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legal collateral opinion- Sweden

The Futures & Options Association
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5 April 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of the Kingdom of Sweden ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below).

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 3 of this opinion letter.

References herein to "*this opinion*" are to the opinions given in paragraph 3.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of

1.1.1 generally, in respect of Parties which are unregulated limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) (*aktiebolagslagen (2005:551)*) (the "**Companies Act**") having their "centre of main interest" (as defined in the Council Regulation (EC) No 1346/2000 on insolvency proceedings (the "**Regulation**")) ("**COMI**") in this jurisdiction;

1.1.2 registered partnerships (*handelsbolag*) and limited partnerships (*kommanditbolag*) formed under the Partnerships Act 1980 (as amended) (*lagen (1980:1102) om handelsbolag och enkla bolag*); and

1.1.3 in respect of paragraph 3.3, the entities referred to in such paragraph,

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



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

1.2.1 financial institutions incorporated as limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) holding banking or financing business authorisations pursuant to the Swedish Banking and Financing Business Act 2004 (as amended) (*lagen (2004:297) om bank- och finansieringsrörelse*) (Schedule 1);

1.2.2 insurance companies, mutual insurance companies and insurance cooperatives organised under the Insurance Business Act 2010 (as amended) (*försäkringsrörelselagen (2010:2043)*) (Schedule 2);

1.2.3 limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) holding investment firm authorisations pursuant to the Swedish Securities Markets Act 2007 (as amended) (Sw. *lagen (2007:528) om värdepappersmarknaden*) (Schedule 3);

1.2.4 natural persons with their habitual domicile in Sweden (Schedule 4); and

1.2.5 investment funds (*investeringsfonder*) organised (i) as mutual funds (*värdepappersfonder*) and (ii) as hedge funds (*specialfonder*), under the Investment Funds Act 2004 (as amended) (*lagen (2004:46) om investeringfonder*) (Schedule 5);

1.2.6 sovereign entities, namely Sveriges Riksbank the central bank of the Kingdom of Sweden (*Sveriges Riksbank*), the Swedish National Debt Office (*Riksgälden*), the Swedish national pension funds nos. 1, 2, 3, 4 and 7 (*Första AP-fonden, Andra AP-fonden, Tredje AP-fonden, Fjärde AP-fonden* and *Sjunde AP-Fonden*) regulated by the AP Funds Act 2000 (as amended) (*lagen (2000:192) om allmänna pensionsfonder (AP-fonder)*) and no. 6 (*Sjätte AP-fonden*) regulated by the Sixth AP Fund Act 2000 (as amended) (*lagen (2000:193) om Sjätte AP-fonden*) (there is no fund no. 5) (Schedule 6); and

1.2.7 sub sovereign entities, namely, local municipalities (*kommuner*), regional municipalities (*landsting*) and regions (*regioner*) organised under the laws of the Kingdom of Sweden (Schedule 7);

insofar as each may act as a Counterparty to a Firm under an Agreement.

1.3 This opinion is given in respect of cash and account-held securities which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra-day basis.

1.4 In this opinion letter:

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

1.4.2 "**Equivalent Agreement**" means an agreement:

- (a) which is governed by the law of England and Wales;
- (b) which has broadly similar function to any of the Agreements listed in Annex 1;
- (c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
- (d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

references to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;

1.4.3 a "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

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

- (i) sale and application of proceeds of the sale of Collateral against monies owed, or
- (ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions;

1.4.5 in other instances other than those referred to at 1.4.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge, we do not opine on the availability of any judicial remedy;

1.4.6 "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings;

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

1.4.8 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;

1.4.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; ~~20~~

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

1.5 references to “**Core Provisions**” include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- 2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.4 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- 2.5 That the Agreement has been properly executed by both Parties.
- 2.6 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.
- 2.7 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses and that the provisions of the Agreement are consistently applied between the Parties.
- 2.8 That the Agreement accurately reflects the true intentions of each Party.
- 2.9 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.11 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security²⁰

interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

- 2.12 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.
- 2.14 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.15 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. **OPINIONS**

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

3.1 **Valid Security Interest**

- 3.1.1 The Security Interest Provisions would create a valid security interest over the Collateral.
- 3.1.2 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.
- 3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.
- 3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, there are no rules of law of this jurisdiction which would affect the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person. However, if the assets are subject to a Security Interest pursuant to the Security Provision are located within this jurisdiction, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein. *PA*

3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.3 Foreign Collateral Providers

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

3.4 Right of re-use

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

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

4. QUALIFICATIONS

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

Valid Security Interest and Foreign Collateral Providers

- 4.1 As set out in chapter 5 section 3 of Financial Instruments Trading Act 1991 (*lagen (1991:980) om handel med finansiella instrument*) (the "FITA") and as a general matter according to Swedish conflict of law rules, the law governing the Security Interest would be the *lex rei sitae*. Formal requirements, such filings, registrations etc, necessary to ensure the validity or the perfection of the title transfer would thus be governed by English law as *ex hypothesi* the *lex rei sitae* or the law of whichever jurisdiction within which the assets are held.
- 4.2 To elaborate on the matter, the conflict of laws rules of Sweden are primarily to be found in the writings of legal experts, and to a lesser degree, in statute and case law. Because the specific issues of securities held in an indirect holding pattern have not been the subject of much discussion (and still less material is available in the way of statute and judicial precedent), a wide variety of issues have not been conclusively addressed. However, the principles that have been perceived by market participants and the Swedish Government as applying to these issues appear to have been considered to be both applicable and appropriate in the recent legislative efforts to implement the EU Settlement Finality Directive into Swedish law.
- 4.3 Despite the absence of clear authority, the better view, and the view that is most likely to be adopted by a Swedish court, is that the proprietary effects of a dealing in securities held on a fungible basis in a custody account (whether in the form of 20

dematerialised or immobilised securities) will be governed by the law of the place where the account is maintained. It is highly unlikely that a court in Sweden would apply the traditional tests for directly held certificated securities, which would have looked to the law of the location of the certificates representing the securities.

- 4.4 Notwithstanding that the general view is that the existing Swedish principles achieve a satisfactory outcome in the case of indirectly held securities, the absence of authority directly in point has made the position less clear than is desirable. Thus, the opportunity presented by the EU Settlement Finality Directive to codify the relevant principles in Swedish law was generally welcomed. Article 9(2) of the EU Settlement Finality Directive has been implemented into Swedish law through an amendment to the FITA. Section 3 of Chapter 5 of the FITA provides that:

Swedish	English
<p>Vid överlåtelse, pantsättning eller annat förfogande över finansiella instrument för vilka aktiebrev, skuldebrev eller annan motsvarande skriftlig handling inte har utfärdats eller, där en sådan handling har utfärdats, den genom förvaring eller på liknande sätt har säkerställts att handlingen inte kommer i omlopp skall, när förvärvarens rätt till de finansiella instrumenten har registrerats enligt lag, lagen i det land där registret förs tillämpas beträffande rättsverkningarna i förhållande till andra än parterna.</p>	<p>In respect of any transfer of, or pledge over or other disposition of financial instruments or any interests therein, in respect of which certificates or other written instruments have not been issued, or where such an instrument has been issued, measures have been taken to ensure that such instrument will not be negotiated, and the interests of the acquiror has been registered according to law, the law of the country in which the register is maintained shall apply in respect of the legal effects in relation to third parties.</p>

- 4.5 It should be borne in mind that none of the implementing provisions have been judicially tested. Any conclusions based on them as to how Swedish courts would apply them will therefore perforce be somewhat conjectural.

- 4.6 The original position of the Swedish government was that the Place of the Relevant Intermediary Approach (PRIMA) rule embodied in Article 9(2) of the EU Settlement Finality Directive was already reflected in the unwritten but commonly accepted principles of Swedish law, and therefore it would seem that the amendments to the FITA were primarily made in the interests of greater legal certainty in international commerce. However, there is some concern among practitioners that the implementation of Article 9(2) has not been entirely successful in achieving its purpose; in at least one respect the codification may actually have introduced new uncertainties. The uncertainties actually arise from the fact that the Swedish statutory language closely follows the official Swedish translation of the Settlement Finality Directive. The language of the statute makes it clear that Swedish law will not look to either the law of the issuer or the law of the location of any underlying certificates that ~~RD~~

may have been issued (on the basis of other statutory provisions, applied by way of analogy, it could be confidently stated that this would be the case, provided that such certificates have been satisfactorily withdrawn from circulation). The statutory language is clearly designed and intended to point to a jurisdiction which is connected to the intermediary through whom the securities are being held. However, the requirement in the statute that the intermediary shall have "registered" the relevant interest "according to law" introduces a significant element of ambiguity into the language: it is simply not clear what the phrase "registered according to law" is intended to mean. It is hoped that Swedish courts will construe it in the sense of "the interests of the acquirer have been recorded in a register in a way which enjoys legal recognition" (which would accord with the informal information available from the relevant Government department). It is thought that this wording was adopted to ensure that it would only apply where the country in which the interests were recorded would itself recognise interests in an indirect holding system (the draftsmen would appear to have had in mind the domestic Swedish statutory regime for dematerialised and immobilised securities and also certain other internationally well-known clearing systems).

- 4.7 It is simply unknown how the Swedish courts will address this issue and what tests they will devise to determine whether the "register" kept by a particular intermediary (even if only for internal or accounting purposes) will qualify under the statutory language. It is thought that Swedish courts would most likely follow any construction of Article 9(2) propounded by the European Court of Justice, as the Swedish statutory language is based on that of Article 9(2). The present situation would have the effect, in our view unintended, that the FITA would not indicate clearly the law of any one jurisdiction as the applicable law. This would clearly be inconsistent with the spirit of Article 9(2) of the EU Settlement Finality Directive and the pre-existing Swedish conflict of laws rules (which the amendments to the FITA were intended merely to codify). For this reason, unless the reference to "registering" the interest is understood in a broad sense that includes the recording of positions in a custody account (irrespective of how that recordation is treated under the laws of the jurisdiction in which the account is maintained), the new rule does less in the way of providing certainty than what was expected when the new provisions were discussed prior to enactment. The adoption of the Hague Convention currently being prepared should result in the removal of doubts that exist today. If Swedish law were to apply, the perfection requirements discussed below would apply.
- 4.8 Swedish perfection requirements would only apply to assets held in Sweden. If the perfection of the interest fell to be decided by Swedish law:
- 4.8.1 in respect of dematerialised or immobilised instruments:
- (a) registration (where the relevant interest is registered directly on the books of a central securities depository in the Kingdom of Sweden) or
 - (b) notice to the nominee (where the interest is held through the nominee) or
- 4.8.2 in respect of certificated bearer securities, delivery (either physical delivery or constructive delivery in the form of notice to third-party depositories) or ~~RD~~

- 4.8.3 in the case of cash, notice to the account operator and that the account holder is blocked from access to the cash account

would be required for the perfection of the interest purportedly created. Un-perfected interests are treated as mere personal claims in insolvency proceedings, which means that the Party having such claim would be treated as an unsecured creditor in the proceedings.

General Qualifications

- 4.9 Pursuant to the Swedish Contracts Act 1915 (as amended) (Sw.: *lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område*) and general equitable principles of the law of contract and obligations, a contract term may be modified or set aside if it is adjudged to be unreasonable. Where any party to an agreement is vested with a discretion or may determine a matter in its opinion or at its discretion, the laws of this jurisdiction may require that such discretion be exercised reasonably or that such opinion be based on reasonable grounds and a provision that a certain determination is conclusive and binding will not serve to prevent or preclude judicial enquiry into the merits of any claim by an aggrieved party; and the effectiveness of any provision which allows an invalid or unenforceable provision to be severed to save the remainder of the relevant document and its provisions will be determined by the courts of this jurisdiction or arbitral tribunals sitting in, or applying the procedural laws of this jurisdiction in their discretion. However, it should be noted that it is highly irregular for the courts to utilise such equitable power in matters between two professional parties.
- 4.10 The enforcement of any agreement, guarantee or instrument may be limited by the provisions of the Moratorium Act 1940 (as amended) (*lag (1940:300) ang. förordnande om anstånd med betalning av gäld m.m. (moratorielag)*) (which provides for a moratorium on the performance of obligations by persons or entities domiciled or resident in Sweden when the Kingdom is at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or in retaliation for corresponding or commensurate measures in another state in respect of claims by Swedish creditors) and the Emergency Powers (Defence of the Realm) Act 1978 (as amended) (*förfogandelag (1978:262)*) (which provides that property and assets situate in Sweden may be requisitioned or otherwise compulsorily disposed of by the authorities of the Kingdom when the Kingdom is at war; when there is a risk of the Kingdom becoming at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or where there is an imperative need for the defence of the Kingdom).
- 4.11 Provisions in an agreement specifying that its provisions may only be amended or waived in writing may not be enforceable to the extent that an oral agreement or implied agreement in trade practice or course of conduct has been created modifying provisions of the agreement; and to the extent that any matter is expressly to be determined by future agreement or negotiation, such provision may be unenforceable or void for lack of certainty.
- 4.12 The Agreement and this opinion are expressed in the English language whilst addressing and explaining institutions and concepts of the laws of Sweden; and such institutions and concepts may be reflected in or described by the English language.

only imperfectly; and we express no opinion on how the Swedish would construe contractual language expressed in English where the contract would be subject to the laws of Sweden. However, we believe that such courts would pay attention to the meaning and import in the laws of any pertinent jurisdiction in which the English language is normally or habitually employed of the expressions used in construing what the parties intended to put in writing for the purposes of the laws of Sweden.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,

ADVOKATFIRMAN VINGE KB



Fredrik Wilkens



Robin Dangoor

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 are Credit Institutions (as defined below). For the purposes of this Schedule 1 (*Credit Institutions*), "**Credit Institutions**" means limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) holding banking or financing business authorisations pursuant to the Swedish Banking and Financing Business Act 2004 (as amended) (*lagen (2004:297) om bank- och finansieringsrörelse*).

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 **Valid Security Interest**

It should be noted that under section 15 of the Swedish Insurance Companies and Credit Institutions Insolvency Procedures (International Relations) Act 2005 (*lagen (2002:1047) om internationella förhållanden rörande försäkringsföretags och kreditinstituts insolvens*) (the "**Winding-Up Act**") (designed to implement the EU Directives 2001/17/EC of 19 March 2001 on the reorganisation and winding-up of insurance undertakings and 2001/24/EC of 4 April 2001 on the reorganisation and winding-up of credit institutions), the Security Interest may not be subject to hardening periods or claw-backs if such hardening periods or claw-backs are not permitted under the law which governs the contract. ~~FD~~

SCHEDULE 2
Insurance Companies

Subject to the modifications and additions set out in this Schedule 2 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies (as defined below). For the purposes of this Schedule 2 (*Insurance Companies*), "**Insurance Companies**" means insurance companies, insurance cooperatives and mutual insurance companies organised under the Insurance Business Act 2010 (as amended) (*försäkringsrörelselagen (2010:2043)*) ("**Insurance Business Act**").

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 **Valid Security Interest**

It should be noted that under section 15 of the Swedish Insurance Companies and Credit Institutions Insolvency Procedures (International Relations) Act 2005 (*lagen (2002:1047) om internationella förhållanden rörande försäkringsföretags och kreditinstituts insolvens*) (the "**Winding-Up Act**") (designed to implement the EU Directives 2001/17/EC of 19 March 2001 on the reorganisation and winding-up of insurance undertakings and 2001/24/EC of 4 April 2001 on the reorganisation and winding-up of credit institutions), the Security Interest may not be subject to hardening periods or claw-backs if such hardening periods or claw-backs are not permitted under the law which governs the contract. *DD*

SCHEDULE 3
Investment Firms

Subject to the modifications and additions set out in this Schedule 3 (*Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms (as defined below). For the purposes of this Schedule 2 (*Investment Firms*), "**Investment Firms**" means limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) holding investment firm authorisations pursuant to the Swedish Securities Markets Act 2007 (as amended) (*Sw. lagen (2007:528) om värdepappersmarknaden*).

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 QUALIFICATIONS**

The opinions in this opinion letter are subject to the following additional qualifications. Depending on the type of Investment Firm the opinion shall either be subject to the same qualifications as set out in the opinion letter or as set out in Schedule 1 (*Credit Institutions*) and Schedule 2 (*Insurance Companies*). ~~FD~~

SCHEDULE 4
Natural Persons

Subject to the modifications and additions set out in this Schedule 4 (*Natural Persons*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Natural Persons (as defined below). For the purposes of this Schedule 4 (*Natural Persons*), "**Natural Persons**" mean natural persons that are solely citizens (*medborgare*) of the Kingdom of Sweden as set out in the Swedish Citizen Act 2001 (*Lag (2001:82) om svenskt medborgarskap*) and has his or hers habitual domicile (*hemvist*) in the Kingdom of Sweden, as defined in the International Regulation of Wedlock and Tutelage Act 1904 (*Lag (1904:26 s.1) om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap*) and in the International Regulation of Spouses and Cohabitants Act 1990 (*Lag (1990:272) om internationella frågor rörande makars och sambors förmögenhetsförhållanden*).

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 Natural Person is at least eighteen years of age.

That the Natural Person is not subject to tutelage (*förmyndare, god man, or förvaltare*). *ZV*

SCHEDULE 5

Investment Funds

Subject to the modifications and additions set out in this Schedule 5 (*Investment Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Funds (as defined below). For the purposes of this Schedule 5 (*Investment Funds*), "**Investment Funds**" means investment funds (*investeringsfonder*) organised (i) as mutual funds (*värdepappersfonder*) and (ii) as hedge funds (*specialfonder*), under the Investment Funds Act 2004 (as amended) (*lagen (2004:46) om investeringfonder*) ("**Investment Funds Act**").

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 QUALIFICATIONS

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

1.1 Legal Form

Neither "mutual funds" nor "hedge funds" are recognised legal terms under Swedish law. However, the types of structures usually thought to correspond to these English-language terms are, for mutual funds, "*värdepappersfonder*" and, for hedge funds, "*specialfonder*". *Värdepappersfonder* will be referred to herein as "**mutual funds**" and *specialfonder* as "**hedge funds**". Mutual funds are funds that comply with relevant European Union UCITS legislation; hedge funds have been granted exemptions from the UCITS regulations by the SFSA.

Both kinds of fund are organised as the same basic legal construct, the "investment fund" (*investeringsfond*) under the Investment Funds Act.

An Investment Fund must accordingly be represented by a fund manager in every aspect of its organisation. Permission to manage the fund is given to a fund company "**fund company**". A fund company is subject to general insolvency laws for its own behalf but the fund's assets will not be available to the fund company's creditors. In the event that the fund company becomes insolvent, its authorisation and appointment as fund manager of the fund will lapse automatically. A new fund company will be appointed by the SFSA. Pursuant to the Investment Funds Act, the fund company is prohibited from exercising any control over property comprising the fund, or in respect of the fund, taking or granting loans, standing surety or selling securities which are not at the disposal of the fund company in respect of the fund.

The assets of Investment Funds are required to be held in custody by a custodian (*förvaringsinstitut*) "**custodian**". The Investment Funds Act stipulates that the custodian shall execute the fund company's decisions regarding the Investment Fund unless they contradict the fund statutes or provisions of the Investment Funds Act, to the extent that no exemption has been granted. The custodian shall further receive and hold the assets comprising the fund and make sure that the assets comprising the fund are put at the disposal of the custodian without delay. It shall supervise the sale and RD

redemption of fund units and the calculation of the value of the fund units and shall ensure the use of the assets comprising the Fund is in accordance with the provisions of the Investment Funds Act and the fund statutes. If the assets comprising the fund include foreign securities, the custodian may allow a suitable foreign sub-custodian to hold such securities. The custodian may not enter into loans or extend credits or guarantee the obligations with respect to the fund.

The type and/or value of Transactions entered into under the Agreements is restricted by the investment restrictions and special provisions regarding permissible transactions in the Investment Funds Act and the fund statutes approved by the SFSA. The fund statutes are individual to each Investment Fund and are available as a matter of public record from the SFSA.

There are different sets of placement rules for mutual funds and special funds. The regulation of special funds in the Investment Funds Act is limited and the bulk of the applicable restrictions would be found in the fund statutes of each respective fund. The Investment Funds Act sets out a number of restrictions on the investments of mutual funds; the restrictions also apply to special funds, unless the SFSA has approved exemptions in the fund statutes of the special funds.

Although the matter has not been judicially settled and there is some debate on the issue, the majority view (a view which we share) is that contracts made in breach of the provisions of the Investment Funds Act would not be void or voidable solely on the basis of such breach. In egregious cases the courts of the Kingdom of Sweden may, however, invoke its equitable powers to vary or set aside such agreements. An example of such an egregious case could be an investment which in itself breaches the limits discussed above and where a counterparty had been informed of the value of the relevant Investment Fund. There is no case-law to decide the issue. The bases of this line of argument have recently been upheld by the Swedish Supreme Court in a number of cases dealing with tax evasion, in which the Court upheld agreements that contravened tax laws, even where such contraventions attracted criminal sanctions. ~~2D~~

SCHEDULE 6

Sovereign Entities

Subject to the modifications and additions set out in this Schedule 6 (*Sovereign Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sovereign Entities (as defined below). For the purposes of this Schedule 6 (*Sovereign Entities*), "**Sovereign Entities**" means (i) Sveriges Riksbank the central bank of the Kingdom of Sweden (*Sveriges Riksbank*), (ii) the Swedish National Debt Office (*Riksgälden*), and (iii) the Swedish national pension funds nos. 1, 2, 3, 4 and 7 (*Första AP-fonden, Andra AP-fonden, Tredje AP-fonden, Fjärde AP-fonden* and *Sjunde AP-Fonden*) regulated by the AP Funds Act 2000 (as amended) (*lagen (2000:192) om allmänna pensionsfonder (AP-fonder)*) and no. 6 (*Sjätte AP-fonden*) regulated by the Sixth AP Fund Act 2000 (as amended) (*lagen (2000:193) om Sjätte AP-fonden*) (there is no fund no. 5).

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 QUALIFICATIONS

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

1.1 Legal Form

The Sovereign Entities are agencies of the Kingdom of Sweden organised as public authorities and are integral parts of the central administration of the Kingdom; and as such they cannot enter bankruptcy or become subject to company reconstruction proceedings or any other insolvency proceedings. The Sovereign Entities enjoy immunity from execution on the territory of the Kingdom of Sweden in respect of all of its assets but not immunity from suit to which the Sovereign Entities is party in the courts of the Kingdom of Sweden. This means that the Sovereign Entities can be sued in the courts of the Kingdom of Sweden and that judgements against it in the courts of other states may be recognised in the Kingdom of Sweden, but that the executive authorities of the Kingdom of Sweden will not take any action to enforce a judgment against the Sovereign Entities. The immunity enjoyed by the Sovereign Entities does not preclude a counterparty from exercising self-help remedies available to it, such as set-off and the sale of collateral in its possession. The immunity thus accorded to the Sovereign Entities under Swedish law does not preclude the Sovereign Entities from entering into contracts under foreign law or to submit to the jurisdiction of a foreign court. The issue of the Sovereign Entities' immunity from suit in such foreign courts, or from execution on the territory of any other sovereign, would be a matter for the laws of the relevant curial or local law. ⁷⁵

SCHEDULE 7
Sub Sovereign Entities

Subject to the modifications and additions set out in this Schedule 7 (*Sub Sovereign Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sub Sovereign Entities (as defined below). For the purposes of this Schedule 7 (*Sub Sovereign Entities*), "**Sub Sovereign Entities**" means local municipalities (*kommuner*), regional municipalities (*landsting*) and regions (*regioner*) organised under the laws of the Kingdom of Sweden.

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.

What is set out in paragraph 3.1 through 3.4 does not apply with regards to Sub Sovereign Entities.

The Security Interest Provisions would not create a valid security interest over the collateral, as Sub Sovereign Entities are prohibited from entering into such arrangements under the Local Municipalities Act (*Kommunallagen (1991:900)*).

2. **ADDITIONAL QUALIFICATIONS**

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

1.1 **Legal Form**

The Sub Sovereign Entities cannot enter bankruptcy or become subject to company reconstruction proceedings or any other insolvency proceedings. The Sub Sovereign Entities enjoy immunity from execution on the territory of the Kingdom of Sweden in respect of all of its assets but not immunity from suit to which the Sub Sovereign Entities is party in the courts of the Kingdom of Sweden. This means that the Sub Sovereign Entities can be sued in the courts of the Kingdom of Sweden and that judgements against it in the courts of other states may be recognised in the Kingdom of Sweden, but that the executive authorities of the Kingdom of Sweden will not take any action to enforce a judgment against the Sub Sovereign Entities. The immunity enjoyed by the Sub Sovereign Entities does not preclude a counterparty from exercising self-help remedies available to it, such as set-off. The immunity thus accorded to the Sub Sovereign Entities under Swedish law does not preclude the Sub Sovereign Entities from entering into contracts under foreign law or to submit to the jurisdiction of a foreign court. The issue of the Sub Sovereign Entities' immunity from suit in such foreign courts, or from execution on the territory of any other sovereign, would be a matter for the laws of the relevant curial or local law. ~~20~~

1.2 Valid Security Interest

Sub Sovereign Entities are prohibited under the Local Municipalities Act (*Kommunallagen (1991:900)*) from granting pledges (*pant*). The effects if they were to enter into such a contract could be that such contract would be deemed null and void. Expert opinion is divided as to whether they have capacity to post collateral under any other heading, e.g. as transfers of title. There is some support against such capacity at least with regards to sale-and-leaseback structures as that position was made clear in a Governmental Report. A strong argument in favour of such capacity would be that it is trite law as Sub Sovereign Entities may sell assets outright. The prohibition on the granting of pledges has been severely criticised in the legal literature as an inconsistent historical residue from the earlier prohibition on Sub Sovereign Entities to dispose of any assets.

However, although transfer of title, under certain circumstances, could be deemed to fall outside the scope of the prohibition under the Local Municipalities Act, Collateral under the Security Interest Provisions would not and as such not be binding upon the Sub Sovereign Entity. ☞

ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")
2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")
3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")
4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")
5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")
6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")
7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")
8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")
9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

For the avoidance of doubt none of the forms of the Agreements listed at this Annex 1 include or incorporate the Title Transfer Securities and Physical Collateral Annex to the Netting Modules published by the Futures and Options Association.

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**FOA Published Form Agreement**") expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

Each of the Agreements listed in this Annex 1 may be deemed to include Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement. *RD*

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.
5. "**Core Provisions**" means:
 - (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
 - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.
6. "**Rehypothecation Clause**" means:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (*Rehypothecation*);
 - (ii) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (*Rehypothecation*);
 - (iii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (*Rehypothecation*); and
 - (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
7. "**Security Interest Provisions**" means:
 - (a) the "**Security Interest Clause**", being: ~~AD~~

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (b) the "**Power to Charge Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (*Power to charge*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (*Power to charge*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (*Power to charge*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (*Power to charge*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (*Power to charge*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (*Power to charge*); 20

- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (*Power to charge*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (*Power to charge*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (*Power to charge*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (c) the "**Power of Sale Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); and
 - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (*Power of appropriation*); ²⁰

- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (*Power of appropriation*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (*Power of appropriation*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (*Power of appropriation*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (*Power of appropriation*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (*Power of appropriation*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (*Power of appropriation*);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (*Power of appropriation*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (*Power of appropriation*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (*General lien*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (*General lien*);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (*General lien*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (*General lien*);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (*General lien*); ~~20~~

- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (*General lien*);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (*General lien*); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the ²⁰

foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

8. **"Two Way Clauses"** means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.

ANNEX 3 NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B") provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.
4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.
5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.
6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.
7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof). 

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision. ~~AD~~