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18 February 2013

Dear Sirs

NETTING ANALYSER LIBRARY

You have asked us to give an opinion in respect of the laws of Malaysia ("this jurisdiction") as to the effect of certain collateral arrangements in relation to Bursa Malaysia Derivatives Clearing Bhd (the "Clearing House") as between the Clearing House and its clearing members (each a "Member").

We understand that your requirement is for the enforceability and validity of such collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "this opinion" are to the opinion given in Section 3.

1. TERMS OF REFERENCE

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the Clearing House have the same meaning in this opinion letter.
- 1.2 The opinions given in Section 3 are in respect of a Member's powers under the Clearing House Documentation as at the date of this opinion. We express no opinion as any provisions of the Rules of the Clearing House other than those on which we expressly opine.

1.3 Definitions

In this opinion, unless otherwise indicated:

- (a) **"Equivalent Clearing Agreement"** means the undertaking in the form of Schedule 3 to the Rules by or on behalf of a Member pursuant to which such

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Member agrees to be bound by the Rules as a Member but which contains no other provisions which may be relevant to the matters opined on in this opinion letter;

- (b) "**Security Documentation**" means the security documents entered into between each Member and the Clearing House in the form prescribed by the Clearing House in respect of approved collateral in the form of eligible securities, which is not publicly available;
- (c) "**Assessment Liability**" means a liability of a Member to pay an amount to the Clearing House (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:
 - (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;
 - (ii) membership fees, fines and charges;
 - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
 - (iv) indemnification for any taxation liabilities;
 - (v) payment or delivery obligations under Contracts; or
 - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty.
- (d) "**Clearing House Documentation**" means the Equivalent Clearing Agreement, Security Documentation and Rules;
- (e) "**Contract**" means a futures contract or option (each as defined in the rules of the Exchange) entered into in accordance with the Exchange Rules which is registered at the Clearing House;
- (f) "**Exchange**" means Bursa Malaysia Derivatives Berhad;
- (g) "**Party**" means the Clearing House or the relevant Member;

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- (h) "**Non-cash Collateral**" means the non-cash collateral provided to the Clearing House as margin under the Security Documentation;
- (i) 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;
- (j) a reference to "**FSMA**" is to the UK Financial Services and Markets Act 2000;
- (k) "**Rules**" means the rules of the Clearing House in force as at the date of this opinion;
- (l) references to a "**section**" or to a "**paragraph**" are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

2. ASSUMPTIONS

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the Clearing House Documentation and Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Clearing House Documentation and Contracts; to perform its obligations under the Clearing House Documentation and Contracts; and that each Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and Contracts.
- 2.3 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 Clearing House Documentation and Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That the Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.

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- 2.5 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and Contracts; and that (save in relation to any non-performance leading to the taking of action by the Members), each Party performs its obligations under the Clearing House Documentation and each Contract in accordance with their respective terms.
- 2.6 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Clearing House Documentation that are publicly available, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Equivalent Clearing Agreement or Security Documentation.
- 2.7 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.8 That the obligations assumed under the Clearing House Documentation and Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.9 That no provision of the Clearing House Documentation that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect.

3. **OPINION**

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

3.1 **Insolvency Proceedings**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- (a) winding-up which may be-
 - (i) a compulsory winding-up under an order of the High Court of Malaya;
 - (ii) a voluntary winding-up approved by special resolution of its members, or
 - (iii) a voluntary winding-up approved by an ordinary resolution of its members.

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A “members’ voluntary winding-up” or solvent liquidation requires the directors to make a statutory declaration to the effect they believe that the Clearing House will be able to pay its debts in full within 12 months after the commencement of the winding-up; a voluntary winding-up in which such a declaration cannot be given is a “creditors’ voluntary winding-up”.

A provisional liquidator may be appointed by the court at any time after the presentation of a winding-up petition and before the making of a winding-up order¹.

- (b) a compromise or a scheme of arrangement under section 176 of the Companies Act 1965 (“Companies Act”);
- (c) private or court appointed receivership;
- (d) special administration under the Pengurusan Danaharta Nasional Berhad Act 1998 (Danaharta Act) after it has become an affected person under the Danaharta Act; or
- (e) the appointment of a conservator (Conservator) under the Malaysia Deposit Insurance Corporation Act 2011 (MDICA) after it has become an affected person under the MDICA.

These procedures are together called "Insolvency Proceedings".

The insolvency regime applicable to the Clearing House is the same as that applicable to companies incorporated under the Companies Act², subject to the special provisions set out in Section 3.2 below. Contractual netting and set-off will only be enforceable in the insolvency of the Clearing House only to such extent that such rights are consistent with the statutory right of set-off contained in section 41 of the Bankruptcy Act 1953, made applicable to the Clearing House by virtue of section 291(2) of the Companies Act, and

- if the Clearing House becomes an “affected person” and has a special administrator appointed pursuant to the Danaharta Act, subject to the applicable provisions of the Danaharta Act following such appointment;
- if the Clearing House becomes an ‘affected person’ and has a conservator appointed pursuant to the MDICA, subject to the applicable provisions of the MDICA following such appointment;

¹ Section 231 of the Companies Act

² This is set out in the Netting Opinion to FOA.

- subject to any exercise of the powers by Bank Negara Malaysia pursuant to sections 38 and 77 of the Central Bank of Malaysia Act 2009; and
- subject to any directive issued by the Securities Commission pursuant to section 346C of the Capital Markets and Services Act 2007 (“CMSA”).

The statutory right to set-off under Section 41 of the Bankruptcy Act 1953 stipulates four pre-requisite criteria for its application-

- (1) The mutual claims must have existed prior to or at the time of the winding-up order³;
- (2) There must be mutuality in relation to the claims to be set-off;
- (3) The claims must ultimately be payable in money; and
- (4) When entering into the Clearing House Documentation or any Contract, the Firm party thereto must not have:
 - (a) Notice of the existence of any of the grounds for compulsory winding up listed as (a) to (k) in section 218(1) of the Companies Act that would justify the presentation of petition under section 218 of the Companies Act for the compulsory winding up of Clearing House; or
 - (b) In the case of a voluntary liquidation, notice of the convening of a meeting of the members of the Clearing House or of the summoning of the creditors of the Clearing House to a meeting, in either case to consider placing the Clearing House in liquidation.

³ See *Majlis Amanah Rakyat v Official Receiver Malaysia* [1984] 1 MLJ 173

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The legislation applicable to Insolvency Proceedings is:

- the Companies Act and the Companies (Winding-up) Rules.
- Section 361 of the CMSA.
- the provisions in the Danaharta Act relating to affected persons (as defined therein) and the appointment of a special administrator in respect of an affected person.
- the provisions in the MDICA relating to affected persons (as defined therein) and the appointment of a conservator in respect of an affected person.

3.2 Special provisions of law

The following special provisions of law apply to Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products and are cleared through a central counterparty:

3.2.1 Subdivision 6 of Part II of the CMSA contains provisions relating to the modifications to the law of insolvency and miscellaneous provisions relating to the operations and procedures of the Clearing House, as an approved clearing house, in relation to Contracts which are defined therein as a “market contract”.

3.2.2 For purposes of Subdivision 6 of Part II of the CMSA, subsection 41(1) of the CMSA sets out the following definitions, which apply unless the context otherwise requires.

3.2.3 A “**participant**” means –

- (a) a person who may participate in one or more of the services provided by a stock exchange or a derivatives exchange; or
- (b) a person who, under the rules of an approved clearing house, may participate in one or more of the services provided by the approved clearing house.⁴

⁴ Subsection 2(1) of the CMSA.

3.2.4 A “**market charge**” means a charge, whether fixed or floating, granted in favour of an approved clearing house over any property as specified in the rules of the approved clearing house;

3.2.5 A “**market contract**” means-

- (a) a contract which is subject to the rules of an approved clearing house and entered into by the approved clearing house with a participant pursuant to a novation for the purpose of the clearing and settlement of transactions using the clearing facility of an approved clearing house; or
- (b) a transaction which is or is to be cleared or settled using the clearing facility of an approved clearing house and in accordance with the rules of the approved clearing house, whether or not a novation referred to in paragraph (a) is to take place.

3.2.6 “**Market collateral**” means any property specified in the rules of an approved clearing house held by or deposited with an approved clearing house for the purpose of securing liabilities arising directly in connection with the approved clearing house ensuring the performance or settlement of one or more market contracts.

3.2.7 “**Default proceedings**” means any proceedings or other action taken by the Clearing House under its default rules.

3.2.8 “**Default rules**”, in relation to the Clearing House, means such Rules which provide for the taking of default proceedings if a participant has failed, or appears to be unable, or likely to become unable, to meet its obligations in respect of all or any unsettled market contracts to which the participant is a party.

3.2.9 Subsection 43(1) of the CMSA provides that none of-

- (a) a market contract;
- (b) the Rules relating to the settlement of a market contract;
- (c) any proceedings or other action taken under the Rules relating to the settlement of a market contract;
- (d) a market charge;
- (e) the default rules; or

(f) any default proceedings,

shall be regarded to any extent as invalid on the ground of inconsistency with the provisions relating to the distribution of the assets of a person under the laws of insolvency or on the appointment of a relevant office-holder over any of the assets of a person.

3.2.10 A “relevant office-holder” means-

- (a) the Director General of Insolvency appointed under section 70 of the Bankruptcy Act 1967 (“Bankruptcy Act”);
- (b) any person acting in relation to a company as its liquidator, provisional liquidator, receiver or manager;
- (c) any person acting in relation to an individual as his trustee in bankruptcy or interim receiver of his property;
- (d) any person appointed pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person; or
- (e) a Special Administrator appointed under the Danaharta Act.

3.2.11 Subsection 43(2) of the CMSA further provides that a relevant office-holder in his capacity as such, and the powers of a court under the law of insolvency, shall not be exercised in such a way as to prevent or interfere with-

- (a) the settlement of a Contract in accordance with the Rules; or
- (b) any default proceedings.

However, a relevant office-holder is not prevented by subsection 43(2) of the CMSA from seeking to recover any amount referred to in subsection 49(1) of the CMSA which relates to amounts for sales of securities.

The Court may on the application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the functions of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken and, accordingly, such functions of the relevant office-holder shall be construed subject to such order⁵.

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⁵ Subsection 44(1) of the CMSA.

3.2.12 Subsection 47(1) of the CMSA provides that neither section 59 of the Bankruptcy Act nor subsection 296(1) of the Companies Act (both provisions entitle the relevant office-holder to claim onerous property) shall apply in relation to –

- (a) a market contract;
- (b) a contract effected by the Clearing House for the purposes of realising property provided as market collateral;
- (c) a market charge; or
- (d) any default proceedings.

3.2.13 Subsection 47(2) of the CMSA provides that neither section 47 of the Bankruptcy Act nor section 223 of the Companies Act will apply in relation to any act, matter or thing which has been done pursuant to –

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by the Clearing House for the purpose of realising property provided as market collateral;
- (e) a disposition of property in accordance with the Rules as to the application of property provided as market collateral;
- (f) a market charge;
- (g) a disposition of property as a result of which the property becomes subject to a market charge, or any transaction pursuant to which that disposition is made;
- (h) a disposition of property made in enforcing a market charge; or
- (i) any default proceedings

Section 47 of the Bankruptcy Act 1967 relates to the relation back of the relevant office-holder what property of the bankrupt is divisible among his creditors.

Section 223 of the Companies Act provides that dispositions of property after commencement of winding up are void unless Court otherwise orders.

3.2.14 No order shall be made pursuant to sections 53, 53A and 54 of the Bankruptcy Act or sections 293 and 304 of the Companies Act in relation to any of the following matters-

- (a) a market contract;
- (b) a disposition of property pursuant to a market contract;
- (c) the provision of market collateral;
- (d) a contract effected by the Clearing House for purposes of realising property provided as market collateral;
- (e) a disposition of property in accordance with the Rules as to the application of property provided as market collateral;
- (f) a market charge; and
- (g) any default proceedings⁶.

Sections 53, 53A and 54 of the Bankruptcy Act relate to undue preference, avoidance of assignment of book debts and protection of bona fide transactions without notice from effect of bankruptcy on an execution or attachment, and undue preferences respectively.

Sections 293 and 304 of the Companies Act relate to undue preferences and the imposition of personal liability for fraudulent trading respectively.

3.2.15 Pursuant to subsection 50(1) of the CMSA, a court shall not, pursuant to any enactment or rule of law, recognise or give effect to-

- (a) any order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Malaysia; or
- (b) any act of a person appointed in such a place to perform any function under the law of insolvency in such place,

insofar as the making of the order or the doing of the act would be prohibited in the case of a court within Malaysia or a relevant office-holder by provisions made by or under the CMSA.

3.2.16 Subsection 51(1) of the CMSA provides that where-

- (a) a participant in his capacity as such enters into any transaction (including a Contract) with the Clearing House; and

⁶ Section 48 of the CMSA.

(b) but for this subsection, the participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, as between the Clearing House and any other person (including the participant and the person who is his principal in respect of that transaction), the participant shall for all purposes (including any civil action, claim or demand)—

(A) be deemed not to be party to that transaction as agent and
(B) be deemed to be a party to that transaction as principal.

3.2.17 Subsection 51(2) of the CMSA provides that where-

(a) two or more participants in their capacities as such enter into any transaction; and
(b) but for subsection 51(2), any such participant would be a party to that transaction as agent,

then, notwithstanding any provision under any law, any such participant to whom paragraph (b) applies, shall for all purposes (including any civil action) except as between, but only as between, him and the person who is his principal in respect of the transaction-

(A) be deemed not to be a party to that transaction as agent, and
(B) be deemed to be a party to that transaction as principal.

3.2.18 Section 52 of the CMSA provides that where securities or derivatives are delivered in settlement of a Contract or provided as market collateral or under a market charge to, among others, the Clearing House by a participant and in accordance with the Rules, then, notwithstanding any provision under any law, no civil action, claim or demand in respect of any right, title or interest in those securities or derivatives held or enjoyed by any person lies, or shall be commenced or allowed, against the Clearing House.

3.2.19 Section 53 of the CMSA addresses the transfers of securities by the central depository (approved by the Minister under the Securities Industry (Central Depositories) Act 1991 (“SICDA”) upon the instruction of the Clearing House for settlement of a Contract or relates to a dealing with a Contract in accordance with the Rules.

Subsection 53(1) of the CMSA (“subsection 53(1)”) provides that, notwithstanding any other provision of law, including the SICDA, a central depository shall give effect to an instruction from the Clearing House to effect a transfer of securities into or out of a securities account (as defined in SICDA) of a depositor (as defined in SICDA) provided such instruction shall be for the purposes of settlement of a Contract or otherwise dealing with a Contract in accordance with the Rules. An instruction under subsection 53(1) shall be given by the Clearing House only in relation to a securities account which relates to a depositor who is a party to the Contract or had instructed a participant to effect a trade which results in a Contract to which the participant has become a party.

Notwithstanding any other provision of law, where any transfer of securities is effected by the central depository to or from a securities account of a depositor pursuant to subsection 53(1), no title in such securities shall pass except as provided under the Rules⁷. Where a transfer of securities has been effected into or out of a securities account of a depositor pursuant to subsection 53(1), a central depository shall not be subject to any action or claim by or be liable to any damages to that depositor.

3.3 Cash Collateral

Payments made by a Member to the Clearing House as cash margin do constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would be treated as the property of the Clearing House available to its creditors generally.

However, the amount of cash so provided would constitute a debt owed by the Clearing House to the Member as principal.

3.4 Members' Assessment Liabilities

A Member's Assessment Liability is as follows.

3.4.1 Pursuant to Rule 206A-

- (a) each Member must lodge a Security Deposit of at least RM1 million in the form of cash and/or approved collateral.

⁷ Subsection 53(3) of the CMSA.

- (b) the Clearing House may from time to time, having regard to the obligations of and performance risk undertaken by the Clearing House in respect of Contracts to which a Member is a party, market volume, price volatility and such other matters as the Clearing House may consider relevant, request that Member to increase the amount of the Security Deposit lodged by that Member.
- (c) the Clearing House may apply a Member's Security Deposit towards satisfaction of that Member's obligations to the Clearing House.

3.4.2 Pursuant to Rule 401, a Member must contribute to the Clearing Fund as follows:

- (a) a fixed amount of RM1 million;
- (b) a variable amount calculated in accordance with Rule 402 as set out in its most recent Clearing Fund Statement;
- (c) all amounts (if any) requested by the Clearing House from such Member in accordance with Rule 401(a), subsequent to the issue of the most recent Clearing Fund Statement;
- (d) its share of loss, if any, calculated in accordance with Rule 407 or Rule 408(c), subsequent to the issue of the most recent Clearing Fund Statements,

in the form of cash and/or approved collateral.

3.4.3 Rule 400 provides that the Clearing Fund is established by the Clearing House for the purpose of indemnifying the Clearing House against losses or anticipated losses in the events set out in Rule 405, namely, that-

- (a) any Member fails to discharge any of its obligations to the Clearing House when due; and/or
- (b) if any financial institution or clearing house organisation fails to perform any obligation to the Clearing House when due because of its insolvency, receivership, indefinite suspension of operations or the suspension of payments or because of any similar event.

3.4.4 When a Member fails to pay its Clearing Fund contribution in full (a "Defaulting Member"), the Clearing House is entitled to take the following default action set out under Rule 1001:

- (a) liquidate and/or novate the rights and obligations under the Contracts of such Member in accordance with Rule 1002;
- (b) liquidate any approved collateral and calculate the sum of all assets of such Member including its Security Deposit, Clearing Fund contribution, cash and any other assets held by the Clearing House;
- (c) set-off any loss incurred by the Clearing House pursuant to Rule 1001(a) against the monies determined in accordance with Rule 1001(b) and (i) any surplus monies must be utilised in accordance with Rule 1003, and (ii) any deficit must be met in accordance with Rule 1004.

3.4.5 As a Member is a person to whom the Rules apply, where a Member fails to comply with its obligation to make its Clearing Fund contribution under the Rules, such Member commits a breach pursuant to subsection 355(1) of the CMSA. If the Securities Commission is satisfied that it is appropriate in all the circumstances to take action against the Defaulting Member, the Securities Commission may take any one or more of the actions set out in subsection 355(3) of the CMSA which include, among others:

- (a) direct the Defaulting Member to comply with, observe, enforce or give effect to the Rules;
- (b) impose a penalty in proportion to the severity or gravity of the breach on the Defaulting Member, but in any event not exceeding RM500,000;
- (c) reprimand the Defaulting Member;
- (d) require the Defaulting Member to take such steps as the Securities Commission may direct to remedy the breach or to mitigate the effect of such breach,

after giving the Defaulting Member an opportunity to be heard.

3.4.6 Subsection 360(1) of the CMSA empowers the Securities Commission and the Clearing House respectively, in respect of the failure by the Defaulting Member to make its Clearing Fund contribution, to apply to the Court for one or more of the orders set out therein. The orders include, among others:

- (a) an order appointing a receiver of the property of the Member who is a holder of a Capital Markets Services Licence or the property that is

held by such holder for or on behalf of another person whether on trust or otherwise;

- (b) an order vesting securities or such other property that is specified in the order in the Securities Commission or a trustee appointed by the court;
- (c) an order requiring the Defaulting Member to make its Clearing Fund contribution;
- (d) an order giving directions concerning compliance with or enforcement of the Rules to the Defaulting Member and the directors of the Defaulting Member.

A Defaulting Member who contravenes an order made under subsection 360(1) of the CMSA applicable to it commits an offence and shall, on conviction, be liable to a fine not exceeding RM1 million and in respect of any person who at the time of the commission of the offence was a director, a chief executive, an officer or a representative of the Defaulting Member or was purporting to act in such capacity who is deemed under subsection 367(1) of the CMSA to have committed the offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances), to imprisonment for a term not exceeding 10 years or both.

3.4.7 Rule 407(a) provides that the proportion of the total amount (the "**Total Loss**") required by the Clearing House, after drawing on the reserves of the Clearing House specifically set aside for this purpose and such surplus funds of the Clearing house as the Clearing House may determine are in excess of funds for normal operations, charged against each Member is to be calculated as follows:

Share of loss = MS x FD

Where:

MS is the Member's share of Fund, and

FD is the Total Loss.

3.4.8 The Clearing House must, pursuant to Rule 407(b), issue a statement to each Member advising such Member of its share of loss calculated pursuant to Rule 407(a) which, subject to Rules 401(g) and 408(b), has to be paid within one

Business Day after receipt of the statement, after which time Rule 407(c) requires the Clearing House recalculate each Member's share of Fund in accordance with Rule 404.

3.4.9 Rule 408(b) provides that a Member is not liable to make good more than an additional 100% of the current amount of its fixed and variable contributions to the Clearing Fund as set out in its most recent Clearing Fund Statement if:

- (i) within one Business Day of being notified by the Clearing House of its share of loss, the Member notifies the Clearing House in writing that it is terminating its participantship;
- (ii) no Contract is entered into after the giving of such notice except contracts for immediate liquidation by offset; and
- (iii) the Member closes out or transfers its Contracts as promptly as practicable.

Rule 408(d) provides that a Member who has exercised its right under Rule 408(b) is ineligible to be readmitted to participantship of the Clearing House unless it agrees to reimburse the other Members for the deficiency at the time of applying for re-admission or such other amount as the Clearing House deems fair and equitable in the circumstances.

3.4.10 Pursuant to Rule 408(c), if a Member exercises its right under Rule 408(b), the balance of his share of loss (referred to in this paragraph as "deficiency") must be charged against each remaining Member in the proportion of the deficiency calculated in accordance with Rule 404, and the provisions of Rule 408 will *mutatis mutandis* apply to each remaining Member in relation to its liability to pay such proportion of the deficiency.

3.4.11 Pursuant to Rule 401(g), a Member who has served notice of resignation pursuant to Rule 213 prior to a claim being made on the Clearing Fund is not obliged to make any further contribution to the Clearing Fund in respect to a request made pursuant to Rule 401(a) in connection with such claim.

3.5 Netting and Set-Off: House Accounts and Client Accounts

The Rules do not address the netting and set-off of House Accounts and Client Accounts.

4. QUALIFICATIONS

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

- 4.1 The Rules do not expressly state whether the cash margin is held by way of security only, but provide for deposit into bank account of the Clearing House so it is not clear what legal rights the Clearing House has over such cash.
- 4.2 The rights and obligations of the Clearing House referred to in paragraph 3 may be modified by any other contract between the Parties required under the Rules, the form of which is not publicly available.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). 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



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