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Legal collateral opinion – Non Situs Version

The Futures & Options Association
2nd Floor
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London EC3R 8DE

February 22, 2013

Dear Sirs,

FOA Collateral Opinion

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

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

We draw to your attention that we are providing this opinion letter in accordance with and subject to the instructions set out in Annex 5.

We have also assumed for the purpose of this opinion letter, that there is no other information, other than matters pertaining to the laws of this jurisdiction, which is not contained in the Agreements that would have a direct or indirect impact on this opinion letter.

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 This opinion is given in respect of:

1.1.1 banks incorporated in this jurisdiction (a "**Counterparty that is a Lebanese bank**") under the provisions of the Lebanese Code of Money and Credit dated January 8, 1963, and that are regulated by the various circulars of the Central Bank of Lebanon (the "**BDL**");

1.1.2 the following persons (a "**Counterparty that is not a Lebanese bank**") which are:

(a) Lebanese individuals exercising commerce in this jurisdiction under the provisions notably of the Lebanese Code of Commerce (the "**LCC**");

(b) partnerships incorporated in this jurisdiction under the provisions of the LCC, namely articles 46 and so forth, and the object of which is commercial;

(c) corporations, which comprise;

(i) joint-stock companies incorporated in this jurisdiction under the provisions of the LCC, namely articles 77 and so forth; and

(ii) limited liability companies incorporated in this jurisdiction under the provisions of Decree-Law No. 35 dated August 5, 1967; and

(iii) limited partnerships incorporated in this jurisdiction under the provisions of the LCC, namely articles 226 and so forth, and the object of which is commercial; and

(iv) limited partnerships with shares incorporated in this jurisdiction under the provisions of the LCC, namely articles 232 and so forth.

d) financial institutions incorporated under the provisions of BDL Decision No. 7136 issued on August 21, 1998, and its further amendments;

e) brokerage firms incorporated in this jurisdiction under the provisions of Law No. 234 dated January 10, 2000, and the various circulars of the BDL;

f) insurance companies incorporated in this jurisdiction, which can only be established in the form of joint-stock companies, and which operate notably in accordance with the provisions of Decree-Law No. 8451

dated October 21, 1967, and its application decree No. 9812 dated May 4, 1968, and its further application decisions and decrees;

g) investment firms with variable capital which are incorporated under the form of Lebanese joint-stock companies and subject notably to BDL Circular No. 49 dated September 5, 1998, and Law No. 706 dated December 9, 2005;

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.2) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

Noting that the aforementioned Counterparties are the only Counterparties that are subject to this opinion given that:

a) trusts (including pension schemes) do not exist in this jurisdiction;

b) building societies do not exist in this jurisdiction either;

c) special fund entities do not enjoy a separate legal personality (and may therefore not be subject to any bankruptcy proceedings in this jurisdiction) as provided in Law No. 706 dated December 9, 2005, and BDL Circular No. 49 dated September 5, 1998; and,

d) charitable trusts and sovereign and public entities may not be subject to bankruptcy proceedings, given that they are not merchants and that only merchants can be declared bankrupt under the laws of this jurisdiction as mentioned in this opinion.

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

1.3 In this opinion letter:

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

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

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

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

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

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

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

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

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

(i) sale and application of proceeds of the sale of Collateral against monies owed, or

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.3.5 in other instances other than those referred to at 1.3.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.3.6 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

1.3.7 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;

1.3.8 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2;

1.3.9 headings in this opinion letter are for ease of reference only and shall not affect its interpretation; and

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

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2. ASSUMPTIONS

We assume the following:

2.1 That the applicable law to the Agreements is not the law of this jurisdiction.

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

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

2.4 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.

2.5 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

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

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

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

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

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

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

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

2.13 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security

interests thereunder pursuant to the laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

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

2.15 That any Collateral, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.

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

2.17 That in the event the Collateral is granted by a Lebanese bank, such granting has obtained all required authorisations from the competent authorities of this jurisdiction (including the BDL).

2.18 That each Party has complied with any and all laws and regulations relating notably to the taxes and/or duties which are applicable to the Agreement and the Collateral, and the enforcement thereof, noting that we are not advising in this opinion letter on whether or not any taxes are due or need to be paid in the process of implementing the Agreement or enforcing the Collateral.

2.19 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. OPINIONS

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

3.1 Valid Security Interest

3.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral, subject to the opinion stated in paragraph 3.1.3 below.

3.1.2 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 right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral, subject to the opinion stated in paragraph 3.1.3 below.

3.1.3 Given that the Collateral is located outside this jurisdiction and that the applicable law to the Agreements is not the law of this jurisdiction, there is in principle no concern in exercising your rights under 3.1.1 and 3.1.2 above provided that they are validly and lawfully enforceable in the relevant jurisdictions (namely the country of the law applicable to the Agreement and the country where the Collateral is located), to the exception of the case of preventive composition, bankruptcy, and composition, regarding which the laws in this jurisdiction are of public policy.

In the event a bankruptcy judgement is rendered by a competent court in this jurisdiction, in relation to a Counterparty of this jurisdiction, there are specific instances entailing a risk that the Collateral be annulled.

Indeed, regarding a Counterparty that is not a Lebanese bank, the following shall apply:

A. Pursuant to Article 489 LCC, without prejudice to the application of the provisions of the precedent title of the LCC (relating to composition, which we have not expressly thoroughly addressed in this opinion), a merchant is in a state of bankruptcy when he ceases to honour his commercial debts or is paying his debts by means that are manifestly illicit.

Article 507 LCC provides that are null *de jure* towards the mass of creditors the following acts or transactions undertaken by the debtor during the Suspect Period (as such term is defined here below) or during the twenty (20) days preceding such Suspect Period:

1- Transfers made for free without counterpart, to the exception of regular minimal donations; the constitution of "*wakfs*";

2- Anticipated payments, made under any form;

3- Payment of due debts, settled other than in cash, by promissory notes, by proxy or wire transfers, and in general any payment in kind or in substitution;

4- Conclusion of a judicial or contractual mortgage, or a pledge or antichresis on his assets to secure pre-existing debts due by him.

Article 507 LCC further provides that when the payment in substitution is done in the form of a transfer of immoveable, the nullity will only have effect towards the creditor who dealt with the bankrupt and will not affect the rights of sub-purchasers for a consideration, if the latter are of good faith.

The term "**Suspect Period**" is used herein to refer to the period described in Article 495 LCC, being the period elapsing from the date of cessation of payment (as such date is determined by the Court) and up to the judgment declaring bankruptcy, noting that the date of cessation of payment cannot be

fixed to a date of more than 18 (eighteen) months before the judgment declaring bankruptcy.

Furthermore, Article 508 LCC provides that any other payments made by the debtor for due debts, and any other acts undertaken by him in exchange of a consideration, after the cessation of payments and before the judgement declaring the bankruptcy (i.e. during the Suspect Period), may be annulled if the persons to whom the debtor settled the debt, or with whom the debtor dealt, were aware of his cessation of payments.

According to Article 511 LCC, the lawsuits in nullity provided for notably in Articles 507 and 508 LCC will prescribe eighteen months as of the day of declaration of bankruptcy.

In view of the foregoing, please note that:

(i) in the event the Agreement is entered into, and the Collateral is granted, outside such Suspect Period or outside the period of twenty (20) days prior to it, there should be in principle no risk of annulment of said Agreement and Collateral;

(ii) in the event the Agreement is entered into outside the Suspect Period or outside the period of twenty (20) days prior to it, and the Collateral is granted inside the Suspect Period or inside the period of the twenty (20) days prior to it, then according to paragraph 4 of Article 507 LCC the Collateral will in principle be considered null *de jure*. It is the Insolvency Representative who will submit the request of annulment and the only proof that he has to provide is that the Collateral was granted during the Suspect Period or the period of twenty (20) days prior to it. Also, according to Article 508 LCC, the Collateral may be annulled if the Insolvency Representative proves that it was entered into inside the Suspect Period and that the Firm was aware that the Counterparty was in a state of cessation of payment; such proof can be brought by the Insolvency Representative by all means;

(iii) in the event the Agreement is entered into, and the Collateral is granted, inside the Suspect Period, concomitantly, then according to Article 508 LCC, they both may be annulled if the Insolvency Representative proves that they were entered into inside the Suspect Period and that the Firm was aware that the Counterparty was in a state of cessation of payment; such proof can be brought by the Insolvency Representative by all means;

(iv) in the event that both the Agreement and the Collateral are granted inside the Suspect Period or inside the period of twenty (20) days prior to it, but not concomitantly, i.e. that the Collateral is granted after the Agreement was concluded, then according to paragraph 4 of Article 507 LCC, the Collateral will in principle be considered null *de jure*. The Insolvency Representative will submit the request of annulment and the only proof that he has to provide is that the Collateral was granted during the Suspect Period or the period of

twenty (20) days prior to it. Also, according to Article 508 LCC, the Collateral and the Agreement may be annulled if the Insolvency Representative proves that they were entered into inside the Suspect Period and that the Firm was aware that the Counterparty was in a state of cessation of payment; such proof can be brought by the Insolvency Representative by all means.

Furthermore, Article 501 LCC provides *inter alia* that, as a result of the judgement declaring bankruptcy, the bankrupt can no longer dispose of his assets, undertake or receive any payment, unless it is a *bona fide* settlement of a commercial instrument, or contract any obligation; he can however undertake any conservatory acts regarding his rights.

It should be noted that one of the solutions to bankruptcy is an arrangement with creditors. Indeed, within a deadline provided for in Article 557 LCC, the judge supervising the bankruptcy will have the creditors whose debts have been accepted convened in order to discuss the possibility to reach an arrangement (Article 557 LCC). If the bankrupt has a suggestion of an arrangement, the creditors will vote on it. If the arrangement gets the creditors' approval according to the provisions of the LCC (Article 560 LCC), and is thereafter homologated, the homologation of the arrangement will render it binding to all creditors, whether or not they are mentioned in the balance sheet, and whether or not their debts have been verified, and even regarding debtors that are domiciled outside of Lebanon as well as those who have been temporarily accepted in the discussions regardless of the amount that the definitive judgment would then allocate them; the arrangement is however not effective regarding (i) preferred and hypothecary creditors who have not relinquished their privilege or hypothec; and (ii) regular creditors if their debt was created during the bankruptcy period (Article 570 LCC). Article 575 LCC further notably provides that as long as the amount mentioned in the arrangement shall have not been entirely paid, the debtor cannot undertake any abnormal disposal that is not required for the conduct of the commerce itself, unless there is an agreement otherwise according to the rules fixed to that end regarding preventive composition. Legal writings therefore consider that the sanction to any acts undertaken in contravention to the provisions of Article 575 LCC should logically be the nullity of such acts. Article 582 LCC further provides that the acts that the bankrupt undertakes after the homologation of the arrangement and prior to its annulment or resolution are not annulled unless there has been fraud that affects the creditors' rights.

On another note, we draw to your attention that preventive composition is also possible in this jurisdiction and the provisions concerning preventive composition are also of public policy in this jurisdiction. Indeed, pursuant to Article 459 LCC "*any merchant, either before his cessation of payment, or within the ten days following his cessation of payment, may have recourse to the tribunal of first instance where his main establishment is located, and ask for the convocation of all his creditors to suggest to them a composition*". We have highlighted the main consequences of the approval or rejection of composition by the Court:

a. Article 462 LCC provides *inter alia* that if the Court acknowledges that the request for composition is in order and receivable, it will call the creditors to discuss and debate the proposal of composition. It shall designate the place, the day and the time of the meeting, within a maximum of 30 days as of the approval of the request for composition.

b. One of the main consequences of submitting a composition request is provided for in Article 464 of the LCC according to which, as of the date of submitting the request for composition, and until the judgment confirming the composition has acquired the status of *res judicata*, no creditor with a deed existing prior to the judgment, may, subject to annulment, begin or resume an enforcement procedure, acquire a certain preferential right on the debtor's assets, or register a mortgage. In this respect, please note that in case the Counterparty submits a request for composition before the competent Lebanese Court (which the Counterparty is entitled to do given that composition laws in this jurisdiction are also of public policy), and that the Firm enforces the Collateral after the submission of such request by virtue of an enforcement procedure, the Counterparty may file a claim before the said Lebanese Court, in order to annul the enforcement procedure undertaken by the Firm in view of enforcing the Collateral, and such on the basis of the provisions of the aforementioned Article 464 LCC. In this regard, kindly note that there are two lines of legal writings and court precedents: a minority stating that the suspension provided for in this Article 464 LCC lasts until the judgment confirming the composition has acquired the status of *res judicata*, and that after that, the concerned persons can resume the exercise of their individual rights against the debtor without any restrictions other than those resulting from the clauses of the confirmed composition; and a majority of legal writings and court precedents considering that the suspension provided for in this Article 464 LCC does not concern the holders of a security, and that the concerned persons can exercise the enforcement of their security.

c. Furthermore, Article 466 LCC provides that are not opposable to debtors the donations or other deeds with no consideration or deeds of guarantees undertaken by the debtor during the composition procedure; the same will apply to deeds undertaken by the debtor by virtue of which he would have contracted debts, even if in the form of bills of exchange, or concluded settlements, or approved sales not entering in the exercise of his commerce, mortgages or the creation of pledges, without the authorization of the delegated judge, who should not grant it except in cases of obvious benefit.

d. Composition may either be approved by the Court, or rejected by the Court. If the Court rejects the composition, the Court may automatically declare the debtor bankrupt (Article 477 LCC). If the Court approves the composition, and according to Article 481 LCC, the homologation of the compromise renders it binding *vis-à-vis* all creditors; legal writings consider that the composition becomes binding *vis-à-vis* all unsecured creditors and *vis-à-vis* secured creditors who participated in the voting of the composition. As such, in case the Firm does not attend and does not vote on the composition, then it will not be bound by the composition judgement and should be able to enforce the Collateral. However, if the Firm decides to attend and vote on the composition, then it will be deemed to have waived its right to the security according to the conditions determined in the composition and as such will not be able to enforce it. If despite this, the Firm enforces the Collateral, the Counterparty may file a claim in order to annul the enforcement of the Collateral. The Counterparty will file such claim before the Lebanese competent court, and is entitled to do so given that the laws of composition in this jurisdiction are of public policy. In this context, if the competent Lebanese Court decides that the Collateral should be annulled, then the Counterparty will have to obtain the *exequatur* before a competent Court in the place where the Collateral is located in order to be able to enforce such Lebanese judgement against the Firm that has enforced the Collateral.

e. Article 482 LCC further provides that the benefit of the composition granted to a company applies also to the partners who are personally liable of the company's liabilities, unless provided otherwise. If composition is indeed approved, the debtor will have to perform his obligations pursuant to the approved composition. Moreover, and unless otherwise provided for in the approved composition or in any other deliberation that has been also approved by the Court, the debtor may not, prior to having implemented all the obligations he undertook in the approved composition, alienate or mortgage his immovable assets, create pledges, or in general, divert part of his assets in any manner other than what is required by the nature of his commerce or his industry; any deed undertaken in contravention to this prohibition will be null towards the creditors who are anterior to the homologated compromise (Article 478 LCC). Furthermore, if the debtor does not integrally perform all his obligations pursuant to the approved composition, any creditor may, according to the conditions provided in Article 487 LCC, request that the approved composition be declared terminated and that the debtor be declared bankrupt (Article 487 LCC).

B. Regarding a Counterparty that is a Lebanese bank, the following shall apply:

Banks that have become insolvent are subject notably to Law no. 2/67 dated January 16, 1967 ("**Law 2/67**") setting out the specific measures to be taken in the event of a bank's insolvency.

Pursuant to Law 2/67, whenever a bank (i) declares its own failure to pay its debts; (ii) fails to pay any debt due to the BDL upon maturity; (iii) draws a check on the BDL without sufficient provision; or, (iv) fails to provide sufficient provision to cover a debtor balance resulting from the clearinghouse operations, the competent court must confirm or declare, upon request, failure of the concerned bank.

Every creditor of the bank may request from the competent court to apply the provisions of this law.

Within 48 hours as of submitting a request, the court should appoint a temporary director experienced in banking or finance to manage the day-to-day activities of the bank and to take provisional measures under the direct supervision of the court. The court studies the request and in case it approves such request, it renders an enforceable decision announcing the temporary cessation of payments and appointing the date of such temporary cessation, after taking the opinion of the Governor of the BDL and listening to the bank's representatives. The court's decision shall also include the revocation of the bank's board of directors' members.

The temporary director continues his mission under the supervision of the court until the latter appoints an administrative committee composed of 6 to 10 members.

The committee assumes the prerogatives of the board of directors and of the general assembly when required, and represents at the same time the bank's general body of creditors. The committee also takes the measures that guarantee the interests of owners of rights, and manages the bank and its branches. The committee has the right to enter into agreements aiming at the continuation of the bank's activities, provided the court has approved such agreements.

The bank's creditors and owners of rights, to the exception of the depositors, should submit a report to the committee including details on their debts and providing evidence of such debts. The report should be submitted within three months as of the publication of the court's decision of cessation of payment in the Official Gazette, under the penalty of the forfeiture of their debt or right if the delay is not caused by a force majeure or lawful excuse that the Court appreciates.

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If within a period of six months, the committee deems that the bank is able to continue its operations, the committee should bring the matter before the competent court, which takes a decision, after having consulted the BDL, allowing the convocation of a general assembly in order to elect a new board of directors for the bank; after such election, the committee's mission is over.

If within a period of six months, the committee deems that the bank will not be able to continue its operations, the competent court will decide the bank's liquidation and determine the definitive date of cessation of payment, and will appoint a liquidation committee for such purpose.

If within the aforementioned six months period, the committee does not submit its report to the competent court as to whether it deems that the bank can or cannot continue its operations, the court shall address to such committee a notice to submit such report within a week; otherwise, the court shall decide the liquidation.

In case the committee does not submit a report within a six months period as of its nomination or submits a report where it deems that the bank will not be able to continue its activity, it is possible by virtue of a decree issued by the Lebanese Council of Ministers to appoint a special committee with extended prerogatives (the prerogatives of an extraordinary general assembly) assuming the previous committee's mission for an additional 2 months period. This special committee is particularly in charge of finding new solutions to guarantee the interests of owners of rights by the best and faster means after reviewing the reports and documents related to the bank's situation and verifying their accuracy. For this reason, the said committee is entitled to make contacts in order to find one or more buyers for the bank, its branches or its shares.

The liquidation committee is entitled to sell and liquidate the assets of the bank by the means it deems appropriate and to enter into amicable settlements provided it obtains the approval of the court.

The liquidation committee may, with the court's approval, create one or more companies to replace the bank, the shares of which are to be split into two classes: (i) class 1 including all depositors and creditors of the bank, each being granted shares *pro rata* to the value of its debt, and (ii) class 2 including all shareholders of the bank who shall be granted amortized "use" shares. Dividends realized through the operation and liquidation process will be transferred to the class 1 shareholders until full repayment of their debts.

The provisions of the LCC relating to insolvency will apply to banks when Law 2/67 is silent and when the provisions of the LCC are not contrary to the provisions of Law 2/67; consequently, Articles 507 and 508 LCC shall apply given that they are not in contradiction with the provisions of Law 2/67.

Moreover, and pursuant to Article 19 of Law 2/67, as of the date of submitting the request to the competent courts, the provisions of Article 464 LCC (on composition) shall apply, and the creditors cannot submit a request to declare the bankruptcy of the bank. In this respect, the risks mentioned under paragraph 0 above in its paragraph b, regarding Article 464 LCC, shall also apply in the case of Lebanese banks.

In light of all the above, it should be noted that if the Insolvency Representative or the Counterparty (as the case may be) files a claim in order to annul the Collateral or its enforcement as mentioned under Paragraphs A and 0 above, the Insolvency Representative or the Counterparty (as the case may be) will file such claim before the Lebanese competent court, and they are entitled to do so given that the laws of bankruptcy and composition in this jurisdiction are of public policy. In such case, if the Insolvency Representative or the Counterparty (as the case may be) does obtain a judgment from the Lebanese Court ruling on the annulment of the Collateral or its enforcement, and in order to enforce such judgment, the Insolvency Representative or the Counterparty (as the case may be) will need to obtain the enforceability or *exequatur* of this judgment in the country where the Collateral is situated or has been enforced.

3.1.4 Subject to our opinion in paragraph 3.1.3 above, following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated.

3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral, provided however that regarding a Counterparty that is a Lebanese bank regarding which the court's decision of cessation of payment has been published in the Official Gazette, the aforementioned provisions of Law 2/67 will apply, and the Firm should submit, within three months as of the publication of the court's decision of cessation of payment in the Official Gazette, a report to the committee including details on its debts and providing evidence of such debts and henceforth follow the procedure set out in the said Law 2/67 which is described in paragraph 3.1.3 B above.

4. QUALIFICATIONS

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

4.1 This opinion letter is solely based on the applicable Lebanese laws and regulations at the time of its issuance.

4.2 We have made no investigation of the laws of any other country or jurisdiction, and we do not express or imply any opinion thereon.

4.3 Although this opinion letter is based on the current applicable Lebanese laws, court precedents and legal writings, it is always up to the competent court to resolve the matter at hand and any given court of this jurisdiction may render a decision that is different than what we provided in this opinion letter given that it is the court that appreciates the facts of the matter and that therefore ultimately rules in this respect.

4.4 The valid and official laws in Lebanon are in the Arabic language and we have as much as possible reflected the equivalent English translation in this opinion letter when needed.

4.5 We have not addressed in this opinion letter the issue of the enforceability or *exequatur* of any foreign court judgments, arbitral awards, or court or other orders of any nature whatsoever.

4.6 We have not addressed in this opinion letter the issue of the enforceability or *exequatur* of any court judgments rendered in this jurisdiction in a foreign country, notably the United Kingdom.

4.7 We have not exhaustively addressed and covered in this opinion letter the mechanisms and procedures of composition and bankruptcy, and this opinion letter cannot in any way be considered as an exhaustive overview of the mechanisms and procedures of composition and bankruptcy and other Insolvency Proceedings in this jurisdiction.

4.8 We assume that the value resulting from the enforcement of the Collateral is not higher than the value of the debt of the Counterparty towards the Firm, otherwise if the value of the enforced Collateral is higher than the value of the Counterparty's debt, then it may be considered that the surplus should be recovered by the Insolvency Representative to be remitted to the mass of creditors.

4.9 We have expressed no view in this opinion regarding the validity of the re-use/re-hypothecation clauses, mentioned notably in article 8.13 of the 2011 Professional Client Agreement.

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

This opinion letter 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 letter). This opinion letter may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such

persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such members firms and their affiliates in connection with their compliance with their obligations under prudential regulation, provided however that we do not assume any duty or liability of any nature whatsoever to any person/entity to whom/which this opinion letter is shown and that such person/entity will not show this opinion letter to any other person/entity without our prior written consent.

Yours faithfully,

p.i. Samia Meouchi

Badri and Salim El Meouchi Law Firm

Prepared by: Late Sleiman Dagher, Chadia El Meouchi, Samia El Meouchi and Carine Farran

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

6. "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement).

7. "**Rehypothecation Clause**" means:

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

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

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

   (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ANNEX 3
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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ANNEX 5

1. STRUCTURE OF THE OPINIONS

1.1 General

1.1.1 The template opinions are each set out in a typical format consisting of:

(i) Terms of Reference and Definitions.

Note that certain document specific definitions are also set out in Annex 2/3.

(ii) Assumptions

(iii) Opinions

(iv) Qualifications

(v) Supporting Annexes and Schedules (including Schedules for specific counterparty types).

In section 3 of this note we have set out additional guidance to assist you in completing the opinion templates.

1.2 Netting opinion

1.2.1 Broadly, the netting opinion deals with the effectiveness of the netting provisions, set-off provisions and title transfer collateral provisions (where used), together with certain other related issues. If you have given an opinion for the FOA before, the opinion (and documentation) will be familiar to you, with the addition of opinions on (a) cash set-off and (b) title-transfer collateral.

1.2.2 You should work on the basis that any collateral posted by a counterparty pursuant to the Title Transfer Provisions is located outside your jurisdiction.

1.2.3 Any collateral will consist of cash and securities only.

1.2.4 You should note that the FOA documentation envisages that, with the consent of the collateral taker, the collateral provider may substitute collateral. See, for example clause 4.1 of the Title Transfer Securities and Physical Collateral Annex of 2011 (details of the documentation covered by these opinions are set out at section 4 below).

1.2.5 If you consider that you may be unable to give a positive opinion on the Set-off Provisions or the Title Transfer Provisions, or that these opinions would require additional qualifications not needed for your opinions on the Netting Provisions, please contact us before starting work.

1.3 **Collateral opinion**

1.3.1 The Collateral opinion deals with the effectiveness of the English law security interest margin provision.

1.3.2 You should work on the basis that collateral subject to the Security Interest Provisions will be located outside your jurisdiction.

1.3.3 You should note that the FOA documentation requires the consent of the collateral taker for the withdrawal or substitution of collateral (but therefore envisages that, with such consent, collateral may be withdrawn or substituted). See, for example clause 8.9 of the Professional Client Agreement 2011 (details of the documentation covered by these opinions are set out at section 4 below).

2. OPINION GUIDELINES

2.1 General

2.1.1 Please keep as closely as possible to the format and language of the templates.

2.1.2 Please note the particular defined use of the word "enforceable" in the Netting Opinion template. The Clifford Chance London team's view is that the opinions should not, and need not, address "enforceability" and that it would be more appropriate to address "effectiveness". This is because netting and the enforcement of collateral are self-help remedies requiring no judicial assistance.

The question is whether the Non-Defaulting Party is permitted to exercise its remedy without fear of judicial restraint (limb (a)) and whether, having done so, there is a good defence to action by the Defaulting Party to recover sums retained as a result of exercising the remedy (limb (b)).

However, FOA member firms have expressed a requirement to make specific reference to the term "enforceable", as this is what is required by the relevant regulations.

Our re-defined use of the term "enforceable" makes clear that you are not required to give an opinion on the availability of any judicial remedy, and that the word "enforceable" is used to refer to the ability of the Non-Defaulting Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge.

Please would you bear this modified meaning in mind when drafting your reservations (i.e. we would not expect to see the full range of assumptions ordinarily required for a typical "legal valid binding and enforceable" opinion).

2.1.3 We expect that you will need to make certain additions to the template (notably in completing the qualifications section and counterparty-specific schedules).

2.1.4 We have also included certain provisions in square brackets, which you would need to tailor as appropriate.

2.1.5 However, we would ask you not to amend the provisions of the template that are not already in square brackets, unless you have a compelling reason for doing so.

2.2 Terms of reference

Counterparty types

2.2.1 Paragraphs 1.1 and 1.2 set out the various counterparty types to which each opinion relates.

2.2.2 You should amend the list of counterparties listed at paragraph 1.2 to reflect the classes of entities that we have agreed your opinion should cover. Please note that the counterparty table attached to your original pre-instructions did not include "partnerships". This was an error, please treat these as covered by the scope of the opinion (if partnerships can be established in your jurisdiction)

2.2.3 We anticipate that you may need to amend some of the pro-forma descriptions, in order to reflect how such entity types are established and described in your jurisdiction.

2.2.4 Note that the main opinion letter (i.e. excluding the schedules) should address companies and banks (or equivalents) only. Any variations or additions required in respect of the other counterparty types that you cover should be addressed by way of the Schedules.

Covered Transactions

2.2.5 Please do not exclude futures or exchange traded derivatives from the scope (these are of course the core types of Transaction to which the FOA documents relate).

2.3 Assumptions

2.3.1 Any additional assumptions that you make must be assumptions of fact. You should not make any assumptions as to law, or as to how a law may be applied (any such concerns are best addressed through the Qualifications).

2.3.2 For example, if you have a concern that netting might be challenged as a "preference" under your insolvency law, you should not include an assumption that "the netting provisions are not preferences". Instead you should include a

qualification discussing the risk that such challenge may arise and be successful.

2.3.3 Similarly, if you have a concern that the title transfer provisions may be recharacterised as security interests, you should not include an assumption that "the title transfer provisions are not recharacterised as creating security interests", but you should instead raise this concern and discuss the likelihood of recharacterisation in the qualification section.

2.4 **Qualifications**

2.4.1 You may find it helpful to include sub-headings in the qualification sections.

2.4.2 Please include qualifications relating to the perfection of security (e.g. registration of security, notarisation, payment of taxes) or impact of any moratorium on the enforcement of security, only where you are sure that they are relevant and necessary. Given that all collateral assets will be located outside your jurisdiction, we do not expect such qualifications are relevant.

2.5 **Schedules (counterparties)**

2.5.1 You should complete a schedule (using the pro-forma) for each counterparty type that you have listed at paragraph 1.2 of your opinions.

2.5.2 Each such schedule should address any issues relevant to the opinion that are relevant to such counterparty type (but not to the companies covered pursuant to paragraph 1.1 of your opinions).

2.5.3 Where necessary, the schedule should explain which parts of the main opinion apply/do not apply to the specific counterparty type.

2.5.4 For example, where special types of insolvency proceeding apply to insurance companies, you should refer to these in the opinions and qualifications sections of the relevant schedule, but not in the main body of the opinion.

3. **DOCUMENTATION**

3.1 We have included with these instructions a zip file containing the relevant documents.

3.2 The documents on which the Netting Opinion and Collateral Opinion is based are set out in Annex 1 of the relevant templates. These documents should be easily identifiable from the name of the files contained within the zip file.

3.3 Note that the Netting Opinion distinguishes between [Professional Client /Retail Client /Eligible Counterparty] Agreements "with Security Provisions" and "with Title Transfer Provisions".

3.4 This is because the Title Transfer Provisions and the Security Interest Provisions relating to the posting of Collateral are mutually exclusive.

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3.5 The Agreements with Security Provisions are simply the form of the agreements as provided in the zip file. However, the Agreements with Title Transfer Provisions need to be "reconstructed" by substituting the relevant Title Transfer Securities and Physical Collateral Annex (provided in the zip file) for the section entitled "Module G (margin) in the core document. The effect of this is to replace the security collateral provisions with title transfer collateral provisions.

3.6 Note also that, included among these documents are "Two Way Clauses", which may be deemed substituted for the relevant netting/event of default provisions of the Agreements. The standard model FOA Agreements enable only one party (the member firm) to initiate close-out netting, by substituting the Two Way Clauses, both parties have such rights.

3.7 We appreciate that this is a long list of documentation, however the key terms that are relevant for these opinions are more or less identical in the case of each variant. We recommend therefore that, for the purposes of preparing your opinion, you refer mainly to the Professional Client Agreement 2011 and the Title Transfer Securities and Physical Collateral Annex 2011.

3.8 The key provisions for the purposes of the opinions are as follows:

3.8.1 the ***Insolvency Events of Default Clauses***: (as identified in the relevant definition at annex 3 to the Netting Opinion);

3.8.2 the ***Netting Provisions*** (as identified in the relevant definition at annex 3 to the Netting Opinion);

3.8.3 the ***Set-off Provisions*** (as identified in the relevant definition at annex 3 to the Netting Opinion);

3.8.4 the ***Title Transfer Provisions*** (as identified in the relevant definition at annex 3 to the Netting Opinion); and

3.8.5 the ***Security Interest Provisions*** (as identified in the relevant definition at annex 2 to the Collateral Opinion).

3.9 Each opinion also relates to hypothetical "***Equivalent Agreements***".

3.9.1 An Equivalent Agreement is broadly an English law FOA-like document containing certain "Core Provisions" (i.e. broadly those provisions listed at 4.8 above) (although such Core Provisions may feature certain "non material amendments", as identified in Annex 4/5).

3.9.2 See Clause 1.4.2 (*Netting Opinion*)/1.9.4 (*Collateral Opinion*), and the definitions at Annex 3/2 for "Equivalent Agreement", "Core Provisions" and related definitions.

3.9.3 The aim of covering "Equivalent Agreements" is to enable FOA member firms to rely upon the opinions in respect of their own bespoke documents that are

not in the precise form of the FOA Agreements, but otherwise contain the same Core Provisions (subject to non-material amendments, of kind set out at Annex 4/3).

3.9.4 You can assume that English counsel will have issued an opinion to the effect that "Equivalent Agreements" are effective under English (governing) law in the same way as the documents sent to you herewith.