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6 December 2013

Dear Sirs,

FOA netting opinion issued in relation to the FOA Netting Agreements, FOA Clearing Module and ISDA/FOA Clearing Addendum

You have asked us to give an opinion in respect of the laws of Luxembourg ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in an FOA Netting Agreement or a Clearing Agreement.

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

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

References herein to "*this opinion*" are 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 FOA Netting Agreement and the Clearing Agreement has been limited to their terms as they appear on the face thereof without reference to English law or any other applicable law (other than Luxembourg law to the extent opined on herein).

We express no opinion herein on any taxation consequences of the FOA Netting Agreement and/or a Clearing Agreement or any of the Transactions entered into thereunder or on any regulatory, prudential or accounting matter that may arise in the context of the FOA Netting Agreement or the Clearing Agreement or any of the Transactions entered into thereunder or any consequences thereof.

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 exclusive 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 in respect of Parties which are:

1.1.1 commercial 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; and

1.1.2 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 directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions) 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

(the "**Luxembourg Parties**" and each a "**Luxembourg Party**").

1.2 This opinion is also given in respect of Parties that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the applicable Schedule:

1.2.1 PSF (Schedule 1);

1.2.2 Insurance Undertakings (Schedule 2);

1.2.3 Reinsurance Undertakings (Schedule 3);

1.2.4 Individuals (Schedule 4);

1.2.5 UCI (Schedule 5);

1.2.6 SICAR (Schedule 6);

1.2.7 Securitisation Vehicles (Schedule 7); and

1.2.8 Pension Funds (Schedule 8).

1.3 This opinion does not address the situation of parties which are public bodies, including municipalities, business trusts, economic interest groups or European interests groups (*groupements d'intérêts économiques* and *groupements d'intérêts économiques européens*), companies incorporated under the Company Law in the form of a *société en commandite spéciale* which does not have legal personality distinct from its partners (*associés*) 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 the category set out in paragraphs 1.1.1 or 1.2.5. Partnerships do as such not exist under Luxembourg law. Legal entities to some extent comparable to partnerships are covered by the category set out in paragraph 1.1.1. A company may also be a *société civile* established under the laws of Luxembourg (Articles 1832 *ff.* of the Luxembourg 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.

1.4 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the Netting Agreement and the Clearing Agreement are expressed to be governed by English law.

1.5 This opinion covers all types of Transactions, whether entered into on an exchange, any other forms of organised market place or multilateral trading facility, or over the counter.

1.6 This opinion is given in respect of only such of those Transactions which are capable under their governing laws, of being terminated, liquidated and (to the extent applicable) set-off in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision.

1.7 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy, in particular of specific performance.

1.8 **Definitions**

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the FOA Netting Agreement or the Clearing Agreement, unless the context specifies otherwise. Where, in an FOA Netting Agreement or, as the case may be, a Clearing Agreement, a defined term has been changed but the changed term corresponds to a term defined in a FOA Published Form Agreement or, as the case may, the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or this opinion letter, this opinion letter may be read as if terms used herein were the terms as so changed.

1.8.1 "**Insolvency Proceedings**" means the proceedings listed in paragraph 3.1 below;

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

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

1.8.4 "**FOA Member**" means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion); and

1.8.5 A reference to a "**paragraph**" is to a paragraph of this opinion letter.

Annex 3 contains further definitions of terms relating to the FOA Netting Agreement and the Clearing Agreement.

2. ASSUMPTIONS

We assume the following:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated, but subject to the reservations set out in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration.

2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are legally binding and enforceable against both Parties under their governing laws and any other applicable laws (including Luxembourg law, to the extent applicable, except in relation to the Netting Provisions, the Set-Off Provisions and the Title Transfer Provisions insofar as expressly opined on herein with respect to Luxembourg law).

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.4 That the execution and performance of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and any of the Transactions do not violate and are 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.

2.5 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 the Council Regulation (EC) n° 1346/2000 of 29 May 2000 on insolvency proceedings (the "**Regulation**")) at its registered office in Luxembourg.

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 FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement in this jurisdiction.

2.7 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement has been properly executed by both Parties in accordance with all applicable laws.

2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party.

2.9 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.

2.10 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the parties thereto in good faith, without any intention to circumvent any applicable laws or regulations or to defraud the rights of any other 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.

2.11 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.

2.12 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are "mutual" between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.

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

2.14 That, in relation to a Clearing Agreement, a Luxembourg Party which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a bank, PSF which is an investment firms (*entreprise d'investissement*) or an insurance undertaking as referred to in paragraphs 1.1.2, 1.2.1 and 1.2.2.

2.15 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

2.16 That all margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of margin pursuant to the Title Transfer Provisions will have been effectively carried out.

2.17 That all margin transferred pursuant to the Title Transfer Provision will at all times consist wholly of: (i) cash credited to an account or similar claims (*créances*) for the repayment of monies (as opposed to physical notes and coins); (ii) financial instruments within the widest meaning of that term; or (iii) both of (i) and (ii) together.

2.18 That the FOA Set-Off Provisions, the Clearing Module Set-Off Provisions and the Addendum Set-Off Provisions constitute set-off arrangements under the laws of all relevant jurisdictions (other than Luxembourg to the extent applicable).

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

2.20 That enforcement, including liquidation of any rights granted under the Netting Provisions as well as the Set-Off Provisions and the Title Transfer Provisions will be carried out in accordance with the terms thereof and all applicable laws (other than Luxembourg law to the extent opined on herein).

2.21 That the statements made below under paragraph 3. are the result of the FOA Netting Agreement, or, as the case may be, the Clearing Agreement and the relevant governing law and all other applicable laws (except Luxembourg law).

3. OPINION

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

3.1 Insolvency Proceedings

3.1.1 Relevant Insolvency Proceedings for Luxembourg Parties (other than Luxembourg branches of foreign parties and credit institutions)

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a company[1] (in respect of Luxembourg branches of foreign parties we refer you to paragraph 3.1.2 below) would be subject in this jurisdiction are the following:

(a) *faillite* (insolvency) as provided for in Articles 437 *ff.* of the Code of Commerce;

(b) *sursis de paiement* (suspension of payments) as provided for in Articles 593 *ff.* of the Code of Commerce;

(c) *gestion contrôlée* (controlled management) as provided for in a Grand-Ducal Decree dated 24 May 1935;

(d) *concordat préventif de faillite* (composition with creditors) as provided for in a law dated 14 April 1886;

(e) *liquidation judiciaire*, a form of liquidation ordered by the court under Article 203 of the Company Law upon the request of the public prosecutor, and to which the court may declare applicable some of the provisions mentioned under (a) above in relation to the liquidation in insolvency proceedings; it should be noted that the court order pronouncing the annulment of a company (*nullité d'une société*) under Articles 12ter *ff.* of the Company Law will have the same effects, and that the court will have the power to determine the liquidation mode and appoint the liquidators;

(f) *cession volontaire de biens* (voluntary composition with creditors), a voluntary arrangement between a debtor and its creditors governed by Articles 1265 *ff.* of the Civil Code;

(g) *cession judiciaire de biens* (court-supervised composition with creditors) which is an arrangement which can be granted by the courts to the debtor willing to abandon all its assets to its creditors under certain conditions, as provided for in Article 1265, 1266, 1268 *ff.* of the Civil Code. This arrangement is normally not available for commercial persons and would therefore not normally apply to Luxembourg Parties within the scope of this opinion (except Individuals).

3.1.2 **Insolvency Proceedings of branches of foreign parties in Luxembourg**

(a) The Luxembourg branch of an entity referred to under paragraph 1.1.1 incorporated and established in another jurisdiction will in principle not be subject to the insolvency proceedings mentioned under paragraph 3.1.1 above, but to the insolvency proceedings existing in

[1] Such term does not include, for the avoidance of doubt, a credit institution being a Financial Institution (as such term is defined below in and in respect of which we kindly refer you to paragraph 3.1.5 below).

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), as the Luxembourg courts recognise the principle of unity of an insolvency or bankruptcy (*principe d'unité de la faillite*), subject to the terms of the Regulation, where applicable (for which we refer you to (b) below).

Luxembourg courts may however exercise the discretion to open such proceedings upon request of a foreign receiver, creditor or other interested party where:

- 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;
- 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;
- 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.

(b) A party whose centre of main interests is situated within the territory of a EU Member State in which the Regulation is applicable could be subject in Luxembourg to secondary proceedings, in accordance with Article 27 *ff.* of the Regulation, 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.

The Regulation only applies to insolvency proceedings listed in Annex A to the Regulation, i.e. with respect to Insolvency Proceedings listed in 3.1.1 (a), (c) and (d) (the "**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.

(c) Article 203-1 of the Company Law provides that the Luxembourg courts have jurisdiction to order the closure of any Luxembourg establishment of a foreign company which carries on criminally prohibited activities or which seriously contravenes the provisions of the Code of Commerce or the laws governing companies, including the laws regarding business authorisations. However, there is no provision similar to Article 203 of the Company Law causing certain provisions of the insolvency proceedings referred to under 3.1.1 (a)(1) above to be applicable.

3.1.3 **Relevant Insolvency Proceedings for Financial Institutions (other than Luxembourg branches of foreign Financial Institutions)**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Luxembourg Party which qualifies as an *établissement* under Article 60 of the Financial Sector Law, i.e. institutions managing third party funds ("**Financial Institutions**"), including credit institutions (in respect of Luxembourg branches of foreign Financial Institutions we refer you to section 3.1.6 below) could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *sursis de paiement* (suspension of payments), as provided for in Article 60-2 *et seq.* of the Financial Sector Law; and

(b) *liquidation judiciaire* (judicial liquidation) as provided for in Article 61 *et seq.* of the Financial Sector Law, to which the court may, in its opening judgement declare applicable some or all of the provisions of *faillite* as referred to in paragraph 3.1.1 (a), in its discretion and as may be necessary for the purposes of the liquidation.

3.1.4 **Insolvency proceedings for Luxembourg branches of foreign Financial Institutions**

(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) 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) 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) 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 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) does not provide otherwise.

3.1.5 In addition to the above we draw your attention to the existence of voluntary winding-up procedures (*liquidation volontaire*) which are governed by specific provisions of the Company Law and the Financial Sector Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such entity during the voluntary winding-up procedures if the relevant conditions are fulfilled.

3.1.6 We confirm that subject to any differing interpretation thereof under English law, the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions, except that in the Insolvency Events of Default Clause providing for "*[...] a [voluntary]/[involuntary] case or other procedure seeking or proposing liquidation, reorganisation*" to add behind these words in any case where this is not expressly foreseen in the relevant Insolvency Events of Default Clause and the Luxembourg Party is not a Financial Institution ", *or an arrangement or composition*" in order to expressly cover also voluntary or court-supervised compositions with creditors. We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*), Point 1 (*Necessary Amendments*).

3.2 Recognition of choice of law

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised and given effect in this jurisdiction (i) where the choice relates to contractual obligations, in accordance with, and subject to the provisions of the Council Regulation (EC) n° 593/2008 of 17 June 2008 on the law applicable to contractual obligations (the "**Rome I Regulation**") and (ii) if and to the extent the choice relates to non-contractual obligations in accordance with, and subject to the provisions of the Council Regulation (EC) n° 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (the "**Rome II Regulation**") and the corresponding Luxembourg procedural and substantive law, even if neither Party is incorporated or established in England.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions, subject to the application of Luxembourg law provisions as discussed in paragraph 3.3 *et seq.* below.

3.3 **Enforceability of FOA Netting Provision**

In relation to an FOA Netting Agreement, or in relation to a Clearing Agreement where the Defaulting Party acts as Client, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

3.3.2 the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because:

- According to article 18 of the law dated 5 August 2005 on financial collateral arrangements (as amended) (the "**Financial Collateral Law**"), the set-off between claims exercised in case of reorganisation measures, liquidation proceedings or any other form of creditors' process (*toute autre situation de concours*) is valid and enforceable against third parties, bankruptcy receivers and liquidators or similar officers, regardless of the maturity, object or currencies of the claims, under the condition that the claims result from operations which are covered by bilateral or multilateral set-off provisions or agreements between two or more parties. Such operations of set-off are also valid and enforceable if carried out through public bodies or professionals of the financial sector in charge of settlement and delivery of payments or transactions on financial instruments. Unless otherwise agreed, such set-off can be made without prior formal notice.

- Article 19 of the Financial Collateral Law expressly provides for the validity and enforceability of (i) connexity clauses between mutual claims (*clauses de connexité entre créances*), (ii) termination clauses (*clauses de résolution ou de résiliation*), (iii) single agreement clauses (*clauses d'indivisibilité*), (iv) clauses on margin requirements (*clauses d'exigence de marges de couverture*), (v) substitution clauses (*clauses de substitution*), (vi) acceleration clauses (*clauses de déchéance du terme*) (vi) clauses on the modalities for the

evaluation and the set-off and, more generally, (vii) any clauses related to the set-off under article 18 of the Financial Collateral Law,

(a) regardless of the opening or continuation of reorganisation or liquidation proceedings, independently of the time at which such clauses have been agreed upon or implemented between the parties, and

(b) regardless any civil, penal or judicial garnishment (*saisie*) or penal confiscation as well as any alleged transfer or other alienation of or concerning the rights in question.

- Article 20 (1) of the Financial Collateral Law confirms that set-off arrangements agreed on by the parties are valid and binding on third parties, auditors, administrators, liquidators and other similar bodies notwithstanding the existence of reorganisation measures, winding-up proceedings or any other situation involving any creditors' process (*situation de concours*), national or foreign.

- Article 20 (2) of the Financial Collateral Law provides that the termination, evaluation, execution and set-off carried out due to enforcement proceedings or interim protection measures, including measures foreseen in Article 19 (b) of the Financial Collateral Law, are deemed to have occurred before such proceedings.

- According to Article 20 (4) of the Financial Collateral Law, *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 set-off arrangements and shall not prevent their enforceability.

- Finally, Article 24 of the Financial Collateral Law sets forth that the national provisions referred to in Article 20 (4) of the Financial Collateral Law shall also not apply, in case where the giver of a financial collateral arrangement (*garantie financière*) or any other similar collateral arrangement (*garantie*) to which foreign law applies or the defaulting party under a set-off arrangement to which foreign law applies is established or resident in Luxembourg.

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3.1 to apply.

3.4 **Enforceability of the Clearing Module Netting Provision**

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

The opinion given at this paragraph 3.4 is based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights under the Clearing Module Netting Provision.

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

3.5 **Enforceability of the Addendum Netting Provision**

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

The opinion given at this paragraph 3.5 is based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights under the Addendum Netting Provisions.

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

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

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

inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 **Enforceability of the FOA Set-Off Provisions**

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

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

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

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

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

The opinions given at this paragraph 3.7.1 are based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

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

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

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

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

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

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

The opinions given at this paragraph 3.7.2 are based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

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

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

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

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

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

The opinions given at this paragraph 3.8.1 are based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

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

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

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

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

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

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

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

The opinions given at this paragraph 3.9 are based on the provisions of the Financial Collateral Law mentioned in paragraph 3.3 above.

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

3.10 **Enforceability of the Title Transfer Provisions**

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

Provisions) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

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

3.10.3 The courts of this jurisdiction would not re-characterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest (*gage*) (but please see the possibility of re-characterisation set out below in paragraph 4.2.2).

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

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

In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.11 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

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

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

3.12 **Single Agreement**

It is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the Netting Provisions to be enforceable.

3.13 **Automatic Termination**

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the Netting Provisions to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, the Clearing Agreement in the event of opening of Insolvency Proceedings against a Luxembourg Party.

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the Netting Provisions, the Set-Off Provisions or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned.

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction, has its registered office, place of central administration and principal establishment as well as centre of main interests in another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**"), the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction only as set out in paragraphs 3.1.2 and 3.1.4 above.

3.16 **Special legal provisions for market contracts**

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

4. **QUALIFICATIONS**

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

4.1 **Recognition of Choice of Law**

The opinions expressed in paragraph 3.2 above are subject to the following reservations:

4.1.1 In proceedings before the Luxembourg courts, such courts would not apply a chosen foreign law if the foreign law was not pleaded or proved unless the question to be determined under the governing law relates to a matter for which the parties do not have the free disposal of their rights (such as questions of capacity or legal status);

4.1.2 A Luxembourg court may refuse to apply the chosen governing law:

(a) if the choice of the foreign law was not made *bona fide*;

(b) if the foreign law is contrary to the mandatory rules of Luxembourg law or manifestly incompatible with Luxembourg international public policy or public order;

(c) where all other elements relevant to the situation at the time that the agreement was entered into are located in a country other than the country of the chosen governing law, to the extent the parties' choice of governing law affects the application of the provisions of the law of that other country which cannot be derogated from by agreement, which the court may then apply;

(d) if the overriding mandatory provisions (*lois de police*) of the law of the country where the obligations arising out of the agreement have to be or have been performed, render the performance of the agreement unlawful in such country, in which case it may apply such overriding mandatory provisions taking into account (in deciding such application) the nature and object of such laws, as well as the consequences of its application or non-application;

(e) regarding the means of enforcement and measures to be taken by a creditor in case of a default in performance, it may apply the law of the country in which performance is taking place; or

4.1.3 Where an FOA Netting Agreement or, as the case may be, a Clearing Agreement was entered into prior to (and excluding) 17 December 2009, the recognition of the choice of English law to govern the provisions of the agreement relating to contractual obligations will be recognised in this jurisdiction in accordance with, and subject to the provisions of the Rome convention dated 19 June 1980 on the law applicable to contractual obligations ("**Rome Convention**"). Accordingly, in particular, a Luxembourg court may refuse (instead of in the cases listed in paragraph 4.1.2 above) to apply the chosen governing law:

(a) if the choice of the foreign law was not made *bona fide*;

(b) if the provisions of such foreign law are contrary to the mandatory rules of Luxembourg law or manifestly incompatible with Luxembourg international public policy or public order;

(c) all elements of the matter are localised in a country other than the jurisdiction of the chosen governing law in which case it may apply the imperative laws of that jurisdiction, or

(d) if the agreement has a strong connection to another jurisdiction and certain laws of that jurisdiction are applicable regardless of the chosen governing law (*lois de police*), in which case it may apply those laws.

4.1.4 Where an FOA Netting Agreement or, as the case may be, a Clearing Agreement was entered into prior to (and excluding) 17 December 2009 and amended on or after 17 December 2009, the recognition of the choice of English law to govern the provisions of an FOA Netting Agreement or, as the case may be, a Clearing Agreement as amended relating to contractual obligations will be subject to the rules of the Rome Convention (as described under paragraph 4.1.3 above) unless the amendment of an FOA Netting Agreement or, as the case may be, a Clearing Agreement will be considered by a court to be a conclusion of a contract on the date of the amendment of the agreement within the meaning of article 28 of the Rome I Regulation according to which the Rome I Regulation shall apply to contracts concluded on or after 17 December 2009, in which case the reservation made in paragraph 4.1.3 above will not apply with respect to an FOA Netting Agreement or, as the case may be, a Clearing Agreement as amended.

4.1.5 To determine the impact of opening of Insolvency Proceedings on the validity, enforceability and effectiveness of the Netting Provisions, the Set-Off Provisions and the Title Transfer Provisions (and without prejudice to the discussion under paragraphs 3.3 *et seq.* above), a Luxembourg court would apply Luxembourg insolvency law provisions applicable to the relevant Insolvency Proceedings, except to the extent specifically provided otherwise.

Within the scope of the Regulation, in particular:

(a) in accordance with Article 5 of the Regulation, the opening of Regulation Proceedings does not affect the right *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets which change from time to time — belonging to the debtor which are situated at the time of the opening of proceedings on the territory of another Member State, without prejudice however to actions for voidness, voidability or unenforceability;

(b) in accordance with Article 6 of the Regulation, the opening of Regulation Proceedings does not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor's claim, without prejudice however to actions for voidness, voidability or unenforceability;

(c) Article 13 of the Regulation provides that the provision that Luxembourg law determines the rules relating to actions for voidness, voidability or unenforceability of acts harmful to the entirety of creditors is not applicable where the person benefiting from these acts provides proof that such act is subject to a law of an EU Member State other than the EU Member State of the opening of Regulation Proceedings and that such law does not permit by any means to challenge that act in the relevant case;

(d) in accordance with Article 14 of the Regulation, where, by an act concluded after the opening of Regulation Proceedings, the debtor disposes, for consideration, of securities whose existence or transfer presupposes registration in a register laid down by law, the validity of that act is governed by the law of the country under whose authority that register is kept.

In respect of Insolvency Proceedings opened against a Financial Institution, laws other than Luxembourg law apply according to the Financial Sector Law (implementing the relevant provisions of the directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions ("**CI-WUD**")) to certain aspects of such Insolvency Proceedings. In particular:

(e) Article 61-10 of the Financial Sector Law provides that the opening of the above Insolvency Proceedings does not affect the right *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets which change from time to time — belonging to the Financial Institution and which are situated at the time of the opening of such proceedings on the territory of another Member State, without prejudice however to actions for voidness, voidability or unenforceability;

(f) Article 61-12 of the Financial Sector Law foresees that the opening of the above Insolvency Proceedings does not affect the right of creditors to demand the set-off of their claims against the claims of the Financial Institution, where such set-off is permitted by the law applicable to the insolvent Financial Institution's claim, without prejudice however to actions for voidness, voidability or unenforceability;

(g) Article 61-13 of the Financial Sector Law provides that the exercise of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system shall be governed by the law of the country where the register, account or centralised deposit system in which those rights are recorded is held or located;

(h) according to Article 61-14 of the Financial Sector Law, close-out netting arrangements (*conventions de compensation et de novation*) will be governed solely by the law of the contract which governs such arrangements or agreements;

(i) pursuant to Article 61-16 of the Financial Sector Law, transactions carried out in the framework of a regulated market are solely governed by the law applicable to the contract which governs such transactions, without prejudice to Article 61-13 of the Financial Sector Law (see above);

(j) according to Article 61-19 (1) of the Financial Sector Law, the determination by Luxembourg law of the rules relating to actions for voidness, voidability or unenforceability of acts does not apply where the person benefiting from these acts provides proof that the act harmful to the entirety of creditors is subject to a law other than Luxembourg law and that this foreign law does not provide any means to challenge that act in the relevant case; and

(k) Article 61-20 c) of the Financial Sector Law provides that where, by an act concluded after the opening of suspension of payments proceedings or of liquidation proceedings, the insolvent debtor disposes, for consideration, of instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system, the validity and enforceability of that act shall be governed by the law of the country under the authority of which that register, account or deposit system is kept.

4.1.6 We express no opinion on any choice of law provisions relating to contractual obligations that do not fall within the scope of the Rome I Regulation or relating to non-contractual obligations that do not fall within the scope of the Rome II Regulation.

4.2 **Enforceability of the Netting Provisions, Set-Off Provisions and Title Transfer Provisions**

The opinions expressed under paragraphs 3.3 to 3.11 are reserved as follows:

4.2.1 The opinions set out in paragraphs 3.3 to 3.11 have been expressed on the basis that the Netting Provisions, as well as the Set-Off Provisions and the Title Transfer Provisions would be considered to come within the scope of Article 24 of the Financial Collateral Law which applies, as set out in paragraph 3.3 above, to a financial collateral arrangement (*garantie financière*) or any other similar collateral arrangement (*garantie*) to which foreign law applies or to a set-off arrangement to which foreign law applies and 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 a title transfer financial collateral arrangement or a close-out netting provision, each as defined in the Financial Collateral Directive, or any similar collateral or set-off arrangement, in each case coming within the scope of application of the Financial Collateral Law, which will require that the set-off or netting occurs between *avoirs* (being claims (*créances*) and/or financial instruments (*instruments financiers*) within the meaning of the 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 title transfer financial collateral arrangements, close-out netting arrangements or set-off 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*) 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 referred to in paragraph 4.1.5 above). Given that this is a matter of construction of a legal provision in absence of any case-law, there is however nothing that a secured party could reasonably do in the circumstances to prevent this risk from arising.

4.2.2 It cannot be excluded that a court of this jurisdiction would characterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement or, as the case may be, a Clearing Agreement (with Title Transfer Provisions) as financial collateral in the form of a transfer of ownership for collateral purposes (*transfert de propriété à titre de garantie*), in particular where the relevant assets transferred are located (or deemed to be located) in Luxembourg. However, such characterisation would not affect the conclusions reached in this opinion, except as set out in paragraph 4.5.3 below.

4.2.3 Where the party required to pay the net amount resulting from the netting or set-off is a Luxembourg Party and such party is subject to Insolvency Proceedings, the rights of the other party to claim and receive such net amount are limited by the general restrictions governing creditors' rights to payment and enforcement under the rules of the relevant Insolvency Proceedings. In particular, any filing of a claim in the Insolvency Proceedings for the payment of the net amount resulting from the application of the agreement of the Luxembourg Party would have to be made in Euro.

4.2.4 A discretion established in favour of one party by the FOA Netting Agreement or, as the case may be, a Clearing Agreement will have to be exercised in a reasonable and fair manner. In relation to the opinions expressed at paragraphs 3.3 to 3.11 above, although it is arguable that the realisation, valuation or

calculation (including currency conversion or pricing) provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement are protected by Article 19 of the Financial Collateral Law it cannot be excluded that the realisation, valuation or calculation (including currency conversion or pricing) could be challenged by an insolvency officer if it was not done fairly.

4.2.5 The exclusion of the provisions referred to in Article 20 (4) of the Financial Collateral Law (see as to this provision paragraph 3.3 above) would not prevent an action being brought for the nullity of an FOA Netting Agreement or, as the case may be, a Clearing Agreement, the Netting Provisions as well as the Set-Off Provisions or the Title Transfer Provisions in cases of fraud of other creditors' rights (*actio pauliana*).

4.2.6 The rights and obligations of the parties under the FOA Netting Agreement or, as the case may be, the Clearing Agreement may be limited by general principles of criminal law, including but not limited to criminal freezing orders.

4.3 The opinions expressed at paragraphs 3.3 to 3.12 above are further reserved to the extent that there is a requirement under the laws of this jurisdiction that the claims to be set-off result from operations which are covered by bilateral or multilateral set-off provisions or agreements between two or more parties. To the extent therefore that the Netting Provisions as well as the Set-Off Provisions provide for netting or set-off with transactions which are not subject to an FOA Netting Agreement or, as the case may be, a Clearing Agreement (of which the relevant Netting Provisions as well as the Set-Off Provisions are part), or even with claims which arise for reasons other than the FOA Netting Agreement, or, as the case may be the Clearing Agreement, or the Transactions between the parties, it is not certain whether a Luxembourg court would consider that the extension of netting or set-off to all claims between the parties, i.e. also to claims not arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transactions to be set-off, is specific enough and whether the provisions of Article 18, 19 and 20 of the Financial Collateral Act referred to in paragraph 3.3 above would apply thereto, even where such extension is explicitly foreseen by the terms of the Netting Provisions as well as the Set-Off Provisions.

4.4 **Multibranch Parties**

The opinion expressed in paragraph 3.14 above is reserved as follows:

4.4.1 Luxembourg law applies the principle of unity and universality of insolvency proceedings. According to this principle, Insolvency Proceedings opened under Luxembourg law over a Luxembourg Party apply to all assets and liabilities of the Luxembourg Party, wherever located. As a consequence, the fact that a Luxembourg Party would have entered into the FOA Netting Agreement or, as the case may be, the Clearing Agreement as a multibranch party with branches in jurisdictions other than Luxembourg would in principle not affect the application of Luxembourg law by a Luxembourg court, in particular of the provisions of the Financial Collateral Law referred to in 3.3

above. However, if the relevant foreign jurisdiction were not to recognise the same principle of unity of insolvency proceedings, the Insolvency Representative might be limited in its action if proceedings were opened in respect of a branch of the Insolvent Party in the jurisdiction where that branch is located. It is possible that the insolvency representative appointed in respect of that proceeding would seek to ring-fence the relevant branch's assets for the benefit of local creditors of that branch. Such isolation might adversely affect the practical enforceability of the Netting Provisions, Set-Off Provisions or Title Transfer Provisions in this jurisdiction.

4.4.2 Within the scope of the Regulation, and in case of opening of secondary proceedings within the meaning of Article 27 *ff.* of the Regulation, a Luxembourg court would in principle be required to recognise any decision taken by the court of the opening of the secondary proceedings under its local insolvency law with respect to the assets subject to such secondary proceedings. If such court refused to recognise the effect of the relevant Netting Provisions as well as the Set-Off Provisions or the Title Transfer Provisions with respect to Transactions coming within the scope of the secondary proceedings, the Luxembourg court would in principle be prevented from applying the relevant Netting Provisions as well as Set-Off Provisions or Title Transfer Provisions to all Transactions.

4.5 **Special legal provisions for market contracts**

The opinions expressed in paragraphs 3.2 and 3.16 above are reserved as follows:

4.5.1 By implementing the relevant provisions of the directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (as amended) ("**SFD**"), Article 112 (3) of the law of 10 November 2009 on payment services (as amended) (the "**PSL**") provides that where securities, including rights in securities, are provided as collateral security for the benefit of a participant in a SFD payment or securities settlement system, or of a SFD system operator or of central banks of the Member States or the European Central Bank, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities is governed by the law of that Member State.

4.5.2 Furthermore, according to Article 113 of the PSL, in the event of insolvency proceedings being opened against a participant in a Luxembourg SFD system, the rights and obligations arising from, or in connection with, the participation of that participant have to be determined by Luxembourg law; in the event of insolvency proceedings being opened against a Luxembourg participant in a SFD system of another Member State, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

4.5.3 Specific creditors benefit from preference rights by virtue of Luxembourg law and may take precedence over the rights of other secured or unsecured creditors, in particular:

(a) Pursuant to the law dated 23 December 1998 on the monetary statute and the *Banque Centrale du Luxembourg* (as amended), 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.

(b) According to the law dated 1 August 2001 on the circulation of securities (as amended) (the "**LCS**"), holders of accounts (*teneurs de comptes*) 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 or the netting (*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 holders of accounts 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 holder of accounts against the participant that have arisen on the occasion of the settlement or clearing of the transactions on securities or the netting (*compensation*) related thereto carried out by the participant for client account, including the claims arising from loans or advances.

However, the LCS expressly excludes from the scope of the above preference rights any own assets of participants if these assets are encumbered by a "guarantee" duly notified to or accepted by the depository. The LCS 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 Transfers of Margin

under the Title Transfer Provisions of an FOA Netting Agreement, or, as the case may be, a Clearing Agreement (with Title Transfer Provisions) were qualified by a court as a "guarantee" within the meaning of the LCS, but were duly notified to or accepted by the holder of accounts, they would not be subject to the preferential right under the LCS.

Finally, these preferential rights 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.

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 (each a "**subscribing member**").

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

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

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

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

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

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

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

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 the Futures and Options Association or any FOA Member 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
PROFESSIONALS OF THE FINANCIAL SECTOR OTHER THAN BANKS

Subject to the modifications and additions set out in this Schedule 1 (Professionals of the Financial Sector other than Banks), 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 1 (Professionals of the Financial Sector other than Banks), "**PSF**" means 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 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC) 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 1 (Other Professionals of the Financial Sector other than Banks)";

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: PSF which are Financial Institutions

The opinion paragraphs 3.1.1, 3.1.2, 3.1.5 and 3.1.6 apply in relation to PSF which are not Financial Institutions. The opinion paragraphs 3.1.3 to 3.1.6 apply in relation to PSF which are Financial Institutions, i.e., according to article 60 of the Financial Sector Law, in addition to credit institutions, in particular, without limitation, PSF which are commission agents (*commissionaires*), portfolio managers (*gérants de fortune*), professionals dealing for own account, distributors of units/shares in

undertakings for collective investments or making payments, underwriters of financial instruments and market makers.

3. ADDITIONAL QUALIFICATIONS

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

3.1 Recognition of Choice of Law

The second sentence of paragraph 4.1.5 applies in relation to PSF which are not Financial Institutions. The third and fourth sentence of paragraph 4.1.5 applies in relation to PSF which are Financial Institutions.

3.2 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 Netting Provisions, Set-Off Provisions and Title Transfer Provisions.

SCHEDULE 2
INSURANCE UNDERTAKINGS

Subject to the modifications and additions set out in this Schedule 2 (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 2 (Insurance Undertakings), "**Insurance Undertakings**" means insurance undertakings (*enterprises d'assurance*) established and duly authorised under Luxembourg law in accordance with and subject to Articles 27 *et seq.* 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 *et seq.* (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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 2 (Insurance Undertakings)";

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Insurance Undertakings

The opinion paragraphs 3.1.1 to 3.1.6 shall be replaced in relation to Insurance Undertakings by the following sections:

2.1.1 Relevant insolvency proceedings for Insurance Undertakings (other than Luxembourg branches of foreign Insurance Undertakings)

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Insurance Undertaking (in respect of Luxembourg branches of foreign Insurance Undertakings we

refer you to section 2.1.2 below) could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *sursis de paiement* (suspension of payments), as provided for in Article 59 *et seq*. of the Insurance Sector Law; and

(b) *liquidation judiciaire* (judicial liquidation) as provided for in Article 60 *et seq*. of the Insurance Sector Law.

2.1.2 Insolvency proceedings for Luxembourg branches of foreign Insurance Undertakings

(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 (as referred to in section 2.1.1 above) against such Luxembourg branches. A petition to this effect may solely be made by the *Commissariat aux Assurances*, the supervisory authority of the Luxembourg insurance sector if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch. The effects of such proceedings are however limited to the assets and liabilities relating to the operations carried out in Luxembourg.

2.1.3 In addition to the above we draw your attention to the existence of voluntary winding-up procedures (*liquidation volontaire*) which are governed by specific provisions of the Company Law and the Insurance Sector Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such entity during the voluntary winding-up procedures if the relevant conditions are fulfilled.

2.1.4 We confirm that subject to any differing interpretation thereof under English law, the events specified in the Insolvency Events of Default Clause

adequately refer to all Insolvency Proceedings, without the need for any additions.

3. ADDITIONAL QUALIFICATIONS

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

3.1 Recognition of Choice of Law

The second, third and fourth sentence of paragraph 4.1.5 shall be replaced by the following sentence:

"In particular, in respect of Insolvency Proceedings opened against an Insurance Undertaking, laws other than Luxembourg law apply according to the Insurance Sector Law (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) to certain aspects of such Insolvency Proceedings. In particular:

(a) Article 58-2 of the Insurance Sector Law provides that the taking of reorganisation or liquidation measures does not affect the right *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets which change from time to time — belonging to the Insurance Undertaking and which are situated at the time of the taking of such measures or the opening of such proceedings on the territory of another Member State, without prejudice however to actions for voidness, voidability or unenforceability.

(b) According to Article 58-4 of the Insurance Sector Law, the taking of reorganisation or liquidation measures does not affect the right of a creditor to claim the set-off of its claim with a claim of the insurance undertaking, if such set-off is allowed by the law applicable to the claim of the insurance undertaking, without prejudice however to actions for voidness, voidability or unenforceability.

(c) Pursuant to Article 58-5 of the Insurance Sector Law, the effects of reorganisation measures or of the opening of collective liquidation proceedings on the rights and obligations of participants of a regulated market are solely governed by the law applicable to such market, without prejudice to Article 58-2 of the Insurance Sector Law (see above) and without prejudice however to actions for voidness, voidability or unenforceability.

(d) According to Article 58-6 of the Insurance Sector Law, the determination by Luxembourg law of the rules relating to actions for voidness, voidability or unenforceability of acts does not apply where the person benefiting from these acts provides proof that the act

harmful to the entirety of creditors is subject to a law of an EU member state other than the law of Luxembourg as the EU home member state and that this foreign law does not provide any means to challenge that act in the relevant case.

(e) Article 58-7 c) of the Insurance Sector Law provides that where, by an act concluded after the implementation of reorganisation measures or the opening of collective liquidation proceedings, the insolvent debtor disposes, for consideration, of securities or instruments the existence or transfer of which presupposes their recording in a register, an account foreseen by law or which are placed in a centralised deposit system governed by the law of an EU member state, the validity of that act shall be governed by the law of the EU member state under the authority of which that register, account or deposit system is kept."

3.2 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 3
REINSURANCE UNDERTAKINGS

Subject to the modifications and additions set out in this Schedule 3 (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 3 (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 *et seq.* 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 3 (Reinsurance Undertakings)";

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Reinsurance Undertakings

The paragraphs 3.1.1, 3.1.2, 3.1.5 and 3.1.6 apply to Reinsurance Undertakings. However, 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 Undertakings[2]. On this basis, the provisions of the Regulation would not apply to Reinsurance Undertakings. However, a court would not be bound by the 2006 conclusions of the European Commission and it is debatable whether the

[2] 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).

exclusion of "insurance undertakings" from the scope of the Regulation does extend to Reinsurance Undertakings and consequently we express no opinion whether the Regulation applies or not to Reinsurance Undertakings. The question whether the Regulation applies or not to Reinsurance Undertakings would however not affect any of the conclusions reached in this Opinion.

SCHEDULE 4
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 4 (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 4 (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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 4 (*Individuals*)".

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Individuals

2.1.1 The paragraphs 3.1.1 (except (e) thereof) and 3.1.2 (a) and (b) apply to Individuals who are merchants (*commerçant*) within the meaning of the Luxembourg Code de Commerce.

Individuals who are not merchants (*commerçant*) within the meaning of the Luxembourg Code de Commerce may not be subject to the proceedings set out in paragraph 3.1.1 (a) to (d), but may equally as merchants enter into (i) *cession volontaire de biens* (voluntary composition with creditors) arrangements governed by Articles 1265 *ff.* of the Civil Code and *cession judiciaire de biens* (court-supervised composition with creditors) arrangements governed by Article 1268 of the Civil Code as set out under paragraph 3.1.1 (f) and (g)). Paragraph 3.1.2 should not be relevant for Individuals who are not merchants (*commerçant*) within the meaning of the Luxembourg Code de Commerce.

In addition, 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 law of 8 December 2000 on over-indebtedness (as

amended) ("**Over-Indebtedness Law**")[3], unless they have organised their bankruptcy. Individuals who are merchants (*commercant*) 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.

Paragraph 3.1.5 is not relevant for Individuals. Paragraph 3.1.6 applies to Individuals, irrespective of whether they are merchants or not, except that additionally the Insolvency Events of Default foreseen in paragraph 4 a) 6. and 7. of Part 1 (*Core Provisions*) of Annex 4 (as supplemented as set out in paragraph 3.1.6) would need to be added as Insolvency Events of Default to those foreseen in paragraph 4 b) of Part 1 (*Core Provisions*) of Annex 4. We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*), Point 1 (*Necessary Amendments*).

3. ADDITIONAL QUALIFICATIONS

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

Article 20 (4) of the Financial Collateral Law does not exclude the application of the Over-Indebtedness Law on financial collateral arrangements, including transfers of ownership for collateral purposes, and set-off arrangements entered into with Individuals subject to proceedings opened under the Over-Indebtedness Law. 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

[3] 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.

the debts, the reduction of interest rates, the suspension of the effects of an *in rem* security interest without loss of the preferential right (*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 Netting Provisions, Set-Off Provisions or Transfer of Title Provisions would be affected by the opening of proceedings under the Over-Indebtedness Law and the opinions expressed in paragraphs 3.3 *et seq.* are qualified accordingly.

SCHEDULE 5
UNDERTAKINGS FOR COLLECTIVE INVESTMENT

Subject to the modifications and additions set out in this Schedule 5 (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 5 (Undertakings for Collective Investment), "**UCI**" means undertakings for collective investment (*organismes de placement collectif*), 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 FOA Netting Agreement, or as the case may be, the Clearing Agreement or the Transaction relates to. While the counterparty of the Transaction or the FOA Netting Agreement or, as the case may be, the Clearing Agreement will remain the relevant UCI, any recourse of the counterparty will be limited to the assets of the compartment so specified.

When referring to a UCI constituted of several compartments, a reference to a Luxembourg Party shall be construed as a reference to the relevant compartment with which the FOA Netting Agreement or, as the case may be, the Clearing 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. However, UCIs may only enter into Transactions within certain limits contained in the UCI's constitutional documents and applicable laws and official regulations (in particular, without however being limited to, circulars published 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 3.1.1 of Schedule 5 (Undertakings for Collective Investment)";

2. 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 in the Regulation) at its registered office in Luxembourg.

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings: Undertakings for Collective Investment

The opinion paragraphs 3.1.1 to 3.1.6 shall be replaced in relation to UCI by the following sections:

3.1.1 Relevant insolvency proceedings for UCI (in the form of SICAV, SICAF and FCP)

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a UCI (in the form of SICAV, SICAF and FCP) could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) *sursis à tout paiement* (suspension of any payment), as provided for in Article 142 of the 2010 Law or Article 46 of the 2007 Law; and

(b) *dissolution et liquidation* (winding-up and liquidation) as provided for in Article 143 of the 2010 Law or Article 47 of the 2007 Law;

Article 143 of the 2010 Law and Article 47 of the 2007 Law specifically provide that one or more compartments of a UCI may be subject to *dissolution et liquidation* (winding-up and liquidation) if the license (*autorisation*) of such compartment(s) has (have) been definitely refused or withdrawn. Given that the suspension of payments procedure is a preliminary procedure to the judicial winding-up and liquidation procedure covering the moment between the withdrawal decision being notified and the moment where such decision becomes final, it would have seemed coherent to provide that suspension of payments proceedings may also be opened against an individual compartment being notified of a decision by the CSSF to withdraw its license (*autorisation*). Article 142 of the 2010 Law and Article 46 of the 2007 Law do however only provide for the possibility to open suspension of payments proceedings against a UCI and do not specifically refer to the possibility to open such a procedure against an individual compartment. As a result, it is uncertain whether the withdrawal of the license of an individual compartment will actually lead to a suspension of payments of that compartment. We do therefore recommend to specify that the withdrawal of the license (*autorisation*) of the specific compartment to which the Agreement relates constitutes an Act of Insolvency.

SICAVs and SICAFs may in addition, potentially be subject to the proceedings described under the paragraph 3.1.1 of the original opinion. No such proceedings may be opened against an FCP.

3.1.2 An FCP will furthermore be automatically subject to liquidation procedures in the following cases:

(a) upon the expiry of the period fixed in the management regulations;

(b) in the event of cessation of their duties by the Management Company of the FCP or by the depositary entrusted with the custody of the assets of the FCP in accordance with (i) paragraphs b) to e) of Article 21 of the 2010 Law or (ii) paragraphs b) to e) of Article 19 of the 2007 Law respectively, provided they have not been replaced within two months (without prejudice to the specific circumstance referred to under sub-paragraph (ii) below).

Paragraphs b) to e) of Article 21 of the 2010 Law and paragraphs b) to e) of Article 19 of the 2007 Law provide for the cessation by the Management Company or by the depositary of their functions:

(i) in the case of voluntary withdrawal of the depositary or of its removal by the Management Company;

(ii) where the Management Company or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court controlled management or has been the subject of similar proceedings or has been put into liquidation;

(iii) where the CSSF or, in case of the 2010 Law, the CSSF or the competent foreign authority, withdraws its authorisation of the Management Company or the depositary; or

(iv) in all other cases provided for in the management regulations;

(c) in the event of bankruptcy of the Management Company;

(d) in the event the net assets of the FCP have fallen for more than 6 months below one fourth of the minimum; or

(e) in all other cases provided for in the management regulations.

3.1.3 In addition to the above we draw your attention to the existence of voluntary winding-up procedures (*dissolution et liquidation*) which are governed by specific provisions of the Company Law and the UCI Laws, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to a UCI during the winding-up procedures if the relevant conditions are fulfilled.

3.1.4 We confirm that subject to any differing interpretation thereof under English law, the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions, except that in the Insolvency Events of Default Clause providing for "*[...] a [voluntary]/[involuntary] case or other procedure seeking or proposing liquidation, reorganisation*" to add behind these words in any case where this is not expressly foreseen in the relevant Insolvency Events of Default Clause and where the UCI is a SICAV or SICAF "*, an arrangement or composition*" in order to clearly cover also voluntary or court-supervised compositions with creditors.

We would also recommend to add to the relevant Insolvency Events of Default Clause that the withdrawal of the license of an individual compartment (*compartiment*) of a UCI shall constitute an insolvency event of default.

We further recommend to stipulate in relation to UCIs constituted of several compartments (*compartiments*) that (i) the voluntary liquidation of one compartment shall not constitute an insolvency event of default in relation to any other compartment of the same UCI, and (ii) while the judicial winding-up and liquidation (*dissolution et liquidation*) of, the suspension of any payment (*sursis à tout paiement*) over or the withdrawal of licence in relation to one compartment shall constitute an insolvency event of default in relation to such compartment, it does not constitute an insolvency event of default in relation to any other compartment of the same UCI.[4]

We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*).

[4] The counterparty of the UCI should consider whether to amend the addition suggested here in light of wider considerations, including business considerations, in a specific case where it may appear in the counterparty's view to be more appropriate that a liquidation or *sursis à tout paiement* in relation to one compartment of a UCI shall constitute an insolvency event of default not only in relation to such compartment but also in relation to the other compartments of the same UCI.

SCHEDULE 6
SICAR

Subject to the modifications and additions set out in this Schedule 6 (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 6 (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 FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transaction relates to. While the counterparty of the Transaction or the FOA Netting Agreement or, as the case may be, the Clearing 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 Luxembourg Party shall be construed as a reference to the relevant compartment with which the FOA Netting Agreement or, as the case may be, the Clearing 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 is deemed deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1.1 of Schedule 6 (SICAR)";

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: SICAR

The opinion paragraphs 3.1.1 to 3.1.6 shall be replaced in relation to SICAR by the following sections:

2.1.1 Relevant insolvency proceedings for SICAR

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

(a) *sursis à tout paiement* (suspension of payments), as provided for in Article 18 of the SICAR Law; and

(b) *dissolution et liquidation* (winding-up and liquidation) as provided for in Article 19 *et seq.* of the SICAR Law;

There is no provision expressly excluding the application of the proceedings referred to in the paragraph 3.1.1 of the original opinion for SICAR. It can therefore not be excluded that SICAR may in addition be subject to such proceedings, including in particular *faillite* proceedings.

2.1.2 In addition to the above we draw your attention to the existence of voluntary winding-up procedures (*liquidation volontaire*) which are governed by specific provisions of the Company Law and the SICAR Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such entity during the voluntary winding-up procedures if the relevant conditions are fulfilled.

2.1.3 We confirm that subject to any differing interpretation thereof under English law (as the case may be), the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions, except that in the Insolvency Events of Default Clause providing for "*[...] a [voluntary]/[involuntary] case or other procedure seeking or proposing liquidation, reorganisation*" to add behind these words in any case where this is not expressly foreseen in the relevant Insolvency

Events of Default Clause ", *an arrangement or composition*" in order to clearly cover also voluntary or court-supervised compositions with creditors.

We further recommend to stipulate in relation to SICAR constituted of several compartments (*compartiments*) that (i) the voluntary liquidation of one compartment shall not constitute an insolvency event of default in relation to any other compartment of the same SICAR and (ii) while the judicial winding-up and liquidation (*dissolution et liquidation*) of or the suspension of any payment (*sursis à tout paiement*) over one compartment shall constitute an insolvency event of default in relation to such compartment, it does not constitute an insolvency event of default in relation to any other compartment of the same SICAR.[5]

We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*).

3. ADDITIONAL QUALIFICATIONS

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

3.1 Recognition of Choice of Law

The second sentence of paragraph 4.1.5 is qualified in the sense that 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 referred to at section 2.1.1 above (in particular, *sursis à tout paiement* (suspension of payments), 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 (see section 2.1.1 above) 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.

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[5] The counterparty of the SICAR should consider whether to amend the addition suggested here in light of wider considerations, including business considerations, in a specific case where it may appear in the counterparty's view to be more appropriate that a liquidation or *sursis à tout paiement* in relation to one compartment of a SICAR shall constitute an insolvency event of default not only in relation to such compartment but also in relation to the other compartments of the same SICAR.

SCHEDULE 7
SECURITISATION VEHICLES

Subject to the modifications and additions set out in this Schedule 7 (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 7 (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 Luxembourg financial sector supervisory authority, *Commission de Surveillance du Secteur Financier* (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.

Please note that securitisation transactions may also be carried out by companies established in Luxembourg that do not submit themselves to the provisions of the Securitisation Law. They would therefore normally constitute commercial companies subject to the Companies Law only and hence are covered by the original scope of the opinion letter and not by this Schedule 7.

A Securitisation Vehicle 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 Vehicle constituted of several compartments, it needs to be specified, which compartment the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transaction relates to. While the counterparty of the Transaction or the FOA Netting Agreement or, as the case may be, the Clearing Agreement will remain the relevant Securitisation Vehicle, any recourse of the counterparty will be limited to the assets of the compartment so specified.

When referring to a Securitisation Vehicle constituted of several compartments, a reference to a Luxembourg Party shall be construed as a reference to the relevant compartment with which the FOA Netting Agreement or, as the case may be, the Clearing 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 Vehicle are permitted to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement. However, Securitisation Vehicles may only enter into Transactions within certain limits contained in the Securitisation Vehicle's constitutional documents (including their prospectus) and applicable laws and official regulations. In this respect we refer you to the assumption made in paragraph 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 3.1.1 and 3.1.2 of Schedule 7 (Securitisation Vehicles)";

2. 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.

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings: Securitisation Vehicles

Paragraphs 3.1.1 to 3.1.6 shall be replaced in relation to Securitisation Vehicles by the following sections:

3.1.1 Relevant insolvency proceedings for Securitisation Vehicles

Securitisation Companies may be subject to the proceedings described under paragraph 3.1.1 of the original opinion. No such proceedings may be opened

against a Securitisation Fund and subject to section 3.1.2 below in relation to a Securitisation Fund which is an Authorised Securitisation Vehicle, no other Insolvency Proceedings are foreseen in the Securitisation Law for a Securitisation Fund.

3.1.2 Authorised Securitisation Vehicles may in addition be subject to the following proceedings:

(i) *sursis à tout paiement* (suspension of payments), as provided for in article 28 *et seq.* of the Securitisation Law; and

(ii) *liquidation forcée* (forced liquidation), as provided for in article 39 *et seq.* of the Securitisation Law.

3.1.3 In addition to the above we draw your attention to the existence of voluntary winding-up procedures ("*dissolution et liquidation*") which are governed by specific provisions of the Company Law and the Securitisation Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such Securitisation Vehicle during the winding-up procedures if the relevant conditions are fulfilled.

3.1.4 We confirm that subject to any differing interpretation thereof under English law, the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions, except that in the Insolvency Events of Default Clause providing for "*[...] a [voluntary]/[involuntary] case or other procedure seeking or proposing liquidation, reorganisation*" to add behind these words in any case where this is not expressly foreseen in the relevant Insolvency Events of Default Clause and where the Securitisation Vehicle is a Securitisation Company ", *an arrangement or composition*" in order to clearly cover also voluntary or court-supervised compositions with creditors.

We further recommend to stipulate in relation to Securitisation Vehicles constituted of several compartments (*compartiments*) that (i) the voluntary liquidation of one compartment shall not constitute an insolvency event of default in relation to any other compartment of the same Securitisation Vehicle and (ii) while the judicial winding-up and liquidation (*dissolution et liquidation*) of or the suspension of any payment (*sursis à tout paiement*) over one compartment shall constitute an insolvency event of default in relation to such compartment, it does not constitute an insolvency event of default in relation to any other compartment of the same Securitisation Vehicle.[6]

[6] The counterparty of the Securitisation Vehicle should consider whether to amend the addition suggested here in light of wider considerations, including business considerations, in a specific case where it may appear in the counterparty's view to be more appropriate that a liquidation in relation to one compartment of a

We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*).

4. ADDITIONAL QUALIFICATIONS

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

4.1 Recognition of Choice of Law

The second sentence of paragraph 4.1.5 is qualified in the sense that 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 referred to at section 3.1.1 and 3.1.2 above (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 (see section 3.1.1 above). The question whether the Regulation applies or not to Securitisation Vehicles would however not affect the conclusions reached in this opinion.

4.2 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 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement for a purpose other than the securitisation of the assets provided for guarantee purposes, then the transfer of assets provided for guarantee purposes under the Agreement would be null and void. The same may also apply with respect to set-off or netting provisions.

Securitisation Vehicle shall constitute an insolvency event of default not only in relation to such compartment but also in relation to the other compartments of the same Securitisation Vehicle.

SCHEDULE 8
PENSION FUNDS

Subject to the modifications and additions set out in this Schedule 8 (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 8 (Pension Funds):

(a) "**CSSF Pension Funds**" means pension funds subject to the supervision of the *Commission de Surveillance du Secteur Financier* ("**CSSF**"), the supervisory authority of the Luxembourg financial sector, 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 (as defined in Schedule 2 (Insurance Undertakings)) and the amended 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transaction relates to. While the counterparty of the Transaction or the FOA Netting Agreement or, as the case may be, the Clearing 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 FOA Netting Agreement or, as the case may be, the Clearing 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement. 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 2.4.

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 TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.1 shall be deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1.1 of Schedule 8 (Pension Funds)".

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Pension Funds

The opinion paragraphs 3.1.1 to 3.1.6 shall be replaced in relation to Pension Funds by the following sections:

2.1.1 Relevant insolvency proceedings for Pension Funds

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

(a) *sursis de paiement* (suspension of payments), as provided for in Article 59 of the Insurance Sector Law; and

(b) *liquidation judiciaire* (judicial liquidation) as provided for in Article 60 of the Insurance Sector Law.

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

(a) *sursis à tout paiement* (suspension of payments), as provided for in Article 67 of the 2005 Law;

(b) *dissolution et liquidation* (winding-up and liquidation) as provided for in Articles 91 *et seq.* of the 2005 Law;

SEPCAVs and CAA Pension Funds (incorporated under the form of a *société cooperative* or of a *société cooperative* organized as a *société anonyme*) may, in addition, possibly be subject to the insolvency proceedings set out in paragraph 3.1.1 of the original opinion.

2.1.2 In addition to the above we draw your attention to the existence of voluntary winding-up procedures (*dissolution et liquidation*) which are governed by specific provisions of the Company Law, the 2005 Law, the 2000 Regulation and the Insurance Sector Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such entity during the winding-up procedures if the relevant conditions are fulfilled.

2.1.3 We confirm that subject to any differing interpretation thereof under English law, the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions, except that in the Insolvency Events of Default Clause providing for "*[...] a [voluntary]/[involuntary] case or other procedure seeking or proposing liquidation, reorganisation*" to add behind these words in any case where this is not expressly foreseen in the relevant Insolvency Events of Default Clause and where the Pension Fund is a SEPCAV or CAA Pension Funds (incorporated under the form of a *société cooperative* or of a *société cooperative* organized as a *société anonyme*) "*, an arrangement or composition*" in order to clearly cover also voluntary or court-supervised compositions with creditors.

We further recommend to stipulate in relation to CSSF Pension Funds constituted of several compartments (*compartiments*) that (i) the voluntary liquidation of one compartment shall not constitute an insolvency event of default in relation to any other compartment of the same CSSF Pension Fund and (ii) while the judicial winding-up and liquidation (*dissolution et liquidation*) of or the suspension of any payment (*sursis à tout paiement*) over one compartment shall constitute an insolvency event of default in relation to such compartment, it does not constitute an insolvency event of default in relation to any other compartment of the same CSSF Pension Fund[7].

We also kindly refer you in this respect to Annex 5 (*Necessary or Desirable Amendments*).

3. ADDITIONAL QUALIFICATIONS

[7] The counterparty of the CSSF Pension Fund should consider whether to amend the addition suggested here in light of wider considerations, including business considerations, in a specific case where it may appear in the counterparty's view to be more appropriate that a liquidation in relation to one compartment of a CSSF Pension Fund shall constitute an insolvency event of default not only in relation to such compartment but also in relation to the other compartments of the same CSSF Pension Fund.

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

3.1 **Recognition of Choice of Law**

The second, third and fourth sentence of paragraph 4.1.5 shall be replaced by the following sentence:

"In particular, in respect of Insolvency Proceedings opened against a CAA Pension Fund, laws other than Luxembourg law apply according to the Insurance Sector Law to certain aspects of such Insolvency Proceedings. In particular:

(a) Article 58-2 of the Insurance Sector Law provides that the taking of reorganisation or liquidation measures does not affect the right *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets — both specific assets and collections of indefinite assets which change from time to time — belonging to the CAA Pension Fund and which are situated at the time of the taking of such measures or the opening of such proceedings on the territory of another Member State, without prejudice however to actions for voidness, voidability or unenforceability.

(b) According to Article 58-4 of the Insurance Sector Law, the taking of reorganisation or liquidation measures does not affect the right of a creditor to claim the set-off of its claim with a claim of the insurance undertaking, if such set-off is allowed by the law applicable to the claim of the insurance undertaking, without prejudice however to actions for voidness, voidability or unenforceability.

(c) Pursuant to Article 58-5 of the Insurance Sector Law, the effects of reorganisation measures or of the opening of collective liquidation proceedings on the rights and obligations of participants of a regulated market are solely governed by the law applicable to such market, without prejudice to Article 58-2 of the Insurance Sector Law (see above) and without prejudice however to actions for voidness, voidability or unenforceability.

(d) According to Article 58-6 of the Insurance Sector Law, the determination by Luxembourg law of the rules relating to actions for voidness, voidability or unenforceability of acts does not apply where the person benefiting from these acts provides proof that the act harmful to the entirety of creditors is subject to a law of an EU member state other than the law of Luxembourg as the EU home member state and that this foreign law does not provide any means to challenge that act in the relevant case.

(e) Article 58-7 c) of the Insurance Sector Law provides that where, by an act concluded after the implementation of reorganisation measures or

the opening of collective liquidation proceedings, the insolvent debtor disposes, for consideration, of securities or instruments the existence or transfer of which presupposes their recording in a register, an account foreseen by law or which are placed in a centralised deposit system governed by the law of an EU member state, the validity of that act shall be governed by the law of the EU member state under the authority of which that register, account or deposit system is kept."

3.2 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
FORMS OF FOA NETTING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
List of Transactions

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement (with Security Provisions) Agreement 2007, the Eligible Counterparty Agreement (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty Agreement (with Security Provisions) Agreement 2009, the Eligible Counterparty Agreement (with Title Transfer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Netting Provisions**" means the FOA Netting Provisions, the Clearing Module Netting Provisions and the Addendum Netting Provisions.

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

"**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Part 2 (*Non-material Amendments*) of Annex 4.

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Set-Off Provisions**" means the FOA Set-Off Provisions, the Clearing Module Set-Off Provisions and the Addendum Set-Off Provisions.

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

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

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

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

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

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

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

2. **General Set-Off Clause:**

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

3. **Margin Cash Set-Off Clause:**

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

4. **Insolvency Events of Default Clause:**

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

"The following shall constitute Events of Default:

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

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

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

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

"The following shall constitute Events of Default:

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

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

5. Title Transfer Provisions:

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

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

6. Clearing Module Netting Provision / Addendum Netting Provision:

a) [Firm Trigger Event/CM Trigger Event]

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

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

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

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

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

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

b) CCP Default

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

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

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

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

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

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

c) Hierarchy of Events

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

Or

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

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

Or

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

d) Definitions

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

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

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

(a) is attributable to such Client Transactions;

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

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

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

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

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

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

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

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

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

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

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

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

36. 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.

37. 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.

38. 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.

39. 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

However, 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 the events specified by the changed definition of Insolvency Event of Default do not adequately refer to all Insolvency Proceedings and our view expressed in assumption made in paragraph 2.1 and our opinion expressed in paragraph 3.1.3 is reserved accordingly. Equally, any change to the Insolvency Events of Default definition which has the effect of providing that when one or several specified events occur in relation to one specified Party, such event shall not constitute an Event of Default under the Agreement may have as a consequence that the events specified by the changed definition of Insolvency Event of Default do not adequately refer to all Insolvency Proceedings and our view expressed in assumption made in paragraph 2.1 and our opinion expressed in paragraph 3.1.3 is reserved accordingly.

PART 3
SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

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

2. **Power of Sale Clause:**

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

3. **Client Money Additional Security Clause**

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

4. **Rehypothecation Clause**

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

and was retained by you on the date on which such income was paid.".

ANNEX 5

NECESSARY OR DESIRABLE AMENDMENTS

1. **Necessary amendments**

(a) For the purposes of paragraph 3.1.6, section 3.1.4 of Schedule 5 (Undertakings for Collective Investment), sections 2.1.1 and 2.1.3 of Schedule 6 (SICAR), section 3.1.4 of Schedule 7 (Securitisation Vehicles) and section 2.1.3 of Schedule 8 (Pension Funds), subject to any differing interpretation of the events specified in the Insolvency Events of Default Clause, the words ", *or an arrangement or composition,*" would need to be added between the word "*reorganisation*" and "*or other similar relief*" in paragraph 4 a), 6. and 7. of Part 1 of Annex 4 as well as , in order to expressly cover also voluntary or court-supervised compositions (to the extent these are Insolvency Proceedings potentially applicable to the Luxembourg Party), unless this is expressly foreseen in the relevant Insolvency Events of Default Clause.

(b) For the purposes of section 2.1.1 of Schedule 4 (Individuals), the Insolvency Events of Default foreseen in paragraph 4 a) 6. and 7. of Part 1 (*Core Provisions*) of Annex 4 (as supplemented as set out in (a) above) would need to be added as Insolvency Events of Default to those foreseen in paragraph 4 b) of Part 1 (*Core Provisions*) of Annex 4.

2. **Desirable amendments**

(a) We kindly refer you to sections 3.1.1 and 3.1.4 of Schedule 5 (Undertakings for Collective Investment), section 2.1.3 of Schedule 6 (SICAR), section 3.1.4 of Schedule 7 (Securitisation Vehicles) and section 2.1.3 of Schedule 8 (Pension Funds).

Accordingly, where the Luxembourg Party is a UCI we would recommend adding as an additional Insolvency Event of Default to those listed in paragraph 4 a) of Part 1 (*Core Provisions*) of Annex 4:

"*8. the withdrawal of the license of an individual compartment (*compartiment*) of [UCI]*".

Furthermore, where the Luxembourg Party is a UCI, SICAR, Securitisation Vehicle or CSSF Pension Fund constituted of several compartments, we would recommend adding the following sentence at the end of the list of Insolvency Events of Default foreseen in paragraph 4 a) of Part 1 (*Core Provisions*) of Annex 4:

"*In relation to [UCI] /[SICAR] / [Securitisation Vehicle] / [CSSF*

*Pension Fund], the voluntary liquidation of one compartment (*compartiment*) shall not constitute an Event of Default in relation to any other compartment of [UCI] /[SICAR] / [Securitisation Vehicle] / [CSSF Pension Fund][8].*

*Also in relation to [UCI] /[SICAR] / [Securitisation Vehicle] / [CSSF Pension Fund], while the judicial winding-up and liquidation (*dissolution et liquidation*) of, the suspension of any payment (*sursis à tout paiement*) over [or the withdrawal of licence in relation to][9] one compartment shall constitute an Event of Default in relation to such compartment, it does not constitute an Event of Default in relation to any other compartment of [UCI] /[SICAR] / [Securitisation Vehicle] / [CSSF Pension Fund][10]".*

3. **Additional wording to be treated as part of the Core Provisions**

None.

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8 The counterparty of the Luxembourg Party should consider whether to amend the addition suggested here in light of wider considerations, including business considerations, in a specific case where it may appear in the counterparty's view to be more appropriate that the opening of liquidation or *sursis à tout paiement* in relation to one compartment of a Luxembourg Party shall constitute an Insolvency Event of Default not only in relation to such compartment but also in relation to the other compartments of the same Luxembourg Party.

9 For UCI only.

10 In this respect, we refer you to footnote 8 above.