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5 December 2013

Dear Sir

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of Parties which are:

1.1.1 companies which are incorporated under the Companies Act (Cap. 50) of Singapore ("Singapore Companies") or companies incorporated or formed under the laws of another jurisdiction and which are registered under Division 2 of Part XI of the Companies Act (Cap. 50) of Singapore ("Non-Singapore Companies"); and

1.1.2 Singapore Companies or Non-Singapore Companies which are licensed under the Banking Act as banks in Singapore ("**Singapore Banks**").

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

- 1.2.1 Singapore Companies or Non-Singapore Companies which hold capital market services licences granted in accordance with the Securities and Futures Act ("**Singapore Investment Firms**") (Schedule 1);
- 1.2.2 Singapore Companies or Non-Singapore Companies which are registered in Singapore as insurers under the Insurance Act ("**Singapore Insurance Companies**") (Schedule 2);
- 1.2.3 Singapore Individuals (as defined below) (Schedule 3);
- 1.2.4 persons in their capacity as trustees of Singapore Trusts (as defined below) (Schedule 4);
- 1.2.5 persons in their capacity as partners in partnerships or limited partnerships ("**Singapore Partnerships**") within the meaning of the Partnership Act or the Limited Partnerships Act respectively (Schedule 5); and
- 1.2.6 limited liability partnerships ("**Singapore LLPs**") within the meaning of the Limited Liability Partnerships Act (Schedule 6).

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

1.4 This opinion covers all Transactions other than any Transaction which falls within paragraph (A)(v) of Annex 2 to this opinion letter, because the nature of such a Transaction is not known to us at the time of giving this opinion letter).[▲](#)

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

1.5 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy in respect of any net obligation resulting from any netting or set off.

1.6 Section 327 of the Companies Act provides, amongst other things, that in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the

valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons. Accordingly, and because this opinion is given in respect of Singapore Companies and Non-Singapore Companies, in this opinion letter, we refer to winding up, winding up petitions and winding up orders, notwithstanding that the relevant provisions of the Bankruptcy Act refer to bankruptcy, bankruptcy applications and bankruptcy orders, as the case may be.

1.7 We express no opinion:

- 1.7.1 as to any provision of the FOA Netting Agreement or the Clearing Agreement other than those to which express reference is made in this opinion letter;
- 1.7.2 as to any matter of fact;
- 1.7.3 on any specific Transaction;
- 1.7.4 as to any right or obligation which the FOA Netting Agreement or the Clearing Agreement purports to impose, confer or establish in respect of any person who is not a party thereto;
- 1.7.5 on any accounting or regulatory matters; and
- 1.7.6 as to any matter relating to tax law or as to any liability to tax which may arise or be suffered as a result of or in connection with the FOA Netting Agreement or the Clearing Agreement or any Transaction.

1.8 Definitions

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

- 1.8.1 "**approved clearing house**" has the meaning given in the Securities and Futures Act;
- 1.8.2 "**Banking Act**" means the Banking Act (Cap. 19) of Singapore;
- 1.8.3 "**Bankruptcy Act**" means the Bankruptcy Act (Cap. 20) of Singapore;
- 1.8.4 "**Bankruptcy Rules**" means the Bankruptcy Rules made under the Bankruptcy Act;
- 1.8.5 "**Companies Act**" means the Companies Act (Cap. 50) of Singapore;

1.8.6 "**Company**" means a Singapore Company or a Non-Singapore Company;

1.8.7 "**CLPA**" means the Conveyancing and Law of Property Act (Cap. 61) of Singapore;

1.8.8 "**Customer Money Rules**" means Division 2 of Part III of the Securities and Futures (Licensing and Conduct of Business) Regulations of Singapore;

1.8.9 a Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**";

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

1.8.11 "**Insurance Act**" means Insurance Act (Cap. 142) of Singapore;

1.8.12 "**Limited Liability Partnerships Act**" means the Limited Liability Partnerships Act (Cap. 163A) of Singapore;

1.8.13 "**Limited Partnerships Act**" means the Limited Partnerships Act (Cap. 163B) of Singapore;

1.8.14 "**MAS**" means the Monetary Authority of Singapore;

1.8.15 "**MAS Act**" means the Monetary Authority of Singapore (Cap. 186) of Singapore;

1.8.16 "**Partnership Act**" means the Partnership Act (Cap. 391) of Singapore;

1.8.17 "**recognised clearing house**" has the meaning given it in the Securities and Futures Act;

1.8.18 "**Rules of Court**" means the Rules of Court made pursuant to Section 80 of the Supreme Court of Judicature Act (Cap. 322) of Singapore;

1.8.19 "**Securities and Futures Act**" means the Securities and Futures Act (Cap. 289) of Singapore;

1.8.20 "**Singapore Individuals**" means individuals (natural persons) who:

- (a) are domiciled in Singapore;
- (b) have property in Singapore; or
- (c) have, at any time within the period of one year immediately preceding the date of the making of the application:

- (i) been ordinarily resident or have had a place of residence in Singapore; or
- (ii) carried on business in Singapore;

1.8.21 **"Singapore Trust"** means an express trust validly constituted under Singapore law;

1.8.22 **"Singapore Trustee"** means a Singapore Company, a Non-Singapore Company or a Singapore Individual, acting as trustee of a Singapore Trust;

1.8.23 **"Insolvency Proceedings"** means the procedures listed in paragraph 3.1;

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

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

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

2. ASSUMPTIONS

We assume:

- 2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration.
- 2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are legally binding and enforceable against both Parties under their governing laws.
- 2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.
- 2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter

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

- 2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party.
- 2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.
- 2.7 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the parties thereto in good faith, 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 FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.
- 2.9 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.
- 2.10 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a Singapore Company, Non-Singapore Company, Singapore Bank or Singapore Investment Firm.
- 2.11 In relation to the opinions set out at paragraphs 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.
- 2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).
- 2.13 That all margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction

to be done to ensure the validity of each transfer of margin pursuant to the Title Transfer Provisions will have been effectively carried out.

- 2.14 That any cash provided as Margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.15 The FOA Netting Agreement or, as the case may be, Clearing Agreement has been properly executed by both Parties.
- 2.16 There is an absence of duress or undue influence in respect of any of the Parties (and their respective directors, employees, agents and advisers) in relation to the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transactions.
- 2.17 No new Transaction will be entered into following the occurrence of an Event of Default or, as the case may be, a CM Trigger Event or a Firm Trigger Event.

3. **OPINION**

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

3.1 **Insolvency Proceedings**

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party which is a Company (including a Singapore Bank) would be subject in this jurisdiction are the following:

- (a) winding up (including provisional winding up);
- (b) receivership; and
- (c) schemes of arrangement.

In addition, a Singapore Company (but not a Singapore Bank) could also be subject to judicial management.

The legislation applicable to Insolvency Proceedings is:

- (a) the Companies Act; and
- (b) the Bankruptcy Act,

together with any subsidiary legislation including the Bankruptcy Rules, each as modified up to the date hereof.

In addition, a Singapore Bank is subject to additional grounds for winding up under the provisions of the MAS Act.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented, in respect of a Party which is a Singapore Company (that is not a Singapore Bank), by the following events: judicial management. See Annex 5 for suggested amendments to the Insolvency Events of Default Clause.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in respect of a Party which is a Singapore Bank or a Non-Singapore Company without the need for any additions.

3.2 **Recognition of choice of law**

- 3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England.
- 3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law as the governing law of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provisions or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum, Set-Off Provision and, (ii) the Title Transfer Provisions.
- 3.2.3 We express no opinion on the binding effect of the choice of law provisions in the FOA Netting Agreement or, as the case may be, the Clearing Agreement insofar as they relate to non-contractual obligations arising from or connected with the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

3.3 **Enforceability of FOA Netting Provision**

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

- 3.3.1 the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and
- 3.3.2 the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the FOA Netting Provision or which would render such terms ineffective

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

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

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

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

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Clearing Module Netting Provision or which would render such terms ineffective.

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

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

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.2.1) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would, subject to the other comments in this paragraph and

paragraphs 4.2.1 to 4.2.5, be to aggregate and set off all Cleared Set Termination Amounts together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Clearing Module Netting Provision provides for each Cleared Set Termination Amount to be payable separately in respect of each Agreed CCP Service. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-Off, so that the Clearing Module Netting Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off.

If Statutory Insolvency Set-Off does apply, the Party which is not in liquidation or administration (the "**Solvent Party**") would be unlikely to be left in a worse position than in the absence of Statutory Insolvency Set-Off. This is because (under the laws of this jurisdiction) the solvent Party would be able to reconstitute separate mutual amounts which, when aggregated and set off, equal the net amount receivable or payable under Statutory Insolvency Set-Off.

3.5 **Enforceability of the Addendum Netting Provision**

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

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Addendum Netting Provision or which would render such terms ineffective.

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

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

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.2.1) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would, subject to the other comments in this paragraph and paragraphs 4.2.1 to 4.2.5, be to aggregate and set off all Cleared Set Termination Amounts together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Addendum Netting Provision provides

for each Cleared Set Termination Amount to be payable separately in respect of each Agreed CCP Service. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-Off, so that the Addendum Netting Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off.

If Statutory Insolvency Set-Off does apply, the Solvent Party would be unlikely to be left in a worse position than in the absence of Statutory Insolvency Set-Off. This is because (under the laws of this jurisdiction) the solvent Party would be able to reconstitute separate mutual amounts which, when aggregated and set off, equal the net amount receivable or payable under Statutory Insolvency Set-Off.

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

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

3.7 Enforceability of the FOA Set-Off Provisions

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

- (i) where the FOA Set-Off Provisions include the General Set-Off Clause:
 - (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Defaulting Party); or
 - (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Non-Defaulting Party); or

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

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the FOA Set-Off Provisions or which would render such terms ineffective.

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

- 3.7.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision (insofar as the FOA Set-Off Provisions is not a Disapplied Set-Off Provisions) and/or the Addendum Set-Off Provision, the FOA Set-Off Provisions will, to the extent that set-off has not already occurred pursuant to the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms as set out in paragraph 3.7.1 above.

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

- 3.8.1 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions is a Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, upon the exercise of such rights:
 - (a) if the Client is a Defaulting Party, so that the value of any cash balance owed by the Firm to the Client would be set-off against any Liquidation Amount owed by the Client to the Firm; and
 - (b) if there has been a Firm Trigger Event or a CCP Default, so that the value of any cash balance owed by one Party to the other would, insofar as not already brought into account as part of the Relevant Collateral Value, be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a

contract upon the terms of the Clearing Module Set-Off Provision or which would render such terms ineffective.

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

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.2.1) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would, subject to the other comments in this paragraph and paragraphs 4.2.1 to 4.2.5, be to aggregate and set off the Liquidation Amount or the value of any cash balance owed and any Available Termination Amount (as applicable) together with all other amounts due between the Parties so that only a single net sum is payable. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-Off, so that the Clearing Module Set-Off Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off.

If Statutory Insolvency Set-Off does apply, the Solvent Party would be unlikely to be left in a worse position than in the absence of Statutory Insolvency Set-Off. This is because (under the laws of this jurisdiction) the solvent Party would be able to reconstitute separate mutual amounts which, when aggregated and set off, equal the net amount receivable or payable under Statutory Insolvency Set-Off.

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

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

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

- (a) in the case of a CM Trigger Event, the Client (as defined in the ISDA/FOA Clearing Addendum); or
- (b) in the case of a CCP Default, either Party (the "**Electing Party**"),

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

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Addendum Set-Off Provision or which would render such terms ineffective.

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

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.2.1) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would, subject to the other comments in this paragraph and paragraphs 4.2.1 to 4.2.5, be to aggregate and set off the value of any cash balance owed and any Available Termination Amount together with all other amounts due between the Parties so that only a single net sum is payable. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-Off, so that the Addendum Set-Off Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off.

If Statutory Insolvency Set-Off does apply, the Solvent Party would be unlikely to be left in a worse position than in the absence of Statutory Insolvency Set-Off. This is because (under the laws of this jurisdiction) the solvent Party would be able to reconstitute separate mutual amounts which, when aggregated and set off, equal the net amount receivable or payable under Statutory Insolvency Set-Off.

3.10 Enforceability of the Title Transfer Provisions

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

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

- 3.10.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value.
- 3.10.3 The courts of this jurisdiction would not recharacterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.
- 3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Title Transfer Provisions or which would render such terms ineffective.

It has sometimes been suggested that where cash or other assets are transferred from one party to another as collateral for obligations owed by the transferor to the transferee, that the courts may recharacterise such transfer as the creation of a security interest over that collateral rather than as a transfer of title. Generally, however, the courts of this jurisdiction will give effect to the intention of the parties such that, where the terms of the arrangement are that title to the collateral be transferred from the transferor to the transferee, and that the transferor was to retain no proprietary interest in such collateral but would merely have a contractual right to receive equivalent cash or securities transferred to it by the transferee at some future point in time, such arrangements will not be recharacterised as creating a security interest unless it is demonstrated that the parties are acting in a manner inconsistent with the terms of the arrangement or that the arrangement is otherwise a sham. In this context, Clause 7.2 of the Title Transfer Provision provides that all right, title and interest in any collateral shall vest in the transferee, and that the parties do not intend to create a security interest over such collateral, and the consequences of such vesting of title in the transferee are reflected in the inclusion of the Default Margin Amount in the calculation of a Liquidation Amount pursuant to Clause 5 of the Title Transfer Provisions as described in paragraph 3.10.1 above. In this regard we also refer you to paragraphs 2.8 and 4.6.8.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

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

In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.10 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

- (i) the agreement unambiguously specifies the circumstances in which the security interest provisions or the Title Transfer Provisions apply in respect of any given item of margin so that it is not possible for both the security interest provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and
- (ii) the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

3.12 Single Agreement

Under the laws of this jurisdiction it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable.

The FOA Netting Agreement or, as the case may be, the Clearing Agreement states that all Transactions are entered into in reliance upon the fact that the FOA Netting Agreement or, as the case may be, the Clearing Agreement and Transactions governed by the FOA Netting Agreement or, as the case may be, the Clearing Agreement constitute a single agreement between the Parties. Singapore law would give effect to a clause specifying that the FOA Netting Agreement and Transactions (or, as the case may be, the Clearing Agreement and Client Transactions) constitute a single agreement, assuming that such a clause reflects the intention of the Parties. However, in relation to Transactions or, as the case may be, Client Transactions not governed by the laws of this jurisdiction, the question of effectiveness of such a clause is not solely a question of Singapore law.

3.13 Automatic Termination

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, the Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

3.14 Multibranch Parties

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

3.15 Insolvency of Foreign Parties

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction.

3.16 Special legal provisions for market contracts

- 3.16.1 Other than the matters discussed in 3.16.1 below,, there are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty.
- 3.16.2 Under Part III of the Securities and Futures Act, an approved clearing house or a recognised clearing house may, and may be obliged to, take action to achieve the settlement of market contracts. By virtue of Section 81C of the Securities and Futures Act, any such action taken by an approved clearing house or a recognised clearing house are not to be regarded as invalid to any extent at law by reason only of inconsistency with the law relating to distribution of the assets of a person on insolvency, bankruptcy or winding up, or on the appointment of a receiver, a receiver and manager or an equivalent person over any of the assets of a person. Moreover, neither the insolvency officials of such person nor the Singapore courts may use their powers to prevent or interfere with the settlement of a market contract in accordance with the business rules of the approved clearing house or the recognised clearing house or proceedings or other action taken under those business rules. Accordingly, the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision and the Title Transfer Provisions may not be given effect insofar as such action conflicts with or overrides them. Section 81C applies to approved clearing houses and recognised clearing houses. As at the date of this opinion letter, there are only 3 approved clearing houses: Singapore Exchange Derivatives Clearing Limited, Singapore Mercantile Exchange Clearing Corporation Pte

Ltd and The Central Depository (Pte) Limited. There are no recognised clearing houses as at the date of this opinion letter.

Under Section 48(1) of the Securities and Futures Act, "market contract" is defined as:

- (a) a contract subject to the business rules of an approved clearing house or a recognised clearing house, that is entered into between the approved clearing house or recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the approved clearing house or recognised clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of an approved clearing house or a recognised clearing house, and in accordance with the business rules of the approved clearing house or recognised clearing house, whether or not a novation referred to in paragraph (a) is to take place.

To the extent that any Transaction falls within limb (b) of the above definition, such Transaction would be a "market contract".

4. **QUALIFICATIONS**

The opinions in this opinion letter are subject to the following qualifications. In this paragraph 4, the terms "Transaction" include a Transfer of Margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes Title Transfer Provisions and a payment of cash credited to an account provided by the Firm to the Counterparty.

4.1 **Contractual set-off**

Except as expressly stated in this paragraph 4, a contractual provision for set-off (and/or netting) will be effective and binding on a Party which is a Company unless and until that Party is wound-up in this jurisdiction and then only to the extent that such contractual provision does not contravene or infringe a mandatory rule of insolvency law.

4.2 **Liquidation**

4.2.1 *Mandatory insolvency rules of set-off*

Section 88(1) of the Bankruptcy Act, which is made applicable to Companies by Section 327(2) of the Companies Act, prescribes that in a winding up of a Company (the Insolvent Party) under Singapore law, where there have been

any mutual credits, mutual debts or other mutual dealings between the Insolvent Party and a creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings shall be set-off against each other and only the balance shall be a debt provable in bankruptcy.

Set-off pursuant to Section 88(1) of the Bankruptcy Act ("Statutory Insolvency Set-Off") is mandatory and occurs automatically on the date of the winding-up order. It is not possible for parties to contract out of Statutory Insolvency Set-Off. Statutory Insolvency Set-Off would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties. This may lead to (i) the net amount payable between the Parties by result of Statutory Insolvency Set-Off being different from the amount that would have been payable under the FOA Netting Provision or (ii) to a single net amount being payable between the Parties by result of Statutory Insolvency Set-Off instead of separate net amounts pursuant to the Clearing Module Netting Provision or the Addendum Netting Provision.

However, any set-off (pursuant to a contractual set-off provision) that took effect prior to the commencement of the winding-up will not be affected by Statutory Insolvency Set-Off; and Section 88(1) of the Bankruptcy Act does not entitle a liquidator to require the payment by the Solvent Party to the Insolvent Party of the gross amount that had been the subject of such set-off (pursuant to a contractual set-off provision).

4.2.2 *Dispositions of property void*

In a winding up of a Company (the Insolvent Party) under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the commencement of winding up of the Insolvent Party are void under Section 259 of the Companies Act unless the court otherwise orders. Accordingly, we express no opinion as to whether or not an obligation incurred after the commencement of a winding-up of the Insolvent Party could properly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions or Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title

Transfer Provisions or Statutory Insolvency Set-Off in respect of Transactions or, as the case may be, Client Transactions entered into before the commencement of such winding-up.

4.2.3 ***Obligations incurred after certain times***

In circumstances where a winding-up petition is presented for the winding-up of a Company (the Insolvent Party) and a winding-up order is ultimately made pursuant to that petition, an obligation (a "Post-Notice Obligation") incurred between (a) the date on which the Solvent Party has notice of the winding-up petition and (b) the date of the winding-up order may not be included in any aggregation or set-off pursuant to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or Statutory Insolvency Set-Off if the Post-Notice Obligation (looked at in isolation) gives rise to an amount owing by such Insolvent Party to such Solvent Party.

However, this would not affect the aggregation or set-off of the obligations of the Parties in respect of (i) any obligation incurred before such Solvent Party had notice of the winding-up petition and (ii) any Post-Notice Obligation (looked at in isolation) giving rise to an amount owing to such Insolvent Party by such Solvent Party.

4.2.4 ***Vulnerable transactions***

Sections 98 and 99 (read with Section 100) and Section 103 of the Bankruptcy Act (which apply to the winding up of a Company (the Insolvent Party) through Section 329 of the Companies Act and to a Singapore Company under judicial management through Section 227T of the Companies Act (and references to winding up in this paragraph 4.2.4 shall also refer to judicial management)) provide that certain transactions entered into by a Company prior to the commencement of winding up may be challenged on the grounds that they are transactions at an undervalue, unfair preferences or extortionate credit transactions.

(a) ***Section 98 of the Bankruptcy Act: Transactions at Undervalue***

- (i) A liquidator of a Company may apply to the court to set aside transactions entered into at an undervalue within five years prior to the commencement of winding up, if the Company was insolvent at the time the transaction was entered into, or became insolvent in consequence of the transaction. For this purpose a transaction is at an undervalue if it constitutes a gift, is entered into for no consideration, or if the value of the consideration received (in money or moneys worth) by the Company is significantly less than the consideration provided (in money or moneys worth) by the Company.

(ii) Regulation 6 of the Companies (Application of Bankruptcy Provisions) Regulations provides, however, that a transaction will not be set aside if the court is satisfied that the relevant transaction was entered into in good faith and for the purpose of carrying on its business and at the time it did so there were reasonable grounds for believing that the transaction would benefit the Company.

(iii) Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. However, the matters referred to in paragraph (ii) above and the previous sentence are questions of fact in each case.

(b) *Section 99 of the Bankruptcy Act: Unfair Preferences*

(i) A liquidator of a Company may apply to the court to set aside transactions which occurred within six months prior to the commencement of winding up (extended to two years for transactions involving connected parties) which have the effect of putting the creditor, surety or guarantor in a better position in the liquidation than would otherwise have been the case, if the Company was insolvent at the time the preference was given, or became insolvent in consequence of the giving of the preference.

(ii) In deciding to give the preference, a Company must have been influenced by a desire to produce the effect of putting the creditor, surety or guarantor in a better position in a winding up of the Company. The court would not otherwise make an order to set aside the transaction.

(iii) If there is evidence to show that an arrangement for set-off is entered into by an Insolvent Party and another party within the applicable period referred to in paragraph (i) above and the Insolvent Party had the intention of giving the other party an unfair preference in the winding up of the Company, the arrangement may be invalidated.

(c) *Section 103 of the Bankruptcy Act: Extortionate Credit Transactions*

(i) A liquidator of a Company may apply to set aside transactions (involving the provision of credit to a Company) which are or were extortionate and were entered into within three years prior to the commencement of winding up. A transaction will be extortionate if, having regard to the risk accepted by the party providing the credit, (A) the terms of it are or were such as to require grossly exorbitant payments to be made (whether

unconditionally or in certain contingencies) in respect of the provision of the credit, or (B) it is harsh and unconscionable or substantially unfair. A court would presume, unless the contrary is proved, that such a transaction is extortionate.

- (ii) Some types of Transactions or, as the case may be, Client Transactions envisaged under the FOA Netting Agreement or, as the case may be, Clearing Agreement may involve the provision of credit to a Company and accordingly Section 103 of the Bankruptcy Act may apply.

4.2.5 *Disclaimer of onerous property*

Section 332 of the Companies Act allows the liquidator, in a winding up of a Company (the Insolvent Party), to disclaim any onerous property with the leave of the court or committee of inspection of the Company. For this purpose, onerous property means, *inter alia*, shares in corporations, any unprofitable contract and any other property which is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money. A liquidator may, upon the commencement of winding up of a Company, therefore seek to disclaim any such onerous property, including any contract entered into by the Insolvent Party if the liquidator considers the contract to be an unprofitable contract. If any such property is so disclaimed and loss or damage is suffered by the Solvent Party as a result, the Solvent Party may prove such loss or damage as a debt in the winding up of the Insolvent Party.

However, any liability or obligation which was incurred by the Insolvent Party prior to the date of commencement of such winding up and which has become payable or due to be performed or discharged on or before such date will not be affected by such disclaimer; and Section 332 of the Companies Act does not entitle a liquidator to:

- (a) recover any sum paid by the Insolvent Party to the Solvent Party before the commencement of the winding-up of the Insolvent Party; or
- (b) disclaim any contract so as to determine, or release the Insolvent Party from, any liability or obligation of the Insolvent Party in respect of any amount that became due and payable by it before the commencement of its winding-up.

In addition, Section 332 of the Companies Act does not entitle a liquidator of the Insolvent Party to disclaim a contract:

- (i) if and to the extent that automatic termination has been effective to convert into an amount due and payable any liability or obligation which, but for the operation of automatic termination, would have been

required to be discharged or performed by the Insolvent Party at some future time; or

- (ii) if and to the extent that (A) the Solvent Party has properly exercised an effective right to close-out any liability or obligation which, but for such close-out, would have been required to be discharged or performed by the Insolvent Party at some future time; and (B) such close-out has become effective (so as to produce an amount due and payable) before the time at which the liquidator seeks to disclaim the relevant contract.

4.3 Other insolvency issues

4.3.1 Singapore court may, on proof to its satisfaction that there is sufficient reason, stay the winding up proceedings against the Insolvent Party either altogether or for a limited time on such terms and conditions as the court may think fit.

4.3.2 It is possible that:

- (a) the valuation and calculation made to determine the Liquidation Amount or the net amount resulting from the set-off implemented under the FOA Netting Agreement, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision;
- (b) any currency conversion rate applied; or
- (c) any other valuation, calculation or determination made or other action or discretionary decision taken under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision,

could be challenged by an Insolvency Representative if they were or it was not done fairly or in a manner consistent with applicable law.

4.3.3 We express no opinion as to the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in relation to any obligation owing by one Party the benefit of which is acquired by a Company after a winding up order has been made in respect of that Company.

4.4 Judicial management

4.4.1 Under Singapore law, a Singapore Company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor may apply to

court for the company to be placed under judicial management and for the appointment of a judicial manager (Sections 227A and 227B of the Companies Act). Judicial management is covered by Part VIIIA of the Companies Act, which does not apply to banks, finance companies and insurance companies incorporated in Singapore and licensed in Singapore unless a court decides it would be in the public interest, or to branches established or located in Singapore of companies incorporated outside Singapore. Accordingly, judicial management does not apply to Non-Singapore Companies, Singapore Banks or Singapore Insurance Companies.

4.4.2 The court may make a judicial management order in relation to the Singapore Company only if: (a) it is satisfied that the Singapore Company is or will be unable to pay its debts; and (b) it considers that the making of the judicial management order would be likely to achieve one or more of the following purposes, namely: (i) the survival of the Singapore Company or the whole or part of its undertaking as a going concern; (ii) the approval of a compromise or arrangement under Section 210 of the Companies Act between the Singapore Company and any such persons mentioned in that section; and (iii) a more advantageous realisation of the Singapore Company's assets would be effected than on a winding up. During the period beginning with the making of an application for a judicial management order and ending with the making of such an order, the following shall apply: (a) no resolution shall be passed or order made for the winding up of the Singapore Company; (b) no steps shall be taken to, inter alia, enforce any charge or security over the Singapore Company's property; and (c) no other proceedings, execution or other legal process shall be commenced or continued against the Singapore Company except with the leave of court (Section 227C of the Companies Act). On the making of a judicial management order, any receiver or receiver and manager shall vacate office and any application for the winding up of the Singapore Company shall be dismissed (Section 227D of the Companies Act).

4.4.3 Neither an application for a judicial management order nor the making of a judicial management order would in itself impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions (*Altus Technologies Pte Ltd (under judicial management) v Oversea-Chinese Banking Corp Ltd* [2009] SGHC 159, at 14-15). However, pursuant to Section 227G(6) of the Companies Act, the judicial manager is not permitted to make payment towards discharging any debt to which the Singapore Company was subject on the making of the judicial management order, such as any net amount resulting from the application of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions unless the making of the payment is sanctioned by the Singapore court or the

payment is made in pursuance of a compromise or arrangement so sanctioned.

4.5 **Schemes of arrangement**

There is a provision in the Companies Act for schemes of arrangement in respect of Companies to be approved by creditors or, in some cases, shareholders of the Company. A court will not sanction a scheme of arrangement unless it is satisfied that creditors and shareholders have been provided with sufficient information in order to make an informed decisions. Approval at the creditors' meeting of the terms of a scheme of arrangement does not require unanimity of the affected creditors, whether or not present at the meeting. Such a scheme of arrangement could affect both set-off rights of creditors and the amount of claims which the creditors may have against the Company. However, any such scheme of arrangement could impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision only if the aggregation or set-off provided for in the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision, as applicable, has not taken place before the coming into effect of such scheme of arrangement. If the aggregation or set-off has taken place before the coming into effect of such scheme of arrangement, that scheme of arrangement could affect only the amount (and other terms) of any resulting net claim.

4.6 **Transfer of Margin**

- 4.6.1 Under the conflict of laws rules of Singapore, matters concerning the title to, and rights and obligations of persons generally with respect to, Margin Transferred pursuant to the Title Transfer Provisions of an Agreement (with Title Transfer Provisions) are generally governed by the law of the place where the Margin is situated.
- 4.6.2 If Singapore law were to apply to such matters, the Singapore courts will respect the legal characterisation of a transaction expressly given by the parties to that transaction unless:
 - (a) the transaction is a sham, in the sense that the parties intended to create a different transaction from the one evidenced by the documents of that transaction, or intended to create no transaction at all; or
 - (b) the transaction is mislabelled, in the sense that the documents of a transaction may evidence the true intention of the parties but the transaction has been given an express legal characterisation by the parties that is different from an objective legal characterisation (by the court) of the rights and obligations created by the parties.

4.6.3 We have already assumed that the FOA Netting Agreement or, as the case may be, Clearing Agreement has been entered into and is carried out by each Party in good faith and that the Agreement accurately reflects the true intentions of each Party. In the English case of *Lloyds and Scottish Finance Ltd v Cyril Lord Carpets* [1992] BCLC 609, the House of Lords held that a transaction would not be a sham merely on the ground that it replicates the economic effect of another type of transaction.

4.6.4 Moreover, in accordance with the principles set out in *Re Inglefield (George) Ltd.* [1933] Ch. 1, as considered and applied by the English Court of Appeal in *Welsh Development Agency v. Export Finance Co Ltd.* [1992] BCC 270, and followed by the House of Lords in *Lloyds and Scottish Finance Ltd v Cyril Lord Carpets* [1992] BCLC 609, a Singapore court would find that a purported transfer of title to an asset or a right pursuant to a sale and purchase agreement should not be regarded as the creation of a security interest if:

- (a) the seller will have no right to acquire the title to the assets or any of the benefit of the rights transferred by it pursuant to the sale and purchase agreement by repaying to the purchaser the initial purchase price;
- (b) the purchaser has no obligation to account to the seller for any profit made by the purchaser on any subsequent disposal by the purchaser of the assets or rights transferred pursuant to the sale and purchase agreement; and
- (c) the purchaser has no right of recourse to the seller if the purchaser realises the assets or the benefit of the rights transferred pursuant to the sale and purchase agreement for an amount less than the initial purchase price other than by virtue of the right of the purchaser to require the seller to repurchase the relevant assets or rights upon a breach by the seller of any warranty concerning the relevant assets or rights.

4.6.5 The decision in *Re Inglefield (George) Ltd.* has been cited with approval by the Singapore Court of Appeal in *Thai Chee Ken and others (Liquidators of Pan-Electric Industries Ltd) v Banque Paribas* [1993] SGCA 38.

4.6.6 We observe that under the Title Transfer Provisions:

- (a) the Counterparty has no general right to reacquire any Margin that had been Transferred by it to the Firm pursuant to the Title Transfer Provisions by repaying to the Firm the Value of such Margin as of the date of Transfer;
- (b) the Firm has no obligation to account to the Counterparty for any profit made on the disposition by it of the benefit of any Margin Transferred

by the Counterparty to the Firm pursuant to the Title Transfer Provisions; and

- (c) the Firm has no general right of recourse to the Counterparty if the Firm realises the Margin Transferred pursuant to the Title Transfer provisions for an amount less than the Value of such Margin as of the date of Transfer.

4.6.7 Accordingly, in view of the above, we consider that the Transfer of Margin pursuant to the Title Transfer Provisions will not be characterised by the Singapore courts as a loan made by the Firm to the Counterparty against the security of Margin.

4.6.8 However, the Singapore courts will examine whether by their subsequent conduct the Parties amended or rescinded the terms of the FOA Netting Agreement or, as the case may be, Clearing Agreement and the Singapore courts would take this into consideration in determining the nature of the Transfer. Such conduct could include where a Party which receives Margin from the other Party pursuant to the Title Transfer Provisions treats that Margin in a manner which indicates that the other Party retains proprietary interest in that Margin (for example, such that the observations noted in paragraph 4.6.6 above are incorrect).

4.7 **Recognition of choice of law**

4.7.1 The opinion in paragraph 3.2 is subject to:

- (a) the choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement being made in good faith and not with a view to avoiding any provision or effect of any other applicable law; and
- (b) English law being pleaded and proved to the satisfaction of the courts of this jurisdiction (which satisfaction is within the discretion of the said courts).

4.7.2 Further

- (a) English law will be disregarded if its or their application will be illegal or contrary to public policy or mandatory rules in this jurisdiction; and
- (b) matters of procedure including questions of set-off and counter-claim, interest chargeable on judgment debts, priorities, measure of damages, limitation of actions and submission to the jurisdiction of foreign courts are as a general rule governed by the laws of this jurisdiction to the exclusion of the chosen governing law.

4.8 General

4.8.1 If any creditor (the "**attaching creditor**") of a Party ("**the defendant Party**") were to attach, execute, levy execution or otherwise exercise a creditor's process (whether before or after judgment) over or against any amount owing under the FOA Netting Agreement or, as the case may be, Clearing Agreement or a Transaction or, as the case may be, a Client Transaction by the other Party ("**the debtor Party**") to the defendant Party, then the debtor Party would be able following a Termination Date or, as the case may be, a date where each Client Transaction in the relevant Cleared Transaction Set automatically terminates (a "**Cleared Set Termination Date**"), to exercise its rights under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions against the creditor of the defendant Party in respect of claims which existed at the date of the attachment or other process, including the amount which is the subject of the attachment or other process. However, if a winding-up order or a bankruptcy order has been made in respect of the attaching creditor before the Termination Date or, as the case may be, a Cleared Set Termination Date has occurred, it may be possible for the liquidator or trustee in bankruptcy of the attaching creditor to claim from the debtor Party the amount which is subject to the attachment free of the debtor Party's rights under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions. This is because it may be argued that the debtor Party seeks to exercise a set-off right in respect of an amount which is now owed by the debtor Party to the attaching creditor rather than to the defendant Party, and a contractual provision which purports to create a right of set-off in respect of non-mutual claims may not be effective in the winding-up or bankruptcy of the attaching creditor.

However, after the commencement of a winding-up or the bankruptcy of the defendant Party any attachment will be ineffective unless the court otherwise orders, and in our view the court would not validate the attachment in order to defeat the rights of the debtor Party under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

4.8.2 Where any Party is vested with a discretion or may determine a matter, Singapore law may require, that such discretion is exercised or determination is made in good faith, reasonably and for a proper purpose. Any provision in the FOA Netting Agreement or, as the case may be, the Clearing Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation, determination or certification is

fraudulent, unreasonable, arbitrary or manifestly incorrect. The Singapore court may regard any calculation, determination or certification as no more than *prima facie* evidence.

- 4.8.3 If the effect of proceedings in a forum outside this jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the Singapore courts may recognise the extinction of those claims or liabilities.
- 4.8.4 Any provision of the FOA Netting Agreement or, as the case may be, Clearing Agreement which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any Party or any other person may be ineffective.
- 4.8.5 Under Singapore law, interest imposed upon a Party by the FOA Netting Agreement or, as the case may be, Clearing Agreement might be held to be irrecoverable on the grounds that it is a penalty, or to the extent that it accrues on an unsecured debt after the making of a winding-up order or a bankruptcy order or the passing of a winding-up resolution in respect of the Party liable to pay such interest, but the fact that such interest was held to be irrecoverable would not of itself prejudice the legality or validity of any other provision of the FOA Netting Agreement or, as the case may be, Clearing Agreement.
- 4.8.6 While a Singapore court has power to give judgment in a currency other than Singapore dollars, if, subject to the terms of the contract, it is the currency which most truly expresses the plaintiff's loss, it has the discretion to decline to do so.
- 4.8.7 Conveyance with intent to defraud creditors: Under Section 73B of the CLPA, every conveyance of property, made with intent to defraud creditors shall be voidable, even if the person is not the subject of a bankruptcy order, at the instance of any person prejudiced by the conveyance, unless the estate or interest in property is disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors.
- 4.8.8 The Singapore Government has, together with other recommendations, accepted a recommendation made by the Company Legislation and Regulatory Framework Committee ("**CLRFC**") to consolidate and refine Singapore's bankruptcy and insolvency legislation (which is currently contained in the Companies Act and the Bankruptcy Act and related subsidiary legislation) into an omnibus insolvency act and subsidiary legislation. It is expected that this recommendation will be implemented in due course and there is a possibility that, when implemented, Singapore's insolvency laws could be amended in a way which could affect the conclusions set out in this opinion letter. However, we are not able to advise in detail on this matter at this stage as no legislation to implement the

CLRFC's recommendation has been introduced. While we are unable to conclude if such consolidation of legislation may affect the opinions given in this opinion letter, there is at this juncture no reason to believe that such proposed consolidation of legislation will adversely affect such opinions.

4.8.9 The opinions expressed in this opinion letter are subject to the effects of United Nations or Singapore sanctions or other similar measures implemented or effective in Singapore with respect to a Party which is, or is controlled by or otherwise connected with, a person resident in, incorporated or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply.

4.9 **Singapore Banks**

Customer Money Rules

4.9.1 A Singapore Bank may enter into Transactions or, as the case may be, Client Transactions for the Singapore Bank's own account or for the account of the Singapore Bank's customers whose monies may be required to be treated by the Singapore Bank as money received on account of a customer under the Customer Money Rules (such monies "**customer money**" and such customer a "**segregated customer**"). A Singapore Bank cannot aggregate or set off (or permit there to be aggregation or set off of) its own liabilities owed to the other Party against customer money to be received from such other Party.

4.9.2 Accordingly, if a Party were a Singapore Bank, the FOA Netting Agreement or, as the case may be, the Clearing Agreement might need to be amended to provide for two discrete amounts to be calculated in order to produce, separately, a net amount due in respect of transactions made for the account of segregated customers and a net amount due in respect of all other transactions; or the Singapore Bank might need to enter into two FOA Netting Agreements, or, as the case may be, Clearing Agreements, one to apply to transactions made with the other Party for the account of segregated customers and the other to cover all other transactions.

4.9.3 Alternatively, in such circumstances, the other Party might obtain a representation in the FOA Netting Agreement, or, as the case may be, the Clearing Agreement from a Party that is a Singapore Bank that such Singapore Bank is dealing in relation to such agreement only for its own account and not for the account of its customers. A possible representation (to be adapted for individual circumstances) is as follows:

"[You] represent and warrant that you are dealing in relation to this [Agreement] and any [Transaction] only for your own account and not for the account of any customer or other third party."

4.9.4 We express no opinion as to the effect under Singapore law of any failure by a Singapore Bank to adopt one of the above courses of action mentioned in paragraphs 4.9.2 and 4.9.3.

MAS Act

4.9.5 Part IVB of the MAS Act provides for various remedies for a failing Singapore Bank, which include :

- (a) under Section 30AAO of the MAS Act, the power of the High Court, on the application of the MAS to make one or more orders, including an order that no steps be taken by any person, other than a specified person, to sell, transfer, assign or otherwise dispose of any property of the Singapore Bank and any such disposal in contravention of such order is void;
- (b) under Section 30AAS of the MAS Act, the power of the MAS to make a determination that the whole or any part of the business of a Singapore Bank shall be transferred, whereupon during the prescribed period, amongst other things, any sale, transfer, assignment or other disposition of the specified business is void.

Accordingly, we express no opinion as to whether or not an obligation incurred after the making of the order or during the prescribed period could properly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off in respect of Transactions or, as the case may be, Client Transactions entered into before the making of the order.

Further Section 30AAS of the MAS Act is drafted widely to permit the MAS to make a determination that the whole or any part of the business of a Singapore Bank is to be transferred to a transferee. Any such transfer which includes the Agreement and the Transactions under the Agreement may affect the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision or Addendum Netting Provision (in particular where some but not all the Transactions are to be transferred), FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision and Title Transfer Provisions.

There has been no known exercise by the MAS of its powers under Section 30AAS of the MAS Act since its predecessor provision (previously Section 55E of the Banking Act) was introduced in 2007. From a legal perspective,

the statutory provision could be read to include a transfer of some but not all Transactions or only assets but not liabilities of a Singapore Bank. However, such wide powers should be considered against the policy statements by the MAS, such as set out below:

- (a) in the industry response to the consultation MAS conducted when introducing the compulsory transfer regime in 2006 (see http://www.mas.gov.sg/-/media/resource/publications/consult-papers/2006/Response_to_BankingAmentment_Bill_Nov_06.pdf), industry participants queried if the circumstances under which the MAS could invoke such provision could be more clearly defined or restricted in its scope of application. In response, the MAS stated the following: *"Before MAS makes a determination on a compulsory transfer of the business or shares of a bank or a restructuring of its share capital, there must be sufficient grounds for the Authority to do so. In setting out these grounds, MAS has taken into account the powers and practices of other regulators in major jurisdictions. It is not feasible to provide for more precise trigger points as supervisory judgment would be involved. In addition, any determination by MAS may only be made if the Authority is satisfied that it is in the interests of the depositors, as well as the stability of the financial system in Singapore. MAS may also appoint one or more persons to perform an independent assessment of the proposed transfer, where appropriate, to ensure that the final valuation reflects fair market opinion. Furthermore, MAS' determination is subject to the approval of the Minister charged with the responsibility for banking matters. The Minister will give the affected parties an opportunity to make written representations, except where it is not practicable or desirable to do so, for instance, where an expeditious transfer is crucial to maintaining financial system stability."*
- (b) in the MAS's response to public feedback to the Consultation Paper on Proposed Amendments to the Monetary Authority of Singapore Act of December 2012 (wherein the MAS proposed to extend the resolution regime applicable to banks and insurers, including similar compulsory transfer of business provisions, to other regulated financial institutions), the MAS stated that *"the MAS(A) Bill will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, will not be affected by the exercise of resolution powers under the MAS Act."*

As such, we are of the view that it is unlikely that the MAS would use its powers under Section 30AAS of the MAS Act to "cherry pick" Transactions

(such that some but not all Transactions are transferred pursuant to an exercise of its powers under that section).

Banking Act

4.9.6 In respect of the winding up of a Singapore Bank, Section 62A of the Banking Act ("**Section 62A**") prescribes that, notwithstanding any written law or rule of law relating to the winding up of companies, a liquidator of a Singapore Bank which is being wound up shall first set-off a depositor's liabilities to that Singapore Bank (whether or not incurred in the Asian Currency Unit of that Singapore Bank) against any deposit of the depositor placed with that Singapore Bank other than with the Asian Currency Unit of that Singapore Bank.

We have the following concerns with the application of Section 62A:

- (a) Firstly, the language of Section 62A does not replicate the language of (or refer to) Section 88(1) of the Bankruptcy Act, which is the statutory provision creating Statutory Insolvency Set-off: for example, there is no express reference in Section 62A to the requirement of mutuality (which is a key element of Statutory Insolvency Set-off). It may be, therefore, that the Singapore courts determine that the requirements for Statutory Insolvency Set-off do not need to be satisfied in respect of Section 62A set-off.
- (b) Secondly, Section 62A set-off appears not to be of automatic application (unlike Statutory Insolvency Set-off), but seems to require to be effected by the liquidator of the relevant Singapore Bank.

However, on the assumption (despite what we say in sub-paragraphs (a) and (b) above) that Section 62A set-off is to take effect in the same way as Statutory Insolvency Set-off, we are of the view that after the application of Section 62A set-off and Statutory Insolvency Set-off the respective positions of the Parties would be the same as if only Statutory Insolvency Set-off had applied. Accordingly, subject to the other qualifications in this opinion letter, the application of Section 62A set-off would appear not to impair the overall effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision or Title Transfer Provisions. Further, Section 62A is, of course, relevant only where a Party is a Singapore Bank with which the other Party has placed one or more deposits (other than with the Asian Currency Unit of that Singapore Bank).

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options

Association's opinions library and whose terms of subscription give them access to this opinion (each a "subscribing member").

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

- (a) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, auditors and professional advisers of such affiliate;
- (b) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings;
- (c) the officers, employees, auditors and professional advisers of any addressee; and
- (d) any competent authority supervising a subscribing member or its affiliates in connection with their compliance with their obligations under prudential regulation

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

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

Yours faithfully



Clifford Chance Pte Ltd

SCHEDULE 1

SINGAPORE INVESTMENT FIRMS

Subject to the modifications and additions set out in this Schedule 1 (*Singapore Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party which is a Singapore Investment Firm.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

[Intentionally left blank]

2. ADDITIONAL ASSUMPTIONS

[Intentionally left blank]

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings : Singapore Investment Firms

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party which is a Singapore Investment Firm would be subject in this jurisdiction are the following:

- (a) winding up (including provisional winding up);
- (b) receivership; and
- (c) schemes of arrangement.

In addition, a Singapore Investment Firm which is a Singapore Company could also be subject to judicial management.

The legislation applicable to Insolvency Proceedings is:

- (a) the Companies Act; and
- (b) the Bankruptcy Act,

together with any subsidiary legislation including the Bankruptcy Rules, each as modified up to the date hereof.

In addition, a Singapore Investment Firm is subject to additional grounds for winding up under the MAS Act.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented, in respect of a Party which is a Singapore Investment Firm that is a Singapore Company, by the following events: judicial management. See Annex 5 for suggested amendments to the Insolvency Events of Default Clause.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in respect of a Party which is a Singapore Investment Firm that is a Non-Singapore Company without the need for any additions.

4. ADDITIONAL QUALIFICATIONS

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

4.1 Customer Money Rules

- 4.1.1 A Singapore Investment Firm may enter into Transactions or, as the case may be, Client Transactions for the Singapore Investment Firm's own account or for the account of the Singapore Investment Firm's customers whose monies may be required to be treated by the Singapore Investment Firm as money received on account of a customer under the Customer Money Rules (such monies "**customer money**" and such customer a "**segregated customer**"). A Singapore Investment Firm cannot aggregate or set off (or permit there to be aggregation or set off of) its own liabilities owed to the other Party against customer money to be received from such other Party.
- 4.1.2 Accordingly, if a Party were a Singapore Investment Firm, the FOA Netting Agreement or, as the case may be, the Clearing Agreement might need to be amended to provide for two discrete amounts to be calculated in order to produce, separately, a net amount due in respect of transactions made for the account of segregated customers and a net amount due in respect of all other transactions; or the Singapore Investment Firm might need to enter into two FOA Netting Agreements, or, as the case may be, Clearing Agreements, one to apply to transactions made with the other Party for the account of segregated customers and the other to cover all other transactions.
- 4.1.3 Alternatively, in such circumstances, the other Party might obtain a representation in the FOA Netting Agreement or, as the case may be, the

Clearing Agreement from a Party that is a Singapore Investment Firm that such Singapore Investment Firm is dealing in relation to such agreement only for its own account and not for the account of its customers. A possible representation (to be adapted for individual circumstances) is as follows:

"[You] represent and warrant that you are dealing in relation to the [Agreement] and any [Transaction] only for your own account and not for the account of any customer or other third party."

4.1.4 We express no opinion as to the effect under Singapore law of any failure by a Singapore Investment Firm to adopt one of the above courses of action mentioned in sections 4.1.2 and 4.1.3.

4.2 MAS Act

4.2.1 Part IVB of the MAS Act provides for various remedies for a failing Singapore Investment Firm, which include :

- (a) under Section 30AAO of the MAS Act, the power of the High Court, on the application of the MAS to make one or more orders, including an order that no steps be taken by any person, other than a specified person, to sell, transfer, assign or otherwise dispose of any property of the Singapore Investment Firm and any such disposal in contravention of such order is void;
- (b) under Section 30AAS of the MAS Act, the power of the MAS to make a determination that the whole or any part of the business of a Singapore Investment Firm shall be transferred, whereupon during the prescribed period, amongst other things, any sale, transfer, assignment or other disposition of the specified business is void.

Accordingly, we express no opinion as to whether or not an obligation incurred after the making of the order or during the prescribed period could properly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off in respect of Transactions or, as the case may be, Client Transactions entered into before the making of the order.

Further Section 30AAS of the MAS Act is drafted widely to permit the MAS to make a determination that the whole or any part of the business of a Singapore Investment Firm is to be transferred to a transferee. Any such transfer which includes the Agreement and the Transactions under the

Agreement may affect the effectiveness of the FOA Netting Provisions, Clearing Module Netting Provision or Addendum Netting Provision (in particular where some but not all the Transactions are to be transferred), FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision and Title Transfer Provisions.

There has been no known exercise by the MAS of its powers under Section 30AAS of the MAS Act. From a legal perspective, the statutory provision could be read to include a transfer of some but not all Transactions or only assets but not liabilities of a Singapore Investment Firm. However, such wide powers should be considered against the policy statements by the MAS, such as set out in the MAS's response to public feedback to the Consultation Paper on Proposed Amendments to the Monetary Authority of Singapore Act of December 2012 (wherein the MAS proposed to extend the resolution regime applicable to banks and insurers, including similar compulsory transfer of business provisions, to other regulated financial institutions). The MAS stated that *"the MAS(A) Bill will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, will not be affected by the exercise of resolution powers under the MAS Act."*

As such, we are of the view that it is unlikely that the MAS would use its powers under Section 30AAS of the MAS Act to "cherry pick" Transactions (such that some but not all Transactions are transferred pursuant to an exercise of its powers under that section).

References to "Singapore Investment Firm" in this section 4.2 exclude any holder of a capital markets services licence which carries on the business of providing credit rating services as defined in the Securities and Futures Act.

SCHEDULE 2

SINGAPORE INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 2 (*Singapore Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party which is a Singapore Insurance Company.

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

1. ADDITIONAL ASSUMPTIONS

The following additional assumption shall apply:

In the case of a Party that is a Singapore Insurance Company, the FOA Netting Agreement or, as the case may be, Clearing Agreement and Transactions or, as the case may be, Client Transactions are attributable to the same insurance fund maintained by the Singapore Insurance Company under the Insurance Act.

2. ADDITIONAL ASSUMPTIONS

[Intentionally left blank]

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings : Singapore Insurance Company

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party which is a Singapore Insurance Company would be subject in this jurisdiction are the following:

- (a) winding up (including provisional winding up);
- (b) receivership; and
- (c) schemes of arrangement.

The legislation applicable to Insolvency Proceedings is:

- (a) the Companies Act; and

(b) the Bankruptcy Act,

together with any subsidiary legislation including the Bankruptcy Rules, each as modified up to the date hereof.

In addition, a Singapore Insurance Company is subject to additional grounds for winding up under the Insurance Act.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in respect of a Party which is a Singapore Insurance Company without the need for any additions

4. ADDITIONAL QUALIFICATIONS

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

4.1 Insurance funds

Section 17 of the Insurance Act requires a Singapore Insurance Company to establish separate insurance funds for each class of insurance business carried on by the Singapore Insurance Company that relates to Singapore policies and for each class of insurance business carried on by the Singapore insurance Company that relates to offshore policies. Singapore Insurance Companies are also, in certain circumstances, required by Section 17 of the Insurance Act to establish separate insurance funds for different types of policies in respect of certain classes of insurance business.

Section 17(4) of the Insurance Act requires that all receipts of the Singapore Insurance Company that are attributable to the business to which an insurance fund relates must be paid into that insurance fund, and the assets in the insurance fund can only be applied to meet such part of the Singapore Insurance Company's liabilities and expenses as is so attributable to the business to which such insurance fund relates (although it is permissible to withdraw any surplus of assets over liabilities for such insurance fund in accordance with Section 17(9)).

It would appear that Section 17 would prohibit any netting or set-off to the extent that the rights and liabilities of the Singapore Insurance Company that is being netted or set-off are attributable to different classes of its insurance business (and accordingly to different insurance funds).

Accordingly, we would recommend that each Singapore Insurance Company enter into each FOA Netting Agreement or, as the case may be, Clearing Agreement in relation to a specified insurance fund, and represent and undertake to ensure that all Transactions under such agreement are attributable to the business to which such insurance fund relates.

4.2 Insurance Act

The Insurance Act contains various provisions which may affect the effectiveness of the Netting Provision and the Set-Off Provisions. In particular, Parts III and IIIAA of the Insurance Act provides for various remedies for a failing Singapore Insurance Company, which include :

- (a) under Section 41E of the Insurance Act, the power of the High Court, on the application of the MAS to make one or more orders, including an order that no steps be taken by any person, other than a specified person, to sell, transfer, assign or otherwise dispose of any property of the Singapore Insurance Company and any such disposal in contravention of such order is void;
- (b) under Section 49FF of the Insurance Act, the power of the MAS to make a determination that the whole or any part of the business of a Singapore Insurance Company shall be transferred, whereupon during the prescribed period, amongst other things, any sale, transfer, assignment or other disposition of the specified business is void.

Accordingly, we express no opinion as to whether or not an obligation incurred after the making of the order or during the prescribed period could properly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off in respect of Transactions or, as the case may be, Client Transactions entered into before the making of the order..

Further Section 49FF of the Insurance Act is drafted widely to permit the MAS to make a determination that the whole or any part of the business of a Singapore Insurance Company is to be transferred to a transferee. Any such transfer which includes the Agreement and the Transactions under the FOA Netting Agreement or, as the case may be, Clearing Agreement may affect the effectiveness of the FOA Netting Provisions, Clearing Module Netting Provision or Addendum Netting Provision (in particular where some but not all the Transactions are to be transferred), FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision and Title Transfer Provisions.

SCHEDULE 3 SINGAPORE INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 3 (*Singapore Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Singapore Individuals.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.8.23 is deemed deleted and replaced with the following:

- 1.1 **"Insolvency Proceedings"** means, in relation to a Singapore Individual, the laws and procedures referred to in section 3.1."
- 1.2 **"Official Assignee"** has the meaning given in the Bankruptcy Act.

2. ADDITIONAL ASSUMPTIONS

The following additional assumption shall apply:

- 2.1 That each Singapore Individual is of full age and sound mind and has the mental capacity and full legal capacity under any applicable law relating to him/her to enter into and to exercise his/her rights and to perform his/her obligations under the FOA Netting Agreement or, as the case may be, Clearing Agreement and Transactions or, as the case may be, Client Transactions.

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings: Singapore Individuals

- 3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency procedures to which a Party which is a Singapore Individual would be subject in this jurisdiction, and which are relevant for the purposes of this opinion letter, are the following:
 - (a) bankruptcy;
 - (b) voluntary arrangements; and
 - (c) debt repayment schemes.

- 3.1.2 The legislation applicable to Insolvency Proceedings is the Bankruptcy Act, together with any subsidiary legislation including the Bankruptcy Rules, each as modified up to the date hereof.
- 3.1.3 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in respect of a Party which is a Singapore Individual without the need for any additions.

4. ADDITIONAL QUALIFICATIONS

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

4.1 Bankruptcy

4.1.1 *Mandatory bankruptcy rules of set-off*

Section 88(1) of the Bankruptcy Act provides that where a Singapore Individual (the Insolvent Party) is adjudged bankrupt under Singapore law, where there have been any mutual credits, mutual debts or other mutual dealings between the Insolvent Party and a creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings shall be set-off against each other and only the balance shall be a debt provable in bankruptcy.

Set-off pursuant to Section 88(1) of the Bankruptcy Act ("**Statutory Bankruptcy Set-off**") is mandatory and occurs automatically on the date of the bankruptcy order. It is not possible for parties to contract out of Statutory Bankruptcy Set-Off. Statutory Insolvency Set-Off would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties. This may lead to (i) the net amount payable between the Parties by result of Statutory Insolvency Set-Off being different from the amount that would have been payable under the FOA Netting Provision or (ii) to a single net amount being payable between the Parties by result of Statutory Insolvency Set-Off instead of separate net amounts pursuant to the Clearing Module Netting Provision or the Addendum Netting Provision.

However, any set-off (pursuant to a contractual set-off provision) that took effect prior to the commencement of the winding-up will not be affected by Statutory Insolvency Set-Off; and Section 88(1) of the Bankruptcy Act does not entitle a liquidator to require the payment by the Solvent Party to the

Insolvent Party of the gross amount that had been the subject of such set-off (pursuant to a contractual set-off provision).

4.1.2 ***Dispositions of property void***

Where a Singapore Individual (the Insolvent Party) is adjudged bankrupt under Singapore law, any disposition of property made by the Insolvent Party during the period beginning with the day of the making of the bankruptcy application and ending with the making of the bankruptcy order ("Relevant Period") is void under Section 77 of the Bankruptcy Act, except to the extent that such disposition has been made with the consent of, or been subsequently ratified by the court. Accordingly, we express no opinion as to whether or not obligations incurred during the Relevant Period could validly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Bankruptcy Set-Off. The avoidance of any obligation on this basis would not prejudice the effectiveness of the aggregation and set-off of other obligations pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Bankruptcy Set-Off.

4.1.3 ***Obligations incurred after certain times***

In circumstances where a bankruptcy application is made against a Singapore Individual (the Insolvent Party) and a bankruptcy order is ultimately made pursuant to that petition, an obligation (a "Post-Notice Obligation") incurred between (a) the date on which the Solvent Party has notice of the bankruptcy application and (b) the date of the bankruptcy order may not be included in any aggregation or set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off if the Post-Notice Obligation (looked at in isolation) gives rise to an amount owing by such Insolvent Party to such Solvent Party.

However, this would not affect the aggregation or set-off of the obligations of the Parties in respect of (i) any obligation before such Solvent Party had notice of the bankruptcy application and (ii) any Post-Notice Obligation (looked at in isolation) giving rise to an amount owing to such Insolvent Party by such Solvent Party.

4.1.4 *Vulnerable transactions*

Sections 98 and 99 (read with Section 100) and Section 103 of the Bankruptcy Act provide that certain transactions entered into by a Singapore Individual that is adjudged bankrupt under Singapore law (the Insolvent Party) prior to the making of the bankruptcy application may be challenged on the grounds that they are transactions at an undervalue, unfair preferences or extortionate credit transactions.

- (a) Section 98 of the Bankruptcy Act: Transactions at Undervalue
 - (i) The Official Assignee may apply to the court to set aside transactions entered into at an undervalue within five years prior to the day of the making of the bankruptcy application, if the Insolvent Party was insolvent at the time the transaction was entered into, or became insolvent in consequence of the transaction. For this purpose a transaction is at an undervalue if it constitutes a gift, is entered into for no consideration, or if the value of the consideration received (in money or moneys worth) by the Insolvent Party is significantly less than the consideration provided (in money or moneys worth) by the Insolvent Party.
 - (ii) Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. However, this is a question of fact in each case.
- (b) Section 99 of the Bankruptcy Act: Unfair Preferences
 - (i) The Official Assignee may apply to the court to set aside transactions which occurred within six months prior to the day of the making of the bankruptcy application (extended to two years for transactions involving connected parties) which have the effect of putting the creditor, surety or guarantor in a better position in the event of the Insolvent Party's bankruptcy than would otherwise have been the case, if the Insolvent Party was insolvent at the time the preference was given, or became insolvent in consequence of the giving of the preference.
 - (ii) In deciding to give the preference, the Insolvent Party must have been influenced by a desire to produce the effect of putting the creditor, surety or guarantor in a better position in the event of the Insolvent Party's bankruptcy. The court would not otherwise make an order to set aside the transaction.
 - (iii) If there is evidence to show that an arrangement for set-off is entered into by an Insolvent Party and another party within the applicable period referred to in paragraph (i) above and the

Insolvent Party had the intention of giving the other party an unfair preference in the Insolvent Party's bankruptcy, the arrangement may be invalidated.

(c) Section 103 of the Bankruptcy Act: Extortionate Credit Transactions

- (i) The Official Assignee may apply to set aside transactions (involving the provision of credit to the Insolvent Party) which are or were extortionate and were entered into within three years prior to the commencement of the bankruptcy. A transaction will be extortionate if, having regard to the risk accepted by the party providing the credit, (A) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or (B) it is harsh and unconscionable or substantially unfair. A court would presume, unless the contrary is proved, that such a transaction is extortionate.
- (ii) Some types of Transactions or, as the case may be, Client Transactions envisaged under the FOA Netting Agreement or, as the case may be, Clearing Agreement may involve the provision of credit to a Singapore Individual Company and accordingly, Section 103 of the Bankruptcy Act may apply.

4.1.5 *Disclaimer of onerous property*

Section 110 of the Bankruptcy Act allows the Official Assignee to disclaim any onerous property of a Singapore Individual adjudged bankrupt under Singapore law (the Insolvent Party). For this purpose, onerous property means, *inter alia*, shares or stock in companies, any unprofitable contract and any other property which is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money. The Official Assignee may, upon the commencement of the bankruptcy, therefore seek to disclaim any such onerous property, including any contract entered into by the Insolvent Party if the Official Assignee considers the contract to be an unprofitable contract. If any such property is so disclaimed and loss or damage is suffered by the Solvent Party as a result, the Solvent Party may prove such loss or damage as a debt in the bankruptcy of the Insolvent Party.

However, any liability or obligation which was incurred by the Insolvent Party prior to the date of commencement of such bankruptcy and which has become payable or due to be performed or discharged on or before such date will not be affected by such disclaimer; and Section 110 of the Bankruptcy Act does not entitle an Official Assignee to:

- (a) recover any sum paid by the Insolvent Party to the Solvent Party before the commencement of the bankruptcy of the Insolvent Party; or
- (b) disclaim any contract so as to determine, or release the Insolvent Party from, any liability or obligation of the Insolvent Party in respect of any amount that became due and payable by him or her before the commencement of his or her bankruptcy.

In addition, Section 110 of the Bankruptcy Act does not entitle an Official Assignee of the Insolvent Party to disclaim a contract:

- (i) if and to the extent that automatic termination has been effective to convert into an amount due and payable any liability or obligation which, but for the operation of automatic termination, would have been required to be discharged or performed by the Insolvent Party at some future time; or
- (ii) if and to the extent that (A) the Solvent Party has properly exercised an effective right to close-out any liability or obligation which, but for such close-out, would have been required to be discharged or performed by the Insolvent Party at some future time; and (B) such close-out has become effective (so as to produce an amount due and payable) before the time at which the Official Assignee seeks to disclaim the relevant contract.

4.2 Other bankruptcy issues

- 4.2.1 Singapore court may, on proof to its satisfaction that there is sufficient reason, stay the bankruptcy proceedings against the Insolvent Party either altogether or for a limited time on such terms and conditions as the court may think fit.
- 4.2.2 It is possible that:
 - (a) the valuation and calculation made to determine the Liquidation Amount or the net amount resulting from the set-off implemented under the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision ;
 - (b) any currency conversion rate applied; or
 - (c) any other valuation, calculation or determination made or other action or discretionary decision taken under the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision,

could be challenged by an Insolvency Representative if they were or it was not done fairly or in a manner consistent with applicable law.

4.2.3 We express no opinion as to the effectiveness of the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in relation to any obligation owing by one Party the benefit of which is acquired by a Singapore Individual after a bankruptcy order has been made in respect of that Singapore Individual.

4.3 **Voluntary Arrangements**

There is provision in Part V of the Bankruptcy Act for a composition in satisfaction of debts or a scheme of arrangement of an insolvent Singapore Individual to be approved by creditors of that Singapore Individual. The Singapore Individual who intends to make such a proposal to his creditors may make an application to the court for an interim order preventing any bankruptcy application from being made or proceeded with, or other legal proceeding from being taken or continued against, the individual without the leave of the court during the period for which such interim order is in force.

A creditors' meeting is summoned if the nominee appointed in respect of the proposed voluntary arrangement reports to the court that a meeting of the individual's creditors should be summoned, unless the court otherwise directs. Approval at the creditors' meeting of the terms of the proposed voluntary arrangement does not require unanimity of the affected creditors. An approved voluntary arrangement binds every person who had notice of and was entitled to vote at the creditors' meeting whether or not present or represented at the meeting, as if such person were a party to the arrangement.

Such an approved voluntary arrangement could affect both netting or set-off rights of creditors and the amounts of claims which the creditors may have against the Singapore Individual. However, any such arrangement could impair the effectiveness of the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision only if the aggregation or set-off provided for in the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision, as applicable, has not taken place before the coming into effect of such a voluntary arrangement. If the aggregation or set-off has taken place before the coming into effect of such a voluntary arrangement, that voluntary arrangement could affect only the amount (and other terms) of any resulting net claim.

4.4 **Debt repayment scheme**

There is provision in Part VA of the Bankruptcy Act, where the court has adjourned a bankruptcy application made against a Singapore Individual to whom a debt repayment scheme applies under Part VA of the Bankruptcy Act (the Insolvent Party), for the Official Assignee to implement a debt repayment scheme in accordance with Part VA.

The Official Assignee shall convene and preside at a meeting of creditors (disclosed in the Insolvent Party's statement of affairs) to review the proposed debt repayment plan submitted by the Insolvent Party and the Official Assignee may approve such plan (without any modifications or with such modifications as the Official Assignee considers appropriate). The approved debt repayment plan is binding on the Insolvent Party and every creditor who has proved his debt against the Insolvency Party under Division 2 of Part VA of the Bankruptcy Act and whose debt is included in the plan. A creditor who has proved his debt against the Insolvent Party may appeal against the Official Assignee's approval of the debt repayment plan on the ground that the approved plan unfairly prejudices his interests but any decision of the appeal panel is final.

Such an approved debt repayment scheme could affect both netting or set-off rights of creditors and the amounts of claims which the creditors may have against the Singapore Individual. However, any such scheme could impair the effectiveness of the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision only if the aggregation or set-off provided for in the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision, as applicable, has not taken place before the coming into effect of such a debt repayment scheme. If the aggregation or set-off has taken place before the coming into effect of such a debt repayment scheme, that debt repayment scheme could affect only the amount (and other terms) of any resulting net claim and we note in this regard that any proof of debt submitted under Division 2 of Part VA of the Bankruptcy Act would be likely to be for the resulting net claim in any event pursuant to Section 88 of the Bankruptcy Act.

5. **MODIFICATIONS TO QUALIFICATIONS**

The following paragraphs shall be deemed deleted:

- (a) paragraph 4.2 (*Liquidation*);
- (b) paragraph 4.3 (*Other insolvency issues*);
- (c) paragraph 4.4 (*Judicial management*); and

(d) paragraph 4.5 (*Schemes of arrangement*).

SCHEDULE 4

SINGAPORE TRUSTEES OF SINGAPORE TRUSTS

Subject to the modifications and additions set out in this Schedule 4 (*Singapore Trustees of Singapore Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party who or which is a Singapore Trustee of a Singapore Trust.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

- 1.1 "**Trust Insolvency Proceedings**" means the laws and procedures referred to in Section 3.1.
- 1.2 Paragraph 1.8.23 is deemed deleted and replaced with the following:

"Trustee Insolvency Proceedings" means:

 - (a) in respect of a Singapore Trustee that is a Company, the laws and procedures referred to in paragraph 4.1; and
 - (b) in respect of a Singapore Trustee who is a Singapore Individual, the laws and procedures referred to in section 3.1 of Schedule 4 (*Singapore Individuals*).
- 1.3 "**Trustees Act**" means the Trustees Act (Cap. 337) of Singapore.
- 1.4 To the extent this opinion relates to Singapore Trustees, it is given in respect of a Party which, in entering into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, acts as trustee in respect of a single Singapore Trust. Where a Party acts as trustee of more than one Singapore Trust, no opinion is expressed in relation to the FOA Netting Agreement or, as the case may be, the Clearing Agreement except to the extent that the terms of such agreement apply separately in relation to each Singapore Trust.
- 1.5 Where a body of trustees act as trustee of a Singapore Trust, references in this opinion to a trustee shall be to such body of persons acting jointly as trustees.

2. ADDITIONAL ASSUMPTIONS

- 2.1 The following additional assumptions shall apply:

- 2.1.1 Where a Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement is expressed to be a Singapore Trustee of a Singapore Trust, the contracting party to such Agreement is the Singapore Trustee of such Singapore Trust, acting in his, her or its capacity as such.

- 2.1.2 Each Singapore Trust is an express trust validly constituted under a written trust instrument governed by Singapore law, but excluding (without limitation) any trust arising by operation of law, any statutory trust, any trust of which a judicial trustee is trustee, any trust of which an official trustee is trustee, any bare trust (simple trust), and any trust of which a person is trustee by virtue of being a personal representative of a deceased estate.
- 2.1.3 Each trustee of a Singapore Trust is a Singapore Trustee.
- 2.1.4 Each Singapore Trustee, in entering into the FOA Netting Agreement or, as the case may be, Clearing Agreement and each Transaction or, as the case may be, Client Transactions, is not in breach of any of his, her or its express or implied duties under the relevant trust instrument or otherwise in connection with the relevant Singapore Trust and is acting in accordance with the terms, express or implied, and conditions and purpose of the relevant Singapore Trust.
- 2.1.5 During the life of all Transactions or, as the case may be, Client Transactions, each Singapore Trustee will remain a trustee of the relevant Singapore Trust.
- 2.1.6 Each Singapore Trustee will have assumed or undertaken all obligations and liabilities under the FOA Netting Agreement or, as the case may be, Clearing Agreement in his, her or its capacity as trustee of the relevant Singapore Trust and not in his, her or its personal capacity, and will have agreed, by express contractual provision with the other Party, that any power or right conferred on the other Party under such agreement, or any recourse therefor, shall not extend to any personal assets of that Singapore Trustee or any assets held by that Singapore Trustee as trustee of any trust other than the relevant Singapore Trust.

2.2 The assumption set out in paragraph 2.9 of this opinion letter does not apply.

3. MODIFICATIONS TO OPINIONS

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

3.1 Insolvency Proceedings: Singapore Trusts

- 3.1.1 Singapore Trusts are not legal persons. However, a Singapore Trust may in some circumstances be treated as if it were a separate legal person in the context of its insolvency.
- 3.1.2 A Singapore Trust may be the subject of the following bankruptcy, composition, rehabilitation or other insolvency procedures in this jurisdiction:
 - (a) an administration order under Order 80 of the Rules of Court.

3.1.3 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Trust Insolvency Proceedings, if supplemented by the following:

"The commencement of any action for administration of [the Singapore Trust] under Order 80 of the Rules of Court or any analogous proceeding."

3.1.4 In addition, the FOA Netting Agreement or, as the case may be, Clearing Agreement will need to provide expressly that each reference to "a Party" in the Insolvency Events of Default Clause is deemed to include a Singapore Trust.

4. ADDITIONAL QUALIFICATIONS

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

4.1 Trustee Insolvency Proceedings

4.1.1 Any power or right of a Singapore Trustee under or in connection with the FOA Netting Agreement or, as the case may be, Clearing Agreement (and the benefit of any obligation or liability owing to that Singapore Trustee under or in relation to such agreement) is not a power or right held by (or an obligation or liability owing to) such Singapore Trustee personally, but is held by or owing to the Singapore Trustee in a representative capacity. Accordingly, such Singapore Trustee is not the beneficial owner of any such power or right (or of the benefit of any such obligation or liability). It follows that, if the Singapore Trustee becomes the subject of any Trustee Insolvency Proceeding, any such power or right (or the benefit of any such obligation or liability) is not an asset of the Singapore Trustee for the purpose of such Trustee Insolvency Proceeding, and in particular:

- (a) any amount owing by another person (the other Party) by virtue of any such power or right (or obligation or liability) does not contravene or infringe a mandatory rule of insolvency law; and
- (b) any such amount cannot be the subject of Statutory Insolvency Set-Off.

4.1.2 In relation to obligations and liabilities undertaken or incurred by a Singapore Trustee under or in connection with the FOA Netting Agreement or, as the case may be, Clearing Agreement, a Singapore Trustee is personally liable (as a matter of contract) in respect of any such obligation or liability. However, if (as we assume at section 2.1.6), the other Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement has agreed with such Singapore Trustee by express contractual provision that the recourse of such other Party for such obligations or liabilities does not extend to any personal asset of such Singapore Trustee (or any assets held by him, her or it as trustee of any other

trust), the other Party has no recourse to any such personal assets, and in particular:

- (a) any amount owing to such other Party cannot be claimed by such other Party for the purpose of any Trustee Insolvency Proceeding of which the Singapore Trustee is the subject;
- (b) any contractual provision for set-off (and/or netting) in respect of any such amount does not contravene or infringe a mandatory rule of insolvency law; and
- (c) any such amount cannot be the subject of Statutory Insolvency Set-Off.

4.1.3 In order for credits, debts or other dealings (i.e. amounts owing in respect of powers and rights and obligations and liabilities respectively) to be "mutual" for the purpose of Statutory Insolvency Set-Off:

- (a) in the case of a power or right, it must be capable of constituting an asset for the purpose of the relevant Trustee Insolvency Proceeding, and
- (b) in the case of an obligation or liability, it must be capable of constituting a claim or debt for the purpose of the relevant Trustee Insolvency Proceeding.

4.1.4 Accordingly, in our view:

- (a) all such amounts lie outside the relevant Trustee Insolvency Proceeding;
- (b) any contractual provision for set-off (and/or netting) in respect of such amounts is not capable of contravening or infringing a mandatory rule of insolvency law;
- (c) Statutory Insolvency Set-Off and the requirement of mutuality are not relevant to the setting-off (and/or netting) of such amounts; and
- (d) the Set-Off Provisions and the Netting Provisions (to the extent the Netting Provisions are viewed as involving set-off) operate or are exercisable in accordance with their terms.

4.1.5 It follows that, if a Trustee Insolvency Proceeding was commenced in respect of a Singapore Trustee:

- (a) the terms of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions would not be invalidated or rendered ineffective; and

- (b) the other Party would be entitled to exercise its rights under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

4.1.6 The foregoing analysis depends on the effectiveness of the express contractual provision referred to at section 2.1.6. On the basis of the decision in the English case of *Re Robinson's Settlement* [1912] 1 Ch 717, and the comments made in respect of that decision in Philip R. Wood, *English and International Set-off* (1989) and Geraint Thomas and Alastair Hudson, *The Law of Trusts* (2nd ed., 2010), the effectiveness of such a provision is a matter of contractual construction, and such a provision is not, by its nature or effect alone, void or unenforceable.

4.1.7 A possible representation and undertaking (to be adapted for individual circumstances) to incorporate the contractual provision referred to at section 2.1.6 are as follows:

"[You/the Singapore Trustee] represent[s] and warrant[s] that [you/the Singapore Trustee] assume and undertake all obligations and liabilities under the [Agreement] in [your/the Singapore Trustee's] capacity as trustee of the [Singapore Trust] and not in [your/the Singapore Trustee's] personal capacity."

"The [parties] agree that any power or right conferred on [us] under such agreement, or any recourse therefor, shall not extend to any personal assets of [yours/the Singapore Trustee] or any assets held by [you/the Singapore Trustee] as trustee of any trust other than the [Singapore Trust].".

4.2 **Schemes of Arrangements and Individual Voluntary Arrangements**

A Singapore Trustee that is a Company or who is a Singapore Individual may be the subject of a scheme of arrangement under the Companies Act or a voluntary arrangement under the Bankruptcy Act, respectively. If a "no recourse" provision has been incorporated into the Agreement (as referred to in section 2.1.6 above), a proposal in respect of the Singapore Trustee may have the effect of removing the "no recourse" provision and reinstating recourse against the Singapore Trustee in his/her/its personal capacity. However, any such arrangement could impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision only if the aggregation or set-off provided for in the Netting Provisions, the FOA Set-Off Provisions, the Clearing Module Netting Provisions, the Clearing Module Set-Off Provisions, the Addendum Netting Provisions or the Addendum Set-Off provisions, as applicable, has not taken place before the coming into effect of such arrangement. If the aggregation or set-off has taken place before the coming into effect of a scheme of arrangement or voluntary arrangement, that arrangement could affect only the amount (and other terms) of any resulting net claim.

4.3 Trusts And Trustees

4.3.1 In the event of a Trustee Insolvency Proceeding in respect of a Singapore Trustee of a Singapore Trust, it might be asserted by an Insolvency Representative of such Singapore Trustee that (although any sums recovered by the Insolvency Representative would fall outside the insolvency or bankruptcy estate), it is the duty of the Insolvency Representative, by virtue of his/her fiduciary responsibilities to the beneficiaries of the Singapore Trust to pursue a claim against the other Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement for any amount owing by it in respect of any Transaction or, as the case may be, Client Transactions under such Agreement, without any netting or set-off under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision, the Title Transfer Provisions or otherwise. The basis for such a claim would be absence of mutuality for the purpose of Statutory Insolvency Set-Off. For the reasons discussed above, we consider that such a claim would be unsuccessful. If such a claim were successful, it would give the beneficiaries of the Singapore Trust a windfall benefit attributable solely to the winding-up or bankruptcy of such Singapore Trustee; and at the same time the claim of a creditor would be admitted to the winding-up or bankruptcy, to the detriment of other creditors. In our view, the Singapore courts would find that the fiduciary responsibilities of the Insolvency Representative would not require him/her to act in a manner so detrimental to creditors of the winding-up or bankruptcy.

4.3.2 There is some authority for the proposition that, where a trustee is a nominee or bare trustee for one or more beneficiaries, Statutory Insolvency Set-Off should apply as if powers, rights, obligations and liabilities held or owed by such trustee were powers, rights, obligations and liabilities held or owed by such beneficiary or beneficiaries.

4.4 Trust Insolvency Proceedings

4.4.1 A Singapore Trust is not a legal person and may not be the subject of an Insolvency Proceeding.

4.4.2 However, where the Singapore Trust is technically insolvent, in the sense that the assets of the Singapore Trust are insufficient to meet the liabilities properly incurred by the Singapore Trustee(s) on behalf of the relevant Singapore Trust, it is possible for the Singapore courts to make an order concerning the administration of the Singapore Trust under Order 80 of the Rules of Court.

4.4.3 As a Singapore Trust is not a Company or an Individual, a winding-up of a Singapore Trust pursuant to Order 80 of the Rules of Court does not constitute an Insolvency Proceeding under the Bankruptcy Act or the Companies Act. Accordingly, provisions in the Bankruptcy Act or the Companies Act concerning the winding up of a Company or the making of a bankrupt order

in respect of an individual, including Statutory Insolvency Set-Off under Section 88(1) of the Bankruptcy Act, do not apply.

4.4.4 However, as the Singapore courts have broad discretion in relation to administration orders made under Order 80, that proposition cannot be stated with certainty and it is possible that an administration order made under Order 80 would provide that the Set-Off Provisions and/or the Netting Provisions should not operate and not be exercisable in accordance with their terms. Please also see Section 4.4.6 below.

4.4.5 Although we are not aware of any decision of the Singapore courts which supports such view, it is possible that the Singapore courts might treat a technically insolvent trust as a "quasi-person" and apply automatic set-off by analogy with Statutory Insolvency Set-Off rule applicable to Companies and Singapore Individuals. If that occurred, on the making of an administration order for the winding-up of a trust, all amounts owing in respect of powers, rights, obligations and liabilities attributable to the trust would be mandatorily and automatically set-off against each other. Please see, however, the discussions in paragraph 4.2.1 and section 4.1.1 of Schedule 4 (*Singapore Individuals*).

4.4.6 The Singapore courts also have broad powers in respect of the management and administration of property vested in trustees. Under Section 56(1) of the Trustees Act, where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may:

- (a) by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit; and
- (b) direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

4.4.7 Pursuant to Section 87(1) of the Trustees Act, Sections 98 to 101 of the Bankruptcy Act apply to settlements or dispositions of property made on trust. Accordingly, the qualifications set out in paragraph 4.2.4 and paragraphs (a) and (b) of section 4.1.4 of Schedule 4 (*Singapore Individuals*) shall apply as if set out herein and references to "*Singapore Individuals*" in the qualifications shall be construed as being references to "*Singapore Trustees of Singapore Trusts*".

SCHEDULE 5 SINGAPORE PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 5 (*Singapore Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties who or which are parties in a Singapore Partnership.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The following additional definitions shall apply:

1.1.1 **"General Partner"** means:

- (a) in respect of a General Partnership, a "partner" as such term is used in the Partnership Act; and
- (b) in respect of a Limited Partnership, a "general partner" as defined in the Limited Partnerships Act.

1.1.2 **"General Partnership"** means a "partnership" as defined in the Partnership Act.

1.1.3 **"Limited Partner"** means a "limited partner" as defined in the Limited Partnerships Act.

1.1.4 **"Limited Partnership"** means a "limited partnership" as such term is used in the Limited Partnerships Act.

1.1.5 **"Partner"** means a General Partner or a Limited Partner.

1.1.6 **"Partner Sole Insolvency Proceedings"** means:

- (a) in respect of a Partner that is a Company, the procedures listed in paragraph 3.1; and
- (b) in respect of a Partner that is a Singapore Individual, the procedures listed in section 3.1 of Schedule 3 (Singapore Individuals).

1.1.7 **"Partnership Insolvency Proceedings"** means the procedures listed in section 3.1.2.

1.2 Paragraph 1.8.23 is deemed deleted.

2. ADDITIONAL ASSUMPTIONS

The following additional assumptions shall apply.

- 2.1 Where a Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement is expressed to be a Singapore Partnership, the contracting party to such agreement is one or more General Partners of such Singapore Partnership, acting as agent on behalf of all the Partners of the Singapore Partnership.
- 2.2 Each Singapore Partnership that is a General Partnership is validly formed and existing in accordance with the Partnership Act throughout the life of each Transaction or, as the case may be, Client Transactions and the FOA Netting Agreement or, as the case may be, Clearing Agreement.
- 2.3 Each Singapore Partnership that is a Limited Partnership is validly formed, registered and existing in accordance with the Limited Partnerships Act throughout the life of each Transaction or, as the case may be, Client Transactions and the FOA Netting Agreement or, as the case may be, Clearing Agreement.
- 2.4 Each General Partner which enters into the FOA Netting Agreement or, as the case may be, Clearing Agreement and/or each Transaction or, as the case may be, Client Transactions on behalf of a Singapore Partnership:
 - 2.4.1 has the capacity, power and authority under all applicable laws to enter into each such Transaction or, as the case may be, Client Transactions and/or the FOA Netting Agreement or, as the case may be, Clearing Agreement; and
 - 2.4.2 has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, Clearing Agreement and/or each such Transaction or, as the case may be, Client Transactions,
- 2.5 Each Partner in a Singapore Partnership is a Company or a Singapore Individual.
- 2.6 A General Partner, by entering into the FOA Netting Agreement or, as the case may be, Clearing Agreement on behalf of a Singapore Partnership, is not in breach of any of his/her/its express or implied duties under the relevant partnership agreement, the Partnership Act or the Limited Partnerships Act (as applicable).
- 2.7 Each Limited Partner in a Limited Partnership does not take part in the management of the business of such Limited Partnership.
- 2.8 The membership of each Singapore Partnership remains unchanged throughout the life of the FOA Netting Agreement or, as the case may be, Clearing Agreement and any Transaction or, as the case may be, Client Transactions.

3. MODIFICATION TO OPINIONS

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

3.1 Insolvency Proceedings: Singapore Partnerships

- 3.1.1 Singapore Partnerships are not legal persons. However, a Singapore Partnership may in some circumstances be treated as if it were a separate legal person in the context of its insolvency.
- 3.1.2 A Singapore Partnership may be the subject of the following bankruptcy, composition, rehabilitation or other insolvency procedures in this jurisdiction:
 - (a) liquidation (in the case of Part X Partnerships (as defined in section 4.3.3 below) under the Companies Act); and
 - (b) bankruptcy (in the case of a firm under the Bankruptcy Act).
- 3.1.3 As a Singapore Partnership cannot be a Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement, it may be argued that the events specified in the Insolvency Events of Default Clause does not refer to Partnership Insolvency Proceedings. However, we are of the view that such an argument could not be made (where a Party to the Agreement is a General Partner in a Singapore Partnership, acting in his/her/its capacity as such) if it is clearly provided in such agreement or, as the case may be, Clearing Agreement that all references to "*a Party*" in the Insolvency Events of Default Clause be deemed to include such Singapore Partnership. Accordingly, provided that this is clearly provided in the FOA Netting Agreement or, as the case may be, Clearing Agreement that all references to "*a Party*" in the Insolvency Events of Default Clause be deemed to include a Singapore Partnership, we confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Partnership Insolvency Proceedings, without the need for any additions.

4. ADDITIONAL QUALIFICATIONS

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

4.1 Debts owed to and by a Singapore Partnership

- 4.1.1 Under the Partnership Act, every Partner of a Singapore Partnership is an agent of the other Partners for the purpose of the business of that Singapore Partnership. Accordingly, where a Partner has incurred a debt or obligation for the Singapore Partnership, each Partner will be jointly liable with the other Partners for such debt or obligation, as the case may be (except that, in the case of a Limited Partnership, a Limited Partner is not liable for the debts or

obligations of the Limited Partnership beyond the amount contributed at the time of entering into such Limited Partnership). For convenience, in this Schedule, we refer to such debts or obligations incurred by a Partner for the Singapore Partnership as "**joint debts of the Singapore Partnership**", even though a Singapore Partnership is not a legal person and cannot be liable for any debt.

- 4.1.2 Under Section 20(1) of the Partnership Act, "partnership property" consists of all property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.
- 4.1.3 Although we are aware of academic opinion to the contrary, we believe the better view is that, unless the partnership agreement provides otherwise, each Partner has a beneficial interest in every partnership asset (including debts and obligations owed by third parties) and collectively the Partners own every partnership asset, as a Singapore Partnership is not a separate entity capable of holding property. However, a Partner's interest in the partnership assets is not a title to specific property but a right to his/her/its proportion of the surplus after the realisation of assets and the payment of debts and liabilities of the Singapore Partnership.
- 4.1.4 For convenience, in this Schedule, we refer to such debts owned by third parties as "**debts owed to the Singapore Partnership**", even though a Singapore Partnership is not a legal person and cannot own any property.

4.2 Partner Sole Insolvency Proceedings

- 4.2.1 A Partner which or who is a Company or a Singapore Individual may be the subject of a Partner Sole Insolvency Proceeding.
- 4.2.2 There is a lack of mutuality between (a) a joint debt of the Singapore Partnership owing to a third party; and (b) a debt owed by a third party to one of the Partners; and (c) a separate debt of one of the Partners and a debt owed to the Singapore Partnership.
- 4.2.3 It follows that, if a Partner became the subject of a Partner Sole Insolvency Proceeding, save for a few limited circumstances, neither a joint debt of the Singapore Partnership nor a debt owed to the Singapore Partnership can be the subject of Statutory Insolvency Set-Off in such Partner Sole Insolvency Proceeding. However, in exceptional cases, if a Partner agrees to be severally liable for any joint debt of the Singapore Partnership, then it is possible that such joint debt may be included in Statutory Insolvency Set-Off in such Partner Sole Insolvency Proceeding. (However, please see the discussions in paragraph 4.2.1 and section 4.1.1 of Schedule 4 (*Singapore Individuals*)).

4.2.4 Moreover, the English case of *Stanniforth v Fellowes* (1814) 1 Marsh 184 is authority for the proposition that Statutory Insolvency Set-Off in such Partner Sole Insolvency Proceeding would not apply to set off a joint debt of the Singapore Partnership against a debt owed to the Singapore Partnership unless the Singapore Partnership becomes subject to Partnership Insolvency Proceeding.

4.3 **Partnership Insolvency Proceedings**

4.3.1 A Singapore Partnership may be the subject of a Partnership Insolvency Proceeding pursuant to the Bankruptcy Act and the Companies Act.

Winding up under the Companies Act

4.3.2 The Companies Act generally deals with matters concerning companies. Although Singapore Partnerships are not companies, Section 351(1) of the Companies Act provides that an "unregistered company" may be wound up under the Companies Act and Section 350(1) provides that, for the purposes of Division 5 of Part X of the Companies Act, the expression "unregistered company" shall include any partnership consisting of more than 5 members:

4.3.3 Accordingly, it follows that, by virtue of Sections 350(1) and 351(1), there may be wound up under the Companies Act:

- (a) any General Partnership which has more than 5 members; and
- (b) any Limited Partnership which has more than 5 members,

(any such partnership, a "**Part X Partnership**").

4.3.4 Section 327(2) of the Companies Act provides that, in the winding up of an insolvent company (including a Part X Partnership), the rules regarding the bankruptcy proceedings of individuals shall apply to such company (or Part X Partnership, as the case may be), including Statutory Insolvency Set-off that occurs automatically on the date of the winding up order. This suggests that, in the winding up of a Part X Partnership under the Companies Act, such Part X Partnership would be treated as a separate legal person, with its own liabilities (even though, as a strict matter of general law, a Singapore Partnership does not have a separate legal personality).

Bankruptcy proceedings in respect of partnerships under the Bankruptcy Act

4.3.5 The Bankruptcy Act generally deals with the bankruptcy of individuals. A bankruptcy order may be made against an individual or a firm, being an unincorporated body of individuals carrying on business in partnership with a view to profit.

- 4.3.6 Pursuant to Section 76(2) of the Bankruptcy Act where a bankruptcy order is made against a firm, the order shall operate as if it were a bankruptcy order made against each person who, at the time of the order, is a partner in the firm.
- 4.3.7 Pursuant to Section 91 of the Bankruptcy Act the bankruptcies of the firm and each Partner will be conducted separately, with any surplus from the joint estate (after all its debts have been settled) being remitted to the bankruptcies of the Partners (in proportion to the partnership interests of the Partners in the Firm), and vice versa.

Statutory Insolvency Set-Off

- 4.3.8 There is some uncertainty as to how Statutory Insolvency Set-Off would be applied in the context of a Partnership Insolvency Proceeding. If a Singapore Partnership is treated as a separate legal person with its own liabilities under a Partnership Insolvency Proceeding (which Section 351(1) read with Section 327(2) of the Companies Act and Section 91 of the Bankruptcy Act seem to suggest), we believe the Singapore courts would consider that there is sufficient mutuality between joint debts of the Singapore Partnership and debts owed to the Singapore Partnership. Statutory Insolvency Set-Off would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties. This may lead to (i) the net amount payable between the Parties by result of Statutory Insolvency Set-Off being different from the amount that would have been payable under the FOA Netting Provision or (ii) to a single net amount being payable between the Parties by result of Statutory Insolvency Set-Off instead of separate net amounts pursuant to the Clearing Module Netting Provision or the Addendum Netting Provision.
- 4.3.9 However, any set-off (pursuant to a contractual set-off provision) that took effect prior to the commencement of the winding-up will not be affected by Statutory Insolvency Set-Off; and Section 88(1) of the Bankruptcy Act does not entitle a liquidator to require the payment by the Solvent Party to the Insolvent Party of the gross amount that had been the subject of such set-off (pursuant to a contractual set-off provision).

4.4 Other Qualifications

- 4.4.1 In the case of Singapore Partnerships to which the Partnership Insolvency Proceeding described at section 3.1.2(a) is applicable, the qualifications set out at section 4 of Schedule 3 (*Singapore Individuals*) shall apply as if set out herein and references to "*Singapore Individuals*" in the qualifications shall be construed as being references to "*Singapore Partnerships adjudged bankrupt under the Bankruptcy Act*".

4.4.2 In the case of Singapore Partnerships to which the Partnership Insolvency Proceeding described at section 3.1.2(b) is applicable, references to "Company" in paragraph 4 shall be construed as being references to "*Singapore Partnerships wound up under the Companies Act*".

SCHEDULE 6 SINGAPORE LLPs

Subject to the modifications and additions set out in this Schedule 6 (*Singapore LLPs*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party which is a Singapore LLP.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.8.23 is deemed deleted and replaced with the following:

"LLP Insolvency Proceedings" means the laws and procedures referred to in section 3.1."

2. ASSUMPTIONS

[Intentionally left blank]

3. OPINIONS

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

3.1 Insolvency Proceedings: Singapore LLPs

3.1.1 The only bankruptcy, composition, rehabilitation (e.g. liquidation, receivership or voluntary arrangement) or other insolvency procedures to which a Party which is a Singapore LLP would be subject in this jurisdiction, and which are relevant for the purposes of this opinion letter, are the following:

- (a) winding up;
- (b) receivership; and
- (c) schemes of arrangement.

3.1.2 The legislation applicable to LLP Insolvency Proceedings is:

- (a) the Limited Liability Partnerships Act; and
- (b) the Bankruptcy Act,

together with any subsidiary legislation including the Bankruptcy Rules, each as modified up to the date hereof.

3.1.3 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all LLP Insolvency Proceedings.

4. QUALIFICATIONS

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

4.1 Liquidation

4.1.1 *Mandatory insolvency rules of set-off*

Section 88(1) of the Bankruptcy Act, which is made applicable to Singapore LLPs by paragraph 75(2) of the Fifth Schedule to the Limited Liability Partnerships Act prescribes that in a winding up of an insolvent Singapore LLP (the Insolvent Party) under Singapore law, where there have been any mutual credits, mutual debts or other mutual dealings between the Insolvent Party and a creditor, the debts and liabilities to which each party is or may become subject as a result of such mutual credits, debts or dealings shall be set-off against each other and only the balance shall be a debt provable in bankruptcy.

Set-off pursuant to Section 88(1) of the Bankruptcy Act ("**Statutory Insolvency Set-off**") is mandatory and occurs automatically on the date of the winding-up order. It is not possible for parties to contract out of Statutory Insolvency Set-Off. Statutory Insolvency Set-Off would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties. This may lead to (i) the net amount payable between the Parties by result of Statutory Insolvency Set-Off being different from the amount that would have been payable under the FOA Netting Provision or (ii) to a single net amount being payable between the Parties by result of Statutory Insolvency Set-Off instead of separate net amounts pursuant to the Clearing Module Netting Provision or the Addendum Netting Provision.

However, any set-off (pursuant to a contractual set-off provision) that took effect prior to the commencement of the winding-up will not be affected by Statutory Insolvency Set-Off; and Section 88(1) of the Bankruptcy Act does not entitle a liquidator to require the payment by the Solvent Party to the Insolvent Party of the gross amount that had been the subject of such set-off (pursuant to a contractual set-off provision).

4.1.2 *Dispositions of property void*

In a winding up of a Singapore LLP (the Insolvent Party) under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the commencement of winding up of the Insolvent Party are void under paragraph 8 of the Fifth Schedule to the Limited Liability Partnerships Act unless the court otherwise orders. Accordingly, we express no opinion as to whether or not obligations incurred after the commencement of a winding-up of the Insolvent Party could validly be included in an aggregation or a set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off. The avoidance of any obligation on this basis would not prejudice the effectiveness of the aggregation and set-off of other obligations pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision, Title Transfer Provisions or Statutory Insolvency Set-Off.

4.1.3 *Obligations incurred after certain times*

In circumstances where a winding-up petition is presented for the winding-up of a Singapore LLP (the Insolvent Party) and a winding-up order is ultimately made pursuant to that petition, an obligation (a "**Post-Notice Obligation**") incurred between (a) the date on which the Solvent Party has notice of the winding-up petition and (b) the date of the winding-up order may not be included in any aggregation or set-off pursuant to the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-off Provision or Statutory Insolvency Set-Off if the Post-Notice Obligation (looked at in isolation) gives rise to an amount owing by such Insolvent Party to such Solvent Party.

However, this would not affect the aggregation or set-off of the obligations of the Parties in respect of (i) any obligation before such Solvent Party had notice of the winding-up petition and (ii) any Post-Notice Obligation (looked at in isolation) giving rise to an amount owing to such Insolvent Party by such Solvent Party.

4.1.4 *Vulnerable transactions*

Paragraphs 77, 78 and 82 of the Fifth Schedule to the Limited Liability Partnerships Act provide that certain transactions entered into by a Singapore LLP prior to the commencement of winding up may be challenged on the grounds that they are transactions at an undervalue, unfair preferences or extortionate credit transactions.

- (a) Paragraph 77 of the Fifth Schedule to the Limited Liability Partnerships Act: Transactions at Undervalue
 - (i) The Official Assignee may apply to the court to set aside transactions entered into at an undervalue within five years prior to the commencement of winding up, if the Singapore LLP was insolvent at the time the transaction was entered into, or became insolvent in consequence of the transaction. For this purpose a transaction is at an undervalue if it constitutes a gift, is entered into for no consideration, or if the value of the consideration received (in money or moneys worth) by the Singapore LLP is significantly less than the consideration provided (in money or moneys worth) by the Singapore LLP.
 - (ii) Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. However, the matters referred to in the previous sentence are questions of fact in each case.
- (b) *Paragraph 78 of the Fifth Schedule to the Limited Liability Partnerships Act: Unfair Preferences*
 - (i) The Official Assignee may apply to the court to set aside transactions which occurred within six months prior to the commencement of winding up (extended to two years for transactions involving connected parties) which have the effect of putting the creditor, surety or guarantor in a better position in the liquidation than would otherwise have been the case, if the Singapore LLP was insolvent at the time the preference was given, or became insolvent in consequence of the giving of the preference.
 - (ii) In deciding to give the preference, a Singapore LLP must have been influenced by a desire to produce the effect of putting the creditor, surety or guarantor in a better position in a winding up of the Singapore LLP. The court would not otherwise make an order to set aside the transaction.
 - (iii) If there is evidence to show that an arrangement for set-off is entered into by an Insolvent Party and another party within the applicable period referred to in paragraph (i) above and the Insolvent Party had the intention of giving the other party an unfair preference in the winding up of the Singapore LLP, the arrangement may be invalidated.
- (c) *Paragraph 82 of the Fifth Schedule to the Limited Liability Partnerships Act: Extortionate Credit Transactions*

- (i) A liquidator of a Singapore LLP may apply to set aside transactions which occurred within three years prior to the commencement of winding up involving the provision of credit to a Singapore LLP. A transaction will be extortionate if, having regard to the risk accepted by the party providing the credit, (A) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or (B) it is harsh and unconscionable or substantially unfair. A court would presume, unless the contrary is proved, that such a transaction is extortionate.
- (ii) Since certain Transactions or, as the case may be, Client Transactions envisaged under the FOA Netting Agreement or, as the case may be, Clearing Agreement may involve the provision of credit to a Singapore LLP, paragraph 82 of the Fifth Schedule to the Limited Liability Partnerships Act may apply.

4.1.5 *Disclaimer of onerous property*

Paragraph 86 of the Fifth Schedule to the Limited Liability Partnerships Act ("Paragraph 86") allows the liquidator, in a winding up of a Singapore LLP (the Insolvent Party), to disclaim any onerous property with the leave of the court or committee of inspection of the Singapore LLP. For this purpose, onerous property means, *inter alia*, shares or interests in corporations, any unprofitable contract and any other property which is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money. A liquidator may, upon the commencement of winding up of a Singapore LLP, therefore seek to disclaim any such onerous property, including any contract entered into by the Insolvent Party if the liquidator considers the contract to be an unprofitable contract. If any such property is so disclaimed and loss or damage is suffered by the Solvent Party as a result, the Solvent Party may prove such loss or damage as a debt in the winding up of the Insolvent Party.

However, any liability or obligation which was incurred by the Insolvent Party prior to the date of commencement of such winding up and which has become payable or due to be performed or discharged on or before such date will not be affected by such disclaimer; and Paragraph 86 does not entitle a liquidator to:

- (a) recover any sum paid by the Insolvent Party to the Solvent Party before the commencement of the winding-up of the Insolvent Party; or
- (b) disclaim any contract so as to determine, or release the Insolvent Party from, any liability or obligation of the Insolvent Party in respect of any

amount that became due and payable by it before the commencement of its winding-up.

In addition, Paragraph 86 does not entitle a liquidator of the Insolvent Party to disclaim a contract:

- (i) if and to the extent that automatic termination has been effective to convert into an amount due and payable any liability or obligation which, but for the operation of automatic termination, would have been required to be discharged or performed by the Insolvent Party at some future time; or
- (ii) if and to the extent that (A) the Solvent Party has properly exercised an effective right to close-out any liability or obligation which, but for such close-out, would have been required to be discharged or performed by the Insolvent Party at some future time; and (B) such close-out has become effective (so as to produce an amount due and payable) before the time at which the liquidator seeks to disclaim the relevant contract.

4.2 Other insolvency issues

4.2.1 Singapore court may, on proof to its satisfaction that there is sufficient reason, stay the winding up proceedings against the Insolvent Party either altogether or for a limited time on such terms and conditions as the court may think fit.

4.2.2 It is possible that:

- (a) the valuation and calculation made to determine the Liquidation Amount or the net amount resulting from the set-off implemented under the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision;
- (b) any currency conversion rate applied; or
- (c) any other valuation, calculation or determination made or other action or discretionary decision taken under the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision,

could be challenged by an Insolvency Representative if they were or it was not done fairly or in a manner consistent with applicable law.

4.2.3 We express no opinion as to the effectiveness of the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum

Set-Off Provision or the Title Transfer Provisions in relation to any obligation owing by one Party the benefit of which is acquired by a Singapore LLP after a winding up order has been made in respect of that Singapore LLP.

4.3 **Schemes of arrangement**

There is a provision in paragraph 56 of the Fifth Schedule to the Limited Liability Partnerships Act for schemes of arrangement in respect of Singapore LLPs to be approved by creditors of the Singapore LLP. Approval of the terms of a scheme of arrangement does not require unanimity of the affected creditors. Such a scheme of arrangement could affect both netting or set-off rights of creditors and the amount of claims which the creditors may have against the Singapore LLP. However, any such scheme of arrangement could impair the effectiveness of the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision only if the aggregation or set-off provided for in the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision, as applicable, has not taken place before the coming into effect of such a scheme of arrangement. If the aggregation or set-off has taken place before the coming into effect of such a scheme of arrangement, that scheme of arrangement could affect only the value (and other terms) of any resulting net claim.

5. **MODIFICATIONS TO QUALIFICATIONS**

The following paragraphs shall be deemed deleted:

- (a) paragraph 4.2 (*Liquidation*);
- (b) paragraph 4.3 (*Other insolvency issues*);
- (c) paragraph 4.4 (*Judicial management*); and
- (d) paragraph 4.5 (*Schemes of arrangement*).

ANNEX 1

FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")
2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")
3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")
4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")
5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")
6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")
7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")
8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")
9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")
10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")
11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")
12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")
13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")
14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")
15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")
17. Professional Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")
18. Professional Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")
19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")
20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")
21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")
22. Retail Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")
23. Retail Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")
24. Retail Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")
25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")
26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")
27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

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

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

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

ANNEX 2

List of Transactions

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

- (A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:
 - (i) a contract made on an exchange or pursuant to the rules of an exchange;
 - (ii) a contract subject to the rules of an exchange; or
 - (iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,
 in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or
 - (iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or
 - (v) any other Transaction which the parties agree to be a Transaction;
- (B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;
- (C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;
- (D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.
- (E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

ANNEX 3

DEFINITIONS RELATING TO THE AGREEMENTS

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

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

- (a) Clause 8(b) (*Clearing Member Events*), 8(c) (*CCP Default*) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum; or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

- (a) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement; or
- (b) any modified version of such clause provided that it includes at least those parts of paragraph 8 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

"Clearing Agreement" means an agreement:

- (a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;
- (b) which is governed by the law of England and Wales; and
- (c) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

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

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

- (a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

- (a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or
- (b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

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

- (a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";
- (c) for the purposes of paragraph 3.5 (*Enforceability of the Addendum Netting Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

- (d) for the purposes of paragraph 3.7.1, the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;
- (e) for the purposes of paragraph 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;
- (f) for the purposes of paragraph 3.8.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;
- (g) for the purposes of paragraph 3.8.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;
- (h) for the purposes of paragraph 3.9 (*Set-Off under a Clearing Agreement with Addendum Set-Off Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision;
- (i) for the purposes of paragraph 3.10.1, (i) in relation to an FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions; and
- (j) for the purposes of paragraphs 3.10.3 and 3.10.4, the Title Transfer Provisions;

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

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

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

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

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

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

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

"FOA Netting Agreement" means an agreement:

- (a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;
- (b) which is governed by the law of England and Wales; and
- (c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provision, and with or without the Title Transfer Provisions, with no Adverse Amendments.

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

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

- (a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (**Liquidation Date**), Clause 2.4 (**Calculation of Liquidation Amount**) and Clause 2.5 (**Payer**);
- (b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (**Liquidation Date**), Clause 2.3 (**Calculation of Liquidation Amount**) and Clause 2.4 (**Payer**);

- (c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;
- (d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (**Liquidation Date**), Clause 10.3 (**Calculation of Liquidation Amount**) and Clause 10.4 (**Payer**);
- (e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (**Liquidation Date**), Clause 11.4 (**Calculation of Liquidation Amount**) and Clause 11.5 (**Payer**);
- (f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (**Liquidation Date**), Clause 11.4 (**Calculation of Liquidation Amount**) and Clause 11.5 (**Payer**); or
- (g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

"FOA Set-off Provisions" means:

- (a) the **"General Set-off Clause"**, being:
 - (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (**Set-off**);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (**Set-off**);
 - (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (**Set-off**);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (**Set-off**);
 - (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (**Set-off**);
 - (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (**Set-off**);
 - (vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (**Set-Off**);

- (viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*); or
- (ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

- (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (*Set-off on default*);
- (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (*Set-off upon default or termination*);
- (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (*Set-off on default*),
- (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (*Set-off upon default or termination*);
- (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (*Set-off on default*); and
- (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (*Set-off upon default or termination*); or
- (vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

- (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);
- (ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);

- (iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);
- (iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);
- (v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive); or
- (vi) provided that any modification of such clauses include at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and

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

- (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);
- (ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);
- (iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); or
- (iv) any modified version of such clauses provided that it includes at least those parts of paragraph 4(b) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

"Non-material Amendment" means an amendment having the effect of one of the amendments set out at Annex 4.

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

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

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

"Rehypothecation Clause" means:

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

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

"Non-Cash Security Interest Provisions" means:

- (a) the **"Non-Cash Security Interest Clause"**, being:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);

- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

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

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (**Power of sale**); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

(c) the "**Client Money Additional Security Clause**", means:

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (**Additional security**) at module F Option 4 (where incorporated into such Agreement);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (**Additional security**) at module F Option 4 (where incorporated into such Agreement);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (**Additional security**) at module F Option 4 (where incorporated into such Agreement);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement); or
- (x) any modified version of such clauses provided that at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

- (a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

- a) **"Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "Non-Defaulting Party") may, by notice to the party in default (the "Defaulting Party"), specify a date (the "Liquidation Date") for the termination and liquidation of Netting Transactions in accordance with this clause.
- b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:
 - i. neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
 - ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and
 - iii. the Non-Defaulting Party shall treat each such cost or loss to it as a positive amount and each such gain by it as a negative amount and aggregate all such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "Liquidation Amount").
- c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. General Set-Off Clause:

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

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

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

"The following shall constitute Events of Default:

- i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];
- ii. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "**Custodian**") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;
- iii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

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

"The following shall constitute Events of Default:

- i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];
- ii. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)."

5. Title Transfer Provisions:

- a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.
- b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. Clearing Module Netting Provision / Addendum Netting Provision:

- a) [Firm Trigger Event/CM Trigger Event]

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

- (a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];
- (b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;
- (c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the

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

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;
3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in

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

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

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

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

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

- (a) is attributable to such Client Transactions;

- (b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and
- (c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

- (i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("CM Other Amounts"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "X" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("EP Other Amounts" and together with CM Other Amounts, "Other Amounts"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of

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

- (ii) For the purposes of this Section 8(ii):
 - (A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;
 - (B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and
 - (C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).
- (iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

PART 2
NON-MATERIAL AMENDMENTS

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", using synonyms, changing the order of the words) provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions for the purposes of correct cross-referencing or by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the agreement provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.
4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.
5. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), where such addition may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, and such addition may be expressed to apply to one only of the Parties.
6. 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.
7. 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.

8. 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.
9. 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).
10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.
11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.
13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.
14. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.
15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.
16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).
18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:
 - more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
 - more than one FOA Clearing Module or Clearing Module Netting Provision
 - one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision
 provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.
19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.
20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in an FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).
21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).
22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.
23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related

margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3

SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

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

2. Power of Sale Clause:

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

3. Client Money Additional Security Clause

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

4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever

with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
AMENDMENTS TO INSOLVENCY EVENT OF DEFAULT CLAUSE

We suggest the following amendments to be made to the Insolvency Events of Default Clause (the provisions below are Clause 1(b) and (c) of the Long-Form One-Way Clauses 2007, and similar amendments should be made to other forms of Insolvency Events of Default Clauses) where a Party is (i) a Singapore Company that is not a Singapore Bank or Singapore Insurance Company or (ii) a Singapore Investment Firm that is a Singapore Company:

"(b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, **judicial management**, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, **judicial manager**, custodian or other similar official (each a "Custodian") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a reorganisation, **judicial management**, arrangement or composition, we do not consent to the proposals;

(c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, **judicial management**, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets and such involuntary case or other procedure either (a) has not been dismissed within [five] days of its institution or presentation or (b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;"