set-Off Provisions constitute a case of "voluntary set-off" (*compensazione volontaria*), which should be upheld also in the insolvency of the Defaulting Party on the basis of the reasoning in sub-paragraph 15(a) of paragraph 4 (*Qualifications*), although we acknowledge that an alternative reasoning is also possible; this is illustrated in sub-paragraphs 15(b) and (c) of paragraph 4 (*Qualifications*).

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

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

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

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

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

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

We are of this opinion because the FOA Set-Off Provisions constitute a case of "voluntary set-off" (*compensazione volontaria*), which should be upheld also in the insolvency of the Defaulting Party on the basis of the reasoning in sub-paragraph 15(a) of paragraph 4 (*Qualifications*), although we acknowledge that an alternative reasoning is also possible; this is illustrated in sub-paragraphs 15(b) and (c) of paragraph 4 (*Qualifications*).

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

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

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

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

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

We are of this opinion subject to the reasoning in sub-paragraph 15 of paragraph 4 (*Qualifications*) below.

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

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

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

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

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

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

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

We are of this opinion because the Addendum Set-Off Provision constitutes a case of "voluntary set-off" (*compensazione volontaria*), which should be upheld also in the insolvency of the Defaulting Party on the basis of the reasoning in sub-paragraph 15(a) of paragraph 4 (*Qualifications*), although we acknowledge that an alternative reasoning is also possible; this is illustrated in sub-paragraphs 15(b) and (c) of paragraph 4 (*Qualifications*).

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

3.10 **Enforceability of the Title Transfer Provisions**

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

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

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

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

We are of this opinion because Decree 170 expressly acknowledges the validity of title transfer collateral financial arrangements (such as the Title Transfer Provisions), including in the insolvency of one of the parties. In the event that Decree 170 is not applicable, the opinion in this paragraph 3.10 is subject to the reasoning under sub-paragraph 16 of paragraph 4 (*Qualifications*) below.

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

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

In relation to 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 3.10 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

(i) a provision in the form of, or with equivalent effect to, Clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest provisions or the Title Transfer Provisions apply in respect of any given item of margin so that it is not possible for both the security interest provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and

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

3.12 **Single Agreement**

Under the laws of this jurisdiction it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and Transactions are part of a single agreement.

3.13 **Automatic Termination**

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

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned. However, where, pursuant to EU Regulation No. 1346/2000 ("**Regulation 1346**"), Insolvency Proceedings are commenced in Italy on account that the Insolvent Party possesses an

establishment in Italy, although the centre of its interests is elsewhere, according to Article 3(2) of Regulation 1346, the effects of the Italian proceedings will be restricted to the assets of the Insolvent Party situated in Italy. In this instance, there may be, in our view, a potential risk that an Insolvency Representative of a Defaulting Party could treat the obligations in respect of Transactions entered into in this jurisdiction separately from other obligations arising under the Agreement or other Transactions.

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction, in respect of its Italian branch, unless it is an EU based bank.

Where the foreign Defaulting Party endures Insolvency Proceedings in this jurisdiction, the effect of the local (Italian) Insolvency Proceedings will be restricted to the assets of the Defaulting Party situated in Italy.

The Solvent Party may file its claim arising as a result of termination of the Transaction and the Agreement with the local Insolvency Proceedings, irrespective of whether the Transactions and the Agreement were booked into, or effected through, the Italian branch of the foreign Defaulting Party.

For the purposes of the local Insolvency Proceedings, the analysis outlined at paragraph from 3.3 to 3.10 above will apply, or is likely to apply (the legal framework is not specific on this and does not allow to reach firm conclusions), to the issues relating to the effectiveness of the FOA Netting Provision, again irrespective of whether the Transactions and the Agreement were booked into, or effected through, the Italian branch of the foreign Defaulting Party.

3.16 **Special legal provisions for market contracts**

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

4. QUALIFICATIONS

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

1. This opinion covers all Transactions to the extent and assuming that all Transactions qualify as financial derivatives (*strumenti finanziari derivati*) within the meaning of Article 1, paragraph 2, of the Consolidated Financial Act (a "**Financial Derivative**"). Please note the following high-level commentary on whether or not a Transaction would qualify as a Financial

Derivative, based on the criteria laid down in Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC: "Spot" contracts, where delivery of the asset is scheduled to be made within the longer of two trading days or the period generally accepted in the market for that asset as the standard delivery period, and contracts entered into with an energy operator or administrator and necessary to keep in balance the supplies and uses of energy at a given time, shall not be regarded as Financial Derivatives. Other contracts may be considered as having the characteristics of financial derivatives if, inter alia, (a) traded on a regulated market or MTF; or (b) cleared by a clearing house or subject to margin payments, or (c) standardised and in particular certain terms are determined by reference to published prices or standard quantities or delivery dates.

2. In respect of many of the issues that must be resolved for the purposes of the opinions expressed in paragraph 3 - particularly those expressed in paragraphs 3.3 to 3.5 and 3.7 to 3.10 - there may be little if no case law or legal literature available, or there may be contradictory case law and legal literature.

   Consequently, our opinions in paragraph 3 - particularly those in paragraphs 3.3 to 3.5 and 3.7 to 3.10 - are sometimes the result of our reasoning and personal elaboration, by inference from the applicable legal framework, rather than reflect legal views commonly shared between legal scholars.

   We have not discussed at lengths the reasoning and elaboration underlying the conclusions set out in paragraph 3, as the arguments are very detailed and would have required an overly extensive analysis, which we understand would be beyond the scope of your instructions.

   Although we are confident that the arguments supporting the views expressed in paragraph 3 should be successful, you should be aware that there may sometimes be room for a different reasoning, leading to different, or partially different, conclusions.

3. Pursuant to Article 55 of the Bankruptcy Act (which also applies in the context of a compulsory administrative liquidation), interest accrual on amounts claimed *vis à vis* the Insolvent Party is suspended as from the date on which the relevant Insolvency Proceeding is initiated. Even when the FOA Netting Provision are enforceable in accordance with their terms, therefore, it is doubtful that (in circumstances where the close-out amount is payable by the Insolvent Party to the Solvent Party), the Solvent Party would also be entitled to claim interests on the close-out amount.

4. Certain limitations to the exercise of termination rights under the FOA Netting Provision might derive from the so called "abuse of rights" doctrine (which is increasingly recognised by Italian courts). Under this doctrine, rights (including contractual rights) may not be exercised to achieve purposes that go beyond the "natural purpose" for which the relevant right was granted. Particularly in case of Insolvency Proceedings affecting either Party,

termination rights under the FOA Netting Provision should therefore be exercised by the Solvent Party with a view to "freeing" itself, as soon as conveniently practicable, from the contractual relationship; however, it would not be entirely appropriate, in the light of the "abuse of rights" doctrine, to seek to maximize the close-out amount (if positive) or minimize it (if negative), by selecting an early termination date - within the timeframe contractually available - with such intent. If the Solvent Party "saves up" its termination rights in order to terminate the Transactions only at a point in time when the market value of the same is especially favourable to it, this might be seen, in the abstract, as an "abuse of rights", as a result of which termination as at the selected early termination date would not be upheld.

5. Any judgment in respect of the Agreement obtained in any foreign courts shall be recognized and enforced by the Italian courts, to the extent that enforcement by the Italian courts is sought, in accordance with, and subject to, the provisions of the EU Regulation No. 44/2001 dated 22 December 2000.

6. An Italian court may stay proceedings brought in such court if concurrent proceedings are being brought elsewhere.

7. An Italian court may refuse to apply the law of another jurisdiction if it is deemed to be contrary to public order or if submission to foreign law is prejudicial to the application of provisions of Italian laws of mandatory application. However, it is not likely, in our view, that any terms of the Agreement would be regarded as contrary to public order or prejudicial to mandatory law in Italy.

8. Any provision in the Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent and will not necessarily prevent judicial enquiry into the merits of any claim by any party thereto.

9. Claims may be or become subject to claw back or to defence of set-off or counterclaim, and their enforcement may become barred through lapse of time.

10. Enforcement of obligations may be invalidated by reason of fraud.

11. In respect of the opinion expressed under paragraph 3.1.3 above, for the avoidance of any doubt, it may be desirable to supplement the Agreement by adding specific references to each of the Insolvency Proceedings listed above. Language, to be added to the section of the Agreement about Interpretation, could be as follows:

    "Events of Default" shall also include, for the avoidance of any doubt and without limitation, the commencement, against a Party, of any of the following procedures: *amministrazione straordinaria* (extraordinary administration) under Articles 70 to 77 of Italian Law No. 385/1993 and Article 56 of Italian Legislative Decree No. 58/1998; *liquidazione coatta amministrativa*

(compulsory administrative liquidation) under Articles 80 to 97 of Italian Law No. 385/1993, and Article 56 of Italian Legislative Decree No. 58/1998; *gestione provvisoria* (temporary management) under Article 76 of Italian Law No. 385/1993; *fallimento* (bankruptcy) under Title II of Italian Royal Decree No. 267/1942; *liquidazione coatta amministrativa* (compulsory administrative liquidation) under Title V of Italian Royal Decree No. 267/1942; *concordato preventivo* (composition with creditors) under Title III of Italian Royal Decree No. 267/1942; *amministrazione straordinaria delle grandi imprese insolventi* (extraordinary administration for large insolvent companies) under Italian Legislative Decree No. 270/1999; *amministrazione straordinaria per la ristrutturazione industriale delle grandi imprese insolventi* (extraordinary administration for the industrial restructuring of large insolvent companies) under Italian Law No. 39/2004; *liquidazione* (liquidation) under Article 30 of the Italian Civil Code; *dissesto* (distress) under Article 244 of Italian Legislative Decree No. 267/2000; or any of the proceedings opened pursuant to paragraph 3-*bis* or paragraph 6-*bis* of Article 57 of Legislative Decree No. 58/1998.

12. In respect of the opinion expressed under paragraph 3.2.1 above, mandatory provisions of Italian law which would potentially override any conflicting or unaligned provisions under the Agreement would include the following:

    - where any Party to Agreement is vested with a discretion or may determine a matter in its opinion (e.g. when determining its total costs as a result of termination), Italian law may require that such discretion is exercised reasonably and in good faith or that such opinion is based on reasonable grounds;

    - similarly, any provision in the Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent and will not necessarily prevent judicial enquiry into the merits of any claim by any Party;

    - the question whether or not any provision of the Agreement which may be invalid on account of illegality may be severed from the other provisions thereof in order to save those other provisions would be determined by the Italian courts in their discretion;

    - under Italian law, there are limited cases where it is possible to seek from an Italian court an order for specific performance of an obligation, and an Italian court would anyway maintain discretion in this regard; therefore an Italian court might make an award of damages even where specific performance of an obligation is sought.

13. Notwithstanding the opinion expressed in paragraph 3.2.2, certain provisions of Italian law applicable to the Insolvency Proceedings are relevant in

determining the effectiveness of the FOA Netting Provision, as discussed in paragraph 3.3.

14. In respect of the opinion expressed in paragraph 3.4, note that close-out netting clauses are upheld under Decree 170 only to the extent that they ensure that the valuation of the netted positions is made in accordance with commercially reasonable criteria. In this respect, we note that sub-paragraph 5.2.2(i) of the Clearing Module Netting Provision provides that the closed-out trades and the corresponding collateral are deemed to be worth zero when the porting mechanism operates. On the face of it, this mechanism would appear to ascribe an arbitrary value to the netted positions, thus failing to comply with the requirement that the positions must be valued in a commercially reasonable manner. However, the conventional zero value when porting occurs is actually fully consistent with the consequences of the porting mechanism, whereby the position of the defaulted clearing member is entirely neutralized and the transactions continue with a replacement clearing member as if no clearing member default had occurred; in other words, the conventional zero value appears to be a reasonable valuation (arguably the only reasonable valuation, in fact) of the netted positions in the circumstances considered under sub-paragraph 5.2.2(i) of the Clearing Module Netting Provision. In our view, this provides good arguments supporting the conclusion that the valuation under sub-paragraph 5.2.2(i) of the Clearing Module Netting Provision should be deemed compliant with the requirements of Decree 170, although – in the absence of case law and/or official guidance – it cannot be entirely excluded that an insolvency court might conclude (following a less 'substantive' approach, with which we would not agree) otherwise.

15. The opinion expressed in paragraph 3.7, 3.8 and 3.9 above is subject to the following commentary:

    (a) Voluntary set-off

    Set-off in accordance with either the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (together, the "**Set-Off Provisions**" constitutes a case of "voluntary set-off", i.e. set-off occurring by agreement between the parties irrespective of whether the conditions for the statutory set-off under the Civil Code are met; in particular, pursuant to the Set-Off Provisions, set-off may also occur between amounts that are denominated in different currencies, while statutory set-off only occurs between amounts in the same currency.

    Voluntary set-off is a generally recognized concept under Italian law and is governed by article 1252 of the Civil Code. The law, however, does not expressly clarify whether voluntary set-off may occur also in an insolvency scenario.

Set-off upon insolvency is governed by article 56 of the Insolvency Law, which only acknowledges the possibility of statutory set-off (see paragraph headed "*Statutory Set-off*" below); however, it is unclear whether this provision (i) is meant to define the perimeter within which set-off may occur upon insolvency, so that no other type of set-off may occur other than as provided by article 56, or (ii) simply sets out the conditions for set-off in the absence of an agreement between the parties in that respect.

Scholars seem to share the view that voluntary set-off is permissible even after insolvency in accordance with the rules applicable to outstanding contracts upon insolvency. Voluntary set-off – the reasoning goes – is nothing but a contractual arrangement and as such its effectiveness upon insolvency must not be assessed in the light of article 56 on statutory set-off, but rather in accordance with the rules applicable to the effects of insolvency on outstanding contracts. It follows that the right to operate a voluntary set-off between obligations which arose before insolvency, as contractually agreed between the parties before insolvency, is not affected, and can be still exercised, following the opening of Insolvency Proceedings. The only remedy available to an insolvency receiver to prevent voluntary set-off in such circumstances would be to attempt the clawback of either the voluntary set-off arrangement, or the obligations to be offset, to the extent that the conditions for clawback are met, i.e. if either: (i) the voluntary set-off arrangement, or the obligations to be offset, were entered into in the six-month period before the declaration of insolvency and the Insolvency Representative can prove that Solvent Party, had actual or constructive knowledge at the time of the transaction of the state of insolvency of the entity subsequently declared insolvent; or (ii) the voluntary set-off arrangement, or the obligations to be offset were entered into at an undervalue (meaning that the Insolvent Party received materially less by way of consideration for an obligation undertaken by it to its contractual counterparty than it provided by way of consideration to its contractual counterparty) in the one year period preceding the declaration of insolvency, unless the Solvent Party can prove that it had no actual or constructive knowledge of the state of insolvency of the Insolvent Party.

If the argument is successful, then the 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 (where the Defaulting Party is the Counterparty), the Non-Defaulting Party would be immediately entitled to exercise its rights under the Set-Off Provisions

Notwithstanding the above, it cannot be fully excluded that an insolvency receiver may try to advocate a different (wider) reading of article 56 of the Insolvency Law, to be construed as preventing any set-off other than those contemplated under such article. In particular, a receiver might observe that set-off is a derogation from the general principle that all creditors must be treated equally upon insolvency. By offsetting its claim against a counterclaim of the insolvent party, a creditor achieves a full recovery of what is due to it,

unlike all other creditors who need to file a proof of debt and will presumably recover only a portion of their claim.

Because it is a derogation from a general principle, a receiver may argue that the possibility to operate a set-off should be restricted to the cases expressly contemplated by the law; consequently, there could be no room for set-off (including voluntary set-off) outside the scope of article 56 of the Insolvency Law. If successful, this argument would prevent the enforceability of the Set-Off Provisions; however, we note that such an argument does not appear to have ever been tested in court, nor brought about by Italian scholars.

(b) Statutory set-off

Should an insolvency court not concur with our reasoning under paragraph "*Voluntary Set-off*" above, thus deeming the Set-Off Provisions unenforceable, the Non-Defaulting Party could still rely on the statutory set-off mechanism provided under article 56 of the Insolvency Law, subject to the analysis below.

Article 56 provides that creditors of the Insolvent Party have the right to set-off their claims (even if unmatured at the time of the insolvency) against their debts *vis à vis* the insolvent party.

This set-off is, however, subject to the statutory requirement that both the claim and the counterclaim are "homogenous". This requirement becomes relevant insofar as the positions between the Solvent Party and the Insolvent Party are denominated in more than one currency. In this case, the Solvent will certainly be able to set-off all claims in a currency against all counterclaims in the same currency; however, it is doubtful whether set-off may also occur between sums denominated in different currencies (which would entail the Bank performing a currency conversion).

Some scholars maintain that the Solvent Party would be entitled to convert its non-euro denominated claims in euro, as article 59 of the Insolvency Law provides that all claims that are not claims to a cash amount denominated in the official currency of Italy must be converted into cash denominated in such currency. Other scholars, however, are of the view that the only purpose of this provision is to allow a creditor to establish the euro amount for which it is entitled to file a proof of debt (given that all claims must be filed in the official currency of Italy), and not also to allow it to perform a set-off between positions in different currencies.

Moreover, if it is the claim of the Insolvent Party against the Solvent Party that is not denominated in euro, no currency conversion will occur under article 59 of the Insolvency Law. In this case, irrespective of which of the above views prevails, no statutory set-off would occur between a euro denominated claim of the Solvent Party and a non-euro denominated claim of the Insolvent Party.

(c) Set-off under Regulation 1346

Even if the Set-Off Provisions are deemed unenforceable, and the statutory set-off fails to produce a full set-off of the Solvent Party's opened positions with the Insolvent Party, a further remedy may be still available to the Solvent Party under article 6 of Regulation 1346. This article provides that "the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim".

Accordingly, if an Italian insolvency court were to maintain that the Set-Off Provisions are overridden by the Bankruptcy Law and a full set-off is not achievable under the Italian statutory set-off regime, it should still be possible to advocate that the Set-Off Provisions can be enforced in accordance with their terms should this be permissible under their governing law. While believe that Article 6 of Regulation 1346 should apply in such a scenario, we note that, in practice, Italian courts seem reluctant to recognize the applicability of this provision.

16. The opinion expressed in paragraph 3.10 is subject to Decree 170 being applicable (as described under paragraph 3.3). In circumstances where Decree 170 is not applicable, please note the following commentary.

Even outside the scope of Decree 170, the Italian legal system generally recognizes the concept of creating security by means of a title transfer security arrangement.

While there is no statute of Italian law (other than Decree 170) governing such an arrangement generally, there exist an express mention of it under Article 1851 of the Civil Code, relating to cash or securities provided to a bank as security for the bank's claims against a client.

Moreover, scholars unanimously acknowledge the legitimacy of such types of arrangements under the general rules on freedom of contract (*autonomia privata*) pursuant to Article 1322 of the Civil Code, whereby the parties can freely determine the contents of any arrangement they wish to enter into, regardless of whether or not the relevant arrangement is specifically contemplated under any statute of Italian law, so long as it does not violate any provisions of law and the parties act in the pursuit of interests worth of legal protection.

Accordingly, the Parties can validly provide security to each other by means of the Title Transfer Provisions as a matter of Italian law.

In terms of their enforceability upon the commencement of Insolvency Proceedings when Decree 170 is not applicable:

(i) on the one end the outstanding Transactions would be closed-out as described under the applicable counterparty-specific Schedule, resulting in a net sum payable by a Party to the other;

(ii) on the other end, the margin transferred under the Title Transfer Provisions would need to be returned by the collateral taker to the collateral receiver;

(iii) the amounts owing under sub-paragraph (i) and (ii) above would be capable of being set-off against each other as described under paragraph 3.4 above (subject to the commentary under sub-paragraph 16 of this paragraph 4 (*Qualifications*).

17. It is possible, under applicable legislation and in the abstract, that, in the context of Liquidation Proceedings, the court presiding over the proceedings orders the continuation of the business or of a line of business, rather than the immediate liquidation of the Insolvent Party's assets. This is, however, an unlikely event, as the Liquidation Proceedings are predominantly designed to achieve the liquidation of the Insolvent Party's assets (the Rehabilitation Proceedings, where available, are more appropriate if the intention is to overcome a temporary crisis and continue the business).

In case the continuation of the business or of a line of business is ordered, when Decree 170 does not apply: (i) if the continuation of business is ordered after the declaration of insolvency, Article 203 of the Consolidated Financial Act will apply, causing the automatic termination of the outstanding transactions; (ii) if the continuation of business is ordered simultaneously with the declaration of insolvency, there is a doubt that Article 203 of the Consolidated Financial Act may be overridden by Article 104.6 of the Bankruptcy Law. Article 104.6 of the Bankruptcy Law provides that all pending contracts continue to be outstanding, subject to the Insolvency Representative's right to suspend or terminate them. It is unclear whether this provision is intended to also apply to contracts which are the subject of special provisions of insolvency law (such as Article 203 of the Consolidated Financial Act) stipulating that the relevant contracts are automatically terminated upon the declaration of insolvency. If an insolvency court takes the view that Article 104.6 of the Bankruptcy Law prevails over Article 203 of the Consolidated Financial Act, than the latter would not apply. Instead, the outstanding transactions will remain outstanding unless the Insolvency Representative elects to suspend or terminate them.

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 (each a "subscribing member").

This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

a) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, auditors and professional advisers of such affiliate;

b) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings;

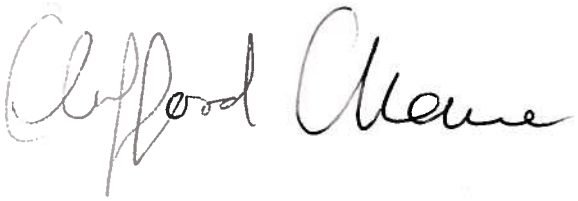
c) the officers, employees, auditors and professional advisers of any addressee; and

d) any competent authority supervising a subscribing member or its affiliates in connection with their compliance with their obligations under prudential regulation

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing this opinion we have only had regard to the interests of our client.

We accept responsibility to the Futures and Options Association and subscribing members in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the Futures and Options Association's members of their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the Futures and Options Association's members or their affiliates.

Yours faithfully,



SCHEDULE 1
Financial Institutions

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

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: Financial Institutions

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Financial Institution could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *amministrazione straordinaria* (extraordinary administration) under Article 56 of the Consolidated Financial Act;

(b) *liquidazione coatta amministrativa* (compulsory administrative liquidation) under Article 57 of the Consolidated Financial Act.

1.2 Enforceability of FOA Netting Provision

The opinion expressed in paragraph 3.3.1 of this Opinion Letter also applies to Financial Institutions subject to Decree 170 being applicable. In circumstances where Decree 170 does not apply, please note the following commentary.

The enforceability of the FOA Netting Provision should be considered in respect of each type of Insolvency Proceedings, in light of the provisions applicable to them.

(i) Liquidation Proceedings

In the case of Liquidation Proceedings applicable to Financial Institutions, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.

Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements.

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

(ii) Rehabilitation Proceedings

In the case of Rehabilitation Proceedings applicable to Financial Institutions, the statute under Article 203 of the Consolidated Financial Act, outlined at sub-paragraph (i) above, would not apply unless and until the Rehabilitation Proceedings are converted into Liquidation Proceedings.

Pending the Rehabilitation Proceedings, the Solvent Party should be capable to terminate the Transactions on the basis of the FOA Netting Provision. However, if a "suspension of payment" were ordered by the court presiding over the proceedings, it would be impossible (for so long as such suspension is in place) to claim payment from the Insolvent Party of the Liquidation Amount.

On the other hand, by virtue of the right of any non-defaulting party, under Article 1460 of the Italian Civil Code, to refuse payment of amounts owing to a defaulting party for so long as the defaulting party does not fulfil its obligation owing to the non-defaulting party, while the suspension of payment is in place, the Solvent Party would not be required to make the payments owing by it under the Transactions to the Insolvent Party.

SCHEDULE 2
Partnerships

Subject to the modifications and additions set out in this Schedule 2 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships.

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: Partnerships

Partnerships not qualifying as entrepreneurs may be made subject to liquidation (*liquidazione*) under Article 30 of the Civil Code in the event that they have become unable to pursue their object (including due to material losses). While liquidation under Article 30 of the Civil Code is not per se a bankruptcy proceeding, if in the context of the liquidation it is ascertained that the Partnership's liabilities exceed the assets, the Civil Code cross-refers to the rules applicable to the proceedings under sub-paragraphs (a) and (b) of paragraph 3.1.1 of this opinion letter.

Partnerships qualifying as entrepreneurs may be made subject to the proceedings under sub-paragraphs (a), (b) and (c) of paragraph 3.1.1 of this opinion letter.

1.2 Enforceability of FOA Netting Provision

The opinion expressed in paragraph 3.3.1 of this Opinion Letter also applies to Partnerships subject to Decree 170 being applicable. In circumstances where Decree 170 does not apply, please note the following commentary.

(i) Liquidation Proceedings

In the case of Liquidation Proceedings applicable to Partnerships, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.

Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements.

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection

with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

(ii) Rehabilitation Proceedings (other than Composition with Creditors) applicable to Partnerships

In the case of Rehabilitation Proceedings applicable to Partnerships, other than composition with creditors, the statute under Article 203 of the Consolidated Financial Act would apply as described under sub-paragraph (i) (*Liquidation Proceedings*) above.

(iii) Composition with Creditors

In the case of composition with creditors, which does not appear to affect ongoing contractual relationships to which the Solvent Party is a party, the FOA Netting Provision should be enforceable, including to seek early termination (and subsequent netting) of the Transactions on the basis of the initiation of the composition with creditors proceedings.

SCHEDULE 3
Individuals

Subject to the modifications and additions set out in this Schedule 3 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are individuals.

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: individuals

Individuals not qualifying as entrepreneurs may not be made subject to any insolvency or similar proceedings. Individuals qualifying as entrepreneurs may be made subject to the proceedings listed in sub-paragraphs (a), (b) and (c) of paragraph 3.1.1 of this opinion letter.

1.2 Enforceability of FOA Netting Provision

Decree 170 does not apply to contracts to which an individual is a party. Accordingly, please note the following commentary.

Individuals not qualifying as entrepreneurs

Individuals not qualifying as entrepreneurs cannot be made subject to Insolvency Proceedings in Italy.

Accordingly, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

(b) 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.

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

Individuals qualifying as entrepreneurs

(i) Liquidation Proceedings

In the case of Liquidation Proceedings applicable to individuals qualifying as entrepreneurs, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.

Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements.

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

(ii) Rehabilitation Proceedings (other than Composition with Creditors) applicable individuals qualifying as entrepreneurs

In the case of Rehabilitation Proceedings applicable to individuals qualifying as entrepreneurs, other than composition with creditors, the statute under Article 203 of the Consolidated Financial Act would apply as described under sub-paragraph (i) (*Liquidation Proceedings*) above.

(iii) Composition with Creditors

In the case of composition with creditors, which does not appear to affect ongoing contractual relationships to which the Solvent Party is a party, the FOA Netting Provision should be enforceable, including to seek early termination (and subsequent netting) of the Transactions on the basis of the initiation of the composition with creditors proceedings.

2. ADDITIONAL QUALIFICATIONS

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

In relation to Individuals who qualify as "consumers" (i.e. natural persons entering into the contract for a purpose outside his trade or profession), please note the following commentary.

Under Article 6 of Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations ("**Rome I**"), contracts entered into with consumers as a result of a solicitation in the place of their habitual residence may not have the result of depriving the consumers of the protection afforded to them by mandatory provisions of law in the country where they have their habitual residence.

Although Article 6 does not apply to "*rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities*", we understand from the recitals of Rome I that the rationale of this exemption is to safeguard public offer of securities which need to be highly standardised and may not withstand the application of different (consumer) rules in different countries.

It is questionable whether the same rationale may be relied upon in the case of the transactions under the Agreement. Consequently, it may not be entirely excluded that Article 6 of Rome I applies to the Agreement.

If so (and assuming that the Agreement is entered into further to a solicitation in the place of the Individual's habitual residence), the Italian unfair contract terms legislation (under Legislative Decree No. 206, dated 6 September 2009 – the "**Consumers Code**") may become applicable, as a set of mandatory provisions of Italian law and notwithstanding the governing law of the Agreement selected by the Parties.

Under the Consumers Code (Article 33), an unfair contract term is one that creates a significant imbalance in the parties' rights under the contract, to the detriment of the consumer, contrary to the requirement of good faith. Unfair contract terms are unenforceable (Article 36 of the Consumers Code).

Although the same or similar principles may apply under the governing law of the Agreement selected by the Parties, an Italian court might want to ensure that Italian consumers enjoy the protection afforded by the Consumer Code, as construed in Italy, and Article 6 of Rome I may enable the Italian court to take this approach.

In light of the principles under the Consumers Code, outlined above, we may not entirely exclude that the FOA Netting Provision in the context of the "one-way" arrangements be regarded as "unfair" within the meaning of the Consumers Code by an Italian court and as such be unenforceable, should the issue arise before an Italian court.

SCHEDULE 4
Funds

Subject to the modifications and additions set out in this Schedule 4 (*Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Funds. Please be aware that collective investment schemes organized in the form of *società di investimento a capital variabile* (SICAVs) are considered under Schedule 1 (*Financial Institutions*).

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: Funds

Funds are subject to liquidation in accordance with either paragraph 3-*bis* of Article 57 of the Consolidated Financial Act (liquidation of the Fund following the compulsory administrative liquidation of the relevant management company) or paragraph 6-*bis* of Article 57 of the Consolidated Financial Act (liquidation of the Fund "*when the fund's assets are insufficient to meet the fund's obligations and there are no reasonable prospects that the situation may be overcome*" and there is "*a material risk of prejudice*").

1.2 Enforceability of FOA Netting Provision: Funds

The opinion expressed in paragraph 3.3.1 of this Opinion Letter also applies to Funds subject to Decree 170 being applicable. In circumstances where Decree 170 does not apply, please note the following commentary.

In the case of Liquidation Proceedings applicable to Funds, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.
Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements[1].

[1] A question may arise whether Article 72, paragraph 6 of the Bankruptcy Law and Article 203 of the Consolidated Financial Act should also apply when the Fund is liquidated following the liquidation of the relevant management company pursuant to paragraph 3-bis of Article 57 of the Consolidated Financial Act, in circumstances when the Fund itself is not insolvent; this is because Article 57 of the Consolidated Finance Act extends the applicability of these provisions to the liquidation of Funds only "to the extent compatible" with the nature of the liquidation process. Now, these provisions – which override the contractual arrangements agreed between the parties – are clearly aimed at regulating the orderly liquidation

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

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of an entity in an insolvency scenario. If the Fund is not itself insolvent at the time when it is liquidated, the application of these rules would unnecessarily restrict the parties' freedom of contract; for this reason, we believe that the best view is that they should be deemed not compatible with the liquidation of a non-insolvent Fund. If Article 72, paragraph 6 of the Bankruptcy Law and Article 203 of the Consolidated Financial Act are deemed not applicable to liquidation of a non-insolvent Fund, then the FOA Netting Provision will be enforceable in the context of such liquidation.

SCHEDULE 5
Public Entities

Subject to the modifications and additions set out in this Schedule 5 (*Public Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Public Entities.

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: Public Entities

Republic of Italy and regions

The Republic of Italy and the regions may not be made subject to any insolvency or similar proceedings.

Local Authorities

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party that is a Local Authority would be subject is the *dissesto* (distress) under Article 244 of the Local Authorities Act.

1.2 Enforceability of FOA Netting Provision

Republic of Italy and regions

The Republic of Italy and the regions cannot be made subject to Insolvency Proceedings in Italy.

Accordingly, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

(b) 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.

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

Local Authorities

The opinion expressed in paragraph 3.3.1 of this Opinion Letter also applies to Local Authorities subject to Decree 170 being applicable. In circumstances where Decree 170 does not apply, please note the following commentary.

While Local Authorities can be subject to Insolvency Proceedings as described in paragraph 3.1.4, there are no rules under the applicable proceedings that are similar in effect to Article 72, paragraph 6 of the Bankruptcy Law, nor are there, more generally, any rules governing the treatment of pending contracts at the time the proceedings are commenced.

Accordingly, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

(b) 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.

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

2. ADDITIONAL QUALIFICATIONS

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

While this opinion letter also covers regions and Local Authorities, you should be aware that, as of the date of this opinion letter, pursuant to Article 62 of Law Decree no. 112 of 25 June 2008, regions and Local Authorities are entirely prevented from entering into and/or restructuring derivatives transactions (the only exception being that they are authorized to restructure existing derivative transactions linked to an underlying liability if the relevant liability is restructured). Any violation of this prohibition will result in the relevant contract being null and void.

SCHEDULE 6
Pension Funds

Subject to the modifications and additions set out in this Schedule 6 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds.

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Insolvency Proceedings: Pension Funds

Pension Funds may be subject to the proceedings under sub-paragraphs (a) and (b) of paragraph 3.1.2 of this opinion letter.

1.2 Enforceability of FOA Netting Provision

The opinion expressed in paragraph 3.3.1 of this Opinion Letter also applies to Pension Funds subject to Decree 170 being applicable. In circumstances where Decree 170 does not apply, please note the following commentary.

(i) Liquidation Proceedings

In the case of Liquidation Proceedings applicable to Pension Funds, the FOA Netting Provision would not be enforceable, as a result of the application of Article 72, paragraph 6 of the Bankruptcy Law, whereby contractual arrangements providing for the early termination of a contract upon bankruptcy are unenforceable.

Rather, Article 203 of the Consolidated Financial Act would apply, as a mandatory provision of Italian law, irrespective of the governing law of the Agreements.

Article 203 prescribes that all financial derivatives transactions outstanding between the Insolvent Party and the Solvent Party, as of the date of commencement of Liquidation Proceedings, are automatically terminated. The amount due in connection with the termination of each transaction will be determined either as (a) the difference between the contract price and the value of the relevant underlying assets or (b) as the "replacement cost" of the transaction, calculated "at market values", where "replacement cost" is not defined though should be intended as the cost of entering into a new transaction economically equivalent to the terminated one. The choice between (a) and (b) ultimately lies with the Insolvency Representative or the court presiding over the relevant Liquidation Proceedings. However, the method of the

difference price/value of underlying is clearly inapplicable in respect of certain types of financial derivatives transactions.

The amounts so determined, to the extent they are mutually owing between the Parties, may then be offset and only the resulting balance will be due by one Party to the other.

If the "replacement cost" applies for the purposes of the application of Article 203, the net amount which would be due by one Party to the other as a result of the application of Article 203 of the Consolidated Financial Act might not be too far from the Liquidation Amount which would be payable in accordance with the FOA Netting Provision, which also seems to take account of the cost or gain for the Solvent Party of re-establishing the terminated trading position, having regard, e.g., to market quotations.

However, the Liquidation Amount under the FOA Netting Provision would consider also other losses and costs, incurred by the Solvent Party, which would be disregarded for the purposes of the application of Article 203 of the Consolidated Financial Act.

Rehabilitation Proceedings

In the case of Rehabilitation Proceedings applicable to Pension Funds, the statute under Article 203 of the Consolidated Financial Act, outlined at sub-paragraph (i) above, would not apply unless and until the Rehabilitation Proceedings are converted into Liquidation Proceedings.

Pending the Rehabilitation Proceedings, the Solvent Party should be capable to terminate the Transactions on the basis of the FOA Netting Provision. However, if a "suspension of payment" were ordered by the court presiding over the proceedings, it would be impossible (for so long as such suspension is in place) to claim payment from the Insolvent Party of the Liquidation Amount.

On the other hand, by virtue of the right of any non-defaulting party, under Article 1460 of the Italian Civil Code, to refuse payment of amounts owing to a defaulting party for so long as the defaulting party does not fulfil its obligation owing to the non-defaulting party, while the suspension of payment is in place, the Solvent Party would not be required to make the payments owing by it under the Transactions to the Insolvent Party.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral

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

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

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

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

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

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

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

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

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

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

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

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

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

Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")

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

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

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

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

ANNEX 2
List of Transactions

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

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

"**Retail Client Agreements**" means each of the Retail Client (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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

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

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

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

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

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

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

2. General Set-Off Clause:

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

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

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

"The following shall constitute Events of Default:

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

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

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

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

"The following shall constitute Events of Default:

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

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

5. Title Transfer Provisions:

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

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

6. Clearing Module Netting Provision / Addendum Netting Provision:

a) [Firm Trigger Event/CM Trigger Event]

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

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

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

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from

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

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

b) CCP Default

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

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

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

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default

occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first

exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

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

d) Definitions

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

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

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

(a) is attributable to such Client Transactions;

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

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

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

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

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

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

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

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

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 3
SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

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

2. Power of Sale Clause:

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

3. Client Money Additional Security Clause

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

4. Rehypothecation Clause

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

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

Desirable amendments

In respect of the opinion expressed under paragraph 3.1.3 above, for the avoidance of any doubt, it may be desirable to supplement the Agreement by adding specific references to each of the Insolvency Proceedings listed above. Language, to be added to the section of the Agreement about Interpretation, could be as follows:

"Events of Default" shall also include, for the avoidance of any doubt and without limitation, the commencement, against a Party, of any of the following procedures: *amministrazione straordinaria* (extraordinary administration) under Articles 70 to 77 of Italian Law No. 385/1993 and Article 56 of Italian Legislative Decree No. 58/1998; *liquidazione coatta amministrativa* (compulsory administrative liquidation) under Articles 80 to 97 of Italian Law No. 385/1993, and Article 56 of Italian Legislative Decree No. 58/1998; *gestione provvisoria* (temporary management) under Article 76 of Italian Law No. 385/1993; *fallimento* (bankruptcy) under Title II of Italian Royal Decree No. 267/1942; *liquidazione coatta amministrativa* (compulsory administrative liquidation) under Title V of Italian Royal Decree No. 267/1942; *concordato preventivo* (composition with creditors) under Title III of Italian Royal Decree No. 267/1942; *amministrazione straordinaria delle grandi imprese insolventi* (extraordinary administration for large insolvent companies) under Italian Legislative Decree No. 270/1999; *amministrazione straordinaria per la ristrutturazione industriale delle grandi imprese insolventi* (extraordinary administration for the industrial restructuring of large insolvent companies) under Italian Law No. 39/2004; *liquidazione* (liquidation) under Article 30 of the Italian Civil Code; *dissesto* (distress) under Article 244 of Italian Legislative Decree No. 267/2000; or any of the proceedings opened pursuant to paragraph 3-*bis* or paragraph 6-*bis* of Article 57 of Legislative Decree No. 58/1998.