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Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of the Republic of Poland ("**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 the Parties which are companies – a limited liability company (*spółka z ograniczoną odpowiedzialnością*) or a joint-stock company (*spółka akcyjna*) in the meaning of the Commercial Companies Code of 15 September 2000 (*ustawa z dnia 15 września roku 2000 Kodeks spółek*

handlowych) (the "**Commercial Companies Code**"), provided that its business activity is not regulated by any special regulations; and

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

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

1.2.1 banks (Schedule 1);

1.2.2 brokerage houses (*domy maklerskie*) (Schedule 2);

1.2.3 partnerships (Schedule 3);

1.2.4 insurance companies (Schedule 4);

1.2.5 individuals (Schedule 5);

1.2.6 investment funds (Schedule 6);

1.2.7 the local government entities (*jednostki samorządu terytorialnego*) (Schedule 7);

1.2.8 pension entities (Schedule 8); and

1.2.9 the National Bank of Poland (Schedule 9),

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

1.4.2 "**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;

1.4.3 "**Financial Instruments**" means: (1) securities or (2) other than securities: (i) units in collective investment undertakings, (ii) money market instruments, (iii) options, futures contracts, swaps, forward rate agreements and other derivatives based on securities, currencies, interest rates, profitability ratios, other derivatives, financial indices or financial measures which are physically-settled or cash-settled, (iv) options, futures contracts, swaps, forward rate agreements and other derivatives which are based on commodities and which are cash-settled or may be cash-settled at the option of one of the parties, (v) options, futures contracts, swaps and other derivatives which are based on commodities and physically-settled, provided that they are admitted to trading on a regulated market or in a multilateral trading facility, (vi) options, futures contracts, swaps, forward agreements and other derivatives which are based on commodities, that can be physically settled, which are not admitted to trading on a regulated market or in a multilateral trading facility and which are not for commercial purposes, which have the characteristics of other derivative financial instruments, (vii) derivative instruments for the transfer of credit risk, (viii) contracts for difference, and (ix) options, futures contracts, swaps, forward rate agreements and other climate variables, freight rate and emission allowance derivatives, as well as derivatives based on inflation rates or other official statistics which are cash-settled or may be cash-settled at the option of one of the parties, as well as any other derivatives based on assets, rights, obligations, indices and other ratios which have the characteristics of other derivative financial instruments as well as certificates of deposits (issued by banks) and shares in limited liability companies;

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 a reference to the "**FCA Act**" is to the Act of 2 April 2004 on Certain Financial Collateral Arrangements (*ustawa z dnia 2 kwietnia 2004 roku o niektórych zabezpieczeniach finansowych*);

1.4.6 a reference to the "**EU Insolvency Regulation**" is to EU Council Regulation No. 1346/2000 on insolvency proceedings;

1.4.7 a reference to the "**Bankruptcy Law**" is to the Act of 28 February 2003 on bankruptcy and recovery proceedings (*ustawa z dnia 28 lutego 2003 roku Prawo upadłościowe i naprawcze*);

1.4.8 a reference to the "**Act on Registered Pledges**" is to the Act of 6 December 1996 on Registered Pledges and the Pledge Register (*ustawa z dnia 6 grudnia 1996 roku o zastawie rejestrowym i rejestrze zastawów*);

1.4.9 a reference to the "**Civil Code**" is to the Civil Code of 23 April 1964 (*ustawa z dnia 23 kwietnia 1964 roku Kodeks cywilny*);

1.4.10 a reference to the "**Civil Procedure Code**" is to the Civil Procedure Code of 17 November 1964 (*ustawa z dnia 17 listopada 1964 roku Kodeks postępowania cywilnego*);

1.4.11 a reference to the "**Settlement Finality Act**" is to the Act of 24 August 2001 on Settlement Finality in Payment and Securities Settlement Systems and the Principles of Supervision over These Systems (*ustawa z dnia 24 sierpnia 2001 roku o ostateczności rozrachunku w systemach płatności i systemach rozrachunku papierów wartościowych oraz zasadach nadzoru nad tymi systemami*);

1.4.12 a reference to the "**Act on Trading**" is to the Act of 29 July 2005 on trading in financial instruments (*ustawa z dnia 29 lipca 2005 roku o obrocie instrumentami finansowymi*);

1.4.13 references to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments (as defined herein);

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

(a) sale and application of proceeds of the sale of Collateral against monies owed; or

(b) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.4.15 in instances other than those referred to at 1.4.14 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;

1.4.16 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

1.4.17 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;

1.4.18 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and

1.4.19 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

1.5 We express no opinion as to any provisions of the Agreement other than those to which express reference is made in this opinion letter except insofar as any such provision relates to the effectiveness of the Security Interest Provisions.

1.6 We express no opinion as to any matters of fact.

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 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.

2.4 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.

2.5 That the Agreement has been properly executed by both Parties.

2.6 That the Agreement is entered into prior to the commencement of any bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or analogous proceedings (in particular, bankruptcy proceedings with a liquidation option (*postępowanie upadłościowe obejmujące likwidację majątku*) or bankruptcy proceedings with a composition option (*postępowanie upadłościowe z możliwością zawarcia układu*) under the Bankruptcy Law (each "**Bankruptcy Proceedings**") or recovery proceedings (*postępowanie naprawcze*) under the Bankruptcy Law ("**Recovery Proceedings**")) in respect of either Party.

2.7 That the Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, 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.

2.8 That the Agreement accurately reflects the true intentions of each Party.

2.9 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 Interest Provisions or the Rehypothecation Clause under the governing law of the Agreement.

2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

2.11 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.

2.12 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.

2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.

2.14 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view,

an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

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 the account-held securities constituting a Collateral are book-entry Financial Instruments (*niematerialne instrumenty finansowe*).

2.17 That the book-entry securities which are subject to the Security Interest Provisions are directly-held dematerialised securities and the omnibus accounts *(rachunki zbiorcze)*, in the meaning set out in Article 8a of the Act on Trading, will not be used for the purpose of entering into Transactions and/or providing or receiving Margin under the Agreements.

2.18 Other than for the purpose of the opinion given at paragraph 3.3, the Counterparty has its "centre of main interests" within the meaning of the EU Insolvency Regulation in this jurisdiction.

2.19 That the cash which is subject to the Security Interest Provisions is credited to an account (it is not physical notes or coins).

2.20 That the Counterparty was not created by way of an act of Polish statute (*ustawa*) (unless the statute provides that such a Counterparty may be declared bankrupt) and was not created in the performance of an obligation imposed by a Polish statute (*ustawa*) as referred to in Article 6.4 of the Bankruptcy Law.

2.21 That the Counterparty is not entitled to claim in relation to itself or its assets immunity from suit, attachment, execution or other legal process.

2.22 That this opinion letter relates solely to matters of the laws of this jurisdiction and does not consider the impact of any laws (including insolvency laws) other than the laws of this jurisdiction, even where, under the laws of this jurisdiction, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by the laws of this jurisdiction and relate only to the laws of this jurisdiction as applied by the Polish courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by the laws of this jurisdiction. We express no opinion in this opinion letter on the laws of any other jurisdiction.

2.23 This opinion letter expresses and describes Polish legal concepts in the English language rather than in their original form and such expressions and/or descriptions

may not be fully identical in their meaning to the underlying Polish law concepts. Any issues of interpretation arising in respect of the Agreement which are in the English language or with respect to this opinion will be determined by the Polish courts in accordance with the laws of this jurisdiction, and we express no opinion on the interpretation that the Polish courts may give to any such expressions or descriptions.

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 The Security Interest Provisions would create a valid security interest over the Collateral.

3.1.2 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein.

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.

3.3 Foreign Collateral Providers

Moreover, the opinions given at paragraphs 3.1 and 3.2 also apply in respect of any Counterparty that is not established or resident in this jurisdiction, where any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located within this jurisdiction.

3.4 **Right of re-use**

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

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

4. QUALIFICATIONS

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

4.1 Conflict of laws and effectiveness of Security Interest

4.1.1 The laws of this jurisdiction distinguish between the obligation to provide security (contractual rights) and the creation of the security interest (property rights). The creation as such results in effective security and constitutes the fulfilment of the obligation to provide security.

4.1.2 The courts of this jurisdiction will apply the following conflict of laws rules to the property rights on the Collateral in the form of securities:

(a) as a general rule, pursuant to Article 41 of the Act of 4 February 2011 – Private International Law (*ustawa z dnia 4 lutego 2011 roku Prawo prywatne międzynarodowe,* the "**Private International Law**"), rights *in rem* (property rights) are governed by the laws of the state in which the subject of these rights is located;

(b) Article 44 of the Private International Law provides that the rights resulting from the entry on an account kept in a securities settlement system are governed by the law of the country where that account is kept;

(c) further, pursuant to Article 12.2 of the Settlement Finality Act, where securities are provided as collateral security to participants, the National Bank of Poland, a central bank of a EU member state other than Poland or a central bank of Island, Lichtenstein or Norway, or the European Central Bank, and their rights with respect to the securities is recorded:

(i) in a register or account located in this jurisdiction – the rights of such entities arising from the securities are governed by the laws of this jurisdiction;

(ii) in a register or account located in another EU member state, Island, Lichtenstein or Norway – the rights of such entities arising from the securities are governed by the laws of that other state; and

(d) pursuant to Article 13 of the FCA Act, in respect of book-entry Financial Instruments subject to financial collateral, the laws of the jurisdiction where the relevant securities account is maintained will be decisive in respect of the rights arising from the financial collateral, the priority of rights, and the steps required for the realisation of the financial collateral, as well as the good faith acquisition of the book-entry securities.

These conflict of laws rules are mandatory and cannot be changed by the parties.

4.1.3 In this jurisdiction, Collateral in the form of cash credited to an account will be treated as a receivable under an account where the Counterparty is a creditor and the account provider is the debtor. Consequently, the Security Interest over that Collateral will be established over the Counterparty's receivable. The Private International Law does not clearly determine which law should be decisive in respect of proprietary aspects of security interest established on a receivable. We believe that the law which governs the receivable should govern the creation of the security interest on the receivable and that the receivable is governed by the law governing the agreement under which the receivable is created.

4.1.4 If a claim has been effectively brought before a Polish court, we believe that the courts in this jurisdiction will apply the laws of the jurisdiction determined in accordance with the rules discussed in paragraphs 4.1.2 and 4.1.3 to the validity and perfection of the Security Interest.

4.1.5 In this opinion letter we express no opinion as to:

(a) whether a Counterparty has created a valid Security Interest over the Collateral if the foreign law is decisive as far as proprietary aspects are concerned;

(b) whether the Counterparty has good legal or other title to the Collateral, or as to the existence or value of the Collateral; or

(c) whether any events in relation to the Collateral or issuer of Collateral may devalue the Collateral or impair a Firm's ability to enjoy such Collateral or the full value thereof.

4.2 Effectiveness of Security Interest

4.2.1 Provided that the laws of this jurisdiction are decisive as far as proprietary aspects of the Collateral are concerned, the validity of the Security Interest will be assessed under the laws of this jurisdiction and, consequently, our opinions in this opinion letter are subject to the following qualifications.

4.2.2 Under the laws of this jurisdiction, when examining the meaning of a contract one should examine what the congruent intention of the parties and the purpose of that contract was, rather than simply rely on the literal wording of that contract. Therefore, when interpreting a contract, a court can also take into consideration circumstances outside the scope of the wording of the contract that indicate the congruent intention of the parties and purpose of the contract, divergent from its literal wording. Consequently, to apply the laws of this jurisdiction to a Security Interest, the court in this jurisdiction will need to establish what type of security interest the Parties intend to create under the Security Interest Provisions.

4.2.3 Based on our reading of the Security Interest Provisions, we believe that the intention of the Parties to the Agreement is to create a security interest over the Collateral which remains the property of the Counterparty. Consequently, we believe that the Polish law security interest closest to the intention of the Parties expressed in the Security Interest Provisions is any of the following: a Financial Pledge (as defined below), a pledge regulated in the Civil Code (the "**Ordinary Pledge**"), or a registered pledge regulated in the Act on Registered Pledges (the "**Registered Pledge**").

4.2.4 In our view, the Financial Pledge would be the most practical. It does not involve any time-consuming or complex perfection requirements, allows relatively easily for the substitution of collateral and top-up arrangements and can give the collateral taker a right of use in respect of the collateral (in other words, a right to "rehypothecate" the collateral.) It also gives the collateral taker the most flexibility when it comes to enforcement.

4.2.5 The Registered Pledge requires a registration with the court and is not effective until such registration in a register. It is also less flexible when it comes to operational maintenance and enforcement (e.g. it requires the pledgee to wait for at least seven days after it has notified the pledgor before it can take enforcement actions).

4.2.6 The Ordinary Pledge is also much less flexible than the Financial Pledge. Its key disadvantage is that it cannot give the pledgee any out-of-court enforcement options available in the case of the Financial Pledge and Registered Pledge.

Below, we provide a more detailed analysis of the Security Interest Provisions from the perspective of each of those types of security interest.

4.3 Financial Collateral Arrangements

4.3.1 In this jurisdiction, financial collateral is primarily regulated in the FCA Act which implements Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Collateral Directive**"). The FCA Act provides for the following types of collateral arrangement: a financial pledge (the "**Financial Pledge**"), a transfer of title to cash or credit claims or financial instruments (the "**Collateral Transfer**"), and a blockade over a brokerage account, an omnibus account or other relevant account or a deposit account (the "**Blockade**"). Since we believe that the intention of the Parties expressed in the Security Interest Provisions is not to create a Collateral Transfer or a Blockade, we will only examine the Security Interest Provisions from the perspective of the provisions of the laws of this jurisdiction applicable to a Financial Pledge.

4.3.2 The Security Interest created under the Security Interest Provisions may constitute financial collateral as provided for in the FCA Act provided that the collateral arrangement is made between at least one Party being eligible under the FCA Act to be a party to a financial collateral arrangement, i.e.: the National Bank of Poland, a central bank of another state, the European Central Bank, the European Investment Bank, the Bank for International Settlements, the International Monetary Fund, a multilateral development bank as defined in Annex VI, Part I, Section 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, an investment firm, an investment fund manager to the extent it manages open investment funds, an open investment fund, a company managing a foreign fund, a bank, a credit institution, a financial institution, a cooperative savings and credit society, the National Cooperative Savings and Credit Society, a pension fund, a central partner, a settlement agent, a clearing house, an insurance undertaking, a reinsurance undertaking, a public administration body acting on behalf of the Polish State Treasury, an EU country public administration body competent for public debt administration or authorized to keep accounts for its clients. An individual (*osoba fizyczna*) cannot be a party to a financial collateral arrangement.

4.3.3 Financial collateral may only secure a financial claim (*wierzytelności finansowe*), i.e. pecuniary debts (i.e. obligations to pay cash) or receivables where performance is limited to the delivery of Financial Instruments.

4.3.4 Article 5.2 of the FCA Act contains, among others, a requirement that a financial collateral arrangement specify the term (*termin*) for which the collateral is provided. This requirement can be interpreted in a manner that the collateral agreement should specify a long-stop date after which the collateral arrangement should expire (and collateral be returned) regardless of whether the secured obligations will have been satisfied or not by that date. We note that the Agreement does not contain any such provision. Therefore, to the extent the Collateral is located in this jurisdiction, it is worth considering whether a general long-stop date to satisfy the requirement of Article 5.2 could be added in the Agreement.

4.3.5 The FCA Act does not impose any burdensome perfection requirements to make a Financial Pledge effective. The financial pledge agreement should be executed in writing, and the entity that maintains the relevant account has to make a "note" in the securities account and in the account where the cash is credited, as the case may be, that the Financial Pledge has been created. We believe that the "note" referred to above itself is not necessary for the perfection of the Financial Pledge, and it would be sufficient to notify the account provider about the creation of the Financial Pledge. As far as the Financial Pledge is to be created on the Collateral in the form of book-entry Financial Instruments, the following additional comments apply.

4.3.6 We note that the Ordinance of the Minister of Finance of 24 September 2012 on the Method and Terms of Conduct of the Investment Firms and Banks Referred to in Art. 70.2 of the Act on Trading in Financial Instruments and of Custodian Banks (*rozporządzenie Ministra Finansów z dnia 24 września 2012 roku w sprawie trybu i warunków postępowania firm inwestycyjnych, banków, o których mowa w art. 70 ust. 2 ustawy o obrocie instrumentami finansowymi, oraz banków powierniczych)* which is a secondary legislation to the Act on Trading (the "**2012 Secondary Legislation**") provides for an obligation on the part of Polish investment firms or custodian banks to "block" Financial Instruments deposited in an account maintained by them that are subject to a Financial Pledge. Such a "blockade" should be imposed by the securities account provider after it receives a copy of the pledge agreement based on an instruction issued by the pledgor in writing or by way of electronic means of communications. In general, the instruction referred to above can be issued by the pledgee (i.e. a Firm) based on an irrevocable power of attorney granted by the pledgor (i.e. a Counterparty) to the pledgee.

4.3.7 We believe that a "blockade" referred to above, while standard practice in Poland and normally expected by local securities account providers to immediately follow the execution of a financial pledge agreement, is technically not necessary for the creation of a valid and effective security interest in the form of a Financial Pledge. We believe that it is possible to establish the "blockade" later if and when it becomes necessary to "crystallise" the Financial Pledge following an enforcement event. This idea assumes that the Firm would be able to issue an instruction to block the securities on behalf of the Counterparty when it is necessary to "block" the securities. Such a solution would give the parties more flexibility as it would allow for the assets to go in and out of the securities account on a daily basis but the Firm would still be able to enforce the Financial Pledge if and when needed. We note that the Agreement does not contain such a power of attorney. Therefore, to the extent the Security Interest is governed by the laws of this jurisdiction, it is worth considering whether a power of attorney could be added in the Agreement.

4.3.8 We believe that the more flexible solution referred to in the previous paragraph would not breach the applicable regulations, in particular the 2012 Secondary Legislation. On the other hand, we note that some local security account providers tend to be conservative and it is, therefore, highly recommended to discuss the proposed collateral structure with them beforehand and take into account its practices and relevant terms and conditions.

4.3.9 If the Polish security account provider does not accept the flexible solution, then a "blockade" over securities in the security account will need to be imposed: (i) at the beginning of the Financial Pledge; and (ii) each time that additional securities are credited to the securities account. The "blockade" will have to be lifted each time a transfer out of the securities account will have to be effected. It should be possible to provide for a flexible solution in that respect, i.e. especially to allow for transfers out of the accounts, but this solution is clearly slightly less flexible than the solution with a "blockade" for "crystallisation" purposes.

4.3.10 The Civil Code provides for an express requirement that an ordinary pledge agreement must have a formally authenticated date, e.g. by a notary public (*data pewna*) in order to be effective vis-à-vis the creditors of the pledgor. We are aware that certain law firms in this jurisdiction represent a view that this requirement should also apply to Financial Pledges. In our view, however, this should not be the case because the Financial Pledge was introduced into the Polish legal system in order to implement the Collateral Directive. Pursuant to the Collateral Directive, EU member states may not impose any requirements

in respect of the perfection of financial collateral except that the financial collateral should be delivered to the other party. In particular, Article 3 of the Collateral Directive states that EU member states cannot require parties to a financial collateral arrangement to perform any formal acts (except for evidencing the financial collateral arrangement in writing) to validly create and perfect and to ensure the enforceability or admissibility as evidence of the financial collateral. Poland is a member of the European Union, and the Polish courts are required to interpret Polish law in compliance with Community law. Accordingly, we believe that the Security Interest construed under the Security Interest Provisions which constitutes financial collateral in the form of a Financial Pledge should be upheld even without a formally authenticated date.

4.3.11 The Financial Pledge would give a Firm a right to appropriate the Collateral, i.e., essentially, to transfer the Collateral from the account held for the Counterparty into an account held for the Firm. An account provider would execute an instruction to transfer the pledged Financial Instruments based on the power of attorney granted to it by the Counterparty in the agreement. We note that in the Agreement there is no such power of attorney. Therefore, to the extent the Security Interest is governed by the laws of this jurisdiction, it is worth considering whether a power of attorney could be added in the Agreement. For listed securities the appropriation would be for a value resulting from the closing price for the trading date as at the date of appropriation or another most recent trading day on the relevant listing venue. For non-listed securities a valuation method should be agreed on in the agreement. Cash would be appropriated, as a rule, at its value without any haircuts, subject to cross-currency conversion if necessary, in which case the financial pledge agreement should provide for a conversion mechanism. Once the assets have been appropriated, the Firm will be able to sell them/liquidate them.

4.3.12 Where the Secured Obligations are secured by the Financial Pledge the Firm will also be allowed to satisfy the Secured Obligations in accordance with the provisions pertaining to court enforcement. Court enforcement is the least flexible enforcement method. It requires the involvement of a bailiff and is time consuming.

4.3.13 It is not entirely clear whether the pledgee may exercise the right of appropriation if an unsecured creditor of the pledgor (other than the pledgee) (or a creditor who is secured but has a lower priority) institutes enforcement proceedings against the pledgor and the assets in the accounts (securities or cash) are subject to attachment and enforcement by a bailiff pursuant to the Civil Procedure Code. It can be argued that the pledgee of a Financial Pledge is authorised to perform the right of appropriation under a financial pledge

agreement even after the attachment. However, there are certain doubts in this respect.

4.3.14 When the pledgee becomes aware of the enforcement, it will be entitled to:

(a) join the enforcement proceedings (which requires an appropriate motion to be filed by the pledgee with the court bailiff, such motion must be accompanied with an enforcement title, and if the pledgee intends to recover all amounts due under the relevant agreement, such agreement must be terminated) and to receive enforcement proceeds to satisfy its claim (to the extent it is due and payable); or

(b) the pledgee will also be able to file a claim for the exclusion of the assets from the enforcement.

Although this is not directly stated in the Civil Procedure Code, it is confirmed in cases where the Supreme Court confirmed the right of a pledgee to file such a claim referred to in paragraph (a).

4.3.15 Even if the pledgee fails to either join the enforcement proceedings or file a claim for the exclusion of the receivables from the enforcement, the court bailiff carrying out the enforcement proceedings while preparing the so-called 'division plan' is obliged to include the pledgee's claim (if the bailiff is aware of the existence of the pledgee's claim). If the pledgee does not have a valid enforcement title on the date on which the division plan is prepared, the enforcement proceeds due to the pledgee will be deposited by the court bailiff in the court's deposit account. The pledgee joining the enforcement proceedings will participate in the division plan only if not later than on the date on which the enforcement proceeds are credited to the court's deposit account, it files with the court bailiff a written list of its claims together with evidence of the establishment of the financial pledge in its favour confirmed in official documents (*dokument urzędowy*) or by a document with notarised signatures.

4.3.16 The FCA Act, unlike the law directly applicable to a Registered Pledge and the Ordinary Pledge, does not specify the rules applicable to a conflict of a Financial Pledge and other encumbrances over the same assets or rights. Therefore, there are controversies in jurisprudence in relation to the priority of the Financial Pledge and other security interests established over the same assets or rights. Pursuant to Article 310 of the Civil Code (which is believed by some commentators to apply to Financial Pledge), a Financial Pledge established later than another Financial Pledge should have a higher priority provided that the pledgee under such later financial pledge has acted in good

faith. However, there is also a contrary view – that Article 249 of the Civil Code applies to any Financial Pledge. Pursuant to that view, a limited right *in rem* (such as a Financial Pledge) established later cannot be invoked to the detriment of a right established earlier. These controversies have not been conclusively resolved by the laws of this jurisdiction, and it seems that there are an insufficient number of court judgments to support any conclusive opinion in this respect.

4.3.17 A Financial Pledge established over receivables under a bank account in favour of a bank operating that account might be questioned as it is established over a receivable which is due from the pledgee. This risk relates to cash credited to an account maintained for a Counterparty by a Firm which, at the same time, is a pledgee in respect of the Financial Pledge created in its favour under the Security Interest Provisions.

4.4 Ordinary Pledge

4.4.1 An Ordinary Pledge may be established only on movable assets or transferable economic rights. Such movables or rights must exist and be the property of the pledgor at the time the Ordinary Pledge is established. Consequently, an Ordinary Pledge may be established on the Collateral if the Collateral exists when the Ordinary Pledge is established.

4.4.2 A civil pledge may secure all kinds of debts. The debt must be described, but it does not need to exist at the time the security is created. It may be future or conditional in nature. A civil pledge secures not only the principal amount of the debt, but also (subject to statutory limits) certain ancillary claims, such as interest and expenses incurred in maintaining the pledged asset (including the costs of taking legal action in order to protect the pledgee's interest).

4.4.3 There are no particular terms that must be included in the agreement for an Ordinary Pledge. In the case of an Ordinary Pledge on the pledgor's rights, the pledge agreement must have a formally authenticated date, e.g. by a notary public (*data pewna*).

4.4.4 An Ordinary Pledge is a "possessory" interest. The creation of an Ordinary Pledge is effected by the delivery to the pledgee or a third party, agreed upon by the parties, of the subject of the Ordinary Pledge (a document incorporating the pledgor's right), unless the law provides otherwise. An Ordinary Pledge over the pledgor's rights (such as the Collateral) is an exception to this rule, and it is established through the execution of a pledge agreement and notification of the debtor. Book-entry securities would, however, be "blocked"

in the securities account (our comments in paragraph 4.3.6–4.3.9 apply accordingly).

4.4.5 An Ordinary Pledge essentially grants an *in rem* right to realise the collateral at maturity upon default of the pledgor in order to discharge the secured claim. However, the rules of the Civil Code require the pledgee to keep the collateral in safe custody at all times.

4.4.6 There have been doctrinal controversies as regards the priority of Ordinary Pledges over rights. Arguments may be raised that an Ordinary Pledge over a right established later than another Ordinary Pledge has a higher priority, provided that the pledgee under such later Ordinary Pledge has acted in good faith.

4.4.7 In the case of an Ordinary Pledge, the creditor satisfies its claims from the subject of the pledge in accordance with the provisions pertaining to the judicial enforcement proceedings. This means that a Firm wishing to satisfy its claims from the Collateral must first obtain an executory document with a writ of execution and then submit an application to the bailiff to carry out the execution. Therefore, an agreement that in the case of the Counterparty's default the Firm would be entitled to apply money constituting the Collateral towards the satisfaction of the Secured Obligations or that the Firm would be entitled to sell the book-entry securities constituting the Collateral and apply the proceeds of the sale towards the satisfaction of the Secured Obligations, will not be enforceable.

4.5 Registered Pledge

4.5.1 A Registered Pledge may be established on, among others, receivables and on securities and, consequently, a Registered Pledge may be established on the Collateral.

4.5.2 A Registered Pledge may secure only pecuniary debts (i.e. obligations to pay cash). The debt must be specified. It may be future or conditional in nature. A Registered Pledge secures not only the principal amount of the debt but also (subject to statutory limits) certain ancillary claims, such as interest. However, (1) a future or conditional debt and (2) an existing debt the value of which is not known on the date of execution of the registered pledge agreement, may only be secured up to the highest amount of security specified in the registered pledge agreement. We note that the Agreement does not contain any such provision.

4.5.3 The creation of a Registered Pledge is effected by an agreement and registration of the Registered Pledge in the register of pledges, which is

maintained by the Polish court. The Registered Pledge will become effective from the actual date of registration in the register of pledges. The subject of such pledge does not have to be transferred to the pledgee. Book-entry securities would, however, be "blocked" in the securities account of the pledgor (our comments in paragraph 4.3.6–4.3.9 apply accordingly).

4.5.4 A Registered Pledge registered prior to another Registered Pledge has a higher priority and the date when the application for registration is delivered to the appropriate court is decisive in this case. If applications for the registration of Registered Pledges are filed on the same date, then such Registered Pledges have the same priority.

4.5.5 It is required that an agreement for a Registered Pledge to be created specifies, among other things, the subject of the Registered Pledge. We note that the description of the Collateral contained in the Agreement might be found to be too general for this purpose.

4.5.6 A Registered Pledge will allow a Firm to satisfy the Secured Obligations through court enforcement proceedings on the same basis as an Ordinary Pledge. If the Secured Obligation is being satisfied in the course of execution against the Collateral, then, pursuant to Art. 1025 of the Civil Procedure Code, the Secured Obligation secured by a Registered Pledge will be satisfied out of the proceeds of the execution with priority over claims secured by an Ordinary Pledge.

4.5.7 However, the laws of this jurisdiction also provide for the following of non-executory methods of satisfying claims from the subject of the Registered Pledge besides the procedure of satisfying the creditor in accordance with the provisions pertaining to court enforcement proceedings:

(a) the pledgee assumes ownership title to the subject of the pledge;

(b) the subject of the Registered Pledge is sold through a public tender (this method, however, does not apply to the sale of the Financial Instruments); and

(c) the pledgee draws income derived from the subject of the Registered Pledge.

4.5.8 In order to benefit from the above-mentioned methods the agreement for the establishment of a Registered Pledge must provide for these methods of enforcement. If the agreement is silent in this respect the Registered Pledge may only be enforced through court enforcement proceedings.

4.5.9 Based on our reading of the Security Interest Provisions, a Firm might be entitled to assume ownership of the pledged money by notice to the Counterparty, and the seizure value of the collateral will be set off against the outstanding amount of the secured debt. However, for the right of seizure to be effective it is necessary to determine the value of collateral for the purpose of the seizure where the seizure value may be a seizure value specified in the agreement or a value determined in accordance with the agreement, and we note that the Agreement does not contain any such provision. In addition, we are of the view that the seizure would be effective only if the pledged money were credited in an account maintained by the Firm. Before this option is exercised by a Firm, the Firm needs to notify the Counterparty of its intention to use that option, in which case the Counterparty has a seven days to satisfy the Secured Obligation or to apply to the court to determine that the Secured Obligation does not exist or is not yet due and payable.

4.5.10 If a creditor institutes enforcement proceedings against a Counterparty, the Collateral encumbered with the Registered Pledge may be subject to attachment and enforcement even if the enforcing creditor has an unsecured claim or a claim which is secured but has lower priority than the Secured Obligation. The court bailiff is not obliged to investigate whether the relevant asset is encumbered, nor is he obliged to notify a pledgee of the commencement of execution proceedings unless they relate to a claim exceeding PLN 20,000 (in which case the court bailiff should check the registry of Registered Pledges and notify registered pledgees of the attachment). If a Firm becomes aware of the execution, it will be entitled to join the execution proceedings (which requires an appropriate motion to be filed by the Firm with the court bailiff) and to receive execution proceeds to satisfy the Secured Obligation (subject to the Secured Obligation's being due and payable, and subject to other claims (if any) that rank higher pursuant to the statutory order of priority). Alternatively, the Firm will also be able to file a claim for the exclusion of the relevant asset from the execution (although this view is not commonly accepted, and will not apply if the other creditor has a claim secured on the relevant asset). After the execution proceedings towards the Collateral encumbered with the Registered Pledge are instigated, a Firm will not be entitled to exercise an alternative option referred to in paragraph 4.5.9.

4.5.11 By operation of law, a Registered Pledge expires and is to be deleted from the pledge register 20 years from the date of its registration unless the parties decide to maintain the pledge for a further period of time, not longer than ten years, and an amendment to the pledge agreement is submitted to the pledge register. In our view, although there are no precedents or legal writings to

confirm the same, such amendment can be executed at any time after the Registered Pledge is registered but prior to the lapse of 20 years from its registration.

4.6 Rehypothecation

4.6.1 Generally, the right of a security taker to rehypothecate the Collateral is not in accordance with the basic concept of the laws of this jurisdiction concerning pledges, and the laws of this jurisdiction concerning both an Ordinary Pledge and a Registered Pledge do not provide for any right of the security taker to use or dispose of collateral prior to the maturity of the secured claim. Even at maturity, the Firm will not be entitled to use or dispose of the Collateral at its discretion; it must liquidate the Collateral in the manner prescribed by law or by the Agreement.

4.6.2 However, the FCA Act introduces an exception to this rule. Consequently, to the extent the Agreement and the Counterparty's obligations thereunder constitute a financial collateral arrangement (as referred to in paragraph 4.3), and since it has been agreed in the Agreement, a Firm will be allowed to exercise a right of use in relation to a Financial Pledge.

4.7 Limitations arising from Bankruptcy Law

4.7.1 Bankruptcy Proceedings in Poland are regulated by the Bankruptcy Law. The Bankruptcy Law also provides for separate Recovery Proceeding, which do not constitute insolvency proceedings but can affect rights of creditors. The Bankruptcy Law implements in this jurisdiction Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganization and winding up of credit institutions and Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganization and winding-up of insurance undertakings.

4.7.2 The Bankruptcy Law may limit the enforcement or effectiveness of the Security Interest. In particular, we note that:

(a) any proof of claim in bankruptcy proceedings in this jurisdiction should be made by a creditor or its representative (being a qualified Polish attorney or other eligible person appointed in accordance with the Civil Procedure Code);

(b) any claims expressed in foreign currencies are subject to conversion into the Polish currency upon the date of declaration of bankruptcy;

(c) if insolvency proceedings in this jurisdiction are carried out with the possibility of reaching a composition, the termination or modification of terms of a contract entered into by the bankrupt is only possible pursuant to the Bankruptcy Law; and

(d) under the Bankruptcy Law, any contractual provisions stipulating that the creditor has the right to accelerate the debtor's obligations upon the debtor's bankruptcy (whether automatically or subject to a notice) are void.

4.7.3 Moreover, the Bankruptcy Law includes certain claw-back provisions which, under Article 127 of the Bankruptcy Law include the following:

(a) any legal acts performed by the bankrupt during the year before the date that the bankruptcy petition was filed that result in the disposal of its assets shall be ineffective vis-à-vis the bankrupt estate if made for no consideration or if made for consideration but the value of the bankrupt's performance grossly exceeds the value of the consideration received by or stipulated for the bankrupt or a third party;

(b) the creation of security (including an Ordinary Pledge and Registered Pledge) in respect of a debt not yet due and payable and made by the bankrupt during a period of two months before the date the bankruptcy petition was filed, shall also be ineffective vis-à-vis the bankrupt estate. The recipient of the payment or security may by means of a suit or allegation demand that such actions be declared effective if at the time the action was carried out the recipient was unaware of the grounds for declaring bankruptcy.

However, pursuant to Article 127.4 of the Bankruptcy Law, the claw-back provisions referred to in this paragraph 4.7.3 do not apply to security interest relating to, among others, term financial contracts as referred to in Article 85.1 of the Bankruptcy Law. Therefore, to the extent the Security Interest is provided in connection with transactions which are either the term financial operations or the lending of Financial Instruments or repo, the claw-back provisions referred to above will not apply to the Security Interest.

4.7.4 In addition, pursuant to Article 128 of the Bankruptcy Law, any legal act carried out by the bankrupt for consideration during the period of six months before the date the bankruptcy petition is filed, with the bankrupt's affiliated company, shall be ineffective vis-à-vis the bankrupt estate.

4.7.5 Also, according to Article 527 of the Civil Code if, as a result of a legal transaction effected by the debtor to the detriment of its creditors (i.e., where

the debtor became insolvent or became insolvent to a greater extent as a result of the transaction) a third party has gained a benefit, each of the creditors (or, if the debtor is declared bankrupt, the relevant bankruptcy officer) may demand that that transaction be recognised as ineffective with regard to it if:

(a) the debtor consciously acted to the creditors' detriment; and

(b) the third party knew or, had it acted with due diligence could have known that the debtor was acting to the detriment of its other creditors (and the third party's knowledge is presumed if it remained in a permanent economic relationship with the debtor).

In general, out of bankruptcy, an action based on this article can be raised within five years of the date of the transaction in question, and in bankruptcy, the action can be raised by the bankruptcy officer within two years of the declaration of bankruptcy; in certain circumstances, however, the action can be raised even after two years of the declaration of bankruptcy, but in either case such challenges are subject to the general period of five years, commencing on the date of the transaction in question.

Neither the FCA Act nor the Bankruptcy Law disapply the operation of Article 128 of the Bankruptcy Law or Article 527 of the Civil Code in respect of term financial operations or the lending of Financial Instruments or repos or financial collateral arrangements relating to such transactions.

4.7.6 Pursuant to Article 77.1 of the Bankruptcy Law all acts of an insolvent party in respect of assets included in the bankrupt estate are void. This, however, has been excluded in respect of the financial collateral arrangements where the conclusion of the relevant arrangement or the establishment of the financial collateral (such as a Financial Pledge) took place on a day the bankruptcy was declared, provided that the solvent party did not know and acting with due care could not have known about the instigation of the Bankruptcy Proceedings.

4.7.7 The Security Interest created pursuant to the laws of this jurisdiction may be affected by any relief granted by a Polish bankruptcy court upon the application for relief by a foreign bankruptcy representative or upon the recognition of a foreign bankruptcy proceeding.

4.7.8 If Recovery Proceedings are opened against a Party, pursuant to Article 498 of the Bankruptcy Law, among others, the performance of the obligations of the Party to which the proceedings relate is suspended; also a set-off of claims is restricted. However, the institution of Recovery Proceedings does not apply to claims resulting from the financial collateral arrangement if the obligation to establish financial collateral or the right to withdraw collateral was established

on the day the recovery proceedings were instituted and the secured financial claims arose before the establishment of the financial collateral. Also, the institution of Recovery Proceedings will not affect the remedies afforded by contractual close-out netting provisions relating to financial collateral arrangements.

4.7.9 The EU Insolvency Regulation applies directly in this jurisdiction. Consequently, provided that the Counterparty is not an insurance undertaking, credit institution, investment undertaking holding funds or securities for third parties and collective investment undertakings, the following additional qualifications apply:

(a) if the centre of the Counterparty's main interest ("**COMI**"), understood as the place where the Counterparty conducts the administration of its interests on a regular basis and is therefore ascertainable by third parties (there is a presumption that the COMI is where the registered office is located but this may not always be the case), is located in this jurisdiction, Bankruptcy Proceedings might be opened against that Counterparty. In such a case, the Bankruptcy Proceedings, which would be considered to be main proceedings, will have a universal scope encompassing all the Counterparty's assets. However, if the Counterparty has an establishment (within the meaning in the EU Insolvency Regulation) in a EU member state other than Poland or Denmark, the courts of that EU member state will have jurisdiction to open secondary proceedings which will be restricted to the assets which are located (or deemed under the EU Insolvency Regulation to be located) in that EU member state.

(b) Generally, the law applicable to insolvency proceedings and their effects is the law of the EU member state within the territory of which such proceedings are opened. However, the EU Insolvency Regulation provides for certain exceptions to this rule. Pursuant to Article 5.1 of the EU Insolvency Regulation, creditors' or third parties' rights *in rem* in respect of assets belonging to the debtor which are situated within the territory of another EU member state at the time of the opening of proceedings are not affected by the opening of insolvency proceedings. Consequently, the opening of Bankruptcy Proceedings will not affect the Security Interest if pursuant to the laws of this jurisdiction the property aspects of the Security Interest are governed by the laws of such other jurisdiction.

(c) The law of the EU member state in which the proceedings are opened will determine, among others, the rules relating to the voidness,

voidability or unenforceability of legal acts detrimental to all the creditors. Consequently, if a court in this jurisdiction started the Bankruptcy Proceedings against the Counterparty, the claw-back rules referred to in paragraphs 4.7.3 – 4.7.5 will apply.

(d) Moreover, Security Interest created in accordance with the laws of this jurisdiction may be held to be wholly or partly invalid as a result of the opening of insolvency proceedings, within the meaning of the EU Insolvency Regulation, against a Counterparty in another Member State or as a result of the courts in this jurisdiction being required, under the EU Insolvency Regulation, to give effect to the law of that EU member state or to recognise or enforce any judgment of a court of that EU member state concerning those proceedings.

(e) In this jurisdiction, the EU Insolvency Regulation applies to Bankruptcy Proceedings and it does not apply to Recovery Proceedings.

4.7.10 To the extent the EU Insolvency Regulation does not apply, and provided that there is no international treaty to which Poland is a party, the courts in this jurisdiction will have exclusive jurisdiction in bankruptcy cases relating to a Counterparty whose COMI is in this jurisdiction. The Polish court may recognise insolvency proceedings opened in another jurisdiction and, in such a case, the effects of the declaration of bankruptcy as to the Counterparty's assets located in this jurisdiction and as to the obligations that have originated or are to be performed in this jurisdiction, are subject to the laws of this jurisdiction. Also, the ineffectiveness and voidance of the Counterparty's transactions relating to the assets located in this jurisdiction will be subject to the laws of this jurisdiction. The laws of this jurisdiction will also apply to the satisfaction of claims secured by rights *in rem* on assets situated in this jurisdiction or entered into registers in this jurisdiction. Consequently, comments in paragraphs 4.7.3 – 4.7.5 will apply accordingly.

4.7.11 The Bankruptcy Law does not provide for any rules concerning enforcement of security interest established pursuant to the laws other than the laws of this jurisdiction.

4.8 Further qualifications

4.8.1 Under the laws of this jurisdiction, *in rem* security interests (such as pledges) generally grant priority of satisfaction upon enforcement of the relevant secured claim (subject to applicable rules establishing priority between different security interests and other rights over the encumbered asset).

However, in any event the secured obligation will be satisfied after certain costs and debts preferred by mandatory provisions of Polish law have been satisfied, depending on the method of enforcement.

4.8.2 The enforcement or effectiveness of the Security Interest may also be limited by prescription of time, applicable administration, enforcement, liquidation or other laws relating to or affecting the scope of contractual obligations or enforcement of creditors' rights generally, including but not limited to the Civil Code, the Civil Procedure Code or the Act of 29 August 1997 Tax Ordinance.

4.8.3 A pledge is closely connected to the claim secured. In practice, this means that the invalidity of the Secured Obligations will entail the automatic invalidity of the pledge (either an Ordinary Pledge, a Registered Pledge or a Financial Pledge) established on the Collateral. The expiry of the Secured Obligations will also mean the expiry of the pledge established on the Collateral. A pledge established on the Collateral cannot be transferred without transferring the Secured Obligations.

4.8.4 The obligations of the respective parties under an agreement can be cancelled or modified by a competent court if, following an extraordinary change of circumstances, the performance of the agreement would result in excessive difficulties or threaten one of the parties with substantial losses which the parties did not foresee when concluding the agreement. The above-mentioned rule, known as the *rebus sic stantibus* clause, is aimed to provide a remedy for a party in a situation where in the period between the conclusion of the agreement and the execution of the performances set in that agreement a material and unexpected change in the circumstances occurs and as a result a party obliged to perform would find itself in a situation resulting in a substantial loss. This remedy is designed as an exception to the *pacta sunt servanda* rule. In the opinion of some legal scholars a deep economic crisis or major transformations in the structure of the domestic and international market may be classified as such extraordinary changes of circumstances. In one of its rulings the Supreme Court (*Sąd Najwyższy*) stated that an extraordinary change of circumstances should be understood as a state of affairs resulting from circumstances which are not covered by a typical contractual risk and are of an objective nature and, therefore, independent of the parties, which was not foreseen by them upon the conclusion of the agreement and could not have been foreseen by them on any basis. In our view, bearing in mind the current market situations and turbulences on the financial market over the last few years, a situation where the market moves against one party should not be regarded as a situation not covered by the risk associated with the conclusion of agreements such as the Agreement or as a situation that the Parties entering into the Agreement could not foresee and, in consequence, should not be

considered as an extraordinary change of circumstances. However, each time it will be assessed by the court on the basis of the circumstances of a given case.

4.8.5 All contracts and other sources of legal relationship are affected by certain fundamental principles of Polish civil law, such as the prohibition on the misuse of a party's legal right or privilege, the principle of taking into account the socio-economic purpose of each right or claim and the "principles of social co-existence" while interpreting the content of each agreement or legal instrument and other similar principles based on the concepts of equity and public order.

4.8.6 Under the law of this jurisdiction, a right or remedy may be deemed to be waived impliedly (*per facta concludentia*), for example by taking no action in circumstances where the lack of action indicates (e.g. by reference to correspondence or other communication) the intention to grant a waiver. Similarly, a consent may be deemed to be granted impliedly, and an agreement may be deemed to be amended impliedly.

4.8.7 In this jurisdiction there is no doctrine of precedent, i.e. no rule or case upon which one can rely in reviewing or opining on matters relating to the law, and there is a likelihood of different opinions and interpretations on the same issue of the law by different courts; thus the rendering of opinions on the law of this jurisdiction does not warrant that the court considering the potential disputes will adopt the view expressed in the legal opinion.

4.8.8 There are exchange control laws in this jurisdiction relating to the payment of foreign currency obligations.

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). 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,

Andrej Stosio

Clifford Chance
Janicka, Krużewski, Namiotkiewicz
i Wspólnicy spółka komandytowa

SCHEDULE 1
BANKS

Subject to the modifications and additions set out in this Schedule 1 (*Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 1 (*Banks*), a "**Bank**" means a bank in the meaning of the Banking Law and incorporated and existing as either a joint-stock company (*spółka akcyjna*) or a co-operative bank (*bank spółdzielczy*) or a state bank (*bank państwowy*) other than Bank Gospodarstwa Krajowego.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The following additional terms of reference and definitions shall apple:

1.1.1 a reference to an "**EEA Credit Institution**" is to a credit institution (*instytucja kredytowa*) as defined in the Banking Law;

1.1.2 a reference to the "**Banking Law**" is to the Banking Law of 29 August 1997 (*ustawa z dnia 29 sierpnia 1997 roku Prawo bankowe*); and

1.1.3 a reference to the "**PFSA**" is to the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*).

2. ADDITIONAL ASSUMPTIONS

A Bank is neither a mortgage bank (*bank hipoteczny*), nor Bank Gospodarstwa Krajowego.

3. ADDITIONAL QUALIFICATIONS

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

3.1 If the PFSA makes a decision on the takeover of a Bank by another Bank or on the liquidation of a Bank (as the case may be), the surviving Bank or the liquidator (as the case may be) may demand that the content of an obligation incurred within a year before the takeover on the basis of a legal transaction of the Bank taken over or liquidated be changed if as a result of this transaction the other party obtained a receivable on conditions more favourable than the conditions applied at that time by the Bank taken over or by the liquidated Bank.

3.2 In the case of Bank liquidation, the liquidator may also deduct from the receivable of the Bank under liquidation the debt resulting from the bank account when the deadlines for its repayment have not taken place yet.

3.3 In the cases set out in the Banking Law, the PFSA may suspend the Bank's activity. During such suspension this Bank, among other things, does not regulate its obligations, except for those connected with the incurring of reasonable costs of on-going activity.

3.4 In the event of the declaration of bankruptcy of a Bank which operates in at least one EU member state other than this jurisdiction or in a member state of the European Free Trade Association (EFTA) - a party to the agreement on the European Economic Area (EEA) (the "**other EEA jurisdiction**"), and in the event of a declaration of bankruptcy, the opening of arrangement proceedings or any other similar proceedings against a foreign bank (in the meaning of the Banking Law) if it provides services in this jurisdiction and in at least one EU member state or other EEA jurisdiction, the following additional qualifications apply:

3.4.1 in the case of bankruptcy of the Bank, the bankruptcy estate will include the Bank's assets located in a EU member state (other than this jurisdiction) and in any other EEA jurisdiction;

3.4.2 the Firm will have a right to set-off its claims against the claims of the bankrupt Counterparty provided that the set-off is permitted under the law applicable to the Counterparty's claim;

3.4.3 the declaration of bankruptcy will not affect the rights *in rem* on the assets located in the territory of another EU member state or in any other EEA jurisdiction; this, however, will not preclude the actions for voidness or unenforceability of a legal act detrimental to creditors;

3.4.4 the rules of this jurisdiction relating to the voidness and voidability of legal acts detrimental to all creditors will not apply if the law governing any such legal act does not allow any means by which it can be challenged; and

3.4.5 the following conflict of laws rules will apply:

(a) the netting agreements will be governed by the law of the contract which governs such agreements;

(b) the enforcement of rights, the creation, existence or disposal of which presupposes their having been recorded in a register, account or centralised deposit system, will be governed by the law of the state

where the register, account or centralised deposit system is held or located;

(c) subject to sub-paragraph (b), transactions carried out on a regulated market within the meaning of the Act on Trading will be governed by the law of the contractual obligations applicable to the transactions carried out on that regulated market; and

(d) where, by an act concluded after the declaration of bankruptcy, the Bank disposes of rights the creation, existence or disposal of which presupposes their having been recorded in a register, account or centralised deposit system, such act is governed by the law where that register, account or deposit system is held or located.

3.5 The courts in this jurisdiction have no jurisdiction in bankruptcy matters concerning EEA Credit Institutions. Insolvency proceedings against an EEA Credit Institution instigated in a state where the EEA Credit Institution has its registered office will be recognised in this jurisdiction *ipso iure*.

4. MODIFICATIONS TO QUALIFICATIONS

4.1 The following paragraphs shall be deemed deleted:

4.1.1 sub-paragraph 4.7.8;

4.1.2 sub-paragraph 4.7.9; and

4.1.3 sub-paragraph 4.7.10.

SCHEDULE 2
BROKERAGE HOUSES

The opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Brokerage Houses. For the purposes of this Schedule 2 (*Brokerage houses*), "**Brokerage House**" means a brokerage house (*dom maklerski*) within the meaning of the Act on Trading.

SCHEDULE 3
PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 3 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships. For the purposes of this Schedule 3 (*Partnerships*), "**Partnership**" means a partnership (*spółka osobowa*) within the meaning of the Commercial Companies Code and, for the avoidance of doubts, not a civil law partnership (*spółka cywilna*).

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

1. ADDITIONAL QUALIFICATIONS

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

1.1 Pursuant to the Bankruptcy Law, partners bearing unlimited liability for debts of their relevant partnerships and partners in professional partnerships have bankruptcy capacity.

SCHEDULE 4
INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 4 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies. For the purposes of this Schedule 4 (*Insurance Companies*), an "**Insurance Company**" means an insurance undertaking (*zakład ubezpieczeń*) within the meaning of the Act of 22 May 2003 on insurance activity (*ustawa z dnia 22 maja 2003 roku o działalności ubezpieczeniowej,* the "**Insurance Law**"), incorporated and existing as a joint-stock company (*spółka akcyjna*) or a mutual insurance society (*towarzystwo ubezpieczeń wzajemnych*).

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The following additional terms of reference and definitions shall apply:

1.1.1 a reference to an "**EEA Credit Institution**" is to a credit institution (instytucja kredytowa) as defined in the Banking Law.

2. ADDITIONAL ASSUMPTIONS

We assume the following.

2.1 An Insurance Company does not carry out reinsurance activity in addition to insurance activity.

2.2 An Insurance Company is either an insurance undertaking offering insurance described in Schedule 1 Part I to the Insurance Law or an insurance undertaking offering insurance described in Schedule 1 Part II to the Insurance Law (respectively, the "**Life Insurance Undertakings**" and the "**Non-life Insurance Undertakings**"), and the Agreement may also apply to Transactions entered into in connection with a Life Insurance Undertaking's life insurance products linked to an insurance capital fund *(ubezpieczenia na życie związane z ubezpieczeniowym funduszem kapitałowym)* (the "**Fund-Linked Products**").

3. ADDITIONAL QUALIFICATIONS

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

3.1 Article 481 of the Bankruptcy Law provides that among others Article 453 under which courts in this jurisdiction have no jurisdiction over an EEA Credit Institution applies *mutatis mutandis* to the instigation of a Bankruptcy Proceedings against a domestic insurance undertaking which carries out activities also in at least one EU member state other than this jurisdiction or in a member state of the European Free Trade Association (EFTA) – a party to the agreement on the European Economic Area (EEA) (the "**other EEA jurisdiction**"), to the instigation of a Bankruptcy Proceedings against a foreign insurance undertaking with its seat in an EU member state or in other EEA jurisdiction which carries out activities in this jurisdiction, and to the instigation of a Bankruptcy Proceedings against a foreign insurance undertaking with its seat in a state other than an EU member state or other EEA jurisdiction, if it carries out the activity in the territory of the Republic of Poland and it at least one other EU member state or any other EEA jurisdiction. Although, in our view, the above-mentioned provision is not entirely clear, we believe that based on the rule of pro-European interpretation of the laws of this jurisdiction, it should be interpreted in such a way that the courts in this jurisdiction have no jurisdiction in bankruptcy matters concerning insurance undertakings which have their head office in the EU member states and to the EU member states (other than this jurisdiction) branches of insurance undertakings which have their head office in third countries, and such proceedings will be recognised in this jurisdiction *ipso iure*. We are aware, however, of different views presented in the legal doctrine, that instigation in an EU member state other than this jurisdiction of a bankruptcy or other similar proceedings against a branch of an insurance undertaking which has its head office in third countries does not preclude the possibility of instigation by courts in this jurisdiction of a Bankruptcy Proceedings against that branch.

3.2 Pursuant to Article 477 of the Bankruptcy Law, once an Insurance Company is declared bankrupt, the assets covering its technical provisions constitute a separate bankruptcy estate (the "**Provisions-Related Estate**") and the Provisions-Related Estate should be used to satisfy all liabilities of the Insurance Company arising from insurance policies, reinsurance contracts and the costs of liquidation. The remaining assets will constitute a distinct bankruptcy estate (the "**General Estate**"). Furthermore, Article 199.1 of the Insurance Law introduces a corresponding regulation in respect of the liquidation of an Insurance Company without any insolvency proceedings being commenced.

3.3 There is a question of the interrelation between: (i) Article 85 and 85a of the Bankruptcy Law (which both confirm the operation of netting, including collateral netting, in bankruptcy) on the one hand and (ii) Article 477 of the Bankruptcy Law (which provides that upon an Insurance Company's bankruptcy there would be two bankruptcy estates, one for "general assets" and one for the assets covering the Insurance Company's technical provisions) on the other. There are reasons to argue

that Article 85a of the Bankruptcy Law overrides the application of Article 477 in the context of close-out netting arrangements.

3.4 The enforceability of collateral netting provisions upon bankruptcy is directly referred to in Article 85a of the Bankruptcy Law. This means that a counterparty to an Agreement with an Insurance Company is allowed to benefit from the netting provisions if such Insurance Company is declared bankrupt. We believe that Article 85a shows that it was the law makers' intention that where there is a close-out netting arrangement in place, e.g. in a derivatives framework agreement executed by an Insurance Company, the principles applicable to the netting contained in Article 85 and 85a are an exemption from the principles contained in Article 477. Had the law makers thought otherwise, they would have specifically addressed the two separate bankruptcy estates in Article 85a or elsewhere. There is nothing in Article 477 (or elsewhere in the Bankruptcy Law) that would exclude the application of the principles relating to the protection of the close-out netting referred to above in respect of Insurance Companies if there is an eligible framework agreement in place with them. Needless to say, there would be no close-out netting if there were no such framework agreement in place and the Insurance Company were declared bankrupt. In such a case, Article 477 would be applicable and no overriding principle of close-out netting could be invoked by the counterparty of the Insurance Company (or the bankruptcy receiver of the Insurance Company, as the case may be).

3.5 Life Insurance Companies may offer Fund-Linked Products. Each "class" of such products is backed by a separate pool of assets (an insurance capital fund). The fund is not a separate entity. The assets in the fund form a reserve created from proceeds from the premiums of Fund-Linked Products, invested in accordance with the relevant contracts relating to the Fund-Linked Products. Each Life Insurance Undertaking might have multiple insurance capital funds.

3.6 As far as the protection of the policyholders is concerned, there are two types of Fund-Linked Products. The first is a product type where the policyholders "do not bear the risk of investment", i.e. the Life Insurance Undertaking will make up any loss up to an amount guaranteed in the contract if the fund backing the relevant Fund-Linked Product is not sufficient. The second is a product type where the policyholders "bear the risk of investment", i.e. any pay-outs will come exclusively from the relevant fund backing a given Fund-Linked Product and not from other assets of the Life Insurance Undertaking.

3.7 The rules described in the preceding section could imply that the assets of an insurance capital fund should not be commingled with any other assets of a Life Insurance Undertaking (be it "free assets", assets covering its technical provisions or assets of any other insurance capital fund). However, the provisions of the Bankruptcy Law (in particular Article 477) do not provide for the special treatment of the assets of

a capital fund. Therefore, if the Life Insurance Undertaking is declared bankrupt, we are of a view that such assets will form part of a single "technical provisions" bankruptcy estate and will, upon the bankruptcy declaration, commingle with assets of other capital funds and the general cover for the technical provisions of the bankrupt Life Insurance Undertaking.

3.8 In the event of the declaration of bankruptcy of an Insurance Company which carries out activities also in at least one EU member state other than this jurisdiction or in **other EEA jurisdiction**, or a foreign insurance undertaking with its seat in a EU member state or in other EEA jurisdiction which carries out activities in this jurisdiction, or a foreign insurance undertaking with its seat in a state other than a EU member state or other EEA jurisdiction, if it carries out activity in this jurisdiction and it at least one other EU member state or other EEA jurisdiction, the following additional qualifications apply:

3.8.1 in the case of bankruptcy of an Insurance Company, the bankruptcy estate will include the Insurance Undertaking's assets located in an EU member state (other than this jurisdiction) and in other EEA jurisdiction;

3.8.2 a Firm will have a right to set-off its claims against the claims of the bankrupt Counterparty provided that the set-off is permitted under the law applicable to the Counterparty's claim;

3.8.3 the declaration of bankruptcy will not affect the rights *in rem* on the assets located in the territory of another EU member state or in other EEA jurisdiction; this, however, will not preclude the actions for voidness or unenforceability of a legal act detrimental to creditors;

3.8.4 the rules of this jurisdiction relating to the voidness and voidability of legal acts detrimental to all creditors will not apply if the law governing any such legal act does not allow any means by which it can be challenged;

3.8.5 the following conflict of laws rules will apply:

(a) the enforcement of rights, the creation, existence or disposal of which presupposes their having been recorded in a register, account or centralised deposit system, will be governed by the law of the state where the register, account or centralised deposit system is held or located;

(b) subject to section (a), transactions carried out on the regulated market within the meaning of the Act on Trading will be governed by the law of contractual obligations applicable to transactions carried out on that regulated market;

(c) where, by an act concluded after the declaration of bankruptcy, the Insurance Company disposes of rights the creation, existence or disposal of which presupposes their having been recorded in a register, account or centralised deposit system, such act is governed by the law where that register, account or deposit system is held or located.

4. MODIFICATIONS TO QUALIFICATIONS

4.1 The following paragraphs shall be deemed deleted:

4.1.1 sub-paragraph 4.7.8;

4.1.2 sub-paragraph 4.7.9; and

4.1.3 sub-paragraph 4.7.10.

SCHEDULE 5
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 5 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 5 (*Individuals*), "**Individual**" means an individual (*osoba fizyczna*) who is an entrepreneur (*przedsiębiorca*) in the meaning of the Civil Code.

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

1.1 The Individual is not an individual running an agricultural holding (*gospodarstwo rolne*).

1.2 The Agreement and the Transactions are entered into by the Individual in relation to the Individual's business or professional activity.

2. MODIFICATIONS TO OPINIONS

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

2.1 Paragraph 3.4 shall be deemed deleted.

3. ADDITIONAL QUALIFICATIONS

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

3.1 An individual (*osoba fizyczna*) cannot be a party to a financial collateral arrangement.

3.2 In many circumstances, the death of an Individual terminates the authority of another person to bind the estate of the Individual.

3.3 The actual domicile of an Individual is decisive to determine certain aspects relevant to the transacting with this Individual and to determine the courts competent to adjudicate certain matters relevant to the Individual, such as on the declaration of bankruptcy (for the purpose of which, the location of assets comprising the bankrupt estate is relevant if the individual has no domicile in this jurisdiction).

3.4 Pursuant to the Act of 25 February 1964 - Family and Guardianship Code (*ustawa z dnia 25 lutego 1964 roku Kodeks rodzinny i opiekuńczy*), in the case of joint property of husband and wife, a creditor can satisfy its claims towards one of the spouses from the joint property of husband and wife only if the other spouse has expressed consent to assumption of the obligations towards the creditor by his / her spouse.

3.5 The spouse's consents may be held unenforceable in relation to future undertakings (if any) of the Individual under the Agreement. In particular, any amendment to the Agreement will require a separate consent of the spouse of the Individual if such amendment would result in an increase of liability of the Individual.

3.6 Pursuant to Article 423 of the Bankruptcy Law when bankruptcy proceedings are opened after the death of an insolvent debtor (being an Individual), claw-back provisions under the Bankruptcy Law referred to in paragraphs 4.7.3 - 4.7.4 should apply to the actions of the Individual performed in the last six months prior to the Individual's death.

4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Paragraph 4.2.3. shall be deemed deleted and replaced with the following:

Based on our reading of the Security Interest Provisions, we believe that the intention of the Parties to the Agreement is to create security interest over the Collateral which remains the property of the Counterparty. Consequently, we believe that the Polish law security interest closest to the intention of the Parties expressed in the Security Interest Provisions is any of the following: a pledge regulated in the Civil Code (the "**Ordinary Pledge**"), or a registered pledge regulated in the Act on Registered Pledges (the "**Registered Pledge**").

4.2 Paragraphs 4.3 and 4.6 shall be deemed deleted.

4.3 Paragraph 4.4.4 shall be deemed deleted and replaced with the following:

" 4.4.4 An Ordinary Pledge is a "possessory" interest. The creation of an Ordinary Pledge is effected by the delivery to the pledgee or a third party, agreed upon by the parties, of the subject of the Ordinary Pledge (a document incorporating the pledgor's right), unless the law provides otherwise. An Ordinary Pledge over the pledgor's rights (such as the Collateral) is an exception to this rule, and it is established through the execution of a pledge agreement and notification of the debtor. Book-entry securities would, however, be "blocked" in the securities account and the following additional comments apply.

(a) *We note that the Ordinance of the Minister of Finance of 24 September 2012 on the Method and Terms of Conduct of the Investment Firms and Banks Referred to in article 70.2 of the Act on Trading in Financial Instruments and of Custodian Banks (rozporządzenie Ministra Finansów z dnia 24 września 2012 roku w sprawie trybu i warunków postępowania firm inwestycyjnych, banków, o których mowa w art. 70 ust. 2 ustawy o obrocie instrumentami finansowymi, oraz banków powierniczych) which is a secondary legislation to the Act on Trading (the "**2012 Secondary Legislation**") provides for an obligation on the part of Polish investment firms or custodian banks to "block" Financial Instruments deposited in an account maintained by them that are subject to a Financial Pledge. Such a "blockade" should be imposed by the securities account provider after it receives a copy of the pledge agreement based on an instruction issued by the pledgor in writing or by way of electronic means of communications. In general, the instruction referred to above can be issued by the pledgee (i.e. a Firm) based on an irrevocable power of attorney granted by the pledgor (i.e. a Counterparty) to the pledge. .*

(b) *Webelieve that a "blockade" referred to above, while standard practice in Poland and normally expected by local securities account providers to immediately follow the execution of a financial pledge agreement, is technically not necessary for the creation of a valid and effective security interest in the form of a Financial Pledge. We believe that it is possible to establish the "blockade" later if and when it becomes necessary to "crystallise" the Financial Pledge following an enforcement event. This idea assumes that the Firm would be able to issue an instruction to block the securities on behalf of the Counterparty when it is necessary to "block" the securities. Such a solution would give the parties more flexibility as it would allow for the assets to go in and out of the securities account on a daily basis but the Firm would still be able to enforce the Financial Pledge if and when needed. We note that the Agreement does not contain such a power of attorney. Therefore, to the extent the Security Interest is governed by the laws of this jurisdiction, it is worth considering whether a power of attorney could be added in the Agreement..*

(c) *We believe that the more flexible solution referred to in the previous paragraph would not breach the applicable regulations, in particular the 2012 Secondary Legislation. On the other hand, we note that some local security account providers tend to be conservative and it is, therefore, highly recommended to discuss the proposed collateral*

structure with them beforehand and take into account its practices and relevant terms and conditions. .

(d) *If the Polish security account provider does not accept the flexible solution, then a "blockade" over securities in the security account will need to be imposed: (i) at the beginning of the Financial Pledge; and (ii) each time that additional securities are credited to the securities account. The "blockade" will have to be lifted each time a transfer out of the securities account will have to be effected. It should be possible to provide for a flexible solution in that respect, i.e. especially to allow for transfers out of the accounts, but this solution is clearly slightly less flexible than the solution with a "blockade" for "crystallisation" purposes."*

4.4 References in paragraph 4.5.3 to paragraphs 4.3.6 – 4.3.9 shall be deemed deleted and replaced with references to paragraph 4.4.4(a) – (d) as set out in section 4.3 (*Individuals*).

4.5 Paragraph 4.7.4 shall be deemed deleted and replaced with the following:

"In addition, pursuant to Article 128 of the Bankruptcy Law any legal act carried out by the bankrupt for consideration during the period of six months before the date the bankruptcy petition is filed, with the bankrupt's spouse, with a relative by blood or marriage in the direct line, with a relative by blood or marriage in the collateral line up to within the second degree, or with an adopted child or adoptive parent, shall be ineffective vis-à-vis the bankrupt estate."

4.6 Paragraph 4.7.6 shall be deemed deleted and replaced with the following:

"Pursuant to Article 77.1 of the Bankruptcy Law all acts of an insolvent party in respect of assets included in the bankrupt estate are void."

4.7 Paragraph 4.8.3 shall be deemed deleted and replaced with the following:

"A pledge is closely connected to the claim secured. In practice, this means that the invalidity of the Secured Obligations will entail automatic invalidity of pledge (either an Ordinary pledge, or a Registered Pledge) established on the Collateral. Expiry of the Secured Obligations will also mean the expiry of the pledge established on the Collateral. The pledge established on the Collateral cannot be transferred without transferring the Secured Obligations."

SCHEDULE 6
INVESTMENT FUNDS

Subject to the modifications and additions set out in this Schedule 6 (*Investment funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment funds. For the purposes of this Schedule 6 (*the Investment Funds*), the "**Investment Fund**" (*fundusz inwestycyjny*) means a legal person within the meaning of the Act of 27 May 2004 on investment funds (*Ustawa z dnia 27 maja o Funduszach Inwestycyjnych the* "**Act on Investment Funds**") and incorporated and existing as either an open-ended investment fund (*fundusz inwestycyjny otwarty*) (the "**Open-Ended Fund**"), a closed-ended investment fund (*fundusz inwestycyjny zamknięty*) (the "**Closed-Ended Fund**") or a specialist open-ended investment fund (*specjalistyczny fundusz inwestycyjny otwarty*) (the "**Specialist Open-Ended Fund**") managed by a fund management company (*towarzystwo funduszy inwestycyjnych*) (the "**TFI**"), within the meaning of the Act on Investment Funds.

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

1. ADDITIONAL QUALIFICATIONS

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

1.1 It is not entirely clear if an Investment Fund is capable of formally being declared bankrupt in this jurisdiction. However, the possibility of its liabilities becoming higher than its assets (i.e. the state of actual insolvency) cannot be completely ruled out. We are not aware of any guidelines on this issue from recognised scholars or judgments of courts in this jurisdiction, and we cannot confirm that this issue has been tested in practice. Therefore, it remains to be seen which view is shared by the Polish courts. However, whichever view prevails, our opinions in this opinion letter will not be fundamentally different.

1.2 According to the first view, no Investment Fund, even though it is a legal person under Polish law, can be declared bankrupt or be subject to Recovery Proceedings (and, consequently, the Bankruptcy Law provisions relevant to such events do not apply to Investment Funds). Therefore, Investment Funds would not be subject to Insolvency Proceedings. The reasoning for this position is based on a number of arguments, including, among others, the following:

1.2.1 under the Act on Investment Funds, Investment Funds are managed and represented vis-à-vis third parties by the TFI managing them. Although the TFIs are closely connected with the Investment Funds they manage, and are

themselves capable of being declared bankrupt or becoming subject to the Recovery Proceedings, their assets are separate from the assets of the Investment Funds, which are protected by a number of measures. For instance, the assets of Investment Funds are registered and, where appropriate, deposited, with a depository and cannot be attached or used to satisfy the claims of creditors of the depository if the depository is declared bankrupt. In addition, they are also immune from the claims of the creditors of the TFI;

1.2.2 it is sometimes argued that Investment Funds are not "entrepreneurs" (*przedsiębiorcy*) (business entities) for the purposes of the Bankruptcy Law and, as they are not specifically mentioned in the Bankruptcy Law as one of the "non-entrepreneur" categories of entities capable of being declared bankrupt, the relevant provisions of the Bankruptcy Law relating to bankruptcy declaration or Recovery Proceedings do not apply to them; and

1.2.3 in relation to the Open-Ended Funds, liquidation proceedings under the Act on Investment Funds would most likely be triggered before the insolvency tests under the Bankruptcy Law could be met. Under Article 246.1.4 in connection with Article 92.1 of the Act on Investment Funds, such Investment Funds must be liquidated if their net asset value drops below PLN 2,000,000. In addition, under Article 92.2 of the Act on Investment Funds, the Open-Ended Fund must promptly publish a notice in accordance with the rules set forth in its articles every time its net asset value falls below PLN 2,500,000.

1.3 For the avoidance of doubt, the above special liquidation proceedings are applicable to all Investment Fund types and not only to the Open-Ended Funds. However, the grounds referred to in section 1.2.3 above only apply, under the Act on Investment Funds, to the Open-Ended Funds and not to the Closed-Ended Funds. There are no statutory grounds that relate directly to the inability of an Investment Fund to repay its creditors or a similar event which can be assimilated or lead to the de facto bankruptcy of an Investment Fund.

1.4 If the first view is shared by the Polish courts in the future, the analysis contained at paragraphs 4.7.1 – 4.7.4 and 4.7.6 – 4.7.10 of this opinion letter would not be applicable to the Investment Funds. Moreover, paragraph 4.7.5 shall be deemed deleted and replaced with the following:

> *"4.7.5 According to Article 527 of the Civil Code of 23 April 1964* (ustawa z dnia 23 kwietnia 1964 roku Kodeks cywilny, *the "**Civil Code**"), if, as a result of a legal transaction effected by the debtor to the detriment of its creditors (i.e., where the debtor became insolvent or became insolvent to a greater extent as a result of the transaction) a third party has gained a benefit, each of*

the creditors may demand that that transaction be recognised as ineffective with regard to it if:

(a) the debtor consciously acted to the creditors' detriment, and

(b) the third party knew or, had it acted with due diligence could have known that the debtor was acting to the detriment of its other creditors (and the third party's knowledge is presumed if it remained in a permanent economic relationship with the debtor).

As a matter of principle, the remedies under Article 527 of the Civil Code will apply to situations where a Transaction is not effected at arm's length. If a Transaction was effected on market terms it would not be challengeable based on the principles of Article 527 of the Civil Code. An action under Article 527 of the Civil Code can be brought within five years after the date of the challenged transaction.".

1.5 According to the second view, Investment Funds can be declared bankrupt as their activities are business activities and therefore they are "entrepreneurs" for the purposes of the Bankruptcy Law. In addition, they can stop paying their debts when they mature and it is not, at least theoretically, excluded that the value of their liabilities can exceed the value of their assets. These are the universal insolvency tests under the Bankruptcy Law and there are no convincing reasons that Investment Funds would be immune from them in every circumstance. Assuming that this view is correct, had the liquidation proceedings under the Act on Investment Funds been engaged before an insolvency test under the Bankruptcy Law were triggered, the bankruptcy procedure under the Bankruptcy Law would be applicable in addition to or instead of the liquidation proceedings under the Act on Investment Funds.

1.6 If the second view is shared by the Polish courts in the future, the analysis contained in paragraph 4.7 of this opinion letter would be applicable to the Investment Funds.

SCHEDULE 7
THE LOCAL GOVERNMENT ENTITIES

Subject to the modifications and additions set out in this Schedule 7 (*The local government entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Local government entities. For the purposes of this Schedule 7 (*the Local Government Entities*), the "**Local Government Entity**" (*jednostka samorządu terytorialnego*) means a public sector entity existing in this jurisdiction pursuant to the provisions of – amongst others – the Constitution of the Republic of Poland of 2 April 1997 (*Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*) and the Act on 27 August 2009 on Public Finance (*ustawa z dnia 27 sierpnia 2009 roku o finansach publicznych, the* "**Public Finance Act**").

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

1. MODIFICATIONS TO ASSUMPTIONS

1.1 The Local Government Entity is not capable of formally being declared bankrupt and, in consequence, the following paragraphs shall be deemed deleted:

1.1.1 paragraph 2.18; and

1.1.2 paragraph 2.20.

2. MODIFICATIONS TO QUALIFICATIONS

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

2.1 The Local Government Entity is not capable of formally being declared bankrupt and, in consequence, the paragraphs 4.7.1 - 4.7.4 and 4.7.6 – 4.7.10 shall be deemed deleted.

2.2 Paragraph 4.7.5 shall be deemed deleted and replaced with the following:

> *"4.7.5 According to Article 527 of the Civil Code of 23 April 1964* (ustawa z dnia 23 kwietnia 1964 roku Kodeks cywilny, *the "**Civil Code**"), if, as a result of a legal transaction effected by the debtor to the detriment of its creditors (i.e., where the debtor became insolvent or became insolvent to a greater extent as a result of the transaction) a third party has gained a benefit, each of the creditors may demand that that transaction be recognised as ineffective with regard to it if:*
>
> *(a) the debtor consciously acted to the creditors' detriment, and*

(b) the third party knew or, had it acted with due diligence could have known that the debtor was acting to the detriment of its other creditors (and the third party's knowledge is presumed if it remained in a permanent economic relationship with the debtor).

As a matter of principle, the remedies under Article 527 of the Civil Code will apply to situations where a Transaction is not effected at arm's length. If a Transaction was effected on market terms it would not be challengeable based on the principles of Article 527 of the Civil Code. An action under Article 527 of the Civil Code can be brought within five years after the date of the challenged transaction.".

SCHEDULE 8
PENSION ENTITIES

Subject to the modifications and additions set out in this Schedule 8 (*Pension entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension entities. For the purposes of this Schedule 7 (*the Pension entities*), a "**Pension Fund**" means a pension fund (*fundusz emerytalny*) in the meaning of the Act of 28 August 1997 on the organisation and operation of pension funds (Ustawa z dnia 28 sierpnia 1997 roku o organizacji i funkcjonowaniu funduszy emerytalnych, the "**Pension Funds Act**") and incorporated and existing as either a general fund (*fundusz otwarty*) (the "**General Fund**") or voluntary fund (*fundusz dobrowolny*) (the "**Voluntary Fund**") or an occupational fund (*fundusz pracowniczy*) (the "**Occupational Fund**"), and managed by a fund management company (*towarzystwo emerytalne*) (the "**TE**"), a joint-stock company (*spółka akcyjna*), operating either as a general fund company (*powszechne towarzystwo emerytalne*) or an occupational fund company (*pracownicze towarzystwo emerytalne*), managing and representing one (as a general rule) Pension Fund.

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

1. ADDITIONAL QUALIFICATIONS

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

1.1 It is not entirely clear if a Pension Fund is capable of formally being declared bankrupt in this jurisdiction. However, the possibility of its liabilities becoming higher than its assets (i.e. the state of actual insolvency) cannot be completely ruled out. We are not aware of any guidelines on this issue from recognised scholars or judgments of courts in this jurisdiction, and we cannot confirm that this issue has been tested in practice. Therefore, it remains to be seen which view is shared by the Polish courts. However, whichever view prevails, our opinions in this opinion letter will not be fundamentally different.

1.2 If the view that a Pension Fund may not be declared bankrupt is shared by the Polish courts in the future, the analysis contained in paragraphs 4.7.1 - 4.7.4 and 4.7.6 – 4.7.10 of this opinion letter would not be applicable to the Investment Funds. Moreover, paragraph 4.7.5 shall be deemed deleted and replaced with the following:

*"4.7.5 According to Article 527 of the Civil Code of 23 April 1964 (ustawa z dnia 23 kwietnia 1964 roku Kodeks cywilny, the "**Civil Code**"), if, as a result of a legal transaction effected by the debtor to the detriment of its creditors (i.e., where the debtor became insolvent or became insolvent to a greater extent as a result of the*

transaction) a third party has gained a benefit, each of the creditors (or, if the debtor is declared bankrupt, the relevant bankruptcy officer) may demand that that transaction be recognised as ineffective with regard to it if:

(a) the debtor consciously acted to the creditors' detriment, and

(b) the third party knew or, had it acted with due diligence could have known that the debtor was acting to the detriment of its other creditors (and the third party's knowledge is presumed if it remained in a permanent economic relationship with the debtor).

As a matter of principle, the remedies under Article 527 of the Civil Code will apply to situations where a Transaction is not effected at arm's length. If a Transaction was effected on market terms it would not be challengeable based on the principles of Article 527 of the Civil Code. An action under Article 527 of the Civil Code can be brought within five years after the date of the challenged transaction.".

1.3 If the view that a Pension Fund may be declared bankrupt is shared by the Polish courts in the future, the analysis contained in paragraph 4.7 of this opinion letter would be applicable to the Pension Funds.

SCHEDULE 9
THE NATIONAL BANK OF POLAND

Subject to the modifications and additions set out in this Schedule 9 (*National Bank of Poland*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of the Party which is the National Bank of Poland. For the purposes of this Schedule 9 (National Bank of Poland), the "**National Bank of Poland**" means Narodowy Bank Polski incorporated and existing under the NBP Act.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The following additional terms of reference and definitions shall apply:

1.1.1 a reference to the "**NBP Act**" is to the Act of 29 August 1997 on the National Bank of Poland (ustawa z dnia 29 sierpnia 1997 roku o Narodowym Banku Polskim).

2. MODIFICATIONS TO ASSUMPTIONS

1.2 The National Bank of Poland is not capable of formally being declared bankrupt and, in consequence, the following paragraphs shall be deemed deleted:

1.2.1 paragraph 2.18; and

2.1.1 paragraph 2.20.

2. ADDITIONAL QUALIFICATIONS

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

There are certain specific rules relating to enforcement of claims that apply to the National Bank of Poland. Under Article 57.2 of the NBP Act, any enforcement against the National Bank of Poland of its payment obligations can be carried out only after the creditor has delivered to the National Bank of Poland a judicial or administrative "executory title" and within one month from the date of delivery, the National Bank of Poland has not performed such payment obligations. In addition, Article 1060 of the Civil Procedure Code of 17 November 1964 *(ustawa z dnia 17 listopada 1964 roku Kodeks postępowania cywilnego)* provides for special rules concerning the enforcement of claims against the Polish State Treasury (*Skarb Państwa*) which, accordingly, apply also to the National Bank of Poland. In light of

those rules, it is not entirely clear if enforcement of pecuniary claims against the National Bank of Poland may be directed solely to the bank accounts of the National Bank of Poland or also to other assets of the National Bank of Poland. In addition, enforcement of non-pecuniary obligations against the Polish State Treasury (*Skarb Państwa*) (and, accordingly, the National Bank of Poland) is also subject to specific rules. At the request of the creditor, the court will fix a deadline to meet the relevant non-pecuniary obligations and the relevant manager of the National Bank of Poland will be personally fined if such deadline is not met.

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 The National Bank of Poland is not capable of formally being declared bankrupt and, in consequence, the paragraphs 4.7.1 - 4.7.4 and 4.7.6 – 4.7.10 shall be deemed deleted.

3.2 Paragraph 4.7.5 shall be deemed deleted and replaced with the following:

*"4.7.5 According to Article 527 of the Civil Code of 23 April 1964 (ustawa z dnia 23 kwietnia 1964 roku Kodeks cywilny, the "**Civil Code**"), if, as a result of a legal transaction effected by the debtor to the detriment of its creditors (i.e., where the debtor became insolvent or became insolvent to a greater extent as a result of the transaction) a third party has gained a benefit, each of the creditors may demand that that transaction be recognised as ineffective with regard to it if:*

(a) the debtor consciously acted to the creditors' detriment, and

(b) the third party knew or, had it acted with due diligence could have known that the debtor was acting to the detriment of its other creditors (and the third party's knowledge is presumed if it remained in a permanent economic relationship with the debtor).

As a matter of principle, the remedies under Article 527 of the Civil Code will apply to situations where a Transaction is not effected at arm's length. If a Transaction was effected on market terms it would not be challengeable based on the principles of Article 527 of the Civil Code. An action under Article 527 of the Civil Code can be brought within five years after the date of the challenged transaction.".

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:

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

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

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

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

4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.

5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.

7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.