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NETTING ANALYSER LIBRARY

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5 December 2013

Dear Sirs,

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 Spain ("**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 are 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

1.1.1 generally, in respect of Parties which are either (a) companies with limited liability incorporated either as public limited liability companies (*sociedades anónimas*) or private limited liability companies (*sociedades de responsabilidad limitada*) or partnership with shares (*sociedades comanditarias por acciones*) under the Consolidated Text of the Law Limited Liability Companies (*Ley de Sociedades de Capital*) approved by means of the Royal Legislative Decree 1/2010, dated 2 of July or (b) partnerships incorporated in this jurisdiction either as *sociedades colectivas* or *sociedades comanditarias* under the Commercial Code; and

1.1.2 branches in this jurisdiction of foreign banks and other corporations.

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 Credit institutions (*entidades de crédito*), including banks (*bancos*), saving banks (*cajas de ahorros*), credit unions (*cooperativas de crédito*) and lending institutions (*establecimientos financieros de crédito*) (Schedule 1);

1.2.2 Investment firms (*empresas de servicios de inversión*) (Schedule 2);

1.2.3 Insurance undertakings (*entidades aseguradoras*) (Schedule 3);

1.2.4 Individuals (Schedule 4);

1.2.5 Collective Investment Undertakings (Schedule 5);

1.2.6 Sovereign and public sector entities, namely the Government of the Kingdom of Spain, the Regional Governments (*Comunidades Autónomas*), any provinces and municipalities (*Entidades Locales*) and any legal entities incorporated by the foregoing as a public body under Public Law (including *organismos autónomos* and *entidades públicas empresariales*) (Schedule 6); and

1.2.7 Pension entities (Schedule 7).

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 types of Transaction as defined and listed in Annex 2 hereto (*List of Transactions*), whether entered into an exchange, any other forms of organised market place or multilateral trading facility, or over the counter, except for those referred to in paragraph (A)(v) of such Annex 2 (namely, "any other Transaction which the parties agree to be a Transaction").

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.

1.6 **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.

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

1.6.2 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**";

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

1.6.4 A reference to the "**EU Insolvency Regulation**" is a reference to the EU Council Regulation No. 1346/200 on Insolvency Proceedings;

1.6.5 A reference to the "**Insolvency Law**" is a reference to Law 22/2003, of 9 July (*Ley 22/2003, de 9 de julio, Concursal*);

1.6.6 A reference to a "**financial collateral arrangement**" ("*garantía financiera*") is a reference to a collateral agreement within the scope of Royal Decree-Law 5/2005, of 11 March ("**RDL 5/2005**"), which deals, inter alia, with the implementation of the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Financial Collateral Directive**");

1.6.7 "**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

1.6.8 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 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 Credit Institution or an Investment Firm.

2.11 In relation to the opinions set out at paragraphs 3.4, 3.5, 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 and collateral 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 That the rules of the relevant exchange and/or settlement and clearing system where the Transactions are traded, cleared or settled do not invalidate the enforceability or effectiveness of the Netting Provisions, the Set-Off Provisions or the Title Transfer Provisions under the governing law of the Agreement or the laws governing those rules.

2.16 That the mark-to-market values of individual Transactions, the Default Margin Amount, the Relevant Collateral Value and/or the value of any margin will be calculated by the relevant Party in a commercially reasonable manner.

2.16 That the provision of margin can be evidenced in writing or by electronic means and any other durable medium and that such evidencing allows for the identification of the margin (provided that, for this purpose, it is sufficient to prove that the book entry securities margin has been credited to, or forms a credit in, the relevant account and that the cash margin has been credited to, or forms a credit in, a designated account).

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 would be subject in this jurisdiction is *concurso* (bankruptcy proceedings for individuals and companies) under the Insolvency Law.

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

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, of the Clearing Agreement in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision 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, except that:

(a) when applying English law as the law governing the FOA Netting Agreement or, as the case may be, the Clearing Agreement, the courts of competent jurisdiction of Spain, if any, by virtue of Regulation (EC) No. 593/2008 of the European Parliament and the Council, dated 17 June 2008, on the law applicable to contractual obligations ("**Rome I**"):

(i) may give effect to any overriding mandatory provisions of the law of the country where the obligations arising out of the Agreement have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the Agreement unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application;

(ii) will apply any overriding mandatory provisions of the law of Spain (including the insolvency laws of this jurisdiction);

(iii) may refuse to apply English Law if such application is manifestly incompatible with the public policy of Spain;

(iv) shall have regard to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance; and

(v) where all the elements relevant to the situation at the time an agreement was entered into are connected with one country

only, the parties' choice of the law governing such agreement will not prejudice the application of rules of law of that country which cannot be derogated from by agreement;

(b) moreover, if an asset or right which is the subject of a transfer of title as margin is situated outside England, the courts of Spain shall take into account the law of the place where the asset or right is legally situated and the governing law of the asset (despite the choice of English Law as the governing law of the FOA Netting Agreement or, as the case may be, the Clearing Agreement). Accordingly, the issue of enforceability of the Margin Cash Set-Off Clause and of the Title Transfer Provisions may be determined by a system, or systems, of law other than English law.

In particular and without limitation, pursuant to Article 17.2 of RDL 5/2005, any questions with respect to any of the matters specified below arising in relation to book entry securities collateral shall be governed by the law of the country in which the relevant account is maintained:

(i) the legal nature and proprietary effects of book entry securities collateral;

(ii) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book entry securities collateral under such an arrangement, and more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;

(iii) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred; and

(iv) the steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event.

For these purposes, "book entry securities collateral" means securities collateral provided under a financial collateral arrangement which consists of financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary; and "relevant account" means the register or account in which the entries are made by which that book entry securities collateral is provided to the collateral taker; and

(c) any secondary proceedings in respect of a Party in a foreign jurisdiction in relation to margin located in that jurisdiction and

transferred by such Party may be governed by the law of such foreign jurisdiction (in which we kindly refer you to paragraph 4.5 below).

3.2.3 Finally, 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 a 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:

(i) in the absence of an Insolvency Proceeding in respect of any of the Parties, the courts of this jurisdiction will recognise the validity and enforceability of the FOA Netting Provision to the extent that it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the enforceability of the FOA Netting Provision will be subject to satisfaction of the requirements provided for in RDL 5/2005 to this effect (the "**Netting Requirements**").

In this respect we are of the opinion that the FOA Netting Provision will satisfy the Netting Requirements to the extent that:

(a) any of the Parties is a Qualifying Party (as defined in paragraph 4.4. below);

(b) no spot transactions (other than spot FX) have been entered into under the Agreement (in which we kindly refer you to paragraph 4.4 below); and

(c) the relevant FOA Netting Agreement or, as the case may be, the Clearing Agreement creates a single legal obligation for the purposes of RDL 572005, whose Article 5.1 of RDL 5/2005 requires any netting agreement to "*provide for the creation of one single legal*

obligation which encompasses all of the financial transactions entered into under such agreement and by virtue of which, where there is an early termination, the parties will only have the right to claim the net sum of the terminated transactions" (the "**Single Legal Obligation Requirement**")

In this regard, we are of the opinion that the Two-Way Master Netting Agreement and the Two-Way Clauses satisfy the Single Legal Obligation Requirement.

As regards the One-Way Master Netting Agreement and the One-Way Clauses, please note as follows:

- the language of Article 5.1 of RDL 5/2005 dealing with the "Single Legal Obligation Requirement only requires a net amount to be always calculated (and paid) upon early termination of the relevant netting agreement (irrespective whether the payee thereof is either the defaulting party or the non-defaulting party), but it neither deals with the events triggering such early termination nor expressly requires that both parties are conferred the right to terminate the relevant netting agreement ("**close-out rights**") upon the occurrence of any such early termination events; and

- we are of the opinion that: (i) it is not required in order for RDL 5/2005 to apply to a netting agreement that close-out rights are vested on both parties; the fact that close-out rights are only provided in favour of only one of the parties should not prevent the relevant netting agreement from benefitting from the application of RDL 5/2005; and (ii) therefore the One-Way Master Netting Agreement and the One-Way Clauses should also satisfy the Single Legal Obligation Requirement (although it must be noted that, to the best of our knowledge, this issue has not been tested yet before the courts of this jurisdiction).

Finally, please note that in order for any Clearing Agreement to satisfy the Single Legal Obligation Requirement it must contain a provision specifying that the terms of the relevant agreement and the terms of the Transactions constitute a single agreement and that all Transactions entered into on or after the date of execution of the agreement are entered into in reliance upon the fact that such agreement and all such terms constitute a single agreement.

Further, to the extent that the Netting Requirements have been satisfied, 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 to apply.

Notwithstanding all of the above, please see our opinions in paragraph 3.6 below on the impact of the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement on the opinions expressed at this paragraph 3.3.

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:

(i) in the absence of an Insolvency Proceeding in respect of any of the Parties, the courts of this jurisdiction will recognise the validity and enforceability of the Clearing Module Netting Provision to the extent that they are valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding in respect of any of the Parties, the enforceability of the Clearing Module Netting Provisions will be subject to satisfaction of the Netting Requirements.

In this respect we are of the view that the Clearing Module Netting Provisions will satisfy the Netting Requirements to the extent that:

(a) any of the Parties is a Qualifying Party (as defined in paragraph 4.4. below);

(b) no spot transactions (other than spot FX) have been entered into under the Clearing Agreement (in which we kindly refer you to paragraph 4.4 below); and

(c) the relevant Clearing Agreement satisfies the Single Legal Obligation Requirement.

In this regards, we believe the better view is that the inclusion of the Clearing Module Netting Provision should be characterised by the courts of this jurisdiction as effecting a "splitting" of the Clearing Agreement into a number of separate netting agreements equal to the number of Cleared Transaction Sets (as defined in the FOA Clearing Module) plus one (this last one comprising Transactions which are not Client Transactions ("**Non-Client Transactions**"), so that the

Clearing Module Netting Provision will be enforceable to the extent that each such set complies with the Netting requirements.

Please note, however, that whilst we believe that such construction is the one which conforms better to the intention of the parties (a crucial element of interpretation of any agreement under Spanish law) and with the so-called principle of conservation of the agreement (*principio de conservación del negocio jurídico*), this issue has never been tested before the courts, there being a risk that the courts of this jurisdiction find that the inclusion of the Clearing Module Netting Provision and the differentiation between different Cleared Transaction Sets jeopardises the enforceability of the Clearing Module Netting Provision. This risk could be avoided by including the following clause:

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "**Cleared Transaction Set Agreement**");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a single legal obligation ("*una única obligación jurídica*" within the meaning of Article 5.1 of the Spanish Royal Decree-law 5/2005, of 11 March); and

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement.".

Further, subject to the above, 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.

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:

(i) in the absence of an Insolvency Proceeding in respect of any of the Parties, the courts of this jurisdiction will recognise the validity and enforceability of the Addendum Netting Provision to the extent that they are valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding in respect of any of the Parties, the enforceability of the Addendum Netting Provision will be subject to satisfaction of the Netting Requirements.

In this respect we are of the view that the Addendum Netting Provisions will satisfy the Netting Requirements to the extent that:

(a) any of the Parties is a Qualifying Party (as defined in paragraph 4.4. below);

(b) no spot transactions (other than spot FX) have been entered into under the Clearing Agreement (in which we kindly refer you to paragraph 4.4 below); and

(c) the relevant Clearing Agreement satisfies the Single Legal Obligation Requirement.

In this regards, we believe the better view is that the inclusion of the Addendum Netting Provision should be characterised by the courts of this jurisdiction as effecting a "splitting" of the Clearing Agreement into a number of separate netting agreements equal to the number of Cleared Transaction Sets (as defined in the ISDA/FOA Clearing Addendum) plus one (this last one comprising Non-Client Transactions), so that the Addendum Netting Provision will be enforceable to the extent that each such set complies with the Netting requirements.

Please note, however, that whilst we believe that such construction is the one which conforms better to the intention of the parties (a crucial element of interpretation of any agreement under Spanish law) and with the so-called principle of conservation of the agreement

(*principio de conservación del negocio jurídico*), this issue has never been tested before the courts, there being a risk that the courts of this jurisdiction find that the inclusion of the Addendum Netting Provision and the differentiation between different Cleared Transaction Sets jeopardises the enforceability of the Addendum Netting Provision. This risk could be avoided by including the following clause:

"The parties agree and acknowledge that:

(i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "**Cleared Transaction Set Agreement**");

(ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a single legal obligation ("*una única obligación jurídica*" within the meaning of Article 5.1 of the Spanish Royal Decree-law 5/2005, of 11 March); and

(iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement.".

Further, subject to the above, 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 Provision.

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

3.6.1 In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision **are affected** by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement.

The reason for this is that the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement is most likely to jeopardise the ability of that Clearing Agreement to satisfy the Single Legal Obligation Requirement.

According to our view, in the event of an Insolvency Proceeding in respect of the Client, the Firm or, as the case may be, Clearing Member could exercise its close-out netting rights under the FOA Netting Provisions separately in respect of each of those sets of Transactions and each Cleared Transaction Set Agreement, without the relevant termination amounts thereunder being

capable of being "netted" against each other under RDL 5/5005 (although they might still be subject to set-off under the relevant Set-Off Provisions, in which we kindly refer you to paragraphs 3.7, 3.8 and 3.9 below).

3.6.2 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), *provided that*, in the event that the relevant Event of Default is an Insolvency Event, exercise of set-off rights on any cash balance (other than any balance arising from the transfer of margin or collateral) is permitted by the law governing the claim of the Defaulting Party to such cash balance; 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), *provided that*, in the event that the relevant Event of Default is an Insolvency Event and the relevant cash balance does not arise from the transfer of margin or collateral, exercise of set-off rights is permitted by the law governing the claim of the Defaulting Party to the Liquidation Amount; 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:

(a) General Set-off Clause:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the General Set-Off Clause to the extent that it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the General Set-Off Clause will only be enforceable in this jurisdiction where Article 205 of the Insolvency Law (equivalent to Article 6.1 of the EU Insolvency Regulation) applies, such Article 205 providing that "*the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim*".

(b) Margin Cash Set-Off Clause:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Margin Cash Set-Off Clause to the extent it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the Margin Cash Set-Off Clause will be enforceable pursuant to RDL 5/2005.

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 and/or the Addendum Set-Off Provision, 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 in respect of the Client, the Firm or, as the case may be, the Clearing Member 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 includes the General Set-Off Clause:

(a) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such liquidation amount is owed by the Client), *provided that*, in the event that the relevant Event of Default is an Insolvency Event, exercise of set-off rights on any cash balance (other than any balance arising from the transfer of margin or collateral) is permitted by the law governing the claim of the Client to such cash balance; or

(b) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such liquidation amount is owed by the Firm or, as the case may be, the Clearing Member) *provided that*, in the event that the relevant Event of Default is an Insolvency Event and the relevant cash balance does not arise from the transfer of margin or collateral, such set-off is permitted by the law governing the claim of the Client to the Liquidation Amount; 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 or, as the case may be, the Clearing Member 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:

(a) General Set-off Clause:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the General Set-Off Clause to the extent that it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the General Set-Off Clause will only be enforceable in this jurisdiction where Article 205 of the Insolvency Law applies.

(b) Margin Cash Set-Off Clause:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Margin Cash Set-Off Clause to the extent it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the Margin Cash Set-Off Clause will be enforceable pursuant to RDL 5/2005.

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 3.7.2 to apply.

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 if:

(a) the Client is a Defaulting Party, so that, upon the exercise of such rights, 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 *provided that*, in the event that the relevant Event of Default is an Insolvency and the relevant cash balance does not arise from the transfer of margin or collateral, such set-off is permitted by the law governing the claim of the Client to such cash balance; and

(b) there has been a Firm Trigger Event (other than the opening of an Insolvency Proceeding) or a CCP Default, so that upon exercise of such rights, 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;

provided that if there has been a Firm Trigger Event constituted by an Insolvency Proceeding, the Firm is not legally entitled to exercise any set-off rights under the Clearing Module Set-Off Provision.

We are of this opinion because:

(i) in the absence of an Insolvency Proceeding in respect of any of the Parties, the courts of this jurisdiction will recognise the validity and enforceability of the Clearing Module Set-Off Provision, to the extent that it is valid and enforceable under English law;

(ii) after the opening of an Insolvency Proceeding in respect of the Client, the Clearing Module Set-Off Provision will only be enforceable in this jurisdiction where Article 205 of the Insolvency Law applies; and

(iii) after a Firm Trigger Event constituted by the opening of an Insolvency Proceeding in respect of the Firm, the Insolvency

Representatives may not effect any set-off as this is prohibited by Article 58 of the Insolvency Law.

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 and there are no desirable amendments to the Clearing Module Set-Off Provision that we would recommend and which would allow a Party to exercise its rights under the Clearing Module Set-Off Provision in circumstances other than those set out in this paragraph 3.8.1

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 (ii) 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 *provided that*, in the event that the CM Trigger Event is constituted by the opening of an Insolvency Proceeding in respect of the Client Member, such set-off is permitted by the law governing the claim of the Client to the Available Termination Amount (if payable to the Client) or to the relevant cash balance constituting a termination amount (where owed to the Client).

We are of this opinion because

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Addendum Set-Off Provision to the extent that it is valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the Addendum Set-Off Provision will only be enforceable in this jurisdiction where Article 205 of the Insolvency Law (implementing Article 6.1 of the EU Insolvency Regulation) applies.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply and there are no desirable amendments to the Addendum Set-Off Provision that we would recommend and which would allow a Party to exercise its rights under the Addendum Set-Off Provision in circumstances other than those set out in this paragraph 3.9

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:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Transfer Title Provisions to the extent that they are valid and enforceable under English law; and

(ii) after the opening of an Insolvency Proceeding, the Transfer Title Provisions will be enforceable pursuant to RDL 5/2005.

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) 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 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 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 where the relevant Event of Default is an Insolvency Event.

In this regards, our view is that:

(a) as further discussed in paragraph 3.3 above, the Two-Way Master Netting Agreement, the Two-Way Clauses, the One-Way Master Netting Agreement and the One-Way Clauses satisfy the Single Legal Obligation Requirement;

(b) as further discussed in paragraph 3.3 above in order for any Clearing Agreement to satisfy the Single Legal Obligation Requirement, it must contain a single agreement provision; and

(c) as further discussed in paragraph 3.6 the use of the FOA Clearing Module or ISDA/FOA Clearing Addendum will jeopardise the ability of the FOA Netting Agreement or, as the case may be, the Clearing Agreement to satisfy, as a whole, the Single Legal Obligation Requirement.

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 (the "**Netting Provisions**") 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, as:

(a) where the FOA Netting Agreement or, as the case may be, the Clearing Agreement satisfies the Netting Requirements, an optional, termination and liquidation under the relevant Netting Provision will be enforceable in the event of bankruptcy, liquidation, or other similar circumstances; and

(b) conversely, where the FOA Netting Agreement or, as the case may be, the Clearing Agreement does not satisfy the Netting Requirements, the Netting Provisions will not be enforceable in the event of bankruptcy, liquidation, or other similar circumstances (irrespective whether either automatic or optional termination and liquidation has been agreed thereunder).

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 or (subject to our considerations in paragraph 4.5 below), the FOA Set-Off Provision, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision (the "**Set-Off Provisions**") or the Title Transfer Provisions insofar as the laws of this jurisdiction are concerned except that the Insolvency Representatives in this jurisdiction may be required to defer to the jurisdiction of the insolvency officer appointed in another country in certain circumstances (because the claims of the Defaulting Party against the Non-Defaulting Party arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement would be deemed under the EU Insolvency Regulation and the Insolvency Law to be located outside the jurisdiction of the Insolvency Representatives in this jurisdiction).

The circumstances referred to are where:

(i) the Defaulting Party is neither a Credit Institution nor an Insurance Undertaking; **and**

(ii) the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of the Defaulting Party is in Spain, the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of the Non-Defaulting Party is in another country and there are secondary proceedings under the EU Insolvency

Regulation or the Insolvency Law in respect of the Defaulting Party in that third country.

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 cannot be subject to Insolvency Proceedings in this jurisdiction unless the Foreign Defaulting Party:

(a) is not an EEA undertaking which qualifies as a: (i) credit institution under Directive 2000/12/EC (an "**EEA Credit Institution**"), or (ii) an EEA undertaking which qualifies as an insurance undertaking under Directive 73/239/EEC or Directive 79/267/EEC (an "**EEA Insurance Undertaking**"); **and**

(b) has an establishment (within the meaning in the EU Insolvency Regulation and the Insolvency Law) in Spain,

in which case the Foreign Defaulting Party can be subject in this jurisdiction to a secondary insolvency proceeding (*procedimiento territorial*), the scope of which will be restricted to those assets of the Foreign Defaulting Party located in Spain (including any claims of such Foreign Defaulting Party against a Spanish Non-Defaulting Party).

In this regard, it is worth noting that:

(i) there is no legal, judicial or academic guidance as to the effects of any secondary insolvency proceeding on a netting agreement encompassing transactions entered into by branches; and

(ii) whilst no conclusive opinion can be provided on this matter, we believe that the better view is that the Insolvency Representatives should refer this issue to the courts of the jurisdiction of the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of the Foreign Defaulting Party.

3.16 **Special legal provisions for market contracts**

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, except that:

(i) pursuant to Article 15 of Law 41/1999, of 12 November, on Payment and Securities Settlement Systems (*Ley 41/1999, de 12 de noviembre, sobre sistemas de pagos y de liquidación de valores*) (which implements in Spain

Article 8 of the Directive 98/26/EC of the European Parliament and of the Council, of 19 May 1998, on settlement finality in payment and securities settlement systems) "*in the event of insolvency proceedings being opened against a Spanish participant in a system recognised in other Member State of the European Union, pursuant to Directive 98/26/EC, the rights and obligations arising from the participation of that participant shall be determined by the law governing that system*";

(ii) pursuant to the second paragraph of Article 204 of the Insolvency Law (implementing Article 9.1 of the EU Insolvency Regulation), the effects of Insolvency Proceedings on the rights and obligations of the parties to a clearing system or a financial market shall be governed solely by the law of the State applicable to that clearing system or market; and

(iii) pursuant to the second paragraph of Article 8.1.d) of Law 6/2005, of 22 April, on the Reorganisation and Winding-up of Credit Institutions ("**Law 6/2005**"), which has implemented Article 27 of the Directive 2001/24/EC of 4 April on the Reorganisation and Winding up of credit institutions (the "**BUWD**"), transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions (provided that for these purposes "*regulated market*" has the meaning given in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

4. QUALIFICATIONS

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

4.1 Insolvency: Transactions and transfers of Margin after insolvency

In an Insolvency Proceeding under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the opening of Insolvency Proceeding can be avoided under Article 40 of the Insolvency Law unless it has been approved or authorised by the Insolvency Representatives.

Transactions and Margin validly entered into or transferred after the opening of an Insolvency Proceeding will be capable of inclusion in the relevant netting and set-off calculations under the relevant Netting Provision and/or the relevant Set-Off Provision (to the extent that they are enforceable in this jurisdiction).

Conversely, Transactions entered into and transfers of Margin made after the opening of the Insolvency Proceeding without the consent or approval of the Insolvency Representatives can be avoided and, accordingly, might not be capable of inclusion in the relevant netting and set-off calculations under the under the relevant Netting Provision and/or the relevant Set-Off Provision but this would not impair the effectiveness of the under the relevant Netting Provision and/or the relevant Set-Off Provision in respect of Transactions entered into and Margin transferred, respectively,

before the opening of such Insolvency Proceedings or otherwise authorised and approved by the Insolvency Representatives.

Notwithstanding the above, Article 15.2 of RDL 5/2005 (implementing Article 8.2 of the Financial Collateral Directive) provides that where a financial collateral arrangement has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, Insolvency Proceedings, it shall be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such Insolvency Proceeding.

4.2 **Insolvency: claw-back**

4.2.1 ***Agreement and Transactions***

Pursuant to Article 16.3 of RDL 5/2005 in connection with Article 71.1 of the Insolvency Law, the courts of this jurisdiction can set aside any Transactions entered into by the insolvent party within the two-year period preceding the adjudication of the bankruptcy (the "**Suspect Period**") if the Insolvency Representatives can prove that such Transactions were "detrimental" to the insolvency estate.

Furthermore, under Articles 1,111 and 1,291-1,299 of the Spanish Civil Code, the courts of this jurisdiction may, on the application of any creditor of a debtor, set aside a fraudulent transaction entered into by that debtor within the 4-year period preceding the application.

In this regard, please note that:

(a) the Spanish legislation does not provide for a concept of "detrimental" to this effect nor have the Supreme Court formulated yet a test for this purpose. However, it is clear that both transactions at an undervalue and transactions intended to constitute a fraudulent preference fall within the scope of Article 16.3 of RDL 5/2005 in connection with Article 71.1 of the Insolvency Law; and

(b) conversely, Article 71.5 of the Insolvency Law prevents the courts of this jurisdiction from setting aside any transactions/acts entered into/made by the insolvent party within the Suspect Period in the ordinary course of its business and on normal conditions.

Notwithstanding the above, please note that, in accordance with Article 208 of the Insolvency Law (implementing Article 13 of the EU Insolvency Regulation), no act governed by a foreign law can be set aside pursuant to the abovementioned Spanish legal provisions where the beneficiary of that act proves that such foreign law does not allow any means of challenging that act in the case in point.

4.2.2 ***Transfer of Margin***

Pursuant to Article 15.5 of RDL 5/2005 in connection with Article 71.1 of the Insolvency Law, the courts of this jurisdiction can set aside any financial collateral arrangement (including payments and deliveries/transfers of collateral thereunder) made by the insolvent party within the Suspect Period if the Insolvency Representatives can prove that such acts were "fraudulent" (*en fraude de acreedores*).

Furthermore, under Articles 1,111 and 1,291-1,299 of the Spanish Civil Code, the courts of this jurisdiction may, on the application of any creditor of a debtor, set aside a fraudulent transaction entered into by that debtor within the 4-year period preceding the application.

In this regard, please note that pursuant to Article 10 of RDL 5/2005, the delivery/transfer of additional collateral required to be posted because of fluctuations in the market value of the collateral initially posted or of changes in the amount of the secured exposure shall be deemed to have been made on the date on which the first deliver/transfer of collateral was made (so that if the initial delivery/transfer was made prior to the Suspect Period, no further such delivery/transfer of top-up collateral can be challenged under Article 15.5 of RDL 5/2005).

Finally please note that in accordance with Article 208 of the Insolvency Law (implementing Article 13 of the EU Insolvency Regulation), no act governed by a foreign law can be set aside pursuant to the abovementioned Spanish legal provisions where the beneficiary of that act proves that such foreign law does not allow any means of challenging that act in the case in point.

4.3 **Insolvency: international set-off pursuant to Article 205 of the Insolvency Law**

To the best of our knowledge no cases have yet been brought before the EU Court of Justice in relation to Article 6.1 of the EU Insolvency Regulations or before the Spanish courts in relation to Article 205 of the Insolvency Law.

In this regards, in the absence of any judgement to the contrary from the European Court of Justice, Spanish courts are likely to construe the scope of the abovementioned Article 6.1 of the EU Insolvency Regulation (and, accordingly, that of Article 205 of the Insolvency Law) in a restrictive way. In particular, but without limitation, Spanish courts might find that those Articles do not apply to: (i) contingent and/or unascertained claims, and/or (ii) claims of different nature (such as claim for the payment of a cash amount and a claim for the delivery or redelivery of securities).

4.4 **Insolvency: Netting Requirements and Non-Qualifying Transactions**

Satisfaction by a relevant netting agreement of the Netting Requirements requires that:

(a) either of the parties to the relevant netting agreement is:

(i) a public authority;

(ii) the European Central Bank, the Bank of Spain, a central bank of any Member State of the European Union, a central bank of any third

States, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

(iii) a credit institution, an investment firm, an insurance company, an undertaking for collective investment in transferable securities or a management company thereof, a *fondo de titulización de activos* ("non-mortgage securitisation fund") or a *fondo de titulización de hipotecaria* ("mortgage securitisation fund") or a management company thereof, a pension fund, or any other financial institutions as defined in Article 4(5) of Directive 2006/48/EC of the European Parliament and of the Council, of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions (recast); or

(iv) a governing body of a secondary exchange, a governing body of a clearing and settlement system, or a central counterparty, a settlement agent or a clearing house as defined in Law 41/1999, of 12 November, or a similar institution acting in the futures, options and derivatives markets

(each of them, a "**Qualifying Party**");

(b) the relevant netting agreement satisfies the Single Legal Obligation Requirement (in which we kindly refer you to paragraph 3.12 above); and

(c) each of the Transactions entered into under the relevant netting agreement is a transaction of one of the following types (each a "**Qualifying Transaction**"):

- securities loans;
- those financial instruments contemplated in the second paragraph of Article 2 of Law 24/1988, including credit derivatives, spot FX transactions, commodity derivatives and allowance derivatives; and
- repurchase transactions and buy and sell back transactions.

In our opinion all Transactions must be regarded as Qualifying Transactions save for spot trades (other than spot FX Transactions).

In the event that any Transactions are not Qualifying Transactions (such as spot trades other than spot FX), there may be two scenarios:

(i) that the relevant court excludes those Transactions from the calculations under the Netting Provisions; and

(ii) that the relevant court finds that the inclusion into a netting agreement of Transactions which are not Qualifying Transactions jeopardises the ability of such agreement (and, therefore, of all Qualifying

Transactions entered into thereunder) to satisfy the Netting Requirements.

In this respect we are of the view that, even if the literal wording of RDL 5/2005 allows for the second of the above two scenarios, both the rationality of RDL 5/2005 and good practice considerations play in favour of the first scenario. However, we cannot give a conclusive opinion on this issue, since, to the best of our knowledge, no cases have been brought before Spanish courts on this issue.

4.5 **Margin located in other jurisdiction**

4.5.1 Pursuant to the EU Insolvency Regulation, where a Party incorporated in this jurisdiction (other than a Credit Institution or an Insurance Undertaking) has an establishment (within the meaning in the EU Insolvency Regulation) in any EU Member State other than Denmark (the "**EU jurisdiction**"):

(i) the courts of the EU jurisdiction will be competent to implement certain secondary proceedings in relation to the assets of such Party situated or deemed to be situated in that EU jurisdiction, and

(ii) moreover, such secondary proceedings will be governed by the laws of such EU jurisdiction.

4.5.2 Pursuant to the Insolvency Law, where a Party incorporated in this jurisdiction has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than any EU Member State other than Denmark (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of such Party situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, such secondary proceedings will be governed by the laws of the relevant foreign jurisdiction.

4.5.3 Whilst we duly note that any Margin is provided on a "title of transfer" basis, we believe that, in the absence of case-law of the EU Court of Justice to the contrary, the courts of this jurisdiction are likely to regard any asset provided as Margin by a Party as an asset of such Party for the purposes of the application of the EU Insolvency Regulation and the Insolvency Law.

4.6 **Jurisdiction of Spanish Courts for the opening of Insolvency Proceedings**

4.6.1 Where the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of a Party incorporated, registered or organised in this jurisdiction (other than a credit institution or an insurance undertaking) is located in a foreign jurisdiction, the Spanish Courts will not have jurisdiction to institute Insolvency Proceedings in respect of such Party, unless it has an

establishment (within the meaning in the EU Insolvency Regulation and the Insolvency Law) in Spain, in which case such Party can be subject in this jurisdiction to a secondary insolvency proceeding (*procedimiento territorial*), the scope of which will be restricted to those assets of that Party located in Spain.

4.6.2 Where the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of a Foreign Defaulting Counterparty incorporated, registered or organised in other jurisdiction (other than an EEA Credit Institution or an EE Insurance Undertaking) is located in Spain, Insolvency Proceedings in respect of such Foreign Defaulting Counterparty can be opened in Spain.

4.7 Procedural Law

4.7.1 In accordance with general principles of Spanish procedural law, the rules of evidence in any judicial proceeding cannot be modified by agreement of the parties, and consequently any provisions of any Agreement in which determinations made by the parties thereto are to be deemed conclusive in the absence of manifest error, may not be upheld by Spanish courts.

4.7.2 Spanish courts may stay proceedings if concurrent proceedings are being brought elsewhere.

4.7.3 Spanish courts may require evidence of the foreign law in accordance with Article 281.2 of the Spanish Civil Proceedings Act dated 7 January 2000 (*Ley de Enjuiciamiento Civil de 7 de enero de 2000*).

4.8 Standardised Agreements

The counterparty (i.e. *adherente*) of the party proposing a standardised agreement (i.e. *predisponente*) is protected by Law 7/1998, dated 13 April, on *Condiciones Generales de la Contratación* (i.e. Standard Terms Act), even if the counterparty is not a consumer. Pursuant to such Law 7/1998, any lack of clarity in the standard form shall be interpreted in favour of the counterparty; contradictions amongst general and particular conditions shall be solved by making to prevail the most favourable for the counterparty, and stipulations contrary to mandatory provisions shall be void. Notwithstanding this, Law 7/1998 shall only apply where one of the parties was prevented *de facto* (due to its weak bargaining position) from negotiating the terms and conditions of the relevant agreement.

4.9 Financial collateral arrangements

4.9.1 Our opinions in paragraphs 3.7, 3.8, 3.9 and 3.10 above will only apply to the extent that the Set-Off Provisions (to the extent related to Margin) and the Title Transfer Provisions are financial collateral arrangements within the scope of RDL 5/2005.

In order for a collateral agreement to be deemed to be a financial collateral arrangement, it is required pursuant to RDL 5/2005 that:

(a) either of the parties thereof is a Qualifying Party;

(b) none of the parties in an individual;

(c) the collateral assets are either: (i) cash, (ii) negotiable securities ("*valores negociables*") or other financial instruments as defined in Law 24/1988, of 28 July, on the securities market, or (iii) certain loan claims; and

(d) the collateral agreement is intended to secure a "relevant financial obligation" ("*obligación financiera principal*"), such term being defined in Article 6.4 of RDL 5/2005 (following Article 2.1.(f) of the Financial Collateral Directive) as any "*obligations which give a right to cash payment and/or delivery of financial instruments*" (we duly note that the English version of the Financial Collateral Directive uses the term "settlement" rather than "payment").

In this regards, please note as follows:

(i) years ago some scholars argued that RDL 5/2005 only applied to collateral agreements entered into in connection with payment and/or delivery obligations arising from OTC derivative transactions but not to payment obligations arising under any other types of contracts (such as loan agreements), that position being then followed by some Lower Courts (*Juzgados de Primera Instancia*);

(ii) both we and most scholars supported a literal interpretation of the wording of RDL 5/2005 and opined that RDL 5/2005 also applies to collateral agreements entered into in connection with any payment obligation (including those arising under loan agreements);

(iii) in 2008 the Barcelona Appeal Court (*Audiencia Provincial*) supported the literal interpretation of the wording of RDL 5/2005, stating that "*the terms of the RDL 5/2005, with respect to the scope of application of financial collateral arrangements, are clear (although, for a sector, open to criticism) and is not expressly restricted to the security of obligations related with the settlement of financial instruments, whether cash-settled or physically-settled, in the same way that it is not so restricted in the European [Collateral] Directive*" (Judgment of the Barcelona Appeal Court dated 30 September 2008, such Appeal Court being reputed as the leading Appeal Court in insolvency issues);

(iv) following the abovementioned judgment, our opinion was that the risk of our Supreme Court holding a view different from the literal interpretation of the wording of the RDL 5/2005 was very low; and

(v) moreover, we believe that nowadays such risk is even more remote in light of the following considerations:

- to the best of our knowledge, no cases on this issue have been decided by our Supreme Court (our Supreme Court has recently dismissed the appeal of the Judgment of the Barcelona Appeal Court dated 30 September 2008 but such dismissal is mainly based on formal defects of the appeal rather than on a full analysis of the issue at stake) and the sole later judgment known to us rendered on this matter by an Appeal Court (Judgment of the Tarragona Appeal Court dated 13 October 2009) follows the Judgment of the Barcelona Appeal Court;

- to the best of our knowledge, the number of cases in Lower Courts have materially decreased in the last years (which, in our view, shows that counsel to borrowers are aware of the unlikelihood of the "literal construction" being rejected);

- to the best of our knowledge, we believe that Lower Courts are also following the "literal interpretation" of the Courts of Appeal (for instance, judgment of Ninth Lower Court of Madrid of 26 March 2010), although we obviously cannot track each and all of the cases heard in Lower Courts; and

- RDL 5/2005 has been amended twice in the last three years (by means of Law 16/2009, of 13 November, and Law 7/2011, of 11 April) and no change has been made to the definition of "relevant financial obligation" (*obligación financier principal*). Although we acknowledge that this fact can be interpreted in different ways, the prevailing view among scholars (bearing in mind that, pursuant to the Recitals to Law 7/2011, it was intended to, *inter alia*, sort out some legal uncertainties) is that it amounts to an "implied" confirmation of the "literal construction" followed by the Courts of Appeal.

4.9.2 In the unlikely event that the "restrictive construction" of the scope of RDL 5/2005 were to be upheld by our Supreme Court (to the extent related to Margin) and of the Title Transfer Provisions will not apply in relation to any Clearing Agreement which fails to satisfy the Netting Requirements (in which we refer you to paragraph 4.4. above).

4.10 **Default Interest and Indemnities between Parties**

There is some possibility that a Spanish court would hold that a judgment on any agreement would supersede such agreement so that any obligations relating to the payment of interest after judgment would not be held to survive judgment.

Moreover pursuant to the Insolvency Law, interest imposed upon a party by any agreement might be held to be irrecoverable to the extent that it accrues on an unsecured debt after the commencement of an Insolvency Proceeding in respect of the party liable to pay such interest.

Finally, any provision of any agreement purporting to require a party to indemnify another person against the costs or expenses of proceedings in the Spanish courts is subject to the discretion of the court to decide whether and to what extent a party to such proceedings should be awarded the costs or expenses incurred by it in connection therewith.

4.11 **Currency**

In accordance with Article 1,170.1 of the Spanish Civil Code, a debtor is bound to pay in the agreed currency unless this is legally or factually impossible, in which case it may discharge its obligation by paying the equivalent amount in the Spanish legal currency.

The above notwithstanding, Insolvency Proceedings must be conducted in Euro as Article 88.1 of the Insolvency Law provides that all claims will be converted into Euros at the official exchange rate on the date of adjudication of bankruptcy *"for the sole purposes of quantifying the liabilities, without such process resulting in a conversion or modification of the claim"* of the Insolvent Party. In this regard, we are of the opinion that:

(a) the Liquidation Amount and any Available Termination Amount will have further to be converted into Euro in order for it to be included in the relevant Insolvency Proceeding but only for the purposes of quantification of the liabilities of the Insolvent Party; and

(b) therefore, the Liquidation Amount and any Available Termination Amount will have to be paid by Insolvency Representatives, in accordance with the legal order of priority of payments, in the currency originally specified by the Solvent Party.

There is no case-law, however, as to the way in which Article 88.1 must be interpreted. Therefore, we cannot fully discard the risk that Spanish courts may not uphold our interpretation of Article 88.1 (even if supported by scholars) and find that the Liquidation Amount and any Available Termination Amount must be paid in Euro by using the official exchange rate on the date of adjudication of bankruptcy.

4.12 **Unpaid Amounts**

RDL 5/2005 provides that the net termination amount payable under netting agreements satisfying the Netting Requirements must be always calculated in accordance with the provisions of the relevant netting agreement.

This notwithstanding, it should be noted that several Spanish minor courts have held that amounts owed by the insolvent party which had become due and payable prior to the adjudication of the insolvency cannot be included in the calculation of the net termination amount (although they can be claimed as an ordinary claim) in spite of the provisions of the relevant close-out netting agreement providing otherwise.

4.13 **EMIR**

We express no opinion as to whether any Party has complied with any applicable provisions of Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and any technical standards made thereunder in respect of anything done by it in relation to or in connection with any Transactions. However, Article 12(3) of EMIR provides that any infringement of the rules under Title II of EMIR "shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract", consequently any failure by a party to so comply should not make any Transactions invalid or unenforceable.

4.14 **Collateral being ancillary to secured obligations**

As a matter of Spanish law, any collateral agreement (including transfer of title collateral arrangements) is ancillary to the relevant secured obligations in such a way that, in the event that those secured obligations are nullified, set aside or rescinded for any reason, this would entail the relevant collateral agreement being also nullified, set aside or rescinded.

4.15 **Other Qualifications**

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

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

4.15.2 This letter expresses and describes certain Spanish legal concepts in English and not in their original Spanish terms; therefore, this opinion is issued and may be only relied upon on the express condition that it shall be governed by, and that all words and expressions used herein shall be construed and interpreted in accordance with, the laws of Spain.

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 of 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,

José Manuel Cuenca Miranda

Clifford Chance, S.L.

SCHEDULE 1
Credit Institutions

Subject to the modifications and additions set out in this Schedule 1 (Credit Institutions), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which Credit Institutions. For the purposes of this Schedule 1 (Credit Institutions), "**Credit Institutions**" means: (i) any bank (*banco*) incorporated in this jurisdiction in accordance with Law 3/1994, of 14 April, which adapts Spanish legal framework relating to credit institutions to the Second Banking Directive ("**Law 3/1994**") and Royal Decree 1298/1986, of 28 June, which adapts Spanish legal framework to the EU legal framework relating to credit institutions; (ii) any saving bank (*caja de ahorros*) organised in this jurisdiction pursuant to Law 31/1985, of 2 August, on the basic rules regarding governing bodies of Spanish savings banks ("**Law 31/1985**") and Law 3/1994; (iii) any credit union (*cooperativa de crédito*) incorporated in this jurisdiction pursuant to Law 13/1989, of 26 May, on Credit Unions ("**Law 13/1989**") and to Law 3/1994, and (iv) any lending institution (*establecimientos financiero de crédito*) ("**EFC**") incorporated in this jurisdiction pursuant to the First Additional Provision of Law and Royal Decree 692/1996, of 26 April.

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 1.11.1 is deemed deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 1 (Credit Institutions".

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Credit Institutions

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Credit Institution could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(i) *concurso* under the Insolvency Law; and

(ii) recovery and resolution proceedings under Law 9/2012, of 14 November, on Recovery and Resolution of Credit Institutions ("**Law 9/2012**") (which follows closely the provisions in the Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and

resolution of credit institutions and investment firms published by the European Commission on 6 June 2012 (the "**Proposal**"), which has now been superseded by a more recent proposal).

In this regards, please note, however, that Law 9/2012 has been recently enacted, it not being fully clear whether it is intended to apply to Credit Institutions incorporated as EFCs (*establecimientos financieros de crédito*).

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

Finally, it is also worth noting that Law 26/1988, of 29 July, on Discipline and Supervision of Credit Institutions provides for a specific proceeding for the so-called "intervention" (*intervención*) of Credit Institutions. However, "intervention" by itself is only aimed to the replacement of the Board of Directors of the relevant Credit Institution by new directors appointed by the Bank of Spain or to the appointment by the Bank of Spain of an official (*interventor*) to supervise and approve the operation of the relevant Credit Institution but they should not affect themselves the rights and remedies of its creditors (including any close-out netting or set-off rights). Accordingly, "intervention" itself is not characterised for the purposes of this letter opinion as an Insolvency Proceeding.

2.2 **Enforceability of FOA Netting Provision (paragraph 3.3)**

Paragraph 3.3 is deemed deleted and replaced with the following:

"In relation to a 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:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the FOA Netting Provision to the extent that it is valid and enforceable under English law;

(ii) pursuant to Article 8.1.e) of Law 6/2005 (which implements the provisions of Article 25 of the BWUD), the effects on any "netting agreement" of any reorganisation measure and of the opening of an Insolvency Proceeding in

respect of a Credit Institution will be governed by the law governing such netting agreement; and

(iii) whilst Article 67.1 of Law 9/2012 (broadly following Article 77.1 of the Proposal) provides that the application of a resolution tool or the exercise of a resolution power shall in itself not make possible for anyone to exercise any right to terminate, accelerate or declare a default under any financial contract as defined therein (a "**Financial Contract**") (all Transactions other than spot trades amounting to Financial Contracts for the purposes of Law 9/2012) unless the relevant Financial Contract is not finally transferred to the bridge institution or a third entity, this provision is not applicable to netting agreements governed by a foreign law (such as the Agreement) since paragraph 3 of the Fifth Additional Provision of Law 9/2012 (the "**5th AP**") provides that the application of resolution tools shall amount to a "reorganisation measure" for the purposes of Law 6/2005.

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. It is worth noting in this regards that Article 70.3 of Law 9/2012 (which follows Article 63 of the Proposal) grants the Spanish resolution authorities the power to suspend the termination rights of any counterparty under a Financial Contract with a failing institution that arise by reason of any resolution action, any recovery action or any early intervention action, but (as discussed above) Article 70.3 is not applicable to netting agreements governed by a foreign law (such as the Agreement) by virtue of Article 8.1.e) of Law 6/2005.

Please note that our considerations above are based on the legal ground that Law 9/2012 must be interpreted in conformity with the BWUD and the Financial Collateral Directive in the absence of any EU rule to the contrary. Accordingly, those considerations will not remain applicable in the event that (i) the Proposal becomes into a Directive and (ii) such Directive overrides the provisions of the BWUD or the Financial Collateral Directive, in which case the entitlement of the Non-Defaulting Party to exercise its rights under the Netting Provisions would be restricted by the provisions of Law 9/2012."

2.3 **Enforceability of the Clearing Module Netting Provision (paragraph 3.4)**

Paragraph 3.4 is deemed deleted and replaced with the following:

"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:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Clearing Module Netting Provision to the extent that it is valid and enforceable under English law;

(ii) pursuant to Article 8.1.e) of Law 6/2005 (which implements the provisions of Article 25 of the BWUD), the effects on any "netting agreement" of any reorganisation measure and of the opening of an Insolvency Proceeding in respect of a Credit Institution will be governed by the law governing such netting agreement; and

(iii) whilst Article 67.1 of Law 9/2012 (broadly following Article 77.1 of the Proposal) provides that the application of a resolution tool or the exercise of a resolution power shall in itself not make possible for anyone to exercise any right to terminate, accelerate or declare a default under any financial contract as defined therein (a "**Financial Contract**") (all Transactions other than spot trades amounting to Financial Contracts for the purposes of Law 9/2012) unless the relevant Financial Contract is not finally transferred to the bridge institution or a third entity, this provision is not applicable to netting agreements governed by a foreign law (such as the Agreement) since paragraph 3 of the Fifth Additional Provision of Law 9/2012 (the "**5th AP**") provides that the application of resolution tools shall amount to a "reorganisation measure" for the purposes of Law 6/2005.

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. It is worth noting in this regards that Article 70.3 of Law 9/2012 (which follows Article 63 of the Proposal) grants the Spanish resolution authorities the power to suspend the termination rights of any counterparty under a Financial Contract with a failing institution that arise by reason of any resolution action, any recovery action or any early intervention action, but (as discussed above) Article 70.3 is not applicable to netting agreements governed by a foreign law (such as the Agreement) by virtue of Article 8.1.e) of Law 6/2005.

Please note that our considerations above are based on the legal ground that Law 9/2012 must be interpreted in conformity with the BWUD and the Financial Collateral Directive in the absence of any EU rule to the contrary. Accordingly, those considerations will not remain applicable in the event that (i) the Proposal becomes into a Directive and (ii) such Directive overrides the provisions of the BWUD or the

Financial Collateral Directive, in which case the entitlement of the Non-Defaulting Party to exercise its rights under the Netting Provisions would be restricted by the provisions of Law 9/2012."

2.4 **Enforceability of the Addendum Netting Provision (paragraph 3.5)**

Paragraph 3.5 is deemed deleted and replaced with the following:

"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:

We are of this opinion because:

(i) in the absence of an Insolvency Proceeding, the courts of this jurisdiction will recognise the validity and enforceability of the Clearing Module Netting Provision to the extent that it is valid and enforceable under English law;

(ii) pursuant to Article 8.1.e) of Law 6/2005 (which implements the provisions of Article 25 of the BWUD), the effects on any "netting agreement" of any reorganisation measure and of the opening of an Insolvency Proceeding in respect of a Credit Institution will be governed by the law governing such netting agreement; and

(iii) whilst Article 67.1 of Law 9/2012 (broadly following Article 77.1 of the Proposal) provides that the application of a resolution tool or the exercise of a resolution power shall in itself not make possible for anyone to exercise any right to terminate, accelerate or declare a default under any financial contract as defined therein (a "**Financial Contract**") (all Transactions other than spot trades amounting to Financial Contracts for the purposes of Law 9/2012) unless the relevant Financial Contract is not finally transferred to the bridge institution or a third entity, this provision is not applicable to netting agreements governed by a foreign law (such as the Agreement) since paragraph 3 of the Fifth Additional Provision of Law 9/2012 (the "**5th AP**") provides that the application of resolution tools shall amount to a "reorganisation measure" for the purposes of Law 6/2005.

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 Provision. It is worth noting in this regards that Article 70.3 of Law 9/2012 (which follows Article 63 of the Proposal) grants the Spanish resolution authorities the power to suspend the termination rights of any

counterparty under a Financial Contract with a failing institution that arise by reason of any resolution action, any recovery action or any early intervention action, but (as discussed above) Article 70.3 is not applicable to netting agreements governed by a foreign law (such as the Agreement) by virtue of Article 8.1.e) of Law 6/2005.

Please note that our considerations above are based on the legal ground that Law 9/2012 must be interpreted in conformity with the BWUD and the Financial Collateral Directive in the absence of any EU rule to the contrary. Accordingly, those considerations will not remain applicable in the event that (i) the Proposal becomes into a Directive and (ii) such Directive overrides the provisions of the BWUD or the Financial Collateral Directive, in which case the entitlement of the Non-Defaulting Party to exercise its rights under the Netting Provisions would be restricted by the provisions of Law 9/2012."

2.5 **Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision (paragraph 3.6)**

Paragraph 3.6 is deemed deleted and replaced with the following:

"3.6 **Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision (paragraph 3.6)**

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.

The reason for this is that the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement will not prevent the relevant Clearing Agreement from being characterised as a "netting agreement" for the purposes of Article 8.1.e) of Law 6/2005 (which implements the provisions of Article 25 of the BWUD)."

2.6 **Enforceability of Set-Off Provisions (paragraphs 3.7, 3.8 and 3.9)**

Paragraphs 3.7, 3.8 and 3.9 are deemed amended so that any references therein to Article 205 of the Insolvency Law and Article 6.1 of the EU Insolvency Regulation shall be read as references to Article 8.2.c) of Law 6/2005 and to Article 23 of the BWUD, respectively.

2.7 **Single Agreement (paragraph 3.12)**

Paragraph 3.12 is deemed deleted and replaced with the following:

"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 where the relevant Event of Default is an Insolvency Event.

This opinion is given because:

(i) as discussed in paragraph 3.3 above, the Netting Provisions will be enforceable in this jurisdiction pursuant to Article 8.1.e) of Law 6/2005 (which implements the provisions of Article 25 of the BWUD), such Article 8.1.e) providing that the effects on "netting agreements" of any reorganisation measure and of the opening of an Insolvency Proceeding in respect of a Credit Institution will be governed by the law governing such netting agreement; and

(ii) whilst to the best of our knowledge there is no case-law from the EU Court of Justice on this issue, it is not required for any "netting agreement" to constitute a "single agreement" in order for it to benefit from Article 25 of the BWUD, it being sufficient in our view to this effect that the relevant agreement contains a provision pursuant to which, on the occurrence of a termination event, whether through the operation of netting or set-off or otherwise: (a) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (b) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party."

3. ADDITIONAL QUALIFICATIONS

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

3.1 Scope of Application of Law 6/2005

Pursuant to the literal wording of Article 2 thereof, Law 6/2005 is only applicable to Credit Institutions which provide services in other EU Member State either by means of an establishment or on a purely cross-border basis. This notwithstanding, we believe that: (i) such principle is actually intended to apply only in relation to those provisions in Law 6/2005 dealing with issues relating to mutual recognition of reorganisation measures and insolvency proceedings and the related communications between EU authorities, and that (ii) the better view is that the conflict of law rules set out in Article 8 of Law 6/2005 are applicable in any Insolvency Proceedings in respect of any Credit Institution irrespective whether it provides or not services in other EU Member State (although please note that this view has not been tested before the Spanish courts).

It is worth noting, however, that, even where the conflict of law rules set out in Article 8 of Law 6/2005 fail to apply to any Agreement entered into by a Credit Institution, the Netting Provisions will still benefit from close-out netting recognition

under RDL 5/2005 to the extent that the Agreement satisfies the Netting Requirements.

3.2 **Law 9/2102: suspension of enforcement of security interest**

Article 70.2 of Law 9/2012 (which follows Article 62 of the Proposal) grants the Spanish resolution authorities the power (the "**suspension power**") to restrict secured creditors of a Credit Institution under resolution from enforcing security interests in relation to any assets of that institution for the limited period that the resolution authorities determines necessary to achieve the resolution objectives.

In this regards, the wording of Law 9/2012 is not fully precise, it being uncertain whether such Article 70.2: (i) is intended to apply also to financial collateral provided in relation to Finance Contracts satisfying the Netting Requirements set forth in RDL 5/2005, and (ii) if so, whether it is intended to apply only to "security financial collateral" or, conversely, also to "title transfer collateral" (in which case it might has an impact on the enforceability of the Margin Cash Set-off Provisions and the Title transfer Provisions).

In the event that Article 70.2 is found to apply also to title of transfer arrangements, the scope of application of Law 9/2012 must still be interpreted in light of the provisions set forth in both Article 8.2.a) of Law 6/2005 (implementing Article 23 of the BUWD and in Article 15.4 of RDL 5/2005 (implementing Article 4.5 of the Financial Collateral Directive), so that two different scenarios can be distinguished:

(a) the margin is located in an EEA Member State other than Spain:

Enforcement of the Margin Cash Set-Off Clause and Title Transfer Provisions should be exempt from the exercise of suspension powers as Article 8.2.a) of Law 6/2005 provides that: "*the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings*".

It must be noted that pursuant to the literal wording of Article 2 thereof, Law 6/2005 is only applicable to Credit Institutions which provide services in other EU Member State either by means of an establishment or on a purely cross-border basis. This notwithstanding, we believe that: (i) such principle is actually intended to apply only in relation to those provisions in Law 6/2005 dealing with issues relating to mutual recognition of reorganisation measures and insolvency proceedings and the related communications between EU authorities, and that (ii) the better view is that the conflict of law rules set out in Article 8 of Law 6/2005 are applicable in any Insolvency Proceedings in respect of any Credit Institution irrespective whether it provides or not

services in other EU Member State (although please note that this view has not been tested before the Spanish courts); and

(b) the margin is located in Spain or in a non- EEA Member State:

Article 4.5 of the Financial Collateral Directive requires Member States to ensure that a financial collateral arrangement can take effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider or collateral taker.

Moreover, reorganisation measures for the purposes of the Financial Collateral Directive are defined as "*measures which involve any intervention by administrative or judicial authorities which are intended to preserve or restore the financial situation and which affect pre-existing rights of third parties, including but not limited to measures involving a suspension of payments, suspension of enforcement measures or reduction of claims*".

Clearly, the exercise of suspension powers pursuant to Article 70.2 of Law 9/2012 must be characterised as a "reorganization measure" pursuant to the Financial Collateral Directive. Moreover, paragraph 3 of the Fifth Additional Provision of Law 9/2012 (the "**5th AP**") expressly provides that the application of resolution tools shall amount to a "reorganisation measure" for the purposes of Law 6/2005 (implementing the Banks Winding-Up Directive).

The fact that Article 4.5 of the Collateral Directive has been transposed somewhat inaccurately into Article 15.5 of RDL 5/2005 (as it provides that financial collateral arrangements can be enforced immediately in accordance with their terms without such enforcement being limited, restricted or affected in any manner whatsoever by the opening of insolvency proceedings or administrative liquidation proceedings -the term "administrative liquidation proceedings" replacing the term "reorganisation measures" used in the Financial Collateral Directive-) is not a matter of concern, since such inaccuracy can be well remedied through the application of the principle of consistent interpretation (since, as stated in the *Marleasing* judgment of the EU Court of Justice, "*in applying national law, [...], the national court called upon to interpret it is required to do so, **as far as possible**, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter*").

This notwithstanding, please note that paragraph 4 of the 5th AP surprisingly provides that the implementation by the FROB and/or the Bank of Spain of any of the measures and powers referred in Law 9/2012 (including therefore the exercise of any resolution tool) shall not be regarded as an "insolvency proceeding" ("*no tendrá la condición de procedimiento de insolvencia*") for the purposes of Articles 14, 15 and 16 of RDL 5/2005, although the wording of Articles 14, 15 and 16 of RDL 5/2005 does not use the term "*procedimiento de insolvencia*" used by paragraph 4 of the 5th AP but those of "*medidas de*

saneamiento" (reorganisation measures) and "procedimientos de liquidación" (winding-up proceedings). As discussed above, the *prima facie* effect of paragraph 4 of the 5th AP (i.e. the infringement by the Kingdom of Spain of the Financial Collateral Directive because of the subjection of the enforcement of certain financial collateral arrangements to the suspension powers of the Spanish resolution authorities) should be avoided on the grounds of the principle of consistent interpretation unless no alternative construction of that provision is possible. Please note, however, that Law 9/2012 has been recently enacted, there being neither case-law nor consensus among counsel as to the way it must be interpreted, there being a risk that the courts of this jurisdiction may take the view that paragraph 4 of the 5th AP does not allow for any alternative interpretation.

Please note that our considerations above are based on the legal ground that Law 9/2012 must be interpreted in conformity with the BWUD and the Financial Collateral Directive in the absence of any EU rule to the contrary. Moreover, please note that as expressly stated in its Preamble, Law 9/2012 has taken into account the contents of the Proposal and that, once the Proposal (which has been now replaced by the latest proposal published on 20 June 2013 by the Presidency of the Council of the EU and that is still subject to discussion in, and negotiation with, the European Parliament) has become into a Directive, the contents of Law 9/2012 shall be accommodated to the final text of such Directive.

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 shall be deemed modified as follows:

4.1 Insolvency: claw-back (paragraph 4.2)

Paragraph 4.2 is deemed amended so that, in respect of any Agreements governed by English Law, any references therein to Article 208 of the Insolvency Law and Article 13 of the EU Insolvency Regulation must be read as references to Article 8.1.g) of Law 6/2005 and to Article 30 of the BWUD, respectively.

4.2 Insolvency: international set-off pursuant to Article 205 of the Insolvency Law (paragraph 4.3)

Paragraph 4.3 is amended so that any references therein to Article 205 of the Insolvency Law and Article 6.1 of the EU Insolvency Regulation shall be read as references to Article 8.2.c) of Law 6/2005 and to Article 23 of the BWUD, respectively.

4.3 Margin located in other jurisdictions (paragraph 4.5)

Paragraph 4.5.2 is deemed deleted and replaced by the following:

"4.5.2 Where a Credit Institution has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than an EEA Member State (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, those secondary proceedings will be governed by the laws of such foreign jurisdiction."

SCHEDULE 2

Investment Firms

Subject to the modifications and additions set out in this Schedule 2 (Investment Firms), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms. For the purposes of this Schedule 2 (Investment Firms), "**Investment Firms**" means any entities incorporated in this jurisdiction as "*empresas de servicios de inversión*" pursuant to Law 24/1988, of 28 July, on the securities market ("**Law 24/1988**") and Royal Decree 217/2008, of 15 February, on investment services companies.

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 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:

1.1 Insolvency Proceedings: Investment Firms

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Firm could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, is *concurso* under the Insolvency Law.

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

It is worth noting that Law 24/1988 provides for a specific proceeding for the so-called "intervention in the winding-up" (*intervención administrativa*) of Investment Firms. However, this proceeding should not affect itself the rights and remedies of the creditors of the relevant Investment Firm (including any close-out netting or set-off rights). Accordingly, "intervention in the winding-up" itself is not characterised for the purposes of this letter opinion as an Insolvency Proceeding.

2. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 shall be deemed modified as follows:

2.1 Margin located in other jurisdictions (paragraph 4.5)

Paragraph 4.5 (*Margin located in other jurisdictions*) is deemed deleted and replaced by the following:

"Pursuant to the Insolvency Law, where an Investment Firm incorporated in this jurisdiction has an establishment (within the meaning in the Insolvency Law) in any foreign jurisdiction:

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of such Investment Firm situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, such secondary proceedings will be governed by the laws of the relevant foreign jurisdiction."

SCHEDULE 3
Insurance Undertakings

Subject to the modifications and additions set out in this Schedule 3 (Insurance Undertakings), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Undertakings. For the purposes of this Schedule 3 (Insurance Undertakings), "**Insurance Undertakings**" means any undertaking incorporated in this jurisdiction as an "*entidad aseguradora*" pursuant to the Restated Text of the Law on Regulation and Supervision of Private Insurance Undertakings (approved by Law 6/2004, of 29 October) (the "**Insurance Undertakings Law**").

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 1.11.1 is deemed deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 3 (Insurance Undertakings) ".

2. ADDITIONAL ASSUMPTIONS

We assume the following:

"That each Transaction satisfy all of the requirements in order for it to be validly entered into (and any transfer of margin satisfy all of the requirements in order for it to be validly made) by the relevant Insurance Undertaking in accordance with the provisions of the Insurance Undertakings Law, of the Royal Decree 2486/1998, of 20 November (which approves the Regulation on Private Insurance Undertakings) and of the Order of the Ministry of Economy EHA 339/2007, of 16 February (relating to, inter alia, the entering into derivative transactions by insurance undertakings)"; and

"That no asset provided as margin is an asset held for the coverage of technical provisions ("*provisiones técnicas*") within the meaning in the Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings and in the related Spanish implementing legislation."

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: Insurance Undertakings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Insurance Undertaking could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(i) *concurso* under the Insolvency Law; and

(ii) administrative winding-up (*liquidación administrativa*) under the Insurance Undertakings Law.

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

It is worth noting that the Insurance Undertakings Law also provides for a specific proceeding for the so-called "intervention" (*intervención*) of Insurance Undertakings. However, "intervention" by itself is only aimed to the replacement of the Board of Directors of the relevant Insurance Undertaking by new directors appointed by the insurance regulator or to the appointment by the insurance regulator of an official (*interventor*) to supervise and approve the operation of the relevant Insurance Undertaking but they should not affect themselves the rights and remedies of its creditors (including any close-out netting or set-off rights). Accordingly, "intervention" itself is not characterised for the purposes of this letter opinion as an Insolvency Proceeding."

3.2 Enforceability of Set-Off Provisions (paragraphs 3.7, 3.8 and 3.9)

Paragraphs 3.7, 3.8 and 3.9 are deemed amended so that any references therein to Article 205 of the Insolvency Law and Article 6.1 of the EU Insolvency Regulation must be read as references to Article 30.2 of the Insurance Undertakings Law in connection with Article 205 of the Insolvency law (as such Article 30.2 provides that the conflict of law rules in the Insolvency Law shall apply in the Insolvency Proceedings of an Insurance Undertaking) and to Article 22 of the Directive 2001/17/EC of 19 March on the Reorganisation and Winding Up of Insurance Undertakings, respectively.

4. ADDITIONAL QUALIFICATIONS

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

4.1 Priority of certain claims

Pursuant to Article 59.1 of the Insurance Undertakings Law, the claims of the insured, beneficiaries and third parties referred to in Article 73 of Law 50/1980, of 8 October, on Insurance Contract, will have absolute priority over any other claims against the Insurance Undertaking with respect to the assets which, representing technical provisions, are recorded in the investment registry.

While there is a wide consensus among Spanish scholars that such priority right should not prevail over the close-out netting rights contemplated in RDL 5/2005, no full certainty can be provided on this issue as there is no case-law in this regard.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 shall be deemed modified as follows:

5.1 Insolvency: claw-back (paragraph 4.2)

Paragraph 4.2 is deemed amended so that, in respect of any Agreements governed by English Law, any references therein to Article 208 of the Insolvency Law and Article 13 of the EU Insolvency Regulation shall be read as references to Article 30.2 of the Insurance Undertakings Law (in connection with Article 205 of the Insolvency Law) and to Article 24 of the Directive 2001/17/EC of 19 March on the Reorganisation and Winding Up of Insurance Undertakings, respectively.

5.2 Insolvency: international set-off pursuant to Article 205 of the Insolvency Law (paragraph 4.3)

Paragraph 4.3 is amended so that any references therein to Article 205 of the Insolvency Law and Article 6.1 of the EU Insolvency Regulation shall be read as references to as references to Article 30.2 of the Insurance Undertakings Law (in connection with Article 205 of the Insolvency Law) and to Article 22 of the Directive 2001/17/EC of 19 march on the Reorganisation and Winding Up of Insurance Undertakings, respectively.

5.3 Margin located in other jurisdictions (paragraph 4.5)

Paragraph 4.5.2 is deemed deleted and replaced by the following:

"4.5.2 Where an Insurance Undertaking has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than an EEA Member State (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, those secondary proceedings will be governed by the laws of such foreign jurisdiction."

SCHEDULE 4
Individuals

Subject to the modifications and additions set out in this Schedule 4 (Individuals), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are natural persons whose "centre of main interests" is in Spain ("**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. ADDITIONAL ASSUMPTIONS

We assume the following:

"That the FOA Netting Agreement or, as applicable, the Clearing Agreement (other than the Netting Provisions, the Set-Off Provisions and the Title of Transfer Provisions) and each Transaction thereunder fully comply with all applicable provisions under the consumer protection laws in force in this jurisdiction and that the consent by the relevant Individual to enter into them is not affected by fraud (*dolo*) or error (*error*)".

2. MODIFICATIONS TO OPINIONS

Our opinions in paragraphs 3.7, 3.8 and 3.9 insofar they are related to the set-off of any cash margin and 3.10 (*Enforceability of Title Transfer Provisions*) of this opinion letter will **not** apply in respect of Parties which are Individuals.

The reason for this is that: (i) our opinions in paragraphs 3.7, 3.8 and 3.9 and 3.10 only apply in the event that the Set-Off Provisions insofar they are related to the set-off of any cash margin (including the Margin Cash Set-Off Clause) and the Title Transfer Provisions are financial collateral arrangements and (ii) any Set-Off Provision insofar it is related to the set-off of any cash margin (including the Margin Cash Set-Off Clause) and the Title Transfer Provisions entered into by an Individual shall not be deemed to be a financial collateral arrangement.

3. MODIFICATIONS TO QUALIFICATIONS

Qualifications in paragraphs 4.2.2 (*Transfer of Margin*), 4.5 (*Margin located in other jurisdiction*) and 4.9 (*Financial Collateral Arrangements*) are deemed deleted and all other qualifications (and cross-references to any such other qualifications) are renumbered accordingly.

4. ADDITIONAL QUALIFICATIONS

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

4.1 **Consumer Protection Laws**

There is a risk that the courts of this jurisdiction would find the One-Way Netting Master Netting Agreement and the One-Way Clauses to be abusive.

4.2 **Rome I and Consumer Protection Laws:**

Where any agreement is concluded by an Individual for a purpose beyond his/her trade or profession (a "**consumer**") with a Party that exercises its activities or directs its activities to the country of residence of the Individual, the choice of English law will not be recognised where it has the effect of depriving the consumer of the protection afforded to such consumer by provisions that cannot be derogated from by agreement by virtue of the law of his/her residence. This qualification would not apply, however, to rights and obligations which constitute a financial instrument in so far as these activities do not constitute provision of a financial service.

SCHEDULE 5
Collective Investment Undertakings

Subject to the modifications and additions set out in this Schedule 5 (Collective Investment Undertakings), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Collective Investment Undertakings. For the purposes of this Schedule 5 (Collective Investment Undertakings), "**Collective Investment Undertaking**" means any company or fund incorporated or organised in this jurisdiction as an "*institución de inversion colectiva*" pursuant to Law 35/2003, of 4 November, on collective investment undertakings ("**Law 35/2003**").

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 1.11.1 is deemed deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 5 (Collective Investment Undertakings)".

2. ADDITIONAL ASSUMPTIONS

We assume the following:

"That each Transaction satisfy all of the requirements in order for it to be validly entered into (and any transfer of margin satisfy all of the requirements in order for it to be validly made) by the relevant Collective Investment Undertaking in accordance with the provisions of the Law 35/2003, of the Royal Decree 1082/2012, of 13 July, which approves the regulation of Law 35/2003 ("**RD 1082/2012**"), of the Order EHA/888/2008, of 27 March, of the Ministry of Economy, on the entering into derivative transactions by financial collective investment undertakings and of the Circular of the Comisión Nacional del Mercado de Valores Circular 6/2010, of 21 December, on derivative transactions entered into by collective investment undertakings."

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: Collective Investment Undertakings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Collective Investment

Undertaking could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, is *concurso* under the Insolvency Law.

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

It is worth noting in this regards that:

(i) Law 35/2003 provides for a specific proceeding for the so-called "intervention" (*intervención*) of Collective Investment Undertakings. However, "intervention" by itself is only aimed to the replacement of the Board of Directors of the relevant Collective Investment Undertaking (or, if organised as a "fund" (*fondo*), of its investment manager (*sociedad gestora*)) by new directors appointed by the Comisión Nacional del Mercados de Valores or to the appointment by the Comisión Nacional del Mercados de Valores of an official (*interventor*) to supervise and approve the operation of the relevant Collective Investment Undertakings but they should not affect themselves the rights and remedies of its creditors (including any close-out netting or set-off rights). Accordingly, "intervention" itself is not characterised for the purposes of this letter opinion as an Insolvency Proceeding; and

(ii) Collective Investment Undertakings organised as a "fund" (*fondo*) are not legal entities but separate pool of assets and liabilities managed by an investment manager (*sociedad gestora*) (although they are legally entitled to act as contracting parties in spite of their lack of legal personality), there being wide consensus among Spanish counsel that they cannot be subject to "*concurso*" under the Insolvency Law.

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

4. ADDITIONAL QUALIFICATIONS

4.1 Capacity to provide margin

Pursuant to Article 6 of Law 35/2003 (as supplemented by Article 51 of RD 1082/2012) provides that no assets of Collective Investment Undertaking (other than those ones which are authorised as "hedge funds" (*instituciones de inversión colectiva de inversión libre*)) can be provided as margin other than for the purpose of: (a) transactions carried out in official secondary transactions, and (b) OTC derivative transactions entered into a master agreement satisfying the Netting Requirements for an amount not exceeding the daily settlement of gains and losses arising from the fluctuation of the mark-to-market value thereof (including any usually applicable haircuts).

SCHEDULE 6
Public Authorities

Subject to the modifications and additions set out in this Schedule 6 (Public Authorities), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Public Authorities. For the purposes of this Schedule 6 (Public Authorities), "**Public Authorities**" means the Kingdom of Spain, the Regional Governments (*Comunidades Autónomas*), any provinces and municipalities (*Entidades Locales*), and any legal entity incorporated by any of the foregoing as a public body under Public Law (including any *organismos autónomos* and *entidades públicas empresariales* but excluding, for the avoidance of doubt, any companies or other entities in the public sector which are not incorporated under Public Law).

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

We assume the following: "That each of the Transactions can be validly entered into by the relevant Public Authority and such Public Authority has complied with all necessary public procurement, budget or otherwise requirements and internal administrative procedures and taken all necessary internal actions (*interna corporis*) and obtained all external consents (if any) required for the due execution, delivery and performance of the Agreement (and each Transaction hereunder)"; and

"That any transfer of margin made by the relevant Public Authority is valid and enforceable against third parties in accordance with the rules of Public Law applying to such Public Authority".

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Public Authorities

Public Authorities cannot be subject to any bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures in this jurisdiction.

This notwithstanding, the obligations of Public Authorities might be affected by a moratorium or standstill. It is not possible to determine the effects of such moratorium on the Agreement as such moratorium must be declared or imposed by means of a specific law.

2.2 **Enforceability of the FOA Set-Off Provisions (paragraph 3.7)**

Paragraph 3.7 is deemed deleted and replaced with the following:

"3.7 Enforceability of the FOA Set-Off Provisions

3.7.1 In relation to an FOA Netting Agreement or a Clearing Agreement which includes the General Set-Off Clause, such General Set-Off Clause **may not be** enforceable in accordance with their terms.

We are of this opinion because, as a matter of Spanish law, set-off (as opposed to genuine close-out netting and payment netting) against a number of Public Authorities may infringe a number of Public Law rules in certain circumstances (which issue must be always analysed on a case by case basis, in light of the specific federal and/or regional laws applicable to each Public Authority).

3.7.2 In relation to an FOA Netting Agreement or a Clearing Agreement which includes the Margin Cash Set-Off Clause, the Margin Cash Set-Off Clause will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms.

We are of this opinion because the courts of this jurisdiction will recognise the validity and enforceability of those provisions as a financial collateral arrangement pursuant to RDL 5/2005."

2.3 **Set-Off under a clearing Agreement with a Clearing Module Set-Off Provision (paragraph 3.8)**

Paragraph 3.8 is deemed deleted and replaced with the following:

" 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 **may not be** immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would not be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision unless the relevant cash balance arises from the Transfer of margin.

We are of this opinion because, as a matter of Spanish law, set-off (as opposed to genuine close-out netting and payment netting) against a number of Public Authorities may infringe a number of Public Law rules in certain circumstances (which issue must be always analysed on

a case by case basis, in light of the specific federal and/or regional laws applicable to each Public Authority), although set-off as a consequence of the enforcement of a financial collateral arrangement will be admissible pursuant to RDL 5/2005.

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 may or not 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, to the extent that set-off is not already covered by the Clearing Module Set-Off Provision, may or not be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.8.1 above.

2.4 **Set-Off under a Clearing Agreement with an Addendum Set-Off Provision (paragraph 3.9)**

Paragraph 3.9 is deemed deleted and replaced with the following:

" **3.9 Set-Off under a clearing Agreement with an Addendum Set-Off Provision**

3.9.1 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 a CM Trigger Event (as defined in the ISDA/FOA Clearing Addendum) the Client (as defined in the ISDA/FOA Clearing Addendum) would be immediately entitled to exercise its rights under the Addendum Set-Off Provision.

We are of this opinion because in this scenario the courts of this jurisdiction will recognise the validity and enforceability of the Addendum Set-Off Provision to the extent that it is valid and enforceable under English law.

3.9.2 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 a CCP Default (as defined in the ISDA/FOA Clearing Addendum), the Client (as defined in the ISDA/FOA Clearing Addendum) would be immediately entitled to exercise its rights under the Addendum Set-Off Provision.

We are of this opinion because in this scenario the courts of this jurisdiction will recognise the validity and enforceability of the Addendum Set-Off Provision to the extent that it is valid and enforceable under English law

3.9.3 In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, the Addendum Set-Off Provision **may not be** immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following a CCP Default (as defined in the ISDA/FOA Clearing Addendum), the Firm (as defined in the ISDA/FOA Clearing Addendum) would be immediately entitled to exercise its rights under the Addendum Set-Off Provision.

We are of this opinion because, as a matter of Spanish law, set-off (as opposed to genuine close-out netting and payment netting) against a number of Public Authorities may infringe a number of Public Law rules in certain circumstances, which issue must be always analysed on a case by case basis, in light of the specific federal and/or regional laws applicable to each Public Authority.

3. ADDITIONAL QUALIFICATIONS

3.1 Article 135 of the Spanish Constitution

Pursuant to the second paragraph of Article 135.1 of the Spanish Constitution, payment of interest and principal of "*public debt of the Administrations*" will enjoy absolute priority (hereinafter, the holders of any such public debt will be referred to as "**Priority Creditors**").

Whilst there is not full consensus as to the meaning of the term "public debt" for these purposes, it is most likely that it does not comprise claims under the Agreement, so that the relevant Firm would not be regarded as a Priority Creditor. Should the relevant Firm not be treated as a Priority Creditor, the provision of margin by the relevant Public Authority (and, accordingly, the Title Transfer Provisions and the Margin Cash Set-off Provisions) would be contrary to Article 135 of the Spanish Constitution, it being unclear whether they would be either fully null and void or, conversely, merely unenforceable against any Priority Creditors. Moreover, even if the Firms were to be treated as Priority Creditors, it is debatable whether Article 135 of the Spanish Constitution is intended or not to provide for a *pari passu* rule among all of the Priority Creditors, there being theoretical arguments to support both positions.

Please note that Article 135 of the Spanish Constitution does not apply to all Public Authorities but only to those which are within the scope of the term "*Administraciones Públicas*". Such term comprises:

(i) the Kingdom of Spain;

(ii) the Regional Governments (*Comunidades Autónomas*);

(iii) any provinces and municipalities (*Entidades Locales*); and

(iv) legal entities incorporated by any of the foregoing as a public body under Public Law within the scope of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts.

3.2 **Other limitations**

Certain types of assets (including public domain (*bienes de dominio público*) as well as assets which are actually attached to the provision of public services or to public use – including cash) cannot be validly provided as margin by Public Authorities. Please note that this issue does not allow for a general analysis and must be examined on a case by case basis in light of the specific laws applying to the relevant Public Authority.

SCHEDULE 7
Pension Funds

Subject to the modifications and additions set out in this Schedule 7 (Pension Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds. For the purposes of this Schedule 7 (Pension Funds), "**Pension Funds**" means any Party organised in this jurisdiction as a *Fondo de Pensiones* (pension fund) or a *Plan de Pensiones* (pension scheme) for the purposes of the Restated Version of the Law on Pension Funds and Pension Schemes (the "**Law on Pension Funds**"), approved by the Royal Legislative Decree 1/2002, of 29 November.

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 1.11.1 is deemed deleted and replaced with the following:

""**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 7 (Pension Funds)".

2. ADDITIONAL ASSUMPTIONS

We assume the following:

"That each Transaction satisfy all of the requirements in order for it to be validly entered into (and any transfer of margin satisfy all of the requirements in order for it to be validly made) by the relevant Pension Fund in accordance with the provisions of the Law of Pension Funds, of the Royal Decree 304/2004, of 20 February (which approves the Regulation on Pension Funds and Pension Schemes) and of the Order of the Ministry of Economy EHA/407/2008, of 7 February (relating to, inter alia, the entering into derivative transactions by Pension Funds)."

5. 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.

5.1 Insolvency Proceedings: Pension Funds

As a matter of Spanish law, Pension Funds are not legal entities but separate legal pool of assets and liabilities managed by a third company and legally entitled to act as contracting parties in spite of their lack of legal personality. Accordingly, there is wide consensus among Spanish counsel that Pension Funds cannot be subject to "*concurso*" proceedings under the Insolvency Law.

It is worth noting that the Law on Pension Funds provides for a specific proceeding for the taking of "special control measures" (*medidas de control especial*) on Pension Funds. However, those measures by themselves should not affect themselves the rights and remedies of the creditors (including any close-out netting or set-off rights). Accordingly, they are not characterised for the purposes of this letter opinion as an Insolvency Proceeding.

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 (with Security Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Security Provisions) Agreement

2009, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009, the Eligible Counterparty (with Security Provisions) Agreement 2011 or the Eligible Counterparty (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***);

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

"**Rehypothecation Clause**" means:

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

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

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

(h) 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 (with Security Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Security Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Security Provisions) Agreement 2011 or the Retail Client (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 it includes 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):

(g) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or

(h) 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

d) 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

4. 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]);

5. 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.[1]

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.[1]

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.[1]

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.

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[1] Counsel to delete and if any such provisions would alter agreement so as to prevent opinion from applying.

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).[1]

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 a 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
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

   [None]

2. Desirable amendments

   (a) For the purposes of paragraphs 3.4 and 3.5, it is desirable to include the following language in the Clearing Agreement:

   "The parties agree and acknowledge that:

   (i) execution of this Agreement shall create between the parties a separate agreement in the same form as, and dated the same date as, this Agreement, in relation to each of the Cleared Transaction Sets (each a "**Cleared Transaction Set Agreement**");

   (ii) all Transactions within the same Cleared Transaction Set Agreement shall constitute a single legal obligation ("*una única obligación jurídica*" within the meaning of Article 5.1 of the Spanish Royal Decree-law 5/2005, of 11 March); and

   (iii) all Transactions entered into on or after the date of execution of this Agreement are entered into in reliance upon the fact that each Cleared Transaction Set Agreement constitutes a single agreement.".

3. Additional wording to be treated as part of the Core Provisions

   The single legal agreement clause is also a Core Provision.