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5 December 2013

## NETTING ANALYSER LIBRARY

Dear Sirs,

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

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

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

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

#### 1. TERMS OF REFERENCE AND DEFINITIONS

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

- 1.1.1 persons which are companies incorporated under the Commercial Code (as defined below) as a (a) joint stock company (*anonim şirket*), (b) limited liability company (*limited şirket*), (c) company with unlimited liability shareholders (*kollektif şirket*), (d) unlimited liability company (company having certain shareholders with unlimited liability (*komandit şirket*));
- 1.1.2 banks incorporated under the Banking Law (as defined below) (Schedule 1); and
- 1.1.3 branches in this jurisdiction of foreign banks and other corporations.

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

- 1.2.1 Insurance Companies incorporated under the Insurance Law (as defined below) (Schedule 2);
- 1.2.2 Investment firms/broker dealers under the Capital Market Law (as defined below) (Schedule 3);
- 1.2.3 Funds organised as investment funds under the Capital Market Law (as defined below) (Schedule 4);
- 1.2.4 Pension Funds established under the Individual Retirement Saving and Investment Law (as defined below) (Schedule 5); and
- 1.2.5 Individuals acting as merchants (Schedule 6).

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

This opinion covers all types of Transaction whether entered into on an exchange, any other forms of organised market place or multilateral trading facility, or over the counter

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

1.4 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

#### 1.5 **Definitions**

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

- 1.5.1 "**Banking Law**" means Banking Law (Law No. 5411) published in the Official Gazette dated 1 November 2005, No. 25983;
- 1.5.2 "**BRSA**" means the Banking Regulatory and Supervisory Agency (*Bankacılık Düzenleme ve Denetleme Kurulu*);
- 1.5.3 "**Capital Market Law**" means Capital Market Law (Law No. 6362) published in the Official Gazette dated 30 December 2012, No. 28513;

- 1.5.4 "Civil Code" means Civil Code (Law No. 4721) published in the Official Gazette dated 22 November 2001, No. 24607;
- 1.5.5 "Clearing House" means İstanbul Takas ve Saklama Bankası A.Ş.;
- 1.5.6 "Clearing House Regulation" means İstanbul Takas ve Saklama Bankası Anonim Şirketi Central Clearing Regulation issued by the CMB and published in the Official Gazette dated 18 July 2013, No. 28711;
- 1.5.7 "CMB" means the Capital Market Board, the Prime Ministry of the Republic of Turkey (*T.C. Başbakanlık Sermaye Piyasası Kurulu*);
- 1.5.8 "CRA" means the Central Registry Agency of the Republic of Türkiye (*Merkezi Kayıt Kuruluşu A.Ş.*).
- 1.5.9 "Code of Obligations" means Code of Obligations (Law No. 6098) published in the Official Gazette dated 4 February 2011, No. 27836;
- 1.5.10 "Commercial Code" means Turkish Commercial Code (Law No. 6102) published in the Official Gazette dated 14 February 2011, No. 27846;
- 1.5.11 "Communiqué" means the Communiqué on the Dematerialised Capital Market Instruments (Serial IV, No: 28) issued by the CMB;
- 1.5.12 "Consumer Law" means the Law on the Protection of Consumers (Law No. 4077) published in the Official Gazette dated 8 March 1995, No. 22221;
- 1.5.13 "Decree No. 32" means Decree No. 32 Regarding the Protection of the Value of Turkish Currency (published in the Official Gazette dated 11 August 1989, No. 20249) issued by the Council of Ministers under Article 1 of the Law Regarding the Protection of the Value of Turkish Currency (Law No. 1567) (published in the Official Gazette dated 25 February 1930, No. 1433);
- 1.5.14 "Enforcement and Bankruptcy Law" means Enforcement and Bankruptcy Law (Law No. 2004) published in the Official Gazette dated 19 June 1932, No 2128;
- 1.5.15 "FOA Member" means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion);
- 1.5.16 "Insolvency Proceedings" means the procedures listed in paragraph 3.1;
- 1.5.17 "IIC" means Investors' Indemnity Centre Fund (*Yatırımcı Tazmin Merkezi*);
- 1.5.18 "Individual Retirement Saving and Investment Law" means Individual Retirement Saving and Investment Fund (Law No. 4632) published in the Official Gazette dated 7 April 2001, No. 24366;
- 1.5.19 "Insolvency Representative" means a liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction;
- 1.5.20 "Insurance Law" means the Insurance Law (Law No. 5684) published in the Official Gazette dated 14 June 2007, No. 26552;

- 1.5.21 "**Investment Fund Communiqué**" means the Communiqué in relation to the Investment Funds (Serial No. VII/10) (*Yatırım Fonlarına İlişkin Esaslar Tebliği*) issued by the CMB and published in the Official Gazette dated 19 December 1996, No. 22852;
- 1.5.22 "**ISE**" means İstanbul Stock Exchange (*Borsa İstanbul Anonim Şirketi*);
- 1.5.23 "**Member Account**" means segregated account with the Clearing House opened in the name of a Member in which the Transactions made by the Member with one or more clients of such Member are registered and to which monies in respect of such Transactions are credited;
- 1.5.24 "**Official Gazette**" means the Official Gazette of Turkey;
- 1.5.25 "**Private International Law**" means the International Private Law and Procedural Law (Law No. 5718) published in the Official Gazette dated 12 December 2007, No. 26728;
- 1.5.26 "**SDIF**" means Saving Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu*);
- 1.5.27 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;
- 1.5.28 "**Turkey**" means the Republic of Turkey (*Türkiye Cumhuriyeti*);
- 1.5.29 "**UT**" means the Undersecretariat of Treasury, the Prime Ministry of the Republic of Turkey (*T.C. Cumhuriyeti Hazine Müsteşarlığı*); and
- 1.5.30 A reference to a "**paragraph**" is to a paragraph of this opinion letter.

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

## 2. ASSUMPTIONS

We assume:

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

- 2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement in this jurisdiction.
- 2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party.
- 2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.
- 2.7 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- 2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.
- 2.9 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.
- 2.10 In relation to the opinions set out at paragraphs 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.
- 2.11 That each Party, when Transferring Margin pursuant to the Title Transfer Provisions, has full legal title to such Margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).
- 2.12 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a bank, investment firm/broker dealer.
- 2.13 That all margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of margin pursuant to the Title Transfer Provisions will have been effectively carried out.

- 2.14 The Parties' purpose in entering into a Transaction does not include any financing or financing of an acquisition of shares in contravention to Articles 379 and 380 of the Commercial Code.
- 2.15 That any cash provided as margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

### 3. OPINION

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

#### 3.1 Insolvency Proceedings

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

- 3.1.1 bankruptcy (*iflas*);
- 3.1.2 postponement of bankruptcy (*iflasın ertelenmesi*);
- 3.1.3 reorganisation by way of abandonment of the debtor's assets (*malvarlığının terki suretiyle konkordato*);
- 3.1.4 restructuring of capital stock companies by way of conciliation (*sermaye şirketlerinin uzlaşma yoluyla yeniden yapılandırılması*); and,
- 3.1.5 ordinary compositions of debts (*adi konkordato*)

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

#### 3.2 Recognition of choice of law

- 3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England **provided that** there is a foreign element to the subject transactions and relationships and such choice of law is valid under English law.
- 3.2.2 We are of this opinion because pursuant to Article 24 of the Private International Law, the law governing contractual rights and obligations may be freely chosen by its parties, provided there is a foreign element to the subject transactions and relationships.
- 3.2.3 An Insolvency Representative or court in this jurisdiction would have regard to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions.

### 3.3 Enforceability of FOA Netting Provision

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

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

3.3.2 We are of this opinion because:

- (a) Under Turkish law, the FOA Netting Provisions in the Agreement will be treated as a pre agreed liquidation method of all Transactions entered into under the FOA Netting Agreement or, the Clearing Agreement where the Defaulting Party acts as Client, by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law. According to Article 950 of the Civil Code, Articles 139 and 142 of the Code of Obligations, Article 90 of the Commercial Code and Article 200 of the Enforcement and Bankruptcy Law, close out netting is a consequence of set off granted by law and having the effect of terminating the debt to the extent of the counter claim. Pursuant to Article 139 of the Code Obligations, requirements for application of set off are:
  - (i) the parties must have mutual claims of the same kind,
  - (ii) both mutual claims must be due,
  - (iii) the parties must not have waived their set off rights,
  - (iv) the party exercising set off must make a declaration to that effect.
- (b) In order to offset a cash claim against a fungible asset or vice versa, the fungible asset is first required to be cashed in, which can be done without the consent or involvement of the counterparty or legal proceeding.
- (c) As a contractual arrangement, right of set off under close out netting provisions of the FOA Netting Agreement, or as the case may be, of the Clearing Agreement, is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, upon designation of the Liquidation Date, the FOA Netting Provision in the FOA Netting Agreement, or the Clearing Agreement where the Defaulting Party acts

as Client, would be recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law. But, as explained above this jurisdiction recognises contractual set off as a way of liquidating claims.

(d) Pursuant to Article 139 of the Code of Obligations, in the event of bankruptcy of a Party in this jurisdiction, the right of set off can be exercised, even if the claims are not due and payable. However, according to Article 200 of the Enforcement and Bankruptcy Law, close out netting shall not be enforced for:

- (i) the credits assumed by a debtor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court,
- (ii) the debt assumed by a creditor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court, and,
- (iii) in any event, the credits of a creditor evidenced with a bearer negotiable instrument, such as a bill of exchange or a promissory note, after its bankruptcy is declared by competent court irrespective of whether such negotiable instrument being issued before, on or after the bankruptcy.

(e) In our opinion, the close out netting provisions of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, providing for the netting of termination values in determining a single lump sum termination amount upon an Insolvency Event, as described in the FOA Netting Agreement, will be enforceable under laws of this jurisdiction.

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

### 3.4 Enforceability of the Clearing Module Netting Provision

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

3.4.2 We are of this opinion because:

(a) Under Turkish law, the Clearing Module Netting Provisions in the Clearing Agreement will be treated as a pre agreed liquidation method of the Transactions entered into under the Clearing Agreement by way of contractual set off. The procedure of liquidating contractual claims

can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.

- (b) Pursuant to Articles 26 and 27 of the Code of Obligations, Parties are free to enter into contracts and determine its contents, subject to the requirements of good faith and fair dealing, and the mandatory rules. Legal system in this jurisdiction recognizes the principle of freedom of contract, subject to limitations set out by the mandatory provisions of law and good faith principle. As explained above, the Parties can enter into contractual set-off agreement in advance in order to agree on liquidation method applicable to all Transactions. Accordingly, the Parties are free to determine the content of such pre-agreed liquidation contract in accordance with the freedom of contract principle recognized in this jurisdiction.
- (c) Therefore, in our opinion, the Clearing Agreement which includes the Clearing Module Netting Provision, creating separate netting sums for each CCP service, will be effective in accordance with its terms because it does not conflict with the freedom of contract principle recognised in this jurisdiction.
- (d) As a contractual arrangement, right of set off under Clearing Module Netting Provision of the Clearing Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the Clearing Module Netting Provisions in the Clearing Agreement would be recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law. But, as explained above this jurisdiction recognises contractual set off as a way of liquidating claims.
- (e) However, according to Article 200 of the Enforcement and Bankruptcy Law, Clearing Module Netting Provisions shall not be enforced for:
  - (i) the credits assumed by a debtor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court,
  - (ii) the debt assumed by a creditor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court, and,
  - (iii) in any event, the credits of a creditor evidenced with a bearer negotiable instrument, such as a bill of exchange or a promissory note, after its bankruptcy is declared by competent court irrespective of whether such negotiable instrument being issued before, on or after the bankruptcy.
- (f) We understand that in case of Firm's default, the Client Transaction may be terminated and the Client's portfolio may be "ported" whereby the relevant Firm/CCP Transaction is transferred from the Firm to another member of the Agreed CCP Service through which that Firm/CCP Transaction is cleared, value of such Client Transaction

shall, for the purpose of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values, be zero. Turkish law may view the termination of the existing Client Transaction and entry into of a new Client Transaction on the same terms as the existing Client Transaction as having the same effect as of the Client Transaction had been transferred. If Turkish law were to view the Client Transaction as having the effect of being transferred, such transfer of Transactions will violate Article 200 of the Enforcement and Bankruptcy Law which prohibits transfer of receivables or assumption of debts by a creditor or a debtor, respectively, of an insolvent party. However, in our opinion, as such potential transfer of Transactions are agreed before the insolvency of the Firm, "porting" arrangements under Clause 5.2.2(i) of the Clearing Agreement should be upheld.

- (g) On the other hand, the Insolvency Representative of the Firm or the Client may challenge transfer of such "ported" Transactions with an ascribed close out amount value of zero on the basis that this may deprive creditors of the relevant insolvent Party from the receivables of such insolvent Party.
- (h) In the event of a liquidation or bankruptcy of a Party under the laws of this jurisdiction, the Insolvency Representative may claim requirement of netting of all Transaction between the Parties to aggregate and set off all Cleared Set Termination Amounts together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Clearing Module Netting Provision provides for each Cleared Set Termination Amount to be payable separately in respect of each Agreed CCP Service. However, if single net sum will be payable by netting all Transactions between the Parties, the Party which is not in liquidation or administration (the "solvent Party") would be unlikely to be left in a worse position than in the absence of such single netting for all Transactions. This is because (under the laws of this jurisdiction) if separate netting had been applied to the Transactions in different CCPs, the solvent Party would have receive the ultimate amount which, when each Cleared Set Termination Amount aggregated and set off, equal the net amount receivable or payable under netting of all Transactions.
- (i) Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Clearing Module Netting Provision. However, if the competent court will give a judgement for:
  - (i) the postponement of bankruptcy (*iflasın ertelenmesi*);
  - (ii) the reorganisation by way of abandonment of the debtor's assets (*malvarlığının terki suretiyle konkordato*);

- (iii) the restructuring of capital stock companies by way of conciliation (*sermaye şirketlerinin uzlaşma yoluyla yeniden yapılandırılması*); or
- (iv) ordinary compositions of debts (*adi konkordato*),

of a Party in this jurisdiction, the Non-Defaulting Party cannot enforce the Security Interest in respect of the Collateral during such composition, reorganisation, restructuring or postponement of bankruptcy period. Following the occurrence of any of the above, a moratorium will be in place so that the Party in this jurisdiction cannot be subject to any enforcement proceedings and all the enforcement proceedings initiated before would cease. Please note that if composition, reorganisation, restructuring or postponement of bankruptcy will be adjudicated for a Party, secured creditors of the Party can start proceedings for the enforcement of the Security Interest, however, they are not allowed to foreclose relevant Collaterals during the composition, reorganisation, restructuring or postponement of bankruptcy period. While the Collaterals may not be foreclosed during such period, the exercise of the Clearing Module Netting Provisions, are not, in our view, stayed. The Clearing Module Netting Provisions would only constitute contractual remedies.

### 3.5 Enforceability of the Addendum Netting Provision

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

3.5.2 We are of this opinion because:

- (a) Under Turkish law, the Addendum Netting Provision in the Clearing Agreement will be treated as a pre agreed liquidation method of the Transactions entered into under the Agreement by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.
- (b) Pursuant to Articles 26 and 27 of the Code of Obligations Parties are free to enter into contracts and determine its contents, subject to the requirements of good faith and fair dealing, and the mandatory rules. Legal system in this jurisdiction recognizes the principle of freedom of contract, subject to limitations set out by the mandatory provisions of law and good faith principle. As explained above, the Parties can enter into contractual set-off agreement in advance in order to agree on liquidation method applicable to the Client Transactions. Accordingly, the Parties are free to determine the content of such pre-agreed

liquidation contract in accordance with the freedom of contract principle recognized in this jurisdiction.

- (c) Therefore, in our opinion, the Clearing Agreement which includes the Addendum Netting Provision, creating separate netting sums for each CCP service, will be effective in accordance with its terms because it does not conflict with the freedom of contract principle recognised in this jurisdiction.
- (d) As a contractual arrangement, the Addendum Netting Provision under the Clearing Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the Addendum Netting Provision under the Clearing Agreement would be recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law. But, as explained above this jurisdiction recognises contractual set off as a way of liquidating claims.
- (e) However, according to Article 200 of the Enforcement and Bankruptcy Law, Addendum Netting Provisions shall not be enforced for:
  - (i) the credits assumed by a debtor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court,
  - (ii) the debt assumed by a creditor of the Insolvent Party after the Insolvent Party's bankruptcy is declared by competent court, and,
  - (iii) in any event, the credits of a creditor evidenced with a bearer negotiable instrument, such as a bill of exchange or a promissory note, after its bankruptcy is declared by competent court irrespective of whether such negotiable instrument being issued before, on or after the bankruptcy.
- (f) We understand that in case of Firm's default, the Client Transaction may be terminated and the Client's portfolio may be "ported" whereby the relevant Firm/CCP Transaction is transferred from the Firm to another member of the Agreed CCP Service through which that Firm/CCP Transaction is cleared and the value of such Client Transaction shall, for the purpose of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values, be zero. Turkish law may view the termination of the existing Client Transaction and entry into of a new Client Transaction on the same terms as the existing Client Transaction as having the same effect as if the Client Transaction had been transferred. If Turkish law were to view the Client Transaction as having the effect of being transferred, such transfer of Transactions will violate Article 200 of the Enforcement and Bankruptcy Law which prohibits transfer of receivables or assumption of debts by a creditor or a debtor, respectively, of an insolvent party. However, in our opinion, as such potential transfer of Transactions are agreed before the insolvency of

the Firm, "porting" arrangements under Clause 5.2.2(i) of the Clearing Agreement should be upheld.

- (g) On the other hand, the Insolvency Representative of the Firm or the Client may challenge transfer of such "ported" Transactions with an ascribed value of zero to the Cleared Set Termination Amount and the Aggregate Transaction Values because this may deprive creditors of the relevant insolvent Party from the receivables of such insolvent Party.
- (h) In the event of a liquidation or bankruptcy of a Party under the laws of this jurisdiction, the Insolvency Representative may claim requirement of netting all Transaction between the Parties to aggregate and set off all Cleared Set Termination Amounts together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Addendum Netting Provision provides for each Cleared Set Termination Amount to be payable separately in respect of each Agreed CCP Service. However, if single net sum will be payable by netting all Transactions between the Parties, the Party which is not in liquidation or administration (the "solvent Party") would be unlikely to be left in a worse position than in the absence of such single netting for all Transactions. This is because (under the laws of this jurisdiction) if separate netting had been applied to the Transactions in different CCPs, the solvent Party would have receive the ultimate amount which, when each Cleared Set Termination Amount aggregated and set off, equal the net amount receivable or payable under netting of all Transactions.
- (i) Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provisions. However, if the competent court will give a judgement for:
  - (i) the postponement of bankruptcy (*iflasın ertelenmesi*);
  - (ii) the reorganisation by way of abandonment of the debtor's assets (*malvarlığının terki suretiyle konkordato*);
  - (iii) the restructuring of capital stock companies by way of conciliation (*sermaye şirketlerinin uzlaşma yoluyla yeniden yapılandırılması*); or
  - (iv) ordinary compositions of debts (*adi konkordato*),

of a Party in this jurisdiction, the Non-Defaulting Party cannot enforce the Security Interest in respect of the Collateral during such composition, reorganisation, restructuring or postponement of bankruptcy period. Following the occurrence of any of the above, a moratorium will be in place so that the relevant Party cannot be subject to any enforcement proceedings and all the enforcement proceedings initiated before would cease. Please note that if composition, reorganisation, restructuring or postponement of bankruptcy will be adjudicated for a Party in this jurisdiction, secured

creditors of the relevant Party can start proceedings for the enforcement of the Security Interest, however, they are not allowed to foreclose relevant Collaterals during the composition, reorganisation, restructuring or postponement of bankruptcy period. While the Collaterals may not be foreclosed during such period, the exercise of the Addendum Netting Provisions, are not, in our view, stayed. The Addendum Netting Provisions would only constitute contractual remedies.

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

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

### **3.7 Enforceability of the FOA Set-Off Provisions**

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

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

3.7.2 We are of this opinion because:

- (a) Under Turkish law, the same treatment is applied to netting and set-off as netting is based on set-off (as explained at paragraphs 3.3, 3.4 and 3.5 above). Accordingly, the FOA Set-Off Provisions will be treated as a pre agreed liquidation method of all Transactions entered into under the FOA Netting Agreement by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.
- (b) As a contractual arrangement, right of set off under close out netting provisions of the FOA Netting Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the FOA Set-Off Provision in the FOA Netting Agreement would be recognised under Turkish law to the extent such provisions are valid and enforceable under English law. But, as explained above this jurisdiction recognises contractual set off as a way of liquidating claims.

3.7.3 In relation to a Clearing Agreement which includes the FOA Set-Off Provision and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

- (a) where the FOA Set-Off Provisions includes the General Set-Off Clause:
  - (i) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such liquidation amount is owed by the Client); or
  - (ii) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such liquidation amount is owed by the Firm or, as the case may be, the Clearing Member); or
- (b) where the FOA Set-Off Provision comprises the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm or, as the case may be, the Clearing Member to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

3.7.4 We are of this opinion because:

- (a) Under Turkish law, the same treatment is applied to netting and set-off as netting is based on set-off (as explained at paragraphs 3.3, 3.4 and

3.5 above). Accordingly, the FOA Set-Off Provisions will be treated as a pre agreed liquidation method of all Transactions entered into under the Clearing Agreement by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.

(b) As a contractual arrangement, right of set off under close out netting provisions of the Clearing Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the FOA Set-Off Provision would be recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law. But, as explained above this jurisdiction recognises contractual set off as a way of liquidating claims.

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

3.8.1 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions is a Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, upon the exercise of such rights:

(a) if the Client is a Defaulting Party, so that the value of any cash balance owed by the Firm to the Client would be set-off against any Liquidation Amount owed by the Client to the Firm; and

(b) if there has been a Firm Trigger Event or a CCP Default, so that the value of any cash balance owed by one Party to the other would, insofar as not already brought into account as part of the Relevant Collateral Value, be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance.

3.8.2 We are of this opinion because:

(a) Under Turkish law, the same treatment is applied to netting and set-off as netting is based on set-off (as explained at paragraphs 3.3, 3.4 and 3.5 above). Accordingly, the Clearing Module Set-Off Provision will be treated as a pre agreed liquidation method of all Transactions entered into under the Clearing Agreement by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.

(b) As a contractual arrangement, right of set off under close out netting provisions of the Clearing Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the Clearing Module Set-Off Provision in the Clearing Agreement would be

recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law. But, as explained above the Code of Obligations also contains and recognises contractual set off as a way of liquidating claims.

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

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

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

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

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

3.9.2 We are of this opinion because:

- (a) Under Turkish law, the same treatment is applied to netting and set-off as netting is based on set-off (as explained at paragraphs 3.3, 3.4 and 3.5 above). Accordingly, the Addendum Set-Off Provisions in the Clearing Agreement will be treated as a pre agreed liquidation method of all Transactions entered into under the Clearing Agreement by way of contractual set off. The procedure of liquidating contractual claims can be agreed upon in advance and a close out netting provision would be recognised under Turkish law.
- (b) As a contractual arrangement, right of set off under close out netting provisions of the Clearing Agreement is governed by English law. Therefore, Turkish court will look to English law to determine the validity and the requirements of set off. Accordingly, the Addendum

Set-Off Provision in the Clearing Agreement would be recognised under Turkish law to the extent such provisions are valid and enforceable under applicable English law, as explained above the Code of Obligations also contains and recognises contractual set off as a way of liquidating claims.

### 3.10 Enforceability of the Title Transfer Provisions

- 3.10.1 In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.
- 3.10.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value.
- 3.10.3 The courts of this jurisdiction would not recharacterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.
- 3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.
- 3.10.5 We are of this opinion because:
  - (a) Pursuant to Article 47/1 of the Capital Market Law, transfer of title to the securities registered in the CRA will be recognised provided that there is a written agreement between the parties where parties agree that title to such securities shall be transferred by the security provider to the relevant counterparty as security collateralising the relevant transaction. However, pursuant to Article 47/2 of the Capital Market Law, such securities or its fungible equivalent must be returned to the security provider if the obligations under the underlying transactions were duly performed in accordance with their terms. Additionally, according to various Turkish Supreme Court (*Yargıtay*) judgments (for example, the judgment of Supreme Court's 1<sup>st</sup> Chamber dated 27 December 2005 with number E.2005/13460-K.13858), transfer of title to assets as security arrangement is recognised as valid and binding contractual arrangement to the extent perfection requirements applicable to transfer of title to the relevant asset is complied with on

or after the relevant transfer agreement which must be executed in written form. In its jurisprudence, Turkish Supreme Court (*Yargıtay*) stated that such written contracts constitute fiduciary agreements (*inançlı işlem*) recognised in this jurisdiction and are therefore valid.

- (b) With respect to a FOA Netting Agreement or a Clearing Agreement (with Title Transfer Provisions), following the specification or deemed occurrence of a Liquidation Date, the Non Defaulting Party to a FOA Netting Agreement or a Clearing Agreement (with Title Transfer Provisions) would be immediately (and without fulfilment of any further conditions) entitled to exercise its rights under the Title Transfer Provisions, so that:
  - (i) where the Firm is the Non-Defaulting Party, the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be treated as a gain for the purposes of calculating the Liquidation Amount pursuant to the Netting Provisions; and
  - (ii) where the Two-way Clauses apply and Party in this jurisdiction is the Non-Defaulting Party, Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be treated as a cost for the purposes of calculating the Liquidation Amount pursuant to the Netting Provisions.
- (c) The courts of this jurisdiction would look at the wording and substance of the arrangements and would not recharacterise Transfers of Margin under the Title Transfer Provisions of an Agreement (with Title Transfer Provisions) as creating a security interest unless the court considers that the evidence shows that Title Transfer Provisions do not reflect the genuine intention and agreement of the Parties.
- (d) A Party shall be entitled to use or invest for its own benefit, acting in good faith and in a commercially reasonable manner, without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an Agreement (with Title Transfer Provisions).
- (e) 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 Margin Transferred to a Non-Defaulting Party pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions). If the competent court will give a judgement for:
  - (i) the postponement of bankruptcy (*iflasın ertelenmesi*);
  - (ii) the reorganisation by way of abandonment of the debtor's assets (*malvarlığının terki suretiyle konkordato*);
  - (iii) the restructuring of capital stock companies by way of conciliation (*sermaye şirketlerinin uzlaşma yoluya yeniden yapılandırılması*); or

(iv) ordinary compositions of debts (*adi konkordato*), of a Party in this jurisdiction, the Non-Defaulting Party cannot enforce the Security Interest in respect of the Collateral during such composition, reorganisation, restructuring or postponement of bankruptcy period. Following the occurrence of any of the above, a moratorium will be in place so that the relevant Party cannot be subject to any enforcement proceedings and all the enforcement proceedings initiated before would cease. If composition, restructuring, reorganisation or postponement of bankruptcy will be adjudicated for a Party, secured creditors of the Party in this jurisdiction can start proceedings for the enforcement of the Security Interest, however, they are not allowed to foreclose relevant Collaterals during the composition, restructuring or postponement of bankruptcy period. However, the Margin Transferred to a Non-Defaulting Party pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions, would not constitute a Security Interest because the Non-Defaulting Party will have title to the Margin Transferred. Therefore, the Non-Defaulting Party's right to enforce the Margin Transferred to a Non-Defaulting Party pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) would not be stayed merely because of any such composition, reorganisation, restructuring or postponement of bankruptcy.

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

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

- 3.11.1 a provision in the form of, or with equivalent effect to, Clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest provisions or the Title Transfer Provisions apply in respect of any given item of margin so that it is not possible for both the security interest provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and
- 3.11.2 the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

### 3.12 Single Agreement

Under the laws of this jurisdiction it is necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single

agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and Transactions are part of a single agreement

### 3.13 Automatic Termination

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

### 3.14 Multibranch Parties

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction (other than for reasons of contractual invalidity under the governing law of the Agreement or lack of capacity of a Party) are concerned.

### 3.15 Insolvency of Foreign Parties

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction. According to Turkish jurisprudence, foreign Insolvency Proceedings are not allowed to be enforced in this jurisdiction. Enforcement of foreign insolvency proceedings in this jurisdiction may be refused on the basis that enforcement of such proceedings would violate Turkish public policy. Accordingly, a separate Insolvency Proceedings must be initiated in this jurisdiction for any assets of a Foreign Defaulting Party whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the relevant Foreign Defaulting Party.

### 3.16 Special legal provisions for market contracts

3.16.1 There are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back to back with a Transaction entered into on an exchange (in this or another jurisdiction), or is to be cleared at, or is "back to back" with a Transaction to be cleared at a central counterparty except special provisions of law would apply to the Transactions cleared by the Clearing House in the ISE, which requires application of separate netting and clearing provisions to those Transactions other than the Netting Provisions and the Title Transfer Provisions of the Agreement.

3.16.2 The following special provisions of law apply to the Transactions by virtue of the fact that the Transactions are cleared through the Clearing House:

- (a) Pursuant to the provisions of the Communiqué the Transactions settled through the settlement system managed by the Clearing House. Accordingly, the Clearing House's pool account ("Clearing Account") at the CRA is used for the settlement of such Transactions. The clearing process is run through an integrated system between the CRA and the Clearing House. After the Transactions have been cleared, ISE send daily transaction information to the Clearing House, the Clearing House nets the Transactions between its Members. Netted Transactions data is then sent to the CRA on the same night of the clearing of the Transactions. Based on such data the CRA and the Member make the transfers in the form of book-entry securities to the Member Accounts;
- (b) According to Article 80/3 of the Capital Market Law, the CRA is the central custodian for the securities registered in the CRA and titles over such assets shall be determined in accordance with the records maintained by the CRA.

3.16.3 The Clearing House has adopted common rules and standardised arrangement, including the Clearing House Regulation, for clearing the Transactions and setting-off mutual obligations. The Clearing House is a regulated entity under the Capital Market Law.

In relation to any Transactions which are cleared through the Clearing House in accordance with 3.16.2, the action taken by the Clearing House and the CRA in respect of such Transactions will result in the calculation of a single net sum payable in respect of such Transactions.

#### 4. **QUALIFICATIONS**

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

##### 4.1 **Limitations arising from Insolvency Laws**

- 4.1.1 With respect to bankruptcy, insolvency proceedings, Turkish law may require that all claims or debts are converted into Turkish Lira at an exchange rate determined by the court at a related date, such as the date of bankruptcy judgment.
- 4.1.2 The Insolvency Representative and other creditors of the Insolvent Party may, by commencing an avoidance action procedure in a commercial court, challenge certain arrangements or dispositions made by the Insolvent Party during the period preceding any relevant bankruptcy judgment. Accordingly, pursuant to Article 278 of the Enforcement and Bankruptcy Law, donations and disposals without due consideration and made within the 2 (two) years preceding the bankruptcy date may be cancelled by an avoidance action. Additionally, pursuant to Article 279 of the Enforcement and Bankruptcy Law, transactions of an insolvent debtor involving (i) the posting of collateral for an existing but unsecured obligation with no pre existing undertaking to post

collateral for such transaction; (ii) settlement of a monetary claim other than in cash or commonly used payment means; (iii) settlement of a claim before its maturity date; and (iv) annotations registered in a land registry to strengthen personal rights, may be subject to an avoidance if such a transaction was concluded within the 1 (one) year preceding the bankruptcy date. Finally, pursuant to Article 280 of the Enforcement and Bankruptcy Law, all transactions carried out by an insolvent debtor in the 5 (five) years preceding the bankruptcy date with the intention of fraudulent conveyance or favouring certain creditors are voidable.

#### 4.2 Application of Foreign Law, Enforcement of Judgements

- 4.2.1 A judgment of a court established in a country other than Turkey may not be enforced in Turkish courts unless the conditions specified under the Private International Law are satisfied including, without limitation, (i) there is in effect a treaty between such country and Turkey providing for the reciprocal enforcement of judgments, or (ii) there is *de facto* reciprocity in the field of enforcement of judgments between such country and Turkey, or (iii) there is a provision in the law of such country which provides for the enforcement of judgments of the Turkish courts.
- 4.2.2 Under the Private International Law, Turkish courts will only enforce a judgment of a foreign court if (i) the judgment is not clearly against public policy rules of Turkey, (ii) where the person against whom enforcement is sought does not raise objections in the Turkish courts to the effect that he was not duly summoned to or represented at the foreign court or that the judgment was rendered in his absence in violation of the laws of the foreign country, (iii) the judgment does not fall within the exclusive jurisdiction of the Turkish courts or (provided that the defendant objects) the judgment is not issued by a self-authorised court without any relation to the subject matter or the parties of such dispute, and (iv) such judgment were final and non-appealable (*kesin ilam*).
- 4.2.3 Recognition of foreign judgments by Turkish courts may be limited by considerations of public policy as provisioned under Article 54 of the Private International Law and other principles of general applicability. Although a Turkish court would only examine an application of enforcement of a foreign judgment with a view to determining whether these enforcement conditions are met and should not necessarily re-examine the merits of the case, such court may still re-examine the merits to ascertain if there is any public policy violation.
- 4.2.4 A Turkish court would not uphold the choice of law provision if to recognise and give effect to such law would be clearly against the public policy rules of Turkey.
- 4.2.5 If any obligation is to be performed in a jurisdiction outside Turkey, it may not be enforceable in Turkey to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction and a Turkish court may take into account the law of the place of performance in relation to

the manner of performance and to the steps to be taken in the event of defective performance.

4.2.6 A Turkish court may stay proceedings if concurrent proceedings are being brought in other jurisdictions.

4.2.7 We express no opinion on the binding effect of the choice of law provisions in the Agreement insofar as they relate to non contractual obligations arising from or connected with the FOA Netting Agreement, FOA Clearing Agreement and ISDA/FOA Clearing Addendum or any Transaction.

#### 4.3 Default Interest and Indemnities between Parties

4.3.1 Any provision of the FOA Netting Agreement, FOA Clearing Agreement and ISDA/FOA Clearing Addendum requiring any person to pay amounts imposed in circumstances of breach or default may be held to be unenforceable on the grounds that it is a penalty or an excessive pecuniary remedy.

4.3.2 We express no opinion as to whether a court in Turkey would enforce any judgment, award or uphold the imposition of additional amount on overdue late payment amount pursuant to the relevant provisions of the FOA Netting Agreement, FOA Clearing Agreement and ISDA/FOA Clearing Addendum.

4.3.3 There is some possibility that a Turkish court would hold that a judgment or award on the FOA Netting Agreement, FOA Clearing Agreement and ISDA/FOA Clearing Addendum, whether given in a Turkish court or elsewhere, would supersede the relevant FOA Netting Agreement, FOA Clearing Agreement and ISDA/FOA Clearing Addendum so that any obligations relating to the payment of interest after judgment or any currency indemnities would not be held to survive the judgment or award.

#### 4.4 Security Interest Provisions

4.4.1 The Security Interest has not been avoided by the competent court because they are granted during certain suspect period preceding the Insolvency of a Party in this jurisdiction as a result of such Collateral constitutes a preference (however called whether or not fraudulent) in favour of the secured Party or any other basis. Accordingly, the Insolvency Representative and other creditors of the Insolvent Party may, by commencing an avoidance action procedure in a commercial court, challenge certain arrangements or dispositions made by the insolvent Party in this jurisdiction during the period preceding any relevant bankruptcy judgment. Pursuant to Article 279 of the Enforcement and Bankruptcy Law, transactions of an insolvent debtor involving (i) the posting of collateral for an existing but unsecured obligation with no pre-existing undertaking to post collateral for such transaction; (ii) settlement of a monetary claim other than in cash or commonly used payment means; (iii) settlement of a claim before its maturity date; and (iv) annotations registered in a land registry to strengthen personal rights, may be subject to an avoidance if such a transaction was concluded within the 1 (one) year preceding the bankruptcy date

4.4.2 According to Article 21 of Private International Law *in rem* rights (such a security interests created under a pledge) on assets are subject to the laws where such assets are located (*lex loci situs*). Pursuant to Article 939 of the Civil Code, in order to perfect security interest on cash or securities, their possession must be transferred to the pledgee or its agent and the Parties must execute a written pledge agreement. In case of pledge over a bank account Parties must execute a written pledge agreement and the pledge must be notified to and acknowledged by the account bank. Security interest on dematerialised securities are perfected by registration of relevant security interest at institutions where such dematerialised securities are registered. Accordingly, in order to create security interest over dematerialised Collaterals in this jurisdiction (i) such Collaterals must transferred in the form of book-entry securities to the pledgee's sub-account pursuant to Article 18/A of the Communiqué to perfect the delivery condition of the pledge and to effect the registration of the pledge in favour of the pledgee on the records of CRA and (ii) the relevant custodian or broker firm must deliver to the pledgee a certificate evidencing the registration of the pledge in favour of the pledgee on the records of CRA.

4.4.3 To the extent the relevant security interest has been perfected in accordance with applicable perfection requirements as defined in paragraphs 4.4.2, 4.4.5. and 4.4.6 herein and such security interest was not voided by an avoidance action, pursuant to Article 206 of the Enforcement and Bankruptcy Law, proceeds of pledged assets collateralising a Party's secured receivable shall be paid to such secured creditor after deduction of enforcement costs and taxes payable in connection with the relevant Collateral. However, a creditor which has a security interest on cash could set-off that cash against its receivables after occurrence of an Event of Default. Additionally, in the case of a creditor which has security interest on treasury bills or securities traded on an exchange market, in our opinion, it can sell such securities for satisfaction of its claims on the price prevailing at the relevant exchange market **provided that such creditor is authorised contractually under the pledge agreement to foreclose such securities by way of private sale.**

4.4.4 In accordance with Article 21 of the Private International Law, ownership and other *in rem* rights over accounts or other assets of a Turkish borrower in other jurisdictions shall be subject to the laws of such other jurisdiction where such accounts or assets are located (*lex loci situs*). As a matter of Turkish law, a Party in this jurisdiction is not prevented from creating Security Interest in respect of a Collateral located in other jurisdictions outside Turkey. According to Article 954 of the Civil Code, validity and perfection of security interest over cash, movable assets and receivables are subject to transfer of possession to the pledgee or its agent. If cash, bank accounts where such cash is deposited and other movable assets are outside Turkey, then, creation of security interest over such assets will be subject to the laws of the jurisdictions where such assets are located at the time of creation of the relevant security interest.

4.4.5 Security Interest over negotiable instruments such as share certificates representing shareholding in a corporation incorporated in Turkey or debentures which are issued by Turkish entity under Turkish law will be subject to Turkish law in respect of perfection formalities. Pursuant to Article 956 of the Civil Code, transfer of title over:

- (a) negotiable instrument securities issued in bearer form shall be subject to transfer of possession over such securities;
- (b) negotiable instrument securities issued in the name of a person shall be subject to execution of a written agreement, endorsement of and transfer of possession over such securities.

Additionally, according to Article 490 of the Commercial Code, creation of any *in rem* right, including pledge, over a share certificate representing a shareholding in the capital of a company incorporated in Turkey is subject to:

- (i) execution of written agreement;
- (ii) endorsement and delivery of such shares; and,
- (iii) registration of title transfer or pledge at the issuer's share ledger.

4.4.6 Pursuant to Article 6 of the Public Finance and Debt Management Law (Law No. 4749), Turkish Government internal debt instruments issued in dematerialized form are registered in the Central Bank. An electronic securities transfer system ("Central Bank Electronic Account System") established by the Central Bank is used for the transfer and settlement of such Turkish Government dematerialised internal debt instruments among Banks and/or Investment Companies or Broker Dealers trading such instruments in ISE through the Clearing House. Security interest over Turkish Government debts will be subject to execution of a pledge agreement and must be notified to the relevant Bank and/or Investment Companies or Broker Dealer.

4.4.7 The Collateral created by a pledge cannot be acquired by the pledgee because of the *lex commissaria* principle applicable under the laws of this jurisdiction which prevent a pledgee to acquire a pledged Collateral against its outstanding receivables. Accordingly, if the title of the Collateral is not transferred to the secured Party, the secured Party cannot off-set the Collateral against its receivables and is required to enforce the Collateral by way of selling it to a third party and set-off the proceed of such sale against its receivable under an Agreement.

4.4.8 Valid perfection of a Security Interest in respect of a Collateral is subject to fulfilment of the relevant legal formalities. Accordingly, the commitment of a Party to provide additional Collateral in the future will be recognized only as a contractual obligation of the relevant Party. But, this would not substitute or satisfy perfection requirements in order to create Security Interest in respect of the relevant Collaterals. Therefore, the Security Interest in respect of such future Collateral will only be valid and enforceable if the relevant formalistic requirements necessary to be fulfilled in order to create a Security Interest will be completed.

4.4.9 Pursuant to second paragraph of Article 961 of the Civil Code, the account bank can only transfer money deposited in a pledged account with the pledgor's consent. In our opinion, such consent can be given in the relevant pledge agreement.

**4.5 Other Qualifications**

4.5.1 The Parties to the Agreement or the Transactions may be able to amend the Agreement or the Transactions by oral agreement or by conduct despite any provision to the contrary.

4.5.2 Any provision of the Agreement which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party to the Agreement or any other person may be ineffective.

4.5.3 To the extent that any matter is expressly to be determined by future agreement or negotiation, the relevant provision may be unenforceable or void for uncertainty.

4.5.4 Any provision of the Agreement stating that a failure or delay, on the part of a Party, in exercising any right or remedy under the Agreement shall not operate as a waiver of such right or remedy may not be effective.

4.5.5 None of the communications made electronically would be upheld as evidence of proof by the courts in Turkey unless made in accordance with Article 7/a of the Law on Service of Process (Law No. 7201).

4.5.6 A power of attorney or appointment may be capable of being revoked despite its being expressed to be irrevocable.

4.5.7 No opinion is expressed or implied in relation to the accuracy of any representation or warranty given by or concerning any of the parties to the Agreement or whether such parties or any of them complied with or will comply with any covenant or undertaking given by them or the terms and conditions of any obligations binding upon them.

4.5.8 Pursuant to Article 6(8) of the Decree No. 32, a Party in this jurisdiction is required to enter into the Transactions under the Agreement with the intermediation of appropriate intermediary institution such as a bank or brokerage firm having a derivative licence issued by the CMB. Pursuant to an amendment, made by CMB and published in the Official Gazette dated 6 May 2011, No. 27926, on Article 53 of its Communiqué on Intermediary Activities and Principles with respect to Intermediary Institutions (Serial: 5, No: 46), acceptance of a request of a Party in this jurisdiction by an intermediary institution such as a bank or brokerage firm having a derivative licence to act as intermediary and effecting transfers under the Transactions through such an intermediary institution would be sufficient to comply with this requirement for derivative transactions traded outside Turkey except those based on the ISE indexes and securities traded at ISE.

4.5.9 We express no opinion on the binding effect of the Limited Recourse Provision.

4.5.10 An obligation may cease to exist if the obligor and the creditor of such obligation is the same person.

4.5.11 The incorporation, organisation, and legal existence of the branches and offices of a Party which are incorporated or established outside Turkey may be subject to the laws of the jurisdiction where they are incorporated or established.

4.5.12 The effectiveness of any provision of any of the Agreement which allows an invalid provision to be severed in order to save the remainder of the Agreement will be determined by the Turkish courts in their discretion. A Turkish court may not allow the severability clause to be effective if it considers that it is illegal, invalid or unenforceable.

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

4.5.13 This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library and whose terms of subscription give them access to this opinion (each a "subscribing member").

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

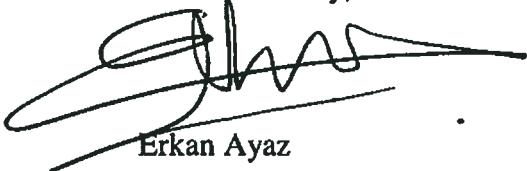
- (a) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, auditors and professional advisers of such affiliate;
- (b) any person to whom disclosure is required to be made by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

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

4.5.15 We accept responsibility to the Futures and Options Association and subscribing members in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we

assume any other duty or liability to the Futures and Options Association's members or their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the Futures and Options Association's members or their affiliates.

Yours faithfully,



A handwritten signature in black ink, appearing to read 'Erkan Ayaz'.

YEGİN CİFTÇİ ATTORNEY PARTNERSHIP

## SCHEDULE 1 BANKS

Subject to the modifications and additions set out in this Schedule 1 (*Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 1 (*Banks*), "Banks" means banks incorporated in this jurisdiction pursuant to the Banking Law.

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

### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1 The Bank is authorised to enter into Transactions pursuant to Article 4 of the Banking Law.
- 1.2 BRSA has neither revoked the license of such bank to engage in banking operations and/or to accept deposits nor transferred the management, supervision and control of the privileges of shareholders (excluding dividends) of such bank to the SDIF.

### 2. MODIFICATIONS TO OPINIONS

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

#### 2.1 Insolvency Proceedings:

- (a) The Banking Law sets out a detailed regime governing the insolvency and bankruptcy of banks in Turkey. The Banking Law grants broad powers to the BRSA and the SDIF. The BRSA has the authority to implement protective measures in cases of justified concern over a bank's insolvency.
- (b) In the event: (a) the aforementioned protective measures are not (in whole or in part) taken by that bank within a period of time set forth by the BRSA or in any case within 12 (twelve) months, (b) the financial structure of such bank cannot be strengthened despite having taken actions or the financial structure of such bank has become so weak that it could not be strengthened even action were taken, (c) the continuation of the activities of such bank would jeopardise the rights of the depositors, the participation fund owners and the security and stability of the financial system, (d) such bank cannot cover its liabilities as they become due, (e) the total amount of the liabilities of such bank exceeds the total amount of its assets, or (f) the controlling shareholders of such bank are found to have made use of that bank's resources for their own interests, directly or indirectly or fraudulently, in a manner that jeopardized the secure functioning of the bank or caused such bank to sustain a loss as a result of such misuse, then the BRSA, with the affirmative vote of at least five of its board members, may revoke the license of such bank to engage in banking operations and/or to accept deposits and transfer the management, supervision

and control of the privileges of shareholders (excluding dividends) of such bank to the SDIF.

- (c) If the licence of a bank to engage in banking operations and/or to accept deposits is revoked, then the relevant bank's management and audit will be taken over by the SDIF. Any and all enforcement and bankruptcy proceedings (including any preliminary injunction) against the bank would be stayed as from the date on which revocation of such bank's licence is published in the Official Gazette. From the date of revocation of the banking licence, the creditors of the bank may not assign their rights or take any action that could result in an assignment of their receivables and rights. The SDIF must take measures for the protection of the rights of depositors and other creditors of the bank. Accordingly, the SDIF may take various measures including sale, transfer or merger of such insolvent banks. The SDIF is required to pay insured savings deposit holders of the bank. The SDIF is also required and entitled to initiate bankruptcy proceedings against any bank whose banking license is revoked. Upon bankruptcy declaration of the relevant bank by a competent commercial court, the SDIF shall act as statutory receiver of the bankruptcy estate.
- (d) We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings.

### 3. ADDITIONAL QUALIFICATIONS

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

Pursuant to second paragraph of Article 57 of the Banking Law, Banks cannot engage in trading real property and commodity for commercial purposes save for the derivative contracts based on real property and commodity concluded in accordance with the provisions of the Capital Market Law and the trading of precious metals approved by the BRSA. Accordingly, the Banks cannot enter into a Transaction relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal (other than gold, silver and platinum) or agricultural product.

## SCHEDULE 2 INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 2 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies. For the purposes of this Schedule 2 (*Insurance Companies*), "Insurance Company" means insurance company in this jurisdiction pursuant to the Insurance Law.

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

### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

1.1 The UT has not revoked the license of such Insurance Company to engage in insurance operations.

### 2. MODIFICATIONS TO OPINIONS

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

#### 2.1 Insolvency Proceedings:

Pursuant to Article 10 of the Insurance Law, upon bankruptcy declaration of the relevant Insurance Company by the commercial court, the UT may replace the Insolvency Receiver. According to Article 10 of the Insurance Law, insurance claim by insured persons shall be preferred as third class claims in the distribution of bankruptcy estate.

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

### SCHEDULE 3 INVESTMENT FIRMS AND BROKER DEALERS

Subject to the modifications and additions set out in this Schedule 3 (*Investment Firms and Broker Dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are investment firms or broker dealers. For the purposes of this Schedule 3 (*Investment Firms and Broker Dealers*), "Investment Firm" (*yatırım ortaklığı*) means firms incorporated in this jurisdiction pursuant to Article 48 of the Capital Market law and Broker Dealer (*aracı kurum*) means broker firms incorporated in this jurisdiction pursuant to Article 43 of the Capital Market Law.

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

#### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1 The Broker Dealer (*aracı kurum*) or the Investment Company (*yatırım ortaklığı*) is authorised to enter into Transactions pursuant to derivative licence (*türev aracların alım satımına aracılık yetki belgesi*) it obtained from the CMB.
- 1.2 The Transactions are not fall within the scope of portfolio restrictions imposed by the CMB pursuant to Article 46 of the Capital Market Law.
- 1.3 CMB has neither revoked the license of such Investment Company or Broker Dealer to engage in investment or brokerage activities respectively.

#### 2. MODIFICATIONS TO OPINIONS

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

##### 2.1 Insolvency Proceedings:

- (a) The Capital Market Law sets out a detailed regime governing the insolvency and bankruptcy of the Investment Companies and the Broker Dealers in Turkey. The Capital Market Law grants powers to the CMB. The CMB has the authority to implement protective measures in cases of justified concern over financial strength of an Investment Company or a Broker Dealer.
- (b) In the event the aforementioned protective measures are not (in whole or in part) taken by that bank within a period of time set forth by the CMB or, (b) the financial structure of such an Investment Company or a Broker Dealer cannot be strengthened despite having taken actions or the financial structure of such an Investment Company or a Broker Dealer has become so weak that it could not be strengthened even action were taken, then the CMB may revoke the license of such Investment Company or Broker Dealer to engage in capital market operations and/or to act as intermediary institution and decide for gradual liquidation of the relevant Investment Company or Broker Dealer in accordance with Article 97 of the Capital Market Law.

- (c) The assets of such an Investment Company or a Broker Dealer shall not be transferred to third persons, or used as security, or used as guarantees, cannot be attached and all legal actions for collections of debts against that Investment Company or Broker Dealer shall automatically be stopped from the date when the CMB decides to remove the authority and license of such Investment Company or Broker Dealer until the date it is announced by the CMB that the gradual liquidation procedure for the relevant Investment Company or the Broker Dealer have been completed. The objective of a gradual liquidation is to liquidate the cash payments and delivery obligations of such an Investment Company or a Broker Dealer by setting aside the amount obtained by transforming the assets in kind or cash. If gradual liquidation of an Investment Company or a Broker Dealer is decided by the CMB, the liquidation of those entities shall be carried by the IIC under Article 86 of the Capital Market Law. During the gradual liquidation of an Investment Company or a Dealer, provisions of the Commercial Code and the Enforcement and Bankruptcy Law applicable to liquidation of a legal entity and other legislation shall not apply. The CMB is authorised to issue regulations in connection with the gradual liquidation of such an Investment Company or a Broker Dealer. The CMB can also decide to transfer the management of portfolios of such a Broker Dealer to another solvent Broker Dealer.
- (d) Pursuant to Article 86 of the Capital Market Law, the ICC shall determine the assets and liabilities of an insolvent Broker Dealer. The ICC is a public entity established under Article 83 of the Capital Market Law in order to protect the interest of investor in case of bankruptcy and liquidation of an Investment Company or a Broker Dealer. The rights and obligations arising from contracts with maturity dates after the date of CMB's gradual liquidation decision shall be determined as of their original maturity dates. Instead of contractual delay interest, the applicable delay interest shall be determined by the CMB.
- (e) For the Investment Company or the Broker Dealers which are not subject to gradual liquidation but for which a decision of bankruptcy has been made, payments shall be made by the IIC, with the approval of the IIC management, to the creditors for cash and share transaction listed in an exchange by taking into consideration the amount owed on the basis of amount traded in the relevant exchange.
- (f) We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings.

## SCHEDULE 4 INVESTMENT FUNDS

Subject to the modifications and additions set out in this Schedule 4 (*Investment Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 4 (*Investment Funds*), "Investment Fund" means investment fund (*yatırım fonu*) established in this jurisdiction pursuant to Article 52 of the Capital Market Law.

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

### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1 The founder of the Investment Fund is authorised to enter into Transactions pursuant to the permission it obtained from the CMB for the establishment of the Investment Fund.
- 1.2 The Transactions are not fall within the scope of portfolio restrictions imposed by the CMB for the management and operation of Investment Funds portfolios pursuant to the provisions of the Investment Fund Communiqué and the Transaction do not infringe the Investment Fund's statute (*fon içtüzüğü*) approved by the CMB.

### 2. MODIFICATIONS TO OPINIONS

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

#### 2.1 Insolvency Proceedings:

- (a) Under the laws of this jurisdiction, the Investment Funds do not have legal personality and therefore they are not subject to the Insolvency Proceedings. The assets of an Investment Fund are separate and segregated from the assets of its founder. The founder shall represent, manage and supervise the assets of the Investment Fund certificate holders invested in the relevant Investment Fund in accordance with the statutory agency contract between the founder and the Investment Fund certificate holders and the founder has fiduciary title over the assets of the Investment Fund certificate holders in the Investment Fund.
- (b) The assets of such Investment Funds cannot be pledged or provided as security pursuant to second paragraph of Article 53 of the Capital Market Law unless such security interest is created for the account of the Investment Fund in accordance with the provisions of the relevant Investment Fund's statute (*fon iç tüzüğü*) as Collateral for the borrowings, derivative transactions and similar transactions entered into on behalf of the Investment Fund.
- (c) Pursuant to Article 54 of the Capital Market Law, the CMB is entitled to take necessary measures in case of bankruptcy or liquidation of an Investment

Fund's founder or when the assets of an investment Fund is not sufficient to meet its obligations.

- (d) If the CMB determined that the founder's financial situation is deteriorated or the Fund is incapable of meeting its costs, the Fund may decide liquidation of Investment Fund's assets in accordance with its statute (*fon içtüzüğü*) approved by the CMB when it was established.

## SCHEDULE 5 PENSION FUNDS

Subject to the modifications and additions set out in this Schedule 5 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds. For the purposes of this Schedule 5 (*Pension Funds*), "Pension Fund" means a pension funds (*emeklilik yatırım fonu*) established by an individual retirement insurance company in this jurisdiction pursuant to Article 15 of the Individual Retirement Saving and Investment Law.

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

### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1 The founder of the Pension Fund is authorised to enter into Transactions pursuant to the permission it obtained from the CMB for the establishment of the Investment Fund for the statute (*fon içtüzüğü*) of the Pension Fund.
- 1.2 The Transactions are not fall within the scope of portfolio restrictions imposed by the CMB for the management and operation of Investment Funds portfolios pursuant to Article 17 of the Individual Retirement Saving and Investment Law and the Transaction do not infringe the Pension Fund's statute (*fon içtüzüğü*) approved by the CMB.

### 2. MODIFICATIONS TO OPINIONS

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

#### 2.1 Insolvency Proceedings:

- (a) Under the laws of this jurisdiction, the Pension Funds do not have legal personality and therefore they are not subject to the Insolvency Proceedings. The assets of a Pension Fund are separate and segregated from the assets of its founder. The founder shall represent, manage and supervise the assets of the Pension Fund certificate holders invested in the relevant Pension Fund in accordance with the statutory agency contract between the founder and the Pension Fund certificate holders and the founder has fiduciary title over the assets of the Pension Fund certificate holders in the Pension Fund.
- (b) The assets of such Pension Funds cannot be pledged or provided as security (apart from for those Transactions in relations to its portfolio) and they can neither be attached by third persons nor constitute a bankruptcy estate pursuant to Article 17 of the Individual Retirement Saving and Investment Law.
- (c) Pursuant to Article 19 of the Individual Retirement Saving and Investment Law, the CMB is entitled to transfer the assets of a Pension Fund to another individual retirement insurance company if it is determined that the founder's

financial situation is deteriorated or it has lost its qualifications as an individual retirement insurance company.

## SCHEDULE 6 INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 6 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 6 (*Individuals*), "Individuals" means real persons who are merchants. Pursuant to Article 43 of the Enforcement and Bankruptcy Law, real persons who are not merchants are not subject to Insolvency Proceedings and when such a non-merchant real person fails to pay his or her debt, debt collection proceedings set out in the Enforcement and Bankruptcy Law shall apply. Additionally, in our opinion, the enforceability and validity of the Netting Provision, Set-off Provisions and Title Transfer Provisions contained in an agreement on the terms of the forms specified in the Agreements or Clearing Agreements will not be upheld before a Turkish court pursuant to Articles 6 and 10 of the Consumer Law as those provisions will be considered as unfair contractual terms against the interest of a consumer (additionally, those are also incompliant with the mandatory provisions for consumer loans set out in Article 10 of the Consumer Law). Because protection of consumers in this jurisdiction is a public policy issue, Turkish law shall mandatorily apply to the Agreements and the Clearing Agreements. Under Article 3 of the Consumer Law Consumer is defined as persons purchasing a good or a service for unprofessional and non-commercial purposes. Consumers are not allowed to enter into cross border derivative Transactions pursuant to the provisions of the Decree No. 32.

Pursuant to Article 12 of the Commercial Law, merchant real persons are required to own and operate a commercial enterprise (*ticari işletme*). Commercial enterprises are enterprises set up by real or legal persons and which are commercially organised and have separate accounts for the purpose of engaging commercial activities. The real or legal persons managing and operating such commercial enterprises are considered to be merchants under Article 12 of the Commercial Code. These are the permanent organisations established for the purpose of generating profit by means of capital, equipment and labour. Merchants real persons must also registered at the trade registry (*ticaret sicili*) under Article 18 of the Commercial Code.

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

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

### 1. ADDITIONAL ASSUMPTIONS

We assume the following:

- 1.1 The Individual owns and operates a commercial enterprise (*ticari işletme*) as described in Article 12 of the Commercial Code and registered in the relevant Trade Registry as merchant (*tacir*).
- 1.2 The Individual is of full age (*reşit*) and able to make fair judgement (*mümeyyiz*).
- 1.3 The Individual has not entered into the Transactions under threat or duress.
- 1.4 The Individual is alive and has not been incapacitated by a competent court judgement or adjudicated by a competent court judgement to be represented by a

guardian (*vası*) or supervised by a statutory advisor (*yasal temsilci*) or an administrator (*kayyum*).

1.5 The Individual is domiciled and resident in Turkey.

**ANNEX 1**  
**FORMS OF FOA NETTING AGREEMENTS**

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

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

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

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

**ANNEX 2**  
**LIST OF TRANSACTIONS**

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

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

### ANNEX 3 DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

**"Clearing Agreement"** means an agreement:

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

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

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

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

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

- (a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or
- (b) any modified version of such clauses **provided that** it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow, together with the defined terms required properly to construe such Clause.

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

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

- (a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";
- (c) for the purposes of paragraph 3.5 (*Enforceability of the Addendum Netting Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";
- (d) for the purposes of paragraph 3.7.1, the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;
- (e) for the purposes of paragraph 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;
- (f) for the purposes of paragraph 3.8.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;
- (g) for the purposes of paragraph 3.8.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction

Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;

(h) for the purposes of paragraph 3.9 (*Set-Off under a Clearing Agreement with Addendum Set-Off Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision;

(i) for the purposes of paragraph 3.10.1, (i) in relation to an FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions; and

(j) for the purposes of paragraphs 3.10.3 and 3.10.4, the Title Transfer Provisions;

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

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

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

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

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

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

**"FOA Netting Agreement"** means an agreement:

(a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;

(b) which is governed by the law of England and Wales; and

(c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provision, and with or without the Title Transfer Provisions, with no Adverse Amendments.

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

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

- (a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);
- (b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);
- (c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;
- (d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);
- (e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);
- (f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or
- (g) any modified version of such clauses **provided that** it includes at least those parts of paragraph 1 of Part 1 (***Core Provisions***) of Annex 4 which are highlighted in yellow.

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

**"FOA Set-off Provisions"** means:

- (a) the "**General Set-off Clause**", being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (***Set-off***);

- (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (*Set-off*);
- (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (*Set-off*);
- (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (*Set-off*);
- (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (*Set-off*);
- (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (*Set-off*);
- (vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*);
- (viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*); or
- (ix) any modified version of such clauses **provided that** it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

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

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

- (a) where the FOA Member's counterparty is not a natural person:
  - (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);
  - (ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);
  - (iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);
  - (iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);
  - (v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive); or
  - (vi) **provided that** any modification of such clauses include at least those parts of paragraph 4 (a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and
- (b) where the FOA Member's counterparty is a natural person:
  - (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);
  - (ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);
  - (iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); or
  - (iv) any modified version of such clauses **provided that** it includes at least those parts of paragraph 4(b) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

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

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

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

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

**"Rehypothecation Clause"** means:

- (a) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (*Rehypothecation*);
- (b) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (*Rehypothecation*);
- (c) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (*Rehypothecation*);
- (d) any modified version of such clauses **provided that** it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

**"Non-Cash Security Interest Provisions"** means:

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

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

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

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); or
- (x) any modified version of such clauses **provided that** it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Client Money Additional Security Clause**" means:

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); or
- (x) any modified version of such clauses **provided that** it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

(b) any modified version of such clauses **provided that** it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

## ANNEX 4

PART 1  
CORE PROVISIONS

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

## 1. FOA Netting Provision:

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

## 2. General Set-Off Clause:

**"Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or

contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

### 3. Margin Cash Set-Off Clause:

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

### 4. Insolvency Events of Default Clause:

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

"The following shall constitute Events of Default:

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

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

"The following shall constitute Events of Default:

- i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two]

Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

- ii. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)."

## 5. Title Transfer Provisions:

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

## 6. Clearing Module Netting Provision / Addendum Netting Provision:

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

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

- (a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or

deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

- (b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;
- (c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[ or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from

[Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[ as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;
3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to

[Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[ and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

**"Aggregate Transaction Value"** means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be

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

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

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

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

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

collateral has been transferred by [Firm/Clearing Member] to Client and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement].

## 7. Clearing Module Set-Off Provision

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

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

## 8. Addendum Set-Off Provision

- (i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("CM Other Amounts"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "X" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("EP Other Amounts" and together with CM Other Amounts, "Other Amounts"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).
- (ii) For the purposes of this Section 8(ii):
  - (A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

- (B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and
- (C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

(iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

## PART 2 NON-MATERIAL AMENDMENTS

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

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<sup>1</sup> Counsel to delete and if any such provisions would alter agreement so as to prevent opinion from applying.

8. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.
9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).<sup>1</sup>
10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.
11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.
13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.
14. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.
15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.
16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

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

## PART 3 SECURITY INTEREST PROVISIONS

### 1. Security Interest Clause:

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

### 2. Power of Sale Clause:

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

### 3. Client Money Additional Security Clause

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

### 4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid."