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## NETTING ANALYSER LIBRARY

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

Ladies and gentlemen,

### FOA Collateral Opinion

We act as your special legal counsel in the Republic of China ("**ROC**") and you have asked us to give an opinion in respect of the laws of the ROC ("**this jurisdiction**") in respect of the Security Interests given under the 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.

This opinion letter is given with respect to the laws and regulations of the ROC and the prevailing interpretations thereof as at today's date and the opinions and statements expressed in this opinion letter are limited in all respects to and are to be construed and interpreted in accordance with the laws of the ROC and does not purport to speculate as to future laws or regulations or as to future interpretations of current laws and regulations. Unless otherwise specifically stated herein, we do not express any opinion on public international law or on the rules promulgated under or by any treaty or treaty organisation, except insofar as such rules are directly applicable in the ROC, nor do we express any opinion on the laws of any other jurisdiction or tax law. No undertaking is assumed on our part to revise, supplement, update or amend this opinion letter, in connection with or to notify or inform you of, any developments and/or changes under the applicable laws of the ROC subsequent to today's date or if we become aware of any facts that might change the opinions expressed herein for any other reason.

In this opinion letter, legal concepts are expressed in English terms. The ROC legal concepts concerned may not be identical in meaning to the concepts described by the

English terms as they exist under the law of other jurisdictions. In the event of a conflict or inconsistency, the relevant expression shall be deemed to refer only to the ROC legal concepts described by the English terms.

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

## 1. TERMS OF REFERENCE AND DEFINITIONS

### 1.1 This opinion is given in respect of

- 1.1.1 persons which are companies incorporated, organized, established or formed under the ROC Company Law and branches established or located in the ROC of the foreign companies which are incorporated, organized, established or formed under relevant foreign company law ("**ROC Companies**");
- 1.1.2 banks incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Banking Act and branches established or located in the ROC of the foreign banks which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of banking business in the ROC ("**ROC Banks**");
- 1.1.3 securities firms conducting brokerage and/or proprietary dealing business incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Securities Act and branches established or located in the ROC of the foreign securities firms which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of securities business in the ROC ("**ROC Securities Firms**");
- 1.1.4 partnerships organised, established and formed under the ROC Civil Code ("**ROC Partnerships**");
- 1.1.5 insurance companies incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Insurance Act and branches established or located in the ROC of the foreign insurance companies which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of insurance business in the ROC ("**ROC Insurance Companies**");
- 1.1.6 individuals that are natural persons having the ROC nationality with full capacity as defined under the ROC Civil Code ("**ROC Individuals**");

- 1.1.7 funds including (i) Securities investment trust funds established and formed under the ROC Securities Investment Trust and Consulting Act ("**ROC Securities Investment Trust Funds**"); and (ii) common funds established and formed under the ROC Trust Enterprise Act ("**ROC Common Funds**");
- 1.1.8 sovereign and public sector entities/funds, including (i) ROC central government and local self-governing governments as defined under the ROC Local Government Self Governing Act ("**ROC Government Entities**"); (ii) Central Bank of the Republic of China (Taiwan) ("**CBC**") organised, established and formed under the Act of Central Bank of the ROC; (iii) Postal Savings Fund organised, established and formed under the ROC Postal Savings and Remittances Act; (iv) Public Service Pension Fund organised, established and formed under the Statute Governing Management of Public Service Retirement Pension Fund of the ROC; (v) Labor Pension Fund (Old Scheme) organised, established and formed under the ROC Labor Standards Act; (vi) Labor Pension Fund (New Scheme) organised, established and formed under the Statute of Labor Pension Fund of the ROC; (vii) Labor Insurance Fund formed under the ROC Labor Insurance Act (items (iii) to (vii) collectively hereinafter referred to "**ROC Government Funds**"); and (viii) National Financial Stabilisation Fund ("**NSF**") organised, established and formed under the Statute for Establishment and Administration of National Financial Stabilization Fund of the ROC;
- 1.1.9 parties acting as trustees of trusts (excluding any charitable trust) established and formed under the ROC Trust Law ("**ROC Trustee Parties**");
- 1.1.10 parties acting as trustees of charitable trusts/bodies established and formed under the ROC Trust Law ("**ROC Charitable Trustee Parties**"); and
- 1.1.11 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 1.2) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.
- 1.2 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.
- 1.3 In this opinion letter:

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

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

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

1.3.4 "**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.

1.3.5 in other instances other than those referred to at paragraph 1.3.4 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 being successfully challenged at court proceedings. We do not opine on the availability of any judicial remedy.

1.3.6 "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion letter,

the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement).

- 1.3.7 Reference to “Core Provisions” includes Core Provisions that have been modified by Non-Material Amendments.
- 1.3.8 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.3.9 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;
- 1.3.10 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.3.11 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

## 2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legal, valid, 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 all requisite capacity, power and authority under all applicable law(s) to enter into, execute and deliver 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 and duly authorised, executed and delivered by each Party in accordance with all applicable laws.

- 2.6 That the Agreement and all Transactions entered into under the Agreement are entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.
- 2.7 That the Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the Parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- 2.8 That the Agreement accurately reflects the true intentions of each Party.
- 2.9 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Interest Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.11 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- 2.12 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Interest 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 at the time at which a Transaction is entered into under the Agreement, neither Party has actual notice of the insolvency of the other Party.
- 2.16 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 commencement 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 imposes a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of any Collateral located in the ROC in relation to the interests of the Counterparty and any other person will not be affected by the rules of this jurisdiction, except for those third parties' claims preferred mandatorily by the applicable laws, e.g., any tax liability arising from the transfer of non-cash Collateral. However, the courts of this jurisdiction may, in determining the ranking of the Firm's rights to the proceeds of realization of any Collateral located outside the ROC, give effect to the law of the place where the Collateral is located, which law may be different from that of this jurisdiction.

#### 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 Interest 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 the 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, save for the Collateral located within this jurisdiction (including cash deposited in the account of a ROC bank and securities issued by an issuer incorporated in this jurisdiction), the transfer of which shall be made in accordance with the formalities required for an outright transfer under the laws of this jurisdiction. A court in this jurisdiction would not upset or recharacterise transfers made pursuant to the Rehypothecation Clause. However, given that there is no civil court precedent in this jurisdiction addressing this issue, our opinion is therefore subject to test in court. The opinion given at this paragraph 3.4 does not apply in respect of an Equivalent 2011 Agreement without Core Rehypothecation Clause.

For the non-cash Collateral located in this jurisdiction, in order for the Firm to borrow, lend, appropriate, dispose of or otherwise use of such Collateral for its own purposes as contemplated in the Rehypothecation Clause, the Counterparty and the Firm should have cancelled the security interest over such Collateral and then have such de-pledged Collateral transferred as an outright transfer from the Counterparty to the Firm. Therefore, the pledge cancellation and title transfer formalities should have been complied with before the Collateral is to be used by the Firm for its own purposes.

## 4. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications and the qualifications at paragraphs 4.10 to 4.21 only apply in respect of Collateral comprising accounts and assets located in this jurisdiction:

- 4.1 The statute of limitations for the right of claim against an obligor as to any amount of principal shall be fifteen years from when such principal becomes due, and as to any amount of interest, shall be five years from when such interest becomes due.

Any specified period prescribed by a statute of limitations may not be shortened or extended unilaterally or by contract and that any entitlement granted under a statute of limitations may not be waived in advance.

- 4.2 The exercise of any right must not be repugnant to public interest or have a primary purpose to harm another person, and that rights must be exercised in good faith.



- 4.3 No liability arising from wilful misconduct or gross negligence may be disclaimed in advance.
- 4.4 Any portion of interest in excess of twenty percent (20%) per annum is unenforceable. Interest (including default interest) may not be compounded unless the compounding has been recognized as a trade custom or usage.
- 4.5 Under the current ROC foreign exchange control laws and regulations, (i) a ROC Individual (including an ROC partner of ROC Partnerships) or (ii) an entity in the ROC (including ROC Companies, ROC Banks, ROC Securities Firms, and ROC Insurance Companies) may, upon filing a report with the CBC purchase foreign exchange with New Taiwan Dollars ("TWD") and remit the same out of the ROC for non-trade-related purposes up to Five Million United States Dollars (US\$5,000,000) and Fifty Million United States Dollars (US\$50,000,000) respectively, per calendar year without special approval from the CBC. Foreign exchange purchase for non-trade-related purposes exceeding the applicable ceiling requires special approval from the CBC which approval is discretionary and will be decided by the CBC on a case-by-case basis.
- 4.6 The court has the discretionary power to admit or rule out evidence. Any determination, certificate or other matters stated in the Share Pledge Agreement to be conclusive may nevertheless be subject to the review by the court.
- 4.7 Any adjudication of composition or bankruptcy in the jurisdiction other than this jurisdiction has no legal effect on the properties of the Counterparty located within this jurisdiction.
- 4.8 Payments of interest by the Counterparty located or resident in the ROC to an offshore entity under the Agreement are subject to withholding tax, at the rate of 20% at the time of payment.
- 4.9 In a bankruptcy proceeding under the ROC Bankruptcy Law, a creditor may enforce its security interest of a pledge without going through the bankruptcy proceeding. However, before a bankruptcy petition is approved by the court, the court may, at its discretion, issue a "freeze order" to suspend any creditor's actions (including the enforcement of a pledge), irrespective of whether the claims are secured or unsecured.

In a reorganization proceeding and a special liquidation proceeding under the ROC Company Law, a reorganization or special liquidation ruling issued by a court approving the reorganization or special liquidation petition of a company may restrain the creditors of the company from collecting their claims or enforcing their security interests (as the case may be) by taking any actions against the company or the company's property. Before a reorganization or special liquidation ruling is issued by the court, the court may, at its discretion, issue a "freeze order" to suspend any creditor's actions (including the

enforcement of a pledge), irrespective of whether the claims are secured or unsecured.

Enforcement of a security interest against the Counterparty which is an ROC Individual may be restricted by a freeze order issued by the court in a rehabilitation proceeding or a liquidation proceeding under the Statute for Consumer Debt Clearance of the ROC.

Though the ROC laws do not expressly specify that a freeze order has a multi-jurisdictional effect, it is reasonably believed that the freeze order imposed on the Counterparty issued by an ROC court shall apply to all the assets of such Counterparty, regardless of the location of assets.

- 4.10 A valid security interest over the Collateral located within this jurisdiction shall be created and perfected as a pledge in accordance with the ROC laws.
- 4.11 There is no "floating pledge" concept under ROC laws. The content of a pledged collateral located in the ROC must be specific and fixed at the time of entering into the pledge agreement and must be stipulated in the pledge agreement. In the event that there is any addition to the pledged collateral, the pledge will not be extended to cover such added collateral unless and until the parties, by a written amendment or agreement, revise or supplement the existing pledge agreement to cover such added collaterals. On the other hand, if the pledged collateral is reduced, the pledge will be valid only with respect to the remaining collateral. Given the foregoing, the pledge created over a cash deposit account will be valid only with respect to the balance in the pledged bank account as at the pledge date. The pledge will not be extended to cover any future deposits placed into the pledged bank account (other than interest accrued on the balance subject to the pledge), unless and until the pledgor and pledgee agree in writing to have the pledge covered such additional deposit at each time when such additional deposit is placed into the pledged bank account.
- 4.12 The creditors of a pledgor may institute proceedings to invalidate a pledge created by the pledgor upon proof in court that the creation of the pledge, if the pledge was provided without remuneration or other commercial consideration, was detrimental to their rights of claim against the pledgor established prior to the creation of the pledge, and if the creation of the pledge was provided with remuneration, upon further proof in court that the beneficiary of the pledge was aware of the fact that the pledge was detrimental to the creditors' rights of claim against the pledgor established prior to the creation of the pledge.
- 4.13 In case of a public sale of collateral conducted by the ROC court, the procedure must be made according to the Compulsory Execution Act of the ROC. In case of a private auction of the pledged shares conducted by the pledgee, the auction must be made on the basis of the market value of the pledged shares and must be

certified by a notary public or chamber of commerce as set forth in Article 28 of the Enforcement Rules for the Rights in Rem Section of the ROC Civil Code.

- 4.14 According to Articles 893 and 873-1 of the ROC Civil Code, the pledgor and pledgee may stipulate that the ownership of the pledged shares will automatically be transferred to the pledgee upon the debtor's failure to perform its debt obligation when due. In such case, the pledgee need not file a petition to the court for auction or disposal of the pledged shares either at public auction or by a private auction. Nevertheless, if the value of the pledged shares exceeds the outstanding obligations secured thereby, the pledgee shall return the excess to the debtor. However, if the value of the pledged shares is insufficient to satisfy the outstanding obligations secured thereby, the pledgee is entitled to claim against the pledgor for the balance. Given that these Articles are newly amended, the practical feasibility of the mechanism under these Articles will be subject to further procedures and rules that may be adopted by the relevant governmental agency from time to time.
- 4.15 The continued validity and enforceability of a pledge is subject to the existence of a valid, binding and enforceable underlying obligation secured thereby and the pledge will be enforced to the extent of such underlying obligation.
- 4.16 A pledge may be challenged if the pledge is created within six (6) months prior to the adjudication of bankruptcy to secure an existing indebtedness, except where the pledgor has already undertaken to provide such security at least six (6) months prior to the adjudication of bankruptcy.
- 4.17 In order for the transferee of the pledged shares to claim shareholder's right against the issuing company, the name of the transferee and its address shall be registered with the issuing company.
- 4.18 The assignment of a right of claim will not be effective against the debtor until the debtor is notified of the assignment.
- 4.19 The pledge over cash deposited in the account of a ROC bank will not be effective against the account bank unless and until the account bank is notified of the pledge, or the account bank has consented to such pledge if the terms and conditions of the bank account so require.
- 4.20 The pledge created by the Counterparty over its cash deposited in the account of a ROC bank is subject to the ROC bank's rights of set off against the Counterparty.
- 4.21 In the event that the Collateral is in the form of securities listed on the Taiwan Stock Exchange or securities traded on the GreTai Securities Market (i.e., OTC-traded securities), such Collateral shall be deposited in the securities central depository account through the book-entry system of Taiwan Depository & Clearing Corporation ("TDCC") maintained by the Firm and a pledge registration shall be duly made with the TDCC.

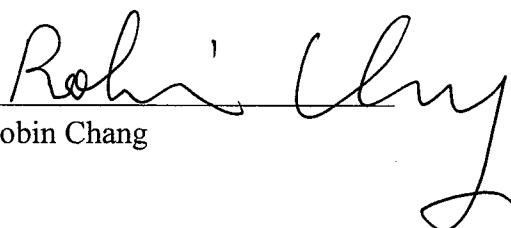
4.22 Cash Collateral for Transactions under the Agreement can be denominated in other foreign currency than TWD. However, it would be difficult for the Counterparty to provide cash Collateral denominated in TWD to the Firm because TWD is not an international traded currency and the Firm is not likely to hold TWD outside this jurisdiction.

There are no other material issues relevant to the issues addressed in this opinion letter 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. 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,

LEE AND LI

  
Robin Chang

**ANNEX 1**  
**FORM OF FOA AGREEMENTS**

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

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

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

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

**ANNEX 2**  
**DEFINED TERMS RELATING TO THE AGREEMENTS**

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.
5. "**Core Provisions**" means:
  - (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
  - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.
6. "**Rehypothecation Clause**" means:
  - (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:

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

(b) the **"Power to Charge Clause"**, being:

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (*Power to charge*);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (*Power to charge*);

- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (*Power to charge*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (*Power to charge*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (*Power to charge*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (*Power to charge*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (*Power to charge*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (*Power to charge*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (*Power to charge*);  
and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (c) the "**Power of Sale Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);



- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); and
  - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (*Power of appropriation*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (*Power of appropriation*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (*Power of appropriation*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (*Power of appropriation*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (*Power of appropriation*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (*Power of appropriation*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (*Power of appropriation*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (*Power of appropriation*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (*Power of appropriation*); and

- (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (***General lien***);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (***General lien***);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (***General lien***);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (***General lien***);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (***General lien***);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

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

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

### ANNEX 3

#### NON-MATERIAL AMENDMENTS

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

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