14 February 2013

File No: 32724

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

Dear Sirs

NETTING ANALYSER LIBRARY: CCP Opinion in relation to the MAOF Clearing House Ltd.

You have asked us to give an opinion in respect of the laws of the State of Israel ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to the MAOF Clearing House Ltd. (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 netting and set-off provisions and 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 Rules of the Clearing House, and under general Israeli contract and insolvency law, as at the date of this opinion, . We express no opinion as to any provisions of the Rules of the Clearing House other than those on which we expressly opine.

1.3 Where Contracts are governed by laws other than the laws of this jurisdiction, the opinions contained in Section 3 are given in respect of only those Contracts which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Netting Provision.

1.4 The opinions given in Section [3.8] are given only in relation to Non-cash Collateral comprising securities credited to an account.

1.5 **Definitions**

In this opinion, unless otherwise indicated:

(a) "**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.

(b) "**Client Account**" means a separate account with the Clearing House opened in the name of a Member in which Contracts relating to contracts made by the Member with one or more clients of such Member are registered.

(c) "**Contract**" means a Derivatives Transaction. In practice, the term refers to exchange traded Derivatives Transactions, which may be either in series or on individually negotiated terms. Non-traded (OTC) derivative transactions are not cleared through the Clearing House.

(d) "**Netting Provision**" means the provision for the netting of rights and obligations between the Parties upon early termination of the Contracts to which the relevant Member is party under Chapter Seven-B of the Rules;

(e) "**House Account**" means an account with the Clearing House opened in the name of a Member that is not a Client Account (i.e. a nostro account);

(f) "**Party**" means the Clearing House or the relevant Member;

(g) "**Set-off Provision**" means the set-off provisions under Chapter Seven-B of the Rules;

(h) "**Non-cash Collateral**" means the non-cash collateral provided to the Clearing House as margin under the Chapter Eight of the Rules;

(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) "**Rules**" means the rules of the Clearing House in force as at the date of this opinion;

(k) 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 Rules 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 be bound by the Rules and to enter into Contracts; to perform its obligations under the Rules and Contracts; and that each Party has taken all necessary steps to undertake to be bound by and perform its obligations under the Rules , and to execute, deliver, and perform the 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 be bound by the Rules and to enter into Contracts; to perform its obligations under the Rules and Contracts; and to ensure the legality, validity, enforceability or admissibility in evidence of the Rules (including its undertaking to comply with the provisions thereof) in this jurisdiction.

2.4 That each Party's undertaking to comply with the provisions of the Rules has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.

2.5 That each Party acts in accordance with the powers conferred by the Rules and Contracts; and that (save in relation to any non-performance leading to the taking of action by the Members under the Netting Provision), each Party performs its obligations under the Rules 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 Rules, there are no any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Rules.

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 (save as discussed at paragraph 3.4) the obligations assumed under the Rules 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 Rules 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: liquidation proceedings, receivership proceedings, and rehabilitation proceedings. These procedures are together called "**Insolvency Proceedings**".

The legislation applicable to Insolvency Proceedings is as follows:

Liquidation and receivership proceedings are governed by the Companies Ordinance (New Version), 1983 (the "Companies Ordinance"). Rehabilitation proceedings are governed by Chapter 3 of Part 9 of the Companies Law, 1999 (the "Companies Law"). Chapter 3 of Part 9 of the Companies Law was introduced into the Companies Law pursuant to Amendment No. 19 to the Companies Law, which was enacted in July 2012 and will come into effect in mid-January 2013, whereupon it will replace the existing corporate recovery provisions which are currently to be found in Section 350 of the Companies Law.

There are no special provisions of law that 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. The Contracts in Financial Assets Law, 2006 (the "**Financial Assets Law**") in principle applies to Contracts by virtue of the fact that they are derivatives transactions entered into under a framework agreement between the Clearing House and a Member. (For further discussion of this law, see below.)

3.2 Recognition of choice of law

The Rules do not contain an express choice of law provision. Nor do they contain an express jurisdiction clause (although Section 5.4 of Chapter 4 of the Rules requires any dispute between members of the Clearing House that relates to their activities on the Clearing House to be referred to arbitration in accordance with the Israeli Arbitration Law 5728-1968. In our opinion in the event of a dispute between a Member and the Clearing House relating to the Member's activities on the Clearing House, an Israeli court (or arbitrator) would apply Israeli law, even if the Member is not incorporated, domiciled or established in this jurisdiction.

3.3 **Netting and Set-off: General**

3.3.1 The Rules contain Netting and Set-off Provisions. Moreover, these provisions are valid and enforceable in accordance with their terms pursuant to the Financial Assets Law. The Rules contain an express statement to the effect that the Rules constitute a framework agreement between the Clearing House and each of its members to which the Financial Assets Law applies (Section 5 of Chapter One of the Rules). However, the Netting Provision and the Set-off Provision under the Rules are unilateral. That is to say, these provisions relate only to events of default concerning the member and only confer rights on the Clearing House. In the absence of express contractual provisions, the rights of a Member upon a default, bankruptcy, liquidation or other similar circumstance concerning the Clearing House fall to be determined under general principles of Israeli contract and insolvency law.

3.3.2 The statutory rules for contractual set-off are set out in Section 53 of the Contracts (General Part) Law, 1973 (the "**Contracts Law**") which states:

"(a) Mutual monetary obligations arising out of one transaction the time for the fulfillment of which has arrived may be set off by notice from one party to the other. The same applies to monetary obligations not arising out of one transaction if they are liquidated obligations.

(b) An obligation, the right to the fulfillment of which is not attachable shall not be set off.

(c) The provisions of sections 49 and 50 shall also apply, mutatis mutandis, to discharge by way of set off."

The statutory rules for set-off in the context of insolvency proceedings is set out in Section 74 of the Bankruptcy Ordinance (New Version), 1980 (the "**Bankruptcy Ordinance**"), which states:

"(a) Where there have been mutual credits, mutual debts or other mutual dealings between a debtor over whose assets a receiver has been appointed and a person proving a debt under the order of appointment, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid respectively. The provisions of this Section shall not entitle a person to set-off against the property of the debtor if, at the time of giving credit to the debtor, he had notice of an act which at the date of the delivery of the petition on which adjudication was made was available for a bankruptcy petition against the debtor.

(b) The transactions capable of being set off under this Section shall be determined according to the status of the transactions between the parties at the date of appointment of the receiver."

References below to contractual and insolvency set-off rules are to these statutory rules.

3.3.3 As mentioned at 3.3.1 above, the Rules do not specify events of default for the Clearing House and do not confer early termination rights on the Member. In the absence of such provisions, a Member's right to terminate Contracts arises, under general rules of contract law, only where there has been a fundamental breach of contract, or there has been a non-fundamental breach and the party in breach has failed to perform the contract within a reasonable time of being notified of a time extension by the non-breaching party, or there has been an anticipatory breach (Sections 7 and 17 of the Contracts (Remedies for Breach of Contract) Law, 1970. For these purposes, a breach of contract is "fundamental" if a reasonable person would not have entered into the contract had he foreseen the breach, and an "anticipatory breach" arises where a party to the contract has indicated his intention not to perform it or it appears from the circumstances that he is unable or unwilling to perform it. Israeli case law sets the bar high for anticipatory breach; that is to say, the likelihood of the breach occurring must be close to certain in order to be regarded as an "anticipatory breach". The existence of liquidation proceedings against, or the appointment of a liquidator over, a party, for example, is not in itself sufficient to entitle the other party to terminate a contract on grounds of anticipatory breach, so long as the liquidator has not repudiated the contract or disclaimed it as an onerous asset.

3.3.4 For so long as the Member is unable to terminate the Contracts, the Member will not be able to effect set-off under Section 53 of the Contracts Law since there will not be mutual monetary obligations for which the payment date has arrived.

3.3.5 If the Contracts have not been terminated prior to the making of a liquidation order against the Clearing House, it is also questionable whether the Member would be able to avail itself of the insolvency set-off provisions under Section 74 of the Bankruptcy Ordinance. A number of Supreme Court decisions have held that the statutory insolvency set-off rules apply only to a debt which is certain at the date of commencement of the bankruptcy, not to a debt which is contingent as at that date, even if the debt arises under a contract that was in existence prior to that date. The Supreme Court has held that date of commencement of liquidation for the purposes of Section 74 is the date of the liquidation order, although the court has left open the possibility that Section 74 could apply as of the date of a stay of proceedings under Section 350 of the Companies Law in a situation where the stay does not result in a successful creditors' arrangement (and the company is liquidated). The new corporate recovery regime of Chapter 3 of Part 9 of the Companies Law expressly provides that the insolvency law provisions under the Companies Ordinance (with limited exceptions, which do not include the insolvency set-off rules) also apply to

corporate recovery proceedings and that the provisions that apply with respect to a liquidation order will apply also to a stay of proceedings order. In our opinion, a Member's rights against the Clearing House under a call option, for example, would be regarded as a contingent right and therefore not eligible for set-off under Section 74 of the Bankruptcy Ordinance.

3.3.6 On the other hand, where a liquidator, or an administrator appointed under rehabilitation proceedings under the Companies Law, seeks to disclaim a Contract or Contracts as onerous assets, in our opinion the liquidator or administrator would not be entitled to "cherry pick", that is to say, to terminate only those Contracts which are "out of the money" for the Clearing House but to continue those Contracts which are "in the money" for the Clearing House. This conclusion is based on the fact that although a liquidator or administrator is permitted in principle to "cherry pick" transactions (in the case of an administrator appointed under rehabilitation proceedings, the administrator is entitled to adopt a contract, with the court's permission, notwithstanding the counterparty's termination rights (Section 350H(c) of the Companies Law), the Rules are expressly stated to constitute a single agreement between the Clearing House and each Member governing all Contracts between the Clearing House and that Member (Section 5 of Chapter One of the Rules). Moreover, Section 3 of the Financial Assets Law expressly provides that a liquidator or administrator cannot disclaim some only of the transactions entered into under a framework agreement to which the Financial Assets Law applies. Accordingly, in our opinion, where a liquidator or administrator seeks to disclaim Contracts, it will be required to disclaim the agreement between the Clearing House and the Member constituted by the Rules in toto.

Where a liquidator or administrator disclaims all open Contracts as onerous assets, the Member is treated as a creditor of the Clearing House for the amount of damage suffered as a result of the disclaimer (Section 365 of the Companies Ordinance).

3.3.7 Likewise, if circumstances arise which entitle a Member to terminate Contracts, whether pre- or post-insolvency of the Clearing House, in our opinion, the Member would be entitled to terminate all Contracts, on the ground that, as noted at paragraph 3.3.6 above, the Rules are expressly stated to constitute a single agreement between the Parties. Where a Member terminates open contracts on grounds of the Clearing House's fundamental or anticipatory breach, the Member would have a claim in damages against the Clearing House.

3.3.8 In either case – i.e. where a liquidator or administrator of the Clearing House disclaims all open Contracts, or where a Member terminates all open Contracts for cause – we believe that a reasonable basis for calculating the Member's claim for damages against the Clearing House would be the net cost of replacing the Member's aggregate position under all terminated Contracts.

3.3.9 We also believe that the Clearing House, or a liquidator or administrator appointed over it, would not be entitled to demand performance of a Contract by the Member

while failing to perform its own obligations under the Contract (or any other Contract). This conclusion is based on the grounds that (a) the obligations of the Member and the Clearing House under Contracts entered into under the Rules are implicitly understood by the Parties to be interdependent obligations (in which case, pursuant to Section 43(a)(3) of the Contracts Law, a condition precedent for the performance of an obligation by a party to the contract is the willingness and ability of the other party to fulfill its obligations), and (b) failure by the Clearing House to perform, or a clear indication by the Clearing House that it does not intend to perform its obligations under a Contract constitutes grounds for termination of the entire agreement (and all Contracts thereunder) by the Member.

3.3.10 The conclusion of the above legal analysis is that, in our opinion, the existence of Insolvency Proceedings does not in itself entitle a Member to terminate its open Contracts with the Clearing House and to effect netting and set-off vis-a-vis the Clearing House. Having said that, if and when the open Contracts are disclaimed or terminated, the Member will have a claim for damages against the Clearing House that effectively represents the net value of the Member's aggregate position under all terminated Contracts. Moreover, as discussed at paragraphs 3.6 and 3.7 below, we believe that Collateral delivered by the Member to the Clearing House would be returnable to the Member, even in the event of Insolvency Proceedings relating to the Clearing House, subject to the Member satisfying its obligations to the Clearing House.

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

Where a Member has exercised its rights of termination and set off under general Israeli contract and insolvency law, or alternatively where a calculation of damages is made upon disclaimer or termination of open Contracts, a Termination Amount payable on any Client Account of a Member would be aggregated with or netted against a Termination Amount payable on any House Account of the Member.

The opinion set out above is based on the following legal analysis:

Under the Rules, although a Member is required to establish a Client Account and a House Account with the Clearing House (as well as a separate client account and house account for each non-Clearing House Member ("NCHM") for which the Member clears on the Clearing House), the Rules expressly state that this division into separate accounts "is intended to address technical and operational needs" and does not derogate from the early termination and netting provisions under Chapter Seven B of the Rules (albeit that, as mentioned at paragraph 3.3 above, Chapter Seven B only confers rights on the Clearing House) (Section 1.2, Chapter Five of the Rules). Section 2 of Chapter Five of the Rules goes on to state:

"The cash settlement of all transactions in all the Member accounts with the MAOF Clearing House will be consolidated without division into the separate accounts.

Accordingly, credits and debits stemming from the separate accounts will be considered debits and credits stemming from one account."

Under the Rules, the parties to a Contract are in all cases (whether the Contract is registered in a Client Account or a House Account) the Clearing House and the relevant Member. Where a Member incurs a liability towards the Clearing House under a Contract, the Member is liable towards the Clearing House whether or not the client meets its obligations towards the member under the contract to which the Contract relates (Sections 5 and 6 of Chapter Six of the Rules).

Under the margin provisions in the Rules (Chapter Eight of the Rules), the margin paid or delivered by a Member to the Clearing House is given as security for all the Member's obligations towards the Clearing House, "including, but without derogating from the generality of the aforesaid, all the Member's obligations in connection with the performance of derivatives transactions for itself or for its clients and also in connection with the performance of derivatives transactions by a NCHM for which the member is liable under the By-laws, and also for the clients of the NCHM." (Section 1.1, Chapter Eight of the Rules). The various margin accounts in which a Member's margin is held do not differentiate between margin held in respect of obligations within a Client Account and obligations within a House Account (or within a client or house account held for an NCHM). Nor do the provisions for enforcement of collateral by the Clearing House make such a differentiation.

On the basis of all the above mentioned provisions of the Rules, we conclude that a Member's rights of termination and set off or calculating a net damage amount, under general Israeli contract and insolvency law do not preclude aggregation or netting of a Termination Amount payable on a Client Account (or on a client account or house account maintained by the Member for any NCHM) with or against a Termination Amount payable on a House Account of the Member.

3.5 NETTING AND SET-OFF: CROSS-PRODUCT NETTING

Where a Member has exercised its rights of set off under general Israeli contract and insolvency law, or alternatively where a calculation of damages is made upon disclaimer or termination of open Contracts, the damages calculation will apply across all Contracts cleared by the Member with the Clearing House.

The opinion stated above is based on the following legal analysis:

As noted at paragraph 3.3 above, the Rules constitute a single framework agreement between the Clearing House and each Member with respect to all Contracts entered into thereunder between the Parties. Accordingly, insofar as the Member has rights of set-off under general Israeli contract and insolvency law or where it is entitled to damages following disclaimer or termination of the Contracts, the set off or damages calculation will

take into account all Contracts entered into between the Parties. (In his connection, we note incidentally that the Netting Provision and the Set-off Provision under the Rules, which confer rights unilaterally on the Clearing House, also do not differentiate between different categories of Contracts cleared by the Member with the Clearing House.)

3.6 Cash Collateral

Although the Rules are not entirely clear on this point, we believe that payments made by a Member to the Clearing House as cash margin do not constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would not be treated as the property of the Clearing House available to its creditors generally.

This view is based on the following legal analysis. Under the Rules, cash Collateral is delivered by a Member to a "monetary bank account". This is defined as an account dedicated to each Member by the Clearing House, and maintained by the Clearing House at a bank it has selected for this purpose, and dedicated to the deposit by a Member of cash to be used as margin in favour of the Clearing House (Section 8.1 of Chapter Eight of the Rules). Under Section 9 of Chapter Eight of the Rules, the Member also grants a security interest over this account in favour of the Clearing House. Although, on the face of it, the transfer of cash Collateral to the Clearing House constitutes an absolute transfer, Section 2(b) of the Pledge Law, 1967 (the "Pledge Law") contains a recharacterisation provision under which the provisions of the Pledge Law apply to "every transaction the purpose of which is to charge an asset as security for an obligation irrespective of the description which is given to the transaction". In our opinion, the delivery of cash Collateral to the "monetary bank account" would be regarded under Section 2(b) of the Pledge Law as giving the Clearing House a mere security interest in the collateral. This point is repeated and analysed in greater detail in paragraph 3.7 below.

3.7 Non-cash Collateral

It is highly likely that securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral would not be treated as the property of the Clearing House and would therefore be returnable to the Member, even in the event of Insolvency Proceedings relating to the Clearing House, subject to the Member satisfying its obligations to the Clearing House.

This view is based on the following legal analysis. Under the Rules, Non-cash Collateral is delivered by a Member to an account at the Tel Aviv Stock Exchange Clearing House (the "TACH") in the name of the Clearing House. This account is referred to in the Rules as the "principal MAOF margin account". (In addition, additional margin is deposited by the Member in an "additional MAOF margin account" held at the TACH in the name of the

Member) (Section 8.1 of Chapter Eight of the Rules). Under Section 9 of Chapter Eight of the Rules, the Member also grants a security interest over these accounts in favour of the Clearing House.

On the face of it, the Clearing House takes title to Non-cash Collateral delivered to the principal MAOF margin account. However, Section 2(b) of the Pledge Law contains a recharacterisation provision under which the provisions of the Pledge Law apply to "every transaction the purpose of which is to charge an asset as security for an obligation irrespective of the description which is given to the transaction". In our opinion, the delivery of Non-cash Collateral to the principal MAOF margin account would be regarded under Section 2(b) of the Pledge Law as giving the Clearing House a mere security interest in the collateral.

In this connection, it is also necessary to consider the provisions of the Financial Assets Law. Section 4(a) of the Financial Assets Law provides that a "transfer to limit exposure", as defined in the Financial Assets Law, shall be considered for all purposes as a transfer of title, notwithstanding the provisions of Section 2(b) of the Pledge Law. A "transfer to limit exposure" is essentially a title transfer of cash or securities as collateral to cover exposure under "derivatives transactions" entered into under a "framework agreement". The term "derivatives transactions" in the Financial Assets Law includes options and futures, and the term "framework agreement" includes an agreement between a clearing house (including the Clearing House) and its members. The Rules are expressly stated to constitute a "framework agreement" for the purposes of the Financial Assets Law, between the Clearing House and each of its Members, with respect to all Contracts whether executed on Client Account or House Account (or on a client or house account for an NCHM).

Having said that, a delivery of cash or Non-cash Collateral will only be considered a "transfer to limit exposure" if the recipient "is entitled to carry out any transaction in the transferred asset, including its sale to another". Moreover, under Section 4(a) of the Financial Assets Law a "transfer to limit exposure" will only be considered an outright transfer of title if the parties did not expressly stipulate otherwise in the agreement. It is clear from the Rules that the Clearing House is only free to dispose of the cash or Non-cash Collateral by way of enforcement of the collateral upon a default by the Member (see, for example, Section 10 of Chapter Eight of the Rules). Moreover, the fact that the Member is required to grant a security interest over the cash and Non-cash Collateral is indicative of a contrary intention (namely, that the cash and Non-cash Collateral is delivered exclusively as collateral and not with the intention that the Clearing House will have ownership of the collateral with freedom to dispose of the assets as it wishes).

Furthermore, Section 50A(d) of the Securities Law – 1968, addresses a "pledge of securities, which serve as collateral for the obligations of a clearing house member vis a vis the clearing house" and for which, inter alia "the securities are registered in the favor of the clearing house in favor of which the pledge is granted, with a financial intermediary, including with the clearing house itself, or are registered in favor of the clearing house with a nominee company". Thus recognizing that transfer of the securities to the name of the

clearing house, does not change the nature of the transaction as a pledge and not as title transfer.

In light of these considerations, we are of the opinion that Section 4(a) of the Financial Assets Law does not apply to cash or Non-cash Collateral delivered by a Member to the Clearing House. The delivery of the cash and Non-cash Collateral is therefore subject to the general rule in Section 2(b) of the Pledge Law and would, in our opinion, be regarded as giving the Clearing House a mere security interest in the collateral.

3.8 Members' Assessment Liabilities

A summary of the Member's Assessment Liability, as set out in the Rules, is set out in the following paragraphs.

Under Chapter two of the Rules, the Clearing House is required to establish a Risk Fund. The amount of the Risk Fund is set from time to time by the Board of Directors of the Clearing House and is updated on a quarterly basis in accordance with a formula set out n the Rules. Each Member's share in the Risk Fund is likewise updated on a quarterly basis.

A Member is required to post margin with the Clearing House to cover its share of the Risk Fund. The value of the margin must be at least equal to the Member's share in the Risk Fund, and is likewise updated on a quarterly basis.

If a NCHM that clears through a Member (the "first member") terminates its clearing arrangement with the first member and either enters into a clearing agreement with another member (the "second member") or itself becomes a member of the Clearing House, the second member's share in the Risk Fund shall increase (or, if the NCHM itself becomes a member of the Clearing House, it shall become liable for a share in the Risk Fund), and the first member's share in the Risk Fund will be correspondingly reduced.

Where a Member fails to make any payment that falls due to the Clearing House, or to provide margin as required under the Rules, or where the Board of Directors of the Clearing House believes that a Member is liable to default on its debts or obligations, this constitutes an event of default which entitles the Clearing House to effect early termination and close-out netting of any or all of the member's open transactions (Chapter Seven-B of the Rules). The Clearing House is also entitled to realise its collateral, including collateral held in respect of the Member's share in the Risk Fund (Section 3 of Chapter Two, and Section 10 of Chapter Eight of the Rules). In addition, of course, a breach of the Member's obligations with respect to the Risk Fund (including the provision of collateral in relation to its share in the Risk Fund) is grounds for suspension or termination of the member's membership of the Clearing House. In addition, where an event of default occurs in relation to a Member, the Clearing House shall require the non-defaulting members to pay an amount to the Clearing House, in proportion to each non-defaulting member's share in the Risk Fund. The amount which the Clearing House shall require the non-defaulting

member to pay shall not exceed that member's share in the Risk Fund, and if the non-defaulting member fails to make such payment, the Clearing House may enforce that non-defaulting member's collateral up to the amount of the member's share in the Risk Fund (Section 3.2 of Chapter Two and Section 10.1.2 of Chapter Eight of the Rules).

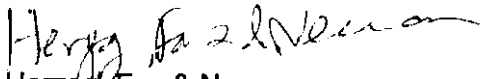
4. QUALIFICATIONS

The qualifications to this opinion have been set forth in the body of the opinion itself.

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



Herzog, Fox & Neeman