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26 February 2013

Dear Sirs,

Netting Analyser library

You have asked us to give an opinion in respect of the laws of The Netherlands ("**this jurisdiction**") in respect of the enforceability and validity of the Security Interests given under agreements in the forms specified in Annex 1 to this opinion letter (each referred to in this opinion letter as the "**Agreement**") or under an Equivalent Agreement (as defined below). Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

- 1.1.1 generally, in respect of Parties which are entities duly incorporated under the laws of this jurisdiction (in particular the Dutch Civil Code) as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and which have their COMI in The Netherlands at all relevant times (not being a Dutch Credit Institution, a Dutch Insurance Company or any of the entities dealt with in the Schedules to this opinion).

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1.1.2 for purposes of 3.4 below, in respect of the entities referred to in such paragraph;

1.1.3 generally to a "**Dutch Credit Institution**" meaning a company that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and has a license to engage in the business of a bank pursuant to article 2:12 of the FMSA; and

1.1.4 generally to a "**Dutch Insurance Company**" meaning a company that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with a license to engage in the business of an insurance company pursuant to article 2:31 of the FMSA;

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.4 to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

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

1.2.1 a "**Dutch Pension Fund**" meaning a pension fund (*pensioenfonds*) as defined in and authorized pursuant to the Pension Act (*Pensioenwet*) that is duly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*), as a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) or as a foundation (*stichting*) which has its COMI in The Netherlands at all relevant times (Schedule 1);

1.2.2 an "**Individual**" meaning a person resident in The Netherlands (Schedule 2);

1.2.3 an "**Investment Firm**" meaning an investment firm (*beleggingsonderneming*) as defined in Article 1:1 FMSA that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and which is licensed under the FMSA and has its COMI in The Netherlands at all relevant times; an Investment Firm may include a broker dealer (Schedule 3);

1.2.4 an "**Investment Fund**" meaning either (i) a custodian (*bewaarder*) represented by the manager (*beheerder*) both acting for the account of an investment fund (*beleggingsfonds, a.k.a. fonds voor gemene rekening (FGR)* hereinafter an "**FGR Investment Fund**") or (ii) an investment company (*beleggingsmaatschappij*) represented by a manager (*beheerder*) (hereinafter an "**Investment Company**"), all such custodians and managers in any case validly incorporated under the laws of this jurisdiction as a public limited

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liability company (*naamloze vennootschap*), a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) or a foundation (*stichting*) and having a license (or being exempt) to engage in such business under the FMSA or otherwise meeting the requirements imposed by (or being exempt from) the FMSA; FGR Investment Funds and Investment Companies may include a hedge fund, a sovereign wealth fund, an investment company with variable capital and a UCITS (Schedule 4);

- 1.2.5 a "**Partnership**" meaning either a general partnership (*vennootschap onder firma; VOF*) or a limited partnership (*commanditaire vennootschap; CV*) in each case established under Dutch law and having its COMI in this jurisdiction provided each Managing Partner of such Partnership also has its COMI in this jurisdiction (Schedule 5).
- 1.2.6 "**Sovereign and public sector entities**", namely the Dutch State, Provinces, Municipalities, Waterboards and Local Government Entities (Schedule 6);
- 1.2.7 "**Charitable foundations**" meaning charitable legal entities duly incorporated under Dutch law as a "*stichting*" (Schedule 7);

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

1.3 For the avoidance of doubt, this opinion does not extend to:

- (i) building societies as described in your instruction letter as such concept does not exist in The Netherlands;
- (ii) limited liability partnerships as such concept does not exist in The Netherlands;
- (iii) any religious entities (*kerkgenootschappen*);
- (iv) any international or supranational organisations;
- (v) any trusts;
- (vi) any regulatory authorities or central banks.

1.4 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

1.5 This opinion letter relates solely to matters of Dutch law and does not consider the impact of any laws (including insolvency laws) other than Dutch law, even where, under Dutch law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by Dutch law and relate only to Dutch law as applied by the Dutch courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by Dutch law. We express no opinion in this opinion letter on the laws of any other

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jurisdiction (including, for the avoidance of doubt, the laws of Curaçao, Aruba, Bonaire, St. Maarten, St. Eustatius or Saba).

- 1.6 We express no opinion as to any provisions of the Agreement other than those to which express reference is made in this opinion letter.
- 1.7 In this opinion 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.
- 1.8 Terms defined in the Agreement have the same meaning in this Opinion. Annex 3 contains further definitions of terms.
- 1.8.1 The procedures referred to in paragraph 3.1 are together called "**Insolvency Proceedings**".
- 1.8.2 A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**".
- 1.8.3 "**Insolvency Representative**" means a liquidator (*curator*) during a bankruptcy (*faillissement*) or an administrator (*bewindvoerder*) during a moratorium of payments (*surseance van betaling*) in the sense of the BA or an administrator within the meaning of Emergency Measures.
- 1.8.4 "**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 Agreement listed in Annex I;
 - (c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
 - (d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);
- References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;
- 1.8.5 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- 1.8.6 A reference to a "**paragraph**" is to a paragraph of this Opinion;

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- 1.8.7 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions; and
- 1.8.8 "**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.
- 1.8.9 in instances other than those referred to at 1.8.8 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- 1.8.10 a reference to "**Core Provisions**" includes Core Provisions that have been modified by Non-Material Amendments.
- 1.9 The opinions given in this opinion letter are given on the basis of the assumptions set out in paragraph 2 and are subject to the qualifications and qualifications set out in paragraph 4 to this opinion letter. The opinions given in this opinion letter are strictly limited to the matters stated in paragraph 3 and do not extend to any other matters.

2. ASSUMPTIONS

We assume the following:

- 2.1 That under the laws of England or the State of New York to which they are expressed to be subject and under all other relevant laws (other than those of The Netherlands):
- 2.1.1 the Agreement constitutes and will at all times constitute valid and legally binding obligations of both Parties thereto, enforceable against each of them in accordance with its terms;
 - 2.1.2 the Security Interest Provisions are enforceable to create a Security Interest.
- 2.2 That each Party has the capacity (corporate, regulatory or otherwise), power and authority under all applicable law(s) (including those of this jurisdiction) to enter into the Agreement and any Transactions; to perform its obligations or exercise its rights under the Agreement and any Transactions (and, more specifically, the Collateral does not belong to a client of a Counterparty which is subject to article 4:87 FMSA unless an exemption applies); and that each Party has taken all necessary steps to validly execute, deliver and perform the Agreement.
- 2.3 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required by the laws of this or any other jurisdiction to enable it lawfully to enter into and perform its obligations under

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- the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- 2.4 That each Party (excluding any Individuals and any Partnership but including each partner of a Partnership), is duly incorporated as a legal entity or, in case of a Partnership, duly formed as a Partnership and validly existing and in good standing (where such concept is legally relevant to its capacity) under the laws of its jurisdiction of incorporation and of the jurisdiction of its place of business.
 - 2.5 That the Agreement has been properly executed by both Parties.
 - 2.6 That the Agreement is entered into and each of the Transactions and each creation of a Security Interest is carried out prior to the formal commencement of any Insolvency Proceedings against either Party and, at the time at which the Agreement or any Transaction are entered into or the relevant creation of a Security Interest was performed, neither Party was aware that an Insolvency petition in respect of the other Party had been filed.
 - 2.7 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidates the enforceability or effectiveness of the Security Interest Provisions or the Rehypothecation Clause under the governing law of the Agreement.
 - 2.8 The Agreement has been entered into, each of the Transactions is carried out and each security interest over Collateral referred to therein is created by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
 - 2.9 That the Agreement accurately reflects the true intentions of each Party.
 - 2.10 That the obligations assumed under the Agreement and the Transactions are 'mutual' between the Parties, in the sense that they (a) arise between the Parties acting in the same capacity and as principals and not as agents, (b) are not assigned to one of the Parties by a third party and (c) are not assigned, pledged or otherwise encumbered by one of the Parties to a third party or otherwise transferred to a third party.
 - 2.11 That each Party when charging Collateral pursuant to the Security Interest Provisions, will have full legal title to such Collateral, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).
 - 2.12 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the Security Interests thereunder pursuant to laws of any jurisdiction (other than this jurisdiction) have been duly fulfilled, performed and effected.
 - 2.13 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

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- 2.14 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.
- 2.15 That, except with respect to our opinion at paragraph 3.4, 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.
- 2.16 That, the Netherlands courts will, in giving effect to the choice of law provisions in the Agreement, apply English or New York law correctly.
- 2.17 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. OPINION

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

3.1 Insolvency Proceedings

3.1.1 General

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

- (a) bankruptcy (*faillissement*), as referred to in and governed by title I of the BA;
- (b) moratorium of payments (*surseance van betaling*) as referred to in and governed by title II of the BA;
- (c) Emergency Measures in respect of Regulated Entities; as referred to in and governed by title 3.5.5 of the FMSA;
- (d) Transfer Measures in respect of a Dutch Credit Institution or a Dutch Insurance Company; and
- (e) WSNP Procedures in respect of Individuals as referred to in and governed by title III of the BA.

3.1.2 Bankruptcy: general overview

Bankruptcy is a general attachment on (practically) all of the assets of a debtor, imposed by a judgment of the appropriate Dutch court (*rechtbank*) for

the benefit of the insolvent debtor's collective creditors. The objective of the bankruptcy is to provide for an equitable liquidation and distribution of (the proceeds of) the debtor's assets among its creditors. In practice, however, bankruptcy proceedings serve as an important instrument for the reorganisation and continuation of businesses in financial distress.

According to the BA, bankruptcy proceedings can be opened in respect of any debtor, natural or legal person, regardless of whether he carries on a business, practises an independent profession or not.

The BA does not provide for the consolidation of bankruptcy proceedings opened in respect of companies belonging to the same group. However, there are some examples of cases in which courts have allowed such consolidation.

If a bankruptcy proceeding is opened, the Insolvent Party loses the right to manage and dispose of his assets with retroactive effect to 00.00 hrs. of the day the bankruptcy order is issued. The court appoints a receiver who is charged with the management and realisation of the Insolvent Party's assets (including by means of a transfer of (part of) the business as a going concern). The receiver acts under the general supervision of a supervisory judge (*rechter-commissaris*). For certain acts of the receiver the law requires the (prior) authorisation of the supervisory judge, e.g. for conducting legal proceedings and for terminating employment and rental contracts. The estate is not liable for obligations incurred by the Insolvent Party after the bankruptcy adjudication, except to the extent that such obligations arise from transactions that are beneficial to the estate.

3.1.3 Moratorium of payments: general overview

Moratorium of payments is a court ordered general suspension of a debtor's payment obligations; its objective is to provide an instrument for the reorganisation and continuation of viable businesses in financial distress. It is available only at the request of the debtor and only has effect in respect of ordinary (non-secured and non-preferred) creditors. During the period for which the moratorium of payments has been granted, creditors with non-preferential claims cannot take recourse in respect of the debtor's assets.

Moratorium of payments proceedings can be opened in respect of natural persons carrying on a business or practising an independent profession and juristic persons. The moratorium of payments may be granted by the court for a maximum period of one and a half years and may be prolonged at the request of the debtor (if necessary more than once) with a maximum of one and a half years.

As a result of the granting of a moratorium of payments, the debtor can no longer manage and dispose of its assets without the co-operation or authorisation of a court appointed administrator. Likewise, the administrator cannot act without the co-operation or authorisation of the debtor. The moratorium of payments order has retroactive effect to 00.00hrs of the day it has been issued. In a moratorium of payments proceeding, the court may

appoint a supervisory judge, whose role is limited to regulating certain procedural matters and advising the administrator upon his request.

3.1.4 Regulated Entities: Emergency Measures

The BA is applicable to Dutch Credit Institutions and Dutch Insurance Companies (as well as to Dutch branches of Third Country Credit Institutions and of Third Country Insurance Companies). However, the FMSA provides a substitute procedure to the BA's moratorium of payments (*surseance van betaling*) in respect of Regulated Entities.

In relation to such Regulated Entities, (i) the FMSA provides that DNB may petition a Dutch court for the application of Emergency Measures to such a Regulated Entity and (ii) the BA provides that no third party (but only DNB) can file a petition for the bankruptcy of such a Regulated Entity. In relation to a Third Country Credit Institution and a Third Country Insurance Company, Emergency Measures only encompass the business activities conducted from the branch(es) in this jurisdiction.

Emergency Measures are comparable to a moratorium of payments and a number of the BA's provisions apply thereto *mutatis mutandis*; the court appoints one or more administrators in order to restore order to the business of the Regulated Entity and these administrators do not require the cooperation of the Regulated Entity's management in taking the decisions which they consider in the interests of creditors. At any time during Emergency Measures, the court may authorise the administrators to transfer the Regulated Entity's business in whole or in part to another institution or to wind it up and may issue a bankruptcy order in respect of the Regulated Entity. The Emergency Measures under the FMSA do not affect the analysis set out in this legal opinion.

3.1.5 Transfer Measures & Special Measures

Since 1 July 2012, the FMSA has been amended to create a new framework for dealing with distressed financial institutions. The FMSA grants power to DNB and the Dutch Minister of Finance to take Resolution Measures, enabling them to deal with, *inter alia*, ailing Dutch Credit Institutions, Dutch Insurance Companies, Third Country Credit institutions and Third Country Insurance Companies prior to insolvency.

DNB can (i) transfer of all or part of the business (including deposits) of a Dutch Credit Institution, Dutch Insurance Company, Third Country Credit Institution or Third Country Insurance Company to a private sector purchaser, or (ii) transfer of all or part of the business of a Dutch Credit Institution, Dutch Insurance Company, Third Country Credit Institution or Third Country Insurance Company to a "bridge institution". DNB can submit a plan for such a transfer to the Dutch courts in the following situations:

- (a) if DNB petitions for the bankruptcy of such an entity;

- (b) during the bankruptcy of such an entity;
- (c) if DNB petitions for the application of Emergency Measures;
- (d) during the application of the Emergency Measures; or
- (e) if DNB petitions for the application of Transfer Measures.

Upon the court having approved the Transfer Measures, it will appoint one or more administrators charged with the execution of the transfer.

If the creditworthiness of a Dutch Credit Institution, a Dutch Insurance Company, or any other regulated entity qualifying as financial institution (*financiële onderneming*) within the meaning of the FMSA threatens the stability of the Dutch financial sector, the Dutch Minister of Finance can take Special Measures, which could include public ownership (nationalisation) of or any other measures in relation to the affected entity.

3.1.6 Confirmation of Events of Default

We confirm that the events specified as Events of Default in the Agreement adequately refer to all Insolvency Proceedings, without the need for any additions.

3.2 Valid Security Interest

- 3.2.1 The Security Interest Provisions¹ would create a valid Security Interest over the Collateral.
- 3.2.2 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.
- 3.2.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.
- 3.2.4 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein.

¹ For the purpose of this paragraph 3.2 and the remainder of this opinion, the term "Security Interest Provisions" shall be deemed to exclude the Power to Charge Clause as this does not effect a Security Interest.

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3.3 Further acts

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

3.4 Foreign Collateral Providers

Moreover, the opinions given at paragraphs 3.2 and 3.3 also apply in respect of any Counterparty that is not established or resident in this jurisdiction, where any accounts or assets expressed to be subject to a Security Interest pursuant to the Security Interest and Provisions are located within this jurisdiction.

3.5 Right of re-use

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

The opinion given at this paragraph 3.5 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 ***General Conflicts Rule for Security Interests***

4.1.1 The proprietary effects, creation and perfection requirements, requirements for rendering the Security Interest Provisions effective against third parties, and the steps required for the enforcement of the Security Interests, will, as a matter of Dutch private international law, be governed by the following laws:

(a) book-entry securities in an account in the name of the Counterparty:

the laws of the country in which the "relevant account" (*rekening waarin effecten worden geadministreerd* as referred to in article 10:141 of the Dutch Civil Code)² is maintained; in the event that the relevant account is

² Neither article 9 of the Collateral Directive nor article 10:141 of the Dutch Civil Code specifies the manner of determining the "relevant account". According to the Dutch State Committee on Private International Law as cited in the legislative history of (the substantially identical predecessor of) article 10:141 of the Dutch Civil Code, relevant intermediaries who administer accounts in securities in book entry form (*giraal overdraagbare effecten*) are credit institutions, central securities depositories and securities clearing companies such as Euroclear and Cedel (currently Clearstream). Obviously, it is the intermediary which makes the relevant transfer or other alteration in the client's account which qualifies as the relevant intermediary. In a chain of intermediaries and sub-custodians it will typically be the intermediary which executes the client's booking order which will be the relevant intermediary, not the intermediary ultimately holding the physical securities.

maintained in an EU Member State, the matters above would be governed by the law of that Member State (including the laws implementing the FCD).³

(b) cash in an account in the name of the Counterparty:

the law applicable to the contract containing the obligation to create the Security Interest. The laws governing the claims arising from the account relationship only determine whether they are capable of being assigned or encumbered with a Security Interest and to whom the account bank can validly discharge its debt⁴. Therefore, in relation to *in personam* rights in respect of cash in an account, the proprietary aspects of a Security Interest depend solely upon the law applicable to the contract containing the obligation to create the security interest, in this case the Agreement. Thus even in respect of cash Collateral in an account in The Netherlands the proprietary aspects of creating a Security Interest would be determined by English or New York law, regardless of whether the Counterparty is incorporated or resident in this jurisdiction or not. English law will then also determine whether the Security Interest qualifies as a financial collateral arrangement.

- 4.1.2 The courts of The Netherlands would therefore not necessarily recognize the validity of Security Interests merely because they are valid under the governing law of the Security Interest Provisions. Such courts would determine the validity of a Security Interest in accordance with the laws designated by the conflict rules outlined in 4.1.1 above for the proprietary aspects of security interests.

4.2 ***Financial Collateral Arrangements: Qualifying Parties***

4.2.1 Collateral held Outside The Netherlands

Financial collateral arrangements will only benefit from the FCA Rules if at least one of the parties falls within one of several specified categories and the other party is not a private individual acting in a private capacity. It is not entirely clear when – in an international transaction – the eligibility requirements of the FCA Rules are applicable. An argument can be made that where the property law aspects of the Collateral are governed by the law of another jurisdiction, the limitations as to the qualifying parties imposed by the FCA Rules are not applicable.

³ Regarding the location of the relevant account, there are strong arguments to support the view that the location agreed upon by the account holder and the securities intermediary is decisive for locating a securities account. In case parties have not agreed upon the location of the account, the location can be assumed to be the location where the securities are held according to the administration of the intermediary (*Tekst & Commentaar Vermogensrecht (2011)*, art. 10:141 BW, aant. 2). In case an international transaction makes use of a chain of accounts, meaning that the transaction must be administered in multiple accounts, article 10:141 does not make clear whether the designated law governs such an entire transaction or whether the applicable law should be determined for each link in the transaction. In general, it is assumed that the latter is the case: the applicable law should be determined for each link.

⁴ Art. 14 Rome I.

Therefore, in our view, where the non-cash Collateral is administered in an account held in another EU member state outside The Netherlands (see paragraph 4.1.1(a)) or where the obligation to create a Security Interest over cash Collateral is governed by a law other than Dutch law (see 4.1.1(b)), the limitations as to the qualifying parties imposed by article 7:52 DCC (see 4.2.2. below) are not applicable.

4.2.2 Dutch Law Collateral

If Dutch law does govern the proprietary aspects of the Security Interests, a financial collateral arrangement as contemplated under the Agreement will only benefit from the FCA Rules if at least one of the parties is a qualifying party and the other is not a private individual acting in a private capacity.⁵

4.2.3 Qualifying Collateral

The only categories of Collateral which can benefit from the provisions of the FCD and/or the FCA Rules are cash (if it qualifies as "cash" as defined in article 2(d) of the FCD) and book-entry securities as defined in article 2(g) of the FCD in an account maintained in an EU Member State. In The Netherlands this effectively limits the availability of a financial collateral arrangement to Dutch Securities. Non-cash Collateral that does not qualify for the benefits of the FCD, is dealt with in 4.4 below.

4.3 *Laws Governing Security Interest over Collateral*

Dutch Law governs proprietary aspects of Security Interests over non-cash Collateral

4.3.1 Should non-cash Collateral consist of book-entry securities held in an account maintained in the Counterparty's name in The Netherlands, this leads to the conclusion that Netherlands law will determine the proprietary effects of the Security Interest contemplated by the Agreement. In such event Dutch law will mandatorily determine:

⁵ Qualifying parties are the following:

- a public authority, including public sector bodies of member states of the European Union charged with or intervening in the management of public debt;
- a public sector body of an EU member state authorised to hold accounts for customers;
- a central bank, the European Central Bank, the Bank of International Settlements, a multilateral development bank, the International Monetary Fund or the European Investment Bank;
- a financial institution subject to prudential supervision including without limitation banks, administrators (*beheerders*), investment institutions (*beleggingsinstellingen*), securities institutions (*beleggingsondernemingen*) all as defined in article 1:1 of the FMVA;
- a central counterparty, settlement agent or clearing house as defined in article 212a, sub c, d and e of the BA (including institutions regulated under the national law of EU Member States) that are active on the market for futures, options and derivatives and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that include bondholders or holders of other forms of debt instruments or any institutions defined in paragraphs a, b, c of article 52 paragraph 1 of the BA; or
- a private individual acting in the course of a profession or business.

- whether the non-cash Collateral is transferable and whether a security interest or other encumbrance can be created over it;
- the requirements for the transfer of title to the non-cash Collateral or for the creation of such security interests or other encumbrances;
- the question whether security interests or encumbrances can be created over such non-cash Collateral and the nature and content of these rights;
- the manner in which these rights are created, modified, transferred or extinguished;
- the rights and remedies upon enforcement of a security interest;⁶

This means in practice that in such cases *only a security interest that complies in all respects with the constitutive requirements for a Dutch law security interest can be validly created over such non-cash Collateral*. This rule applies regardless of whether or not the Counterparty is incorporated under the laws of, or resident in, this jurisdiction.

Law Governing proprietary aspects of Security Interests over cash Collateral

4.3.2 As discussed in 4.1.1, these aspects are governed by the law applicable to the Agreement, not the laws of this jurisdiction.

Dutch Law Security Interests over non-cash Collateral

4.3.3 The FCA Rules have introduced two types of financial collateral arrangements: the title transfer financial collateral arrangement ("**FCA-t**") and the security financial collateral arrangement ("**FCA-p**"). On the face of it, the Security Interest could be characterised either as a right of pledge or (in respect of non-cash Collateral qualifying under the FCD) as an FCA-p.

4.3.4 In order to create a pledge or FCA-p over Dutch Securities there are no further acts (such as registration) which need to be performed under the laws of this jurisdiction, other than that – to achieve control - in the books of the relevant intermediary (capable of opening accounts subject to the Wge) which administers the Collateral the pledge must be recorded in the name of the Firm⁷. The Firm's rights and remedies can extend no further than those

⁶ Articles 10:127 and 10:141 DCC.

⁷ The Collateral Directive applies to financial collateral once it has been 'provided' (Article 1(5) Collateral Directive). This requires the financial collateral to be delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf (Article 2(2) Collateral Directive). Although this is not entirely certain, in our view, in respect of book entry securities, it is sufficient that the collateral has been credited to the relevant account (Article 1(5) Collateral Directive). As the right of pledge is registered in the relevant securities account, this should constitute a sufficient "provision" of the non-cash Collateral. However, it may be argued that the Firm, as the collateral taker, does not have sufficient control over the non-cash Collateral, because the collateral granter, the Counterparty, may dispose freely over the collateral. In any event, concepts such as 'provision' and 'control' of the financial collateral have not appeared in the FCA Rules. Moreover, the relevant articles in the Wge on the pledging of book entry securities have been amended to

available for a pledgee under a Dutch law right of pledge or under an FCA-p even though under English law it may have more extensive rights and remedies. For further detail, please refer to paragraphs 4.3.5 - 4.3.7, 4.3.10 - 4.3.17 and 4.4.7 below.

- 4.3.5 Under an FCA-p, the pledgee can stipulate that it has the right to use the collateral, to sell it and to keep the proceeds. If the pledgee exercises its right of use, it incurs an obligation to transfer equivalent assets replacing the original Collateral, at the latest on the due date for the performance of the obligations covered by the FCA-p. Equivalent collateral substituting the original collateral shall be subject to the same right of pledge to which the original collateral was subject. Notwithstanding the foregoing, the pledgee can stipulate the right to set off its claim against the value of the equivalent collateral.
- 4.3.6 Under an FCA-p the pledgee is authorised in case of an event of default to (i) sell the non-cash Collateral and recover its claim on the proceeds, or (ii) appropriate the non-cash Collateral and set off the value thereof against its claim. The sale of the non-cash Collateral must take place on a market or exchange, in accordance with the rules and practices normally applicable to such a sale. The pledgee can only appropriate the non-cash Collateral if this is stipulated in the FCA-p and the valuation of the non-cash Collateral is based on the value on a market or an exchange. It is not entirely clear with reference to which point in time the valuation must take place, nor whether the parties can agree otherwise.
- 4.3.7 As a matter of Dutch law:
- (i) a right of pledge can only secure debts to the extent that they are owed to the pledgee. Therefore, where the Firm also wants to enforce a right of pledge for debts owed to its Affiliates, it can only do so to the extent the Firm itself is also a creditor of these debts
 - (ii) as a general rule security interests over securities, contractual claims (including claims arising in connection with bank accounts), and title documents can be created in advance, although sometimes additional formalities will have to be performed. Thus, it is possible to pledge after-acquired book-entry securities which are Dutch Securities although new book-entries (in the pledged account) will have to take place. Future contractual claims against a debtor to whom the pledge has been notified can also be pledged in advance.

Foreign Law Governs Proprietary Aspects of Security Interests over non-cash or cash Collateral

implement the Collateral Directive. This implies that the legislator took the view that a pledge under the Wge constitutes a sufficient "provision" of the collateral for purposes of the Collateral Directive.

4.3.8 Where a Security Interest over Collateral has been validly created under applicable foreign law (in accordance with the principles set out in 4.1 above) pursuant to the Agreement:

- (a) *cash or securities accounts outside The Netherlands*: the Firm will be able to enforce its Security Interests outside The Netherlands without the intervention of the courts of this jurisdiction and without any other formalities being required to ensure 'recognition' of the Firm's Security Interests;
- (b) *cash or securities accounts outside The Netherlands*: the Firm will be able to take recourse against the enforcement proceeds outside The Netherlands without the involvement of the courts of this jurisdiction and there is no obligation to turn over these proceeds to the Counterparty's Insolvency Representative (other than excess proceeds);

Consequently, to the extent that any Collateral is located (or deemed located) outside The Netherlands and to the extent that any receivables are owed by debtors established outside The Netherlands, a Dutch court is not likely to be involved in enforcement measures in connection with such Collateral as those measures will be taken outside The Netherlands. For these reasons, the enforcement of the Security Interests purported to be created pursuant to the Agreement should normally not require any action before the courts of The Netherlands. However, this may be different, particularly where the Security Interests are created over cash Collateral in an account located in The Netherlands.

Should a Dutch court for any reason be required in any proceedings brought before it to assess or give effect to a Security Interest created under the Agreement, as is possible if the Counterparty's cash account is located in this jurisdiction, it will examine whether for the purposes of the applicable Dutch provisions in question (if any) the Security Interest can, from a viewpoint of justice and expediency, be aligned with a Dutch security right. In this respect it is decisive whether, with a view to the application of the provision in question, the foreign law Security Interest can as regards its content and purpose be treated equally as the related Dutch security right.⁸

Alignment of Foreign Law Security Interest with FCA-p

4.3.9 Where Collateral qualifying under the FCD has been validly charged under the Security Interest Provisions - in accordance with the laws mentioned in paragraph 4.1 - and insofar as the Security Interest were deemed to be a financial collateral arrangement, the Security Interest will most likely be aligned with an FCA-p subject to the FCA Rules (see paragraphs 4.3.4, 4.3.5

⁸ Supreme Court 14 December 2001, NJ 2002, 241 (*Societa Italiana Sisal e Affini Lavorata S.p.a./NBC Holding Corporation*).

and 4.3.6 above).⁹ In the unlikely case that a foreign law Security Interest cannot be aligned with a comparable Dutch Security Interest, some or all of the benefits or rights of such a Security Interest may not be available to the Firm or, in a theoretical situation, the Firm might not be able to give effect to its Security Interest at all before a Dutch court.¹⁰

Restrictions in case of Insolvency Proceedings in respect of a Counterparty

- 4.3.10 As far as the appointment of an English law receiver could be considered as an authorisation of the receiver by the Counterparty to act on its behalf, such authorisation will terminate by operation of law and without notice upon the opening of Insolvency Proceedings in respect of the Counterparty.
- 4.3.11 Any Collateral acquired by the Counterparty, or coming into existence (e.g. any claims in respect of new credit balances on a cash account subject to a Security Interest) after the Counterparty has become subject to Insolvency Proceedings will not be subject to the Security Interest purported to be effected by the Security Interest Provisions. Any dispositions by the Counterparty of assets made after the commencement of its Insolvency Proceedings are void except as ordered by the court or as allowed under the FCA Rules (see paragraph 4.3.12 below).
- 4.3.12 In Insolvency Proceedings a judgment of bankruptcy or moratorium has retroactive effect as from 00.00 hours of the day of the judgement and any dispositions by the Counterparty of property made after the commencement of such Insolvency Proceedings are void, but this does not apply to financial collateral arrangements nor to acts performed pursuant to such arrangements (e.g. a pledge or transfer of additional or substitute Collateral). The actual time of the judgment applies to such financial collateral arrangements or acts. In addition, financial collateral arrangements or acts pursuant thereto are enforceable against third parties even if such arrangements or acts were entered into or took place after the judgment opening the Insolvency Proceedings was made, but on the same day, provided the counterparty is able to show that it was not aware nor should have been aware of such judgment.
- 4.3.13 Article 212b of the BA creates two further exceptions to the retro-active effect rule mentioned above:
- (i) for any transfer order, or any disposition of property in pursuance of such an order, given by a Dutch Credit Institution or a Dutch Investment Firm after 00.00 hours but prior to the moment of the opening of Insolvency Proceedings in respect of such a Counterparty

⁹ In respect of non-cash Collateral that does not qualify under the FCD, this will be treated as "ordinary" collateral, subject to the general Dutch rules on the enforcement of (foreign law) Security Interests. See 4.4 for further analysis.

¹⁰ We consider this unlikely, because the Supreme Court has even recognized a floating charge created under the law of Tanzania, although it was argued that such type of security interest – having no direct equivalent in Dutch law – could not be recognized in the Netherlands. HR 14 December 2001, NJ 2002, 241 (Sisal/NBC).

irrespective of when the order was carried out; the same applies to any payment, delivery, collateral transfer, set-off, close-out, liquidation of collateral or other disposition necessary to give effect to or carry out such a transfer order;

- (ii) for any transfer orders given by (or on behalf of) a Dutch Credit Institution or a Dutch Investment Firm against the effect of Insolvency Proceedings in cases where the relevant order was entered onto the System *after* the moment of opening of the relevant Insolvency Proceedings if carried out on the same day and the "relevant parties" neither knew nor ought to have known about the judgment opening the Insolvency Proceedings at the time of settlement; the same applies to any set-off instructions and any payment, delivery, collateral transfer, set-off, close-out, liquidation of collateral or other disposition necessary to give effect to or carry out such a transfer order or set-off instruction.

4.3.14 In addition, unless the Security Interests were deemed to be a financial collateral arrangement, they cannot be enforced upon the occurrence of a Relevant Event (see paragraph 4.6.3).

4.3.15 In the Insolvency Proceedings of a Counterparty, a court-ordered freeze period does not apply to Collateral that is subject to a financial collateral arrangement (see paragraph 4.4.7).

4.3.16 Excess proceeds of enforcement of a Security Interest must be returned to the Counterparty during Insolvency Proceedings.

4.3.17 Only first ranking Dutch security interests may be enforced by the Firm in accordance with applicable laws, without the consent or co-operation of the liquidator (*curator*) or administrator (*bewindvoerder*) without other creditors having a prior claim over such Collateral or the proceeds thereof.

4.4 ***Non-Cash Collateral not qualifying for FCD purposes: Validity of Security Interests***

4.4.1 The courts of The Netherlands would determine the proprietary validity of a Security Interest not qualifying as a financial collateral arrangement in accordance with the laws designated by Dutch conflicts of laws for the proprietary aspects of a security interest (see 4.1 above). Security interests validly created under such applicable laws will in principle be recognized in The Netherlands. The basic principles of The Netherlands conflicts of laws for determining the proprietary aspects of a security interest are as stated in 4.1 above and Netherlands private international law does not distinguish between the creation and perfection of security interests. Accordingly, the law governing the perfection is the same law as the law governing the creation.

Dutch Law governs proprietary aspects of Security Interests

4.4.2 In the event that any of the conflict rules described in 4.1 above points to Dutch law as the law governing the proprietary aspects of the Security Interest

over the non-cash Collateral, the analysis in 4.3.1 above applies which means in practice that in such cases only a Security Interest *that complies in all respects with a Dutch law security interest can be validly created over such non-cash Collateral*, i.e. a Security Interest that meets all the constitutive requirements for a valid Dutch law security interest. To validly create a non-possessory pledge under Dutch law, the Agreement must either be passed in the form of a notarial deed, or it must be registered with the Dutch tax authorities. If the Firm and the Counterparty opt for the latter route (registration of the Agreement), a Dutch law non-possessory pledge will come into existence and the Firm's rights as holder of the security interest under the Agreement will become identical to those of a holder of a non-possessory pledge. Any rights and remedies afforded to it under English law which are contrary to Dutch law will simply be unenforceable.

Foreign Law governs proprietary aspects of Security Interests

- 4.4.3 Assuming that the laws of another jurisdiction govern the proprietary aspects of a Security Interest in the non-cash Collateral (not being securities eligible for FCD benefits) pursuant to the Agreement and the Firm has obtained a valid and perfected security interest in such non-cash Collateral under the laws of such other jurisdiction:
- (a) such security interests validly created under applicable foreign law over such non-cash Collateral will in principle be recognized as such by the courts of The Netherlands;
 - (b) in respect of such security interests, there are no formalities, notification requirements or other procedures, that the Firm must observe or undertake in The Netherlands for the purpose of obtaining or securing such recognition or for exercising its rights as a secured party under the Security Interests outside The Netherlands.
- 4.4.4 In respect of non-cash Collateral that is not governed by the property laws of the Netherlands, a Dutch court is not likely to be involved in enforcement measures, as those measures will be taken outside The Netherlands and the analysis in 4.3.8 above would apply *mutatis mutandis*.
- 4.4.5 In the event that, notwithstanding this general rule, a Firm would nevertheless seek to invoke, give effect to or enforce its rights as holder of the Security Interest purported to be granted to it under the Agreement before the courts of The Netherlands, such courts are likely, in order to give effect to and/or to determine the ranking (*prioriteit*) of such Security Interest to act in accordance with 4.3.8 above, save that we expect that the Security Interests purported to be created pursuant to the Agreement over non-cash Collateral for this purpose will be aligned with a Dutch law right of pledge (*pandrecht*) and this would entail that the relevant Dutch provisions on rights of pledge will be applied. Certain restrictions may then apply to a Firm's rights and remedies (see below).

- 4.4.6 Only in case the Dutch courts would align the Security Interests with a right of pledge in accordance with 4.4.5 above and grant first priority ranking to the Security Interests purported to be granted under the Agreement, then, subject to our observations immediately below, the conclusion is the same as in 4.3.17 above. In case a Security Interest cannot be (fully) aligned with a right of pledge, some or all of these benefits may not be available to the Firm.
- 4.4.7 In the event that the Counterparty is subject to Insolvency Proceedings in The Netherlands, and the Security Interest is not a financial collateral arrangement the following mandatory rules of insolvency law of The Netherlands may affect the enforcement of the Security Interests:
- (i) a statutory stay of execution period (two months with a possible extension of at most two more months) may be imposed by court order, and although this stay period would not prevent the Firm from collecting the proceeds any non-cash Collateral, it will prevent (i) the Firm from enforcing the Security Interest (i.e. taking recourse) against any amounts so collected during such stay period, and (ii) the Firm from enforcing the security right by selling the Non-Cash Collateral to third parties by way of a foreclosure sale; however, such a stay of execution would not affect
 - Security Interests that are "*rights in rem*" for the purpose of the exception in Article 5(1) of the Insolvency Regulation (or article 212u/213p of the BA insofar as Dutch Credit Institutions/Dutch Insurance Companies are concerned) under all applicable laws (other than Netherlands law) in respect of the following assets ("**Exempt Assets**"): (i) non-cash Collateral situated in another Regulation State or booked in accounts operated, maintained and administered in another Regulation State or (ii) receivables or other contractual rights owed by debtors having their COMI in another Regulation State.¹¹
 - any security interests (such as the Security Interest Provisions) granted by a Dutch Credit Institution or a Dutch Investment Firm in favour of a "participant" in a System (which includes a central counterparty which holds securities accounts);
 - (ii) the liquidator can force the Firm to enforce its Security Interests within a reasonable time (as determined by the liquidator), failing which the liquidator will be entitled to sell the Non-Cash Collateral and distribute the proceeds to the Firm; this power cannot be exercised in respect of Exempt Assets;
 - (iii) the restrictions referred to in paragraphs 4.3.10 – 4.3.17 above shall also apply.

¹¹ It could even be argued that Article 5(1) of the Insolvency Regulation (and article 212u of the BA) applies by way of analogy to assets that are (deemed to be) located in states which are not Member States

4.5 ***Recognition of the right of a Firm to grant a Security Interest in respect of non-cash Collateral pursuant to Re-Hypothecation Clause.***

This issue is governed by the law governing the proprietary aspects of the Security Interest (see paragraph 4.1) including the question whether a right of use can be granted to the Secured Party. However, in case alignment with Dutch law were to become an issue, we refer to paragraph 4.3.5 above.

If the law governing the proprietary aspects of the Security Interest is Dutch law, then as a matter of Dutch substantive law, the pledgee under a Dutch law governed and validly created FCA-p can stipulate that it has the right to use the Collateral but only if such Collateral qualifies for the benefits of the FCD (see paragraph 4.3.5).

4.6 ***Regulatory Intervention Powers***

- 4.6.1 if the DNB finds that a Dutch finance company as referred to in the definition of Regulated Entities does not comply with the FMSA or if it finds that Dutch Credit Institution, a Dutch Insurance Company, an Investment Firm, an Investment Fund or a Dutch Pension Fund does not comply with the solvency, liquidity and administrative directives ("*richtlijnen*") issued by it, or if there are other indications of a development which in the judgment of the DNB endangers or could endanger the solvency or liquidity of such an entity, then the DNB can determine that, as of a certain moment in time, all or certain bodies of the Dutch finance company, Dutch Credit Institution, Dutch Insurance Company, an Investment Firm, Investment Fund or Dutch Pension Fund can only exercise their powers with the approval of one or more persons (known as silent administrators, "*stille curatoren*") designated by the DNB. Pursuant to the FMSA and the Pension Act, the Dutch finance company, Dutch Credit Institution, Dutch Insurance Company, Investment Firm or Investment Fund can challenge the validity of any act performed without such approval, if the counterparty to that act knew that no such approval was given, or could not have been ignorant thereof. The designation as referred to and accordingly the necessity of the approval referred to is not necessarily published. It is likely that without a publication or without it being otherwise obvious to the counterparty that the person or persons was/were designated as referred to, the relevant counterparty will not know, nor ought to have known, that the approval referred to was required;
- 4.6.2 an Agreement entered into with, or Security Interest granted by, a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company, which becomes subject to Resolution Measures, may be affected by the replacement or substitution of the relevant Counterparty, a transfer of the relevant Counterparty's rights and obligations under the Agreement to a third party, a modification of the terms of the Agreement, or even expropriation of assets and liabilities of a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company arising under the Agreement.
- 4.6.3 by virtue of article 3:267f FMSA the preparation, application and implementation of Resolution Measures (or their foreign equivalents) will

affect the rights of a Party in respect of its Transactions with a Dutch Credit Institution or a Dutch Insurance Company (or a Dutch Party which is part of the same group as the Dutch Credit Institution or a Dutch Insurance Company). Regardless of the laws governing the contractual relationship with the Dutch Credit Institution or a Dutch Insurance Company (or such group entity), a Party will not be entitled – except with DNB's prior approval - to exercise acceleration rights, invoke termination events or events of default, set off its claims or apply any other remedy against the affected entity if any such rights or remedies arise as a result of either of the following (hereinafter: "**Relevant Events**"):

- (a) the preparation, application or implementation of a Resolution Measure (or their foreign equivalents) in relation to the affected entity, or
- (b) any act or omission (including any default) resulting from it.

The above does not apply to (i) rights or remedies arising from financial collateral arrangements that qualify as such under the FCA Rules; or (ii) rights or remedies arising from a Party's participation in a System designated in accordance with the Settlement Finality Directive as against other such participants.

Consequently, in respect of all Collateral charged under the Agreement which (i) does not qualify as cash or book-entry securities, or (ii) which is not charged to the Firm as part of a financial collateral arrangement or (iii) which is not provided to a Party in connection with its participation in a System by another participant in such a System, the Party cannot invoke the Security Interest Provisions or exercise any rights in respect of such Collateral against a Dutch Credit Institution (or a Dutch Party which is part of the same group) as a result of Relevant Events.

The above provisions of the FMSA are stated to override the governing law of any agreements. A Dutch court would probably use article 9(2) Rome I to give effect to this rule and override English law.

4.7 *Effect of EMIR*

We express no opinion as to whether any party needs to comply with or as to the consequences of compliance or non-compliance with any applicable provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and any technical standards made thereunder in respect of anything done by it in relation to or in connection with the Agreement. However, Article 12(3) of EMIR provides that any infringement of the rules under Title II of EMIR "shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract", consequently any failure by a party to so comply should not make the Agreement invalid or unenforceable.

4.8 *General Powers of Insolvency Representatives*

4.8.1 General Voidable Preference Regime

Under Netherlands law every creditor, but in a bankruptcy or WSNP Procedure of a Counterparty, the liquidator (*curator*) respectively administrator (*bewindvoerder*) appointed in the bankruptcy or WSNP-procedure, may invoke the nullity of any transaction performed or entered into by the Counterparty prior to its bankruptcy, provided that:

- (i) the transaction was entered into by the Counterparty *voluntarily* (i.e. in the absence of an enforceable legal (statutory or contractual) obligation); **and**
- (ii) the transaction was *prejudicial* to the recourse possibilities of (some or all of) the Counterparty's creditors; **and**
- (iii) at the time of the transaction both the Counterparty and the person with whom it acted knew or ought to have known that the transaction would have such prejudicial effect (the mere possibility that such detrimental effect might arise is insufficient); **or**
- (iv) in the event that the transaction is for nil consideration (i.e. gifts and other gratuitous dispositions), at the time of the transaction, the Counterparty knew (or ought to have known) of the prejudicial effect, regardless of whether both parties share such knowledge; as presumable the Credit Support Annexes, the Master Agreements and any Transactions are entered into on commercially acceptable terms, this should not be relevant.

4.8.2 Burden of proof

The burden of proof of all of the above elements rests upon the creditor who wishes to nullify the transaction, although a reversal of this burden in respect of the "knowledge requirement" (under (iii) and (iv) in paragraph 4.8.1) is provided in law if the voluntary transaction took place less than one year before the creditor invokes the *Actio Pauliana* or - as the case may be - one year prior to the date on which the Counterparty's bankruptcy or moratorium of payments was declared, and falls within one or more of the statutory categories of "suspect" transactions. Such suspect transactions include:

- (i) payments of or providing collateral for debts that are not yet due and payable;
- (ii) transactions by the debtor (if a company) with or for the benefit of a group company; and
- (iii) transactions at an undervalue.

Apart from the reversal of the burden of proof for suspect transactions entered into one year prior to invoking the *Actio Pauliana* or - as the case may be - one

year prior to the Counterparty's Insolvency, there are no "suspect periods" in relation to the *Actio Pauliana* or otherwise under Netherlands law.

4.8.3 Limitation period

Voidable preference has a limitation period of three years from the date on which a prejudiced creditor *discovered* the detrimental effect of the transaction.

4.8.4 Analysis

In order to assess the potential impact of the *Actio Pauliana*, one must carefully distinguish between (i) the creation of a contractual obligation for the Counterparty to create Security Interests over Collateral and (ii) the actual creation thereof. The reason for this is that in principle only voluntary transactions can be nullified. This means that where Counterparty's assumption of a contractual obligation to create Security Interests over Collateral cannot be challenged, then *any subsequent transfers of collateral* by Counterparty will also be "safe" (subject to "Additional claw back risk" under paragraph 4.8.5 below), because they can then be characterised as involuntary transactions (i.e. transactions for which a contractual obligation exists). Therefore, in this opinion we will focus on the Counterparty's assumption of a contractual obligation to create Security Interests over Collateral and to post Collateral.

It is likely that the assumption of an obligation to create Security Interests over Collateral by the Counterparty could be considered as a *voluntary act* (unless the analysis of the laws of England and Wales is different). If the relevant Agreement was entered into within one year before the relevant creditor invokes the *Actio Pauliana*, the Agreement may be considered a "suspect" transaction under 4.8.2 (i) or (ii) above, depending on how much over collateralization is achieved. It is unlikely that entering into the Agreement would be considered as a 'transaction for a nil consideration' (see paragraph 4.8.1 (iv) above), and therefore only issues under paragraph 4.8.1(ii) and (iii) above should be considered.

As to issue 4.8.1(ii): clearly if the Counterparty remains solvent (i.e. able to pay its debts and does not provide insufficient recourse to its creditors as a result of entering into the Credit Support Annex), then a creditor would not be able to nullify the Collateral posted because the requirement under 4.8.1(ii) above will not be satisfied.

Although an *Actio Pauliana* can be brought if the debtor is still solvent, according to authoritative literature, it is a *conditio sine qua non* for any successful *Actio Pauliana* that the debtor has become unable to pay its debts as they fall due. Only then it will become apparent that there is insufficient recourse available to the debtor's creditors. If the Counterparty continues to be able to pay its debts, the risk of a preference challenge being made on the basis of the mere fact that it has reduced the recourse available to its other creditors by posting collateral, should be regarded as remote.

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As to issue 4.8.1 (iii): unless the assumption of the obligation to create Security Interests over Collateral took place within one year before the creditor challenges it, the creditor will need to show that the Counterparty was aware or ought to have been aware of the fact that assuming the obligation to create Security Interests over Collateral would have the effect that such prejudicial effect would arise (the real or constructive knowledge of the mere possibility that such detrimental effects might arise being insufficient). If an objective financial analysis of the Counterparty's position can only lead to the conclusion that no prejudice to the Counterparty's other creditors should occur, then this will be the Counterparty's best defence.

4.8.5 Additional claw back risk

In addition to the *Actio Pauliana* described above, in Bankruptcy or WSNP-procedure of a Counterparty the Insolvency Representative has the power to invoke the nullity and claw back any contractually required collateral transfers made by the Counterparty before the date the Counterparty was declared bankrupt in the event that:

- (a) the Firm knew, at the time of such transfer that a petition for the Counterparty's Insolvency had been filed with the court; or
- (b) such transfer resulted from concerted action of the Counterparty and the Firm aimed at preferring the latter to the detriment of the Counterparty's other creditors.

Accordingly, to the extent that it can be demonstrated that an obligatory legal act performed by the Counterparty prior to being declared bankrupt or prior to a WSNP-procedure is opened in respect of such Counterparty in order to satisfy or extinguish an obligation under the Agreement (including but not limited to the obligations to create Security Interests over Collateral; each such legal act and extinguishment of debt hereinafter referred to as "**Obligation Performance**");

- (i) occurred at the moment that the Firm knew that a request for Insolvency of the Counterparty had been filed; or
- (ii) was the result of collusion between the two Parties as referred to under (b) above,

such Obligation Performance could be nullified.

4.8.6 Impact of Governing Law

Under the Insolvency Regulation, the WUDCI (implemented in articles 3:240 and 3:244 FMSA (as regards Emergency Measures) and in article 212t and 212x BA (as regards bankruptcy)) and the WUDIU (implemented in articles 3:240 and 3:244 FMSA (as regards Emergency Measures) and articles 213o and 213s BA (as regards bankruptcy)), the law applicable to Insolvency Proceedings shall determine the rules relating to the voidness, voidability or

unenforceability of legal acts detrimental to all creditors. Accordingly, the Dutch rules with regard to voidable preference shall apply in the event of Insolvency Proceedings in this jurisdiction including the Insolvency Representative's authority to nullify legal acts entered into prior to Insolvency on the basis of *Actio Pauliana*.

However, under the Insolvency Regulation,¹² the WUDCI¹³ and the WUDIU,¹⁴ in order to protect the Insolvent Party's counterparty, a claim by the Insolvency Representative for nullification on the basis of voidable preference will only be successful if it would *also* be possible under the insolvency rules of the law of another Member State governing the preferential transaction itself, in this case the laws of England and Wales.

This means that the requirements for nullification of both the BA and of the laws of England and Wales (as the governing law of the Agreement) should be satisfied. If it is not possible under the laws of England and Wales for a local insolvency representative to set aside the Agreement, then the Insolvency Representative could not do so either and all posting of Collateral would be treated as involuntary transactions.

- 4.8.7 This is subject to the additional clawback risk set out in paragraph 4.8.6 above, however, only if such Collateral postings would also be subject to such risk under the laws of England and Wales.

4.9 *Effect of Insolvency Regulation*

- 4.9.1 Where a Party is not a credit institution, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and the centre of its main interests is in a Regulation State outside the Netherlands, the Insolvency Regulation will apply. In such a case the Dutch courts have no jurisdiction in respect of Insolvency Proceedings, except in a case where the Party has an establishment (within the meaning in the Insolvency Regulation) in this jurisdiction, and then only to implement certain secondary proceedings governed by Dutch law in relation to the assets situated (or deemed under the Insolvency Regulation to be situated) in this jurisdiction. Where the Insolvency Regulation applies, the law of the Member State opening insolvency proceedings shall determine the conditions for the opening of those proceedings, their conduct and closure and, in particular, this shall determine the rules relating to voidness, voidability or unenforceability of legal acts detrimental to all creditors (except where the person benefitting from such detrimental act provided such act is subject to the law of another EU Member State and that such law does not allow challenge of such act);

¹² Article 13.

¹³ Article 30(1), implemented as article 3:251 FMSA (as regards Emergency Measures) and article 212ee BA (as regards bankruptcy of a Regulated Entity).

¹⁴ Article 24 implemented as article 3:251 FMSA (as regards Emergency Measures) and article 213z BA (as regards bankruptcy of a Dutch Insurance Company).

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However, where secondary insolvency proceedings are opened in this jurisdiction (i.e. in respect of assets located in this jurisdiction), the Dutch courts shall apply Dutch law to such secondary proceedings.

In any event, pursuant to article 5.1 of the Insolvency Regulation third parties' rights in rem in respect of assets located (or deemed to be located) in a Regulation State outside The Netherlands shall be unaffected (i.e. where the Collateral assets are located in England, English law shall apply to rights in rem over such assets).

4.10 *Right of Use*

To the extent any non-cash Collateral that is subject to the Security Interest is not a financial collateral arrangement pursuant to the FCA Rules, the Firm would not have the benefit of the FCA Rules with respect to the effectiveness of the Rehypothecation Clause. This might expose the Firm to the risk of successful challenge of the exercise of its purported rights pursuant to the Rehypothecation Clause. Our opinion at clause 3.5 is qualified accordingly.

4.11 *Matters Excluded & Other Qualifications*

4.11.1 We express no opinion as to:

- (a) any matters of fact or any accountancy, capital adequacy or other non-legal matter and no opinion is expressed on any tax matters;
- (b) whether any Counterparty has good legal or other title to the assets or rights which are expressed to be subject to the Security Interest, or as to the existence or value of any such assets or rights;
- (c) any Commodity Securities;
- (d) whether any events in relation to the Collateral or issuer of Collateral may devalue the Collateral or impair the Firm's ability to enjoy such Collateral or the full value thereof;
- (e) whether the Agreement breaches any other agreement or instrument;
- (f) whether any other creditor of, or claimant in respect of, the Counterparty or its assets could assert superior title in respect of the Collateral, for example on the grounds of its prior acquisition of an interest in the Collateral, its acquisition of legal title to the Collateral or its having a fixed charge interest over the Collateral.

4.11.2 If the effect of proceedings in a forum outside this jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the courts of this jurisdiction may recognise the extinction of those claims or liabilities.

4.11.3 The opinions expressed in this opinion letter are subject to the effects of any sanctions or other similar measures implemented or effective in The

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Netherlands with respect to any party to the Agreement and to the effects of any emergency measures that may be taken by the Dutch government under the Dutch Financial Relations Emergency Act (*Noodwet Financieel Verkeer*) or by the Ministry of Finance, AFM or DNB under articles 1:28 or 1:29 of the FMSA.

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

5. RELIANCE

This opinion:

- 5.1 expresses and describes Dutch legal concepts in English and not in their original Dutch terms; consequently, this opinion is issued and may only be relied upon on the express condition that it shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with the laws of The Netherlands;
- 5.2 is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation;
- 5.3 is strictly limited to the matters set forth in paragraph 3 and no opinion may be inferred or implied beyond that expressly stated herein; and
- 5.4 may not be used for any other purpose other than in connection with the Agreement.

Yours faithfully,



F.G.B. Graaf
advocaat

Clifford Chance LLP

SCHEDULE 1
DUTCH PENSION FUNDS

Subject to the modifications and additions set out in this Schedule 1 (*Dutch Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Dutch Pension Funds.

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

We assume the following:

- (a) that each Dutch Pension Fund will not enter into Transactions under the Agreement solely for speculative purposes and that such Transactions will not have the same legal or economic effect as a guarantee of (or as joint and several liability for) another person's or entity's liabilities or a loan other than a temporary loan for liquidity purposes and that all Transactions will be entered into in accordance with the "prudent person rule" within the meaning of article 135 of the Pension Act;
- (b) that each Dutch Pension Fund that is a company pension fund will not enter into any transactions under the Agreements with regard to the shares in the company for whose employees that Dutch Pension Fund is instituted.

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 Insolvency Proceedings: Dutch Pension Funds

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Dutch Pension Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*)
- (b) moratorium of payments (*surseance van betaling*)

The Insolvency Regulation, as discussed in paragraph 4.9 of the opinion, is applicable to Dutch Pension Funds. Therefore, the rules of the Insolvency Regulation with regard to set-off will apply to Dutch Pension Funds.

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4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

**SCHEDULE 2
INDIVIDUALS**

Subject to the modifications and additions set out in this Schedule 2 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals.

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 Insolvency Proceedings: Individuals

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*), as referred to in and governed by title I of the BA;
- (b) moratorium of payments (*surseance van betaling*) as referred to in and governed by title II of the BA; and
- (c) WSNP Procedures.

A private individual can be declared bankrupt or, if he/she carries on a business or practices an independent profession, a moratorium of payments proceeding can also be opened in respect of a natural person. Given that (i) a bankruptcy can only lead to a debt-free restart if either the bankrupt person is able to repay his debts or reaches an agreement with his creditors (on the basis of a court-approved scheme of arrangement); and (ii) in the past only a few private individuals succeeded therein, a special procedure for individuals, the WSNP Procedure, was enacted.

The WSNP Procedure may be pursued in respect of any natural person, regardless of whether he/she carries on a business and regardless of whether he/she practices an independent profession. As opposed to the bankruptcy procedure, it is not necessary that there is a plurality of creditors. The WSNP Procedure can be declared applicable

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to a natural person if he/she is in a situation where he/she has stopped to pay his debts and the situation allows for an arrangement for debt reorganisation (*schuldsanering*).

The consequences of the WSNP Procedure are roughly similar to Insolvency Proceedings, although it should be noted that the arrangements for debt reorganisation in the WSNP Procedure are primarily aimed at protecting the debtor. The WSNP Procedure is designed as a liquidation procedure: the estate of the natural person is liquidated and the proceeds will be divided among the creditors. After settlement of the estate, remaining debts will no longer be enforceable. If a composition is reached with the creditors (in principle possible with a simple majority) and the composition has been approved by the court, the court will determine that the WSNP Procedure ceases to be applicable. Applicability of the WSNP Procedure can be verified with the national register.

Consistent with the bankruptcy procedure:

- (i) the Individual to whom the WSNP Procedure has been declared applicable in principle loses his/her right to manage and dispose most of his/her assets with retroactive effect to 00.00 hrs. of the day on which the WSNP Procedure was declared applicable, although he/she will still be allowed during the WSNP Procedure to manage certain assets, such as a car for work related purposes;
- (ii) the court appoints an administrator (*bewindvoerder*) who is charged with the management and realisation of the Individual's assets that are affected by the WSNP Procedure and who acts under the general supervision of a supervisory judge;
- (iii) the assets that are not included in the WSNP Procedure are for example (i) a protected earnings level (*beslagvrije voet*) which debtor is considered to need for living; (ii) the debtor's household effects (*inboedel*) and (iii) assets that cannot be subject to attachments (*beslag*);
- (iv) the debtor will still be able to perform legal acts, although he/she will required the prior approval of the administrator for (a) entering into a credit agreement; (b) entering into an agreement pursuant to which the debtor stands surety for or provides collateral for a third party's debts; or (c) making a donation unless the donation is customary to local standards and not excessive.

4. ADDITIONAL QUALIFICATIONS

None

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5. MODIFICATIONS TO QUALIFICATIONS

None

**SCHEDULE 3
INVESTMENT FIRMS**

Subject to the modifications and additions set out in this Schedule 3 (*Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms.

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

We assume the following:

"That none of the Collateral belongs to the Investment Firm's clients or, to the extent that it does, all relevant legal requirements have been met permitting such Collateral to be validly charged under the FMSA"

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 Insolvency Proceedings: Investment Firms

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Firm could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

3.2 However, although the Insolvency Regulation does not apply to investment undertakings holding funds or securities for third parties, the possibility exists that its set-off rules as explained in 3.1 above, will nevertheless be applied by a Dutch court to such institutions.

4. ADDITIONAL QUALIFICATIONS

None

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5. MODIFICATIONS TO QUALIFICATIONS

None

SCHEDULE 4
INVESTMENT FUNDS

Subject to the modifications and additions set out in this Schedule 4 (*Investment Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Funds.

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

We assume the following:

- (a) That the Agreement, each Security Interest and each posting of Collateral by or on behalf of each Investment Company and each Investment Fund will be within such Investment Company's or Investment Fund's investment policies and any other requirements pursuant to the relevant prospectus and/or applicable Terms and Conditions.
- (b) With regard to Agreements entered into with FGR Investment Funds, that in accordance with current Dutch market practice the FGR Investment Fund's Manager enters into the Agreement and any Transactions thereunder not in its own name as principal but in the name and on behalf of the Custodian as principal.

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 Insolvency Proceedings: Investment Funds

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*)
- (b) moratorium of payments (*surseance van betaling*)

3.2 The Insolvency Regulation does not apply to credit institutions, insurance undertakings, investment undertakings holding funds or securities for third parties, or collective investment undertakings. Based on our reading of the Insolvency

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Regulation in combination with the Virgós/Schmidt Report (which report accompanied the draft European Bankruptcy Convention of September 1995, which never entered into force but contains virtually identical provisions to the Insolvency Regulation), the rules of the Insolvency Regulation will not apply to FGR Investment Funds or Investment Companies to the extent they qualify as UCITS (under Directive 85/611/EC on the Coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as last amended by Directive 95/26/EC).¹⁵ Consequently, it is our view that FGR Investment Funds and Investment Companies that are non-UCITS or are of the closed-ended type are within the scope of the Insolvency Regulation.

- 3.3 Investment Funds in the form of an FGR Investment Fund are non-incorporated pools of cash, securities or other assets raised or obtained for collective investment for the purpose of allowing the participants to share in the proceeds of such investments. An FGR Investment Fund is not a legal entity but a contractual arrangement. The contractual arrangement will typically be entered into between the participants, the fund manager (*beheerder*, the "**Manager**") (which may be licensed as a manager under the FMSA) and a separate custodian (*bewaarder*, the "**Custodian**"), subject to applicable terms and conditions for management and custody (*voorwaarden voor beheer en bewaring*, the "**Terms and Conditions**"). The Manager manages the FGR Investment Fund's assets, which should be done in compliance with the investment objectives and restrictions set out in the relevant Terms and Conditions and/or the relevant prospectus. It is market practice that the Manager in its capacity as manager of the FGR Investment Fund enters into investment and hedging agreements and any transactions in the Custodian's name and for the account of the relevant FGR Investment Fund. The Custodian holds legal title to the Investment Fund's assets. This structure is obligatory for regulated FGR Investment Funds and normally used by unregulated FGR Investment Funds. Custodians usually grant a power of attorney (*volmacht*), which may be subject to certain conditions or limitations, to the Manager (*beheerder*) to enter into agreements on behalf and for the account of the Custodian acting in its capacity as depositary (*bewaarder*) of a specific FGR Investment Fund. The FGR Investment Fund's Manager and Custodian are normally organised in the form of a legal entity incorporated under the laws of this jurisdiction, either a foundation (*stichting*), a public company with limited liability (*naamloze vennootschap*) or a private company with limited liability (*besloten vennootschap*).

4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

¹⁵ See the Preamble no 9 to the Insolvency Regulation as well as paragraph 56 of the Virgós/Schmidt Report.

**SCHEDULE 5
PARTNERSHIPS**

Subject to the modifications and additions set out in this Schedule 5 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships.

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 Insolvency Proceedings: Partnerships

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*)
- (b) moratorium of payments (*surseance van betaling*)

3.2 Partnerships and Insolvency / Set-Off

The same analysis as set out above in paragraph 3.1 and following applies *mutatis mutandis* to Partnerships, subject to the following observations:

The Insolvency of a General Partner, Managing Partner or Limited Partner will not automatically result in the Insolvency of the Partnership itself. The Insolvency of such a partner will in principle result in the dissolution (*ontbinding*) of the relevant Partnership. However, partnership agreements often contain a continuation arrangement (*voortzettingregeling*) to avoid automatic dissolution of the Partnership as a whole in the Insolvency of one of the partners. If this is the case, the enforceability of the Security Interest Provisions vis-à-vis the relevant Partnership will in principle remain unaffected in the event of Insolvency of a partner.

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It should be noted that the Partnership's assets will continue to be available for recourse for the partnership's creditors, also when the new partner has acquired an interest in the partnership fund and is not externally liable for all Partnership debts.

4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

SCHEDULE 6
SOVEREIGN AND PUBLIC SECTOR ENTITIES

Subject to the modifications and additions set out in this Schedule 6 (*Sovereign and Public Sector Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sovereign and Public Sector Entities.

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 Insolvency Proceedings: Sovereign and Public Sector Entities

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Sovereign or Public Sector Entity could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*)
- (b) moratorium of payments (*surseance van betaling*)

General

Dutch insolvency law does not explicitly rule out the possibility that the public bodies can be declared insolvent, in which case the Insolvency procedures would apply to it in accordance with paragraph 3.1 above.

Municipalities

As far as we are aware, a Dutch Municipality has never been declared bankrupt nor is there any case law on the application of the BA to Municipalities. The BA does not address the applicability of Insolvency Proceedings to Municipalities. In practice, as a result of the financial support system pursuant to the Financial-Ratio Act, the risk of a Municipality being declared insolvent is probably theoretical in any event.

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Provinces

As far as we are aware, a Province has never been declared bankrupt nor is there any case law on the application of the BA to Provinces. The BA does not address the applicability of Insolvency Proceedings to Provinces, although it seems that the majority of authoritative legal writers are of the view that Provinces *cannot* be declared bankrupt.

Water Boards

No special Dutch insolvency provisions apply to Water Boards.

Local Government Entities

No special Dutch insolvency provisions apply to Local Government Entities in general. We note however that Municipalities or other local authorities participating in such Local Government Entities in practice often act as a guarantor for the obligations of the legal person.

4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

SCHEDULE 7
CHARITABLE FOUNDATIONS

Subject to the modifications and additions set out in this Schedule 7 (*Charitable Foundations*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Charitable Foundations.

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 **Insolvency Proceedings: Charitable Foundations**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a [*counterparty type*] could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) bankruptcy (*faillissement*)
- (b) moratorium of payments (*surseance van betaling*)

4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

ANNEX 1
FORMS OF FOA AGREEMENTS

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

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

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

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

ANNEX 2
DEFINITIONS RELATING TO THE AGREEMENTS

"BA" means the Dutch Bankruptcy Act (*Faillissementswet*)

"Collateral Directive" or "FCD" means EU Directive 2002/47/EC as amended by EU Directive 2009/44/EC;

"COMI" means an entity's centre of main interests, as defined in Article 3(1) of the Insolvency Regulation.

"Counterparty" means the Party referred to as "you" in an Agreement.

"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.

"Counterparty" means such Party as may be referred to as "you" in an Agreement.

"DNB" means the Dutch Central Bank (*De Nederlandsche Bank N.V.*).

"EEA" means the European Economic Area.

"EEA Credit Institution" means an EEA undertaking which qualifies as a credit institution under EU Banking Co-ordination Directive (2006/48) (recast), but which is not a Dutch Credit Institution and which has obtained a banking license under its local laws equivalent to a license in this jurisdiction to operate as such and that has a branch (*bijkantoor*) or branches established or located in this jurisdiction that meets all the requirements of the FMSA for that branch or those branches to be lawfully engaged in business in this jurisdiction;

"EEA Insurance Company" means an EEA undertaking duly incorporated or organised under the laws of a member state of the EEA, not being a Dutch Insurance Company and which has obtained an insurance license under its local laws equivalent to a license in this jurisdiction to operate as such and that has a branch (*bijkantoor*) or branches established or located in this jurisdiction that meets all the requirements of the FMSA in order for that branch or those branches to be lawfully engaged in business in this jurisdiction;

"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).

"Emergency Measures" are to the administration procedures (*noodregeling*) imposed by a Dutch Court pursuant to the FMSA in respect of certain Regulated Entities which are a substitute procedure to the BA's moratorium of payments (*surseance van betaling*).

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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.

"**FCA Rules**" mean the rules in Book 7 of the Dutch Civil Code and in the BA that implemented the Collateral Directive into Dutch law;

"**financial collateral arrangement**" means an arrangement defined as such in the FCA Rules.

"**Firm**" means the Party referred to as "*we*" or "*us*" in an Agreement.

"**FMSA**" means the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*), together with all its implementing and subordinate decrees and regulations.

"**Foreign Company**" means a company (not being an SE, an EEA Credit Institution, an EEA Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company) incorporated with legal entity status under the laws of another jurisdiction and having a branch or branches established or located in this jurisdiction (each, a "**Dutch Branch**"), and if such a company has its COMI in a Regulation State such Dutch Branch will qualify as an "establishment" within the meaning of article 2 (h) of the Insolvency Regulation.

"**Insolvency Regulation**" means the EU Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings, which applies to all EU member states other than Denmark.

"**Insolvency Representative**" means a liquidator (*curator*) during a bankruptcy (*faillissement*) or an administrator (*bewindvoerder*) during a moratorium of payments (*surseance van betaling*) in the sense of the BA or an administrator within the meaning of Emergency Measures.

"**Limited Partner**" means a partner of a Limited Partnership, whose identity must remain undisclosed, which has agreed to abstain from involvement in the management of a Limited Partnership and whose role is to contribute money or property to the Limited Partnership on the condition that its liability for the Limited Partnership's losses is limited to the value of its contribution.

"**Local Government Entities**" means quasi-governmental entities or public law institutions that are incorporated as an association of local governments with legal entity status pursuant to the "*Wet gemeenschappelijke regelingen*".

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

"**Managing Partner**" means a partner of a Limited Partnership which has agreed to manage the business of such Limited Partnership.

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

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"**Municipality**" means a municipality (*gemeente*) in this jurisdiction that is duly established under the *Gemeentewet* as a legal entity under public law (*publiekrechtelijke rechtspersoon*);

"**Province**" means a province (*provincie*) in this jurisdiction that is duly established pursuant to article 123 of the Dutch Constitution (*Grondwet*) as a legal entity under public law (*publiekrechtelijke rechtspersoon*);

"**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).

"**Regulated Entities**" means:

- (a) Dutch Credit Institutions and Dutch Insurance Companies;
- (b) Dutch branches of Third Country Credit Institutions and of Third Country Insurance Companies;
- (c) Dutch companies that engage in the business of a Credit Institution in reliance on an exemption from the FMSA or in breach of the FMSA.

"**Regulation Proceedings**" are the types of main insolvency proceedings possible in The Netherlands as permitted under Annex A of the Insolvency Regulation (and include winding-up by the court, creditors' voluntary winding-up, administration and company voluntary arrangements);

"**Regulation State**" means any one of the member states of the European Union save for Denmark.

"**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).

"**Resolution Measures**" means transfer measures within the meaning of Chapter 3.5.4A of the FMSA (*overdrachtsregeling*, "**Transfer Measures**") and special measures within the meaning of Chapter 6 of the FMSA (*bijzondere maatregelen*, "**Special Measures**") in respect of a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company;

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"**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).

"**Rome I**" means Regulation (EC) No. 593/2008 of the European Parliament and the Council of 17 June 2008 on the Law Applicable to Contractual Obligations.

"**SE**" means a "*Societas Europaea*" established pursuant to EU Council Regulation No. 2157/2001 of 8 October 2001 on the European Company Statute.

"**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*);

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- (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*);

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- (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*);

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- (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);

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- (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)

"Settlement Finality Directive" means Directive 98/26/EC of the European Parliament and the Council of 19th May 1998 on settlement finality in payment and securities settlement systems.

"Settlement Finality Rules" means the rules of the BA, the FMSA and the DCC that implemented the Settlement Finality Directive into Dutch law.

"System" means a system within the meaning of article 212a(b) of the BA being (i) a system designated by the Dutch Ministry of Finance pursuant to article 212d of the BA; or (ii) a formal arrangement governed by the laws of a member state of the European Union which has been notified by such member state to the Commission of the European Communities as a system within the meaning of the Settlement Finality Directive;

"Third Country Credit Institution" means a Dutch branch of a credit institution incorporated with legal entity status from a country that is not a member state of the EEA which branch meets all the requirements of the FMSA in order for it to be lawfully engaged in business in this jurisdiction.

"Third Country Insurance Company" means a Dutch branch of an insurance company incorporated with legal entity status in country that is not a member state of the EEA which branch meets all the requirements of the FMSA in order for it to be lawfully engaged in business in this jurisdiction.

"This jurisdiction" and **"the Netherlands"** mean the part of the Kingdom of The Netherlands located in Continental Europe (excluding, for the avoidance of doubt, any overseas nations forming part of the Kingdom of the Netherlands such as Aruba, Curacao, and St Maarten and any overseas special municipalities such as Saba, St. Eustatius and Bonaire).

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"**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.

"**Water Board**" means a water board (*waterschap*) in this jurisdiction that is duly established pursuant to article 133 of the Dutch Constitution (*Grondwet*) as a legal entity under public law (*publiekrechtelijke rechtspersoon*);

"**WSNP Procedure**" means the debt restructuring procedure for natural persons from the Debt Restructuring of Private Individuals Act (*Wet Schuldsanering natuurlijke personen*) which is part of the BA;

"**WUDCI**" means the EU Directive 2001/24/EC on the Reorganisation and Winding Up of Credit Institutions; and

"**WUDIU**" means the EU Directive 2001/17/EC on the Reorganisation and Winding Up of Insurance Undertakings.

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.