

YOUR REFERENCE

IN REPLY PLEASE QUOTE

DATE

NETTING ANALYSER LIBRARY

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

- 1.1.1 Parties 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 Parties incorporated or formed under the laws of another jurisdiction which are companies or banks and which have a branch or branches located in this jurisdiction;

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- 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) and registered as a "registered financial institution" (*touroku kinyu kikan*) ("**RFI**") under Article 33-2 of the Financial Instruments and Exchange Act (*kinyu shohin torihiki ho*) (Law No. 25 of 1948, as amended) (the "**FIEA**") 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 unnyo 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*) (the "**FIBO**"), respectively under the FIEA 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, licensed as an "insurance company" (*hoken kaisha*) under the Insurance Business Act and registered as a "registered financial institution" (*touroku kinyu kikan*) ("**RFI**") under Article 33-2 of the under the FIEA;
- 1.1.7 financial institutions (other than banks) which are companies duly incorporated and validly existing under the Companies Act and is a licensed as the "securities finance company" (*shouken kinyu kaisha*) ("**SFC**") as defined in Article 2(30) and Article 156-24 of the FIEA;
- 1.1.8 individuals who have residence in Japan;
- 1.1.9 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
- 1.1.10 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.

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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 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).

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,

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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 be, 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 **"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);
- 1.6.2 **"Insolvency Proceedings"** means the procedures listed in paragraph 3.1;
- 1.6.3 **"Insolvency Representative"** means a liquidator, administrator, administrative receiver or analogous or equivalent official under the Insolvency Proceedings in this jurisdiction;
- 1.6.4 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"**; and
- 1.6.5 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

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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 has been properly executed by both Parties.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.
- 2.10 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.
- 2.11 In relation to the opinions set out at paragraphs 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.
- 2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).
- 2.13 That all margin transferred pursuant to the Title Transfer Provision is freely transferable, all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity and perfection of each transfer of margin pursuant to the Title Transfer Provisions, including, without limitation, the acts referred to in paragraph 2.22, will have been effectively carried out.
- 2.14 That any cash provided as margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

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- 2.15 That, if a Party is a company as referred to in paragraph 1.1.1 above, such Party is duly incorporated or established and validly existing under the Companies Act.
- 2.16 That, if a Party is a company, bank or insurance company which have a branch or branches located in this jurisdiction as referred to in paragraph 1.1.2 above, such Party is duly incorporated or formed under all applicable laws of another jurisdiction, and such branch is duly registered in Japan under the Companies Act and is duly licensed as "banks" (*ginko*) under the Banking Act or as an "insurance company" (*hoken kaisha*) under the Insurance Business Act, as the case may be.
- 2.17 That, if a Party is a mutual company (*sougo kaisha*) as referred to in paragraph 1.1.6 above, such Party is duly incorporated or established and validly existing under the Insurance Business Act.
- 2.18 That, if a Party is an individual as referred to in paragraph 1.1.8 above, such Party 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 Party is any of the pension entities as referred to in paragraph 1.2.2 above, such Party is duly incorporated or established and validly existing under the applicable laws referred to therein.
- 2.20 That, if a Party is a "bank", "investment management business operator", "financial instruments business operator", "insurance company", "investment trust", "investment corporation" or "trust bank" as referred to in paragraphs 1.1 and 1.2 above, such Party satisfies the applicable license requirements as set forth therein.]
- 2.21 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 FIBO, RFI or SFC.
- 2.22 That, (i) if margins transferred pursuant to the Title Transfer Provision are JASDEC Securities, such JASDEC Securities are properly recorded in a proprietary ledger (*hoyuu ran*) of the transferor's securities account under the JASDEC System pursuant to the Book Entry Transfer's Act whether the transferor is located in or outside this jurisdiction, and such JASDEC Securities will be transferred to the securities account of the transferee in accordance with the Book-Entry Transfers Act and the procedure under the JASDEC System, and (ii) if margins transferred pursuant to the Title Transfer Provision are Japanese Governmental Bonds, Japanese Governmental Bonds are properly recorded in a proprietary ledger (*hoyuu ran*) of the transferor's securities account under the BOJ System pursuant to the Book Entry Transfer's Act whether the transferor is located in or outside this jurisdiction and such Japanese Governmental Bonds will be transferred to the securities account of the transferee in accordance with the Book-Entry Transfers Act and the procedure under the BOJ System. In this paragraph:

"BOJ" means the Bank of Japan;

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"**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 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;

"**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; and

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

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**

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party would be subject in this jurisdiction are the following:

3.1.1 the special liquidation (*tokubetsu seisan*) proceedings (the "**Special Liquidation Proceedings**");

3.1.2 the bankruptcy (*hasan*) proceedings (the "**Bankruptcy Proceedings**");

3.1.3 the corporate reorganisation (*kaisha kosei*) proceedings (the "**Corporate Reorganisation Proceedings**"); and

3.1.4 the civil rehabilitation (*minji saisei*) proceedings (the "**Civil Rehabilitation Proceedings**").

The legislation applicable to Insolvency Proceedings is (as amended up to the date hereof, the "**Japanese Insolvency Acts**):

3.1.5 in relation to Special Liquidation Proceedings, Articles 510 to 574 of the Companies Act;

3.1.6 in relation to Bankruptcy Proceedings, the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended) (the "**Bankruptcy Act**");

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3.1.7 in relation to Corporate Reorganisation Proceedings, the Corporate Reorganisation Act (*kaisha kosei ho*) (Law No. 154 of 2002, as amended) (the "**Corporate Reorganisation Act**"); and

3.1.8 in relation to Civil Rehabilitation Proceedings, the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended) (the "**Civil Rehabilitation Act**"),

provided that, the Japanese Insolvency Acts are amended by the Act on Special Procedures for Reorganisation Proceedings in relation to Financial Institutions (*kinyu kikan tou no kousei tetsuzuki no tokurei tou ni kansuru houritsu*) (Law No. 95 of 1996, as amended) (the "**Special Reorganisation Proceedings Act**") to the extent that they are applied to a "bank", "insurance company" or a "trust bank" (in its own capacity).

In addition, 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) (the "**Foreign Insolvency Proceedings Act**") sets out the procedures for dealing with the assets of foreign corporations, regardless of the type of business conducted by it (including, but not limited to, banks, investment firms and broker-dealers) situated in this jurisdiction upon the commencement of insolvency proceedings in a foreign court.

The Special Liquidation Proceedings are applicable only to a joint stock company (*kabushiki kaisha*) ("**KK**") incorporated under the Companies Act and a "mutual company" (*sougo kaisha*) ("**SK**") incorporated under the Insurance Business Act and a company incorporated or formed under the laws of another jurisdiction with its office or assets located in this jurisdiction. The Corporate Reorganisation Proceedings are applicable only to KK and SK and a company incorporated or formed under the laws of another jurisdiction with its office or assets located in this jurisdiction. We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended by the following events (the "**Japanese Insolvency Event**"):

"a petition is made relating to a Party or any of the assets thereof for commencement of the civil rehabilitation proceedings under the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended), the corporate reorganisation proceedings under the Corporate Reorganisation Act (*kaisha kosei ho*) (Law No. 154 of 2002, as amended), the bankruptcy proceedings under the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended), or the special liquidation proceedings (*tokubetsu seisan*) under the Companies Act (*kaisha ho*) (Law No. 86 of 2005, as amended) (the "**Japanese Insolvency Event**")."

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.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, and the Japanese Insolvency Acts in

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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

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 enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

- 3.3.1 the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and
- 3.3.2 the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

However, the payment of the net sum of the positive mark-to-market values of the relevant individual Client Transactions by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

- (a) Although there are no prevailing scholarly views nor reported controlling judicial precedents which have directly ruled on the issue, we believe that, under the laws of this jurisdiction, the FOA Netting Provisions would be recognised by the courts in this jurisdiction as valid, effective and enforceable, if they comply with either (i) all the requirements set out in Article 505.1 of the Civil Code and (if the Defaulting Party is subject to any Insolvency Proceedings) those under the Japanese Insolvency Acts as set forth in paragraphs 4.1.1 and 4.1.2 below or (ii) all requirements set out in Article 58.5 of the Bankruptcy Act (Article 58.5 of the Bankruptcy Act is applicable not only to the Bankruptcy Proceedings but also to the Civil Rehabilitation Proceedings and the Corporate Reorganisation Proceedings by virtue of Article 51 of the Civil Rehabilitation Act and Article 63 of the Corporate Reorganisation Act). The FOA Netting Provisions satisfy such requirements as set forth below.
- (b) Set-Off under Article 505.1 of the Civil Code

On the assumption that (i) an Event of Default has occurred in relation to a Party, (ii) the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the FOA Netting Provisions, and (iii) all obligations of each Party arising under the FOA Netting Agreements are payment obligations in the same currency which are due and payable on the

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Liquidation Date or the obligations of each Party arising under the FOA Netting Agreements are different types (e.g. payment obligations, on the one hand, and delivery obligations of securities, on the other hand) but such obligations are converted to obligations of the same type (i.e. payment obligations) by reference to market value in a situation where a Defaulting Party is not subject to any Insolvency Proceedings, the FOA Netting Provisions satisfy the requirements of Article 505.1 of the Civil Code, which requires as follows:

- (i) obligations of the same type (i.e. payment obligations) are owing between two parties; and
- (ii) such obligations are due and payable or capable of being declared due and payable upon the occurrence of such Event of Default.

However, if the obligations of each Party arising under the FOA Netting Agreements are different types and a Defaulting Party is subject to any Insolvency Proceedings, the FOA Netting Provisions do not satisfy the requirements of Article 505.1 of the Civil Code. In such case, Article 58.5 of the Bankruptcy Act would be applicable as discussed in paragraph (c) below.

(c) Article 58.5 of the Bankruptcy Act

Article 58.5 of the Bankruptcy Act requires as follows:

- (i) two parties have entered into the master agreement to cover all individual contracts of the same types of transactions;
- (ii) the parties have entered into an individual contract concerning a transaction of the commodity and the financial instrument which can be valued at the market price;
- (iii) such contract cannot achieve its purpose unless the obligations thereunder are duly performed on the agreed due date;
- (iv) at least one agreed due date of the trades under that same master agreement has not come yet at the time of the commencement of the Bankruptcy Proceedings, the Civil Rehabilitation Proceedings or the Corporate Reorganisation Proceedings; and
- (v) the master agreement has a close-out netting provision, namely, each individual contract covered thereunder will be terminated, the termination value will be determined by reference to the market price or any other reasonable method and will be payable under each individual contract, and all termination values under all individual contract will be netted.

The FOA Netting Provisions would qualify for protection under Article 58.5 of the Bankruptcy Act, if (i) the commodity or the financial instrument to be delivered can be valued at the market price and the value of the product is determined by reference to the market value of the product or, otherwise, the method used by the Non-Defaulting Party for calculating the Liquidation Amount will be deemed as a reasonable method in the market, regardless of any contrary provisions under the FOA Netting Provisions, and (ii) each

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Transaction under such FOA Netting Agreement will be automatically terminated pursuant to the FOA Netting Provisions at the time of submission of the application for the Bankruptcy Proceedings, the Civil Rehabilitation Proceedings or the Corporate Reorganisation Proceedings.

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, provided that the payment of the net sum of the positive mark-to-market values of the relevant individual Client Transactions by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

The following amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply:

- (x) Paragraph 1(a) of Part 1 of Annex 4 is amended by adding the following provision at the end:

"provided that if the Japanese Insolvency Event has occurred, the Liquidation Date shall occur as of the time immediately prior to the occurrence of such Japanese Insolvency Event."

- (y) Paragraph 1(c) of Part 1 of Annex 4 is amended by adding the following provision at the end:

"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."

Therefore, in addition to the highlighted words, it is necessary that the words shown as underlined in Paragraphs 1(a) and (c) of Part 1 of Annex 4 be treated as Core Provisions 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 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.

However, the payment of the net sum of the positive mark-to-market values of the relevant individual Client Transactions by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the

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reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

- (a) With regard to a Firm Trigger Event, the reasons described in paragraph 3.3 will apply, and we further assume that the netting under the Clearing Module Netting Provision is effected as of the date of the occurrence of the Japanese Insolvency Event.
- (b) With regard to a CCP Default, if (i) neither a Firm nor Client is subject to any Insolvency Proceedings, (ii) any Party has sent notice to express its intention to exercise its rights of set off under the Clearing Module Netting Provision, and (iii) all obligations of each Party arising under such Clearing Agreement which includes the Clearing Module Netting Provision are, or will be converted by reference to market value to, payment obligations in the same currency which are due and payable as a result of calculation of each item (A) through (D) constituting the Cleared Set Termination Amount under the Clearing Module Netting Provision, the Clearing Module Netting Provision satisfies the requirements of Article 505.1 of the Civil Code which are discussed in paragraph 3.3(b) above.

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 rights under the Clearing Module Netting Provision, provided that the payment of the net sum of the positive mark-to-market values of the relevant individual Client Transactions by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply. However, in addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions 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 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 because:

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- (a) With regard to a CM Trigger Event, the reasons described in paragraph 3.3 will apply, and we further assume that the netting under the Clearing Module Netting Provision is effected as of the date of the occurrence of the Japanese Insolvency Event.
- (b) With regard to a CCP Default, if (i) neither a Firm nor Client is subject to any Insolvency Proceedings, (ii) any Party has sent notice to express its intention to exercise its rights of set off under the Addendum Netting Provision, and (iii) all obligations of each Party arising under such Clearing Agreement which includes the Addendum Netting Provision are, or will be converted by reference to market value to, payment obligations in the same currency which are due and payable as a result of calculation of each item (A) through (D) constituting the Cleared Set Termination Amount under the Addendum Netting Provision, the Addendum Netting Provision satisfies the requirements of Article 505.1 of the Civil Code which are discussed in paragraph 3.3(b) above.

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 rights under the Addendum Netting Provisions, provided that the payment of the net sum of the positive mark-to-market values of the relevant individual Client Transactions by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply. However, in addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions 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 to the extent that the FOA Netting Provision is not superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision. 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 would, 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 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).

However, the payment of the net sum after such set off by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

The requirements of Article 505.1 of the Civil Code which are discussed in sub-paragraphs (i) and (ii) of paragraph 3.3(b) above. If (i) an Event of Default has occurred in relation to a Party and that the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the FOA Set-Off Provisions, (ii) all obligations of each Party arising under the FOA Netting Agreements are, or have been converted by reference to market value to, payment obligations in the same currency which are due and payable, and (iii) the notice of set-off is given by the Non-Defaulting Party to the Defaulting Party prior to the set-off, the FOA Set-Off Provisions satisfy such requirements of Article 505.1 of the Civil Code.

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

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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, to the extent that the FOA Set-Off Provisions are not superseded by the Clearing Module Set-Off Provision or, as the case may be, the Addendum Set-Off Provision, the FOA Set-Off Provisions will be immediately 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).

However, the payment of the net sum after such set off by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

The requirements of Article 505.1 of the Civil Code are discussed in paragraph 3.3(b) above. If (i) an Event of Default has occurred in relation to a Party and that the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the FOA Set-Off Provisions, and (ii) all obligations of each Party arising under the FOA Netting Agreements are, or have been converted by reference to market value to, payment obligations in the same currency which are due and payable, and (iii) the notice of set-off is given by the Non-Defaulting Party to the Defaulting Party prior to the set-off, the FOA Set-Off Provisions satisfy such requirements of Article 505.1 of the Civil Code.

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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 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.

However, the payment of the net sum after such set off by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

The requirements of Article 505.1 of the Civil Code are discussed in paragraph 3.3(b) above. If (i) an Event of Default has occurred in relation to a Party and that the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the Clearing Module Set-Off Provision, and (ii) all obligations of each Party arising under the Clearing Agreement are, or have been converted by reference to market value to, payment obligations in the same currency which are due and payable, and (iii) the notice of set-off is given by the Non-Defaulting Party to the Defaulting Party prior to the set-off, the Clearing Module Set-Off Provision satisfies such requirements of Article 505.1 of the Civil Code.

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,

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the Clearing Module Set-Off Provision will be immediately 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 enforceable in accordance with its terms, as set out in paragraph 3.7.1 above. However, the payment of the net sum after such set off by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

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 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.

However, the payment of the net sum after such set off by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.

We are of this opinion because:

The requirements of Article 505.1 of the Civil Code are discussed in paragraph 3.3(b) above. If (i) an Event of Default has occurred in relation to a Party and that the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the Addendum Set-Off Provision, and (ii) all obligations of each Party arising under the Clearing Agreement are, or have been converted by reference to market value to, payment obligations in the same currency which are due and payable, and (iii) the notice of set-off is given by the Non-Defaulting Party to the Defaulting Party prior to the set-off, the Addendum Set-Off Provision satisfies the requirements of Article 505.1 of the Civil Code.

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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 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. However, the payment of the net sum after the netting by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.
- 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. However, the payment of the net sum after the netting by the Defaulting Party to the Non-Defaulting Party will be made pursuant to the distribution proceedings under the Insolvency Proceedings of the Defaulting Party (including, without limitations, those included in the rehabilitation plan approved under the Civil Rehabilitation Proceedings, or the reorganisation plan approved under the Corporate Reorganisation Proceedings, as the case may be) under the relevant Japanese Insolvency Acts.
- 3.10.3 If the Transferred Margin is not cash, there is a risk that the courts of this jurisdiction could 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. In such case, the Non-Defaulting Party will be treated as a secured creditor, if the transfer of title has been duly perfected in accordance with all applicable laws. Please refer to paragraph 4.5 below in respect of restrictions on secured creditors under the Japanese Insolvency Acts.
- 3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Transferred Margin 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:

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- (a) With regard to our opinions under paragraphs 3.10.1 and 3.10.2, assuming that (i) neither a Firm nor Client is subject to any Insolvency Proceedings, (ii) the Non-Defaulting Party has sent notice to express its intention to exercise its rights of set off under the Title Transfer Provisions, and (iii) all obligations of each Party arising such FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, such Clearing Agreement which includes the Title Transfer Provisions including the Default Margin Amount are, or have been converted by reference to market value to, payment obligations in the same currency which are due and payable, the Title Transfer Provisions satisfy the requirements of Article 505.1 of the Civil Code which are discussed in paragraph 3.3(b) above.

If a Firm is subject to any Insolvency Proceedings, assuming that (i) the commodity or the financial instrument to be delivered can be valued at the market price and the value of the product is determined by reference to the market value of the product or, otherwise, the method used by the Non-Defaulting Party for calculating the Liquidation Amount will be deemed as a reasonable method in the market, regardless of any contrary provisions under the Title Transfer Provisions, and (ii) each Transaction under such Title Transfer Provisions will be automatically terminated pursuant to the Title Transfer Provisions at the time of submission of the application for the Bankruptcy Proceedings, the Civil Rehabilitation Proceedings or the Corporate Reorganisation Proceedings, we are of the view that the Title Transfer Provisions would qualify for protection under Article 58.5 of the Bankruptcy Act. However, Article 58.5 of the Bankruptcy Act does not specifically provides whether collateral transactions can be included in the netting arrangement of all transactions under a master agreement, and there is no prevailing scholarly views nor reported controlling judicial precedents which have directly ruled on the issue. Therefore there remains uncertainty as to applicability of Article 58.5 of the Bankruptcy Act to the Title Transfer Provisions.

- (b) With regard to our opinion under paragraph 3.10.3, the Title Transfer Provisions effectively have the same effect as security interests on the Transferred Margin (other than cash). Although there are no prevailing scholarly views nor reported controlling judicial precedents which have directly ruled on the issue, the court might take the view that the transfer of margin (other than cash) is creation of security interests. Please refer to paragraph 4.5.
- (c) With regard to our opinion under paragraph 3.10.4, subject to the assumption in paragraph 2.13 and the reservation in paragraph 4.5, such Party is not prohibited 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 under any present law of Japan or any published regulation having force of law in Japan applicable thereto.

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

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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 Rehypotheication Clause) and/or the Client Money Additional Security Clause, provided always that:

- (i) the agreement 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;
- (ii) the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated; and
- (iii) it is unambiguously clear in respect of specific margin whether such margin is subject to the security interest provisions or the Title Transfer Provisions.

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.

3.13 Automatic Termination

In order for the opinions expressed in paragraph 3 to apply, as discussed in paragraph 3.3 above, it is 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 branches of such party are subject to the Insolvency Proceedings in this jurisdiction, and the laws of this jurisdiction are concerned.

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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.

3.16 Special legal provisions for market contracts

In respect of the transactions between the Firm and the Client, 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.

4.1 Statutory Right of Set-Off in Insolvency Proceedings

4.1.1 Statutory Right of Set-Off

In any Insolvency Proceedings commenced in respect of the Insolvent Party, the Solvent Party would be granted a statutory right to set off any obligations owed to it by the Insolvent Party against any obligations owed by it to the Insolvent Party at the time of:

- (a) the issuance of the court decision for commencement (the "**Commencement Decision**") in relation to Bankruptcy Proceedings (Article 67 of the Bankruptcy Act);
- (b) the Commencement Decision in relation to Special Liquidation Proceedings (there is no express provision in this regard, but Articles 517 and 518 of the Companies Act allow set-off as mentioned in paragraph 4.1.2 below);
- (c) the Commencement Decision in relation to Corporate Reorganisation Proceedings (Article 48 of the Corporate Reorganisation Act); or
- (d) the Commencement Decision in relation to Civil Rehabilitation Proceedings (Article 92 of the Civil Rehabilitation Act),

in each case, as applicable, provided that:

- (a) (in the case of Bankruptcy Proceedings or Special Liquidation Proceedings) the Solvent Party must exercise its statutory right of set off against the bankruptcy trustee (*hasan kanzainin*) or the special liquidator (*tokubetsu seisan nin*) before the end of the Bankruptcy Proceedings or the Special Liquidation Proceedings, as the case may be; or

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- (b) (in the case of Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings):
 - (i) the obligations which the Solvent Party is seeking to set off must be due and payable or declared due and payable before the end of the period for proof of claims (the "**Window Period**"); and
 - (ii) the Solvent Party must exercise its rights of set-off during the Window Period (or the automatic set-off must occur during the Window Period).

4.1.2 Limitation of Set-Off in Insolvency Proceedings

Notwithstanding the above, the set-off under the Netting Provisions, the Set-off Provisions or the Title Transfer Provisions will be avoided or set aside, and the statutory right of set-off may not be exercised, in the following cases pursuant to Articles 71 and 72 of the Bankruptcy Act, Articles 517 and 518 of the Companies Act, Articles 49 and 49.2 of the Corporate Reorganisation Act and Articles 93 and 93.2 of the Civil Rehabilitation Act:

- (a) if the Solvent Party incurs an obligation to the Insolvent Party after the Commencement Decision in relation to the relevant Insolvency Proceeding;
- (b) if the Solvent Party incurs an obligation to the Insolvent Party after the Insolvent Party has become unable to pay its debts as they fall due (*shiharai funou*), where the Solvent Party has the intention to set off such obligation of the Insolvent Party against obligations it owes, and is aware of the inability of the Insolvent Party to pay its debts as they fall due (*shiharai funou*) at the time of incurring of the relevant obligation;
- (c) if the Solvent Party incurs an obligation to the Insolvent Party before the Commencement Decision in relation to the relevant Insolvency Proceedings but after the payments of the Insolvent Party have been suspended generally (*shiharai teishi*), with the knowledge thereof; except where the Insolvent Party has not become unable to pay its debts as they fall due (*shiharai funou*) at that time; or
- (d) if the Solvent Party incurs an obligation to the Insolvent Party after the application for the Commencement Decision in relation to the relevant Insolvency Proceedings has been filed, with the knowledge thereof;

provided that the prohibition against set-off described in paragraphs 4.1.2(b) through 4.1.2(d) above shall not apply where the Solvent Party incurred such obligation to the Insolvent Party after the relevant event (in the case of paragraph 4.1.2(b), the Insolvent Party's inability to pay (*shiharai funou*); in the case of paragraph 4.1.2(c), the Insolvent Party's general suspension of payments (*shiharai teishi*); or in the case of paragraph 4.1.2(d), application for the Commencement Decision, in relation to an Insolvency Proceeding, has been filed:

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- (i) by operation of law;
 - (ii) by any cause which arose before the Solvent Party was aware that the Insolvent Party had become unable to pay its debts as they fell due (*shiharai funou*), that payments of the Insolvent Party had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to an Insolvency Proceeding had been made; or
 - (iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding;
- (e) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the Commencement Decision in relation to the relevant Insolvency Proceeding;
 - (f) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the Insolvent Party has become unable to pay its debts as they fall due (*shiharai funou*), with the Solvent Party's knowledge thereof;
 - (g) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party prior to the Commencement Decision in relation to the relevant Insolvency Proceedings, but after the payments of the Insolvent Party have been suspended generally (*shiharai teishi*), with the knowledge of the Solvent Party thereof; except where the Insolvent Party has not become unable to pay its debts as they fall due (*shiharai funou*) at that time; or
 - (h) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the application for the Commencement Decision of the relevant Insolvency Proceedings has been filed, with the knowledge of the Solvent Party thereof,

provided that the prohibition against set off described in paragraphs 4.1.2(f) through 4.1.2(h) above shall not apply where the Insolvent Party incurred such obligation after the relevant event (in the case of paragraph 4.1.2(f), the Insolvent Party's inability to pay (*shiharai funou*); in the case of paragraph 4.1.2(g), the Insolvent Party's general suspension of payments (*shiharai teishi*); or described in the case of paragraph 4.1.2(h), the application for the Commencement Decision of the relevant Insolvency Proceedings has been filed:

- (i) by operation of law;
- (ii) by any cause which arose before the Solvent Party was aware that the Insolvent Party had become unable to pay its debts as they fell

due (*shiharai funou*), that payments of the Insolvent Party had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to a relevant Insolvency Proceeding had been made;

(iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding; or

(iv) by a contract between the Solvent Party and the Insolvent Party.

4.2 Netting Act

- (a) The Act concerning Close-out Netting of Specified Financial Transactions to be entered into by Financial Institutions etc. (the "**Netting Act**") (*kinyu kikan tou ga okonau tokutei kinyu torihiki no ikkatsu seisan ni kansuru houritu*) (Law No. 108 of 1998, as amended) confirms the validity and enforceability of certain types of close-out netting (*ikkatsu seisan*) arrangements for certain type of financial transactions to which certain Japanese financial institutions are a party. The purpose of the Netting Act is generally interpreted as an official announcement to the international financial markets to confirm the validity and enforceability of certain types of close-out netting arrangements, rather than to validate otherwise invalid or unenforceable close-out netting arrangements. Further, the Netting Act does not purport to have any adverse effects, whether express or implied, on the efficacy and validity of close-out netting arrangements that do not meet the requirements prescribed therein.
- (b) The netting arrangements which satisfy the requirements set out in the Netting Act have been granted express protection from the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings and the Civil Reorganisation Proceedings, and will not be capable of being set aside pursuant to the exercise by an insolvency official or trustee (*kanzainin*) of the right to 'cherry pick' outstanding executory contractual obligations under Article 53.1 of the Bankruptcy Act, Article 61.1 of the Corporate Reorganisation Act and Article 49.1 of the Civil Rehabilitation Act (collectively, the "**Cherry Picking Provisions**"). The Companies Act does not have the Cherry Picking Provisions for the Special Liquidation Proceedings, and therefore, netting arrangements will not be challenged through the Special Liquidation Proceedings, regardless whether netting arrangements satisfy the requirements set out in the Netting Act.
- (c) The Netting Provisions do not satisfy the requirements for "Close-out Netting" (*ikkatsu seisan*) as defined in the Netting Act, because (i) it does not include automatic set-off provisions upon the occurrence of a Japanese Insolvency Event, and (ii) the obligations covered by the Netting Provisions are those arising from the Transactions, which include the Transactions relating to delivery of any base metal, precious metal or agricultural product, and as such, they are not limited to obligations arising out of the "**Specified Financial Transactions**" (as defined in the Netting Act) under a "**Master Agreement**" (as defined in the Netting Act) to which a "**Specified Financial Institution**" (as defined in the Netting Act) is a party, and accordingly, it does not qualify for protection under the Netting Act.

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(d) Even if the Netting Act does not apply, the Cherry Picking Provisions would not apply if the netting arrangements satisfy the requirements under Article 58.5 of the Bankruptcy Act. Please see paragraph 3.3.

4.3 Right of Avoidance (*hininken*)

If the 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 Commencement Decision in relation to the relevant Insolvency Proceedings, and (ii) twenty years from the Preferential Act. 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 the Insolvent Party (whether or not insolvent at the time) with the intention to prefer the 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 the Insolvent Party is in danger and that the 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,

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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 the 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 the Insolvent Party made after the occurrence of a Critical Event may be avoided or set aside by the trustee unless the 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 the 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 the 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 the 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 the 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 the 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

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secure the 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 Special Liquidation Proceedings

No rights of avoidance arise in the Special Liquidation Proceedings.

4.4 Foreign Insolvency Proceedings Act

Pursuant to the Foreign Insolvency Proceedings Act, 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:

- (e) such foreign insolvency proceedings have been commenced in the jurisdiction where the debtor has its principal place of business;
- (f) it will meet the creditors' general interests to recognize such foreign insolvency proceedings; and
- (g) the recognition of such foreign insolvency proceedings would not cause unjustified damage to creditors in Japan.

There is a risk that the Insolvency Representative of an Insolvent Party may seek to re-characterise the Title Transfer Provisions as provisions which create a security interest in the form of security assignment (*joto tanpo*), and in such case the Solvent Party would be deemed to be a secured creditor. If the Title Transfer Provisions are amended so that the margin will be transferred by way of "loan for consumption" (*shohi taisyaku*) under the Civil Code, and the obligations to return the equivalent margin will be set-off at the time of the netting pursuant to the Netting Provisions, it might mitigate this re-characterization risk, but we cannot completely rule out the re-characterization risk. The Insolvency Representative may request the court to permit the discharge of a security interest under the Corporate Reorganisation Proceedings, the Civil Rehabilitation Proceedings or the Bankruptcy Proceedings as described below:

4.5.1 Corporate Reorganisation Proceedings

Claims held by unsecured creditors arising from any cause before the date of commencement of 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 Corporate Reorganisation Proceedings, no creditor of the debtor, whether secured or unsecured, is entitled to enforce its rights outside Corporate Reorganisation Proceedings, and each creditor is required to submit proof of claims. Creditors will receive payment only in accordance with the reorganisation plan.

In order for the right to request the court to permit the discharge of a security interest to be exercised, (a) the secured assets must be determined to be assets necessary for the continuation of the business of the debtor; and (b) the trustee must file with the court a petition for permission for the discharge and pay 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 trustee, the relevant secured creditor may within one month of such petition 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 the value of the secured asset paid into court in accordance with the priority of the security interest, subject to any adjustment to the value of the secured claims under the overall reorganisation plan.

In addition, it is possible that the reorganisation plan subsequently adopted could provide for certain security interests to be discharged. Secured creditors as well as unsecured creditors will receive payment only in

accordance with the reorganisation plan. Note, however that three quarters of the secured creditors by value must vote in favour of any adopted reorganisation plan if a release of the security interest is included in the plan.

4.5.2 Civil Rehabilitation Proceedings

In order for the court to exercise its power to permit the discharge of a security interest at the request of the debtor, (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 into 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 one month of such petition 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 into court, in accordance with the priority of the security interest.

4.5.3 Bankruptcy Proceedings

Following the amendment to the Bankruptcy Act effective as from January 1, 2005, the court has power to permit the discharge of a security interest by voluntary sale of the secured assets at the request of the bankruptcy trustee. In order for this power to be exercised by the court, the voluntary sale and discharge of the security interest must be of general benefit to all creditors of the company.

It is important to note that this power does not allow the court to set aside, discharge or affect the rights or priority of the secured creditor. The value of the secured assets under the voluntary sale shall be paid into court and the secured creditor may recover its claims from such value in accordance with the priority of its security interest. It only allows the court to convert the right of the secured creditors from rights over the secured assets to rights over the value of the proceeds of sale of the secured assets paid into court. As such it only really affects the ability of the secured creditor to control the timing of realisation of the secured assets. However, a portion of the proceeds of sale of the assets may be paid to the bankruptcy estate, as compensation for the bankruptcy trustee executing the voluntary sale.

4.6 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 of the Supreme Court of Japan to suggest that there is a risk that a trustee in such Insolvency Proceedings may seek to deny the provisions which provide for the

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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.

4.7 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.

4.8 Enforceability

In addition to the statement in paragraph 1.5 above, in relation to the limitations on enforceability, please note, in particular, that:

- 4.8.1 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;
- 4.8.2 enforcement may be limited by the provisions of Japanese law applicable to agreements held to have been frustrated by events happening after its execution;
- 4.8.3 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;
- 4.8.4 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
- 4.8.5 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.

4.9 Other Qualifications

- 4.9.1 Any provision of an agreement or document may be amended or waived by oral agreement between the parties, notwithstanding any provision to the contrary.
- 4.9.2 Any provision which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any person may be ineffective.

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- 4.9.3 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.
- 4.9.4 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.
- 4.9.5 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.
- 4.9.6 We express no opinion as to the existence of any property or assets to be transferred pursuant to an FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions 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.
- 4.9.7 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).
- 4.9.8 The Insolvency Representative or court in this jurisdiction would also have regard to the Japanese Insolvency Acts and public order and the good morals doctrine in this jurisdiction in determining the enforceability or effectiveness of the Netting Provisions, the Set-Off Provisions and the Title Transfer Provisions.

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**").

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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 or 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,


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 paragraphs 1.2.1 and 1.2.2 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:

- 1.1.1 If a "fund" as referred to in paragraph 1.2.1 in the opinion letter enters into the FOA Netting Agreement or, as the case may be, the Clearing Agreement a "trust bank" becomes a Party in its capacity as a trustee for such fund, or an "investment management business operator" becomes a Party for the account of such fund.
- 1.1.2 If a Party 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.
- 1.1.3 If a Party 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.

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2. 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.

2.1 Insolvency Proceedings: Fund

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are the Bankruptcy Proceedings and the Civil Rehabilitation Proceedings.

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:

- 1.1.1 If a "pension entity" as referred to in paragraph 1.2.2 in the opinion letter enters into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, a "trust bank" becomes a Party in its capacity as a trustee for such pension entity, or an "insurance company" or an "investment management business operator" becomes a Party for the account of such pension entity.
- 1.1.2 If a Party 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.
- 1.1.3 If a Party 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.
- 1.1.4 If a Party is an "insurance company" acting for the account of a "pension entity" pursuant to an insurance contract, each party to such insurance contract

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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 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.

2.1 Insolvency Proceedings: Pension Entity

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a pension entity could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are the Bankruptcy Proceedings and the Civil Rehabilitation Proceedings, provided that:

2.1.1 In case of a "pension entity", 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement 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.

2.1.2 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

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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
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**")

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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**")

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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; and
- (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;
- (c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, with no Adverse Amendments.

"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.

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"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;

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- (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 Agreement (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.

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"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, with no Adverse Amendments.

"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*); and
- (g) 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.

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"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*),

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- (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

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- (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).

"Netting Provisions" means the FOA Netting Provisions, the Clearing Module Netting Provision and/or the Addendum Netting Provision.

"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

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- (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.
- (c) the "**Client Money Additional Security Clause**", being:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

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- (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.

"**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:

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

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- (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*); or
- (d) 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).

"Set-off Provisions" means the FOA Set-off Provisions, the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision.

"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, provided that if the Japanese Insolvency Event has occurred, the Liquidation Date shall occur as of the time immediately prior to the occurrence of such Japanese Insolvency Event.

The **"Japanese Insolvency Event"** shall occur if a petition is made relating to a Party or any of the assets thereof for commencement of the civil rehabilitation proceedings under the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended), the corporate reorganisation proceedings under the Corporate Reorganisation Act (*kaisha kosei ho*) (Law No. 154 of 2002, as amended), the bankruptcy proceedings under the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended), or the special liquidation proceedings (*tokubetsu seisan*) under the Companies Act (*kaisha ho*) (Law No. 86 of 2005, as amended).

- 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]), (C) an amount

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

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;
3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication,

of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially attributable to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

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

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

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

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

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

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

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

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(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. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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

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must, or may, notify the other party of its exercise of rights under such provision or other provision.

9. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.
10. 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).

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."