

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

29<sup>th</sup> January 2013

Dear Sirs

### Netting Analyser Library - Macau

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

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

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

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

## 1. TERMS OF REFERENCE AND DEFINITIONS

### 1.1 Subject as provided at paragraph 1.2, this opinion is given:

1.1.1 generally, in respect of Parties which are *limited liability companies incorporated by quotas ("Limitada") and joint stock companies ("S.A.") under the Macau Commercial Code;*

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

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

1.2.1 **Banks/financial institutions** licensed and incorporated under the Financial System Act approved by Decree-Law no. 32/93/M, dated 5 July 1993 ("**FSA**") (Schedule A);



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- 1.2.2 **Macau Financial Intermediaries** licensed under the Financial System Act approved by Decree-Law no. 32/93/M, dated 5 July 1993 ("FSA") (Schedule B);
- 1.2.3 **Insurance companies** incorporated under the Insurance Ordinance, approved by Decree-Law no. 27/97/M dated 30 June 1997 ("IO") (Schedule C);
- 1.2.3 **Partnerships** organised under Sections 331 – 347 of the Macau Commercial Code (Schedule D);
- 1.2.4 **Individuals** over 18 years of age acting as entrepreneurs (Schedule E);
- 1.2.5 **Investment funds** incorporated under the Decree-Law no. 83/99/M dated 29 November 1999 ("IMIF") (Schedule F);
- 1.2.6 **Public sector entities**, governed by the Administrative Procedures Code, approved by Decree-Law no. 57/99/M dated 11 October 1999 ("APC"), the Public Financial Administration Regulation, approved by the Administrative Regulation no. 6/2006, dated 24 April 2006 ("PFAR") – ruling the administration, supervision and responsibility for the financial activity of the public sector, including the public institutions with administrative or financial autonomy, and the Decree-Law no. 66/1993 dated 20 December 1993, listing the Macau public entities with financial autonomy (Schedule G);
- 1.2.7 **Charitable Foundations** organised under the Macau Civil Code (Schedule H); and
- 1.2.8 **Pension funds** incorporated and managed pursuant to the Private Pension Funds Act, approved by Decree-Law no. 6/99/M dated 8 February 1999 and amended by Law no. 10/2001 dated 2 July 2001 (Schedule I).

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

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

1.4 In this opinion letter:

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

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

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

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

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

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

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

in either case in accordance with the Security Interest Provisions.

- 1.4.6 in other instances other than those referred to at 1.4.5 above, references to the word **"enforceable"** and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

- 1.4.6 A **"suspect period"** is a period prior to Insolvency or Bankruptcy being declared, during which the bankruptcy Court could set aside certain actions (subject to the verification of the legal requirements the Liquidator of the Macau Counterparty can challenge and declare of no effect, amongst others not relevant, the following suspect acts and contracts), such as payments of non-matured debts or payment of matured debts within the year preceding the declaration of Bankruptcy with amounts that would normally not be used for such settlement (Section 1106, b), Civil Procedures Code) – a **"suspect transaction"**.



- 1.4.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.8 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.4.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.4.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

1.5 References to “**Core Provisions**” include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

## 2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- 2.3 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.
- 2.4 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.5 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- 2.6 That the Agreement has been properly executed by both Parties.
- 2.7 That the Agreement is entered into prior to the commencement of any bankruptcy/insolvency/liquidation proceedings to which a Party would be subject in this jurisdiction, which are described in Annex IV of this opinion letter.in respect of either Party.
- 2.8 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the



benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

- 2.9 That the Agreement accurately reflects the true intentions of each Party.
- 2.10 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.11 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.12 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- 2.13 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.14 That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction (meaning that they also do not include securities issued by Macau legal entities, which would necessarily be subject to Macau registration and to the application of Macau public policy rules and perfection requirements for their transfer).
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.16 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above may constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement may or may not constitute a material alteration of the "Agreement."

### 3. OPINIONS

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

#### 3.1 Valid Security Interest

- 3.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Bankruptcy/Insolvency/Liquidation proceedings (subject to the suspect periods and transactions), but not in the cases of



clause 10.1 (d) of the Professional Client Agreement and Retail Client Agreement, clause 9.1 (d) of the Eligible Counterparty Agreement and clause 4.1 (iv) of the Master Netting Agreement, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

- 3.1.2 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.
- 3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated, or subject to registration, provided that such exercise under the Security Provisions is not under a "suspect period", in which case there are provisions in Civil Procedures Code that establish a "suspect period", as defined above under 1.4.6, which entails that:

(i) The liquidator of the Defaulting Party may void the acts or contracts proven to have been executed or taken under *mala fide* and to prejudice other creditors' rights (Sections 1105 and 1106 of the Civil Procedures Code and Section 605 of the Civil Code). Proof of prejudice to the Bankrupt Defaulting Party's assets and consequently to other creditors' rights may be made by demonstrating that it was clearly unlikely that timely payment of the underlying contractual obligations would have otherwise taken place and that such transfer was excessive in relation to the value of the obligations to be fulfilled and may therefore be seen as favouring of a certain creditor. If the Liquidator is able to make such proof in relation to any transfer of Eligible Credit Support, then the transferred assets may be attached to the Bankrupt Defaulting Party's assets.

(ii) Under Macau bankruptcy provisions (Sections 1043 to 1184) there are various levels of "operations" that may be qualified as "suspect", such as (i) payments of non-matured debts or payment of matured debts within the year preceding the declaration of bankruptcy with amounts that would normally not be used for such settlement, (ii) the obligations undertaken by the Transferor/ bankrupt within 2 years preceding the date of the declaration of bankruptcy, if manifestly exceeding the obligations undertaken by the counterparty, or (iii) real guarantees (such as pledge over assets located in or subject to registration in Macau) granted by title executed subsequently to the date of the guaranteed obligation, within the year preceding the



declaration of bankruptcy, or the guarantees executed simultaneously, with the underlying obligations within the 90 days preceding the declaration of bankruptcy.

### 3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

## 4. QUALIFICATIONS

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

### 4.1 Limitations to Enforcement

Enforcement of the Agreement against the Macau Defaulting Party may be limited by the effect of laws governing Bankruptcy, Insolvency, Liquidation and reorganization, or by other laws of general application in Macau relating to or affecting the rights of creditors generally.

Generally, regardless any agreement of the parties to the contrary under the Agreement, by force of Macau statute, should the Macau Defaulting Party be declared bankrupt, FOA's credits would automatically be deemed matured and stop accruing interests as at the date the bankruptcy is declared. Also from the bankruptcy date onwards, Macau statute determines that set-off is not allowed. Finally, Macau statute determines that debts in a currency other than the Macau currency shall be converted into Macau currency at the exchange rate applicable at the date the Bankruptcy is declared.

Up to the present moment no court decision has been taken by Macau Courts nor there is any specific doctrine supporting this matter in Macau, thus there is still some margin of discretion in the judicial approach and qualification of Transactions under a single Agreement nature (within similar terms as a current account) or to qualify each Transaction as a separable transaction with the necessary consequences to be reflected in relation to the validity and enforceability of the netting clause and set-off, or even a combination between the two.

Macau Courts are likely to adopt one of the following different major legal approaches to this issue under Macau law:

#### (a) Single agreement – current account nature

To consider the Transactions as comparable to the bankrupt's current accounts (to the extent that the credits and debits of the same parties to the Transactions will be subject to netting and a netting lump sum amount payable to the party which remains with such positive balance)



for the purpose of the law (analogous interpretation), in which case it would decide as intended by the netting clause.

**(b) Separate transactions**

To look at the Transactions as separate sets of credits and debts of each party not comparable to a current account. It is within this possibility that the netting clauses (as a single lump-sum termination) may be considered void and the Macau Liquidator would eventually have the right to “cherry pick”. Under this possible understanding the Bank would eventually be required to pay its debts to the Liquidator and claim its credits in the bankruptcy proceedings ranking at least *pari passu* with the other unsecured creditors.

In our opinion, Macau Courts are likely to uphold and enforce the Single Agreement nature of the Agreement, particularly the application of the same contractual framework linking to the various single transactions entered into to the extent that should a certain event of default occur it may affect the whole of the transactions then in course between the two parties. The provisions providing for the netting as a single lump-sum termination amount would also be enforceable under Macau laws as made prior to the Macau Defaulting Party being declared bankrupt, unless it results that it was clearly unlikely that timely payment of such contractual obligations by the bankrupt’s estate would take place in which case any of the Liquidator or other interested party (such as another creditor) may challenge its enforceability.

Regarding Insolvency, the same rules and interpretation should apply.

Regarding Liquidation, this is a phase of the company which does not entail bankruptcy, the rules above referred do not apply. During this phase, there is the obligation for the liquidators to fulfil the companies obligations, and carry out the businesses already initiated at the date of beginning of liquidation. It can be a decision of the liquidators to file for bankruptcy during the liquidation, if the assets are not enough for the company to be able to meet its obligations with its creditors (Section 318 ss of the Commercial Code).

**4.2 Foreign Judgements Recognition**

A judgment obtained in an English or New York court, can be enforceable in the courts of Macau, however the enforcement is not automatic. In the absence of any International Treaties or Judiciary Cooperation Agreements between either one of such jurisdictions and Macau, the general rule of the Macau Civil Procedures Code shall apply, determining that a foreign judgement will be enforceable in Macau only after revision and confirmation (Sections 680 and 1199, CPC), by Macau Superior Court, in principle without a re-trial on the merits.

Pursuant to Section 1200, CPC, a judgement obtained against a Macau counterparty in the courts of a foreign jurisdiction would be recognised and enforced by the courts in Macau, provided that:

- (i) There are no doubts on the authenticity of the document supporting the foreign court's decision and the decision is intelligible;
- (ii) The judgment given by the foreign court is final and conclusive;
- (iii) The jurisdiction of the foreign court was not attained through fraud and the decision of the foreign court does not respect to matters of the exclusive jurisdiction of the Macau courts (rights over real estate located in Macau SAR, capacity and bankruptcy of Macau counterparties and matters deemed of public interest);
- (iv) There is no previous judgment of, or proceedings pending in Macau courts between the same parties to decide on the same issues as those decided by the foreign court, except if the foreign court reserved the jurisdiction;
- (v) The defendant was properly served and the right to contradict and to equal treatment of the parties within the foreign proceedings was respected; and
- (vi) The recognition or enforcement of the foreign judgment in Macau would not be contrary to public policy in Macau.

A judgment issued by a foreign court would normally be enforced upon verification of the non-existence of the factors referred above, which assessment shall be made officially by the Macau Court. Upon initial verification of the enforcement requirements, the Macau Counterparty is summoned and has the right to oppose solely based upon the referred arguments, in which case the revision and confirmation will no longer be just formal but it will include a retrial on the merits (Section 1202, no.2, CPC).

#### **4.3 Reasonable use of discretion**

Where a party is vested with discretion or may determine a matter in its opinion, Macau law requires that such discretion be exercised reasonably or that such opinion is based upon reasonable grounds.

#### **4.4 Invalidity of the Guarantee**

In the event of a cause of invalidity of the main obligation guaranteed by the Macau Counterparty which was known to the FOA before the execution of the Collateral, a Macau court may deem that the invalidity of the main obligation in such circumstances is a cause for the invalidity of the guarantee.

#### **4.5 Debt Securities**

Any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.



Macau "S.A." companies may issue negotiable debt securities, within the limit of its share capital, duly fulfilled and paid (Sections 433 and 434 of the Commercial Code). The issue of debt securities under Macau law is subject to prior registration with the Companies Registry (Section 5, item 1) of the Commercial Registration Code). The transfer of debt securities will follow the same formalities of the transfer of shares. The shareholders have pre-emptive rights in relation to both initial subscription and to the transfer of the debt securities that may be converted into shares (Section 441 of the Commercial Code).

#### **4.6 Limitations to Enforcement on currency differences**

Clauses providing for a separate cause of action in respect to the negative difference between the original currency of an obligation and the payment received in settlement in other currency (judgement currency), may be deemed unenforceable in Macau courts to the extent that under the law of the jurisdiction where the proceedings were filed it was possible for the Firm to claim the obligation in the original currency, as is the case in Macau jurisdiction, because it shall be deemed that any award made by a court of competent jurisdiction in respect to an obligation at matter shall totally cover the obligation claimed.

#### **4.7 Guarantees' Validity Requirements**

The granting of guarantees by the Macau Counterparty to secure third parties obligations are subject, as a matter of validity, that the guarantee is limited in amount and that there is a material interest for the Macau Counterparty's business specifically expressed by written resolution of the Directors, and a Shareholders' resolution approving the guarantees, except where the articles of association expressly empower the Directors to give guarantees.

#### **4.8 Risk of Recharacterisation**

Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated, or subject to registration, provided that the rights under the Security Interest Provisions are fully recognized and enforceable in such jurisdiction, or otherwise if falling under a "suspect period", as defined above under 1.8.8, there may be the following risk:

(i) That the Liquidator of the Defaulting Party may void the acts or contracts proven to have been executed or taken under *mala fide* and to prejudice other creditors' rights (Sections 1105 and 1106 of the Civil Procedures Code and Section 605 of the Civil Code). Proof of prejudice to the Bankrupt Defaulting Party's assets and consequently to other creditors' rights may be made by demonstrating that it was clearly unlikely that timely payment of the



underlying contractual obligations would have otherwise taken place and that such transfer was excessive in relation to the value of the obligations to be fulfilled and may therefore be seen as favouring of a certain creditor – the Non-Defaulting Party. If the Liquidator is able to make such proof in relation to any transfer of Collateral, then the transferred assets may be attached to the bankrupt's assets.

(ii) Under Macau Bankruptcy provisions (Sections 1043 to 1184) there are various levels of "operations" that may be qualified as "suspect", such as (i) payments of non-matured debts or payment of matured debts within the year preceding the declaration of bankruptcy with amounts that would normally not be used for such settlement, (ii) the obligations undertaken by the Transferor/Bankrupt within 2 years preceding the date of the declaration of bankruptcy, if manifestly exceeding the obligations undertaken by the counterparty, or (iii) real guarantees (such as pledge over assets located in or subject to registration in Macau) granted by title executed subsequently to the date of the guaranteed obligation, within the year preceding the declaration of bankruptcy, or the guarantees executed simultaneously with the underlying obligations within the 90 days preceding the declaration of bankruptcy.

#### 4.9 The Rehypothecation Clause

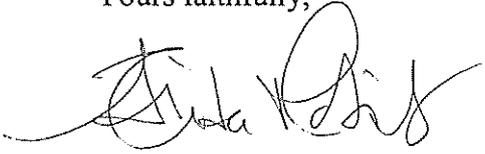
Given that the Collateral is not located in Macau, the Rehypothecation Clause is irrelevant to this jurisdiction, except for the cases where it is not considered as valid and enforceable under the laws of the jurisdiction where the Collateral is located and the Macau Defaulting Party enters into Bankruptcy, in one of the circumstances referred to in the preceding qualification falling under a "suspect period".

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

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



Yours faithfully,

A handwritten signature in black ink, appearing to read 'Rita Martins', written in a cursive style.

Rita Martins  
DSL Lawyers

**SCHEDULE A**  
**Macau Banks/ Financial Institutions**

Subject to the modifications and additions set out in this Schedule A – Macau Banks, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Banks. For the purposes of this Schedule A, "**Macau Banks/ Financial Institutions**" means "*an undertaking whose principal activity is to grant credit facilities, to acquire holdings, to engage in investment activities, or to act as intermediary in the money, financial or foreign exchange markets*" (Section 1 (a), FSA) and *any agency, branch, or office of representation of overseas banks* (Section 1 e) f) and g), FSA).

Macau Banks/ Financial Institutions are governed by the terms of the FSA and subject to the supervision of the Monetary Authority of Macau –“AMCM”.

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.

**ADDITIONAL QUALIFICATIONS**

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

***“ 4.10 Macau banks and branches of foreign banks***

*Macau banks and branches of foreign banks are ruled by the FSA, as mentioned above, thus any limitation to their entering into Transactions would result from the FSA and/or their own AA. Macau Banks are expressly authorized as investors in their own name, as well as on behalf of third parties. They are generally authorised to enter into Transactions with any entity, onshore or offshore, subject to the observation of prudential rules, such as minimum liquidity requirements, minimum solvency ratio and capital adequacy ratio, as defined by supervising entity AMCM from time to time. The degrees of risk to be undertaken by Banks are also defined by notices of AMCM issued from time to time, also depending on the financial regulation of the Counterparties with whom the local Banks deal and depending if the securities are transacted in international stock exchanges or not.”*

***“4.11 Assets registered with local branches***

*Banks with assets registered with local branches may be use these assets to settle obligations undertaken by credit institutions abroad but only after settling all liabilities in Macau, including unrecorded liabilities when confirmed by a court*



*decision enforceable in Macau(Section 25, no. 2 FSA). Therefore, in the case of the universal liquidation of a credit institution incorporated overseas, the Liquidators of the local branch may propose to a meeting of the creditors that they join this procedure, but the transfer of any assets or local property rights is subject to prior authorization from AMCM and shall only be granted after all debts arising out of the Macau branch activity have been settled.”*

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, located in the bottom right corner of the page.

**SCHEDULE B****Macau Investment Brokers (Macau Financial Intermediaries)**

Macau Financial intermediaries are licensed in Macau pursuant to the FSA, Sections 116 – 120 and governed also by various other sections of the FSA, which application is extended to them *ex vi* Section 120.

They have a limited scope of activity, being only authorized to purchase or sell, on behalf of third parties, securities and other instruments transacted in the money, financial or foreign exchange markets, or to accept investors' orders relating to these instruments. In the pursuance of their activity they are subject to the supervision of the Monetary Authority of Macau – AMCM.

Accordingly, Macau Financial Intermediaries would not have the capacity to enter into Transactions under their own name but solely on behalf of third parties according to their respective instructions and authority given to them by the financial investors and thus they should be excluded from the possible Macau Counterparties to enter into the Agreement and Transactions.



**SCHEDULE C**  
**Macau Insurance Companies**

Subject to the modifications and additions set out in this Schedule C – Macau Insurance Companies, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Insurance Companies. For the purposes of this Schedule C – “**Macau Insurance Companies**” means “*entities duly licensed in Macau to perform insurance activity*”.

Insurance companies are governed by the Insurance Ordinance (“**IO**”) and subject to authority of the Insurance Supervision Department of AMCM, which is also expressed by the Notices published and circulars addressed from time to time to the entities subject to its supervision.

Although Macau Insurance Companies are not prohibited from entering into Transactions, Section 4, IO states that the sole object of insurers shall be to carry on the activity referred to in Section 2 paragraph a), IO, as follows:

*“In this Ordinance, unless the context otherwise requires:*

*a) **Insurance activity** - means the regular performance of acts relating to the acceptance and fulfillment of insurance or reinsurance contracts or insurance operations, including any related or supplementary acts and contracts, namely those relating to salvage, reconstruction of and repair to damaged immovable property and vehicles, maintenance of clinical services and application of technical provisions, reserves and capital, excluding insurance intermediary business, under the terms of the applicable legislation;*

*h) **Insurance operations** - means the management of pension funds and operations relating to capitalisation;”*

Accordingly, insurance companies are restricted to the application of technical provisions, reserves and capital, for the purpose of hedging its risks, subject to the limits to the definition of the assets that guarantee the technical reserves, imposed by the insurance regulator (the Insurance Department of AMCM) from time to time by Notice (as determined in the Notice No. 004/2012-AMCM). On the other hand, while a manager of a pension funds a Macau insurance company may also invest in Transactions (as stated in Notices nos. 013/2001 and 014/2001-AMCM) strictly for the purpose of hedging its positions, without leverage.

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.



## **Additional Assumptions**

We assume the following:

*“2.17 That in entering into the Agreement the Counterparty respects the limits to the definition of the assets that guarantee the technical reserves, and that the Transactions are entered into solely for the purposes of hedging the management risks.”*

## **ADDITIONAL QUALIFICATIONS**

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

### ***“4.10 Macau Insurance Companies Capacity***

*Macau Insurance Companies only have the capacity to enter into Transactions for the purpose of hedging its risks, subject to the limits to the definition of the assets that guarantee the technical reserves, imposed by the Insurance Supervision Department of AMCM from time to time by Notice, and, while managers of a Macau pension fund also strictly for the purpose of hedging the fund’s assets and respective risks.”*

### ***“4.11 Suspension of Authorization***

*Where as a result of the application of the financial recovery plans pursuant to the provisions of Articles 67 and 71, or as a consequence of non-compliance with the same, the insurer fails repeatedly to present sufficient financial guarantees according to the terms of the Insurance Ordinance, the Chief Executive of Macau on advice from AMCM, may suspend the authorization of the Insurance Company to enter into any new contracts or to carry out new insurance operations, prohibit or restrict free disposal of the insurer's assets, prohibit the commercialisation of new products and nominate one or more delegates or an administrative committee.”*

### ***4.12 Winding-up and Liquidation of Macau Insurance Companies***

*In case of winding up, the credits arising from insurance contracts or operations enjoy credit privilege over movable or immovable assets pertaining to the technical reserves and shall be graded in the first position.*



**SCHEDULE D**  
**Macau Partnerships**

Subject to the modifications and additions set out in this Schedule D Macau Partnerships, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Partnerships. For the purposes of this Schedule D Macau Partnerships, "Macau Partnerships" means a *commercial enterprise in which the responsibility is non-limited and in which partners are before its creditors, fully and subsidiary responsible for the enterprise, and equally amongst them.*

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.

**ADDITIONAL QUALIFICATIONS**

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

***"4.10 Capacity of Macau corporate entities***

*Capacity of Macau corporate entities to enter into Transactions and provide Collateral to secure such Transactions, results from the principle of speciality that governs corporate legal entities' capacity. According to this principle, legal entities do not have the legal capacity to enter into any type of contracts and to exercise legal acts generally without regard to the subject of such contracts or acts. Instead, legal entities' capacity normally comprises the rights and obligations required, useful or convenient to the pursuance of its business purpose, except for those excluded under statute or that derive from the specific nature of an entity.*

*Accordingly, the capacity of private corporate legal entities shall be assessed from their respective articles of association ("AA"), which may be obtained from the Macau Companies Registry with an updated Certificate of Registration. The AA will also determine the internal form of approval of administration acts and the binding arrangements, also reflected in the Certificate of Registration.*

*It can be said that, normally, when Transactions are entered into by the Macau legal entities for hedging purposes, the transaction would be within their legal capacity and deemed a normal management act. Instead, when Transactions are entered into for pure speculative purposes they will not be deemed to be in the interest of the entity or covered within the normal management acts of the administration. Normally Transactions should be justified based upon hedging purposes and, to safeguard such justification, approved by one director. All partners are directors and all have, if no contrary clause is in the AA, equal and independent powers. The director (any of them) can bind the partnership with its signature, and other directors can oppose to the decisions of others, and the majority of directors decides on this opposition (Section 346, ComC)."*



*Furthermore, these partnerships are dissolved if the number of partners comes down to one, within 3 months from this reduction (Section 347, no.1, ComC)."*

## **SCHEDULE E**

### **Macau Individuals**

Subject to the modifications and additions set out in this Schedule E – Macau Individuals, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Individuals. For the purposes of this Schedule E, "**Individuals**" means *"natural persons over 18 years of age, which are Macau permanent residents and exercising their activity in Macau as individual entrepreneurs."*

The capacity of the individual entrepreneur is regulated by the terms of the Macau Civil Code and the responsibility for the debts of the commercial entrepreneur is set in the Macau Commercial Code.

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.

### **ADDITIONAL QUALIFICATIONS**

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

#### ***"4.10 Married individual entrepreneurs***

*For married individual entrepreneurs, which marital regime is of common property of assets the spouse must also execute any and all transaction documents which imply the transfer, other form of disposition or charge of assets. If the regime is of separate property of assets, the spouse's signature is not required."*



**SCHEDULE F**  
**Macau Investment Funds**

Subject to the modifications and additions set out in this Schedule F – Macau Investment Funds, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Investment Funds. For the purposes of this Schedule F, "**Macau Investment Funds**" means "*autonomous collection of assets comprising a portfolio diversified according to a principle for spreading risks, and generated by the investment of capital obtained from the public, with their purchase of participation units representing the value of that collection of assets.*"

Investment funds constituted/ domiciled in Macau are subject to restrictions and limitations of the IMIF. The management of investment funds shall comply with the conditions and prudential limits referred to in IMIF, namely in what respects to the nature of assets that can be included in their portfolio, the forbidden acquisitions and the prudential limits in their management.

Pursuant to Section 30, IMIF, the management of investment funds must be prudent, subordinated to criteria of great professional diligence and capacity and carried out in the best interest of participants. It further states that the managing entities of investment funds can use financial instruments to hedge the risk, namely futures and options, with the purpose of the adequate administration of the portfolios. Accordingly, entering into Transactions shall respect such limits and restrictions and be subordinated to the hedging of risks.

The fund manager shall ensure that the safekeeping of the fund abroad is committed to suitable entities, duly authorised and submitted to supervision of competent authorities. The same custodian shall keep the assets of a same fund localised abroad in a certain financial market place.

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.

**ADDITIONAL QUALIFICATIONS**

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

***"4.10 Depository's Bankruptcy***

*If the depository of the Investment Fund becomes bankrupt, the securities deposited cannot be included in their proceeds and all securities must be separated and*



*submitted to AMCM which, after checking them and consulting the fund manager, shall submit them to another reliable depository.”*

***“4.11 Counterparty’s respect of limits imposed by AMCM***

*That in entering the Agreement the Counterparty respects the limits imposed upon it by AMCM from time to time and that the Transactions are entered into solely for the purposes of reducing investment risk and for efficient portfolio management.”*

***“4.12 Portfolio Management Purposes***

*Macau Investment Funds have the capacity to enter into Transactions for the purpose of efficient portfolio management. It is recommended that the entering into the Agreement and Transactions under it be approved by resolution of the board of directors of the management company, declaring that it is for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets” .*



**SCHEDULE G**  
**Macau public entities**

Subject to the modifications and additions set out in this Schedule G – Macau public entities with financial autonomy, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau public entities with financial autonomy. For the purposes of this Schedule G "**Macau public entities with financial authority**" means "*a few Macau public entities that have legal capacity, financial and administrative autonomy, and which pursuant of the respective activity and management is subject to compliance with their statutes, own annual investment plans and budget and the Public Financial Administration Regulation (PFAR).*"

Macau public entities with financial autonomy are subject to a strict legality principle and to the supervision by the Chief Executive of Macau. As examples of some of these entities that have from time to time entered into derivatives transactions, we would mention the Monetary Authority of Macau (AMCM). AMCM is a Macau public legal entity with administrative, financial and patrimonial autonomy, its nature being a public institution, created by Decree-Law No. 39/89/M dated 12<sup>th</sup> June, and governed by its statutes, as approved under the AMCM Statutes.

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.

**Additional Assumptions**

We assume the following:

*"2.17 That in entering the Agreement and providing collateral, the Counterparty respects the limits imposed upon it by its own statutes and annual plans, as well as the PFAR, and that the Transactions are entered into solely for the purposes of efficient management and hedging of its liabilities."*

**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:

*"Macau sovereign and public entities are not subject to standard insolvency rules. Their liabilities shall be covered by their own patrimony, firstly, and secondly by the official annual budget."*



## ADDITIONAL QUALIFICATIONS

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

### **“ 4.10 Public Entities Capacity**

*The capacity of public entities to enter into Transactions and to provide collateral is subject to the Public Financial Administration Regulation, the Administrative Procedures Code, public administration principles and remaining regulations. It is limited by the speciality principle under strict legality terms and subject to the respective supervising entities. In relation to Macau public entities there should be a relevant and clear material relation between the investment to be entered into and the public entity's legal purposes.*

*The purposes of the entity can be verified from its statutes, approved by law or dispatch of the governmental body creating the public entity at matter and published in Macau Official Gazette. In general, for Macau public entities to enter into Transactions (in exceptional situations duly justified) they require the prior authorization of the respective supervising entity(ies), which may be generically contained in their annual budget for the respective year or which may be attained on ad hoc basis, specifically supporting the grounds of their respective interest in such Transactions.*

*The authority to authorize expenses on account of the financial budget privative of the public entities with financial autonomy lies with the respective Board of Directors, which authority will be limited to MOP 250,000.00 (two hundred and fifty thousand Patacas) for services to be contracted without the formalities of public tender (Section 56, PFAR). Furthermore, the approval of expenses that cover over one year has to be approved by the Macau Chief Executive and subject to favorable opinion of the Macau Financial Bureau.*

*Public entities must allocate the values recorded in each category of its financial budget according to the official annual budget and should not undertake any obligations in excess of the authorized amounts (Section 7, PFAR) and record the details of all agreements entered into and the amounts payable under each agreement and changes (Section 14, PFAR) – no payments may be made by them without previous registration of the details of the obligations undertaken.*

### **“4.11 Bankruptcy/insolvency/liquidation laws**

*Public entities with financial autonomy are not subject to Macau bankruptcy/insolvency/liquidation laws, given that they are governmental bodies, and therefore, as a matter of Macau law, do not have a limited share capital upon which*



*their liability could be limited. As financially autonomous their assets are the ones to firstly respond for their debts. Nonetheless, their financial undertakings and liability are also further guaranteed by the Macau SAR Government.*

## **SCHEDULE H**

### **Macau Foundations**

The opinions, assumptions and qualifications set out in this opinion letter will not apply in respect of Parties which are Macau Foundations.

For the purposes of this Schedule H, "**Macau Foundation**" means "*legal entities based on assets, with goals of social interest*" (Section 173, Civil Code).

Macau Foundations are established by a unilateral act of the founder, which affects to a determined social goal a certain amount/quality of assets, being that a competent entity has to recognize the social interest of the foundation. The goals it undertakes are intended to be socially useful, so the foundations are bound to these specific goals, according to their act of incorporation and to their articles of association.

The articles of association of the foundation will designate the corporate bodies, amongst which there must be a corporate body of administration and a supervisory council. The "body of administration" manages and represents the foundation, thus makes decisions on behalf of the foundation. Unless the AA stipulate otherwise, there has to be a majority within the present and in case of draw, the president has a qualified vote.

It is important to stand out that dissolution of the foundation can be made on grounds that its real/actual goal is different from the goal intended in the act of incorporation.

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.

#### **Additional Assumptions**

We assume the following:

*"2.17 That the entering into the Agreement or providing collateral the Transactions is strictly for the purposes of hedging the assets of the foundation in view of better pursuing its goals."*

#### **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.

### **ADDITIONAL OPINIONS**

The Foundation which is in a situation where the value of its assets falls lower than its liabilities (Section 1185, no. 1, Civil Procedure Code) can be declared insolvent.

- Insolvency is presumed when two executive actions or Judicial apprehension of assets (*“Arresto”*) have occurred;
- It can also be the initiative of the foundation to present itself to insolvency (articles 1186 and 1188, Civil Procedure Code);
- It is possible to have a *concordata* (article 1194), which consists in a reduction or modification of the global or part of the debtor’s debts;
- The general applicable laws on bankruptcy stated in 3.1.3 apply, except in the part related to commercial enterprise.

### **ADDITIONAL QUALIFICATIONS**

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

#### ***“4.10 Macau Foundations***

*Macau Foundations are intended to be socially useful, so the foundations are bound to these specific goals, according to their act of incorporation and to their articles of association. In the former, it has to be specified not only the goal of the foundation but also the assets which are destined to the pursuance of the goals of the foundation.*

“



**SCHEDULE I**  
**Macau Pension Funds**

Subject to the modifications and additions set out in this Schedule I – Macau Pension Funds, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Pension Funds. For the purposes of this Schedule I – "**Macau Pension Funds**" means "*autonomous assets solely for the purpose of financing one or more pension plans*" (Section 3, Private Pension Funds Act).

Private Pension Funds have the capacity to enter into Transactions, subject to certain limitations, further identified. A resolution approving the Transactions and stating that it is for hedging purposes is recommended, namely because there are specific guidelines from AMCM determining that Funds should only enter into Transactions "*for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets*" – Notice no. 16/2011-AMCM (A.6). Private pension funds shall be managed by insurers authorized to transact life insurance in Macau, or by companies set up specifically to manage pension funds (Section 5, no. 1, The Private Pension Funds Act). Pursuant to Section 5, no. 2, of the Private Pension Funds Act, the constitution, establishment and operation of pension funds managers is regulated by the provisions of the Insurance Ordinance.

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.

**Additional Assumptions**

We assume the following:

*"2.17 That in entering the Agreement the Counterparty respects the limits imposed upon it by AMCM from time to time and that the Transactions are entered into solely for the purposes of reducing investment risk and for efficient portfolio management."*

**ADDITIONAL QUALIFICATIONS**

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

***"4.10 Macau Private Pension Funds***

*Macau Private Pension Funds have the capacity to enter into Transactions, subject to certain limitations. It is recommended that the entering into the Agreement and Transactions under it be approved by resolution of the board*



*of directors of the management company, declaring that it is for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets” .*

#### **4.11 Private Pension Funds’ assets**

*As per their specific nature, the assets of private pension funds in Macau in case of liquidation of a closed pension fund or withdrawal of the respective associate, or the cessation of collective membership of an open pension fund, the respective fund assets shall be used, up to their financial limits, for:*

- a) Payments still outstanding as per the contracts or orders for the acquisition of assets for the fund;*
- b) Pecuniary payments due to the beneficiaries of the fund;*
- c) Other expenses related to the fund as per the respective management contract;*
- d) Amounts of individual account of each participant, in case of open pension funds, which shall be applied according to the rules set out in the management regulation;*
- e) Amount of acquired rights of the participants existing on the date of winding up.*

*In case of financial insufficiency, the assets of the fund shall be used preferentially to settle the liabilities mentioned in the preceding subparagraphs and according to the respective order, having recourse to proportional distribution where deemed necessary. The final net positive balance, if any, ascertained during the liquidation process set out in the preceding paragraph 1 shall be used as agreed upon jointly by the management companies and associates after obtaining prior approval from AMCM.*

#### **4.12 Management Restrictions**

*The management company is strictly forbidden to burden in any way the assets of the fund, to acquire its own shares and to provide credit, except where the management company is an insurer authorised to transact life insurance business in the territory of Macau, insofar as this does not affect investments in pension funds.*



**ANNEX 1**  
**FORM OF FOA AGREEMENTS**

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

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

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

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



**ANNEX 2**  
**DEFINED TERMS RELATING TO THE AGREEMENTS**

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



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



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



definition (except insofar as variations may be required for internal cross-referencing purposes);

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



- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (*General lien*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (*General lien*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (*General lien*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (*General lien*); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*)



at module F Option 4 (where incorporated into such Agreement);

- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
- (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

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



**ANNEX 3**  
**NON-MATERIAL AMENDMENTS**

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as “you”, “Counterparty”, “Party A/Party B”) provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.
4. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.
5. Any change to 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).
6. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
7. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.



## ANNEX 4

### INSOLVENCY PROCEEDINGS

The Insolvency Proceedings to which a Party can be subject in this jurisdiction are the following:

3.1.1 Extrajudicial Liquidation, by appointed liquidators (or the directors) within a maximum term of two years, following dissolution (Section 318 ss., Commercial Code);

3.1.2 Judicial Liquidation in view of its dissolution (Section 1034 ss., Civil Procedures Code – “CPC”);

3.1.3 Bankruptcy (Section 1043 ss., CPC):

The process may be initiated by petition filed within 2 years from the verification of any of the causes of bankruptcy, by any of following:

(a) any creditor, independently of the nature of its credit and priority – the creditors can only file the petition for bankruptcy based on the incapability of the debtor to satisfy its obligations after the 15 days deadline for the debtor to voluntarily present itself to the competent court and request for a creditors’ assembly;

(b) the Macau Public Prosecutor, within its official powers;

(c) the Debtor (individual entrepreneur or corporate entity), after 15 days from the date it failed to satisfy its obligations without filing the application for the assembly of its creditors.

The petition requirements will vary depending on the petitioner/applicant (Section 1085 of the CPC) and the grounds may be one of the following:

(a) Non-payment of one or more debts that, because of its amount or circumstances, demonstrates the incapability of the debtor to punctually satisfy its obligations;

(b) Run-off by the individual entrepreneur or, in the case of a corporate entity, its directors and/or other representatives, due to its indebtedness and without appointment of a substitutive representative;

(c) Desertion of the registered office or directorship’s office;

(d) Dissipation/disposal or deviation of assets, simulation of credits or any other abusive procedure revealing the intention of the debtor to dissipate its patrimony and/or become bankrupt.



As relevant, the submission of a petition for Bankruptcy proceedings by a Creditor (the law does not distinguish between local and foreign creditors for this purpose) shall be justified on the relevant prerequisites and shall describe the origin, nature and amount of the credit, as well as the need (if any) to have the bankruptcy declared without the prior hearing of the debtor, by providing all the existing evidence and applying for any additional evidence it may require.

The hearing will take place within 10 days following the petition (if the petition was submitted by the debtor or if it was required and justified not to hear the debtor in advance), or within 10 days of the debtor's reply in the other cases. If sufficient proof of the indebtedness is made, the bankruptcy ruling will be granted in writing with the minutes of the hearing, or, if Mr. Justice considers the situation to be complex, it may be given separately in writing within 10 days.

The bankruptcy ruling shall necessarily determine (i) the seizure of all books, accounts and assets of the bankrupt, even if previously seized, pledged or by other means kept by a third party; (ii) the new official address of the bankrupt, (iii) the appointment of a Liquidator (the "Liquidator") to take over the management and conservation of the bankrupt's documents, assets and others (unless appointed before) and (iv) the deadline for the submission of any claims against the bankrupt's assets. The bankruptcy ruling will also cause (v) immediate maturity of all the bankrupt's debts; (vi) ending of the accrual of interests over the bankrupt's debts; (vii) the conversion into Macau local currency (Pataca – for reference presently HKD\$1 = MOP\$1.032) of the amount of any debts in foreign currency, at the official exchange rate of the bankruptcy decision date.

Upon the bankruptcy ruling, creditors may claim their credits against the bankrupt by submitting evidence of debt to the Macau Bankruptcy Court, specifying the nature, amount and source of the credit and any existing guarantees (Section 1140, CPC). The deadline established for submission of the petitions will be the one set in the bankruptcy ruling, which is published in the Macau Official Gazette, and it will start on the date of such publication.

The current preferential credits/creditors under Macau law are described and graduated under the following order of privilege (Section 739, CC, ex vi 1152, CPC):

(a) Court Expenses in the interest of creditors for the recovery, conservation or liquidation of certain assets - special priority over all others to be paid from the assets subject to recovery, conservation or liquidation (Sections 733 and 738, CC).

(b) Macau Government taxes;

(c) Civil liability credits (over the respective insurance payment, if any);



- (d) Intellectual property rights (over the covered assets);
- (e) Credits with general indistinct privilege, by the following order:
  - i. Personal medical expenses or expenses with dependent relatives for the past 6 months (individual's insolvency);
  - ii. Primary own expenses or expenses with dependent relatives for the past 6 months (upon individuals' insolvency);
  - iii. Employee's credits for their salaries for the past 6 months.

The credits equally privileged shall rank *pari passu* amongst themselves and be paid on a pro rata basis. Credits with general indistinct privilege shall not preclude third parties' enforceable rights over the assets covered by the privilege.

Other than as above mentioned, the credits under a Transaction would rank at least *pari passu* with all other unsecured creditors.

The credits under a Transaction, in a bankruptcy proceedings, will be paid from the remainder of the assets (after all privileged credits are paid), on a *pro rata* basis, ranked *pari passu* with the other unsecured creditors.

#### Preventive Proceedings (to avoid declaration of Bankruptcy)

3.1.3.1 Judicial composition between creditors proposed by the bankrupt to reduce or modify the total or part of the debtor's obligations, which modification may be limited to a simple moratorium ("*Concordata*" - Section 1055, ss. CPC);

3.1.3.2 Creditors' Agreement for the incorporation of a limited liability companies incorporated by quotas ("*Limitada*") to continue the bankrupt's activity, which quotas are represented by the value of the credits after deduction of the debts of the creditors not subscribing the agreement; the company keep the bankrupt's assets in what exceeds the payment of privileged credits (Section 1075, ss. CPC). It is the same type of company as in paragraph 1.1.1. One solution provided in the bankruptcy proceedings is to create an LLP by quotas (the same type as in paragraph 1.1.1) in order to keep the company afloat.

This solution is applicable to all companies/commercial entrepreneurs that are in a bankruptcy proceedings.

3.1.4 Insolvency of debtors that are not commercial entrepreneurs when their debts are higher than their assets (Section 1185, ss. CPC);

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions.

