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18 January 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of Thailand ("**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 4 of this opinion letter.

References herein to "*this opinion*" are to the opinions given in paragraph 4.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 This opinion is given in respect of persons which are limited companies incorporated under the Civil and Commercial Code of Thailand ("**CCC**") and public companies incorporated under the Public Companies Act B.E 2535 as amended and registered limited partnerships incorporated under the CCC 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 and, in particular, the following:

- 1.1.1 commercial banks and finance companies under the Financial Institutions Business Act B.E. 2551;

- 1.1.2 securities companies¹ under the Securities and Exchange Act B.E. 2535 (the "SEA");
- 1.1.3 insurance companies under the Life Insurance Act B.E. 2535 and the Insurance Against Loss Act B.E. 2535;
- 1.1.4 funds (covering mutual funds, provident funds, and private funds) under the SEA;
- 1.1.5 government entities established as legal personality under relevant specific laws;
- 1.1.6 the government pension fund established under The Government Pension Fund Act B.E. 2539; and
- 1.1.7 Individuals as natural person pursuant to the CCC,

insofar as each may act as a Counterparty to 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 This opinion covers all of the following Transactions:
 - 1.3.1 for a commercial bank: any of paragraphs (A)(i) to (iv), (B) and (C) of the list of Transactions in Annex 4 to this opinion is allowed, provided that such Transaction falls within the scope of the transactions permitted to be entered into and the requirements under the relevant notification of the Bank of Thailand ("BoT") issued under Section 36 of the FIA. A Transaction of the type specified in paragraph (D) is permitted only if the settlement is via cash settlement;
 - 1.3.2 for a finance company: any of paragraphs (A)(i) to (iv), (B) and (C) of the list of Transactions in Annex 4 to this opinion is allowed; provided that such Transaction falls within the scope of the transactions permitted to be entered into and the requirements under the relevant notifications of the BoT issued under Section 36 of the FIA²;
 - 1.3.3 for a securities company: any of paragraphs (A)(i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 4 to this opinion is allowed; provided that

¹ Securities companies in Thailand include a broker, dealer, underwriter, investment advisor and/or asset management company.

² Based on the BoT's regulations Sor Nor Sor 11/2551, a finance company is permitted to enter into a derivatives transaction only in respect of credit default swaps and credit linked notes.

such Transaction falls within the scope of the transactions permitted to be entered into and satisfies the requirements under the Notification of the Capital Market Supervisory Board no. TorThor/Nor/Khor. 24/2553 re: entering into a derivatives contract and providing derivatives services by securities companies dated 1 June 2010 issued under the SEA;

- 1.3.4 for an insurance company: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 4 to this opinion is allowed only if the relevant approval from the Office of Insurance Commission is obtained for such insurance company to enter into the Transaction according to the Notifications dated 20 October 2004 re: investment in other businesses of a life insurance company and the Notification dated 17 November 2004 re: investment in other businesses of a non-life insurance company;
- 1.3.5 for a fund: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 4 to this opinion is allowed; provided that such Transaction falls within the scope of the transactions permitted to be entered into and satisfies the requirements under the Notification of the Securities Exchange Commission of Thailand ("SEC") no. SorNor. 24/2552 dated 28 July 2009 re: type of investment where fund can invest in issued under the SEA;
- 1.3.6 for a government entity established as legal personality: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 4 to this opinion is allowed to the extent permitted under the relevant specific laws under which such government entity is established;
- 1.3.7 for the Government Pension Fund: any of paragraphs (A) (i) to (iv), (B) and (C) of the list of Transactions in Annex 4 to this Opinion is allowed; provided that such Transaction falls within the scope of the transactions permitted to be entered into and satisfies the requirements under the Government Pension Fund Act B.E. 2539 and the Ministerial Regulation dated 29 November 2010 re: rules and conditions for the management of the Government Pension Fund's assets³; and

³ Section 4(2) of the Ministerial Regulation (re: management condition of the Government Pension Fund's funds/investments) B.E. 2553 stipulates that the Government Pension Fund can only invest in a derivatives transaction having the underlying linked to the following securities:

1. certificate of deposit issued by finance companies;
2. bill of exchanges being guaranteed (or granting aval) or endorsed by finance companies or credit foncier companies, or promissory notes grating aval or being endorsed by finance companies or credit foncier companies with unlimited liability;
3. debentures issued by finance companies or credit foncier companies, securities companies, or public/limited companies;

1.3.8 for individuals: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 3 to this Opinion.

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,

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- 4. debentures issued by foreign juristic persons being under the control of Thai juristic persons;
 - 5. debentures issued by off-shore entities who have received permission to make an offering in Thailand;
 - 6. equity instruments; or
 - 7. hybrid instruments.

Based on the above, commodities are not part of the list and we therefore exclude transactions in (D).

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**" has the meaning given to such term in Annex 4 hereto.
- 1.4.7 "**Transactions**" means the transaction as listed in Annex 4 hereto.
- 1.4.8 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.9 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;
- 1.4.10 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2;
- 1.4.11 headings in this opinion letter are for ease of reference only and shall not affect its interpretation; and
- 1.4.12 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 and the laws of the jurisdiction where the Collateral is located.
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest and the laws of the jurisdiction where the Collateral is located.
- 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 other than an individual is duly established and organised and validly existing and in good standing under the laws of its jurisdiction of incorporation or

organisation and of any other jurisdiction in which the conduct of its business or the ownership of its property makes such assumption necessary.

- 2.5 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 jurisdiction⁴.
- 2.6 That the Agreement has been properly executed by both Parties and such execution and delivery and performance by each of the Parties will not violate any contract or undertaking to which such Party is a party or by which it is bound and, in respect of a Party other than an individual, has been duly authorised in accordance with its constitutional or organisational documents and all applicable laws.
- 2.7 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party under any applicable law.
- 2.8 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.
- 2.9 That the Agreement accurately reflects the true intentions of each Party.
- 2.10 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.
- 2.11 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.12 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.
- 2.13 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.

⁴ The Thai Party needs to confirm with the BoT or the Department of Insurance or the Securities and Exchange Commission (as the case may be) if any of the Transactions might require specific approval from the Thai regulators. We note that not all of the Transactions may be permissible under specific laws relating to certain types of Thai Party.

- 2.14 That the Collateral and any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located outside this jurisdiction.
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.16 That the Parties have selected any one of New York law or English law to govern the Agreement and the Security Interest Provisions.
- 2.17 That each of the Parties is acting for itself as principal, not as agent or trustee, in relation to its rights and obligations under the Agreement, and no third party has any right to, interest in or claim on any right or obligation of either party under the Agreement and the Transaction contemplated thereunder.
- 2.18 That the Security Interest Provisions are enforceable in accordance with their terms under the laws of the jurisdiction where the Parties are domiciled or incorporated (other than Thailand).
- 2.19 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. THAI LAW

This opinion letter relates solely to matters of Thai law. We do not purport to be experts on, or generally familiar with, any laws other than the laws of Thailand. Accordingly, we express no opinion herein with regard to any system of law other than Thai law as currently applied by the courts of Thailand. This opinion is to be construed in accordance with Thai law as at the date of this opinion.

4. 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.

4.1 Valid Security Interest

- 4.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the rights of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral would be subject to the laws of the place where the Collateral is situated.
- 4.1.2 The right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral may be restricted upon the occurrence of any Insolvency Proceedings as discussed below.

(a) *Bankruptcy proceedings*

In respect of the bankruptcy proceedings, prior to the absolute receivership order is issued by the bankruptcy court, 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 against the bankrupt debtor, provided that the debtor which is subject to the receivership order is prohibited from dealing with his assets or his business and only the court or the official receiver can deal with the assets including to take action in all pending civil court cases relating to the assets of the debtor⁵.

Generally, a non-resident creditor (including the Non-Defaulting Party) who holds foreign assets of the debtor (that is subject to absolute receivership) would be able to enforce security interests over such secured asset pursuant to the foreign applicable law as, according to Section 177 of the Bankruptcy Act of Thailand B.E. 2483 as amended (the "**Bankruptcy Act**"), the receivership of assets or a bankruptcy action under the Bankruptcy Act relates only to the assets of the debtor within Thailand. As such, if there is any self-help available under that foreign applicable law, that non-resident creditor should be able to exercise such rights to the extent they are related to the secured assets located abroad.

However, if such non-resident creditor wishes to recover its debts from other assets of the debtor within Thailand, it has to be subject to the Thai bankruptcy proceedings i.e. to file a debt repayment application and comply with Thai bankruptcy proceedings. We draw your attention to paragraph 5.2 in respect of the application for debt repayment under Thai bankruptcy proceedings.

(b) *Rehabilitation proceedings*

If a Defaulting Party is subject to rehabilitation proceedings under the Bankruptcy Act, the automatic stay applies. Pursuant to the Bankruptcy Act, (i) an automatic stay applies to any civil action in any law court or any submission to arbitration or any bankruptcy action (ii) the debtor is forbidden to dispose of, distribute, transfer, let, repay its debt, create debt or do any act which creates encumbrances over his asset except where such act is essential so that the debtor may carry on his business as normal, unless otherwise ordered by the court with whom the petition is filed; and (iii) a moratorium affecting creditors' rights (including explicitly the right to enforce security unless the court

⁵ Section 24 and Section 25 of the Bankruptcy Act.

approval is granted) comes into force from the date on which the court of jurisdiction accepts a business rehabilitation petition and lasts until the scheduled date for completion of the business rehabilitation plan or actual completion of the plan, or the date of dismissal or discharge of the petition or cancellation of the rehabilitation order or the date on which the debtor is placed under the absolute receivership in the event that the rehabilitation is not completed pursuant to the plan.

In light of Section 177 of the Bankruptcy Act, which provides that the receivership of assets or a bankruptcy action under the Bankruptcy Act relates only to the assets of the debtor within Thailand, we are of the opinion that the automatic stay and moratorium as described in the preceding paragraph should apply to the assets of the debtor which are located in Thailand and the rights of the creditors thereof. As such, they do not extend to the Collateral and the rights of the Non-Defaulting Party to enforce security interest over such Collateral abroad. There are, however, no rules, official guidelines nor court precedents as to the position of moratorium and automatic stay in respect of assets of the debtor outside Thailand. As such, this issue is an untested matter.

- 4.1.3 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 in relation to the interests of the Counterparty and any other person would be a matter to be determined under the laws of the place where such Collateral is situated.

4.2 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.

Nevertheless, if the Non-Defaulting Party wishes to pursue a recovery of its debts against the Counterparty under the Thai bankruptcy proceedings in the Thai courts, the Non-Defaulting Party is required to comply with certain procedures as referred to in paragraph 5.2.

4.3 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 effectiveness of the Rehypothecation Clause would be subject to the laws of the place where the Collateral is situated.

The opinion given at this paragraph 4.3 does not apply in respect of an Equivalent 2011 Agreement without Core Rehypothecation Clause.

5. QUALIFICATIONS

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

5.1 Meaning of enforceable

This opinion is not to be taken to imply that any obligation would necessarily be capable of enforcement in all circumstances in accordance with its terms. In particular:

5.1.1 a Thai court will not necessarily grant any remedy the availability of which is in the discretion of the court. In particular, orders for specific performance and injunctions are, in general, discretionary remedies under Thai law and specific performance is not available when damages are considered by the court to be an adequate alternative remedy;

5.1.2 claims may become barred under laws imposing limitation periods within which suits, actions or proceedings can be brought or may be or become subject to defence of set-off or counterclaims;

5.1.3 where obligations are to be performed in a jurisdiction outside Thailand, they may not be enforceable in Thailand to the extent that performance would be illegal under the laws, or contrary to the exchange control regulations, of the other jurisdiction;

5.1.4 the enforcement of the obligations of the Parties may be limited by the provisions of Thai law applicable to agreements held to have been frustrated by events happening after their execution;

5.1.5 provisions vesting a discretion in any party or making opinions or determinations or accounts maintained by any party conclusive and/or binding are subject to requirements of good faith, reasonableness and/or proof of correctness; and

5.1.6 enforcement of obligations may be invalidated by reason of fraud.

5.2 Rights of a foreign creditor for a claim in the Thai bankruptcy proceedings

When a debtor is subject to insolvency proceedings under the Bankruptcy Act, a creditor will be eligible to receive the debt repayments pursuant to such proceedings if it submits the debt repayment application to the official receiver within the prescribed period. In addition, pursuant to Section 27 of the Bankruptcy Act, after the absolute receivership order is granted, any creditor (whether the civil case is pending in civil court) must apply for a claim repayment in the bankruptcy proceeding.

Nevertheless, the Bankruptcy Act recognises the rights of the secured creditors to enforce the secured assets without applying for debt repayments i.e. a secured creditor may choose to receive repayment from security granted to it without filing a debt repayment claim, but only if the secured creditor allows the official receiver to inspect

the security. This may be regarded as a self-help right under the Thai bankruptcy proceedings.

If a non-resident creditor wishes to recover the debts by submitting a debt repayment application pursuant to the Thai bankruptcy proceedings, pursuant to Section 178 of the Bankruptcy Act, there are additional conditions which non-resident creditors must fulfil in order to receive debt repayment. Such conditions are:

- 5.2.1 non-resident creditors must prove that Thai creditors will enjoy the same rights to participate in repayment in their respective countries. To satisfy this condition, the creditor is required to prove the relevant foreign law (e.g. English law or New York law, as the case may be) to the satisfaction of the official receiver/the Thai court that Thai creditors can file claim in England or the US (as the case may be) and enjoy the same rights in England or the US (as the case may be); and
- 5.2.2 they must also report the amount of the property or distribution that they have received or are entitled to receive from the estate of the same debtor located outside Thailand and if so, they must agree to relinquish any property of the debtor acquired outside Thailand for the benefit of all creditors.

Please note that the Bankruptcy Act provides that a "Secured Creditor" means the creditor holding rights over the asset of the debtor under a mortgage, pledge, or a right of retention⁶ or a creditor possessing preferential rights in the nature of a pledgee.

Whether or not the security interest over the Collateral held by the Firm is regarded as a pledge, a right of retention or a creditor possessing preferential rights in the nature of a pledgee⁷ under the Bankruptcy Act is subject to the proof of the foreign governing law of the security interest to the Thai courts and the interpretation of the courts regarding such foreign security interests and security under the Bankruptcy Act.

There are no set rules, guidelines nor court precedents with respect to the issue as to whether a "foreign security interest" would constitute a pledge, a right of retention or a creditor possessing preferential rights in the nature of a pledge "under Thai law" (in particular, for the purposes of bankruptcy proceedings). We have had discussions with official receivers and were advised that they have never faced a situation where a non-resident creditor who holds security interest over the assets of a Thai debtor outside Thailand applies for debt repayment or is involved in the bankruptcy proceedings against that debtor in Thailand. This may be because secured creditors are generally

⁶ A right of retention is created by operation of law i.e. in a case where the possessor of a property belonging to another person (i.e. in this case, the debtor) has an obligation in his favour relating to the property possessed, he can retain the property until the obligation is performed.

⁷ It is unlikely that the security interest over the Collateral is considered as a mortgage under Thai law as a Thai law mortgage is a security over immovable properties (e.g. land) and certain registered moveable properties as prescribed under Thai law.

entitled to enforce security abroad (i.e. in the jurisdiction where the secured asset is located) without the need to apply for debt repayments in the Thai proceedings.

5.3 General limitations on enforceability

The Transactions or the provision for the grant of Collateral under the Security Interest Provisions could be challenged and rescinded at the instance of the other creditors or official receiver, planner/plan administrator of the Defaulting Party. The grounds for such challenge include:

5.3.1 Section 237 of the CCC. Under this provision, the obligations to pay an amount calculated under the Agreement may be subject to challenge and rescission at the instance of the general creditors (or the official receiver pursuant to Section 113 of the Bankruptcy Act or the planner or plan administrator pursuant to Section 90/40 of the Bankruptcy Act) of the Defaulting Party if the Defaulting Party enters into such transactions with knowledge that they would prejudice the Defaulting Party's creditors and the other parties are aware of this consequence (although lack of knowledge is not a defence where the act is purely gratuitous) ("**Prejudice Act**"). The period within which the general creditors or the official receiver of the Defaulting Party or such other persons are entitled to bring actions to challenge and rescind a transaction of this sort is one year from the date they acquire knowledge of such unfair discriminatory treatment but in any event not exceeding 10 years from the date the transactions in question are entered into by the Defaulting Party. It will be presumed that both parties knew that such action would prejudice other creditors if the act (i) arose within the period of one year before the filing of the bankruptcy or business rehabilitation petition or (ii) was a gratuitous act or (iii) was an act for which the Defaulting Party received inadequate consideration.

5.3.2 Section 90/41 of the Bankruptcy Act gives any of the planner, plan administrator or official receiver of the Defaulting Party, and Section 115 of the Bankruptcy Act grants the official receiver of the Defaulting Party, the right to bring an action to challenge and obtain a decree to rescind any transactions entered into by the Defaulting Party within 3 months (one year if such act is done with a connected party) before the date of application to make the Defaulting Party bankrupt or subject to the court order of the business rehabilitation as the case may be or thereafter⁸ and done with the intention that such transactions would confer unfair advantage to a creditor of the Defaulting Party over any other creditors of the Defaulting Party ("**Preference Act**").

In particular, the grant of Collateral may be held unenforceable by the Thai courts if they constitute (i) the Prejudice Act or (ii) the Preference Act.

⁸ This law expressly specifies "3 months or thereafter".

5.4 Availability of set-off

Under the CCC, an obligation of a debtor can be discharged by means of set-off, if the two parties are bound to each other by obligations having subjects of the same kind, when both of such obligations are due, unless⁹ (1) the nature of at least one of the obligations does not admit such set-off; (2) the parties have declared a contrary intention; (3) there is a defence against a claim; (4) an obligation arises from an unlawful act; (5) a claim is not subject to judicial attachment e.g. the right to maintenance (i.e. child support or alimony); (6) certain obligations are not permitted by law to be set-off (e.g. the payment for shares in a company); or (7) an obligation is unenforceable. Such intention in (2), however, cannot be set up against a third person acting in good faith. By virtue of set-off, the obligations of the parties can be discharged only up to the extent to which the amounts of such obligations correspond.

It is uncertain under Thai law whether it is possible to exercise set-off in respect of contingent liabilities.

5.5 No opinion on taxation

No opinion is expressed with respect to law and regulations relating to taxation.

5.6 Foreign exchange approval

Prior to remittance to a Party outside Thailand of any amount payable in foreign currency by a Party under the Agreement or the Transactions, such Party must apply for foreign exchange approval from the BoT or the authorised persons of the BoT.

Such approvals have been routinely granted for all *bona fide* (non speculative) transactions provided that the relevant supporting documents are submitted, including evidence that the obligation to make the payment arises under such relevant agreement.

5.7 Interest on late payment

A Thai court will reserve to itself a discretion to review any provision charging interest with respect to late payment of any amounts in the event that the court considers such a provision to be penal in nature in which event the court may decide to reduce the amount payable to the amount considered reasonable by the court.

5.8 Interest on interest

The charging of interest on interest is prohibited, except where a lender and a borrower have agreed in writing that interest on a loan due for not less than one year shall be added to the capital, and that the whole shall bear interest at a specified rate, and where the charging of compound interest is allowed pursuant to commercial

⁹ Sections 341, 344, 345, 346, 1119 and 411 of the CCC, respectively.

usage for the calculation of compound interest on current accounts (for example, overdraft accounts in the case of commercial banks) as well as in other similar commercial transactions.

5.9 Claims for interest in bankruptcy

In a bankruptcy action, it is provided under Section 100 of the Bankruptcy Act that interest or other charge in lieu of interest after the date of the court's control order shall not be a debt for which payment can be claimed.

5.10 Validity of exclusion clauses

Provisions seeking to exclude liability for the consequences of a party's own acts or of facts which such party knew and concealed may not be upheld by a Thai court and provisions exonerating a party in advance for such party's fraud or gross negligence are void.

5.11 Exercise of discretions

Where a party to the Agreement or the Transactions is vested with discretion or may determine a matter in its opinion, Thai law may require that such discretion is exercised reasonably or that such opinion is based upon reasonable grounds.

5.12 Need for Thai translation in Thai proceedings

In any proceedings in a Thai court a Thai translation may be required to accompany any document produced in a foreign language.

5.13 Admissibility of documents in court

A Thai court generally requires that original documents be submitted to the court before they can be admitted in evidence. By way of exception, copies of documents may be submitted by a party to legal proceedings before a Thai court either (a) where the parties to the dispute agree to accept such copy for the purposes of the proceedings or (b) where it can be proven that the original cannot be submitted to the court because it has been damaged by force majeure or lost or due to other causes which are not the circumstances that such party is responsible for or the court deems that it is necessary and in the interests of justice to admit such copied document. In respect of the document to be submitted to the courts of Thailand which is required to be stamped under the Thai Revenue Code and where the copy does not indicate that the original was stamped, then the general requirement is for the copy to be stamped in order to be admitted, although we are aware of a number of Supreme Court decisions which have accepted copies without evidence of stamping.

5.14 Double proceedings not permitted

The taking of proceedings in one court in Thailand may preclude the taking of proceedings in any other court in Thailand on the same subject matter.

5.15 Enforceability of claims for legal and court costs

A Thai court has power to award to the parties to a court case legal fees and court costs in its discretion. Accordingly the validity of any provisions of the Agreement or the Transactions in respect of a Party's obligations to reimburse legal fees and other costs in the event of a court case in Thailand is uncertain.

5.16 Judgment in foreign currency

A judgment in a Thai court may be expressed in the currency in which the debt is then outstanding with provision for payment in Baht equivalent thereof at the average commercial bank selling rate prevailing on the date of judgement, or failing that prevailing immediately prior thereto. However, Section 196 of the CCC states that where a money obligation is expressed in a foreign currency, payment of such sum may be made in Baht, by using the rate of exchange at the time and in the place of payment. We express no opinion as to the enforceability of any provision under which any person is required to give a judgement currency indemnity.

5.17 Recognition of foreign law

The choice of a foreign law as the governing law of the Agreements will be upheld as a valid choice of law in and binding in any action in the courts of Thailand, to the extent that such foreign law is:

5.17.1 proven to the satisfaction of the court; and

5.17.2 with respect to the essential elements or effects thereof, not considered contrary to the public order or good morals of the people of Thailand.

5.18 Recognition of Foreign Judgment

A judgement of a foreign court will not be enforced by the Thai courts but may, at the sole discretion of the court of Thailand, be admissible in evidence in an action in the Thai courts. The Thai courts may re-try the entire case on its merits.

If proceedings are brought in Thailand, the Thai courts would apply the procedural law of Thailand (e.g. the Civil Procedural Code) for procedural matters.

5.19 Need for proof of damage

The award of damages requires proof of loss, which must be the direct or reasonably foreseeable consequence of the breach.

5.20 Revocation of powers of attorney and authorisations

Under Thai law the appointment or authorisation of an agent, which would include the grant of a power of attorney, may be revoked at any time by the appointor giving notice to the agent or attorney, regardless of whether the appointment is expressed to be irrevocable or granted by way of security. Furthermore, under Thai law all such

appointments or authorisations (including but not limited to powers of attorney or authorisations expressed to be irrevocable) granted expressly or by implication terminate by law and without notice upon the bankruptcy of the grantor.

5.21 No recognition of trusts

The concept of "trust" under Thai law is only mentioned in Section 1686 of the CCC; such Section 1686 prohibits the creation of a trust by any will or by any juristic act. Accordingly, the obligation of a person to hold anything in trust for any other person may not be enforceable under Thai law, although analogous rights are recognised in certain transactions. However, such unenforceability would not in itself affect the recognition of the validity of the particular transaction to which the person acting as trustee was a party.

5.22 Effect of oral amendments and waivers

We express no view on any provision (if any) in the Agreement or the Transactions requiring written amendments and waivers of any of the provisions of such document in so far as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon or granted by or between the parties or implied by the course of conduct of the Parties.

5.23 Unfair Contract Terms Act

Under the Unfair Contract Terms Act B.E. 2540, a provision in an agreement that is found by Thai courts to be unfair as characterized in such Act would be enforceable only to the extent that it is fair and reasonable. As the determination of unfair terms is at the discretion of the courts, we express no view as to whether any provision in any of the Agreements might be unfair.

5.24 Meaning of references to Thai law

Insofar as the opinion expressed herein refers to the law or laws of Thailand, such references include Royal Decrees, Ministerial Decrees, Ministerial Regulations and Notifications, and Supreme Court judgments and are limited to those which are published and available to the public as of the date hereof.

5.25 Derivatives Contracts under the Derivatives Act B.E. 2546

Certain Parties (including individuals) may not fall within the types of parties with which a derivatives broker/dealer registered with/licensed by the SEC is permitted to deal in respect of derivatives contracts entered in Thailand pursuant to the Derivatives Act B.E. 2546 (the "**Derivatives Act**").

5.26 Gambling Transactions

Before the enactment of the Derivatives Act, the legality and validity of a derivatives transaction could be challenged on the ground that it could be regarded as a gambling transaction under Thai law.

Under Section 853 of the CCC, a gambling transaction will not create any obligation for any party and a party will not be able to claim back anything that such party gave in the course of gambling. There is no definition of "*gambling*" in Thai law but prior court decisions and academic authorities have described a gambling transaction as being comprised of the following elements:

- (i) it is a contract between 2 or more parties;
- (ii) upon an uncertain event, a party who loses has to pay money or deliver assets;
and
- (iii) all parties must have a chance to win or lose.

There is no court decision in relation to a derivatives transaction clarifying whether or not it is gambling. However, it is believed amongst leading Thai lawyers that if a derivatives transaction has been entered into for the purpose of hedging (not speculation), it should not be considered to be a gambling transaction.

After the enactment of the Derivatives Act, the above uncertainty has been eliminated in respect of a derivatives contract entered into within the scope specified in the Derivatives Act, because Section 5 of the Derivatives Act clearly stipulates that any derivatives contract (having the products or variation as permitted by the SEC) that is conducted (i) with the licensed or registered persons (with the SEC) or (ii) via the derivatives exchange or clearing house established under the Derivatives Act will create legal obligations and be enforceable.

Similarly, a commodities future contract related to rubber, certain types of rice and tapioca chips which is traded in the Agricultural Futures Exchange of Thailand is enforceable under Thai law, and will not be classified as gambling since it has been legalised by the Agricultural Futures Trading Act B.E. 2542 ("**AFTA**").

As such, there is a high risk that any derivatives contract which (i) is outside of the scope of the Derivatives Act or the AFTA and (ii) has a purpose other than hedging, may not be enforceable because it may be regarded as a gambling transaction.

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. 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,

Clifford Chance (Thailand) Limited

CLIFFORD CHANCE (THAILAND) LIMITED

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. An addition to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would constitute such event of default or termination event (ii) the relevant officers the appointment of which would 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.

**ANNEX 4
DEFINITIONS OF CERTAIN TERMS**

1. **"Insolvency Proceedings"** means the business rehabilitation procedures including an automatic stay of execution against the bankrupt party in the Bankruptcy Act which are applicable only to limited companies and public limited companies, the bankruptcy procedures described in the Bankruptcy Act or analogous proceedings (where, for the purposes of paragraph 4 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).

2. **"Transaction"** means the following groups of Transactions may be entered into under the Agreements:
 - (A) (Futures and options and other transactions) Transactions as defined in the One-Way Master Netting Agreement (1997 version) and Two-Way Master Netting Agreement (1997 version):
 - (i) a contract made on an exchange or pursuant to the rules of an exchange;
 - (ii) a contract subject to the rules of an exchange; or
 - (iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or
 - (iv) a transaction which is back-to-back with any transaction with any transaction within paragraph (i), (ii) or (iii) of this definition, or
 - (v) any other Transaction which the parties agree to be a Transaction;
- (B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;
- (C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;
- (D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.