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23 January 2013

Dear Sirs

NETTING ANALYSER LIBRARY

You have asked us to give an opinion in respect of the laws of Spain ("**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 as provided at paragraph 1.2, this opinion is given in respect of:

1.1.1 persons which are companies with limited liability incorporated in this jurisdiction either as public limited liability companies (*sociedades anónimas*), private limited liability companies (*sociedades de responsabilidad limitada*) or partnership with shares (*sociedades comanditarias por acciones*) under the Consolidated Text of the Law Limited Liability Companies (*Ley de Sociedades de Capital*) approved by means of the Royal Legislative Decree 1/2010, dated 2 of July;

1.1.2 persons which are partnerships incorporated in this jurisdiction either as *sociedades colectivas* or *sociedades comanditarias* under the Commercial Code;

1.1.3 persons which are incorporated in this jurisdiction as "*empresas de servicios de inversión*" (investment firms) pursuant to Law 24/1988, of 28 July, on the securities market and Royal Decree 217/2008, of 15 February, on investment services companies;

1.1.4 parties organised in this jurisdiction as a "*Fondo de Pensiones*" (pension fund) or a "*Plan de Pensiones*" (pension scheme) for the purposes of the Restated Version of the Law on Pension Funds and Pension Schemes, approved by the Royal Legislative Decree 1/2002, of 29 November; and

1.1.5 in respect of paragraph 3.3, the entities referred to in such paragraph,

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

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

1.2.1 Credit institutions (*entidades de crédito*), including banks (*bancos*), saving banks (*cajas de ahorros*), credit unions (*cooperativas de crédito*) and lending institutions (*establecimientos financieros de crédito*) (Schedule 1);

1.2.2 Insurance undertakings (*entidades aseguradoras*) (Schedule 2);

1.2.3 Individuals (Schedule 3);

1.2.4 Collective Investment Undertakings (Schedule 4); and

1.2.5 Sovereign and public sector entities, namely the Government of the Kingdom of Spain, the Regional Governments (*Comunidades Autónomas*), any provinces and municipalities (*Entidades Locales*) and any legal entities incorporated by the foregoing as a public body under Public Law (including *organismos autónomos* and *entidades públicas empresariales*) (Schedule 5);

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

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

1.4 In this opinion letter:

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

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

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

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

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

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

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

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

1.4.3 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

1.4.4 "**Insolvency Proceeding**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement), including, without limitation, *concurso* (bankruptcy proceedings for individuals and companies) under Law 22/2003, of 9 July (the "**Insolvency Law**").

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

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

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions;

1.4.6 in other instances other than those referred to at 1.4.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;

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

1.4.8 any reference to a "**financial collateral arrangement**" ("*garantía financiera*") is a reference to a collateral arrangement within the scope of Royal Decree-Law 5/2005, of 11 March ("**RDL 5/2005**"), which deals, inter alia, with the implementation of the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Financial Collateral Directive**");

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

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

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

2. ASSUMPTIONS

We assume the following:

2.1 That the Agreement is legally binding and enforceable against both Parties under their governing laws.

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

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

2.4 That each Party has obtained, complied with the terms of and maintained all 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 That the Agreement has been properly executed by both Parties.

2.6 That the Agreement is entered into prior to the commencement of any Insolvency 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 That the Agreement accurately reflects the true intentions of each Party.

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

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

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

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

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

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

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

2.16 That each Counterparty will have full legal title to any Collateral, free and clear of any lien, claim, charge or encumbrance or any other interest of the Counterparty or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system), including, without limitation, any restriction arising from any applicable client assets rules.

2.17 That the rules of the relevant exchange and/or settlement and clearing system where the Transactions are traded, cleared or settled do not invalidate the enforceability or effectiveness of the Security Interest Provisions under the governing law of the Agreement or the laws governing those rules.

2.18 That all determinations and valuations required for the purposes of the enforcement of the Security Interest will be made in a commercially reasonable manner.

2.19 That the provision of Collateral can be evidenced in writing or by electronic means and any other durable medium and that such evidencing allows for the identification of the Collateral (provided that, for this purpose, it is sufficient to prove that the book entry securities collateral has been credited to, or forms a credit in, the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account).

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 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 Collateral;

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

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

provided that:

(a) the Security Interest is a financial collateral arrangement;

(b) pursuant to the Spanish conflict of law rules, where the relevant Collateral is not located in this jurisdiction, the validity and enforceability of the Security Interest shall be governed by the *lex rei sitae* (i.e., the laws of the jurisdiction where the relevant Collateral is located).

In particular, pursuant to Article 17.2 of RDL 5/2005, any questions with respect to any of the matters specified below arising in relation to book entry securities collateral shall be governed by the law of the country in which the relevant account is maintained:

(i) the legal nature and proprietary effects of book entry securities collateral;

(ii) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book

entry securities collateral under such an arrangement, and more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;

(iii) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred; and

(iv) the steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event.

For these purposes, "book entry securities collateral" means collateral provided under a financial collateral arrangement which consists of financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary; and "relevant account" means the register or account in which the entries are made by which that book entry securities collateral is provided to the collateral taker; and

(c) as explained in paragraph 4.4. below, any secondary proceedings in respect of a Counterparty in a foreign jurisdiction in relation to Collateral located in that jurisdiction will be governed by the law of such foreign jurisdiction.

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, provided that:

(a) the Security Interest is a financial collateral arrangement; and

(b) pursuant to the Spanish conflict of law rules, where the relevant Collateral is not located in this jurisdiction, the requirements for perfecting and enforcing a security interest shall be determined by the *lex rei sitae* (i.e., the laws of the jurisdiction where the relevant Collateral is located).

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 Provisions are located within this jurisdiction.

3.4 **Right of re-use**

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

subject to the further rights and obligations set out in the Rehypothecation Clause, provided that:

(a) the Security Interest is a financial collateral arrangement; and that

(b) where the relevant Collateral is not located in this jurisdiction, the validity and enforceability of the Rehypothecation Clause shall be analysed in light of the *lex rei sitae* (i.e., the laws of the jurisdiction where the relevant Collateral is located).

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

4. QUALIFICATIONS

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

4.1 Financial collateral arrangements

4.1.1 Our opinions in paragraph 3 above only apply in the event that the Security Interest is a financial collateral arrangement.

In order for a collateral agreement to be deemed to be a financial collateral arrangement, it is required pursuant to RDL 5/2005 that:

(a) either of the parties thereof is:

(i) a public authority;

(ii) the European Central Bank, the Bank of Spain, a central bank of any Member State of the European Union, a central bank of any third States, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

(iii) a credit institution, an investment firm, an insurance company, an undertaking for collective investment in transferable securities or a management company thereof, a *fondo de titulización de activos* ("non-mortgage securitisation fund") or a *fondo de titulización de hipotecaria* ("mortgage securitisation fund") or a management company thereof, a pension fund, or any other financial institutions as defined in Article 4(5) of Directive 2006/48/EC of the European Parliament and of the Council, of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions (recast); or

(iv) a governing body of a secondary exchange, a governing body of a clearing and settlement system, or a central counterparty, a settlement agent or a clearing house as defined in Law 41/1999, of 12 November, or a similar institution acting in the futures, options and derivatives markets

(each, a "**Qualifying Party**").

(b) the collateral assets must be either: (i) cash, (ii) negotiable securities ("*valores negociables*") or other financial instruments as defined in Law 24/1988, of 28 July, on the securities market, or (iii) certain loan claims; and

(c) the collateral agreement is intended to secure a "relevant financial obligation" ("*obligación financiera principal*"), such term being defined in Article 6.4 of RDL 5/2005 (following Article 2.1.(f) of the Financial Collateral Directive) as any "*obligations which give a right to cash payment and/or delivery of financial instruments*" (we duly note that the English version of the Financial Collateral Directive uses the term "settlement" rather than "payment").

In this regards, please note as follows:

(i) years ago some scholars argued that RDL 5/2005 only applied to collateral agreements entered into in connection with payment and/or delivery obligations arising from OTC derivative transactions but not to payment obligations arising under any other types of contracts (such as loan agreements), that position being then followed by some Lower Courts (*Juzgados de Primera Instancia*);

(ii) both we and most scholars supported a literal interpretation of the wording of RDL 5/2005 and opined that RDL 5/2005 also applies to collateral agreements entered into in connection with any payment obligation (including those arising under loan agreements);

(iii) in 2008 the Barcelona Appeal Court (*Audiencia Provincial*) supported the literal interpretation of the wording of RDL 5/2005, stating that "*the terms of the RDL 5/2005, with respect to the scope of application of financial collateral arrangements, are clear (although, for a sector, open to criticism) and is not expressly restricted to the security of obligations related with the settlement of financial instruments, whether cash-settled or physically-settled, in the same way that it is not so restricted in the European [Collateral] Directive*" (Judgment of the Barcelona Appeal Court dated 30 September 2008, such Appeal Court being reputed as the leading Appeal Court in insolvency issues);

(iv) following the abovementioned judgment, our opinion was that the risk of our Supreme Court holding a view different from the literal interpretation of the wording of the RDL 5/2005 was very low;

(v) moreover, we believe that nowadays such risk is even more remote in light of the following considerations:

- to the best of our knowledge, no cases on this issue have been decided by our Supreme Court (our Supreme Court has recently dismissed the appeal of the Judgment of the Barcelona Appeal Court dated 30 September 2008 but such dismissal is mainly

based on formal defects of the appeal rather than on a full analysis of the issue at stake) and the sole later judgment known to us rendered on this matter by an Appeal Court (Judgment of the Tarragona Appeal Court dated 13 October 2009) follows the Judgment of the Barcelona Appeal Court;

- to the best of our knowledge, the number of cases in Lower Courts have materially decreased in the last years (which, in our view, shows that counsel to borrowers are aware of the unlikelihood of the "literal construction" being rejected);

- to the best of our knowledge, we believe that Lower Courts are also following the "literal interpretation" of the Courts of Appeal (for instance, judgment of Ninth Lower Court of Madrid of 26 March 2010), although we obviously cannot track each and all of the cases heard in Lower Courts; and

- RDL 5/2005 has been amended twice in the last three years (by means of Law 16/2009, of 13 November, and Law 7/2011, of 11 April) and no change has been made to the definition of "relevant financial obligation" (*obligación financiera principal*). Although we acknowledge that this fact can be interpreted in different ways, the prevailing view among scholars (bearing in mind that, pursuant to the Recitals to Law 7/2011, it was intended to, *inter alia*, sort out some legal uncertainties) is that it amounts to an "implied" confirmation of the "literal construction" followed by the Courts of Appeal; and

(vi) any Agreement which complies with the following requirements (the "**Netting Requirements**"):

- either of the parties thereto is a Qualifying Party;

- he Agreement "*provides for the creation of one single legal obligation which encompasses all of the financial transactions entered into under such agreement and by virtue of which, where there is an early termination, the parties will only have the right to claim the net sum of the terminated transactions*"; and

- each of the transactions entered into under the Agreement is a transaction of one of the following types: (1) securities loans, (2) those financial instruments contemplated in the second paragraph of Article 2 of Law 24/1988, including credit derivatives, spot FX transactions, commodity derivatives and allowance derivatives; and (3) repurchase transactions and buy and sell back transactions,

will be deemed a "relevant financial obligation" irrespective whether the "literal interpretation" prevails or not.

4.1.2 In relation to our opinions in paragraph 3 (other than paragraph 3.3), if the Security Interest were deemed not to be a financial collateral arrangement (in which we kindly refer you to our considerations in paragraph 4.1.1 above), the following issues (which are dissapplied by RDL 5/2005 in respect of financial collateral arrangements) shall apply in respect of Collateral located in this jurisdiction:

(i) further acts and conditions would need to be done or fulfilled under the laws of this jurisdiction (including without limitation, notarisation of the Agreement and of each provision of Collateral thereunder) in order to ensure the recognition, effectiveness and perfection of the Firm's Security Interest in the Collateral and to enable the Firm to enforce that Security Interest in accordance with the Agreement;

(ii) the Firm would have to follow the general enforcement proceedings available to it under the Spanish Civil Code and the Spanish Civil Proceedings Act dated 7 January 2000 (*Ley de Enjuiciamiento Civil de 7 de enero de 2000*), which broadly require the Collateral to be sold pursuant to an auction conducted by the competent courts, without direct sale or appropriation by the Firm being possible;

(iii) the Rehypothecation Clause would not be valid;

(iv) pursuant to Article 56 of the Insolvency Law, where the Collateral are assets "attached to the business" of the Counterparty, a moratorium will apply, preventing the enforcement of the Security Interest until the earlier of the following dates (the "**Stay-Period End Dates**"):

(a) the date on which a rescheduling agreement ("*convenio*") which does not prevent the enforcement of the Security Interest has been reached between the insolvent Counterparty and their creditors; and

(b) the date on which one year has elapsed after the declaration of the insolvency.

Moreover, Article 56 also deals with enforcement proceedings which have been commenced (but not finished) prior to the opening of the Insolvency Proceeding by providing that they should be held up unless (i) the relevant auction has been already announced and (ii) the relevant assets are not "necessary" (*necesarios*) for the continuation of the business activity of the insolvent Counterparty;

(v) pursuant to Article 57 of the Insolvency Law, enforcement rights will be subject to the jurisdiction of the insolvency court, which shall decide on the availability of those rights and, where applicable, issue an order for the commencement of the relevant enforcement proceeding.

Moreover, once the liquidation phase of the Insolvency Proceedings has commenced (if so), secured creditors will lose their separate enforcement rights (unless they have commenced the enforcement proceedings prior to the declaration of the insolvency), although they will retain their right to be paid out of the proceeds of the sale of the secured assets;

(vi) Article 155 of the Insolvency Law enables the *administrador concursal*, *interventor*, *comisario*, *juez* or analogous or equivalent official in this jurisdiction (the "**Insolvency Representatives**") to, prior to the Stay-Period End Date, prevent any security interest from being enforced by immediately paying those secured overdue amounts and by undertaking to pay amounts becoming due in the future under the relevant agreement as "claims against the insolvency estate" (*créditos contra la masa*), –a preferential type of claim, only ranking below secured claims (provided that, should the Insolvency Representatives fail to pay those future claims as they become due, the secured creditor will be then entitled to enforce the relevant security interest); and

(vii) finally, the test for any Security Interest being able to be rescinded upon the insolvency of the Counterparty would not be that of "fraud" but that of "detrimentality", as further explained in paragraph 4.3 below.

4.1.3 In relation to our opinions in paragraph 3 (other than paragraph 3.3), if the Security Interest were deemed not to be a financial collateral arrangement (in which we kindly refer you to our considerations in paragraph 4.1.1 above) and the Collateral is not located in this jurisdiction, then:

(a) where the Collateral is located in an EU Member State other than Denmark, Article 5 of the EU Council Regulation No. 1346/2000 on Insolvency Proceedings (the "**EU Insolvency Regulation**") shall apply, paragraph 1 of such Article 5 providing that "*the opening of an insolvency proceeding shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets -both specific assets and collections of indefinite assets as a whole which change from time to time- belonging to the debtor which are situated within the territory of other Member State at the time of the opening of the proceeding*"; and

(b) where the Collateral is located in any jurisdiction other than an EU Member State or in Denmark, Article 201 of the Insolvency Law shall apply, such Article providing that "*the effects of the adjudication of bankruptcy of a Spanish debtor on the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the Spanish debtor which are situated within the territory of other state at the time of the adjudication of the bankruptcy shall be exclusively governed by the laws of such other state*".

4.1.4 In relation to our opinion in paragraph 3.3 above, if the Security Interest were deemed not to be a financial collateral arrangement (in which we kindly refer you to our considerations in paragraph 4.1.1 above):

(i) our reservations in sub-paragraphs (i), (ii) and (iii) of paragraph 4.1.2 above will apply; and

(ii) our reservations in sub-paragraphs (iv), (v), (vi) and (vii) of paragraph 4.1.2 above will also apply to the extent that the Counterparty has an establishment in Spain and secondary proceedings ("*procedimientos territoriales*") have been opened in Spain in respect of the assets of the Counterparty located in Spain (provided that no secondary proceedings can be opened in Spain in respect of Counterparties which are credit institutions or insurance undertakings incorporated in another EEA Member State).

4.2 **Security Interest being ancillary to secured obligations**

As a matter of Spanish law, any security interest is ancillary to the relevant secured obligations in such a way that, in the event that those secured obligations are nullified, set aside or rescinded for any reason, this would entail the security interest being also nullified, set aside or rescinded.

4.3 **Insolvency: claw-back**

Pursuant to Article 15.5 of RDL 5/2005 in connection with Article 71.1 of the Insolvency Law, the courts of this jurisdiction can set aside any financial collateral arrangement (including payments and deliveries/transfers of collateral thereunder) made by the insolvent party within the two-year period preceding the adjudication of the bankruptcy (the "**Suspect Period**) if the Insolvency Representatives can prove that such acts were "fraudulent" (*en fraude de acreedores*).

Furthermore, under Articles 1,111 and 1,291-1,299 of the Spanish Civil Code, the courts of this jurisdiction may, on the application of any creditor of a debtor, set aside a fraudulent transaction entered into by that debtor within the 4-year period preceding the application.

In this regards, please note as follows:

(i) pursuant to Article 10 of RDL 5/2005, the delivery/transfer of additional collateral required to be provided because of fluctuations in the market value of the collateral initially provided or of changes in the amount of the secured exposure shall be deemed to have been made on the date on which the first deliver/transfer of collateral was made (so that if the initial delivery/transfer was made prior to the Suspect Period, no further such delivery/transfer of top-up collateral can be challenged under Article 15.5 of RDL 5/2005);

(ii) if the Security Interest were deemed not to be a financial collateral arrangement, then the Security Interest Provisions could be set aside on the grounds provided by Article 71 of the Insolvency Law, pursuant to which any

acts of the insolvent party (including provision of collateral) within the Suspect Period can be set aside by the courts of this jurisdiction if the Insolvency Representatives can prove that such acts were "detrimental" to the insolvency estate (Article 71 also providing for some scenarios where detriment is presumed –such presumption being non-rebuttable in some cases); and

(iii) in accordance with Article 208 of the Insolvency Law (implementing Article 13 of the EU Insolvency Regulation), no act governed by a foreign law can be set aside pursuant to the abovementioned Spanish legal provisions where the beneficiary of that act proves that such foreign law does not allow any means of challenging that act in the case in point.

4.4 **Collateral located in other jurisdiction**

4.4.1 Pursuant to the EU Insolvency Regulation, where a Counterparty incorporated in this jurisdiction (other than a Credit Institution or an Insurance Undertaking) has an establishment (within the meaning in the EU Insolvency Regulation) in any EU Member State other than Denmark (the "**EU jurisdiction**"):

(i) the courts of the EU jurisdiction will be competent to implement certain secondary proceedings in relation to the assets of the Counterparty situated or deemed to be situated in that EU jurisdiction, and

(ii) moreover, such secondary proceedings will be governed by the laws of such EU jurisdiction.

4.4.2 Pursuant to the Insolvency Law, where a Counterparty incorporated in this jurisdiction has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than any EU Member State other than Denmark (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, such secondary proceedings will be governed by the laws of the relevant foreign jurisdiction.

4.5 **Provision of Collateral after Insolvency**

In an Insolvency Proceeding under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the opening of Insolvency Proceeding can be avoided under Article 40 of the Insolvency Law unless it has been approved or authorised by the Insolvency Representatives.

Notwithstanding the above, Article 15.2 of RDL 5/2005 (implementing Article 8.2 of the Financial Collateral Directive) provides that where a financial collateral

arrangement has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, Insolvency Proceedings, it shall be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such Insolvency Proceeding.

4.6 **Jurisdiction of Spanish Courts for the opening of Insolvency Proceedings**

4.6.1 Where the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of a Counterparty incorporated, registered or organised in this jurisdiction (other than a credit institution or an insurance undertaking) is located in a foreign jurisdiction, the Spanish Courts will not have jurisdiction to institute Insolvency Proceedings in respect of such Counterparty, unless it has an establishment (within the meaning in the EU Insolvency Regulation and the Insolvency Law) in Spain, in which case such Counterparty can be subject in this jurisdiction to a secondary insolvency proceeding (*procedimiento territorial*), the scope of which will be restricted to those assets of that Counterparty located in Spain.

4.6.2 Where the "*centre of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of a Counterparty incorporated, registered or organised in other jurisdiction (other than a credit institution or an insurance undertaking incorporated in an EEA Member State) is located in Spain, Insolvency Proceedings in respect of such Counterparty can be opened in Spain.

4.7 **Procedural Law**

4.7.1 In accordance with general principles of Spanish procedural law, the rules of evidence in any judicial proceeding cannot be modified by agreement of the parties, and consequently any provisions of an Agreement in which determinations made by the Parties are to be deemed conclusive in the absence of manifest error, may not be upheld by Spanish courts.

4.7.2 Spanish courts may stay proceedings if concurrent proceedings are being brought elsewhere.

4.7.3 Spanish courts may require evidence of the foreign law in accordance with Article 281.2 of the Spanish Civil Proceedings Act dated 7 January 2000 (*Ley de Enjuiciamiento Civil de 7 de enero de 2000*).

4.8 **Standardised Agreements**

The counterparty (i.e. *adherente*) of the party proposing a standardised agreement (i.e. *predisponente*) is protected by Law 7/1998, dated 13 April, on *Condiciones Generales de la Contratación* (i.e. Standard Terms Act), even if the counterparty is not a consumer. Pursuant to such Law 7/1998, any lack of clarity in the standard form shall be interpreted in favour of the counterparty; contradictions amongst general and particular conditions shall be solved by making to prevail the most favourable for the counterparty, and stipulations contrary to mandatory provisions shall be void. Notwithstanding this, Law 7/1998 shall only apply where one of the parties was

prevented *de facto* (due to its weak bargaining position) from negotiating the terms and conditions of the Agreement.

4.9 **Other Qualifications**

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

4.9.1 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or Spanish sanctions or other similar measures implemented or effective in Spain with respect to any party to the 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.

4.9.2 This letter expresses and describes certain Spanish legal concepts in English and not in their original Spanish terms; therefore, this opinion is issued and may be only relied upon on the express condition that it shall be governed by, and that all words and expressions used herein shall be construed and interpreted in accordance with, the laws of Spain.

4.10 **Other Qualifications**

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

4.10.2 Any provision 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.

5. **ADDRESSEES AND PURPOSE**

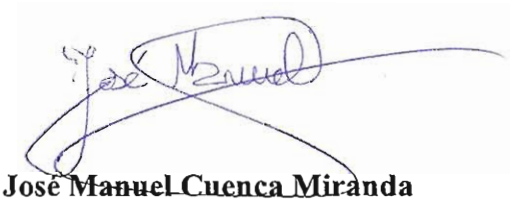
There are no other material issues relevant to the issues addressed in this opinion letter which we draw to your attention.

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,



José Manuel Cuenca Miranda

Clifford Chance, S.L.

SCHEDULE 1
CREDIT INSTITUTIONS

Subject to the modifications and additions set out in this Schedule 1 (Credit Institutions), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which Credit Institutions. For the purposes of this Schedule 1 (Credit Institutions), "**Credit Institutions**" means: (i) any bank (*banco*) incorporated in this jurisdiction in accordance with Law 3/1994, of 14 April, which adapts Spanish legal framework relating to credit institutions to the Second Banking Directive ("**Law 3/1994**") and Royal Decree 1298/1986, of 28 June, which adapts Spanish legal framework to the EU legal framework relating to credit institutions; (ii) any saving bank (*caja de ahorros*) organised in this jurisdiction pursuant to Law 31/1985, of 2 August, on the basic rules regarding governing bodies of Spanish savings banks ("**Law 31/1985**") and Law 3/1994; (iii) any credit union (*cooperativa de crédito*) incorporated in this jurisdiction pursuant to Law 13/1989, of 26 May, on Credit Unions ("**Law 13/1989**") and to Law 3/1994, and (iv) any lending institution (*establecimientos financiero de crédito*) ("**EFC**") incorporated in this jurisdiction pursuant to the First Additional Provision of Law and Royal Decree 692/1996, of 26 April.

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

1. ADDITIONAL QUALIFICATIONS

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

1.1 Resolution powers under Law 9/2012

1.1.1 Law 9/2012, of 14 November, on Recovery and Resolution of Credit Institutions ("**Law 9/2012**") (which follows closely the provisions in the Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms published by the European Commission on 6 June 2012 (the "**Proposal**")) contains various provisions which might affect the effectiveness of the Security Interest Provisions (please note that Law 9/2012 has been recently enacted, it not being fully clear whether it is intended to apply to Credit Institutions incorporated as EFCs (*establecimientos financieros de crédito*). In particular and without limitation:

1.1.2 Law 9/2012 provides for various remedies for a failing Credit Institution, which include the ability of the Spanish resolution authorities to cause the transfer of property of a Credit Institution, to another person.

A property transfer may apply to only part of a Credit Institution's assets and liabilities (such a transfer being referred to as a "**partial property transfer**"). This may be the case because the property transfer expressly applies to only part of the Credit Institution's business or because it is ineffective in relation to foreign property.

Article 67.2 of Law 9/2012 address the risk that a partial property transfer may have the effect of disassociating secured obligations from security (e.g. transferring the one but not the other), by requiring that liabilities owed to or by the Credit Institution and security relating to them may not be separated pursuant to the transfer. However, the remedies for contravention are weak. Therefore, if a property transfer is abused so as to affect the enforceability of the Firm's Security Interest, the Firm may not have adequate remedies on which to rely.

1.1.3 Article 70.2 of Law 9/2012 (which follows Article 62 of the Proposal) grants the Spanish resolution authorities the power (the "**suspension power**") to restrict secured creditors of a Credit Institution under resolution from enforcing security interests in relation to any assets of that institution for the limited period that the resolution authorities determines necessary to achieve the resolution objectives.

The wording of Law 9/2012 is not fully precise, it being uncertain whether such Article 70.2 is intended to apply to financial collateral arrangements entered into in relation to derivatives transactions under a master agreement satisfying the Netting Requirements.

In any case, the scope of application of Law 9/2012 must be interpreted in light of the provisions set forth in both Article 8.2.a) of Law 6/2005 (implementing Article 23 of the Directive 2001/24/EC of 4 April on the Reorganisation and Winding up of credit institutions (the "**BUWD**") and in Article 15.4 of RDL 5/2005 (implementing Article 4.5 of the Financial Collateral Directive), so that three different scenarios can be distinguished:

(a) the Collateral is located in an EEA Member State:

Enforcement of the Collateral should be exempt from the exercise of suspension powers as Article 8.2.a) of Law 6/2005 provides that: "*the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings*".

It must be noted that pursuant to the literal wording of Article 2 thereof, Law 6/2005 is only applicable to Credit Institutions which provide services in other EU Member State either by means of an establishment or on a purely cross-border basis. This notwithstanding, we believe that: (i) such principle is actually intended to apply only in relation to those provisions in Law 6/2005 dealing with issues relating to mutual recognition of reorganisation measures and insolvency proceedings and the related communications between EU authorities, and that (ii) the better view is that the conflict of law rules set out in Article 8 of Law 6/2005 are applicable in any Insolvency Proceedings in respect of any Credit Institution irrespective whether it provides or not

services in other EU Member State (although please note that this view has not been tested before the Spanish courts).

(b) the Collateral is not located in an EEA Member State and the Security Interest is a financial collateral arrangement:

Article 4.5 of the Financial Collateral Directive requires Member States to ensure that a financial collateral arrangement can take effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider or collateral taker.

Moreover, reorganisation measures for the purposes of the Financial Collateral Directive are defined as "*measures which involve any intervention by administrative or judicial authorities which are intended to preserve or restore the financial situation and which affect pre-existing rights of third parties, including but not limited to measures involving a suspension of payments, suspension of enforcement measures or reduction of claims*". Clearly, exercise of suspension powers pursuant to Article 70.2 of Law 9/2012 must be characterised as a "reorganization measure" pursuant to the Financial Collateral Directive.

Unfortunately, Article 4.5 of the Collateral Directive has been transposed inaccurately into Article 15.5 of RDL 5/2005 as it provides that financial collateral arrangements can be enforced immediately in accordance with their terms without such enforcement being limited, restricted or affected in any manner whatsoever by the opening of insolvency proceedings or administrative liquidation proceedings (the term "administrative liquidation proceedings" replacing the term "reorganisation measures" used in the Financial Collateral Directive).

Notwithstanding the above and taking into account that:

- as stated in the *Marleasing* judgment of the EU Court of Justice, "*the Member States' obligations arising from a directive to achieve the result envisaged by the directive under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligation, is binding on all the authorities of member States including, for matters within their jurisdiction, the courts. It follows that, in applying national law, [...], the national court called upon to interpret it is required to do so, **as far as possible**, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter*";

- paragraph 3 of the Fifth Additional Provision of Law 9/2012 provides that the application of resolution tools shall amount to a "reorganisation measure" for the purposes of Law 6/2005; and

- pursuant to Article 3.1 of the Spanish Civil Code, legal provisions must be interpreted in relation to their context,

we understand that the better view is that the term "administrative liquidation proceeding" in Article 15.4 of RDL 5/2005 should be interpreted as comprising nowadays the exercise of suspension powers by the Spanish resolution authorities, so that those powers could not affect the enforcement of financial collateral arrangements.

Please note, however, that Law 9/2012 has been recently enacted, there being neither case-law nor consensus among counsel as to the way it must be interpreted (so that the risk that the courts of this jurisdiction might take a different view cannot be fully discarded).

(c) the Collateral is not located in an EEA Member State and the Security Interest is not a financial collateral arrangement:

Article 70.2 of Law 9/2012 will apply to any such Security Interest.

Please note that our consideration above are based on the legal ground that Law 9/2012 must be interpreted in conformity with the BWUD and the Financial Collateral Directive in the absence of any EU rule to the contrary. Accordingly, those considerations will not remain applicable in the event that (i) the Proposal becomes into a Directive and (ii) such Directive overrides the provisions of the BWUD or the Financial Collateral Directive.

2. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

2.1 Financial collateral arrangements (paragraph 4.1)

Paragraph 4.1.4 is deemed deleted and replaced by the following:

"4.1.4 Subject to our considerations in paragraph 4.4 below, if the Security Interest were deemed not to be a financial collateral arrangement and the Collateral is not located in this jurisdiction, then:

(a) where the Collateral is located in an EEA Member, Article 8.2.a) of Law 6/2005 shall apply, such Article providing that: "*the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings*"; and

(b) where the Collateral is located in any jurisdiction other than an EEA Member State, Article 201 of the Insolvency Law shall apply, such Article providing that "*the effects of the adjudication of bankruptcy of a Spanish debtor on the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the Spanish debtor which are situated within the territory of other state at the time of the adjudication of the bankruptcy shall be exclusively governed by the laws of such other state*"."

2.2 **Insolvency: claw-back (paragraph 4.3)**

Paragraph 4.3 is deemed amended so that, in respect of any Agreements governed by English Law, any references therein to Article 208 of the Insolvency Law and Article 13 of the EU Insolvency Regulation must be read as references to Article 8.1.g) of Law 6/2005 and to Article 30 of the BWUD, respectively.

2.3 **Collateral located in other jurisdictions (paragraph 4.4)**

Paragraph 4.4.2 is deemed deleted and replaced by the following:

"4.4.2 Where a Credit Institution has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than an EEA Member State (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, those secondary proceedings will be governed by the laws of such foreign jurisdiction."

SCHEDULE 2

Insurance Undertakings

Subject to the modifications and additions set out in this Schedule 2 (Insurance Undertakings), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Undertakings. For the purposes of this Schedule 2 (Insurance Undertakings), "**Insurance Undertakings**" means any undertaking incorporated in this jurisdiction as an "*entidad aseguradora*" pursuant to the Restated Text of the Law on Regulation and Supervision of Private Insurance Undertakings (approved by Law 6/2004, of 29 October) (the "**Insurance Undertakings Law**").

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

1. ADDITIONAL QUALIFICATIONS

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

"Insurance Undertakings are prohibited from creating security over assets held for the coverage of technical provisions ("*provisiones técnicas*") within the meaning in the Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings and in the related Spanish implementing legislation. Accordingly, any security interest over such assets will not be enforceable."

2. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 shall be deemed modified as follows:

2.1 Financial collateral arrangements (paragraph 4.1)

Paragraph 4.1.4 is deemed and replaced by the following:

"4.1.4 Subject to our considerations in paragraph 4.4 below, if the Security Interest were deemed not to be a financial collateral arrangement and the Collateral is not located in this jurisdiction, then:

(a) where the Collateral is located in an EEA Member, then the opening of Insolvency Proceedings in respect of an Insurance Undertaking shall not affect the enforcement of the Security Interest (in accordance with Article 20 of the Directive 2001/17/EC of 19 March on the Reorganisation and Winding Up of Insurance Undertakings9; and

(b) where the Collateral is located in any jurisdiction other than an EEA Member State, Article 201 of the Insolvency Law shall apply, such Article providing that "*the effects of the adjudication of bankruptcy of a Spanish debtor on the rights in rem of creditors or third parties in*

respect of tangible or intangible, moveable or immoveable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the Spanish debtor which are situated within the territory of other state at the time of the adjudication of the bankruptcy shall be exclusively governed by the laws of such other state"."

2.2 **Insolvency: claw-back (paragraph 4.3)**

Paragraph 4.3 is deemed amended so that, in respect of any Agreements governed by English Law, any references therein to Article 208 of the Insolvency Law and Article 13 of the EU Insolvency Regulation shall be read as references to Article 30.2 of the Insurance Undertakings Law (in connection with Article 205 of the Insolvency Law) and to Article 24 of the Directive 2001/17/EC of 19 March on the Reorganisation and Winding Up of Insurance Undertakings, respectively.

2.3 **Collateral located in other jurisdictions (paragraph 4.4)**

Paragraph 4.4.2 is deemed deleted and replaced by the following:

"4.4.2 Where an Insurance Undertaking has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than an EEA Member State (the "**foreign jurisdiction**"):

(i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and

(ii) in such a case, those secondary proceedings will be governed by the laws of such foreign jurisdiction."

SCHEDULE 3
Individuals

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

Our opinions in paragraph 3 of this opinion letter will **not** apply in respect of Parties which are individuals whose "centre of main interests" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) is in Spain.

The reason for this is that: (i) our opinions in paragraph 3 of this opinion letter only apply in the event that the Security Interest is a financial collateral arrangement and (ii) any Security Interest granted by an Individual shall not be deemed to be a financial collateral arrangement.

Accordingly, the following issues (which are dissapplied by RDL 5/2005 in respect of financial collateral arrangements) shall apply in respect of Collateral located in this jurisdiction:

(i) further acts and conditions would need to be done or fulfilled under the laws of this jurisdiction (including without limitation, notarisation of the Agreement and of each provision of Collateral thereunder) in order to ensure the recognition, effectiveness and perfection of the Firm's Security Interest in the Collateral and to enable the Firm to enforce that Security Interest in accordance with the Agreement;

(ii) the Firm would have to follow the general enforcement proceedings available to it under the Spanish Civil Code and the Spanish Civil Proceedings Act dated 7 January 2000 (*Ley de Enjuiciamiento Civil de 7 de enero de 2000*), which broadly require the Collateral to be sold pursuant to an auction conducted by the competent courts, without direct sale or appropriation by the Firm being possible;

(iii) the Rehypothecation Clause would not be valid;

(iv) pursuant to Article 56 of the Insolvency Law, where the Collateral are assets "attached to the business" of the Counterparty, a moratorium will apply, preventing the enforcement of the Security Interest until the earlier of the following dates (the "**Stay-Period End Dates**"):

(a) the date on which a rescheduling agreement ("*convenio*") which does not prevent the enforcement of the Security Interest has been reached between the insolvent Counterparty and their creditors; and

(b) the date on which one year has elapsed after the declaration of the insolvency.

Moreover, Article 56 also deals with enforcement proceedings which have been commenced (but not finished) prior to the opening of the Insolvency Proceeding by providing that they should be held up unless (i) the relevant auction has been already announced and (ii) the relevant assets are not "necessary" (*necesarios*) for the continuation of the business activity of the insolvent Counterparty;

(v) pursuant to Article 57 of the Insolvency Law, enforcement rights will be subject to the jurisdiction of the insolvency court, which shall decide on the availability of those rights and, where applicable, issue an order for the commencement of the relevant enforcement proceeding.

Moreover, once the liquidation phase of the Insolvency Proceedings has commenced (if so), secured creditors will lose their separate enforcement rights (unless they have commenced the enforcement proceedings prior to the declaration of the insolvency), although they will retain their right to be paid out of the proceeds of the sale of the secured assets;

(vi) Article 155 of the Insolvency Law enables the *administrador concursal*, *interventor*, *comisario*, *juez* or analogous or equivalent official in this jurisdiction (the "**Insolvency Representatives**") to, prior to the Stay-Period End Date, prevent any security interest from being enforced by immediately paying those secured overdue amounts and by undertaking to pay amounts becoming due in the future under the relevant agreement as "claims against the insolvency estate" (*créditos contra la masa*), –a preferential type of claim, only ranking below secured claims (provided that, should the Insolvency Representatives fail to pay those future claims as they become due, the secured creditor will be then entitled to enforce the relevant security interest); and

(vii) finally, the test for any Security Interest being able to be rescinded upon the insolvency of the Counterparty would not be that of "fraud" but that of "detrimentality", as further explained in paragraph 4.3 below."

If the Collateral is not located in this jurisdiction, then:

(a) where the Collateral is located in an EU Member State other than Denmark, Article 5 of the EU Insolvency Regulation shall apply, paragraph 1 of such Article 5 providing that "*the opening of an insolvency proceeding shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets -both specific assets and collections of indefinite assets as a whole which change from time to time- belonging to the debtor which are situated within the territory of other Member State at the time of the opening of the proceeding*"; and

(b) where the Collateral is located in any jurisdiction other than an EU Member State or in Denmark, Article 201 of the Insolvency Law shall apply, such Article providing that "*the effects of the adjudication of bankruptcy of a Spanish debtor on the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the Spanish debtor which are situated within the territory of other state at the time of the adjudication of the bankruptcy shall be exclusively governed by the laws of such other state*".

SCHEDULE 4
Collective Investment Undertakings

Subject to the modifications and additions set out in this Schedule 4 (Collective Investment Undertakings), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Collective Investment Undertakings. For the purposes of this Schedule 4 (Collective Investment Undertakings), "**Collective Investment Undertaking**" means any company or fund incorporated or organised in this jurisdiction as an "*institución de inversion colectiva*" pursuant to Law 35/2003, of 4 November, on collective investment undertakings ("**Law 35/2003**").

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

"That any provision of Collateral satisfies all of the requirements in order for it to be validly made by the relevant by the relevant Collective Investment Undertaking in accordance with the provisions of Article 6 of Law 35/2003 and of Article 51 of the Royal Decree 1082/2012, of 13 July, which approves the regulation of Law 35/2003.

Article 6 of Law 35/2003 provides that no assets of Collective Investment Undertaking other than those ones which are authorised as "hedge funds" (*instituciones de inversión colectiva de inversión libre*) can be used as collateral other than for: (a) transactions carried out in official secondary transactions and (b) OTC derivative transactions entered into a master agreement satisfying the Netting Requirements for an amount not exceeding the daily settlement of gains and losses arising from the fluctuation of the mark-to-market value thereof (including any usually applicable haircuts)."

SCHEDULE 5
Public Authorities

Subject to the modifications and additions set out in this Schedule 5 (Public Authorities), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Public Authorities. For the purposes of this Schedule 5 (Public Authorities), "**Public Authorities**" means the Kingdom of Spain, the Regional Governments (*Comunidades Autónomas*), any provinces and municipalities (*Entidades Locales*), and any legal entity incorporated by any of the foregoing as a public body under Public Law (including any *organismos autónomos* and *entidades públicas empresariales* but excluding, for the avoidance of doubt, any companies or other entities in the public sector which are not incorporated under Public Law).

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

1. ADDITIONAL ASSUMPTIONS

We assume the following:

"That any provision of collateral made by the relevant Public Authority is valid and enforceable against third parties in accordance with the rules of Public Law applying to such Public Authority".

2. ADDITIONAL QUALIFICATIONS

2.1 Moratorium

Whilst Public Authorities cannot be subject to any bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures in this jurisdiction, the payment obligations of Public Authorities might be affected by a moratorium or standstill. It is not possible to determine the effects of such moratorium on the Security Interest as such moratorium must be declared or imposed by means of a specific law.

2.2 Article 135 of the Spanish Constitution

Pursuant to the second paragraph of Article 135.1 of the Spanish Constitution, payment of interest and principal of "*public debt of the Administrations*" will enjoy absolute priority (hereinafter, the holders of any such public debt will be referred to as "**Priority Creditors**").

Whilst there is not full consensus as to the meaning of the term "public debt" for these purposes, it is likely that it does not comprise claims under the Agreement, so that the relevant Firm would not be regarded as a Priority Creditor. Should the relevant Firm not be treated as a Priority Creditor, the Security Interest would be contrary to Article 135 of the Spanish Constitution, it being unclear whether it would be either fully null and void or, conversely, merely unenforceable against any Priority Creditors.

Moreover, even if the Firms were to be treated as Priority Creditors, it is debatable whether Article 135 of the Spanish Constitution is intended or not to provide for a *pari passu* rule among all of the Priority Creditors, there being theoretical arguments to support both positions.

Please note that Article 135 of the Spanish Constitution does not apply to all Public Authorities but only to those which are within the scope of the term "*Administraciones Públicas*". Such term comprises:

(i) the Kingdom of Spain;

(ii) the Regional Governments (*Comunidades Autónomas*);

(iii) any provinces and municipalities (*Entidades Locales*); and

(iv) legal entities incorporated by any of the foregoing as a public body under Public Law within the scope of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts.

2.3 Other limitations

Certain types of assets (including public domain (*bienes de dominio público*) as well as assets which are actually attached to the provision of public services or to public use – including cash) cannot be validly provided as Collateral by Public Authorities. Please note that this issue does not allow for a general analysis and must be examined on a case by case basis in light of the specific laws applying to the relevant Public Authority.

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.