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20 February 2013

Dear Sirs

FOA Collateral Opinion

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

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

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 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 to the terms of reference, definitions, assumptions and qualifications set out in the main body of text of this opinion letter, this opinion is given in respect of Parties which are Singapore Companies and Non-Singapore Companies (each, as defined below insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

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

1.2.1 Singapore Companies or Non-Singapore Companies which are licensed under the Banking Act as banks in Singapore ("**Singapore Banks**") (Schedule 1);

1.2.2 Singapore Companies or Non-Singapore Companies which hold capital market services licences granted in accordance with the Securities and Futures Act ("**Singapore Investment Firms**") (Schedule 2);

1.2.3 Singapore Companies or Non-Singapore Companies which are registered in Singapore as insurers under the Insurance Act ("**Singapore Insurance Companies**") (Schedule 3);

1.2.4 Singapore Individuals (as defined below) (Schedule 4);

1.2.5 persons in their capacity as trustees of Singapore Trusts (as defined below) (Schedule 5);

1.2.6 persons in their capacity as partners in partnerships or limited partnerships ("**Singapore Partnerships**") within the meaning of the Partnership Act or the Limited Partnerships Act respectively (Schedule 6); and

1.2.7 limited liability partnerships ("**Singapore LLPs**") within the meaning of the Limited Liability Partnerships Act (Schedule 7).

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

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

1.4 In this opinion letter:

1.4.1 "**ACRA**" means the Accounting and Corporate Regulatory Authority of Singapore.

1.4.2 "**Banking Act**" means the Banking Act (Cap. 19) of Singapore;

1.4.3 "**Bankruptcy Act**" means the Bankruptcy Act (Cap. 20) of Singapore;

1.4.4 "**Bankruptcy Rules**" means the Bankruptcy Rules made under the Bankruptcy Act;

1.4.5 "**book-entry securities**" has the meaning given it in Section 130A of the Companies Act;

1.4.6 "**CDP Regulations**" means the Companies (Central Depository System) Regulations S446/1993;

1.4.7 "**Companies Act**" means the Companies Act (Cap. 50) of Singapore;

1.4.8 "**Company** " means a Singapore Company or a Non-Singapore Company;

1.4.9 "**CLPA**" means the Conveyancing and Law of Property Act (Cap. 61) of Singapore;

1.4.10 "**Depository**" means the Central Depository (Pte) Limited;

1.4.11 "**depository agent**" has the meaning given it in Section 130A of the Companies Act;

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

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

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

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

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

1.4.13 "**Foreign Cash Collateral**" means Cash Collateral located outside Singapore;

1.4.14 "**Foreign Collateral**" means Foreign Cash Collateral or Foreign Non-Cash Collateral;

1.4.15 "**Foreign Non-Cash Collateral**" means Non-Cash Collateral located outside Singapore;

1.4.16 "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion letter, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement);

1.4.17 "**Insurance Act**" means Insurance Act (Cap. 142) of Singapore;

1.4.18 "**Limited Liability Partnerships Act**" means the Limited Liability Partnerships Act (Cap. 163A) of Singapore;

1.4.19 "**Limited Partnerships Act**" means the Limited Partnerships Act (Cap. 163B) of Singapore;

1.4.20 "**Local Cash Collateral**" means Cash Collateral located in Singapore;

1.4.21 "**Local Collateral**" means Local Cash Collateral or Local Non-Cash Collateral;

1.4.22 "**Local Non-Cash Collateral**" means Non-Cash Collateral located in Singapore;

1.4.23 "**MAS**" means the Monetary Authority of Singapore;

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

1.4.25 "**Non-Singapore Companies**" means companies incorporated or formed under the laws of another jurisdiction and which are registered under Division 2 of Part XI of the Companies Act;

1.4.26 "**Partnership Act**" means the Partnership Act (Cap. 391) of Singapore;

1.4.27 "**Securities and Futures Act**" means the Securities and Futures Act (Cap. 289) of Singapore;

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

1.4.29 "**Singapore Companies**" means companies which are incorporated under the Companies Act;

1.4.30 "**Singapore Individuals**" means individuals (natural persons) who:

(a) are domiciled in Singapore;

(b) have property in Singapore; or

(c) have, at any time within the period of one year immediately preceding the date of the making of the application:

(i) been ordinarily resident or have had a place of residence in Singapore; or

(ii) carried on business in Singapore;

1.4.31 "**Singapore Registrar of Companies**" shall have same meaning as is given to the term "Registrar" under the Companies Act;

1.4.32 "**Singapore Trust**" means an express trust validly constituted under Singapore law; and

1.4.33 "**Singapore Trustee**" means a Singapore Company, a Non-Singapore Company or a Singapore Individual and acting as trustee of a Singapore Trust.

1.4.34 "**sub-account holder**" has the meaning given it in Section 130A of the Companies Act;

1.4.35 any reference to the "**Agreement**" (other than a specific cross reference to a clause in such Agreement and references in the first paragraph of this letter) shall be deemed to be a reference to an Equivalent Agreement;

1.4.36 any reference to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments;

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

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

(b) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.4.38 in instances other than those referred to at 1.4.37 above, the word "**enforceable**" and cognate terms refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

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

1.4.40 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be

construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;

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

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

2. ASSUMPTIONS

We assume the following:

2.1 The Agreement is legally binding and enforceable against both Parties under its governing law.

2.2 The Security Interest Provisions are effective under the governing law of the Agreement to create a Security Interest.

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

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

2.5 The Agreement has been properly executed by both Parties.

2.6 The Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.

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

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

2.9 No provision 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.

2.10 No provision of the Agreement that is necessary for the giving of our opinions and advise in this opinion letter has been altered in any material respect. In our view, an alteration contemplated by 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.

2.11 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 Interest pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

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

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

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

3. OPINIONS

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

3.1 Valid Security Interest

3.1.1 The Security Interest Provisions would create a valid security interest over the Local Collateral.

3.1.2 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 Local Non-Cash Collateral by selling and applying the proceeds of the sale of the Local Non-Cash Collateral towards amounts owing to the Non-Defaulting Party by the Defaulting Party.

3.1.3 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Local Collateral.

3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Local

Collateral would rank ahead of the interests of the Counterparty and any other person therein.

3.1.5 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of any Foreign Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where such Foreign Collateral is situated.

3.2 **Further acts**

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

3.3 **Foreign Collateral Providers**

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

3.4 **Right of re-use**

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

3.4.2 The opinion given at paragraph 3.4.1 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 **Registration of Security**

Charges created by a Singapore Company

4.1.1 Pursuant to Section 131 of the Companies Act, where a "charge" to which Section 131(3) of the Companies Act applies is created by a Singapore Company a statement containing the prescribed particulars of such charge must be lodged with the Singapore Registrar of Companies for registration within 30 days after the date of its creation (i.e. the date of that instrument),

failing which any security on the Singapore Company's property or undertaking conferred by such charge will be void against the liquidator and any creditor of the Singapore Company. The term "charge" for these purposes includes mortgages or security interests governed by foreign law that would be characterised for Singapore law purposes as a mortgage or charge. For those purposes, it is irrelevant whether the Collateral is Foreign Collateral or Local Collateral.

Charges created by a Non-Singapore Company

4.1.2 Section 141 of the Companies Act extends the application of the requirements referred to above to charges on property situated in Singapore which are created by a Non-Singapore Company. Accordingly, if a company was registered as a Non-Singapore Company on or before the date on which it enters into an instrument constituting the charge, then it would be necessary for a statement containing the prescribed particulars of such charge to be lodged with the Singapore Registrar of Companies for registration within 30 days after the date of that instrument, failing which such charge may be void against the liquidator or any creditor of that Non-Singapore Company.

4.1.3 Pursuant to Section 133(1) of the Companies Act, if a company shall, at any time after the date on which it enters into an instrument constituting the charge, become registered as a Non-Singapore Company, it shall, within 30 days after the date of its being so registered, lodge with the Singapore Registrar of Companies for registration a statement of the prescribed particulars of such charge. Whilst failure by such Non-Singapore Company to comply with such obligations under Section 133(1) of the Companies Act may subject it and its officers to a fine, such failure would not render such security void against the liquidator or any creditor of such Non-Singapore Company.

After acquired property

4.1.4 If the instrument creating a charge provides that the charge is to attach to any property upon the fulfilment of a stipulated condition in respect of that property (for example, upon the chargor's acquisition of property falling within a certain description), then upon the fulfilment of such stipulated condition, the charge will attach to such property without any further act by either the chargor or the chargee. The attachment will take effect from the date of the creation of the charge. Accordingly, without prejudice to the requirement to register as set out in paragraphs 4.1.1, 4.1.2 and 4.1.3 above, there is no requirement under the Companies Act for a Singapore Company or a Non-Singapore Company to lodge with the Singapore Registrar of Companies for registration a statement of the prescribed particulars of the charge as and when the relevant condition is satisfied in respect of the

relevant property. Prior to the satisfaction of such condition, the chargee will have only an "inchoate" security interest in such property.

Registrable charges

4.1.5 The Security Interest created by the Security Interest Provisions may fall within one of the types of registrable charges set out in Section 131(3), including, without limitation:

(a) a floating charge; or

(b) a charge on book debts.

4.1.6 Whether or not a security arrangement constitutes a fixed or floating charge is a question of fact, and we would expect the Singapore courts to analyse the conduct of the parties and the rights created between them before applying the legal principles to such rights and conduct. The essential element that distinguishes a fixed charge from a floating charge is the degree of control that the chargee has over the chargor's ability to deal with the charged assets. Where the chargor is free to deal with the charged assets without the consent of the chargee, the Singapore courts would be likely to hold that the charge constitutes a floating charge, notwithstanding that it may be described as a fixed charge.

4.1.7 The term "book debt" is not defined in the Companies Act. However, Walter Woon's book "Walter Woon on Company Law" (Revised Third Edition, 2009) states that "book debt" means such debts as ought to be entered in such books as should be kept in the business and would, if properly kept, sufficiently disclose the company's business and financial position from time to time (*Motor Credits Ltd* v *WF Wollaston Ltd* (1929) 29 SR (NSW) 227). Whether a debt would be treated in this way therefore depends on normal business and accounting practices, which will usually be determined by reference to expert evidence. It is also of note that Section 131(3A) of the Companies Act states that "the reference to a charge on book debts [...] shall not include a reference to a charge on a negotiable instrument or on debentures issued by the Government". This appears to imply that charges on other negotiable instruments or debentures would be caught by Section 131(3) of the Companies Act. Despite the view expressed above, the case law in this area is limited and so a degree of uncertainty remains. A charge over credit balances in cash accounts may well constitute a charge over book debts.

4.1.8 A charge over shares only is not among the list of charges in Section 131(3) of the Companies Act. However, if the charge extends to dividends payable in respect of shares owned by the company, this could be construed as a charge on book debts of the company – see discussion in paragraph 4.1.6 above.

4.2 **Effectiveness of Security**

4.2.1 We express no opinion as to:

(a) whether a Counterparty has good legal or other title to any Collateral, or as to the existence or value of any Collateral;

(b) the priority of the Security Interest created under the Security Interest Provisions among security interests created by the Counterparty or whether the Security Interest constitutes a legal or equitable security interest or whether it constitutes a fixed or floating charge; or

(c) whether the Security Interest Provisions breach any other agreement or instrument.

4.2.2 The exercise by a Firm of the powers and remedies conferred by the Security Interests Provisions or by law is subject to general equitable principles regarding the enforcement of security and the supervisory powers of the Singapore courts.

4.2.3 The opinions set out in paragraphs 3.1 (*Valid security interest*) and 3.2 (*Further acts*) are subject to the following, with reference to the Collateral that may be referred to in the Security Interest Provisions:

(a) any item of Collateral which is intended to be the subject of the Security Interest must be capable of forming the subject of a security interest and must not otherwise, by reason of a contractual prohibition against assignment or consideration of public policy, be incapable of transfer;

(b) any item of Collateral that was not the subject of the Security Interest at the time of entry into the Agreement must be capable of being ascertained as and when it is expressed to become the subject of the Security Interest;

(c) any authorisation, consent, condition or formality which, by the terms governing or regulating an item of Collateral intended to be the subject of the Security Interest, is required to be satisfied, obtained or done prior to or as a consequence of such item of Collateral becoming the subject of the Security Interest, must have been satisfied, obtained or done; and

(d) any contract the benefit of which is intended to be the subject of the Security Interest must not be capable of being set aside as a result of any fraud or misrepresentation, or any bribe or corrupt conduct.

4.3 **Limitations arising from Insolvency and Similar Laws**

4.3.1 The opinions in this opinion letter are subject to any limitations arising from insolvency, bankruptcy, liquidation, administration, schemes of arrangement, judicial management, moratorium, reorganisation and similar laws generally affecting the rights of creditors (whether under statute law, common law or equity).

4.3.2 Without prejudice to paragraph 4.3.1 above, the opinions in this opinion letter are subject to any obligation expressed to be assumed, or any security interest created or purported to be created, or any disposition of property made or purported to be made, or any other action taken or to be taken, under or pursuant to the Security Interest Provisions being held to be wholly or partly invalid as a result of any of the following sections (if the circumstances described in any of these sections are applicable):

(a) Sections 98 (*Transactions at undervalue*) and 99 (*Unfair preferences*) (read with Section 100 of the Bankruptcy Act) and Section 103 (*Extortionate credit transactions*) of the Bankruptcy Act (which apply to the winding up of a Singapore Company and Non-Singapore Company through Section 329 of the Companies Act and to a Singapore Company under judicial management through Section 227T of the Companies Act);

(b) Section 332 (*disclaimer of onerous property*) of the Companies Act; and

(c) Section 330 (*effect of floating charges*) of the Companies Act; and/or

(d) Section 73B (*voluntary dispositions to defraud creditors voidable*) of the CLPA.

4.3.3 Certain preferential payments of a Singapore Company or a Non-Singapore Company, such as taxes and unpaid wages and other amounts owing to employees may, under Sections 226 and 328(5) of the Companies Act, be paid out of the proceeds of any property subject to any floating charge created under the Security Interest Provisions, in priority to the claims of the holder of the floating charge.

4.3.4 Any of the Security Interest Provisions which confers, purports to confer or waives a right of set-off or similar right may be ineffective against a liquidator, or creditor, if and to the extent that such right (or purported right) or waiver (or purported waiver) would, if given effect, produce a different effect from the mandatory set-off prescribed by Section 88 of the Bankruptcy Act, which is made applicable to Companies by Section 327(2) of the Companies Act.

4.3.5 Without prejudice to paragraph 4.3.1 above, Part VIIIA (*Judicial Management*) of the Companies Act contains various provisions which may affect the effectiveness of the Security Interest Provisions. In particular:

(a) pursuant to Sections 227C(b) and 227D(4)(d) of the Companies Act, in respect of a Singapore Company which is subject to an application or an order for judicial management, no steps shall be taken to enforce any charge on or security over such Singapore Company's property, including the appointment of a receiver and manager, except with leave of the Singapore court and subject to such terms as Singapore court may impose; and

(b) under Section 227H of the Companies Act, subject to certain conditions, a judicial manager of a Singapore Company may dispose of or otherwise exercise his powers in relation to any property of the Singapore Company which is subject to a security as if the property were not subject to the security.

4.4 Application of Foreign Law

4.4.1 Under the conflict of laws rules of Singapore, the law governing the proprietary aspects of the Security Interest is the law of the place where the Collateral is situated, or deemed to be situated. Accordingly, we express no opinion on whether the Security Interest Provisions would create a valid Security Interest over any Foreign Collateral.

4.4.2 If any obligation is to be performed in a jurisdiction outside Singapore, it may not be enforceable in Singapore to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction and if the matter were to arise before it a Singapore court may take into account any overriding mandatory provisions of the law of the place of performance insofar as they render the performance unlawful or otherwise take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

4.5 Right of Re-Use

4.5.1 As issues relating to the rights or obligations connected with, or arising from, Non-Cash Collateral (including whether a Firm is entitled to borrow, lend, appropriate, dispose of or otherwise use for its own purposes such Non-Cash Collateral) are determined by the law of the place where the relevant Non-Cash Collateral is situated, it would be necessary to consider Singapore law in order to determine whether the Rehypothecation Clause would be effective in accordance with its terms in relation to any Local Non-Cash Collateral. From the perspective of Singapore law, the fact that the Rehypothecation Clause in respect of such Local Non-Cash Collateral is valid and enforceable

under the chosen governing law of the Agreement would not, of itself, make such right valid and enforceable under Singapore law.

4.5.2 We believe the Rehypothecation Clause may contravene two long-standing rules of common law, which are:

(a) the doctrine against clogging the equity of redemption; and

(b) the rule against collateral advantages.

Clog against the equity of redemption

4.5.3 One of the essential features of a security interest is the existence of residual property rights in favour of the security giver, known as the "equity of redemption". Because the security giver retains a property right in the secured assets, the security taker is, in the absence of default, not free to dispose of them, or create an inconsistent security over them, but must hold the original secured assets available for return upon the discharge of the secured obligation. Although a security taker which has exercised a right of use in respect of secured assets would normally be under an obligation to return equivalent assets to the security giver or to account for the proceeds of such secured assets, these obligations are merely personal in nature, are capable of being discharged by set-off and are at risk of not being performed in full on the insolvency of the security taker. By contrast, because the equity of redemption is a property right, the secured assets are not at risk on the insolvency of the security taker. Upon the discharge of the secured obligation, the security giver is entitled to recover the secured assets in full from the security taker's insolvency officials.

4.5.4 In the decision of the English case of *Kreglinger v New Patagonia Meat and Cold Storage Co. Ltd* [1914] AC 25, the House of Lords held that any term which clashes directly with a security giver's equitable right to redeem is said to constitute a "clog" and would *always* be held to be inoperative and void, even if it was freely negotiated between sophisticated counterparties on arm's length terms. Thus, for example, a term which gives the security taker a beneficial interest in the secured property itself or a term which gives the security taker an option to acquire such an interest would constitute a "clog", and accordingly be inoperative and void.

4.5.5 In our view, the Rehypothecation Clause would constitute a clog because it provides that the Local Non-Cash Collateral would become absolute property of the Firm (or that of the Firm's transferee), free from any equity, right, title or interest of the Counterparty (including the Counterparty's equity of redemption in the Local Non-Cash Collateral).

4.5.6 It has also been argued in some academic texts that the doctrine against "clogging" would not apply to a security interest created over dematerialised securities in electronic form. In such a case, the security interest is created

over co-proprietary rights in a fungible pool of securities. The assets in such a pool are shifting in nature, and it is simply not possible for the security provider to receive a return of the precise original assets. Therefore, it is argued that there cannot be a "clog" preventing the security provider in such circumstances from getting back exactly what it provided. While this may be the case, we take the view the doctrine against "clogging" is directed primarily against any term which purports to interfere with or diminish the security provider's proprietary interest in the secured assets (and not simply whether the security provider would be able to get back exactly what it had provided). Even in the case of a security interest created over dematerialised securities, a right of use over such securities would have the effect of replacing the security provider's original proprietary interest in such assets with merely a personal right against the security taker; in our view, the fact that the original subject-matter of the security is dematerialised shares or debt securities would not, of itself, lead the court to find that it was impossible for a "clog" to exist.

4.5.7 Moreover, while the strictness of the doctrine has been criticized on a number of occasions, including, more recently in the English Court of Appeal decision in *Jones v Morgan* [2001] EWCA Civ 995 and in some academic texts, the dicta of *Kreglinger* has been followed in the Singapore cases of *Fiscal Consultants Pte Ltd .vs. Asia Commercial Finance Ltd [1981-82]* and *Wee Ah Kee .vs. Citicorp Investment Bank (Singapore) Ltd [1996]* (on appeal *Citicorp Investment Bank (Singapore) Ltd .vs. Wee Ah Kee [1997]*) and therefore we believe the better view is that the "unqualified" approach adopted by the House of Lords in *Kreglinger* remains authoritative in Singapore.

Rule against collateral advantages

4.5.8 By contrast, the rule against collateral advantages, which was developed in England at a time when rates of interest were limited by statute, has been modified in recent times such that the rule's application is limited to situations where advantages are unfair and unconscionable (and not merely unreasonable).

4.5.9 We mention this rule here because the Rehypothecation Clause could, arguably, be seen as a collateral advantage to a Firm - in the sense that a Customer is required not only to perform its secured obligations (including the payment of interest) but also to grant the Firm the right to "use" the Non-Cash Collateral. The Rehypothecation Clause would certainly confer an advantage to a Firm; and it is granted to the Firm in the context of its holding security over Local Non-Cash Collateral.

4.5.10 In determining whether this advantage is unfair or unconscionable, the Singapore courts would likely have regard to amongst other things, the relative bargaining strengths of the Parties; whether any provision in the

nature of penalising a Counterparty exists; and whether a Counterparty is contractually entitled to any real and tangible benefits by agreeing to grant a Firm such right.

4.6 **Enforcement of Security Interest**

4.6.1 Under Singapore law, a chargee has only the remedies of: (a) sale of the secured assets; and (b) appointment of a receiver. The remedy typically exercised by a chargee in relation to collateral in the form of securities would be the power of sale, because the appointment of a receiver is generally not thought to confer any practical advantage. A chargee (unlike a mortgagee) has no right to obtain foreclosure.

4.6.2 The opinion set out in paragraph 3.1.2 is subject to the following, with reference to Local Non-Cash Collateral that may be the subject of the Security Interest Provisions:

(a) in exercising its right of sale, a Firm is required to act in good faith and to take reasonable care to obtain whatever is the true market value of Local Non-Cash Collateral at the moment it chooses to sell it (although it may sell promptly and does not have to wait in the hope of achieving a better price at a later date);

(b) a Firm may not sell the Local Non-Cash Collateral to itself, unless the sale is ordered by the court and the Firm has obtained leave to bid (because such a transaction would amount to foreclosure without the leave of the court); and

(c) a Firm may sell to a company in which it is interested *provided that* the company is not a pure nominee, but it must prove that the sale was in good faith and that it had taken reasonable steps to obtain the best price reasonably obtainable at that time.

4.7 **Security Interests Over Book-Entry Securities**

4.7.1 Section 130N(1) of the Companies Act provides that no security interest may be created in book-entry securities other than as expressly provided in Section 130N of the Companies Act, any other written law or any regulations made under Section 130P of the Companies Act. Accordingly, any Security Interest in respect of Collateral comprising of book-entry securities will not be valid unless it is in compliance with Section 130N(1) of the Companies Act.

4.7.2 Pursuant to Section 130N of the Companies Act, a security interest in respect of book-entry securities may be created by way of lodgement with the Depository of a duly executed form of assignment or charge in respect of such book-entry securities prescribed by the CDP Regulations.

4.7.3 Regulation 23A(1) of the CDP Regulations (which are regulations made under Section 130P of the Companies Act) provides, inter alia, that nothing in Section 130N of the Companies Act or the CDP Regulations shall be construed as precluding a sub-account holder from creating under any rule of law any security interest in book-entry securities in favour of:

(a) any other sub-account holder who maintains a sub-account for such book-entry securities with the same depository agent as the sub-account holder; or

(b) the depository agent with whom the sub-account holder maintains the sub-account for such book-entry securities,

except that the Depository shall not be required to recognise, even when having notice thereof, any security interest so created in such book-entry securities.

4.7.4 Regulation 23A(2) of the CDP Regulations provides that security interests created in book-entry securities pursuant to instruments of assignment or charge in the form prescribed by the CDP Regulations shall have priority over such security interests created under any rule of law.

4.8 Stamp duty

Stamp duty of up to a maximum of S$500 would be imposed by the Inland Revenue Authority of Singapore in connection with the execution of the Agreement unless it is executed under hand only. If stamp duty is chargeable but unpaid, the Agreement would be inadmissible in evidence in a Singapore court.

4.9 Other qualifications

4.9.1 Where any party to the Agreement is vested with a discretion or may determine a matter in his, her or its opinion, that party may be required to exercise his, her or its discretion in good faith, reasonably and for a proper purpose, and to form his, her or its opinion in good faith and on reasonable grounds.

4.9.2 The parties to the Agreement may be able to amend that document by oral agreement or by conduct despite any provision to the contrary.

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

4.9.4 The opinions expressed in this Opinion Letter are subject to the effects of any United Nations sanctions or other similar measures implemented or effective in Singapore with respect to any party to Agreement which is, or is controlled by or otherwise connected with, a person resident in, incorporated

in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

4.9.5 Any term of the Security Interest Provisions permitting the enforcement of security by a Firm after the occurrence of an Event of Default but before the determination of any amount(s) owing by a Counterparty and intended to be secured thereby may be unenforceable or void for uncertainty.

4.9.6 We express no opinion as to the compliance of the Security Interest Provisions or the Parties with the rules and/or requirements of Singapore Exchange Securities Trading Limited (the "**SGX-ST**") (including, without limitation, the listing manual of the SGX-ST) and the effect of any non-compliance.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (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.

Yours faithfully

Clifford Chance Pte Ltd.

Clifford Chance Pte Ltd

SCHEDULE 1
SINGAPORE BANKS

Subject to the provisions of this Schedule 1 (*Singapore Banks*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter apply in respect of a Party which is a Singapore Bank.

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

The following additional definition shall apply:

"**SFR**" means the Securities and Futures (Licencing and Conduct of Business) Regulations of Singapore.

2. ASSUMPTIONS

The following additional assumption shall apply:

2.1 The Collateral does not belong to a customer of a Counterparty.

3. QUALIFICATIONS

The following additional qualifications shall apply:

3.1 Customer asset rules

Where a Singapore Bank engages in regulated activity under the Securities and Futures Act, Regulation 34 of the SFR (which would by virtue of Regulation 54(1) of the SFR apply to a Singapore Bank) provides that such a Singapore Bank may only mortgage, charge, pledge or hypothecate its customer's assets in the circumstances specified in paragraphs (2) and (4) of the SFR.

Under paragraph (2) of Regulation 34, a Singapore Bank may mortgage, charge, pledge or hypothecate its customer's assets but only for a sum not exceeding the amount owed by the customer to it.

Under paragraph (4) of Regulation 34, a Singapore Bank may mortgage, charge, pledge or hypothecate its customers' assets together only if (a) the sum of the claims to which such customers' assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the aggregate amounts owed by the customers to the Singapore Bank; and (b) the claim to which each customer's assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the amount owed by the customer to the Singapore Bank.

Where the Counterparty is itself subject to Regulation 34 of the SFR and posts its own customers' assets as collateral to the Firm, Regulation 34 would raise concerns as to the lawfulness of the creation of and the enforceability of any Security Interest over such assets pursuant to the Security Interest Provision. This is because the Security Interest Provision secures the obligations owing by the Counterparty to the Firm, and this would not comply with paragraphs (2) or (4) of Regulation 34. For this reason, we make our assumption in section 2.1 above.

3.2 **Priorities in respect of banks**

In addition to the preferential payments referred to in paragraph 4.3.3 above, pursuant to Section 61 of the Banking Act, the liabilities in Singapore of a Singapore Bank specified in section 62(1) of the Banking Act shall have priority over all unsecured liabilities of the Singapore Bank other than the preferential debts specified in section 328(1) of the Companies Act.

Section 62(1) of the Banking Act states that in the event of a winding up of a Singapore Bank, the following liabilities in Singapore of the Singapore Bank shall, amongst themselves, rank in the following order of priority:

(a) firstly, any premium contributions due and payable by the bank under the Deposit Insurance and Policy Owners' Protection Schemes Act 2011 (No. 15 of 2011) (the "**Deposit Insurance Act**");

(b) secondly, liabilities incurred by the bank in respect of insured deposits, up to the amount of compensation paid or payable out of the DI Fund by the Agency under the Deposit Insurance Act in respect of such insured deposits (as such terms are defined in the Deposit Insurance Act);

(c) thirdly, deposit liabilities incurred by the bank with non-bank customers other than those specified in paragraphs (b) and (d);

(d) fourthly, deposit liabilities incurred by the bank with non-bank customers when operating an Asian Currency Unit approved under section 77 of the Banking Act."

3.3 **Moratorium**

The Banking Act contains various provisions which may affect the effectiveness of the Security Interest Provisions. In particular, Part VII of the Banking Act provides for various remedies for a failing Singapore Bank, which include :

(a) under Section 54 of the Banking Act, the power of the High Court, on the application of the MAS to make one or more orders, including an order that no steps be taken to enforce any security over any property of the Singapore Bank and/or an order that no steps be taken by any

person, other than a specified person, to sell, transfer, assign or otherwise dispose of any property of the Singapore Bank and any such disposal in contravention of such order is void;

(b) under Section 55E of the Banking Act, the power of the MAS to make a determination that the whole or any part of the business of a Singapore Bank shall be transferred, whereupon during the prescribed period, amongst other things, no steps may be taken to enforce any security over the specified business and any sale, transfer, assignment or other disposition of the specified business is void.

SCHEDULE 2
SINGAPORE INVESTMENT FIRMS

Subject to the provisions of this Schedule 2 (*Singapore Investment Firms*), the opinions, assumptions and qualifications set out in the main body of text in this opinion letter will also apply in respect of a Party which is a Singapore Investment Firm.

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

The following additional definition shall apply:

"**SFR**" means the Securities and Futures (Licencing and Conduct of Business) Regulations of Singapore.

2. ASSUMPTIONS

The following additional assumption shall apply:

2.1 The Collateral does not belong to a customer of a Counterparty.

3. QUALIFICATIONS

The following additional qualification shall apply:

3.1 Customer asset rules

Regulation 34 of the SFR provides that a Singapore Investment Firm may only mortgage, charge, pledge or hypothecate its customer's assets in the circumstances specified in paragraphs (2) and (4) of the SFR.

Under paragraph (2) of Regulation 34, a Singapore Investment Firm may mortgage, charge, pledge or hypothecate its customer's assets but only for a sum not exceeding the amount owed by the customer to it.

Under paragraph (4) of Regulation 34, a Singapore Investment Firm may mortgage, charge, pledge or hypothecate its customers' assets together only if (a) the sum of the claims to which such customers' assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the aggregate amounts owed by the customers to the Singapore Investment Firm; and (b) the claim to which each customer's assets are subject as a result of such mortgage, charge, pledge or hypothecation does not exceed the amount owed by the customer to the Singapore Investment Firm.

Where the Counterparty is itself subject to Regulation 34 of the SFR and posts its own customers' assets as collateral to the Firm, Regulation 34 would raise concerns as to the lawfulness of the creation of, and the enforceability of, any Security Interest over such assets pursuant to the Security Interest Provision. This is because the Security Interest Provision secures the obligations owing by the Counterparty to the Firm, and this would not comply with paragraphs (2) or (4) of Regulation 34. For this reason, we make our assumption in section 2.1 above.

SCHEDULE 3
SINGAPORE INSURANCE COMPANIES

Subject to the provisions of this Schedule 3 (*Singapore Insurance Companies*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter apply in respect of a Party which is a Singapore Insurance Company.

1. ASSUMPTIONS

The following additional assumption shall apply:

In the case of a Party that is a Singapore Insurance Company, the Agreement and Transactions are attributable to the same insurance fund maintained by the Singapore Insurance Company under the Insurance Act and the Agreement stipulates that Collateral consisting of assets attributed to one insurance fund may be used only to secure against the liabilities of the same insurance fund.

2. QUALIFICATIONS

The following additional qualifications shall apply:

2.1 Insurance funds

Section 17 of the Insurance Act requires a Singapore Insurance Company to establish separate insurance funds for each class of insurance business carried on by the Singapore Insurance Company that relates to Singapore policies and for each class of insurance business carried on by the Singapore insurance Company that relates to offshore policies. Singapore Insurance Companies are also, in certain circumstances, required by Section 17 of the Insurance Act to establish separate insurance funds for different types of policies in respect of certain classes of insurance business.

Section 17(4) of the Insurance Act requires that all receipts of the Singapore Insurance Company that are attributable to the business to which an insurance fund relates must be paid into that insurance fund, and the assets in the insurance fund can only be applied to meet such part of the Singapore Insurance Company's liabilities and expenses as is so attributable to the business to which such insurance fund relates (although it is permissible to withdraw any surplus of assets over liabilities for such insurance fund in accordance with Section 17(9)).

Accordingly, we are of the view that Singapore law will not permit the creation of a Security Interest in respect of Collateral consisting of assets attributed to one insurance fund to secure against the liabilities of another insurance fund.

2.2 Custody of assets

Section 22(5) of the Insurance Act provides that if a mortgage or charge is created by a Singapore Insurance Company at a time when there is in force a requirement

imposed on it by virtue of Section 22 (that the whole or a specified properties of assets to which the requirement under Section 21 (*Maintenance of assets in Singapore*) applies shall be held by an approved trustee) and such mortgage or charge confers a security on assets which are held by such approved trustee, the mortgage or charge to the extent of such security shall be void against the liquidator and any creditor of the Singapore Insurance Company.

2.3 **Moratorium**

The Insurance Act contains various provisions which may affect the effectiveness of the Security Interest Provisions. In particular, Part IIIA of the Insurance Act provides for various remedies for a failing Singapore Insurance Company, which include :

(a) under Section 41E of the Insurance Act, the power of the High Court, on the application of the MAS to make one or more orders, including an order that no steps be taken to enforce any security over any property of the Singapore Insurance Company and/or an order that no steps be taken by any person, other than a specified person, to sell, transfer, assign or otherwise dispose of any property of the Singapore Insurance Company and any such disposal in contravention of such order is void;

(b) under Section 49FF of the Insurance Act, the power of the MAS to make a determination that the whole or any part of the business of a Singapore Insurance Company shall be transferred, whereupon during the prescribed period, amongst other things, no steps may be taken to enforce any security over the specified business and any sale, transfer, assignment or other disposition of the specified business is void.

SCHEDULE 4
SINGAPORE INDIVIDUALS

Subject to the provisions of this Schedule 4 (*Singapore Individuals*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter apply in respect of a Party who is a Singapore Individual.

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

The following additional definition shall apply:

"**Bills of Sale Act**" means the Bills of Sale Act (Cap. 24) of Singapore.

2. ASSUMPTIONS

The following additional assumption shall apply:

2.1 We assume that each Singapore Individual is of full age and sound mind and has the mental capacity and full legal capacity under any applicable law relating to him or her to enter into and to exercise his or her rights and to perform his or her obligations under the Agreement and Transactions.

3. QUALIFICATIONS

The following additional qualifications shall apply:

3.1 **Registration of Security**

Bills of sale

3.1.1 Section 4 of the Bills of Sale Act provides that every bill of sale must be duly attested and registered within three clear days after its execution. Otherwise, the bill of sale will be void in respect of the chattels comprised therein, if it was made or given by way of security for the payment of money, and "personal chattels" are purportedly the subject of such security.

3.1.2 The term "personal chattels" is defined in the Bills of Sale Act to mean "*goods, furniture, and other articles capable of complete transfer by delivery [...] but does not include [...] shares or interests in the stock, funds, or securities of any government or in the capital or property of incorporated or joint-stock companies nor choses in action*;". We have no reason to believe that, apart from exceptional circumstances, any such personal chattels are to be taken as security under the Security Interest Provisions.

Assignment of book debts

3.1.3 Section 104 of the Bankruptcy Act provides that where a person engaged in any business makes an assignment to any other person of his or her existing or future book debts or any class thereof and is subsequently adjudicated bankrupt, the assignment shall be void against the Official Assignee as regards any book debts which have not been paid before the making of the bankruptcy application, unless the assignment has been registered under the Bills of Sale Act. However, Section 104 specifically excludes from its operation an assignment of debts becoming due under specified contracts. Accordingly, the Security Interest constituted by the Security Interest Provisions will not be void against the Official Assignee in bankruptcy of a Singapore Individual by reason of non-registration under Section 104 of the Bankruptcy Act. There is no functional equivalent of Section 104 applicable to a Singapore Company or a Non-Singapore Company.

3.2 **Effectiveness of Security: Floating charges**

There is some uncertainty under Singapore law whether a Singapore Individual may create a floating charge. We believe the better view is that a Singapore Individual may not create a floating charge in respect of personal chattels (due to the requirement, under the Bills of Sale Act, for there to be a schedule annexed to, or written on, a bill of sale containing an inventory of the personal chattels comprised in the bill – which prevents "after-acquired" property being covered by such security bill), but there is in principle no reason why a floating charge cannot be created by a Singapore Individual in respect of assets or property which are not personal chattels (such as cash or securities). Although we are not aware of any case law directly on point, we note that in the English case of *Tailby v The Official Receiver* (1888) 13 App Cas 523, it was held that an assignment by an individual of future book debts, being a chose in action and therefore not registrable as a bill of sale, was effective.

3.3 **Limitations arising from Insolvency Law**

Paragraph 4.3.2 shall be deleted and replaced with:

> "*Without prejudice to paragraph 4.3.1 above, the opinions in this opinion letter are subject to any obligation expressed to be assumed, or any security interest created or purported to be created, or any disposition of property made or purported to be made, or any other action taken or to be taken, under or pursuant to the Security Interest Provisions being held to be wholly or partly invalid as a result of:*
>
> (a) *any of the following sections of the Bankruptcy Act (if the circumstances described in any of these sections are applicable):*
>
> (i) *Part V relating to voluntary arrangements;*
>
> (ii) *section 104 (avoidance of general assignment of book debts);*

(iii) *section 98 (transactions at an undervalue);*

(iv) *section 99 (unfair preferences); and*

(v) *section 110 (disclaimer of onerous property); and/or*

(b) *Section 73B (voluntary dispositions to defraud creditors voidable) of the CLPA.*"

SCHEDULE 5
SINGAPORE TRUSTEES OF SINGAPORE TRUSTS

Subject to the provisions of this Schedule 5 (*Singapore Trusts*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter apply in respect of a Party which is a Singapore Trustee of a Singapore Trust.

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

The following additional definition shall apply

1.1 Where a body of trustees (each a Singapore Trustee) act as trustee of a Singapore Trust, references in this opinion to a trustee shall be to such body of persons acting jointly as trustees.

2. ASSUMPTIONS

The following additional assumptions shall apply:

3.1 Where a Party is expressed to be a Singapore Trustee of a Singapore Trust, the contracting party to such Agreement is the Singapore Trustee of such Singapore Trust, acting in his, her or its capacity as such.

3.2 Each Singapore Trust is an express trust validly constituted under a written trust instrument governed by Singapore law, but excluding (without limitation) any trust arising by operation of law, any statutory trust, any trust of which a judicial trustee is trustee, any trust of which an official trustee is trustee, any bare trust (simple trust), and any trust of which a person is trustee by virtue of being a personal representative of a deceased estate.

3.3 Each trustee of a Singapore Trust is a Singapore Trustee.

3.4 Each Singapore Trustee, in entering into the Agreement and each Transaction, is not in breach of any of his, her or its express or implied duties under the relevant trust instrument or otherwise in connection with the relevant Singapore Trust and is acting in accordance with the terms, express or implied, and conditions and purpose of the relevant Singapore Trust.

3.5 During the life of all Transactions, each Singapore Trustee will remain a trustee of the relevant Singapore Trust.

3.6 Each Singapore Trustee will have assumed or undertaken all obligations and liabilities under the Agreement in his, her or its capacity as trustee of the relevant Singapore Trust and not in his, her or its personal capacity, and will have agreed, by express

contractual provision with the other Party, that any power or right conferred on the other Party under the Agreement, or any recourse therefor, shall not extend to any personal assets of that Singapore Trustee or any assets held by that Singapore Trustee as trustee of any trust other than the relevant Singapore Trust.

3. QUALIFICATIONS

The following additional qualifications shall apply:

3.1 Registration of Security

Trustees that are Companies

3.1.2 There is some uncertainty whether Section 131 of the Companies Act (the provisions of which are described in paragraph 4.1 (*Registration of Security*) in the main body of text of this opinion letter) applies to a charge created by a Singapore Trustee that is a Company where such Singapore Trustee is acting in its capacity as trustee of a Singapore Trust, rather than in its personal capacity.

3.1.3 We, believe, on balance, that Section 131 of the Companies Act does not apply to a charge created by a Singapore Trustee that is a Company. This is because:

(a) Section 131(1) refers to "any security on the company's property", and assets held beneficially for another is not the company's property (i.e. is not the Singapore Trustee's property); and

(b) in any case, the consequences of invalidity do not apply since the trust assets do not belong beneficially to the Singapore Trustee and neither the liquidator nor any creditor of the Singapore Trustee would obtain any benefit if the unregistered charge were invalidated.

3.1.4 However, we recognize that an argument may be made on policy grounds that registration under Section 131 of the Companies Act would warn subsequent potential creditors and other third parties dealing with the relevant trust assets that they are subject to a charge.

3.1.5 In light of these uncertainties, it may be prudent to treat a charge created by a Singapore Trustee that is a Company as being caught by the provisions of Section 131 of the Companies Act. The current practice of the Singapore Registrar of Companies is that the Singapore Registrar of Companies would accept for registration a statement of prescribed particulars of the charge created by a Company and accordingly including that by a Singapore Trustee that is a Company (however, a standard search at the ACRA against a Singapore Trustee would not normally show whether the Singapore Trustee is acting in its capacity as a trustee, rather than in a personal capacity).

Beneficiaries that are Companies

3.1.6 We believe an argument may be made that a charge over trust assets held for the benefit of a beneficiary may require to be submitted (under Section 131 of the Companies Act) to the Singapore Registrar of Companies for registration against a beneficiary of the relevant trust, if the beneficiary is a Company. We believe this argument has greater force if the trust assets are held under a bare trust as the assets would, in practice, be under the beneficiary's control and considered the beneficiary's property.

3.1.7 Accordingly, it may be prudent to treat a charge over assets held by a bare trustee for a beneficiary that is a Company as being caught by the provisions of Section 131 of the Companies Act. As charges are rarely submitted for registration against a beneficiary company in this jurisdiction, we are not aware whether the Singapore Registrar of Companies would in practice accept such charges for registration.

Trustees or beneficiaries who are Singapore Individuals

3.1.8 Section 4 of the Bills of Sale Act provides that every bill of sale must be duly attested and registered or it will be void in respect of the chattels therein. It is possible that the requirements under Section 4 of the Bills of Sale Act apply to Singapore Trustees or beneficiaries of a Singapore Trust who are Singapore Individuals (please see section 3.1 (*Registration of Security*) of Schedule 4 (*Singapore Individuals*) above). However, as mentioned in section 3.1 (*Registration of Security*) of Schedule 4 (*Singapore Individuals*), we have no reason to believe that, apart from exceptional circumstances, any such personal chattels are to be taken as security under the Security Interest Provisions.

3.2 Effectiveness of Security: Floating Charges created by Singapore Trustees who are Singapore Individuals

3.2.1 There is some uncertainty under Singapore law whether a Singapore Individual may create a floating charge. We believe the better view is that a Singapore Individual may not create a floating charge in respect of personal chattels (due to the requirement, under the Bills of Sale Act, for there to be a schedule annexed to, or written on, a bill of sale containing an inventory of the personal chattels comprised in the bill – which prevents "after-acquired" property being covered by such security bill), but there is in principle no reason why a floating charge cannot be created by a Singapore Individual in respect of assets or property which are not personal chattels (such as cash or securities). Although we are not aware of any case law directly on point, we note that in the English case of *Tailby v The Official Receiver* (1888) 13 App Cas 523, it was held that an assignment by an individual of future book debts, being a chose in action and therefore not registrable as a bill of sale, was effective.

3.3 Insolvency of Singapore Trustee

A Singapore Trustee is not the beneficial owner of any property held by the Singapore Trustee in his/her/its capacity as trustee. If the Singapore Trustee becomes the subject of any Insolvency Proceeding, such property is not a property of the Singapore Trustee for the purpose of such Insolvency Proceeding. Accordingly, the qualification set out in paragraph 4.3 (*Limitations arising from Insolvency and Similar Laws*) do not apply.

SCHEDULE 6
SINGAPORE PARTNERSHIPS

Subject to the provisions of this Schedule 6 (*Singapore Partnerships*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter apply in respect of Parties who or which are partners in a Singapore Partnership.

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. MODIFICATION TO TERMS OF REFERENCE AND DEFINITIONS

In this Schedule 6 (*Singapore Partnerships*):

1.1 "**General Partner**" means:

1.1.1 in respect of a General Partnership, a "partner" as such term is used in the Partnership Act; and

1.1.2 in respect of a Limited Partnership, a "general partner" as defined in the Limited Partnerships Act.

1.2 "**General Partnership**" means a "partnership" as defined in the Partnership Act.

1.3 "**Limited Partner**" means a "limited partner" as defined in the Limited Partnerships Act.

1.4 "**Limited Partnership**" means a "limited partnership" as such term is used in the Limited Partnerships Act.

1.5 "**Partner**" means a General Partner or a Limited Partner.

2. ASSUMPTIONS

The following additional assumptions shall apply.

2.1 Where a Party to the Agreement is expressed to be a Singapore Partnership, the contracting party to such Agreement is one or more General Partners of such Singapore Partnership, acting as agent on behalf of all the Partners of the Singapore Partnership.

2.2 Each Singapore Partnership that is a General Partnership is validly formed and existing in accordance with the Partnership Act throughout the life of each Transaction and the Agreement.

2.3 Each Singapore Partnership that is a Limited Partnership is validly formed, registered and existing in accordance with the Limited Partnerships Act throughout the life of each Transaction and the Agreement.

2.4 Each General Partner which enters into the Agreement and/or each Transaction on behalf of a Singapore Partnership:

2.4.1 has the capacity, power and authority under all applicable laws to enter into each such Transaction and/or the Agreement; and

2.4.2 has taken all necessary steps to execute, deliver and perform the Agreement and/or each such Transaction,

such that it creates legal, valid and binding obligations of such Singapore Partnership.

2.5 Each Partner in a Singapore Partnership is a Company or a Singapore Individual.

2.6 A General Partner, by entering into the Agreement on behalf of a Singapore Partnership, is not in breach of any of his/her/its express or implied duties under the relevant partnership agreement, the Partnership Act or the Limited Partnerships Act (as applicable).

2.7 Each Limited Partner in a Limited Partnership does take part in the management of the business of such Limited Partnership.

2.8 The membership of each Singapore Partnership remains unchanged throughout the life of the Agreement and any Transaction.

3. QUALIFICATIONS

The following additional qualifications shall apply.

3.1 Partnership Property

3.1.1 Under Section 20(1) of the Partnership Act, "partnership property" consists of all property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

3.1.2 Although we are aware of academic opinion to the contrary, we believe the better view is that, unless the partnership agreement provides otherwise, each Partner has a beneficial interest in every partnership asset and collectively the Partners own every partnership asset, as a Singapore Partnership is not a separate entity capable of holding property. However, a Partner's interest in the partnership assets is not a title to specific property but a right to his/her/its

proportion of the surplus after the realisation of assets and the payment of debts and liabilities of the Singapore Partnership.

3.2 **Registration of Security**

Partners that are Companies

3.2.1 There is some uncertainty whether Section 131 of the Companies Act (the provisions of which are described in paragraph 4.1 (*Registration of Security*) above) applies to a charge over partnership property created by a Partner that is a Company.

3.2.2 Section 131 refers to "any security on the company's property" and, as mentioned, we believe the better view is that, unless the partnership agreement provides otherwise, each Partner has a beneficial interest in every partnership asset (although not to specific property).

3.2.3 However, it could be argued that Section 131 does not apply to a charge over partnership property created by a Partner that is a Company as the consequences of invalidity do not apply (because, if the Partner were to be wound up, the liquidator of the Partner would be entitled to only a proportion of any surplus after the debts and liabilities of the Singapore Partnership had been paid, and neither the liquidator nor any creditor of the Partner would obtain any benefit if the unregistered charge were invalidated).

3.2.4 We understand that the current practice of the Singapore Registrar of Companies, though, is that, in most cases, the Singapore Registrar of Companies would accept for registration a statement of prescribed particulars of a charge over partnership property created by a Partner that is a Company (however, a standard search at the ACRA against a Partner that is a Company would not normally show whether the Partner is acting on behalf of the Singapore Partnership, rather than in its personal capacity).

Partners who are Singapore Individuals

3.2.5 Section 4 of the Bills of Sale Act provides that every bill of sale must be duly attested and registered or it will be void in respect of the chattels comprised therein. It is possible that the requirements under Section 4 of the Bills of Sale Act apply to Partners who are Singapore Individuals (please see section 3.1 (*Registration of Security*) of Schedule 4 (*Singapore Individuals*) above). However, as mentioned in section 3.1 (*Registration of Security*) of Schedule 4 (*Singapore Individuals*), we have no reason to believe that, apart from exceptional circumstances, any such personal chattels are to be taken as security under the Security Interest Provisions.

SCHEDULE 7
SINGAPORE LLPs

Subject to the provisions of this Schedule 7 (*Singapore LLPs*), the opinions, assumptions and qualifications set out in the main body of text of this opinion letter will also apply in respect of a Party which is a Singapore LLP.

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. QUALIFICATIONS

The following additional qualifications shall apply:

1.1 Limitations arising from Insolvency Law

1.1.1 The opinions in this opinion letter are subject to any limitations arising from insolvency, bankruptcy, liquidation, administration, schemes of arrangement, moratorium, reorganisation and similar laws generally affecting the rights of creditors (whether under statute law, common law or equity).

1.1.2 Without prejudice to section 1.1.1 above, the opinions in this opinion letter are subject to any obligation expressed to be assumed, or any security interest created or purported to be created, or any disposition of property made or purported to be made, or any other action taken or to be taken, under or pursuant to the Security Interest Provisions being held to be wholly or partly invalid as a result of any of the following provisions (if the circumstances described in any of these provisions are applicable):

(a) Paragraph 77 (*Transactions at undervalue*) of the Fifth Schedule to the Limited Liability Partnerships Act;

(b) Paragraph 78 (*Unfair preferences*) of the Fifth Schedule to the Limited Liability Partnerships Act;

(c) Paragraph 82 (*Extortionate credit transactions*) of the Fifth Schedule to the Limited Liability Partnerships Act;

(d) Paragraph 86 (*Disclaimer of onerous property*) of the Fifth Schedule to the Limited Liability Partnerships Act;

(e) Section 73B (*Voluntary dispositions to defraud creditors voidable*) of the CLPA.

1.1.3 Certain preferential payments of a Singapore LLP, such as taxes and unpaid wages and other amounts owing to employees may, under paragraph 11 of the Fourth Schedule read with paragraph 76(7) of the Fifth Schedule of the

Limited Liability Partnerships Act, be paid out of the proceeds of any property subject to any floating charge created under the Security Interest Provisions, in priority to the claims of the holder of the floating charge.

1.1.4 Any of the Security Interest Provisions which confers, purports to confer or waives a right of set-off or similar right may be ineffective against a liquidator, or creditor, if and to the extent that such right (or purported right) or waiver (or purported waiver) would, if given effect, produce a different effect from the mandatory set-off prescribed by Section 88 of the Bankruptcy Act, which is made applicable to Singapore LLPs by paragraph 75(2) of the Fifth Schedule to the Limited Liability Partnerships Act.

Following the insolvency of a Counterparty or a Firm, any rights arising under the Security Interest Provisions may be affected by the application of the anti-deprivation principle.

2. MODIFICATIONS TO QUALIFICATIONS

The following paragraphs shall be deemed deleted:

(a) paragraph 4.1 (*Registration of Security*); and

(b) paragraph 4.3 (*Limitations arising from Insolvency Law*).

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 3
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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