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FOA NETTING PROJECT
Legal collateral opinion - Situs Version

The Futures & Options Association
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September 19, 2013

Dear Sirs,

You have asked us to give an opinion in respect of the federal laws of the United States and laws of the State of New York ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each, an "**Agreement**") or under an Equivalent Agreement (as defined below).

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 generally, Parties which are individuals resident in the United States ("**Individuals**");

1.1.2 corporations and partnerships (including limited liability companies, limited partnerships, general partnerships, and business trusts) established under the laws of any state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States that are subject to the U.S. Bankruptcy Code (the "**Bankruptcy Code**") but not subject to any specialized regulatory

scheme ("**Specified Companies**", and together with Individuals, "**Code Counterparties**");[1] and

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

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

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

1.2.1 Broker-dealers (Schedule 1);[2]

1.2.2 Banks (Schedule 2);

1.2.3 Covered Financial Companies (Schedule 3);

1.2.4 Receivership Covered Subsidiaries (Schedule 3);[3]

1.2.5 Covered Broker-Dealers (Schedule 3);

1.2.6 Federal Branches (Schedule 4);

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[1] Under the Bankruptcy Code, a "business trust" specifically qualifies as a corporation. See 11 U.S.C. § 101(9)(A)(v). Although the Bankruptcy Code does not define "business trust", courts have adopted several different interpretations of, and criteria for, the term. *See e.g.* White Family Cos. v. Dayton Title Agency, Inc., 284 B.R. 238, 255 (S.D. Ohio 2002) (adopting the Sixth Circuit's test in In re Kenneth Allen Knight Trust, 121 F.3d 708 (6th Cir. 1997) that a business trust must have "the primary purpose of transacting business or carrying on commercial activity for the benefit of investors ..."); In re Wayson Trust, 29 B.R. 58, 59 (Bankr. D. Md. 1982) (describing a business trust as "a voluntary pooling of capital by a number of people who are the holders of freely transferable certificates evidencing beneficial interests in the trust estate"); In re Parade Realty, Inc., 134 B.R. 7, 11 (Bankr. D. Law. 1991) (stating that a business trust "must have some of the significant attributes of a corporation, primarily the transferability of interests in the trust"); In re Universal Clearing House Co., 60 B.R. 985 (D. Utah 1986) (finding a business trust to apply where profit was the primary apparent motive, even in the presence of gross mismanagement and fraud).

[2] SIPC is a membership corporation the members of which are: all broker-dealers registered under Section 15(b) of the Securities Exchange Act of 1934, as amended, (the "**Exchange Act**"), other than (i) broker-dealers whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions, (ii) broker-dealers whose business consists exclusively of (a) the distribution of shares of registered open-end investment companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts, and (iii) broker-dealers who are registered under Section 15(b)(11)(A) of the Exchange Act. See 15 U.S.C. § 78ccc(a)(2)(A).

[3] Pub. L. No. 111-203, § 201(a)(9).

1.2.7 New York Branches (Schedule 5);

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

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

1.4 This opinion is given in respect of the Agreement when the Agreement is expressed to be governed by English law or, where expressly envisaged as an election in the relevant FOA Published Form Agreement, the laws of the State of New York.

1.5 In this opinion letter:

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

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

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

(b) which has broadly similar function to any of the Agreements listed in Annex 1;

(c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and

(d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

1.5.3 references to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments (as defined herein);

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

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

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

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

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions;

1.5.7 in other instances other than those referred to at 1.5.6 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge;

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

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

1.5.10 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and

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

2. ASSUMPTIONS

We assume the following:

2.1 That each Agreement is legally binding and enforceable against each Party under its governing law.

2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.

2.5 That the Agreement has been properly executed by both Parties.

2.6 That the Agreement is entered into prior to the commencement of any insolvency, bankruptcy or analogous proceedings in respect of either Party (an "**Insolvency Proceeding**").

2.7 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arm's length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.8 That the Agreement accurately reflects the true intentions of each Party.

2.9 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.

2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

2.11 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

2.12 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.

2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.

2.14 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

2.15 That under the Agreement (other than the Agreement containing Transfer of Title Provisions), the assets are pledged as collateral or performance bonds and the following applies:

(a) any cash comprising the Collateral is credited to an account established with the Firm for the benefit of Counterparties in the jurisdiction of the relevant currency and is further held in an account maintained with a depository institution ("**Cash Collateral Account**"); and

(b) any securities comprising the Collateral is credited to an account established with the Firm (and is further held in an account maintained under the control of the Firm for the benefit of Counterparty and other Counterparties).

2.16 That a Firm is a futures commission merchant registered with the U.S. Commodity Futures Trading Commission or is exempt from registration.

2.17 That a Firm will not have had prior notice of any adverse claims with respect to Collateral at the time a Counterparty transfers Collateral to the Firm.

2.18 That a Counterparty has valid rights in Collateral transferred to a Firm.

2.19 That any payments made by one Party or any security interest granted to a Firm in assets of a Counterparty were not taken by the relevant Party in contemplation of the other Party's insolvency or with the intent to hinder, delay or defraud the Party or the creditors of that Party.

2.20 That all obligations under the Agreement are mutual between the Parties in the sense that there are only two Parties and each is acting as a principal, is personally liable with regards to obligations owing by it and is the beneficial owner of obligations owed to it.

2.21 That any right or remedy that may be exercised, and any action taken or determination made, by either Party under or in connection with the Agreement or any Contract under the Agreement, will be exercised, taken or made in a commercially reasonable manner and in good faith.

2.22 That any liquidation of assets in connection with a set-off under the Agreement shall be conducted in accordance with the requirements of applicable law.

2.23 That Collateral would consist of cash ("**Cash Collateral**") and securities ("**Securities Collateral**").

2.24 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "**Equivalent Agreement**" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. OPINIONS

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

3.1 **Valid Security Interest**

3.1.1 Subject to our discussions and qualifications below, where New York law governs the attachment and perfection of a security interest in Collateral pledged by a Counterparty in connection with the Agreement, the Security Interest Provisions would create a valid security interest over the Collateral.

(a) **Governing Law.**

Under New York law, the provisions of Article 9 of the New York Uniform Commercial Code (the "**NYUCC**") govern the attachment and perfection of a security interest in collateral pledged to the secured party.

Generally, the choice of law rule set forth in Section 1-105 of the NYUCC would be applied with respect to attachment of a security interest in Securities Collateral, as well as with respect to the attachment of a security interest in the Cash Collateral. Section 1-105 of the NYUCC provides that where a transaction bears a reasonable relation to New York and also to another state or nation, the parties may agree that the law of New York or of such other state or nation is to govern their rights and duties.

With respect to the law governing the perfection of a security interest in Collateral, the effect of perfection or non-perfection, and the priority of a security interest in collateral generally would be determined by a New York court in accordance with Section 9-301 of the NYUCC, rather than the contractual provision agreed to by the parties. Under NYUCC § 9-301(b), while collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in that collateral.[4] Further, under NYUCC § 9-305, if collateral is transferred to a commodity or securities intermediary, such as a Firm, the effect of perfection or non-perfection would be governed by the law of a jurisdiction governing the agreement between the relevant intermediary and the customer.[5]

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[4] In addition, with respect to Cash Collateral, perfection of a security interest in a deposit account is governed by the local law of the "bank's jurisdiction", which the NYUCC defines as (a) the law of the jurisdiction designated as the bank's jurisdiction in the agreement governing the deposit account, (b) if no such jurisdiction is designated, the governing law of the agreement governing the deposit account, (c) if neither (a) nor (b) apply, the law of the place where the agreement or account statement states the account is to be maintained, and (d) if none of the foregoing applies, the law of the jurisdiction in which the chief executive office of the bank is located. See NYUCC § 9-304.

[5] See NYUCC §§ 9-305(a)(3), (b)(2). Further, regulations published by the United States Treasury (the "**TRADES Regulations**") govern the transfer and pledge of any U.S. Treasury bills, notes and bonds (collectively, "**Treasury Securities**"). The choice of law rule in the TRADES Regulations generally provides that the law of a securities intermediary's jurisdiction governs perfection and the effect of perfection of a security

Accordingly, as long as Collateral is located in New York, or, alternatively, if Collateral is transferred to a Firm in its capacity as a securities or commodity intermediary, and the Agreement calls for the application of New York law, a New York court would apply New York law to determine whether a security interest in Collateral transferred under the Security Interest Provisions was validly perfected.[6]

Alternatively, if neither Collateral is located in New York nor the Agreement calls for application of New York law, whether a security interest in Collateral transferred under the Security Interest Provisions was validly perfected would be determined in accordance with the laws of an applicable foreign jurisdiction (including with regard to the foreign jurisdiction's choice of laws doctrine, unless doing so would violate a fundamental principle of New York law or public policy of the State of New York).

(b) **Attachment**. Where New York law governs the attachment and perfection of a security interest in Collateral (as discussed under (a) above), a security interest would become legally enforceable by a Firm against a Counterparty upon the Parties entering into the Agreement containing the Security Interest Provisions. Under New York law, a security interest becomes legally enforceable against the debtor when it "attaches." As a matter of New York law generally, under Section 9-203 of the NYUCC, a security interest attaches when: (i) value has been given, (ii) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (iii) either the debtor has entered into a security agreement describing the collateral or the secured party has control of the collateral. These requirements would be satisfied, and the security interest would be enforceable between the Parties under New York law, without any further action by the relevant Firm, upon Parties entering into the Security Interest Provisions, because: (i) value would be viewed as given because of the continuing reciprocal obligations of the Firm and a Counterparty with respect to existing Transactions or because of the continued willingness of one or both of the parties to enter into new Transactions subject to entering into the Agreement containing the Security Interest Provisions; (ii) assuming that the Counterparty has rights in Collateral, the second element of a valid security interest will be also satisfied; and (iii) the Security Interest Provisions under each Agreement

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interest in Treasury Securities, as further governed by Article 9 of the NYUCC. See 31 C.F.R. § 357.11. A securities intermediary's jurisdiction would be the governing law specified in the agreement between the securities intermediary and its entitlement holder (or New York law with respect to the PW NY ETD Agreement). 31 C.F.R. § 357.11(b)(i).

[6] NYUCC § 9-301(b), (c).

describe the pledged Collateral, thereby satisfying the third element. Accordingly, under the Security Interest Provisions, a security interest in pledged Collateral would validly attach under New York law.

(c) **Perfection**. Where New York law governs the attachment and perfection of a security interest in Collateral (as discussed under (a) above), a security interest in Cash Collateral would become and remain legally enforceable by a Firm against third parties when it is transferred to such Firm by a Counterparty and is on deposit in the Cash Collateral Account. With respect to Securities Collateral, a security interest would become and remain legally enforceable by a Firm against third parties when (i) a Counterparty pledges Securities Collateral to the Firm, in its capacity as a commodity intermediary or securities intermediary, and that pledge continues or, alternatively, (ii) Securities Collateral is initially transferred by a Counterparty to the "control" of a Firm and remains under "control" of such Firm.

Under New York law, a security interest becomes generally enforceable against certain third parties when it is "perfected." With respect to Cash Collateral, a security interest would be perfected at the time it is transferred to the Firm and deposited in the Cash Collateral Account.[7]

With respect to Securities Collateral, pursuant to Section 9-309 of the NYUCC, a security interest in (i) investment property (which would include any securities collateral) created by a broker or securities intermediary or (ii) a commodity contract created by a commodity intermediary is perfected immediately upon attachment without any further action required by the debtor or the secured party.

In the event Securities Collateral is not transferred to a Firm in its capacity as a commodity or securities intermediary, a security interest in Securities

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[7] Under New York law, money deposited in a general account at a bank becomes the property of the bank. *See* Miller v. Wells Fargo Bank Int'l. Corp., 540 F.2d 548, 560 (1976). Consequently, a deposit account represents a claim by the depositor against the depository institution rather than an interest in physical money. A Firm would have "control" of the Cash Collateral Account (and the rights against the bank) and a perfected security interest in it because the Firm would be the bank's customer with respect to the Cash Collateral Account. NYUCC § 9-104(a)(3). Further, in the event that Cash Collateral held in the Cash Collateral Account is characterized as "money", rather than a "deposit account" for purposes of the NYUCC, a Firm would have a perfected security interest in the Cash Collateral because it would have possession of the "money." NYUCC §§ 9-312(b)(3) and 9-313(a). A Firm would have possession because it would have entered into a deposit account agreement with the depositary institution, whereby it had agreed to hold the funds for the benefit of the Firm. NYUCC § 9-313(c). We note that the New York bankruptcy court has held that in a context of an escrow arrangement, escrow funds deposited in a bank account continued to be deemed "money" for the purposes of the NYUCC. *See* In re O.P.M. Leasing Services, Inc. v. Blue Cross and Blue Shield of Greater New York., 46 B.R. 661 (Bankr. S.D.N.Y. 1985).

Collateral would be validly created and perfected, and would remain validly perfected under New York law without any further action by such Firm or a Counterparty, if Securities Collateral is initially transferred by a Counterparty to the "control" of a Firm and as long as it remains under "control" of such Firm. Under the NYUCC, a Firm, as a secured party, would have "control" of investment property if (i) in the case of a "security entitlement" (which would generally include book-entry securities) if it becomes the "entitlement holder" or the "securities intermediary" (which is the custodian) agrees that it will comply with "entitlement orders" originated by the Firm without further consent by the "entitlement holder" (as those terms are defined in the NYUCC); (ii) in the case of a certificated security in bearer form, if the security is delivered to such Firm; (iii) in the case of a certificated security in registered form, if the security is indorsed in blank to such Firm or registered in the name of the Firm and delivered to the Firm; and (iv) in the case of an uncertificated security, if it is delivered to the Firm or the issuer has agreed that it will comply with instructions from the Firm without further consent from the registered owner.

3.1.2 Subject to our discussions and qualifications in 3.1.1 above and 3.1.3 below, following the occurrence of an Event of Default, other than as a result of the opening of an Insolvency Proceeding, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty, **provided that** if an Event of Default occurs as a result of the opening of an Insolvency Proceeding under the Bankruptcy Code, the Solvent Party is (1) a "forward contract merchant"[8] (**"Forward Contract Merchant"**),

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[8] **"Forward contract merchant"** means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in Section 761 of the Bankruptcy Code) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade. See 11 U.S.C. § 101(26).

Under Section 761 of the Bankruptcy Code, "commodity" has the meaning assigned to that term in the Commodity Exchange Act (the **"CEA"**). See 11 U.S.C. § 761. In the CEA, the term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Section 13-1 of the CEA, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in. See 7 U.S.C. § 1a(4).

"commodity broker" [9] ("**Commodity Broker**") or a "financial participant" ("**Financial Participant**"),[10] each as defined under the Bankruptcy Code, and each Transaction documented under the Agreement is a "forward contract" ("**Forward Contract**")[11] or a "commodity contract" ("**Commodity Contract**"),[12]

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[9] "**Commodity broker**" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer with respect to which there is a Counterparty. See 11 U.S.C. § 101(6).

[10] "**Financial participant**" means an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions which are securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as all those terms are defined in the Bankruptcy Code), with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or a clearing organization (as defined in section 402 of FDICIA (12 U.S.C. § 4402)). See 11 U.S.C. § 101(22A).

[11] "**Forward contract**" means (A) a contract (other than a commodity contract as defined in Section 761 of the Bankruptcy Code) for the purchase, sale, or transfer of a commodity, as defined in Section 761(8) of the Bankruptcy Code, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in this Section), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement; (B) any combination of agreements or transactions referred to in subparagraphs (A) and (C); (C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B); (D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or (E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with Section 562 of the Bankruptcy Code. See 11 U.S.C. § 101(25).

[12] Under the Bankruptcy Code, the term "**commodity contract**" means "(A) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (B) with respect to a foreign futures commission merchant, foreign future; (C) with respect to a leverage transaction merchant, leverage transaction; (D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; (E) with respect to a commodity options dealer, commodity option; (F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and (ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization; (G) any combination of the agreements or transactions

each as defined in the Bankruptcy Code; or (2) a "swap participant" (a "**Swap Participant**"),[13] as defined under the Bankruptcy Code, and each Transaction documented under the Agreement is a "swap agreement", as defined under the Bankruptcy Code ("**Swap Agreement**").[14]

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referred to in this paragraph; (H) any option to enter into an agreement or transaction referred to in this paragraph; (I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or (J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562". See 11 U.S.C. § 761(4).

[13] "**Swap participant**" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor. See 11 U.S.C. § 101(53C).

[14] "**Swap agreement**" (A) means (i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is (I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; (II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; (III) a currency swap, option, future, or forward agreement; (IV) an equity index or equity swap, option, future, or forward agreement; (V) a debt index or debt swap, option, future, or forward agreement; (VI) a total return, credit spread or credit swap, option, future, or forward agreement; (VII) a commodity index or a commodity swap, option, future, or forward agreement; (VIII) a weather swap, option, future or forward agreement; (IX) an emissions swap, option, future, or forward agreement; or (X) an inflation swap, option, future, or forward agreement; (ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that— (I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and (II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value; (iii) any combination of agreements or transactions referred to in this subparagraph; (iv) any option to enter into an agreement or transaction referred to in this subparagraph; (v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements; to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or (vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and (B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, and the securities laws (as such term is defined in Section 3(a)(47) of the Securities Exchange Act). See 11 U.S.C. § 101(53B).

A Commodity Contract, a Forward Contract and a Swap Agreement are each defined to include any security agreements or other credit enhancement (but not to exceed the amount of damages under the relevant Commodity Contract, Forward Contract or Swap Agreement, as measured under Section 562 of the Bankruptcy Code).

Section 362(b)(6) of the Bankruptcy Code excepts from the automatic stay the exercise by a Forward Contract Merchant, Commodity Broker or Financial Participant of any contractual right under any security agreement or arrangement or other credit enhancement forming a part of or related to any Forward Contracts or Commodity Contracts. Further, Section 362(b)(17) of the Bankruptcy Code excepts from the Bankruptcy Code's automatic stay the exercise by a Swap Participant of any contractual right under any security agreement or arrangement or other credit enhancement forming a part of or related to any Swap Agreements.

3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realization of the Collateral would rank ahead of the interests of the Counterparty and all other claims (secured or unsecured) of an interest in the Collateral.

Under New York law, if a Firm maintains control of the Cash Collateral or Securities Collateral (as discussed in 3.1.1 above), it will have priority over all other creditors with respect to the proceeds of realization of such Collateral,[15] **provided that** such Firm does not have notice of any adverse claim prior to the Counterparty's pledge of Collateral to the Firm.[16] In addition, if the Securities Collateral is pledged through a securities intermediary, then pursuant to Section 8-511 of the NYUCC, if a Firm has obtained control over a security entitlement pledged to it by a securities intermediary, it will have priority over any other entitlement holders of such securities intermediary.

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[15] Under Section 9-317 of the NYUCC, a party with a prior perfected security interest has priority over unsecured parties and lien creditors, including a bankruptcy trustee. As for priority between secured parties with perfected security interests, Section 9-328(a) of the NYUCC provides that a secured party who has control over investment property has priority over a security interest of a secured party who does not have control, but rather perfects automatically or by filing a financing statement. This is true even if the security interest perfected by control was perfected after the security interest perfected automatically or by filing.

[16] With respect to Securities Collateral not subject to a system of security entitlements, whether certificated or uncertificated, Section 8-303 of the NYUCC provides that a secured party takes its interest in such securities free from adverse claims (*i.e.*, is a "protected purchaser"), if the secured party gives value, does not have notice of any adverse claim to the securities and obtains control of the certificated or uncertificated securities. With respect to Securities Collateral subject to a system of security entitlements, Section 8-502 of the NYUCC provides that an adverse claim may not be asserted against a secured party if the secured party gives value and does not have notice of the adverse claim.

3.2 **Further acts**

Where New York law governs the attachment and perfection of a security interest in Collateral (as discussed under 3.1.1(a) above), no further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

Under the NYUCC, after Counterparty's default, a Firm would be able to dispose of any or all of Securities Collateral pledged to it by a Counterparty under the Agreement and apply the proceeds against the amount owed to it by such Counterparty without notice to the Counterparty of the intended disposition, assuming such Securities Collateral is of a type customarily sold on a recognized market and such Firm does not elect to retain Securities Collateral in full or partial satisfaction of the Counterparty's obligations under the Agreement.[17] Disposition of Securities Collateral pledged pursuant to the Agreement, may be by public or private proceedings, if the disposition is done in a commercially reasonable manner.[18] Every aspect of a disposition of Securities Collateral (method, time, place and other terms) must be commercially reasonable.[19]

We are not aware of any formalities that a Firm would be required to observe in exercising its rights with respect to Cash Collateral under the Agreement, such as the right to liquidate upon Counterparty's insolvency.

3.3 **Foreign Collateral Providers**

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

3.4 **Right of Re-use**

Where New York law governs the attachment and perfection of a security interest in Collateral (as discussed under 3.1.1(a) above), with respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement

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[17] NYUCC § 9-610(a). Upon default, with respect to Collateral in its possession or control, a Firm has the rights and remedies contained in Section 9-207 of the NYUCC, and, to the extent not impermissible under the NYUCC, under the Security Interest Provisions. These rights and remedies are cumulative and may be exercised simultaneously. NYUCC § 9-610(c).

[18] NYUCC § 9-610(c). Section 9-627(b) of the NYUCC provides that if the secured party either sells the collateral in the usual manner on any recognized market or sells at the price current in such market at the time of such sale, or otherwise sells in conformity with reasonable commercial practices among dealers in the type of property sold, the secured party has in those cases sold in a commercially reasonable manner.

[19] NYUCC § 9-610(b). NYUCC § 9-611(d).

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

Section 9-314(c) of the NYUCC provides that a security interest in "investment property" is perfected from the time the secured party obtains control until (i) the secured party does not have control and (ii) one of the following occurs: (A) if the collateral is a certificated security, the debtor acquires possession of the certificate, (B) if the collateral is an uncertificated security, the issuer registers the debtor as the owner or (C) if the collateral is a security entitlement, the debtor becomes the entitlement holder. Thus, the secured party's loss of control does not affect perfection unless the debtor gains control. This provision recognizes that pledged securities may be repledged and rehypothecated.[20]

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

4. QUALIFICATIONS

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

4.1 We do not opine on the availability of any judicial remedy.

4.2 We are members of the bar of the State of New York and are not members of the bar of any other state, and our opinions are qualified by this fact.

4.3 This opinion letter does not address whether the Non-Defaulting Party may compel the Defaulting Party holding Collateral or any other party to transfer Collateral to (or at the direction of) the Non-Defaulting Party if the Collateral is held by the Defaulting Party.

4.4 The unenforceability or illegality of any provision of the Agreement (other than the Netting Provisions) would not undermine the efficacy of the remainder of the Agreement generally or of the Netting Provisions in particular under the laws of the State of New York and the Federal laws of the United States, so long as the unenforceable or illegal provision is incidental to the legal aspects of the Agreement and is not the main objective of the Agreement.[21]

4.5 This opinion relates only to the entities specified herein. We express no opinion with respect to the effect of the Trading with the Enemy Act, 50 U.S.C. app. § 1 *et seq.*, or the

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[20] NYUCC § 9-314, comment 3 (2005).

[21] *See* Donnell v. Stogel, 161 A.D.2d 93, 97-98 (N.Y. App. Div. 1990); Artache v. Goldin, 133 A.D.2d 596, 599 (N.Y. App. Div. 1987). *See also* Ferro v. Bologna, 31 N.Y.2d 30, 35-36 (1972).

International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*, on the rights or obligations of the Parties.

4.6 Our views are in all cases subject to equitable principles, whether applied in a proceeding at law or in equity.

4.7 This opinion letter is effective as of the date hereof. No expansion of our opinions may be made by implication or otherwise, and we provide no opinions other than the opinions herein expressly set forth. We do not undertake to advise you of any matter within the scope of this opinion letter that comes to our attention after the date hereof and disclaim any responsibility to advise you of any future changes in law, regulations, Rules or fact that may affect the above opinions.

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

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

Yours faithfully,

Clifford Chance US LLP

SCHEDULE 1
BROKER-DEALERS

Subject to the modifications and additions set out in this Schedule 1 (*Broker-dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Broker-dealers. For the purposes of this Schedule 1 (*Broker-dealers*), "***Broker-dealers***" means broker-dealers established under the laws of any state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, regardless of whether they are members of the Securities Investor Protection Corporation ("**SIPC**").[22]

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None.

2. ADDITIONAL ASSUMPTIONS

None.

3. MODIFICATIONS TO OPINIONS

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

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty; **provided, however**, that if the Defaulting Party is a Broker-dealer subject to an insolvency proceeding under the Securities Investor Protection Act ("**SIPA**"), the Non-Defaulting Party would be subject to any stay or other court

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[22] SIPC is a membership corporation the members of which are:

All broker-dealers registered under Section 15(b) of the Securities Exchange Act of 1934, as amended, (the "**Exchange Act**"), other than (i) broker-dealers whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions, (ii) broker-dealers whose business consists exclusively of (a) the distribution of shares of registered open end investment companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts, and (iii) broker-dealers who are registered under Section 15(b)(11)(A) of the Exchange Act. See 15 U.S.C. § 78ccc(a)(2)(A).

order prohibiting any foreclosure on Securities Collateral pledged by such Defaulting Party. This would not restrict foreclosure by the Non-Defaulting Party on any Cash Collateral.

SIPA provides that the filing of an application for a protective decree by SIPC with respect to a Broker-dealer or a court order or decree obtained by SIPC may operate as a stay of any foreclosure on, or disposition of, securities collateral pledged by such Broker-dealer in connection with a "qualified financial contract", including "forward contracts", "commodity contracts", and "swap agreements" (each as defined under SIPA).[23] If, however, an Insolvency Proceeding with respect to a Broker-dealer is conducted under the Bankruptcy Code, rather than under SIPA, the provisions of the Bankruptcy Code would apply and the Non-Defaulting Party would not be stayed from enforcing the Security Interest in respect of any Collateral as set forth above with respect to Code Counterparties.

4. ADDITIONAL QUALIFICATIONS

None.

5. MODIFICATIONS TO QUALIFICATIONS

None.

[23] See 15 U.S.C. § 78eee(b)(2)(C)(ii). We note that the definitions of a "forward contract", "swap agreement", and "commodity contract" have the same meaning both under SIPA and the Bankruptcy Code.

SCHEDULE 2
BANKS

Subject to the modifications and additions set out in this Schedule 2 (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 2 (Banks), "**Banks**" means Banks (including savings associations), established under the laws of any state of the United States, any territory of the United States, the District of Columbia, Puerto Rico, the Virgin Islands (or any other governmental unit defined as a "state" in the Federal Deposit Insurance Act, as amended (the "**FDIA**") or under the Federal laws of the United States, and which take deposits insured by the Federal Deposit Insurance Corporation ("**FDIC**").

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.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None.

2. ADDITIONAL ASSUMPTIONS

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

2.24. That a Firm has relied in good faith either on a resolution provided by the Counterparty's corporate secretary or assistant secretary or on a written representation from an officer of the level of vice president or higher as to the Counterparty's authority to enter into the Agreement and the Contracts thereunder.

3. MODIFICATIONS TO OPINIONS

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

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty, **provided that** each Transaction under the Agreement is a "qualified financial contract" (a "**QFC**"), which includes a "commodity

contract",[24] "forward contract"[25] or a "swap agreement"[26] (each as defined under the FDIA) and subject to the limitations noted below.

The FDIA provides, subject to the limitations noted below, that:

(a) in case of a receivership with respect to a Bank, a party to a QFC with the Bank shall not be stayed or prohibited from exercising:

(i) any rights under any security agreement or arrangement or other credit enhancement related to one or more QFC; and

(ii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more QFCs, including any master agreement for such QFCs;[27] and

(b) in case of a conservatorship with respect to a Bank, a party to a QFC with the Bank shall not be stayed or prohibited from exercising:

(i) any rights under any security agreement or other arrangement or other credit enhancement related to one or more QFC; and

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[24] Under the FDIA, the term "**commodity contract**" means "(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (II) with respect to a foreign futures commission merchant, a foreign future; (III) with respect to a leverage transaction merchant, a leverage transaction; (IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; (V) with respect to a commodity options dealer, a commodity option; (VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause; (VII) any combination of the agreements or transactions referred to in this clause; (VIII) any option to enter into any agreement or transaction referred to in this clause; (IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or (X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause." See 12 U.S.C. § 1821(e)(8)(iii).

[25] The definition of the term "**forward contract**" in the FDIA is substantially similar to the definition of Forward Contract in the Bankruptcy Code in fn. 11 above.

[26] The definition of the term "**swap agreement**" in the FDIA is substantially similar to the definition of Swap Agreement in the Bankruptcy Code in fn. 14 above.

[27] 12 U.S.C. § 1821(e)(8)(A)(ii)-(iii).

(ii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with such QFC.[28]

Under the FDIA, any counterparty to a QFC with a Bank benefits from the protective provisions in the FDIA for QFCs.

Limitations on Termination. The FDIA provides that the right to terminate, liquidate or accelerate a QFC based on the appointment of a receiver or a default by a Bank in a conservatorship may be exercised,[29] subject to the following limitations:

(a) a QFC with a Bank may not be terminated, liquidated or netted based solely on the appointment of a receiver for the Bank until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the receiver or after the Non-Defaulting Party has received notice that the QFC has been transferred pursuant to the FDIA;[30] and

(b) a QFC with a Bank may not be terminated, liquidated or netted based solely on the appointment of a conservator for that Bank.[31]

These exceptions are designed to allow the receiver or conservator to transfer the QFCs of the insolvent Bank to another financial institution.[32] Any such transfer must include all the QFCs with an individual counterparty or any affiliate of such counterparty. Therefore, the FDIC may only disaffirm or repudiate the QFCs to which a Bank is party if it does so with respect to all QFCs with an individual counterparty or any affiliate of such counterparty.

4. ADDITIONAL QUALIFICATIONS

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

None.

5. MODIFICATIONS TO QUALIFICATIONS

None.

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[28] 12 U.S.C. § 1821(e)(8)(E)(ii)-(iii).

[29] 12 U.S.C. § 1821(e)(8)(A)(i) and (E)(i).

[30] 12 U.S.C. § 1821(e)(10)(B)(i).

[31] 12 U.S.C. § 1821(e)(10)(B)(ii).

[32] For purposes of this discussion, the term "financial institution" means a broker-dealer, a depository institution, a futures commission merchant, or any other institution determined by the FDIC by regulation to be a financial institution. 12 U.S.C. § 1821(e)(9)(D).

SCHEDULE 3
COVERED FINANCIAL COMPANIES, RECEIVERSHIP COVERED SUBSIDIARIES AND COVERED BROKER-DEALERS

Subject to the modifications and additions set out in this Schedule 3 (*Covered Financial Companies, Receivership Covered Subsidiaries and Covered Broker-dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Covered Financial Companies and Receivership Covered Subsidiaries. For the purposes of this Schedule 3 (*Covered Financial Companies, Receivership Covered Subsidiaries and Covered Broker-Dealers*), "**Covered Financial Company**" means a "Financial Company" (defined below) for which a Systemic Risk Determination[33] has been made by the Secretary of the U.S. Treasury Department ("**Treasury Secretary**") in accordance with the Orderly Liquidation Authority ("**OLA**") set out in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[34] Covered Financial Companies do not include Banks.

A "**Financial Company**" is a company that (i) is organized under U.S. state or federal law and (ii) is (A) a bank holding company; (B) a non-bank financial company supervised by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**");[35] or (C) a company

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[33] The procedure for determining whether a Financial Company is a Covered Financial Company is the following. The FDIC and the Federal Reserve must both recommend an OLA proceeding. The Treasury Secretary (in consultation with the President) must then determine (a "**Systemic Risk Determination**") whether (1) the Financial Company is in default or danger of default; (2) the failure of the Financial Company and its resolution under otherwise applicable Federal or state law would have serious adverse effects on financial stability in the United States; (3) no viable private sector alternative is available to prevent the default of the Financial Company; (4) any effect on the claims or interests of creditors, counterparties, and shareholders of the Financial Company and other market participants as a result of actions to be taken under OLA is appropriate, given the impact that any action taken under OLA would have on financial stability in the United States; (5) the remedial actions under OLA would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system, the cost to the general fund of the U.S. Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the Financial Company; and (6) a federal regulatory agency has ordered the Financial Company to convert all of its convertible debt instruments that are subject to the regulatory order. If the Treasury Secretary makes this determination, the Financial Company will be a Covered Financial Company.

The Treasury Secretary, after making such Systemic Risk Determination, will notify the FDIC and the Covered Financial Company. If the Covered Financial Company consents, then the FDIC will be appointed as receiver. Otherwise, the Treasury Secretary will petition a federal court for an order authorizing the appointment of the FDIC as a receiver. If the court determines (subject to appeal) that the Treasury Secretary's determination is not arbitrary and capricious, or fails to make a determination within 24 hours, then the FDIC will be appointed as receiver.

[34] Pub. L. No. 111-203.

[35] A "non-bank financial company supervised by the Federal Reserve" is a company that is predominantly engaged in financial activities and supervised by the Federal Reserve but does not include a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971, a national securities exchange (or parent thereof), a clearing agency (or parent thereof, unless the parent is a bank holding company), a security-based swap execution facility, or a security-based swap data repository registered with the Securities Exchange Commission, a board of trade designated as a contract market (or parent thereof), a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap

predominantly engaged in activities that are financial in nature for purposes of the Bank Holding Company Act of 1956 (the "**BHCA**"), as determined by the Federal Reserve.[36] Company, for these purposes, includes any corporation, partnership, business trust or similar association.[37]

A "**Receivership Covered Subsidiary**" is a subsidiary of a Covered Financial Company subject to FDIC receivership, which is organized under U.S. federal or state law[38] and for which the FDIC has appointed itself as a receiver following a determination by the FDIC (discussed below) by the Treasury Secretary.[39]

A "**Covered Broker-Dealer**" is a Covered Financial Company that is a Broker-Dealer (registered with the SEC and a member of SIPA).

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None.

2. ADDITIONAL ASSUMPTIONS

None.

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execution facility or a swap data repository registered with the Commodity Futures Trading Commission. Pub. L. No. 111-203, § 102(a)(4)(C), (D).

[36] Pub. L. No. 111-203, § 201(a)(11). A company is not "predominantly engaged" in financial activities if "the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as [the FDIC], in consultation with [the Treasury Secretary] shall establish by regulation." In determining whether a company is a financial company, the consolidated revenues derived from the ownership or control of a depository institution shall be included. Id. § 201(b).

Under Section 4(k) of the BHCA, activities deemed to be "financial in nature" include, among others, (i) lending, exchanging, transferring, investing for others, or safeguarding money or securities, (ii) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, (iii) providing financial, investment, or economic advisory services, (iv) underwriting, dealing in, or making a market in securities, and (v) engaging in any activity that is determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board). 12 U.S.C. § 1843k.

[37] Pub. L. No. 111-203, § 201(a)(5); BHCA, § 2(b).

[38] Pub. L. No. 111-203, § 201(a)(1)(E).

[39] Pub. L. No. 111-203, § 201(a)(9).

3. MODIFICATIONS TO OPINIONS

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

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty, **provided that** each Transaction under the Agreement is a "qualified financial contract" (a "**QFC**"), which includes a "commodity contract",[40] "forward contract"[41] or a "swap agreement"[42] (each as defined under OLA) and subject to the limitations noted below.

OLA provides, subject to the limitations noted below, that upon commencement of an Insolvency Proceeding under OLA with respect to a Covered Financial Company (including Covered Broker-Dealers) or a Receivership Covered Subsidiary, a party to a QFC with the Covered Financial Company or a Receivership Covered Subsidiary shall not be stayed or prohibited from exercising:

(i) any right under any security agreement or arrangement or other credit enhancement related to one or more QFC; and

(ii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more QFCs, including any master agreement for such QFC's.[43]

Limitations on Termination. OLA provides that the right to terminate, liquidate or accelerate a QFC with a Covered Financial Company or a Receivership Covered Subsidiary based on the appointment of the FDIC as receiver will not be stayed or prohibited,[44] except that a QFC with a Covered Financial Company may not be terminated, liquidated or netted based solely on the appointment of the FDIC as receiver for the Covered Financial Company or a Receivership Covered

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[40] The definition of the term "**commodity contract**" in OLA is substantially similar to the definition of "commodity contract" in the FDIA in fn. 24 above.

[41] The definition of the term "**forward contract**" in OLA is substantially similar to the definition of Forward Contract in the Bankruptcy Code in fn. 11 above.

[42] The definition of the term "**swap agreement**" in OLA is substantially similar to the definition of Swap Agreement in the Bankruptcy Code in fn. 14 above.

[43] Pub. L. No. 111-203, § 210(c)(8)(A)(ii), (iii).

[44] Pub. L. No. 111-203, § 210(c)(8)(A)(i).

Subsidiary (i) until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the receiver or (ii) after the Non-Defaulting Party has received notice that the QFC has been transferred pursuant to OLA.[45]

4. ADDITIONAL QUALIFICATIONS

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

None.

5. MODIFICATIONS TO QUALIFICATIONS

None.

[45] Pub. L. No. 111-203, § 210(c)(10).

SCHEDULE 4
FEDERAL BRANCHES

Subject to the modifications and additions set out in this Schedule 4 (*Federal Branches*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Federal Branches. For the purposes of this Schedule 4 (*Federal Branches*), a "**Federal Branch**" means a branch of a non-U.S. bank established in the United States under the Federal laws of the United States.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None.

2. ADDITIONAL ASSUMPTIONS

None.

3. MODIFICATIONS TO OPINIONS

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

There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty, **provided that** each Transaction under the Agreement is a "qualified financial contract" (a "**QFC**"), which includes a "commodity contract",[46] "forward contract"[47] or a "swap agreement"[48] (each as defined under the FDIA).

If a Federal Branch takes deposits that are FDIC-insured, and if the Comptroller of the Currency ("**OCC**") appoints a receiver with respect to such Federal Branch, then such receiver will be the FDIC, in which case the proceedings in respect of the Federal Branch (and, potentially, in respect of all assets of the foreign bank in the United States) will be

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[46] The definition of the term "**commodity contract**" in the FDIA is set forth under fn. 24 above.

[47] The definition of the term "**forward contract**" in the FDIA is substantially similar to the definition of Forward Contract in the Bankruptcy Code in fn. 11 above.

[48] The definition of the term "**swap agreement**" in the FDIA is substantially similar to the definition of Swap Agreement in the Bankruptcy Code in fn. 14 above.

as described in Schedule 2 above in respect of a Bank. If the Federal branch does not accept FDIC-insured deposits, the receiver appointed by the OCC may "exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the [OCC]."[49] The National Bank Act and Federal law govern the winding up of a national bank and distribution of its assets.[50]

4. ADDITIONAL QUALIFICATIONS

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

None.

5. MODIFICATIONS TO QUALIFICATIONS

None.

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[49] 12 U.S.C. § 3102(j)(1).

[50] See American Surety Co. v. Bethlehem Nat'l Bank, 314 U.S. 314 (1941); Cook County National Bank v. United States, 107 U.S. 445 (1883).

SCHEDULE 5
NEW YORK BRANCHES

Subject to the modifications and additions set out in this Schedule 5 (*New York Branches*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are New York Branches. For the purposes of this Schedule 5 (*New York Branches*), "**New York Branch**" means a branch of a non-U.S. bank in the State of New York established under the laws of the State of New York.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None.

2. ADDITIONAL ASSUMPTIONS

None.

3. MODIFICATIONS TO OPINIONS

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

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral in the event of the opening of an Insolvency Proceeding with respect to the Counterparty, **provided that** each Transaction under the Agreement is a "qualified financial contract" (as such term is used in the New York State Banking Law ("**NYBL**")), which includes "forward contracts", "swap agreements" and "commodity contracts".[51]

Under Section 606(4)(a) of the NYBL, the New York Superintendent of Banks (the "**Superintendent**") may take possession of the business and property in New York of a

[51] Under § 618-a(2)(e)(i) of the NYBL "**qualified financial contract**" means any securities contract, commodity contract, forward contract (including spot and forward foreign exchange), repurchase agreement, swap agreement, and any similar agreement, any option to enter into any such agreement. (None of the foregoing terms is defined in the NYBL or regulation.) Under the NYBL a "qualified financial contract" also includes any combination of the foregoing, and any master agreement for such agreements, as well as other agreements determined by the Superintendent to be qualified financial contracts, provided that such agreements satisfy certain documentary requirements.

foreign bank with a New York licensed branch when the foreign bank is insolvent, in liquidation in its home jurisdiction, or under certain other circumstances. The Superintendent is permitted to satisfy the claims of creditors of the foreign bank who have entered into transactions with the New York licensed branches of the foreign bank out of such business and property of the foreign bank in New York (referred to herein as "**ring-fencing**").[52]

Section 619.1(d)(2)(i) of the NYBL provides that the Superintendent's taking possession of a New York Branch does not operate as a stay or as an injunction against the termination of a "qualified financial contract" in accordance with its terms. In addition, Section 618-a of the NYBL provides that a party to a "qualified financial contract" with a New York Branch may apply all collateral in which such party has a perfected security interest in satisfaction of any claims secured by the collateral in connection with the termination or liquidation of that "qualified financial contract" in accordance with the terms thereof, **provided that** such amount may not exceed the total net payment obligation of the New York Branch under the "qualified financial contract".

4. ADDITIONAL QUALIFICATIONS

None.

5. MODIFICATIONS TO QUALIFICATIONS

None.

[52] Where the N.Y. branch takes FDIC – insured deposits, the Superintendent may elect to appoint the FDIC as receiver and the resulting proceedings would be the same as those applicable to a Bank. Claims from other offices, agencies or branches of, and affiliates of the foreign bank are excluded from the ring-fence.

ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")

2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")

3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")

4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")

5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")

6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")

7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")

8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")

9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

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

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

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

CLIFFORD
CHANCE

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).

2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).

3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).

4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.

5. "**Core Provisions**" means:

   (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and

   (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.

6. "**Rehypothecation Clause**" means:

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

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

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

   (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

7. "**Security Interest Provisions**" means:

(a) the "**Security Interest Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

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

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

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

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (***Power to charge***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (***Power to charge***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (***Power to charge***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (***Power to charge***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (***Power to charge***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (***Power to charge***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (***Power to charge***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

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

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); and

(x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(d) the "**Power of Appropriation Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (***Power of appropriation***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (***Power of appropriation***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (***Power of appropriation***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (***Power of appropriation***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (***Power of appropriation***)

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (***Power of appropriation***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (***Power of appropriation***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(e) the "**Lien Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (***General lien***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (***General lien***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (***General lien***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (***General lien***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (***General lien***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and

(f) the "**Client Money Additional Security Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

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

ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (*e.g.*, addressing the other party as "you", "Counterparty", "Party A/Party B") provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

2. Any change to a provision or provisions by defining certain key terms (*e.g.*, party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

3. An addition to the list of events that constitute an Event of Default (*e.g.* without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.

4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of *e.g.* 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.

5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.

7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.