

YOUR REFERENCE

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Legal collateral opinion- Situs Version

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

Dear Sirs

FOA Collateral Opinion

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

- 1.1.1 persons which are "companies" duly incorporated and validly existing under the Companies Act (*kaisha ho*) (Law No. 86 of 2005, as amended) (the "**Companies Act**") of this jurisdiction);

- 1.1.2 in respect of paragraph 3.3, the entities referred to in such paragraph;
- 1.1.3 Banks which are companies duly incorporated and validly existing under the Companies Act and licensed as "banks" (*ginko*) under the Banking Act (*ginko ho*) (Law No. 59 of 1981, as amended) of this jurisdiction;
- 1.1.4 Investment firms which are companies duly incorporated and validly existing under the Companies Act and registered as "investment management business operator" (*toshi unmyo gyosha*), and "broker dealers" which are companies duly incorporated and validly existing under the Companies Act and registered as "financial instruments business operator" (*kinyu shohin torihiki gyosha*), respectively under the Financial Instruments and Exchange Act (*kinyu shohin torihiki ho*) (Law No. 25 of 1948, as amended) of this jurisdiction;
- 1.1.5 Partnerships which are organised as "partnerships" (*kumiai*) under the Civil Code (*min po*) (Law No. 89 of 1896, as amended) (the "**Civil Code**") or "investment business limited partnerships" (*toshi jigyou yugen sekinin kumiai*) formed under the Limited Partnership Act for Investment (*toshi jigyou yugen sekinin kumiai keiyaku ni kansuru horitsu*) (Law No. 90 of 1998, as amended) of this jurisdiction;
- 1.1.6 Insurance companies which are companies duly incorporated and validly existing under the Companies Act or "mutual companies" (*sougo kaisha*) duly incorporated and validly existing under the Insurance Business Act (*hoken gyo ho*) (Law No. 105 of 1995, as amended) (the "**Insurance Business Act**") of this jurisdiction, and licensed as an "insurance company" (*hoken kaisha*) under the Insurance Business Act;
- 1.1.7 Individuals who have residence in Japan;
- 1.1.8 Sovereign and public sector entities, which are the Japanese government, and "local municipal entities" (*chihou koukyo dantai*) having legal personality under the Local Government Act (*chihou jichi hou*) (Law No. 67 of 1947, as amended) of this jurisdiction, namely, Japanese prefectural governments (*to, dou, fu and ken*), municipalities (*shi, chou (or machi), and son (or mura)*), and special districts (*tokubetsu ku*); and
- 1.1.9 Parties acting as trustees, which shall be "trust banks" (*shintaku ginko*), duly established as the companies under the Companies Act, and licensed as a bank under the Banking Act (*ginko ho*) (Law No. 59 of 1981, as amended) and licensed to conduct the trust business (*shintaku gyo*) under the Trust Business Act (*shintaku gyo ho*) (Law No. 154 of 2004, as amended) and the Act on Concurrent Operation, etc. of Trust Business by Financial Institutions (*kinyu kikan no sintakugyomu tou no kenei ni kansuru horitsu*) (Law No. 109 of 2006, as amended) of this jurisdiction,

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

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

- 1.2.1 Funds which are "investment trusts" (*toshi shintaku*) duly created as a trust, or "investment corporations" (*toshi hojin*) duly established as a corporation, respectively under the Act on Investment Trusts and Investment Corporations (*toshi shintaku oyobi toshi hojin ni kansuru houritsu*) (Law No. 198 of 1951, as amended) of this jurisdiction (Schedule 1); and
- 1.2.2 Pension entities which are (i) the Government Pension Investment Fund (GPIF) (*nenkin tsumitatekin kanri unyo dokuritsu gyosei hojin*) duly established as the independent administrative institute (*dokuritsu gyosei hojin*) under the Government Pension Investment Fund Act (Law No. 105 of 2004, as amended), (ii) "national pension funds" (*kokumin nenkin kikin*) or the National Pension Fund Association (*kokumin nenkin kikin rengokai*) duly established as a special legal person under the National Pension Act (*kokumin nenkin hou*) (Law No. 141 of 1959, as amended), (iii) "employees' pension funds" (*kosei nenkin kikin*) or the Pension Fund Association (*kigyo nenkin rengokai*) duly established as a special legal person under the Employees' Pension Insurance Act (*kosei nenkin hoken hou*) (Law No. 115 of 1954, as amended), or "defined-benefit corporate pension funds" (*kakutei kyufu kigyo nenkin kikin*) duly established as a special legal person under the Defined-Benefit Corporate Pension Act (*kakutei kyufu kigyo nenkin hou*) (Law No. 50 of 2001, as amended) or (iv) "mutual aid associations" (*kyosai kumiai*) or federation of such mutual aid association (*kyosai kumiai rengokai*) duly established as a special legal person by each applicable law for such mutual aid association (including, but not limited to, the National Public Service Mutual Aid Association Act (*kokka komuin kyosai kumiai hou*) (Law No. 128 of 1958, as amended)) (Schedule 2),

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

1.3 This opinion is given in respect of Japanese Governmental Bonds and JASDEC Securities (each as defined below) which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra-day basis. This opinion is not given in respect of cash (credited to a bank account). Although such claim of a Counterparty as depositor may be pledged to a Firm without remitting the cash to the Firm, it is not the intention of the Security Interest Provisions. Under the Security Interest Provisions, cash is remitted to the bank account of a Firm by a Counterparty as margin, and upon such remittance, the Firm will obtain title to cash in its bank account, and no security interest will be created over such cash owned by the Firm. On the Liquidation Date, such cash margin will be netted pursuant to the Netting Provisions. Please note, however, that we express no opinion as to validity or enforceability of the Netting Provisions.

1.4 In this opinion letter:

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

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

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

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

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

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

- (i) sale and application of proceeds of the sale of Collateral against monies owed, or
- (ii) appropriation (i.e., acquisition of the definitive title) of the Collateral,

in either case in accordance with the Security Interest Provisions.

- 1.4.5 in other instances other than those referred to at 1.4.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- 1.4.6 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.7 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.4.8 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2;
- 1.4.9 headings in this opinion letter are for ease of reference only and shall not affect its interpretation;
- 1.4.10 "**BOJ**" means the Bank of Japan;
- 1.4.11 "**BOJ System**" means the clearing system of the Japanese government bonds managed by the BOJ pursuant to the Book-Entry Transfers Act;
- 1.4.12 "**Book-Entry Transfers Act**" means the Act Concerning Book-Entry Transfers of Corporate Bonds, Shares, etc. of Japan (*shasai kabushiki tou no furikae ni kansuru horitsu*) (Act No. 75 of 2001, as amended);
- 1.4.13 "**Insolvency Proceedings**" means the special liquidation proceedings (*tokubetsu seisan*) (the "**Special Liquidation Proceedings**") under the Companies Act, the bankruptcy (*hasan*) proceedings under the Bankruptcy Act (the "**Bankruptcy Proceedings**"), the corporate reorganisation (*kaisha kosei*) proceedings under the Corporate Reorganization Act (the "**Corporate Reorganisation Proceedings**") and the civil rehabilitation (*minji saisei*) proceedings under the Civil Rehabilitation Act (the "**Civil Rehabilitation Proceedings**");
- 1.4.14 "**Japanese Government Bonds**" mean any Japanese government bonds which are recorded and cleared under the BOJ System from time to time pursuant to the Book-Entry Transfers Act;
- 1.4.15 "**Japanese Insolvency Acts**" mean Articles 510 to 574 of the Companies Act, the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended) (the "**Bankruptcy Act**"), the Corporate Reorganisation Act (*kaisha kosei ho*) (Law No. 154 of 2002, as amended) (the "**Corporate Reorganisation Act**") and the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended) (the "**Civil Rehabilitation Act**");
- 1.4.16 "**JASDEC**" means Japan Securities Depository Center, Incorporated;

- 1.4.17 "JASDEC Securities" mean shares and corporate debt securities (i) owned by a Counterparty, (ii) issued by a company incorporated in Japan and (iii) recorded and cleared through the JASDEC System pursuant to the Book-Entry Transfers Act;
- 1.4.18 "JASDEC Securities Pledge" means a security interest in the form of an ordinary pledge (*shichiken*) or a blanket pledge (*ne-shichiken*) which a Counterparty agrees to create over the JASDEC Securities in favour of a Firm;
- 1.4.19 "JASDEC System" means the depository and clearing system of securities managed by JASDEC pursuant to the Book-Entry Transfers Act;
- 1.4.20 "JGB Pledge" means a security interest in the form of an ordinary pledge (*shichiken*) or a blanket pledge (*ne-shichiken*) which a Counterparty agrees to create over the Japanese Government Bonds in favour of a Firm; and
- 1.4.21 "Securities Account" means a pledge ledger (*shichiken ran*) of a securities account of a Firm under the Book-Entry Transfers Act.
- 1.4.22 References to "Core Provisions" include Core Provisions that have been modified by Non-Material Amendments.

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That the Security Interest Provisions are enforceable under any applicable law (other than Japanese law).
- 2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.4 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- 2.5 That the Agreement has been properly executed by both Parties.
- 2.6 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.
- 2.7 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

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- 2.8 That the Agreement accurately reflects the true intentions of each Party.
- 2.9 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.11 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.
- 2.12 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- 2.13 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.14 That the Collateral expressed to be subject to a Security Interest pursuant to the Security Provisions shall be either the Japanese Governmental Bonds or the JASDEC Securities.
- 2.15 That, if a Counterparty is a company as referred to in paragraph 1.1.1 above, such Counterparty is duly incorporated or established and validly existing under the Companies Act.
- 2.16 That, if a Counterparty is an entity that is not established or resident in this jurisdiction, where any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located within this jurisdiction, as referred to in paragraph 1.1.2, such Counterparty is duly incorporated or established and validly existing under all applicable laws of its local jurisdiction.
- 2.17 That, if a Counterparty is a mutual company (*sougo kaisha*) as referred to in paragraph 1.1.6 above, such Counterparty is duly incorporated or established and validly existing under the Insurance Business Act.
- 2.18 That, if a Counterparty is an individual as referred to in paragraph 1.1.7 above, such Counterparty attains the years of maturity under the applicable law, acts of his/her own free will and has full mental capacity.
- 2.19 That, if a Counterparty is a "bank", "investment management business operator", "financial instruments business operator", "insurance company", "investment trust",

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"investment corporation" or "trust bank" as referred to in paragraphs 1.1 and 1.2 above, such Counterparty satisfies the applicable license requirements as set forth therein.

- 2.20 That the Japanese Governmental Bonds or the JASDEC Securities which constitute the Collateral have been duly issued and are existing in Japan.
- 2.21 That a security interest created over the Collateral pursuant to the Security Interest Provisions shall be in the form either of the ordinary pledge (*shichiken*) as provided for in Articles 342 to 366 of the Civil Code or the blanket pledge (*ne shichiken*).
- 2.22 That the pledged JASDEC Securities (i) are properly recorded in a proprietary ledger (*hoyuu ran*) of the Security Provider's securities account under the JASDEC System pursuant to the Book Entry Transfer's Act whether the Security Provider is located in or outside this Jurisdiction and (ii) will be transferred to the Securities Account of a Firm in accordance with the Book-Entry Transfers Act and the procedure under the JASDEC System.
- 2.23 That the pledged Japanese Governmental Bonds (i) are properly recorded in a proprietary ledger (*hoyuu ran*) of the Security Provider's securities account under the BOJ System pursuant to the Book Entry Transfer's Act whether the Security Provider is located in or outside this Jurisdiction and (ii) will be transferred to the Securities Account of a Firm in accordance with the Book-Entry Transfers Act and the procedure under the BOJ System.
- 2.24 That the articles of incorporation (*teikan*) of any companies issuing the JASDEC Securities have no provision which restricts assignment or acquisition of any Collateral upon enforcement of pledges over the Collateral.
- 2.25 That at the time of creation and perfection of the Security Interests, a Counterparty purporting to create a security interest over any of the Collateral under the Security Interest Provisions, the Counterparty is the legal and beneficial owner of the Collateral and that:
- (a) the Counterparty has not assigned, sold, disposed of or created any encumbrance or security interest over the whole or any part of the Collateral;
 - (b) no security interest, encumbrance or third party interest whatsoever exists over or in respect of the whole or any part of the Collateral;
 - (c) no attachment, provisional attachment, provisional execution, procedure for collection of tax delinquency or any other similar legal administration procedure has been made or taken in respect of the Collateral;
 - (d) the Counterparty does not owe any Japanese tax liability of which the statutory due date (*houtei noukigen*) has arrived; and

- (e) no procedure under any applicable bankruptcy, insolvency, reorganisation, civil rehabilitation or similar procedures has commenced with respect to the Counterparty.

3. OPINIONS

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

3.1 Valid Security Interest

3.1.1 JASDEC Securities Pledge

Subject to paragraph 3.1.4 below, the Security Interest Provisions would create valid security interest in the form of the JASDEC Securities Pledge in respect of the JASDEC Securities perfected as against third parties (excluding the issuers of such JASDEC Securities) upon the completion of the book-entry transfer of such JASDEC Securities from a proprietary ledger (*hoyuu ran*) of a Counterparty's securities account to the Securities Account of a Firm in accordance with the Book-Entry Transfers Act and the procedure under the JASDEC System.

3.1.2 JGB Pledge

Subject to paragraph 3.1.4 below, the Security Interest Provisions would create valid security interest in the form of the JGB Pledge in respect of the JGB perfected as against third parties (excluding the issuers of such JGB) upon the completion of the book-entry transfer of such JGB from a proprietary ledger (*hoyuu ran*) of a Counterparty's account to the Securities Account of a Firm in accordance with the Book-Entry Transfers Act and the procedure under the BOJ System.

3.1.3 Lien Clause

The Lien Clause may not create a valid security interest over the Collateral because the Firm does not have physical possession of the Collateral.

3.1.4 Amendments

In order to give our opinions in paragraph 3.1, the Security Interest Provisions must be amended as follows:

- (a) The Security Interest Clause must be amended by adding the following provision at the end of the paragraph:

"In respect of the Japanese Collateral, you grant to us a first priority Japanese Law Pledge over all non-cash margin which is the Japanese Collateral and you give instructions to its custodian of the book-entry transfer of the relevant Japanese Collateral from its account to the Securities Account in accordance with the Book-Entry Transfers Act

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and the procedure under the JASDEC System or the BOJ System, as the case may be, so that JASDEC or the BOJ, as the case may be, can perform such account transfer in accordance with such instructions."

- (b) The Power to Charge Clause must be amended by adding the following provision at the end of the paragraph:

"In respect of the Japanese Collateral, you agree that we may re-pledge (*tenshichi*) any margin which is the Japanese Collateral to secure any of our obligations to an intermediate broker or Market, including obligations owed by virtue of the positions held by us or other of our clients."

- (c) The Power to Sale Clause must be amended by adding the following provision at the end of the paragraph:

"In respect of the Japanese Collateral, if an Event of Default occurs and the Secured Obligations become due and payable, we are entitled to sell all or any part of the margin which is the Japanese Collateral to the extent permitted by applicable law. We shall be entitled to apply the proceeds of sale towards payments of the costs of such sale and towards satisfaction of the Secured Obligations."

- (d) The Power to Appropriation Clause must be amended by adding the following provision at the end of the paragraph:

"In respect of the Japanese Collateral, to the extent permitted under applicable law, we shall have the right to acquire or cause to be acquired by our nominee(s) the definitive title to any margin which is the Japanese Collateral in lieu of payment of the Secured Obligations up to the value of such Japanese Collateral. For this purpose, you agree that the value of such Japanese Collateral so acquired shall be the market value of the Japanese Collateral reasonably determined by us. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation."

- (e) The following provision must be added at the end of the relevant governing law clause:

"Notwithstanding the foregoing, Japanese law shall be applied to the extent necessary in order to interpret and give effect to the provisions of [*insert reference to the relevant provisions for the Japanese Collateral*] so far as the provisions included therein relate to any Japanese Collateral."

- (f) The following definitions must be added:

"**BOJ**" means the Bank of Japan;

"**BOJ System**" means the clearing system of the Japanese government bonds managed by the BOJ pursuant to the Book-Entry Transfers Act;

"**Book-Entry Transfers Act**" means the Act Concerning Book-Entry Transfers of Corporate Bonds, Shares, etc. of Japan (*shasai kabushiki tou no furikae ni kansuru horitsu*) (Act No. 75 of 2001, as amended);

"**Japanese Collateral**" means the Japanese Governmental Bonds and/or the JASDEC Securities.

"**Japanese Government Bonds**" mean any Japanese government bonds which are recorded and cleared under the BOJ System from time to time pursuant to the Book-Entry Transfers Act;

"**Japanese Law Pledge**" means the ordinary pledge (*shichiken*) as provided for in Articles 342 to 366 of the Civil Code (*min po*) (Law No. 89 of 1896, as amended) or the blanket pledge (*ne shichiken*).

"**JASDEC**" means Japan Securities Depository Center, Incorporated;

"**JASDEC Securities**" mean shares and corporate debt securities (i) owned by a Counterparty, (ii) issued by a company incorporated in Japan and (iii) recorded and cleared through the JASDEC System pursuant to the Book-Entry Transfers Act;

"**JASDEC System**" means the depository and clearing system of securities managed by JASDEC pursuant to the Book-Entry Transfers Act;

"**Securities Account**" means a pledge ledger (*shichiken ran*) of a securities account of a Firm held under the Book-Entry Transfers Act."

3.1.5 Power of Sale Clause and Power of Appropriation Clause

With respect to the Power of Sale Clause and the Power of Appropriation Clause, we assume that the Secured Obligations arise from the commercial activities (*shokoi*) provided for under Articles 501, 502 and 503 of the Commercial Code of Japan (*sho ho*) (Law No. 48 of 1899, as amended).

3.1.6 Following the occurrence of an Event of Default, including as a result of the commencement of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral (subject to the Japanese Insolvency Acts and the Insolvency Proceedings).

3.1.7 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein (subject to the Japanese Insolvency Acts and the Insolvency Proceedings).

3.2 Further acts

Other than those provided in paragraph 3.1 above, no further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to

enforce the Security Interest in respect of the Collateral; provided that the Non-Defaulting Party must take such actions as required to enforce the Security Interest in respect of the Collateral under the Book-Entry Transfers Act and the procedure under the JASDEC System or the BOJ System, as the case may be.

3.3 Foreign Collateral Providers

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

3.4 Right of re-use

With respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement 2011 (or an Equivalent Agreement in the form of one of the foregoing), the Rehypothecation Clause may not be effective in accordance with its terms because a security holder is not entitled to lend or otherwise dispose of collateral over which security interests are created except for re-pledge (*tenshichi*) or use of collateral as pledgee permitted under applicable law.

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

4. QUALIFICATIONS

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

4.1 Effectiveness of Security

4.1.1 We express no opinion as to:

- (a) whether the Counterparty has good legal or other title to the assets or rights which are expressed to be subject to a security interest under the Security Interests Provisions, or as to the existence or value of any such assets or rights;
- (b) the priority or perfection of any security interest created under the Security Interests Provisions;
- (c) whether any of the Collateral is now, or may become, subject to any rights or interests of any person ranking now or in the future in priority to a Firm or free from the security constituted by the Security Interests Provisions; or
- (d) whether the Security Interests Provisions breach any other agreement or instrument.

4.1.2 There is no provision in the Civil Code which directly addresses the validity, the method for creation and perfection or crystallisation of a blanket pledge (*ne shichiken*). Although we believe that our opinions relating to the blanket

pledge (*ne shichiken*) set forth above are reasonable, a Japanese court may take a view different from ours on these issues.

- 4.1.3 There is no Japanese statute, guiding case precedent or prevailing scholarly opinion which directly addresses the method for creation and perfection of a pledge (an ordinary pledge or a blanket pledge) over securities under the Book-Entry Transfers Act in the case where there are two or more pledgees. Although it is practically possible to open the securities account in the joint names of the Firms and transfer the pledged Collateral from a proprietary ledger (*hoyuu ran*) of the Counterparty's securities account to a pledge column (*shichiken ran*) of the securities account in the joint names of the Firm, there is a possibility that a Japanese court may take a view that the Firms co-own an pledge over the Collateral.

4.2 Secured Creditors under the Insolvency Proceedings

4.2.1 Summary

Bankruptcy/Civil Rehabilitation

The Firm's ability to enforce the pledge over the Collateral is not affected by the imposition of a stay or moratorium by a court in Japan in the Bankruptcy Proceedings and in the Civil Rehabilitation Proceedings.

Corporate Reorganisation

The Firm's ability to enforce the pledge over the Collateral is affected by the imposition of a stay or moratorium by a court in Japan in the Corporate Reorganisation Proceedings. Automatic stay may be applicable. With regard to the effect of the stay, please see paragraph 4.2.3.

4.2.2 Bankruptcy/Civil Rehabilitation

Secured creditors have the right to enforce their security interest outside the Bankruptcy or Civil Rehabilitation Proceedings (*betsujo ken*), provided that the security interest has been perfected as against third parties in accordance with applicable law by the earlier to occur of the suspension of payments generally by the debtor. Note that under Japanese law the trustee is construed as a third party. If not duly perfected, the enforcement of such security interest is prohibited unless the trustee otherwise agrees with the court's permission.

However, in the Bankruptcy Proceedings, the bankruptcy trustee has the right to request the court to permit the discharge of a security interest through a voluntary sale of secured assets, if such voluntary sale and discharge of security interest would be of benefit to all creditors and would not unduly harm the interest of the relevant secured creditor. The secured creditor may recover its claim from the sales proceeds of the secured asset paid to the court in accordance with the priority of the security interest.

In the Civil Rehabilitation Proceedings, the court has power to permit the discharge of a security interest at the request of the debtor. In order for this power to be exercised, (a) the secured assets must be determined to be assets indispensable for the continuation of the business of the debtor; and (b) the debtor must file with the court a petition for permission for the discharge and pay to the court an amount (supported by evidence) equal to the value of the secured assets. If the secured creditor does not agree with the amount offered by the debtor, the relevant secured creditor may within 1 month of the delivery to the secured creditor of the documents of the debtor's request the court to determine the value of the secured assets. The court will in turn appoint an appraiser and determine the amount based on the appraised value. If the court permits the discharge of the security interest against payment into court of an amount equal to the value of the secured assets, the secured creditor may recover its claim from such amount paid to the court, in accordance with the priority of the security interest.

4.2.3 Corporate Reorganisation

Claims held by unsecured creditors arising from any cause before the date of commencement of the Corporate Reorganisation Proceedings are categorised as "reorganisation claims" (*kosei saiken*), and claims held by secured creditors arising from any cause before the date of corporate reorganisation proceedings are categorised as "reorganisation secured claims" (*kosei tanpo ken*). To the extent of any shortfall between the amount of the secured claims and the amount recovered or recoverable from the secured assets, such shortfall shall constitute a "reorganisation claim" and the secured creditors will be treated as unsecured creditors in respect thereof. As of the date of commencement of the Corporate Reorganisation Proceedings, no creditor of the debtor, whether secured or unsecured, is entitled to enforce its rights outside the Corporate Reorganisation Proceedings, and each creditor is required to submit proof of claims. Creditors will receive payment only in accordance with the reorganisation plan.

Security interests must have been perfected as against third parties in accordance with applicable laws not later than the earlier to occur of the suspension of payments generally by the debtor or the making of an application for the Corporate Reorganisation Proceedings given that the trustee (*kanzainin*) is construed as a third party under Japanese law. If not duly perfected, secured creditors are treated as unsecured creditors.

Upon the commencement of the Corporate Reorganisation Proceedings, the enforcement proceedings already instituted by creditors, whether secured or unsecured, against the debtor's assets instituted against the debtor shall stay or cease to be effective automatically.

4.3 Right of Avoidance (*hininken*)

If an insolvent party is subject to the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings or the Civil Rehabilitation Proceedings, the trustee in any such Insolvency Proceedings may avoid or set aside any act, which has the effect of creating a preference (if, for example, the insolvent party would, as a consequence of

such act, become insolvent or unable to pay its debts as they fall due) (any such act, a "Preferential Act"). This right of avoidance expires upon the earlier of: (i) a statutory limitation of two years from the court decision for the commencement (the "Commencement Decision") in relation to the relevant Insolvency Proceedings, and (ii) twenty years from the Preferential Act. In relation to the Special Liquidation Proceedings, the Companies Act does not have a provision for right of avoidance for the Special Liquidation Proceedings. The relevant types of avoidance are as follows:

4.3.1 Avoidance due to Fraudulent Preference (*koi hinin*)

Any Other Preferential Act (as defined below) carried out by an insolvent party (whether or not insolvent at the time) with the intention to prefer a solvent party over other creditors or to harm other creditors may be avoided or set aside as a fraudulent preference, unless the solvent party is able to successfully prove that it was not aware that other creditors would be harmed as a consequence of such Preferential Act.

4.3.2 Avoidance due to Preference in Critical Period (*kiki hinin*)

If a Critical Event occurs, it is considered to be a sign that the financial condition of a insolvent party is in danger and that an insolvent party is on the verge of Insolvency Proceedings.

A "Critical Event" means (i) a general suspension of payment of debts (*shiharai teishi*), or (ii) a presentation by any person so entitled of an application for the Commencement Decision of the Bankruptcy Proceedings in relation to the Bankruptcy Proceedings, of the Bankruptcy Proceedings, the Civil Rehabilitation Proceedings or Special Liquidation Proceedings in relation to the Civil Rehabilitation Proceedings, or of the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings, the Civil Rehabilitation Proceedings, or Special Liquidation Proceedings in relation to the Corporate Reorganisation Proceedings, as the case may be. The Companies Act does not have a provision for right of avoidance for the Special Liquidation Proceedings. A "Modified Critical Event" means (i) the inability to pay debts as they fall due (*shiharai funou*) (instead of a suspension of payments generally (*shiharai teishi*)) or (ii) a presentation by any person so entitled of an application for the Commencement Decision of such Insolvency Proceedings as referred to in the definition of the Critical Event above.

Preferential Acts after or just before the occurrence of a Critical Event or a Modified Critical Event are categorized as either (1) the payment of debts, creation of a security interest or any other act to discharge existing debts (the "Discharging Acts"), or (2) other type of preferential acts (the "Other Preferential Acts").

Any Preferential Act carried out by a insolvent party after or just before the occurrence of such a critical event may be avoided or set aside by the trustee as described in more detail below:

(a) **Other Preferential Act**

Any Other Preferential Act by an insolvent party made after the occurrence of a Critical Event may be avoided or set aside by the trustee unless a solvent party successfully proves that it did not know of the occurrence of the Critical Event or harm of the other creditors at the time of such act.

(b) **Discharging Act pursuant to a Pre-existing Agreement**

Any Discharging Act carried out by an insolvent party pursuant to a pre-existing agreement after the occurrence of a Modified Critical Event may be avoided or set aside by the trustee if the trustee successfully proves that a solvent party had been aware of the occurrence of the Modified Critical Event at the time of such act.

(c) **Discharging Act where no Pre-existing Agreement is in place**

Any Discharging Act carried out, where an insolvent party is not so obliged by operation of law or by any pre-existing agreement, after the occurrence of a Modified Critical Event or within 30 days prior to a Modified Critical Event, may be avoided or set aside by the trustee, unless a solvent party can successfully prove that it did not know that other creditors of the insolvent party would be harmed as a consequence of such act.

However, if such Discharging Act or any Other Preferential Act was carried out more than one year before the Commencement Decision in relation to the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings or the Civil Rehabilitation Proceedings, as the case may be, it may only be set aside if it was carried out after the occurrence of (i) of the Modified Critical Event (namely, the inability to pay debts as they fall due (*shiharai funou*)) and the trustee successfully proves that a solvent party was aware of such inability to pay.

4.3.3 **Avoidance of Gratuitous Act (*musho hinin*)**

A preferential act which is "gratuitous" may be set aside if a Critical Event occurs within 6 months of such act. In order for an act not to be deemed to be "gratuitous", it must have been carried out in return for a commercial benefit. If such act is the issuance of a guarantee or the grant of third party security interest, Japanese courts generally take the view that commercial benefit must be in the nature of a fee. If it is the grant of security interest to secure an insolvent party's own obligations to the creditor, it is not considered as "gratuitous" but such act might be avoided or set aside as a Discharging Act as mentioned above.

4.3.4 **Avoidance of Perfection**

A sale, lease or any other type of disposition of an asset of the debtor, including creation of a security interest thereon, may be avoided by the

trustee, unless such disposition has been perfected as against third parties before the later to occur of a Critical Event or fifteen (15) days from the date of disposition of the asset and, in any event, before the commencement of bankruptcy proceedings, the Civil Rehabilitation Proceedings and the Corporate Reorganisation Proceedings. It should be noted that the trustee is treated as a third party.

4.3.5 Special Liquidation Proceedings

No rights of avoidance arise in the Special Liquidation Proceedings.

4.4 Foreign Insolvency Proceedings Act

Pursuant to the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (*gaikoku tosan shori tetsuduki no shonin enjo ni kansuru horitsu*) (Law No. 129 of 2000, as amended), if any bankruptcy, insolvency, arrangement, readjustment, compromise or rescheduling of debt, dissolution, liquidation, winding up or similar judicial proceedings in any foreign court is commenced against a debtor who holds assets in Japan, and any liquidator, receiver, trustee, administrator or similar officer has been appointed for the purpose of such foreign insolvency proceedings, such officer may apply to the Tokyo District Court for recognition of such foreign insolvency proceedings. The Tokyo District Court, which has exclusive jurisdiction in respect thereof, may, upon its decision to recognize such foreign insolvency proceedings, issue any of the following orders to facilitate the implementation of such foreign insolvency proceedings:

- (a) to stay enforcement proceedings already instituted by creditors in Japan, whether secured or unsecured, against the debtor's assets, provided that, in case of secured creditors, this would not cause unjustified damage to the secured creditors who instituted such enforcement proceedings;
- (b) to prohibit all unsecured creditors from initiating any enforcement proceedings;
- (c) to prohibit the debtor from changing the present status of its assets and liabilities, including, among other things, selling, leasing or otherwise disposing of any asset, or paying any debt to any creditor; and
- (d) to appoint a trustee (*kanzainin*) for the purpose of management and control of the business and the assets of the debtor in Japan.

However, if the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings, the Civil Rehabilitation Proceedings or the Special Liquidation Proceedings have already commenced against such debtor in Japan, such foreign insolvency proceedings may not be recognised unless:

- (a) such foreign insolvency proceedings have been commenced in the jurisdiction where the debtor has its principal place of business;
- (b) it will meet the creditors' general interests to recognize such foreign insolvency proceedings; and

- (c) the recognition of such foreign insolvency proceedings would not cause unjustified damage to creditors in Japan.

4.5 Risk of Denial of Acceleration

As a matter of Japanese law, a provision for the ability to accelerate payments upon the insolvency of the insolvent party will be upheld, as Japanese law allows for a general freedom of contract, subject to public policy or mandatory provisions of Japanese law. However, where the insolvent party is subject to the Corporate Reorganisation Proceedings or the Civil Rehabilitation Proceedings, there is a judicial precedent to suggest that there is a risk that a trustee in such Insolvency Proceedings may seek to deny the provisions which provide for the acceleration of payment, if the acceleration is regarded as having a materially adverse effect on the continuance of the party's business. However, such judicial precedent is related to acceleration of payments under a conditional sale agreement, where it is likely that the property purchased by the buyer on a deferred payment condition would be necessary for continuance of the buyer's business. It is not certain whether such judicial precedent is also applicable to acceleration of payments or deliveries under the Netting Provisions. We are not aware of any judicial precedent which denied provisions for acceleration of payments for netting.

4.6 Application of Foreign Law

It is uncertain whether the parties can agree in advance the governing law of claims connected with the contract but which are not claims on the contract.

4.7 Enforceability of Claims

In addition to the qualification in paragraphs 1.4.4 and 1.4.5 above, in relation to the limitations on enforceability, please note, in particular, that:

- (a) where any party is vested with a discretion or may determine a matter in its opinion, that party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds;
- (b) enforcement may be limited by the provisions of Japanese law applicable to agreements held to have been frustrated by extraordinary events happening after its execution (*jijo henko no hori*);
- (c) enforcement of rights may be or become limited by prescription or by the lapse of time or may be or become subject to a defence of set-off or counterclaim;
- (d) a party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by a misrepresentation and the Japanese courts will generally not enforce an obligation if there has been fraud; and
- (e) any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification proved to be fraudulent, arbitrary or manifestly incorrect or not made in good faith and a Japanese court may regard any

certification, determination or calculation as no more than *prima facie* evidence of the matter calculated, determined or certified.

4.8 Other Qualifications

- 4.8.1 Any provision of an agreement or document may be amended or waived by oral agreement between the parties, notwithstanding any provision to the contrary.
- 4.8.2 Any provision which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any person may be ineffective.
- 4.8.3 Any provision stating that a failure or delay, on the part of any person, in exercising any right or remedy under any instrument or agreement shall not operate as a waiver of such right or remedy may not be effective.
- 4.8.4 Any question as to whether or not any provision of any agreement or instrument which is illegal, invalid or void may be severed from the other provisions thereof in order to save those other provisions would be determined by a Japanese court in its discretion.
- 4.8.5 In this opinion letter, Japanese legal concepts are expressed in the English language and not in their original Japanese language. The concepts concerned may not be identical to the concepts described by the equivalent English terminology as they exist under the laws of other jurisdictions. Therefore, this opinion letter may only be relied upon under the express condition that any issues of interpretation arising with respect to such concepts will be governed by Japanese law and be brought before a Japanese court.
- 4.8.6 We express no opinion as to the existence of any property or assets to be transferred pursuant to the Agreement, whether any such property or assets is owned by the transferor thereof or whether the same is or may become subject to any equities, rights or interests in favour of any other person ranking in priority to the transferee thereof. Under conflicts of law principles of this jurisdiction, generally the law of the country where property is situated will determine the manner and effectiveness of any purported transfer of title in that property.
- 4.8.7 Ultimately the question of whether or not any particular action satisfies any provision of law would be decided by the Japanese courts and our views are based on our interpretation of the relevant laws having regard to appropriate precedents and other research and our view of a reasonable application of that interpretation of the law to the facts stated. It should of course be noted that a court may, for whatever reason, take a different view (whether reasonable or not).

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options

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

Yours faithfully,



Clifford Chance Law Office (Gaikokuho Kyodo Jigyo)

SCHEDULE 1
FUND

Subject to the modifications and additions set out in this Schedule 1 (Fund), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are funds as referred to in paragraph 1.2.1 of the opinion letter. For the purposes of this Schedule 1 (Fund), "funds" means the entities as referred to in paragraph 1.2.1 of the opinion letter.

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1. If a "fund" as referred to in paragraph 1.2.1 in the opinion letter enters into the Agreement, a "trust bank" becomes a Counterparty in its capacity as a trustee for such fund, or an "investment management business operator" becomes a Counterparty for the account of such fund.
- 1.2. If a Counterparty is a "trust bank" acting in its capacity as the trustee for a trust created pursuant to a trust agreement for a "fund", each party to that trust agreement has the capacity, power and authority under all applicable laws to enter into that trust agreement and to perform its obligations under that trust agreement; each party has taken all necessary steps to execute, deliver and perform that trust agreement; that trust agreement has been duly executed by all parties thereto; and that trust agreement constitutes the legal, valid, binding and enforceable obligations of each party thereto under its governing laws and all other applicable laws.
- 1.3. If a Counterparty is an "investment management business operator" acting for the account of a "fund" pursuant to an investment discretionary contract, each party to such investment discretionary contract has the capacity, power and authority under all applicable laws to enter into that investment discretionary contract and to perform its obligations under that investment discretionary contract; each party has taken all necessary steps to execute, deliver and perform that investment discretionary contract; that investment discretionary contract has been duly executed by all parties thereto; and that investment discretionary contract constitutes the legal, valid, binding and enforceable obligations of each party thereto under its governing laws and all other applicable laws.

2. MODIFICATIONS TO DEFINITIONS

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), the definitions of the "**Insolvency Proceedings**" and "**Japanese**

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Insolvency Acts" shall be modified as follows and the opinion letter shall be read and construed accordingly:

"Insolvency Proceedings" means the bankruptcy (*hasan*) proceedings under the Bankruptcy Act (the "**Bankruptcy Proceedings**"), and the civil rehabilitation (*minji saisei*) proceedings under the Civil Rehabilitation Act (the "**Civil Rehabilitation Proceedings**");

"Japanese Insolvency Acts" mean the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended) (the "**Bankruptcy Act**") and the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended) (the "**Civil Rehabilitation Act**");".

**SCHEDULE 2
PENSION ENTITY**

Subject to the modifications and additions set out in this Schedule 2 (Pension Entity), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are pension entity as referred to in paragraph 1.2.2 of the opinion letter. For the purposes of this Schedule 2 (Pension Entity), "pension entities" means the entities as referred to in paragraph 1.2.2 of the opinion letter.

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1. If a Counterparty is any of the pension entities as referred to in paragraph 1.2.2 in the opinion letter, such Counterparty is duly incorporated or established and validly existing under the applicable laws referred to therein.
- 1.2. If a "pension entity" as referred to in paragraph 1.2.2 in the opinion letter enters into the Agreement, a "trust bank" becomes a Counterparty in its capacity as a trustee for such pension entity, or an "insurance company" or an "investment management business operator" becomes a Counterparty for the account of such pension entity.
- 1.3. If a Counterparty is a "trust bank" acting in its capacity as the trustee for a trust created pursuant to a trust agreement for a "pension entity", each party to that trust agreement has the capacity, power and authority under all applicable laws to enter into that trust agreement and to perform its obligations under that trust agreement; each party has taken all necessary steps to execute, deliver and perform that trust agreement; that trust agreement has been duly executed by all parties thereto; and that trust agreement constitutes the legal, valid, binding and enforceable obligations of each party thereto under its governing laws and all other applicable laws.
- 1.4. If a Counterparty is an "investment management business operator" acting for the account of a "pension entity" pursuant to an investment discretionary contract, each party to such investment discretionary contract has the capacity, power and authority under all applicable laws to enter into that investment discretionary contract and to perform its obligations under that investment discretionary contract; each party has taken all necessary steps to execute, deliver and perform that investment discretionary contract; that investment discretionary contract has been duly executed by all parties thereto; that investment discretionary contract constitutes the legal, valid, binding and enforceable obligations of each party thereto under its governing laws and all other applicable laws; and the ownership of the assets of the pension entity

have been transferred to the investment manager duly in accordance with the investment discretionary contract.

- 1.5. If a Counterparty is an "insurance company" acting for the account of a "pension entity" pursuant to an insurance contract, each party to such insurance contract has the capacity, power and authority under all applicable laws to enter into that insurance contract and to perform its obligations under that insurance contract; each party has taken all necessary steps to execute, deliver and perform that insurance contract; that insurance contract has been duly executed by all parties thereto; that insurance contract constitutes the legal, valid, binding and enforceable obligations of each party thereto under its governing laws and all other applicable laws; and the ownership of the assets of the pension entity have been transferred to the insurance company duly in accordance with the insurance contract.

2. MODIFICATIONS TO DEFINITIONS

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), the definitions of the "**Insolvency Proceedings**" and "**Japanese Insolvency Acts**" shall be modified as follows and the opinion letter shall be read and construed accordingly:

"**Insolvency Proceedings**" means the bankruptcy (*hasan*) proceedings under the Bankruptcy Act (the "**Bankruptcy Proceedings**"), and the civil rehabilitation (*minji saisei*) proceedings under the Civil Rehabilitation Act (the "**Civil Rehabilitation Proceedings**");

"**Japanese Insolvency Acts**" mean the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended) (the "**Bankruptcy Act**") and the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended) (the "**Civil Rehabilitation Act**");",

provided that:

- 2.1. It is usual that a trust bank (in its capacity as a trustee for such pension entity), an insurance company or an investment management business operator (for the account of such pension entity) would become a Party. If a trust bank is a Party as a trustee for such pension entity, the Bankruptcy Proceedings are applicable to trust assets held by the trustee on trust for such pension entity pursuant to Article 244.2 of the Bankruptcy Act, but it is not clear whether the Civil Rehabilitation Proceedings would be applicable thereto. If an insurance company or an management business operator is a Party for the account of such pension entity, the obligations of such insurance company or investment management business operator, as applicable, as a Party under the Agreements will not be affected by any insolvency of such pension entity, because the ownership of the assets of the pension entity have been transferred to such insurance company or investment management business operator duly in accordance with the insurance contract or the investment discretionary contract, but the Bankruptcy Proceedings and the Civil Rehabilitation Proceedings are

applicable to such insurance company or investment management business operator.

- 2.2. If a pension entity has a legal personality, and it is itself a Party, there is no precedent and it is not clear whether the Bankruptcy Proceedings or the Civil Rehabilitation Proceedings would be applicable to such pension entity. There is a scholarly opinion that a pension entity is not capable of being subject to the Bankruptcy Proceedings or the Civil Rehabilitation Proceedings, unless the statute governing such pension entity expressly provides that such pension entity is subject to the Bankruptcy Proceedings or the Civil Rehabilitation Proceedings. To the extent that such pension entity is subject to the Bankruptcy Proceedings or the Civil Rehabilitation Proceedings, there is no difference from those Insolvency Proceedings for companies.

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.
5. "**Core Provisions**" means:
 - (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
 - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.
6. "**Rehypothecation Clause**" means:
 - (a) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (*Rehypothecation*);
 - (b) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (*Rehypothecation*);
 - (c) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (*Rehypothecation*); and
 - (d) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
7. "**Security Interest Provisions**" means:
 - (a) the "**Security Interest Clause**", being:

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- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (b) the "**Power to Charge Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (*Power to charge*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (*Power to charge*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (*Power to charge*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (*Power to charge*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (*Power to charge*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (*Power to charge*);

- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (*Power to charge*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (*Power to charge*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (*Power to charge*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (c) the "**Power of Sale Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); and
 - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (*Power of appropriation*);

- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (*Power of appropriation*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (*Power of appropriation*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (*Power of appropriation*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (*Power of appropriation*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (*Power of appropriation*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (*Power of appropriation*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (*Power of appropriation*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (*Power of appropriation*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (*General lien*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (*General lien*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (*General lien*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (*General lien*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (*General lien*);

- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (*General lien*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (*General lien*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the

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

8. "Two Way Clauses" means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.
9. "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):
 - (i) 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*);
 - (ii) in relation to the terms of the Retail Client Agreements, Clause 11.2 (*Liquidation Date*), Clause 11.4 (*Calculation of Liquidation Amount*) and Clause 11.5 (*Payer*); and
 - (iii) 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*); and
 - (iv) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the Clauses and sub-Clauses (in their totality) referred to in any of one the foregoing paragraphs (i) to (iii) of this definition (except in so far as variations may be required for internal cross-referencing purposes).

ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as “you”, “Counterparty”, “Party A/Party B”) provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.
4. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.