

NETTING ANALYSER LIBRARY
Legal collateral opinion- Situs Version

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

1 March 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of the Grand Duchy of Luxembourg ("**this jurisdiction**", "**Luxembourg**") as to 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).

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, subject to the assumptions and reservations expressed herein.

This opinion is confined to matters of Luxembourg law and we express no opinion with regard to any system of law other than the laws of Luxembourg. We have made no independent investigation of any other laws for the purpose of this opinion and do not express or imply any opinion in relation to any such laws. Notwithstanding the particular assumptions and reservations below, we have assumed that there is nothing in the law of any jurisdiction other than Luxembourg that would affect this opinion. Accordingly, our review of the Agreements has been limited to their terms as they appear on the face thereof without reference to English or New York law or any other applicable law (other than Luxembourg law to the extent opined on herein). Notwithstanding the particular assumptions and reservations below, we have assumed that there is nothing in the law of any jurisdiction other than Luxembourg which would affect this opinion.

We express no opinion herein on any taxation consequences of the Agreement or any of the Transactions entered into thereunder or on any regulatory, prudential or accounting matters that may arise in the context of the Agreement or any of the Transactions entered into thereunder.

C L I F F O R D
C H A N C E

This opinion is given on the basis that it is governed by and construed in accordance with the laws of Luxembourg and will be subject to the jurisdiction of the courts of Luxembourg.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given (to the extent, as discussed below, Luxembourg law is applicable to the matters dealt with herein in relation to such entities):

1.1.1 persons which are companies established in Luxembourg and subject to the law of 10 August 1915 on commercial companies (as amended) (*loi sur les sociétés commerciales*) ("**Company Law**"), as well as Luxembourg branches (*succursales*) of commercial companies established in other jurisdictions (each a "**Luxembourg Party**"); and

1.1.2 in respect of paragraph 3.3, the entities referred to in such paragraph, insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

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

- 1.2.1 Banks (Schedule 1);
- 1.2.2 PSF (Schedule 2);
- 1.2.3 Insurance Undertakings (Schedule 3);
- 1.2.4 Reinsurance Undertakings (Schedule 4);
- 1.2.5 Individuals (Schedule 5);
- 1.2.6 UCI (Schedule 6);
- 1.2.7 SICAR (Schedule 7);
- 1.2.8 Securitisation Vehicles (Schedule 8); and
- 1.2.9 Pension Funds (Schedule 9);

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

This opinion does not address the situation of parties which are public bodies including municipalities, business trusts, economic interest groups or European economic interest groups (*groupements d'intérêts économiques* and *groupements*

d'intérêts économiques européens) or any similar form of organisation under Luxembourg law, nor does it address the situation of public international bodies or international institutions including those established in Luxembourg. Hedge Funds are not organised under a specific regime and customarily fall within category 1.1.1 or 1.2.6. Partnerships do as such not exist under Luxembourg law. Legal entities to some extent comparable to partnerships are covered by category 1.1.1. A company may also be a *société civile* established under the laws of Luxembourg (Articles 1832 ff. of the Civil Code). This type of company has a "civil" rather than a commercial object and is therefore not subject to the Company Law mentioned in paragraph 1.1 above and is not covered by this opinion.

- 1.3 This opinion is given only in respect of cash (i.e. cash credited to an account or similar claims (*créances*) for the repayment of monies as opposed to physical notes and coins) and account-held financial instruments within the meaning of the law dated 5 August 2005 on financial collateral arrangements (as amended) (the "**Financial Collateral Law**") (i.e. financial instruments within the widest meaning of that term transferable by way of account entry) 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.
- 1.4 This opinion covers Collateral located or deemed to be located either within or outside this jurisdiction.
- 1.5 In this opinion letter:
- 1.5.1 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;
- 1.5.2 "**Equivalent Agreement**" means an agreement:
- (a) which is governed by the law of England and Wales;
 - (b) which has broadly similar functions to any of the Agreements listed in Annex 1;
 - (c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
 - (d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

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

C L I F F O R D
C H A N C E

- 1.5.3 A reference to "**Core Provisions**" includes Core Provisions that have been modified by Non-material Amendments;
- 1.5.4 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- 1.5.5 "**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.
- 1.5.6 in other instances other than those referred to at 1.5.5 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 in particular of specific performance.
- 1.5.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.5.8 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;
- 1.5.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.5.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements and Transactions are legally valid, binding and enforceable against both Parties under their governing laws and any other applicable laws (including Luxembourg law, to the extent applicable, except in relation to the Security Interest Provisions insofar as expressly opined on herein with respect to Luxembourg law).
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement and any other applicable laws (except Luxembourg law to the extent opined upon herein) to create a Security Interest.

C L I F F O R D
C H A N C E

- 2.3 That the execution and performance of the Agreement or any of the Transactions, does not violate and is in full compliance with any of the constitutional documents, prospectus', management regulations, investment policies and other corporate, constitutive or contractual documents or obligations of either party and that neither the Agreement nor the Transactions are violating any regulatory or prudential requirements applicable to any party (including, without limitation, own fund requirements, risk spreading and investment policy rules, segregation of client asset rules, technical reserve requirements and rules governing the segregation of assets between various compartments).
- 2.4 That the central administration (*administration centrale*) as referred to in the Company Law of each Luxembourg Party (except for Luxembourg Parties being Luxembourg branches (*succursales*) of entities established in other jurisdictions) is located at the place of its registered office in Luxembourg, and that, to the extent applicable, each such Luxembourg Party has its centre of main interests (*centre des intérêts principaux*) (as referred to in Council Regulation (EC) n°1346/2000 of 29 May 2000 on insolvency proceedings (the "**Regulation**")) at its registered office in Luxembourg.
- 2.5 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement and Transactions; to perform its obligations under the Agreement and Transactions; 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 in accordance with all applicable laws.
- 2.8 That the Agreement and any Transactions are entered into prior to the commencement of any bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other collective creditor proceedings (*procédures collectives*) ("**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, without any intention to circumvent any applicable laws or regulations or to defraud the rights of any persons (including third parties or creditors), 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.

C L I F F O R D
C H A N C E

- 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 or any other applicable law (including Luxembourg law, except to the extent expressly opined on herein).
- 2.12 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement in such a way as to affect the operation of the Security Provisions or the Rehypothecation Clause.
- 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 (including Luxembourg law, except to the extent expressly opined on herein) have been duly fulfilled, performed and effected.
- 2.14 That there are no provisions of the laws of any jurisdiction (including Luxembourg law, to the extent applicable, except to the extent otherwise expressly opined on herein) which would be contravened by the execution or the delivery of the Agreement.
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.16 That any securities comprising the Collateral are fungible securities transferrable by way of account entry within the meaning of the law dated 1 August 2001 on the circulation of fungible securities or other financial instruments (as amended) (the "**Law on Fungible Securities**"). According to the Law on Fungible Securities, securities or other financial instruments are deemed fungible if they are received in custody or held in an account with a depository without indication of individual numbers or other elements of identification.
- 2.17 That the obligations secured by the Security Interest are valid, legal and binding under any applicable laws and give a right to cash settlement or delivery of financial instruments or assets (*biens*) underlying these financial instruments.
- 2.18 That the Party granting the Security Interest under the Agreement has valid, effective, enforceable and unencumbered title, free from any third party rights (other than a lien routinely imposed on all securities in a relevant clearance or settlement system), to all assets over which a Security Interest is being granted, and such assets are duly in existence and capable of being pledged or otherwise encumbered.
- 2.19 That enforcement of any rights granted under the Security Interest Provisions will be carried out in accordance with the terms thereof and all applicable laws, including the laws of this jurisdiction, to the extent applicable, except to the extent expressly opined on herein.

C L I F F O R D
C H A N C E

- 2.20 That the statements made below under paragraph 3 are the result of the Agreement and the relevant governing law and all other applicable laws (except Luxembourg law).
- 2.21 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, except where expressly indicated herein. 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**

So far as the laws of this jurisdiction are concerned:

- 3.1.1 The Security Interest Provisions would create a valid security interest over the Collateral.
- 3.1.2 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.
- 3.1.3 There is no rule of the laws of this jurisdiction which would by operation of law 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.
- 3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, there are no rules of law of this jurisdiction which would affect the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person therein.
- 3.1.5 However, the courts of this jurisdiction would apply the principle of the universal effects of insolvency proceedings and in principle (except as otherwise stated below) give effect to the insolvency laws of the Counterparty's home jurisdiction (including insolvency laws providing for moratoria or stays imposed in respect of execution measures or actions for voidness, voidability or unenforceability) in respect of which no opinion is expressed herein.

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, except the perfection steps described in paragraph 4.3 below in cases where the Collateral is situated or deemed to be situated in this jurisdiction.

3.3 Foreign Collateral Providers

Moreover, the opinions given at paragraphs 3.1 and 3.2 also apply in respect of any Counterparty that is not established or resident in this jurisdiction, where any relevant accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Interest Provisions are situated or deemed to be situated within this jurisdiction. However, the courts of this jurisdiction would apply the principle of the universal effects of insolvency proceedings and in principle (except as otherwise stated below) give effect to the insolvency laws of the Counterparty's home jurisdiction (including insolvency laws providing for moratoria or stays imposed in respect of execution measures or actions for voidness, voidability or unenforceability) in respect of which no opinion is expressed herein.

3.4 Right of re-use

With respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement 2011 (or an Equivalent Agreement in the form of one of the foregoing), the Rehypothecation Clause would be effective in accordance with its terms, such that that Firm is entitled to borrow, lend, appropriate, dispose of or otherwise use for its own purposes all non-cash Collateral, subject to the further rights and obligations set out in the Rehypothecation Clause.

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

Moreover, in cases where the Counterparty is not established or resident in this jurisdiction, the courts of this jurisdiction would apply the principle of the universal effects of insolvency proceedings and in principle (except as otherwise stated below) give effect to the insolvency laws of the Counterparty's home jurisdiction (including insolvency laws providing for moratoria or stays imposed in respect of execution measures or actions for voidness, voidability or unenforceability) in respect of which no opinion is expressed herein.

4. QUALIFICATIONS

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

4.1 Limitations Arising From Insolvency Law

- 4.1.1 Article 24 of the Financial Collateral Law sets forth that the Luxembourg provisions applicable to reorganisation measures, liquidation proceedings or any other situation involving any creditors' process (*situation de concours*) shall not apply, in case where the giver of financial collateral (*garantie financière*) or any other similar collateral to which foreign law applies is established or resident in Luxembourg. The opinions set out in paragraph 3 in relation to the Security Interest Provisions and the Rehypothecation Clause have been expressed on the basis of the view that Article 24 of the Financial Collateral Law will be interpreted, in the light of the Financial Collateral Directive 2002/47/EC (as amended) (the "**Financial Collateral Directive**"), as applying to any arrangement which is of a kind which would constitute, with reference to the nature of the security interest created thereunder a 'security financial collateral arrangement' within the meaning of the Financial Collateral Directive or any similar collateral arrangement, and within the scope of the Financial Collateral Law.

We are not aware, to the best of our knowledge, of any decisions of the Luxembourg courts regarding Article 24 of the Financial Collateral Law. In adopting the Financial Collateral Law, the Luxembourg legislator stated that its objective was to allow Luxembourg undertakings to accede under good conditions to international financial markets by granting them the possibility to offer to their counterparties collateral which cannot be challenged in a Luxembourg creditors' process (*procédure collective*). In the light of this stated intention, as well as the terms of the Financial Collateral Directive and the Financial Collateral Law, we are of the view that this is the appropriate interpretation of Article 24 of the Financial Collateral Law in relation to foreign-law collateral arrangements. We can however not entirely exclude, in absence of case-law, that a Luxembourg court would adopt a stricter construction and apply Article 24 of the Financial Collateral Law only to foreign law security financial collateral arrangements that are in all respects similar to the Luxembourg law arrangements referred to therein, which would require an in depth analysis of each arrangement under all relevant foreign laws (most notably the chosen governing law and the law of the relevant *situs* of the Collateral) and Luxembourg law. In case Article 24 of the Financial Collateral Law did not apply, the insolvency provisions referred to therein, including moratoria or stays imposed in respect of execution measures or provisions foreseeing actions for voidness, voidability or unenforceability, would apply to the foreign-law collateral arrangements (subject always to any exceptions established by law, notably under the Regulation). Given that this is a matter of construction of a legal provision in absence of any case-law (to the best of our knowledge), there is however nothing that a secured party could reasonably do in the circumstances to prevent this risk from arising.

- 4.1.2 Article 20 (4) of the Financial Collateral Law provides that, *inter alia*, the provisions of the Luxembourg Commercial Code on insolvency, bankruptcy and moratoria as well as the national or foreign provisions applicable to reorganisation measures, liquidation proceedings or any other situation

involving any creditors' process (*situation de concours*) shall not apply to pledges or transfers of ownership for collateral purposes in relation to assets (*avoirs*, i.e. claims or financial instruments) as well as to set-off arrangements and shall not prevent their enforceability. In light of the fact that Article 20 (4) is contained in the Financial Collateral Law, it would normally apply only within the scope of such law, i.e. in relation to Luxembourg law financial collateral arrangements subject to the law. While Article 24 (see paragraph 4.1.1 above) applies the provisions to similar foreign-law collateral arrangements where the party constituting collateral is established in Luxembourg, there is no express extension to foreign-law arrangements, whether similar or not, where the assets are located in Luxembourg. Article 24 does not, on the terms thereof, distinguish on the basis of the *situs* of the assets, and, assuming that the similar foreign-law financial arrangement comes within the terms of Article 24 and assuming that the relevant financial collateral agreement is otherwise fully valid and enforceable with respect to Luxembourg law (in respect of which we refer to you to the other relevant parts of our opinion), it may be arguable, on a literal construction of Article 24, that it should also apply to foreign collateral arrangements entered into by a Luxembourg party over assets situated in Luxembourg. We note however that such a construction is not expressly envisaged in the parliamentary documents and that there is neither case law nor legal writing which has advocated such an approach, so that there is no indication as to whether this interpretation would be followed.

4.1.3 *Principle of unity and universal effects of foreign insolvency proceedings*

- (a) The Luxembourg courts recognise the principle of unity of an insolvency or bankruptcy ("*principe d'unité de la faillite*") and its universal effects. Accordingly, a Luxembourg court would in principle recognise and give effect to the foreign insolvency law provisions applicable to the insolvency proceedings opened over a party incorporated and established in a jurisdiction other than Luxembourg, including provisions on moratoria or stays imposed in respect of execution measures or provisions foreseeing actions for voidness, voidability or unenforceability, subject to any exceptions provided for by law.
- (b) Where a party incorporated and established abroad has a branch in Luxembourg, the Luxembourg branch of such party will in principle be subject to the insolvency proceedings existing in the jurisdiction in which the party is incorporated and established (having its registered office, place of central administration and principal establishment and, where relevant, centre of main interests in such jurisdiction), subject to the terms of the Regulation. Luxembourg courts may however exercise the discretion to open Luxembourg insolvency proceedings upon request of a foreign receiver, creditor or other interested party where:

C L I F F O R D
C H A N C E

- the foreign insolvency proceedings opened in relation to the party have purely territorial effects under their applicable law and will therefore not extend to the branch; or
 - the courts of the registered office, place of central administration or principal place of management or, where applicable, the centre of main interests of the corporate entity do not open insolvency proceedings over the entity and such insolvency proceedings are necessary for the protection of the creditors and other interested third parties; or
 - the party has in effect its principal place of management, place of central administration or centre of main interests (where applicable) in Luxembourg despite having its registered office in another jurisdiction or having passed its constitutive instrument in such other jurisdiction.
- (c) A party whose centre of main interests is situated within the territory of a EU Member State (other than Luxembourg) in which the Regulation is applicable could be subject in Luxembourg to secondary proceedings, in accordance with Article 27 ff. of the Regulation (to the extent applicable), if such party possesses an establishment within the territory of Luxembourg, i.e. (as defined in the Regulation) a place of operation where such party carries out a non-transitory economic activity with human means and goods. The effects of secondary proceedings are restricted to the assets of the debtor situated within the territory of Luxembourg and will be governed, in respect of the matters referred to in Article 4 (2) of the Regulation, by Luxembourg law, except as provided otherwise for in the Regulation.

The Regulation only applies to Insolvency Proceedings listed in Annex A of the Regulation ("**Regulation Proceedings**"). The Regulation does not apply to any other Insolvency Proceedings, nor to insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

- (e) In accordance with Article 5 of the Regulation, the opening of Regulation Proceedings over a party whose centre of main interests is situated within the territory of a EU Member State in which the Regulation is applicable does not affect the *right in rem* of a creditor or third party over Collateral belonging to the debtor which is situated within the territory of another Member State at the time of opening of such proceedings, without prejudice to actions for voidness, voidability or unenforceability as referred to in Article 4 (2)(m) of the Regulation. According to Article 13 of the Regulation, Article 4 (2)(m) of the Regulation shall however not apply where the person who benefited from an act detrimental to all the creditors provides proof that the said

act is subject to the law of a Member State other than that of the State of the opening of proceedings, and that law does not allow any means of challenging that act in the relevant case.

4.2 Application of the Law of the *Situs* of the Collateral

4.2.1 *Conflict Rules in Relation to Security Interests over Claims*

According to Article 14 of the Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (the "**Rome I Regulation**") the law governing claims subject to a pledge (*nantissement*) or other security interest (*sûreté*) over claims governs the enforceability of the security interest against the debtors of the receivables and, more particularly, the questions whether the claims are capable of being encumbered with the security interest, the relationship between the security interest holder and the debtors, the conditions under which the security interest can be invoked against the debtors and whether the debtors' obligations have been discharged.

The Rome I Regulation does however not contain any express legal provision addressing the question which law governs the enforceability of a pledge or other security interest over receivables against third parties.

On the basis of traditional Luxembourg private international law rules, this question and hence questions of existence, due perfection, ranking and enforcement of the relevant security interest are governed by the *lex situs*, which, in case of claims, is generally considered to be the law of the domicile of the debtor of the encumbered claims (or potentially, if different, of the place of the relevant establishment of such debtor, i.e. of the branch at which the encumbered claims are booked).

This rule would also apply in case recognition of choice of law will be made in accordance with and subject to the Rome convention dated 19 June 1980 on the law applicable to contractual obligations.

4.2.2 *Conflict Rules in Relation to Security Interests over Financial Instruments Transferable by Way of Account Entry*

Article 23 of the Financial Collateral Law contains an equivalent rule in relation to financial instruments transferable by way of account entry:

- (a) Article 23 (1) of the Financial Collateral Law provides that any question relating to one of the elements listed in Article 23 (2) of the Financial Collateral Law, which arises in the context of financial instruments transferable by way of account entry shall be ruled according to the law of the country where the relevant account is located, and that reference to the law of the country shall designate the domestic law of this country, notwithstanding any rule providing that the question considered should be decided pursuant to the law of another country.

- (b) Article 23 (2) of the Financial Collateral Law foresees that the elements referred to in Article 23 (1) of the Financial Collateral Law are the following:
- (i) the legal nature and *in rem* effects of the collateral over financial instruments transferable in account-entry form;
 - (ii) the requirements relating to the provision of financial collateral over financial instruments transferable by way of account entry by virtue of a financial collateral arrangement and, more generally, the completion of the formalities necessary to render such an arrangement and such a provision binding on third parties;
 - (iii) whether a person's right of ownership or other right to such collateral over financial instruments transferable by way of account entry is extinguished or overridden by a competing right of ownership or other right, or whether an acquisition has occurred in good faith;
 - (iv) the duties of the custodian of the relevant account (*teneur du compte pertinent*) towards any person other than the accountholder (*titulaire du compte pertinent*) claiming competing rights to the financial instruments held in the account with such custodian against the accountholder or any other person;
 - (v) the conditions for the realisation of the financial collateral over financial instruments transferable by way of book entry following the occurrence of an enforcement event;
 - (vi) the extent to which the financial collateral agreement over account-held financial instruments extends to the rights to dividends, incomes, or other distributions, or redemptions, assignment proceeds or any other proceeds.

4.2.3 Conclusion

The Security Interest will hence also need to be validly perfected under the laws of the domicile of the debtor of the encumbered claims or the location of the account in which the encumbered claims or financial instruments are booked, in addition to valid perfection under the relevant governing law. Should perfection not be made under the form required under such laws, then a Luxembourg court could consider the security interest not to have been validly perfected. Likewise, Luxembourg courts would turn to the laws of the domicile of the debtor of the encumbered claim and the location of the relevant account in which the encumbered claims or financial instruments are

booked for the purpose of determining the mandatory rules on enforcement of the security interest.

4.3 **Luxembourg *Lex Situs* Rules and Recognition of Foreign Security Interests**

- 4.3.1 To the extent the Collateral is located or deemed to be located in Luxembourg as a matter of the above-mentioned rules of Luxembourg private internal law, a Luxembourg court should consequently apply, notably for perfection and enforcement matters, the rules of Luxembourg law as the *lex situs* of the Collateral.
- 4.3.2 Although there is no case-law on this question (to the best of our knowledge), based on the assumption that a Luxembourg court is willing to recognise, subject to application of the Luxembourg *lex situs* rules, that a foreign law governed security interest can be granted over Collateral located or deemed to be located in Luxembourg, it is our view that the Luxembourg court would recognise the foreign law governed security interest and apply the *lex situs* rules applicable to pledges under the Financial Collateral Law for the aspects set out in paragraph 4.2 above. Given that this is a matter of legal construction in absence of any case-law (to the best of our knowledge) on this question, again there is however nothing that a secured party could reasonably do in the circumstances to prevent the risk of non-recognition of the security interest from arising.
- 4.3.3 We are not able as Luxembourg lawyers to assess all consequences of application of the Luxembourg *lex situs* rules on the security interest created or purported to be created under the Security Interest Provisions, as such analysis would require an in depth analysis of the Security Interest Provisions (including the underlying statutory rules) under the applicable laws, in particular the chosen governing law, i.e. English law or New York law, and Luxembourg law as the *lex situs* of the Collateral, and potential conflicts that may exist between the applicable laws between themselves and/or between the mandatory rules of such laws and the Security Interest Provisions.
- 4.3.4 As a minimum (and without being exhaustive), the following Luxembourg rules applicable to pledges under the Financial Collateral Law would need to be considered in this context:

(a) *Perfection*

The Financial Collateral Law requires for pledges to be perfected dispossession by the pledgor. The way of dispossession required under the Financial Collateral Law in relation to pledges over Collateral differs depending on whether the pledge is over financial instruments transferrable by way of account entry or claims (*créances*).

- (1) Article 5 (2) of the Financial Collateral Law foresees that in case of a pledge over financial instruments transferrable by way of account entry, dispossession is validly effected:
 - (i) by the conclusion of the pledge agreement in case the depository of these financial instruments is the pledgee; or
 - (ii) by agreement between the pledgor, the pledgee and the depository or by agreement between the pledgor and the pledgee notified to the depository according to which the depository shall act in accordance with the instructions of the pledgee concerning these financial instruments and without other consent of the pledgor; or
 - (iii) by entry of these financial instruments in an account of the pledgee; or
 - (iv) by entry of these financial instruments, without numeric specification, to an account opened with a depository in the name of the pledgor or a person agreed upon acting as a third party holder (*tiers détenteur*), the financial instruments being designated in the books of the depository individually or collectively by reference to the relevant account in which they are registered as pledged.

The dispossession as provided for in (ii) to (iv) triggers a waiver by the depository of the ranking of its pledge on the same financial instruments, except agreement to the contrary or simple notification to the depository in accordance with (ii) above.

- (2) Article 5 (4) of the Financial Collateral Law provides that in case of a pledge over claims, dispossession is effected *vis-à-vis* the debtor of the pledged claims as well as third parties by the conclusion of the pledge agreement.

(b) *Enforcement*

The enforcement of a pledge is regulated in Article 11 of the Financial Collateral Law. In particular, Article 11 (1) of the Financial Collateral Law provides that on the occurrence of an event triggering the enforcement of the collateral, the pledgee can, unless otherwise agreed on, without prior formal notice, either (a) appropriate (either itself or via a third party) these assets at the price fixed, either before or after the appropriation, subject to and pursuant to the valuation method agreed on between the parties; or (b) sell or cause to sell the pledged

assets by private sale at normal commercial conditions, by a sale at the stock exchange or by a public sale; or (c) cause to order by justice that the pledged assets remain payment for him to the extent of his claim, after valuation by an expert; or (d) proceed to set-off in accordance with Articles 18 ff. of the Financial Collateral Law; or (e) as far as financial instruments are concerned, appropriate those financial instruments at the trading price, if they are listed at a stock exchange located in Luxembourg or abroad or traded on a regulated market which operates regularly, recognised and open to public or at the price of the last published net asset value, if units or shares of undertakings for collective investment regularly calculating and publishing a net asset value are concerned.

(c) *Ranking and Rights to Realisation Proceeds*

As regards the ranking of the security interest created over the Collateral under the Security Interest Provisions or of the Firm's rights to the proceeds of realisation of Collateral situated or deemed to be situated in Luxembourg, depending on the method of enforcement, specific creditors may benefit from preference rights by virtue of Luxembourg law and may take precedence over the rights of other secured or unsecured creditors, in particular:

- (i) The Luxembourg tax authorities, the Luxembourg social security institutions and the salaried employees benefit from a general privilege over movables in relation to specific claims determined by law; this general privilege in principle takes precedence over the privilege of any other secured creditors.
- (ii) Pursuant to the Luxembourg law dated 23 December 1998 on the monetary statute and the *Banque Centrale du Luxembourg*, the claims of the *Banque Centrale du Luxembourg*, of the European Central Bank and of any other national central bank which is part of the European System of Central Banks, arising from operations in the framework of common monetary and exchange policies, have a preferred rank by operation of law on all assets held by their debtor, either with the *Banque Centrale du Luxembourg*, or with a securities clearing system or any other counterparty in Luxembourg. Such claims have the same rank as the preferred claims of a secured party.
- (iii) According to the Law on Fungible Securities, depositories operating as principal activity the settlement of transactions on securities (*titres*) benefit from a right of preference (*privilège*) on any securities, claims, monies and other rights that they hold in account as own assets of a participant in relation to the system they operate. This right of preference applies to the

claims of these depositories against the participant to the securities settlement system, arisen on the occasion of the settlement or the clearing of the transactions on securities and other financial instruments or the set-off (*compensation*) related thereto carried out by the participant both for its own account or for the account of its clients, including the claims arising from loans or advances. These depositories equally benefit from a right of preference on all securities, claims, monies and other rights that they hold in account as assets of clients of a participant in relation to the system they operate. This right of preference applies exclusively to the claims of the depository against the participant that have arisen on the occasion of the settlement or clearing of the transactions on securities of other financial instruments or the set-off (*compensation*) related thereto carried out by the participant for client account, including the claims arising from loans or advances.

However, the Law on Fungible Securities expressly excludes from the scope of the above rights of preference any own assets of participants if these assets are encumbered by a "guarantee" duly notified to or accepted by the depository. The Law on Fungible Securities defines "guarantee" as any element of realisable assets, including money, provided in the framework of a pledge, repurchase agreement, fiduciary transfer or an analogous agreement or in another manner, with the aim of guaranteeing the rights and obligations capable to exist in the framework of a securities settlement system or provided to the central banks which are part of the European System of Central Banks or to the European Central Bank on such an element of realisable assets. To the extent that Security Interest were qualified by a court as guarantee within the meaning of the Law on Fungible Securities, but were duly notified to or accepted by the depository, they would not be subject to the preferential rights under the Law on Fungible Securities.

Finally, these rights of preference do not apply to assets held on account with a depository operating as principal activity a securities settlement system by the European Central Bank or a national central bank which is part of the European System of Central Banks.

- (iv) The prior existence of a validly perfected pledge over assets (*avoirs*) in favour of another person (on the basis that such pledges take rank in accordance with the time of their perfection (*opposabilité aux tiers*)) would not allow the constitution of a validly perfected lower ranking pledge unless certain specific formalities are followed in absence of which no

valid security interest would have been created or exist (or in certain circumstances may not allow such creation at all). In addition, even assuming the necessary steps have been taken and a valid lower-ranking security interest is permitted and has been created in favour of a Firm, the existence of a pledge of higher rank over the same pledged assets in favour of another person would limit the rights of the lower-ranking pledge and would in particular restrict the rights of the pledgee under such lower-ranking pledge to obtain proceeds deriving from the pledged assets or the exercise of any rights in relation thereto, including the starting of enforcement processes and the attribution of any proceeds resulting from such enforcement.

4.4 General Reservations

- 4.4.1 A discretion established in favour of one party by the Agreement will have to be exercised in a reasonable manner.
- 4.4.2 Rights exercised in an abusive manner by a Party may not be enforceable.
- 4.4.3 A contractual provision conferring or imposing a remedy, an obligation or penalty consequent upon default may not be fully enforceable if it were construed by a Luxembourg court as constituting an excessive pecuniary remedy.
- 4.4.4 The exclusion of the Luxembourg provisions referred to in Article 24 of the Financial Collateral Law would not prevent an action being brought for the nullity of the Security Interest Provisions and the Rehypothecation Clause in cases of fraud of other creditors' rights (*actio pauliana*).
- 4.4.5 Periods of grace for the performance of its obligations may be granted by the courts to a debtor who has acted *bona fide*.
- 4.4.6 The rights and obligations of the parties under the Agreement may be limited by general principles of criminal law, including but not limited to criminal freezing orders.

4.5 Material Amendments

- 4.5.1 Any change to an Insolvency Event of Default that would describe the relevant procedures or the relevant officers in a way that the Insolvency Proceedings applicable to a Luxembourg Party would not be adequately and exhaustively covered anymore may have as consequence that no Insolvency Event of Default would arise in relation to the Insolvency Proceedings inappropriately described or not covered by the changed definition of Insolvency Event of Default and that hence the Security Interest could not be enforced in such situation, unless the conditions for one or more other Events of Default were fulfilled.

**C L I F F O R D
C H A N C E**

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

Any qualifications which are made in general paragraphs of this opinion shall apply to the entire opinion even without being expressly restated in other paragraphs.

This opinion is strictly limited to the matters stated herein, it only speaks as of this day and does not extend to, and is not to be read as extending by implication to, any other matter in connection with the Agreement or otherwise.

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

In this opinion, Luxembourg legal concepts are expressed (to some extent) in English terms and not in their original French terms. The concepts concerned may not be identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions. This opinion may therefore only be relied upon under the express condition that any issues of interpretation arising thereunder will be governed by Luxembourg law and will be resolved in the vernacular language.

This opinion does not contain any undertaking to update it or to inform you of any changes in the laws of Luxembourg or any other laws which would affect the content thereof in any manner, except where such update will be expressly requested.

Yours faithfully,

CLIFFORD CHANCE

Steve JACOBY

Avocat à la Cour

SCHEDULE 1 BANKS

Subject to the modifications and additions set out in this Schedule 1 (Banks), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 1 (Banks), "**Banks**" means credit institutions (banks) (*établissements de crédit*) established and duly authorised under Luxembourg law pursuant to Article 1-2 ff. of the law dated 5 April 1993 on the financial sector (as amended) (the "**Financial Sector Law**") (which are credit institutions as defined in the Directive 2006/48/EC) or branches of credit institutions located in Luxembourg as referred to in Articles 30 and 32 of the Financial Sector Law (respectively branches of EU/EEA or non-EU/EEA credit institutions, the latter to the extent duly authorised as a matter of Luxembourg law) - this opinion does not address the situation of mortgage banks (*banques d'émission de lettres de gage*) governed by Article 12-1 ff. of the Financial Sector Law.

As a general principle, Banks are permitted to enter into the Agreements. However, Banks may only enter into transactions within certain limits contained in applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

1.1 Luxembourg branches of institutions qualifying as "*établissement*" under Article 60 of the Financial Sector Law, i.e. institutions managing third party funds ("**Financial Institutions**"), including Banks, may not be subject in Luxembourg to secondary proceedings under the Regulation as set out in paragraph 4.1.2 and instead of the provisions of the Regulation the following rules apply thereto:

(a) Regarding Luxembourg branches of Financial Institutions who have their registered office in and whose home country is a member state of the European Union ("**EU**") or European Economic Area ("**EEA**") other than Luxembourg:

(i) In accordance with Article 60-5 of the Financial Sector Law, the authorities of the home country member state (*Etat membre d'origine*) are exclusively competent to implement reorganisation measures for such a Financial Institution, including in respect of its branch in Luxembourg. The law applicable to such reorganisation measures is the law of the home country member state to the extent that the Financial Sector Law (Articles 60 to 61-26 thereof, implementing the relevant provisions of the directive of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions ("**CI-WUD**")) does not provide otherwise. The effects of

such reorganisation measures will apply in Luxembourg in relation to the Luxembourg branches according to the legislation of such home country member state.

- (ii) In accordance with Article 61-6 of the Financial Sector Law, the authorities of the home country member state (*Etat membre d'origine*) are exclusively competent to decide on the opening of liquidation proceedings with respect to such a Financial Institution, including in respect of its branch in Luxembourg. The Luxembourg branch is liquidated in accordance with the laws, regulations and procedures applicable in the home country member state to the extent that the Financial Sector Law (Articles 60 to 61-26 thereof, implementing the relevant provisions of the CI-WUD) does not provide otherwise. The decision of opening of liquidation proceedings taken by the authorities of the home country member state is recognised without any formality on the territory of Luxembourg and takes effect once it is effective in the country of opening of liquidation proceedings.
- (b) Regarding Luxembourg branches of Financial Institutions with a registered office in a country other than an EU/EEA member state:
- (i) Reorganisation measures decided by the relevant authorities of that state will apply according to the legislation of that state to the Luxembourg branches of such Financial Institutions, in accordance with Article 60-6 of the Financial Sector Law, to the extent such measures purport to have effect in Luxembourg under their governing law. Luxembourg courts may however pronounce suspension of payments (*sursis de paiement*) proceedings over such Luxembourg branches. The petition to this effect may only be made by the *Commission de Surveillance du Secteur Financier* ("CSSF"), if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch. The suspension of payments pronounced by the Luxembourg court is governed by Luxembourg law and is made according to the procedures applicable in Luxembourg to the extent that the Financial Sector Law (Articles 60 to 61-26 thereof, implementing the relevant provisions of the CI-WUD) does not provide otherwise.
 - (ii) The authorities of the country where the Financial Institution has its registered office are, in accordance with Article 61-7 of the Financial Sector Law, exclusively competent to implement liquidation measures for such a Financial Institution, including its Luxembourg branch. The Luxembourg branch is liquidated according to the laws, regulations and procedures applicable in such home country except where Luxembourg law provides to the contrary. The decision ordering the liquidation and purporting to have effect in Luxembourg according to the laws of such home country will apply, without any other formality, in Luxembourg according to the laws of such home country. Luxembourg courts may

C L I F F O R D
C H A N C E

however open dissolution and liquidation proceedings over the Luxembourg branch. The petition to this effect may only be made by the CSSF, if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch. In such case, the liquidation of the Luxembourg branch is governed by Luxembourg law and made according to the procedures applicable in Luxembourg to the extent that the Financial Sector Law (Articles 60 to 61-26 thereof, implementing the relevant provisions of the CI-WUD) does not provide otherwise.

SCHEDULE 2
OTHER PROFESSIONALS OF THE FINANCIAL SECTOR

Subject to the modifications and additions set out in this Schedule 2 (*Other Professionals of the Financial Sector*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are PSF. For the purposes of this Schedule 2 (*Other Professionals of the Financial Sector*), "PSF" means other professionals of the financial sector (*PSF*) established and duly authorised under Luxembourg law in accordance with Article 13 ff. of the Financial Sector Law (and including investment firms in the sense of the Directive 2004/39/EC) or branches located in Luxembourg of PSF as referred to in Articles 30 (with respect to Luxembourg branches of EU/EEA investment firms) and 32 (with respect to Luxembourg branches of EU/EEA entities which are not investment firms or of any third country entities, in each case carrying the appropriate license under Luxembourg law) of the Financial Sector Law.

As a general principle, PSF are permitted to enter into the Agreements. However, PSF may only enter into transactions within certain limits contained in applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 1.1 In relation to PSF which are Financial Institutions the modifying qualification set out in section 1.1 of Schedule 1 (*Banks*) applies.

2. ADDITIONAL QUALIFICATIONS

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

- 2.1 Article 37 of the Financial Sector Law requires PSF (including investment firms) managing third party funds to segregate their client's assets and prohibits any measures of execution by personal creditors of such professional on the client's assets. To the extent that the professional has indicated to act as principal, but has abused assets of its customers, this provision could prevent the effectiveness of the Security Interest Provisions or Rehypothecation Clause.

SCHEDULE 3 INSURANCE UNDERTAKINGS

Subject to the modifications and additions set out in this Schedule 3 (*Insurance Undertakings*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Undertakings. For the purposes of this Schedule 3 (*Insurance Undertakings*), "**Insurance Undertakings**" means insurance undertakings (*entreprises d'assurance*) established and duly authorised under Luxembourg law in accordance with and subject to Articles 27 ff. of the law dated 6 December 1991 on the insurance sector (as amended) (the "**Insurance Sector Law**") or branches located in Luxembourg of foreign insurance undertakings authorised to exercise their activity in Luxembourg on the basis of Articles 28 ff. (with respect to Luxembourg branches of non-EU insurance undertakings) and 69 (with respect to Luxembourg branches of EU insurance undertakings) of the Insurance Sector Law.

As a general principle, Insurance Undertakings are permitted to enter into the Agreements. However, Insurance Undertakings may only enter into transactions within certain limits contained in applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 1.1 Branches located in Luxembourg of foreign insurance undertakings authorised to exercise their activity in Luxembourg on the basis of Articles 28 ff. (with respect to Luxembourg branches of non-EU insurance undertakings) and 69 (with respect to Luxembourg branches of EU insurance undertakings) of the Insurance Sector Law, may not be subject in Luxembourg to secondary proceedings under the Regulation as set out in paragraph 4.1.2 and instead of the provisions of the Regulation the following rules apply thereto:
 - (a) Regarding Luxembourg branches of insurance undertakings having their registered office in a EU member state other than Luxembourg, in accordance with Article 56-1 of the Insurance Sector Law, the reorganisation and liquidation measures ordered by the authorities of that member state produce their effects in Luxembourg in accordance with the law of the home country (subject to certain limited exceptions in case the insolvency official intends to exercise its powers in Luxembourg).
 - (b) Regarding Luxembourg branches of insurance undertakings having their registered office in a country other than a EU member state, in accordance with Article 56-2 of the Insurance Sector Law, the reorganisation and liquidation measures ordered by the authorities of that country produce their

effects in Luxembourg in accordance with the law of that country. Luxembourg courts may however open reorganisation and liquidation proceedings against such Luxembourg branches. A petition to this effect may solely be made by the *Commissariat aux Assurances* if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch. In such case, the reorganisation or liquidation of the Luxembourg branch is governed by Luxembourg law and made according to the procedures applicable in Luxembourg to the extent that the Insurance Sector Law (Articles 55 to 60-7 thereof, implementing the relevant provisions of the directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings) does not provide otherwise. The effects of such proceedings are however limited to the assets and liabilities relating to the operations carried out in Luxembourg.

2. **ADDITIONAL QUALIFICATIONS**

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

- 2.1 According to Article 39 of the Insurance Sector Law, the assets of an insurance undertaking representing technical reserves constitute a segregated pool of assets on which policy holders have a first-ranking preference.

SCHEDULE 4 REINSURANCE UNDERTAKINGS

Subject to the modifications and additions set out in this Schedule 4 (*Reinsurance Undertakings*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Reinsurance Undertakings. For the purposes of this Schedule 4 (*Reinsurance Undertakings*), "**Reinsurance Undertakings**" means reinsurance undertakings (*entreprises de réassurance*) established and duly authorised under Luxembourg law in accordance with and subject to Articles 92 ff. of the Insurance Sector Law or branches located in Luxembourg of foreign reinsurance undertakings authorised to exercise their activity in Luxembourg on the basis of Article 100-11 of the Insurance Sector Law (with respect to Luxembourg branches of EU and non-EU reinsurance undertakings).

As a general principle, Reinsurance Undertakings are permitted to enter into the Agreements. However, Reinsurance Undertakings may only enter into transactions within certain limits contained in applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 1.1 Though Reinsurance Undertakings are not expressly excluded from the scope of the Regulation (Article 1(2) thereof), the European Commission confirmed in 2006 that the exemptions from the scope of the Regulation are extended to Reinsurance Undertakings¹. As a consequence, the provisions of the Regulation do, in principle, not apply to Reinsurance Undertakings. Accordingly, the explanations on the Regulation given in paragraph 4.1.2 are not relevant for Reinsurance Undertakings.

¹ MAIN CONCLUSIONS OF THE TRANSPOSITION MEETING REGARDING THE REINSURANCE DIRECTIVE 2005/68/EC
ON 13 NOVEMBER 2006, document MARKT/2502/07/-EN
(http://ec.europa.eu/internal_market/insurance/docs/markt-2502-07/markt-2502-07.pdf).

SCHEDULE 5 INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 5 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 5 (*Individuals*), "**Individuals**" means natural persons who have their domicile in Luxembourg as well as natural persons who operate as merchant (*commerçant*) within the meaning of the Luxembourg Code de Commerce in Luxembourg through a Luxembourg establishment, irrespective of whether they have their domicile in Luxembourg or not.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 1.1 Article 24 (and Article 20 (4)) of the Financial Collateral Law does (do) not exclude the application of the Over-Indebtedness Law on financial collateral arrangements entered into with Individuals subject to proceedings opened under the law of 8 December 2000 on over-indebtedness (as amended) ("**Over-Indebtedness Law**")².

In particular, the Over-Indebtedness Law provides for contractual reorganisation proceedings as well as judicial reorganisation proceedings. Articles 3 ff. of the Over-Indebtedness Law foresee that the filing of a formal application by the debtor with the competent Service of Information and Advice in Over-Indebtedness Matters (*Service d'information et de conseil en matière de surendettement*, "SIAO") triggers, by operation of law and during a maximum period of six months during which a contractual reorganisation scheme proposed by the SIAO may be agreed upon between the debtor, its creditors and, as the case may be, other interested parties, the suspension of execution proceedings running with respect to tangible or intangible assets of the debtor, with the exception of execution proceedings against the debtor concerning debts to pay alimony. In case no contractual reorganisation scheme can be agreed upon, the SIAO, the debtor or any other interested party may file an application with the competent court for the opening of judicial collective reorganisation proceedings in accordance with article 7 of the Over-Indebtedness Law. During judicial collective reorganisation proceedings, the judge may at any time suspend execution measures running on the tangible or intangible assets of the debtor, with the exception of execution proceedings against the debtor concerning debts to pay alimony. The judge will decide in judicial collective reorganisation proceedings on a judicial reorganisation scheme which may contain the suspension of all or part of the debts, the reduction of interest rates, the suspension of the effects of an *in rem*

² The Over-Indebtedness Law is repealed by a law dated 8 January 2013 which will enter into force on 1 February 2014. No opinion is expressed on the new law.

C L I F F O R D
C H A N C E

security interest without loss of the right of preference (*privilège*) and without compromising the assessment base (*assiette*), as well the remission of the debt on the accessory (*remise de la dette sur les accessoires*). The operation of the Security Interest Provisions and Rehypothecation Clause would hence be affected by the opening of proceedings under the Over-Indebtedness Law and the opinions expressed in paragraph 3 are qualified accordingly.

Individuals who are authorised to reside and have their domicile in Luxembourg may be subject to collective settlement of debts proceedings in accordance with the Over-Indebtedness Law, unless they have organised their bankruptcy. Individuals who are merchants (*commerçant*) within the meaning of the Luxembourg Code de Commerce, may however not be subject to collective settlement of debts proceedings under the Over-Indebtedness Law, except in case they have ceased their commercial activity since at least six months or in case of bankruptcy (*faillite*) where the closure of transactions has been pronounced.

SCHEDULE 6 UNDERTAKINGS FOR COLLECTIVE INVESTMENT

Subject to the modifications and additions set out in this Schedule 6 (*Undertakings for Collective Investment*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are UCI. For the purposes of this Schedule 6 (*Undertakings for Collective Investment*), "UCI" means undertakings for collective investment, specifically:

- (i) a *société d'investissement à capital variable* ("SICAV"), i.e. an investment company with variable capital; or
- (ii) a *société d'investissement à capital fixe* ("SICAF"), i.e. an investment company with fixed capital; or
- (iii) a *fonds commun de placement* ("FCP"), i.e. a common fund made up of an undivided collection of assets, made up and managed by a management company (the "**Management Company**") on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units. When entering into the Agreements, the Management Company will act in its own name but for the account of the FCP;

each subject to and authorised under either the law dated 17 December 2010 on undertakings for collective investment (as amended) (the "**2010 Law**") or the law dated 13 February 2007 concerning specialised investment funds (as amended) (the "**2007 Law**", and together with the 2010 Law, the "**UCI Laws**"). Please note that, according to Articles 24, 32 or 40 (3) of the 2007 Law, as applicable, the denomination of a SICAV, SICAF or FCP subject to the 2007 Law has to be completed by the words *fonds d'investissement spécialisé* or FIS.

We do not deal in this opinion with branches of UCI on the basis that these should not normally have branches.

We further draw your attention to the fact that UCI may also exist in other forms, which in current practice are very uncommon, such as in particular UCI in the form of a fiduciary pool of assets (*fiducie*), and which are not dealt with in this opinion. Consequently, a reference to a UCI shall, in this opinion, not cover such other forms.

A UCI may be constituted of several compartments (*compartiments*), each of which constitutes a separate pool of assets and liabilities. The assets attributable to such a compartment will only be available to the creditors of or investors in such compartment. A compartment can be liquidated separately, and such a liquidation does not affect any other compartment.

When entering into Transactions with a UCI constituted of several compartments, it needs to be specified, which compartment the Agreement or the Transaction relates to. While the counterparty of the Transaction or the Agreement will remain the relevant UCI, any recourse of the counterparty will be limited to the assets of the compartment so specified.

C L I F F O R D
C H A N C E

When referring to a UCI constituted of several compartments, a reference to a Relevant Luxembourg Party shall be construed as a reference to the relevant compartment with which the Agreement or Transaction is being entered into. As a consequence, it is not possible to set-off or proceed to the close-out netting between Transactions entered into with different compartments, each of which should be treated as a different counterparty, in particular in terms of credit risk and netting.

As a general principle, UCIs are permitted to enter into the Agreements. However, UCIs may only enter into Transactions within certain limits contained in the UCI's constitutional documents and applicable laws and official regulations by the *Commission de Surveillance du Secteur Financier*, the supervisory authority of the Luxembourg financial sector (the "CSSF"). In this respect we refer you to the assumption made in paragraph 2.3.

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 in case of an FCP that the central administration (*administration centrale*) as referred to in the Company Law of the Management Company of such FCP is located at the place of its registered office in Luxembourg, and that, to the extent applicable, it has its centre of main interests (*centre des intérêts principaux*) (as referred to the Regulation) at its registered office in Luxembourg.

SCHEDULE 7 SICAR

Subject to the modifications and additions set out in this Schedule 7 (*SICAR*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are SICAR. For the purposes of this Schedule 7 (*SICAR*), "**SICAR**" means risk capital investment companies (*société d'investissement en capital à risque*), each subject to and authorised under the law of 15 June 2004 on risk capital investment companies (as amended) (the "**SICAR Law**").

We do not deal in this opinion with branches of SICAR on the basis that these should not normally have branches.

A SICAR may be constituted of several compartments, each of which constitutes a separate pool of assets and liabilities. Except if otherwise provided for in the constitutional documents, the assets attributable to such a compartment will only be available to the creditors of or investors in such compartment. A compartment can be liquidated separately, and such a liquidation does not affect any other compartment.

When entering into transactions with a SICAR constituted of several compartments, it needs to be specified, which compartment the Agreement or the transaction relates to. While the counterparty of the transaction or the Agreement will remain the relevant SICAR, any recourse of the counterparty will be limited to the assets of the compartment so specified.

When referring to a SICAR constituted of several compartments, a reference to a Relevant Entity (as defined below) shall be construed as a reference to the relevant compartment with which the Agreement or transaction is being entered into. As a consequence, it is not possible to set-off or proceed to the close-out netting between transactions entered into with different compartments, each of which should be treated as a different counterparty, in particular in terms of credit risk and netting.

As a general principle, SICARs are permitted to enter into the Agreements. However, SICARs may only enter into Transactions within certain limits contained in their constitutional documents and applicable laws and official regulations (in particular, without however being limited to, the circular 06/241 of the *Commission de Surveillance du Secteur Financier*, the supervisory authority of the Luxembourg financial sector (the "**CSSF**")). In this respect we refer you to the assumption made in paragraph 2.3.

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

1. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 1.1 It is debatable whether the Regulation applies to SICAR or not. The Regulation applies to "collective insolvency proceedings which entail the partial or total

divestment of a debtor and the appointment of a liquidator" (Article 1(1)); the Regulation lists the Regulation Proceedings to which it applies in each Member State in Annex A thereto. These are not identical to all the Insolvency Proceedings to which a SICAR may be subject, in particular a SICAR may in addition to the Insolvency Proceedings to which a Luxembourg incorporated and established commercial company may usually be subject in addition be subject to *sursis à tout paiement* (suspension of payments) proceedings, as provided for in Article 18 of the SICAR Law and *dissolution et liquidation* (winding-up and liquidation), as provided for in Article 19 *et seq.* of the SICAR Law). While certain types of entities are specifically excluded from the scope of the Regulation (Article 1(2)) (for example insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties and collective investment undertakings), SICAR are not expressly excluded from the scope of the Regulation. It cannot be excluded that the Regulation applies to Insolvency Proceedings concerning SICAR in case such Insolvency Proceedings are Regulation Proceedings and we express no opinion in this respect. The question whether the Regulation applies or not to SICAR would however not affect any of the conclusions reached in this opinion.

SCHEDULE 8 SECURITISATION VEHICLES

Subject to the modifications and additions set out in this Schedule 8 (*Securitisation Vehicles*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Securitisation Vehicles. For the purposes of this Schedule 8 (*Securitisation Vehicles*), "**Securitisation Vehicles**" means securitisation vehicles (*organismes de titrisation*), specifically:

- (i) securitisation companies (*sociétés de titrisation*, "**Securitisation Company**") incorporated and having their registered office (*siège statutaire*) in Luxembourg;
- (ii) securitisation funds (*fonds de titrisation*, "**Securitisation Fund**"), i.e. a funds made up of one or more co-ownerships or one or more fiduciary estates, and managed by a management company (the "**Securitisation Management Company**") on behalf of joint owners (*co-propriétaires*) or settlors (*fiduciants*) who are liable only up to the amount contributed by them and whose rights are represented by units. When entering into the Agreements, the Securitisation Management Company will act in its own name but for the account of the Securitisation Fund;

each subject to the law dated 22 March 2004 on securitisation (as amended) (the "**Securitisation Law**"). Only Securitisation Vehicles that issue on a continuous basis securities to the public are required to be subject to the supervision of the CSSF and are hereafter referred to as "**Authorised Securitisation Vehicles**"

We do not deal in this opinion with branches of Securitisation Vehicles on the basis that these should not normally have branches.

A Securitisation Fund may be constituted of several compartments, each of which constitutes a separate pool of assets and liabilities. The assets attributable to such a compartment will be only available to the creditors of or investors in such compartment. A compartment can be liquidated separately, and such liquidation does not affect any other compartment.

When entering into Transactions with a Securitisation Fund constituted of several compartments, it needs to be specified, which compartment the Agreement or the Transaction relates to. While the counterparty of the Transaction or the Agreement will remain the relevant Securitisation Fund, any recourse of the counterparty will be limited to the assets of the compartment so specified.

When referring to a Securitisation Fund constituted of several compartments, a reference to a Luxembourg Party shall be construed as a reference to the relevant compartment with which the Agreement or Transaction is being entered into. As a consequence, it is not possible to set-off or proceed to the close-out netting between Transactions entered into with different compartments, each of which should be treated as a different counterparty, in particular in terms of credit risk and netting.

As a general principle, Securitisation Funds are permitted to enter into the Agreements. However, Securitisation Funds may only enter into transactions within certain limits

contained in the Securitisation Funds' constitutional documents and applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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 in case of a Securitisation Fund that the central administration (*administration centrale*) as referred to in the Company Law of the Securitisation Management Company of such Securitisation Fund is located at the place of its registered office in Luxembourg, and that, to the extent applicable, it has its centre of main interests (*centre des intérêts principaux*) (as referred to the Regulation) at its registered office in Luxembourg.

2. MODIFICATION TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

- 2.1 It is debatable whether the Regulation applies to Securitisation Companies or not. The Regulation applies to "collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator" (Article 1(1)); the Regulation lists the Regulation Proceedings to which it applies in each Member State in Annex A thereto. These are not identical to all the Insolvency Proceedings to which a Securitisation Company may be subject (in particular, with respect to the Authorised Securitisation Vehicles, the *sursis à tout paiement* (suspension of payments), as provided for in Article 28 *et seq.* of the Securitisation Law and the *liquidation forcée* (forced liquidation), as provided for in Article 39 *et seq.* of the Securitisation Law). While certain types of entities are specifically excluded from the scope of the Regulation (Article 1(2)) (for example insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties and collective investment undertakings), Securitisation Companies are not expressly excluded from the scope of the Regulation. The Regulation would therefore normally apply to Insolvency Proceedings concerning Securitisation Companies which are not Authorised Securitisation Vehicles in case such Insolvency Proceedings are Regulation Proceedings. The question whether the Regulation applies or not to Securitisation Vehicles would however not affect the conclusions reached in this opinion.

3. ADDITIONAL QUALIFICATIONS

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

- 3.1 Pursuant to Article 61 (3) of the Securitisation Law, a Securitisation Vehicle may not, by any means whatsoever, grant security interests over its assets or transfer its assets for guarantee purposes, except to secure or guarantee the obligations it has assumed

C L I F F O R D

C H A N C E

for its securitisation or in favour of its investors, its fiduciary-representative or the issuing vehicle participating in the securitisation. Any security interest or guarantee granted by a Securitisation Vehicle in violation of such rule is null and void. As a consequence thereof, if the Parties have entered into the Agreement for a purpose other than the securitisation of the assets over which a security interest is granted, then the granting of such security interest under the Agreement would be null and void.

**SCHEDULE 9
PENSION FUNDS**

Subject to the modifications and additions set out in this Schedule 9 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are CSSF Pension Funds or CAA Pension Funds (each as defined hereafter and collectively referred to as "**Pension Funds**").

For the purposes of this Schedule 9 (*Pension Funds*):

- (a) "**CSSF Pension Funds**" means pension funds subject to the supervision of the Luxembourg financial sector regulatory authority *Commission de Surveillance du Secteur Financier* ("**CSSF**") and governed by the law dated 13 July 2005 on institutions for occupational retirement provision in the form of a *société d'épargne-pension à capital variable* ("**SEPCAV**") or an *association d'épargne-pension* ("**ASSEP**") (as amended) (the "**2005 Law**").
- (b) "**CAA Pension Funds**" means pension funds subject to the supervision of the Luxembourg insurance sector regulatory authority *Commissariat aux Assurances* ("**CAA**") and governed by the Insurance Sector Law and the grand-ducal regulation dated 31 August 2000 adopted in application of Article 26 paragraph 3 of the Insurance Sector Law (as amended) (the "**2000 Regulation**"). Such term shall not, for the avoidance of doubt, include pension funds which are public establishments.

We do not deal in this opinion with branches of Pension Funds on the basis that these should not normally have branches.

A CSSF Pension Fund may be constituted of several compartments, each of which constitutes a separate pool of assets and liabilities. The assets attributable to such a compartment will be only available to the creditors of or investors in such compartment. A compartment can be liquidated separately, and such liquidation does not affect any other compartment.

When entering into Transactions with a CSSF Pension Fund constituted of several compartments, it needs to be specified, which compartment the Agreement or the Transaction relates to. While the counterparty of the Transaction or the Agreement will remain the relevant CSSF Pension Fund, any recourse of the counterparty will be limited to the assets of the compartment so specified.

When referring to a CSSF Pension Fund constituted of several compartments, a reference to a Luxembourg Party shall be construed as a reference to the relevant compartment with which the Agreement or Transaction is being entered into. As a consequence, it is not possible to set-off or proceed to the close-out netting between Transactions entered into with different compartments, each of which should be treated as a different counterparty, in particular in terms of credit risk and netting.

As a general principle, Pension Funds are permitted to enter into the Agreements. However, Pension Funds may only enter into transactions within certain limits contained in the Pension

Funds' constitutional documents and applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.3.

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 QUALIFICATIONS**

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

- 1.1 According to Article 7 (1) of the 2000 Regulation referring to Article 39 of the Insurance Sector Law, the assets of a CAA Pension Fund representing technical reserves constitute a segregated pool of assets on which policy holders have a first-ranking preference.

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

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

C L I F F O R D
C H A N C E

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

C L I F F O R D
C H A N C E

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

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

- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (*General lien*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (*General lien*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (*General lien*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (*General lien*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).
8. **"Two Way Clauses"** means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.

ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as “you”, “Counterparty”, “Party A/Party B”) provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.
4. Any change to an Insolvency Event of Default (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.
5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.
6. 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.
7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
8. 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.

C L I F F O R D

C H A N C E

9. 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.