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NETTING ANALYSER LIBRARY

The Futures & Options Association
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Stockholm, 6 December 2013
446474/FW/HHN

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 unregulated limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) (Sw. *aktiebolagslag (2005:551)*) (the "**Companies Act**") having their "centre of main interest" (as defined in the Council Regulation (EC) No 1346/2000 on insolvency proceedings (the "Insolvency Regulation")) ("**COMI**") in Sweden ("**Companies**");

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1.1.2 financial institutions incorporated as limited liability companies under the Companies Act 2005 (as amended) having their COMI in Sweden and holding banking or financing business authorisations pursuant to the Swedish Banking and Financing Business Act 2004 (as amended) (Sw. *lag (2004:297) om bank- och finansieringsrörelse*) ("**Banking and Financing Business Act**") ("**Credit Institution**") ; and

1.1.3 (i) branches in this jurisdiction of foreign credit institutions or insurance companies incorporated under the laws of a member state ("**EEA Member State**") of the European Economic Area ("**EEA**") ("**Branches of EEA Credit Institutions or Insurance Companies**"), (ii) branches in this jurisdiction of foreign credit institutions incorporated under the laws of a non-EEA Member State ("**Branches of Non-EEA Credit Institutions**"), (iii) branches in this jurisdiction of foreign insurance companies incorporated under the laws of a non-EEA Member State ("**Branches of Non-EEA Insurance Companies**") (iv) branches in this jurisdiction of foreign companies incorporated under the laws of an EEA Member State ("**Branches of EEA Companies**"), and (v) branches in this jurisdiction of foreign companies incorporated under the laws of a non-EEA Member State ("**Branches of Non-EEA Companies**") (Branches of EEA Credit Institutions or Insurance Companies, Branches of Non-EEA Credit Institution, Branches of Non-EEA Insurance Companies, Branches of EEA Companies and Branches of Non-EEA Companies are hereinafter jointly referred to as the "**Branches**").

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

1.2.1 insurance companies (Sw. *försäkringsaktiebolag*) organised under the Swedish Insurance Business Act 2010 (as amended) (Sw. *försäkringsrörelselag (2010:2043)*) having their COMI in Sweden ("**Insurance Companies**") (Schedule 1);

1.2.2 limited liability companies incorporated under the Companies Act 2005 (as amended) having their COMI in Sweden and holding investment firm authorisations pursuant to the Swedish Securities Markets Act 2007 (as amended) (Sw. *lag (2007:528) om värdepappersmarknaden*) (the "**Securities Market Act**") ("**Investment Firms**") (Schedule 2);

1.2.3 registered partnerships (Sw. *handelsbolag*) and limited partnerships (Sw. *kommanditbolag*) formed under the Swedish Partnerships Act 1980 (as amended) (Sw. *lag (1980:1102) om handelsbolag och enkla bolag*) having their COMI in Sweden ("**Registered Partnerships**") (Schedule 3);

1.2.4 natural persons being solely citizens of Sweden with their habitual domicile in this jurisdiction ("**Natural Persons**") (Schedule 4);

1.2.5 funds organised as UCITS (Sw. *värdepappersfonder*) under the Swedish Securities Funds Act 2004 (as amended) (Sw. *lag (2004:46) om värdepappersfonder*) and as special funds (Sw. *specialfonder*) under the Swedish Alternative Investment Fund Managers Act 2013 (Sw. *lag (2013:561) om förvaltare av alternativa investeringsfonder*) ("**Investment Funds**") (Schedule 5);

1.2.6 sovereign entities, namely Sveriges Riksbank the central bank of Sweden (Sw. *Sveriges Riksbank*), the Swedish National Debt Office (Sw. *Riksgälden*), the Swedish national pension funds nos. 1, 2, 3, 4 and 7 (Sw. *Första AP-fonden, Andra AP-fonden, Tredje AP-fonden, Fjärde AP-fonden* and *Sjunde AP-Fonden*) regulated by the Swedish AP Funds Act 2000 (as amended) (Sw. *lag (2000:192) om allmänna pensionsfonder (AP-fonder)*) and no. 6 (Sw. *Sjätte AP-fonden*) regulated by the Swedish Sixth AP Fund Act 2000 (as amended) (Sw. *lag (2000:193) om Sjätte AP-fonden*) (there is no fund no. 5) ("**Sovereign Entities**") (Schedule 6); and

1.2.7 sub sovereign entities, namely, local municipalities (Sw. *kommuner*), regional municipalities (Sw. *landsting*) and regions (Sw. *regioner*) organised under the laws of Sweden (Schedule 7) ("**Sub Sovereign Entities**").

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

1.4 This opinion covers all types of Transactions whether entered into on a recognised investment exchange, any other form of organised market place or multilateral trading facility, or over the counter.

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

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

1.6 **Definitions**

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

this opinion letter, this opinion letter may be read as if terms used herein were the terms as so changed.

1.6.1 "**FOA Member**" means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion);

1.6.2 "**Insolvency Representative**" means a liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction

1.6.3 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

1.6.4 A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**"; and

1.6.5 A reference to a "**paragraph**" is to a paragraph of this opinion letter.

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

2. ASSUMPTIONS

We assume:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration.

2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are legally binding and enforceable against both Parties under their governing laws.

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and to ensure the legality,

validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement in this jurisdiction.

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement has been properly executed by both Parties.

2.6 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any Insolvency Proceedings against either Party.

2.7 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.

2.8 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses and that the provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement are consistently applied between the Parties..

2.9 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.

2.10 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.

2.11 In relation to the opinions set out at paragraphs 3.4, 3.5, 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.

2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such Margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

2.13 That all margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of margin pursuant to the Title Transfer Provisions will have been effectively carried out.

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

2.15 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as a "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a Credit Institution, an Insurance Company (as defined in Schedule 1), an Investment Firm (as defined in Schedule 2), or a party incorporated or formed under the laws of another jurisdiction which is a bank and which has a branch or branches located in Sweden.

3. OPINION

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

3.1 Insolvency Proceedings

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

3.1.1 In respect of Companies:

(a) a company reconstruction (Sw. *företagsrekonstruktion*) pursuant to the Swedish Companies Reconstructions Act 1996 (as amended) (Sw. *lag (1996:764) om företagsrekonstruktion*);

(b) a bankruptcy (Sw. *konkurs*) pursuant to the Swedish Bankruptcy Act 1987 (as amended) (Sw. *konkurslag (1987:672)*) (the "**Bankruptcy Act**");

(c) a compulsory liquidation (Sw. *tvångslikvidation*) pursuant to the Companies Act.

3.1.2 In respect of Credit Institutions:

(a) a bankruptcy pursuant to the Bankruptcy Act; and

(b) a compulsory liquidation pursuant to the Companies Act or the Banking and Financing Business Act.

3.1.3 In respect of:

(a) Branches of EEA Credit Institutions or Insurance Companies such matters are determined by the equivalent regulations that would apply to the foreign credit institutions or insurance companies under the relevant EEA Member State law;

(b) Branches of Non-EEA Credit Institutions such matters are determined by the same considerations as set out for Credit Institutions in respect of their assets in this jurisdiction;

(c) Branches of Non-EEA Insurance Companies such matters are determined by the same considerations as set out for Insurance Companies (Schedule 1) in respect of their assets in this jurisdiction;

(d) Branches of EEA Companies such matters are determined by the equivalent regulations that would apply to the foreign companies under the relevant EEA Member State law; and

(e) Branches of Non-EEA Companies such matters are determined by the same consideration as set out for Companies in respect of its assets located in Sweden (however, this does not apply for Non-EEA Companies which are incorporated under the laws of the Kingdom of Denmark as they are subject to special laws).

Companies, Credit Institutions and Branches

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

3.2 **Recognition of choice of law**

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions.

3.3 **Enforceability of FOA Netting Provision**

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

3.3.1 the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

3.3.2 the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

Credit Institutions

We are of this opinion because:

Under Section 5 of the Swedish Insurance Companies and Credit Institutions Insolvency Procedures (International Relations) Act 2005 (as amended) (Sw. *lag (2005:1047) om internationella förhållanden rörande försäkringsföretags och kreditinstituts insolvens*) (the "**Winding-Up Act**") (designed to implement the EU Directives 2001/17/EC of 19 March 2001 on the reorganisation and winding-up of insurance undertakings and 2001/24/EC of 4 April 2001 on the reorganisation and winding-up of credit institutions) insolvency proceedings against a Credit Institution will be governed by Swedish law unless specifically provided for in the Winding-Up Act. According to Section 12 of the Winding-Up Act the law governing the enforceability of agreements regarding netting (Sw. *avräkning*) or repurchase (Sw. *återköp*) is the law which governs the agreement and thus we are of the opinion that the law governing the FOA Netting Agreement or, as the case may be, the Clearing Agreement will govern the enforceability of the FOA Netting Provision.

However, should the Winding-Up Act, for whatever reason, not apply the Swedish law position would be a fall back to the FITA under which the FOA Netting Provision is enforceable as set out under paragraph 3.3.4 below.

Companies

We are of this opinion because:

For assessing whether provisions such as the FOA Netting Provision will be upheld a determination has to be made whether the Transactions amount to "trade in financial instruments or in rights and obligations similar to financial instruments" (Sw. *lag (1991:980) om handel med finansiella instrument*) ("**Qualified Contracts**"). "Financial instruments" is a term statutorily

defined in the Securities Market Act and such definition will be adopted also in this legal opinion letter ("**Financial Instruments**") and includes:

(a) transferable securities, with the exception of instruments of payment, which are traded on the capital market, such as (a) shares in companies and comparable ownership rights in other types of undertakings and depositary receipts in respect of shares, (b) bonds and other forms of debt instruments including depositary receipts in respect of such securities and (c) other securities granting the right to transfer or acquire such transferable securities as referred to in (a) and (b) or giving rise to cash settlement calculated based on prices of transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

(b) money market instruments;

(c) shares in UCITS, alternative investment funds or other companies for collective investments; and

(d) "financial derivative instruments": instruments falling within paragraphs (4) to (10) of Section C of Annex I to Directive 2004/39/EC of 21 April 2004 (the "**MiFID**").

The need for this classification arises from the fact that provisions such as the FOA Netting Provision contracted for in connection with Qualified Contracts is subject to a separate statutory regime that provides legal certainty under Chapter 5, Section 1 of the Swedish Financial Instruments Trading Act 1991 (as amended) (Sw. *lag (1991:980) om handel med finansiella instrument*) (the "**FITA**") (the "**Netting Law**"). Outwith the Netting Law the legal position is not free from doubt.

In our view, only Transactions listed in item (D) in Annex 2 the terms of which only allow for settlement by physical delivery of commodities would fail to be characterised as Qualified Contracts and would thus prevent legal certainty in relation to the FOA Netting Provision.

Branches

In respect of:

(a) Branches of EEA Credit Institutions or Insurance Companies such matters are determined by the equivalent regulations that would apply to the foreign credit institutions or insurance companies under the relevant EEA Member State law;

(b) Branches of Non-EEA Credit Institutions such matters are determined by the same considerations as set out for Credit Institutions in respect of their assets in this jurisdiction;

(c) Branches of Non-EEA Insurance Companies such matters are determined by the same considerations as set out for Insurance Companies (Schedule 1) in respect of their assets in this jurisdiction;

(d) Branches of EEA Companies such matters are determined by the equivalent regulations that would apply to the foreign companies under the relevant EEA Member State law; and

(e) Branches of Non-EEA Companies such matters are determined by the same consideration as set out for Companies in respect of its assets located in Sweden (however, this does not apply for Non-EEA Companies which are incorporated under the laws of the Kingdom of Denmark as they are subject to special laws).

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

3.4 **Enforceability of the Clearing Module Netting Provision**

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

We are of this opinion because of the same reasons as set out in paragraph 3.3 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply

3.5 **Enforceability of the Addendum Netting Provision**

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

We are of this opinion because of the same reasons as set out in paragraphs 3.3 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provision.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply.

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

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

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

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

(i) where the FOA Set-Off Provisions include the General Set-Off Clause:

(a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Defaulting Party); or

(b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such liquidation amount is owed by the Non-Defaulting Party); or

(ii) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

Credit Institutions

We are of this opinion because:

Under Section 14 of the Winding-Up Act in addition to any rights to set off which may be applicable under Swedish law, set off shall also be permitted if it is permitted under the laws of the EEA Member State governing the claim against the creditor. Thus, as the FOA Netting Agreement, or as the case may be, the Clearing Agreement is governed by English law the question of whether the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision are enforceable is, if such a set-off is not enforceable under Swedish law, a question of English law.

Companies

We are of this opinion because:

(a) outwith Insolvency Proceedings, the FOA Set-Off Provisions are enforceable as a general matter of Swedish law; and

(b) in relation to Insolvency Proceedings, the FOA Set-Off Provisions are enforceable as provided for in Chapter 5 of the Bankruptcy Act.

Branches

We are of this opinion because in respect of:

(a) Branches of EEA Credit Institutions or Insurance Companies such matters are determined by the equivalent regulations that would apply to the foreign credit institutions or insurance companies under the relevant EEA Member State law;

(b) Branches of Non-EEA Credit Institutions such matters are determined by the same considerations as set out for Credit Institutions in respect of their assets in this jurisdiction;

(c) Branches of Non-EEA Insurance Companies such matters are determined by the same considerations as set out for Insurance Companies (Schedule 1) in respect of their assets in this jurisdiction;

(d) Branches of EEA Companies such matters are determined by the equivalent regulations that would apply to the foreign companies under the relevant EEA Member State law; and

(e) Branches of Non-EEA Companies such matters are determined by the same consideration as set out for Companies in respect of its assets located in Sweden (however, this does not apply for Non-EEA Companies which are incorporated under the laws of the Kingdom of Denmark as they are subject to special laws).

Companies, Credit Institutions and Branches

No amendments to The General set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.1 to apply.

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

(i) where the FOA Set-Off Provisions includes the General Set-Off Clause:

(a) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such liquidation amount is owed by the Client); or

(b) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such liquidation amount is owed by the Firm or, as the case may be, the Clearing Member); or

(ii) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm or, as the case may be, the Clearing Member to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion because of the same reasons as set out in paragraph 3.7.1 above.

No amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.2 to apply.

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

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

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

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

We are of this opinion because of the same reasons as set out in paragraph 3.7. 1 above.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8.1 to apply.

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

fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.7.1 above.

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

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

(a) in the case of a CM Trigger Event, the Client (as defined in the ISDA/FOA Clearing Addendum); or

(b) in the case of a CCP Default, either Party (the "**Electing Party**"),

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

We are of this opinion because of the same reasons as set out in paragraph 3.7.1 above.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply.

3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.10.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value.

3.10.3 The courts of this jurisdiction could recharacterise Transfers of Margin under the Title Transfer Provisions of a FOA Netting Agreement (with Title

Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.

3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

Credit Institutions

We are of this opinion because under Section 15 of the Winding Up Act upon the insolvency of a Credit Institution, the Title Transfer Provisions could only be subject to a claw-back if such claw-back would be applicable under English law.

Companies

We are of this opinion because of the contractual provisions and general principles of Swedish law.

Branches

In respect of:

(a) Branches of EEA Credit Institutions or Insurance Companies such matters are determined by the equivalent regulations that would apply to the foreign credit institutions or insurance companies under the relevant EEA Member State law;

(b) Branches of Non-EEA Credit Institutions such matters are determined by the same considerations as set out for Credit Institutions in respect of their assets in this jurisdiction;

(c) Branches of Non-EEA Insurance Companies such matters are determined by the same considerations as set out for Insurance Companies (Schedule 1) in respect of their assets in this jurisdiction;

(d) Branches of EEA Companies such matters are determined by the equivalent regulations that would apply to the foreign companies under the relevant EEA Member States law; and

(e) Branches of Non-EEA Companies such matters are determined by the same consideration as set out for Companies in respect of its assets located in Sweden (however, this does not apply for Non-EEA Companies which are incorporated under the laws of the Kingdom of Denmark as they are subject to special laws).

Companies, Credit Institutions and Branches

There is a slight risk that the courts may re-characterise Transfers of Margin under the Title Transfer Provisions of a FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest. Generally, however, even where the courts of this jurisdiction did so, the Transfers of Margin under the Title Transfer Provisions of a FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions would be upheld by the courts of this jurisdiction as the Title Transfer Provisions would also be acceptable under a security interest arrangement.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

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

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

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

(ii) the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

3.12 **Single Agreement**

Under the laws of this jurisdiction it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are part of a single agreement.

3.13 **Automatic Termination**

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

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned. In particular, there is no danger that an Insolvency Representative of a defaulting party could treat the obligations in respect of Transactions entered into in this jurisdiction separately from other obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or other Transactions.

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction in a limited respect, please see paragraph 3.1.3 above.

3.16 **Special legal provisions for market contracts**

There are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a Transaction to be cleared by a central counterparty.

4. QUALIFICATIONS

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

Recognition of choice of law

4.1 The contractual choice of law would normally be respected by Swedish courts. However, the recognition of the laws of jurisdictions other than Sweden by Swedish courts or enforcement authorities does not include those laws which such courts or authorities consider (i) to be procedural in nature, (ii) to be revenue or penal laws, (iii) to involve the exercise of sovereign powers or powers of public or administrative law, (iv) the application of which would (A) amount to an attempt to circumvent Swedish

conflict of laws rules, (B) lead to or entail a contravention of mandatory laws of Sweden, or (C) be inconsistent with public policy, as such term is interpreted under the laws of Sweden and such courts or authorities may require proof of the relevant provisions of those laws. Please note that the concept of public policy is a dynamic one that is being continuously revisited and developed by statute and, primarily, judicial precedent and that, therefore, no exhaustive enumeration can be given of circumstances that would constitute the public policy of Sweden; and there is some doubt whether, outside the scope of Article 14 of Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), the parties can agree in advance the governing law of claims which are classified as being non-contractual (tortious or delictal).

General matters of Swedish law as to the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision (albeit not in relation to Credit Institutions)

4.2 There has been a debate among Swedish legal experts whether arrangements such as the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision would be recognised and enforceable in Insolvency Proceedings. The discussions have centred on two legal issues: (i) the applicability of Section 63 of the Sale of Goods Act 1990 (as amended) (Sw. *köplag (1990:931)*) and (ii) certain general principles of the insolvency laws of Sweden.

4.3 Section 63 of the Sale of Goods Act 1990 permits the administrator-in-bankruptcy to "enter into" an agreement made by the bankrupt debtor and also to refuse to "enter into" such agreements (cherry picking). It has been argued that Section 63 of the Sale of Goods Act 1990 is mandatory in the sense that it cannot be contracted out of by the parties to an agreement prior to bankruptcy. This view has been questioned by other authors. It could be pointed out, in particular, that Section 3 of the Sale of Goods Act 1990 provides that the Act may be set aside by the parties' agreement, any normative practices developed by the parties (really a subspecies of contractual abrogation) or customary law. No strong consensus has emerged on this point.

4.4 It is a general principle under Swedish law that parties to a contract may agree upon whatever rights and obligations they see fit, subject to the general limitation that a Swedish court may not enforce agreements on criminal acts or acts contrary to Swedish public policy or measures designed solely or primarily to have an effect upon the creditors of any of the parties. It should be pointed out that the Swedish Supreme Court (Sw. *Högsta domstolen*) has upheld and fully enforced contracts designed to facilitate tax evasion. This principle creates a level of legal uncertainty in respect of procedures such as the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision as it may be argued that where such procedures become operative by virtue of the subject party's insolvency, the procedures are directed against other creditors. On the other hand, it may be argued that procedures such as the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision which may become operative in a number of situations (including, but not being limited to, insolvency) are not primarily, but merely incidentally, directed against other creditors.

4.5 To remove the legal uncertainty discussed at paragraph (iii) in respect of certain types of transactions (Qualified Contracts) the Netting Law was enacted as amendments to the FITA. The statutory amendments now read in relevant parts (in our translation into English):

> *"An agreement between two parties in conjunction with trade in financial instruments or in rights and obligations similar to financial instruments or currencies, pursuant to which a final settlement shall take place of outstanding obligations in the event of one of the parties' entering bankruptcy shall be valid against the bankruptcy estate and the bankruptcy creditors. [...]*
>
> *Where an agreement pursuant to the first paragraph contains a condition whereby a final settlement shall take place of all outstanding obligations in the event of a granting of an order in respect of company reconstruction proceedings pursuant to the Company Reconstructions Act 1996 in respect of one of the parties, such a condition shall be valid against the debtor and any creditors whose claims are subject to a composition."*

4.6 The Government committee responsible for the original draft of what later became the Netting Law came out in favour of the view that the uncodified common law would uphold procedures such as the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision. The committee was careful to point out that its proposal should not be construed to imply that, in the absence of legislation, procedures such as the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision would not be upheld. The preparatory works to the Netting Law accepted the analysis and arguments of the committee. One practical effect of the enactment of the Netting Law is that the discussion under paragraphs 4.2 through 4.4 above has now become redundant in respect of Qualified Contracts; but it remains of relevance for other types of agreements, including, in our view, Transactions that only allow for physical settlement (such as Transactions referred to in item (D) in Annex 2).

4.7 When it comes to Transactions involving commodities, it is likely that spot transactions which can only settle physically will not be treated as Financial Instruments but rather as contracts for the purchase of the relevant commodity. There is no statutory definition of "spot transactions", but operationally the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) (the "**SFSA**") has taken the view that contracts that are treated as spot contracts by the market will be treated so also by the SFSA. Similar statements were made in the preparatory works to the Netting Law. Although the SFSA does not have jurisdiction in respect of the Netting Law – that jurisdiction devolves exclusively to Swedish courts – it is likely that the courts will take the SFSA's views into consideration and we believe that the courts would not take a different view from that of the SFSA. In cases where the courts have had to determine whether investment firms and banks have complied with their contractual and extra-contractual obligations of care the views of the SFSA as to what would count as the effective standard against investment firms and banks are to be assessed have been accepted by the Swedish courts.

4.8 In respect of commodity options, our view is that commodity options and futures the terms of which only allow for physical delivery would not be regarded as being Qualified Contracts except where such commodities fall within the definitions in paragraphs (6) or (7) of Section C of Annex I to the MiFID[1]. Thus, in our view, only Transactions listed in item (D) in Annex 2 the terms of which only allow for settlement by physical delivery of commodities would fail to be characterised as Qualified Contracts where such commodities do not fall within the definitions of the said paragraphs of Section C of Annex I the MiFID, and as discussed above prevent legal certainty in relation to the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision.

Partial netting issues of Swedish law as to the enforceability of the Clearing Module Netting Provision and the Addendum Netting Provision (albeit not in relation to Credit Institutions)

4.9 In respect of the Cleared Transaction Sets (as defined in the FOA Clearing Module and the ISDA/FOA Clearing Addendum) and in relation to the FOA Clearing Module, or as the case may be, ISDA/FOA Clearing Addendum it should be noted that the original wording of the Netting Law stated that (in our translation into English):

> *"An agreement between two parties in conjunction with trade in financial instruments or in rights and obligations similar to financial instruments or currencies, pursuant to which a final settlement shall take place of all outstanding obligations in the event of one of the parties' entering bankruptcy shall be valid against the bankruptcy estate and the bankruptcy creditors. [...]"*

According to the Government committee responsible for the original draft of the Netting law, the inclusion of "all" was to clarify that close-out netting also includes obligations maturing in the future but which arise prior to insolvency. Although, the reference to "all" was removed in 1999, the preparatory works to the current Netting Law still state that the starting point should be that close-out netting should include *all* of the outstanding obligations between the parties but that there should be a possibility to exclude certain obligations where there exists "good reason" for doing so. Seeing as the Cleared Transaction Sets arrangement is a consequence of the implementation of article 39(4) and 39(9)(b) of Regulation (EU) No 648/2012 ("**EMIR**") one would most likely deem that the "good reason" requisite under Swedish law is fulfilled in relation hereto. In light thereof it is our opinion that the better view to this issue is that the Cleared Transactions Sets would be permitted under Swedish law. However, it should in relation hereto be noted that there is a limited legal uncertainty in relation to Cleared Set Transactions.

[1] i.e. (i) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF or (ii) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (i) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Swedish law issues in relation to the stay period and Firm Trigger Event in respect of the enforceability of the Clearing Module Netting Provision and the Addendum Netting Provision (albeit not in relation to Credit Institutions)

4.10 In respect of the FOA Clearing Module or as the case may be, ISDA/FOA Clearing Addendum and in relation to the Client having to await a Firm Trigger Event (as regards the FOA Clearing Module) or a CM Event (as regards the ISDA/FOA Clearing Addendum) where the Defaulting Party is the Firm (as regards the FOA Clearing Module) or the Clearing Member (as regards the ISDA/FOA Clearing Addendum), the following should be noted.

4.11 One could query whether an obligation for a Client to await a Firm Trigger Event (as regards the FOA Clearing Module) or a CM Trigger Event (as regards the ISDA/FOA Clearing Addendum) would undermine the validity of the applicable netting provision. There has been a discussion in the preparatory works to the Netting Law of the possibility of agreeing on netting "after notice" versus netting on "automatic termination". The government committee responsible for the amendments draft stressed that there existed strong reasons for recognising both types of netting arrangements. Nevertheless, the Government committee also considered that if a Solvent Party where to abuse its right to give notice by speculating on trends in market prices at the expense of the Insolvent Party or where an agreement of netting upon notice of a party in any other way unduly favoured the Solvent Party such an agreement could be contested. However, taking into consideration that it in this case would not be the Solvent Party (i.e. the Client) that would have a possibility to speculate we do not believe that this would constitute an issue under Swedish law.

Swedish law issues in relation to the porting of Client Transactions in respect of enforceability of the Clearing Module Netting Provision and the Addendum Netting Provision (albeit not in relation to Credit Institutions)

4.12 If (i) the Firm, or, as the case may be, the Clearing Member is registered and organised in this jurisdiction, (ii) the CCP is registered and organised in this jurisdiction, (iii) and there is a transfer of a Firm/CCP Transaction, or as the case may be, a Clearing Member/CCP Transaction following a Firm Trigger Event, or as the case may be, a CM Trigger Event, then the following should be noted in relation to the valuation of the corresponding Client Transaction.

4.13 Where an amount is due from a Client to a (Swedish) Firm, or as the case may be, a (Swedish) Clearing Member under a Client Transaction (the "**Due Amount**") and such transaction is transferred one could doubt whether the valuation of such Client Transaction to zero would be upheld if contested under Swedish law.

4.14 It is not sufficient under Swedish law that the (Swedish) Firm, or as the case may be, the (Swedish) Clearing Member has consented to the transfer in advance as the (Swedish) Firm, or as the case may be, the (Swedish) Clearing Member may have the right to reclaim the Due Amount pursuant to Section 37 of the Swedish Contracts Act 1915 (as amended) (Sw. *lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område*; the "**SCA**") which stipulates that any contractual

provision in respect of a security interest under which security assets will be forfeited to the secured party if the secured obligations are not duly discharged is unenforceable. In practice this mean that where a secured party appropriates the security assets, any surplus of the value of the security assets in excess of the amount of the secured obligations must be returned to the security provider. Of even more importance is that the Insolvency Representative would be entitled to request the same.

4.15 Furthermore, pursuant to Chapter 4, Section 5 of the Bankruptcy Act a legal act that unduly favours a creditor over other creditors can be clawed back where the debtor was or through the legal act became insolvent and the creditor knew or should have been aware of the debtor's insolvency and the circumstances which made the legal act unduly favourable. In the preparatory works to the original Netting Law the Government committee pointed out that where parties to a netting agreement agree that the solvent party would not be obliged to pay any amount to the insolvent party if the latter becomes subject to insolvency proceedings despite close-out netting resulting in the solvent party owing an amount to the insolvent party, such netting could become subject to claw back actions under Chapter 4, Section 5 of the Bankruptcy Act. The mechanism set out in paragraph 4.13 herein carries common characteristics with the mechanisms described in the preparatory works, entailing that the legal assessment is not clear. Thus, in our view such an arrangement could be deemed to fall under Chapter 4, Section 5 of the Bankruptcy Act where the transferred Client Transaction is valued to zero and thus the Due Amount could become subject to claw back.

Matters of Swedish law as to the enforceability of FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision (albeit not in relation to Credit Institutions)

4.16 As a general matter the FOA Set-Off Provisions, the Clearing Module Set-Off Provisions and the Addendum Set-Off Provisions are enforceable under Swedish law (this is set out in Chapter 5 of the Bankruptcy Act). The provisions in the FOA Set-Off Provisions, the Clearing Module Set-Off Provisions and the Addendum Set-Off Provisions entailing cross currency set-off following an Event of Default are, to the extent the circumstances surrounding the Event of Default fall under Chapter 8 Section 10 of the Bankruptcy Act or under Chapter 5, Section 1 of the FITA, as a general matter valid and enforceable under the laws of Sweden in accordance with the provisions. However, if the circumstances surrounding the Event of Default fall outside side the scope of the before mentioned legal sections, the matter is not entirely clear as there is no outright legislative provision nor a court ruling on the matter. Two lines of argument have developed both with support in preparatory works and legal doctrine, one arguing that claims in different currencies cannot be set-off as they represent values in different nominations and thus do not express value within a system providing immediate mutual exchangeability; the other line arguing that that the main prerequisite for a set-off is the certainty and immediacy with which a valuation can be established, often directly dependant on the assets homogeneity and liquidity with which they are traded, entailing that, *inter alia*, cross-currency (and indeed any liquid homogeneous asset such as certain raw materials, T-bills and other

financial assets) set-off is consistent with the underlying purposes that from the outset restrict the permitted scope of set-off. It is our opinion that the later line of argument is more coherent with the purposes of the above mentioned legal sections and that a Swedish court or arbitral tribunals sitting in, or applying Swedish procedural laws should judge accordingly.

4.17 Also, Article 6(1) of the Insolvency Regulation states that in addition to any rights to set-off which may be applicable under Swedish law, set-off shall also be permitted if it is permitted under the laws which govern the agreement regarding the Insolvent Party's claims, thus entailing a wider possible range of permitted set-offs. Thus if the Insolvent Party has a claim under an agreement against the Solvent Party which is not governed by Swedish law (such as the FOA Netting Agreement, or as the case may be, the Clearing Agreement), the question of whether the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision are enforceable is, if such a set-off is not enforceable under Swedish law, a question of the law governing such agreement.

4.18 The objective of the Insolvency Regulation is to establish common rules on cross-border insolvency proceedings, based on principles of mutual recognition and co-operation. The Insolvency Regulation applies to 'collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator'; the Insolvency Regulation lists the relevant insolvency proceedings to which it applies (the insolvency proceeding to which the Insolvency Regulation applies are referred to below as "**EU Regulation Insolvency Proceedings**"; these are, as far as Swedish laws are concerned, identical to the company reconstruction and bankruptcy proceedings referred to in section 3.1 of this opinion, though would not include compulsory liquidation). Certain types of entities are specifically excluded from its operation (for example credit institutions, insurance companies and investment firms which provide services involving the holding of funds or securities for third parties and collective investment undertakings) and certain third party rights in rem are not affected by the opening of insolvency proceedings.

4.19 Broadly, the Insolvency Regulation serves to grant the courts of the EEA Member State (other than the Kingdom of Denmark) within the territory of which the centre of a debtor's main interests are located jurisdiction to open EU Regulation Insolvency Proceedings in respect of such debtor. These proceedings, with regards to other EEA Member States, international in scope, are to be governed by the law of the EEA Member State where proceedings are opened and are to be effective in all EEA Member States, unless secondary proceedings are opened in another EEA Member State. In the case of companies, the place of the registered office of such company is presumed to be the COMI of the company in the absence of proof to the contrary.

4.20 Even if the debtor's COMI is in an EEA Member State, the courts of another EEA Member State may open secondary proceedings in the event that such debtor possesses an establishment (being any place of operations where the debtor carries out a non-transitory economic activity with human goods and means) in the territory of such other EEA Member State. The applicable law will be the law of that other EEA Member State. However, secondary proceedings are territorial in scope and so will

not extend beyond the EEA Member State where they are opened, save in respect of creditors who have given their consent. Generally they will be opened following the opening of the main proceedings, but there are exceptions to this principle.

4.21 The provisions of the Insolvency Regulation dealing with set-off and those dealing with the interaction between primary and secondary proceedings are not clear. The following is a summary of how we believe a Swedish court could apply the Insolvency Regulation with regard to set-off. No opinion is given on how any court other than a Swedish court or the European Court of Justice could or would apply the Insolvency Regulation. As the relevant provisions have not been subject to judicial consideration in Sweden, we cannot rule out that a court in Sweden could apply the Insolvency Regulation in some other manner.

4.21.1 Article 4(1) provides that, save as otherwise provided in the Insolvency Regulation, the law applicable to EU Regulation Insolvency Proceedings and their effects shall be that of the EEA Member State within the territory of which such proceedings are opened. The Insolvency Regulation specifically states that 'the opening of EU Regulation Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor's claim' (Article 6(1)).

4.21.2 Article 4(2)(d) provides that any set-off is subject to the conditions under which set-offs may be invoked by the law of the EEA Member State where the EU Regulation Insolvency Proceedings are opened, but this would seem to be subject to Article 6 (as set-off would seem to be otherwise provided for in Article 6). Article 4(2)(m) provides that the laws of the EEA Member State of the opening of proceedings shall determine 'the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors'. Article 6(2) provides that Article 6(1) shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

4.21.3 While the interaction between Article 6 and Article 4(2)(m) is not clear, the position would seem to be as follows:

(a) to the extent set-off is permitted in the jurisdiction of the EEA Member State in which the relevant EU Regulation Insolvency Proceedings are opened, set-off should not be affected;

(b) to the extent that set-off is not permitted in the jurisdiction of the EEA Member State in which the relevant EU Regulation Insolvency Proceedings are opened it may nevertheless be permitted if (1) it is permitted by the law applicable to the insolvent debtor's claim under the conflict of laws principles of the jurisdiction of the EEA Member State in which the relevant EU Regulation Insolvency Proceedings are opened, unless (2) permitting the set-off would be regarded, under the laws of that jurisdiction, as contravening rules relating to the voidness,

voidability or unenforceability of legal acts detrimental to all creditors (i.e. within Article 4(2)(m)).

4.22 The precise interaction between main and secondary proceedings in the event of conflicting legal systems' approach on insolvency is unclear. Although the Insolvency Regulation does allow the secondary proceedings to be stayed at the request of the Insolvency Representative in the main proceedings, any such request being very difficult to refuse, this remains subject to such Insolvency Representative taking any suitable measure to guarantee the interests of the creditors in the secondary proceedings. It is unclear what result would follow were set-off applied by operation of law in the EEA Member State where secondary proceedings are opened but not permitted by the applicable law in the main proceedings.

Enforceability of the Title Transfer Provisions (albeit not in relation to Credit Institutions)

4.23 As set out in Chapter 5, Section 3 of the FITA and as a general matter according to Swedish conflict of law rules, the law governing the Title Transfer Provisions would be the *lex rei sitae*. Formal requirements, such as filings, registrations etc. necessary to ensure the validity or the perfection of the title transfer would thus be governed by English law as *ex hypothesi* the *lex rei sitae* (or the law of whichever jurisdiction within which the assets are held).

4.24 The conflict of laws rules of Sweden are primarily to be found in the writings of legal experts, and to a lesser degree, in statute and case law. Because the specific issues of securities held in an indirect holding pattern have not been the subject of much discussion (and still less material is available in the way of statute and judicial precedent), a wide variety of issues have not been conclusively addressed. However, the principles that have been perceived by market participants and the Swedish government as applying to these issues appear to have been considered to be both applicable and appropriate in legislative efforts to implement the EU Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlements systems as amended by EU Directive 2009/44/EC of 6 May 2009 (the "**Settlement Finality Directive**") into Swedish law.

4.25 Despite the absence of clear authority, the better view, and the view that is most likely to be adopted by a Swedish court, is that the proprietary effects of a dealing in securities held on a fungible basis in a custody account (whether in the form of dematerialised or immobilised securities) will be governed by the law of the place where the account is maintained. It is highly unlikely that a court in Sweden would apply the traditional tests for directly held certificated securities, which would have looked to the law of the location of the certificates representing the securities.

4.26 Notwithstanding that the general view is that the existing Swedish principles achieve a satisfactory outcome in the case of indirectly held securities, the absence of authority directly on point has made the position less clear than is desirable. Thus, the opportunity presented by the Settlement Finality Directive to codify the relevant principles in Swedish law was generally welcomed. Article 9(2) of the Settlement

Finality Directive has been implemented into Swedish law through an amendment to the FITA. Chapter 5, Section 3 of the FITA provides that:

Swedish	English
Vid överlåtelse, pantsättning eller annat förfogande över finansiella instrument för vilka aktiebrev, skuldebrev eller annan motsvarande skriftlig handling inte har utfärdats eller, där en sådan handling har utfärdats, den genom förvaring eller på liknande sätt har säkerställts att handlingen inte kommer i omlopp skall, när förvärvarens rätt till de finansiella instrumenten har registrerats enligt lag, lagen i det land där registret förs tillämpas beträffande rättsverkningarna i förhållande till andra än parterna.	In respect of any transfer of, or pledge over or other disposition of financial instruments or any interests therein, in respect of which certificates or other written instruments have not been issued, or where such an instrument has been issued, measures have been taken to ensure that such instrument will not be negotiated, and the interests of the acquiror has been registered according to law, the law of the country in which the register is maintained shall apply in respect of the legal effects in relation to third parties.

4.27 It should be borne in mind that none of the implementing provisions have been judicially tested. Any conclusions based on them as to how Swedish courts would apply them will therefore perforce be somewhat conjectural.

4.28 The original position of the Swedish government was that the Place of the Relevant Intermediary Approach ("**PRIMA**") rule embodied in Article 9(2) of the Settlement Finality Directive was already reflected in the unwritten but commonly accepted principles of Swedish law, and therefore it would seem that the amendments to the FITA were primarily made in the interests of greater legal certainty in international commerce. However, there is some concern among practitioners that the implementation of Article 9(2) has not been entirely successful in achieving its purpose; in at least one respect the codification may actually have introduced new uncertainties. The uncertainties actually arise from the fact that the Swedish statutory language closely follows the official Swedish translation of the Settlement Finality Directive The language of the statute makes it clear that Swedish law will not look to either the law of the issuer or the law of the location of any underlying certificates that may have been issued (on the basis of other statutory provisions, applied by way of analogy, it could be confidently stated that this would be the case, provided that such certificates have been satisfactorily withdrawn from circulation). The statutory language is clearly designed and intended to point to a jurisdiction which is connected to the intermediary through whom the securities are being held. However, the requirement in the statute that the intermediary shall have "registered" the relevant interest "according to law" introduces a significant element of ambiguity into the language: it is simply not clear what the phrase "registered according to law" is intended to mean. It is hoped that Swedish courts will construe it in the sense of "the interests of the acquirer have been recorded in a register in a way which enjoys legal

recognition" (which would accord with the informal information available from the relevant government department). It is thought that this wording was adopted to ensure that it would only apply where the country in which the interests were recorded would itself recognise interests in an indirect holding system (the draftsmen would appear to have had in mind the domestic Swedish statutory regime for dematerialised and immobilised securities and also certain other internationally well-known clearing systems).

4.29 It is simply unknown how the Swedish courts will address this issue and what tests they will devise to determine whether the "register" kept by a particular intermediary (even if only for internal or accounting purposes) will qualify under the statutory language. It is thought that Swedish courts would most likely follow any construction of Article 9(2) propounded by the European Court of Justice, as the Swedish statutory language is based on that of Article 9(2). The present situation would have the effect, in our view unintended, that the FITA would not indicate clearly the law of any one jurisdiction as the applicable law. This would clearly be inconsistent with the spirit of Article 9(2) of the Settlement Finality Directive and the pre-existing Swedish conflict of laws rules (which the amendments to the FITA were intended merely to codify). For this reason, unless the reference to "registering" is understood in a broad sense that includes the recording of positions in a custody account (irrespective of how that recordation is treated under the laws of the jurisdiction in which the account is maintained), the new rule does less in the way of providing certainty than what was expected when the new provisions were discussed prior to enactment. The adoption of the Hague Convention should result in the removal of doubts that exist today.

4.30 Swedish perfection requirements would only apply to assets held in Sweden. If the perfection of the interest fell to be decided by Swedish law:

4.30.1 in respect of dematerialised or immobilised instruments:

(a) registration (where the relevant interest is registered directly on the books of a central securities depositary in Sweden) or

(b) notice to the nominee (where the interest is held through the nominee) or

4.30.2 in respect of certificated bearer securities, delivery (either physical delivery or constructive delivery in the form of notice to third-party depositories) or

4.30.3 in the case of cash, notice to the account operator

would be required for the perfection of the interest purportedly created. Unperfected interests are treated as mere personal claims in Insolvency Proceedings, which means that the Party having such claim would be treated as an unsecured creditor in the proceedings.

4.31 There could, however, be a difference in how, under Swedish generally accepted accounting principles, a true absolute transfer should be entered in the books of the parties and how a transfer for security purposes should be entered. A corresponding distinction could be made by Swedish taxation authorities. We express no opinion on the characterisation of a Transaction pursuant to any regulatory provisions (such as portfolio and similar restrictions for certain institutions). (If certainty on accounting rules under Swedish generally accepted accounting principles or Swedish, taxation or regulatory issues in respect of institutions subject to supervision in Sweden is required, we would recommend that separate Swedish accounting and tax advice be obtained).

General Qualifications

4.32 Pursuant to the SCA and general equitable principles of the law of contract and obligations, a contract term may be modified or set aside if it is adjudged to be unreasonable. Where any party to an agreement is vested with a discretion or may determine a matter in its opinion or at its discretion, the laws of Sweden may require that such discretion be exercised reasonably or that such opinion be based on reasonable grounds and a provision that a certain determination is conclusive and binding will not serve to prevent or preclude judicial enquiry into the merits of any claim by an aggrieved party; and the effectiveness of any provision which allows an invalid or unenforceable provision to be severed to save the remainder of the relevant document and its provisions will be determined by the courts of Sweden or arbitral tribunals sitting in, or applying the procedural laws of Sweden in their discretion. However, it should be noted that it is highly irregular for the courts to utilise such equitable power in matters between two professional parties.

4.33 The enforcement of any agreement, guarantee or instrument may be limited by the provisions of the Swedish Moratorium Act 1940 (as amended) (Sw. *lag (1940:300) ang. förordnande om anstånd med betalning av gäld m.m. (moratorielag)*) (which provides for a moratorium on the performance of obligations by persons or entities domiciled or resident in Sweden when Sweden is at war; where extraordinary circumstances obtain in Sweden as a result of war; or in retaliation for corresponding or commensurate measures in another state in respect of claims by Swedish creditors) and the Swedish Emergency Powers (Defence of the Realm) Act 1978 (as amended) (Sw. *förfogandelag (1978:262)*) (which provides that property and assets situate in Sweden may be requisitioned or otherwise compulsorily disposed of by the authorities of Sweden when Sweden is at war; when there is a risk of Sweden becoming at war; where extraordinary circumstances obtain in Sweden as a result of war; or where there is an imperative need for the defence of Sweden).

4.34 Provisions in an agreement specifying that its provisions may only be amended or waived in writing may not be enforceable to the extent that an oral agreement or implied agreement in trade practice or course of conduct has been created modifying provisions of the agreement; and to the extent that any matter is expressly to be determined by future agreement or negotiation, such provision may be unenforceable or void for lack of certainty.

4.35 The FOA Netting Agreement or, as the case may be, the Clearing Agreement and this opinion are expressed in the English language whilst addressing and explaining institutions and concepts of the laws of Sweden; and such institutions and concepts may be reflected in or described by the English language only imperfectly; and we express no opinion on how the Swedish would construe contractual language expressed in English where the contract would be subject to the laws of Sweden. However, we believe that such courts would pay attention to the meaning and import in the laws of any pertinent jurisdiction in which the English language is normally or habitually employed of the expressions used in construing what the parties intended to put in writing for the purposes of the laws of Sweden.

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

This opinion is given for the sole benefit of the Futures and Options Association and FOA Members. 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,

ADVOKATFIRMAN VINGE



Fredrik Wilkens

SCHEDULE 1
Insurance Companies

Subject to the modifications and additions set out in this Schedule 1 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies (as defined below). For the purposes of this Schedule 1 (*Insurance Companies*) "**Insurance Companies**" means insurance companies, insurance cooperatives and mutual insurance companies organised under the Insurance Business Act 2010 (as amended) (Sw. *försäkringsrörelselag (2010:2043)*) ("**Insurance Business Act**") with their COMI in Sweden.

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 1 (Insurance Companies).

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Insurance Companies

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

(a) a bankruptcy pursuant to the Bankruptcy Act; and

(b) a compulsory liquidation pursuant to the Companies Act or the Insurance Business Act.

2.2 Enforceability of the FOA Netting Provision

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

(1) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

(2) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because under Section 5 of the Swedish Insurance Companies and Credit Institutions Insolvency Procedures (International Relations) Act 2005 (as amended) (Sw. *lag (2005:1047) om internationella förhållanden rörande försäkringsföretags och kreditinstituts insolvens*) (the "**Winding-Up Act**") (designed to implement the EU Directives 2001/17/EC of 19 March 2001 on the reorganisation and winding-up of insurance undertakings and 2001/24/EC of 4 April 2001 on the reorganisation and winding-up of credit institutions) insolvency proceedings against an Insurance Company will be governed by Swedish law unless specifically provided for in the Winding-Up Act. According to Section 12 of the Winding-Up Act the law governing the enforceability of agreements regarding netting (Sw. *avräkning*) or repurchase (Sw. *återköp*) is the law which governs the agreement and thus we are of the opinion that the law governing the agreement will govern the enforceability of the FOA Netting Provision.

However, should the Winding-Up Act, for whatever reason, not apply the Swedish law position would be a fall back to the FITA under which the FOA Netting Provision is enforceable as set out in paragraph 3.3.

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

No amendments to the FOA Netting Provisions are necessary in order for the opinions expressed in this paragraph 2.2 to apply.

2.3 **Enforceability of the Clearing Module Netting Provision**

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

We are of this opinion because of the same reasons as set out in section 2.2 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 2.3 to apply.

2.4 **Enforceability of the Addendum Netting Provision**

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

We are of this opinion because of the same reasons as set out in section 2.2 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provisions.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 2.4 to apply.

3. **ADDITIONAL QUALIFICATIONS**

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

3.1 **Enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision**

Under Section 14 of the Winding-Up Act in addition to any rights to set off which may be applicable under Swedish law, set off shall also be permitted if it is permitted under the laws of the EEA Member State governing the claim against the creditor. Thus as the FOA Netting Agreement, or as the case may be, the Clearing Agreement is governed by English law the question of whether the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision are enforceable is, if such a set-off is not enforceable under Swedish law, a question of English law.

3.2 **Enforceability of the Title Transfer Provisions**

Under Section 15 of the Winding-Up Act upon the insolvency of an Insurance Company the Title Transfer Provisions could only be subject to a claw-back if such claw-back would be applicable under English law.

4. **MODIFICATIONS TO QUALIFICATIONS**

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

Paragraphs 4.2 through 4.31 of the opinion letter are not applicable.

SCHEDULE 2
Investment Firms

Subject to the modifications and additions set out in this Schedule 2 (*Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Firms (as defined below). For the purposes of this Schedule 2 (*Investment Firms*), "**Investment Firms**" means limited liability companies incorporated under the Swedish Companies Act 2005 (as amended) with their COMI in Sweden and holding investment firm authorisations pursuant to the Swedish Securities Markets Act 2007 (as amended) (Sw. *lag (2007:528) om värdepappersmarknaden*).

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 2 (Investment Firms).

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Investment Firms

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Firms could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: (i) a bankruptcy pursuant to the Bankruptcy Act; and (ii) compulsory liquidation pursuant to the Companies Act.

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

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications. Depending on the type of Investment Firm the opinion shall either be subject to the same qualifications as set out in the opinion letter with regards to Credit Institutions or as set out with regards to Insurance Companies. It cannot be easily be determined which of the legal structures would apply due to certain inconsistencies in the implementation of certain directives in Swedish law, however this is of little

practical importance as the legal analysis is the same for Credit Institutions and Insurance Companies in respect of these matters.

4. MODIFICATIONS TO QUALIFICATIONS

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

As set out in Schedule 1 (*Credit Institutions)* and Schedule 2 (*Insurance Companies*) if applicable (as discussed in section 2 of this Schedule).

SCHEDULE 3
Registered Partnerships

Subject to the modifications and additions set out in this Schedule 3 (*Registered Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Registered Partnerships (as defined below). For the purposes of this Schedule 3 (*Registered Partnerships*), "***Registered Partnerships***" means 1.2.3 registered partnerships (Sw. *handelsbolag*) and limited partnerships (Sw. *kommanditbolag*) formed under the Partnerships Act 1980 (as amended) (Swe. *lag (1980:1102) om handelsbolag och enkla bolag*) (the "**Partnerships Act**") with their COMI in Sweden.

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 3 (Registered Partnerships).

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Registered Partnerships

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Registered Partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: (i) a bankruptcy pursuant to the Bankruptcy Act; and (ii) compulsory liquidation pursuant to the Partnerships Act.

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

SCHEDULE 4
Natural Persons

Subject to the modifications and additions set out in this Schedule 4 (*Natural Persons*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Natural Persons (as defined below). For the purposes of this Schedule 4 (*Natural Persons*), "**Natural Persons**" mean natural persons that are solely citizens (Sw. *medborgare*) of Sweden as set out in the Swedish Citizen Act 2001 (as amended) (Sw. *lag (2001:82) om svenskt medborgarskap*) and has his or hers habitual domicile (Sw. *hemvist*) in Sweden, as defined in the International Regulation of Wedlock and Tutelage Act 1904 (as amended) (Sw. *lag (1904:26) om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap*) and in the International Regulation of Spouses and Cohabitants Act 1990 (as amended) (Sw. *lag (1990:272) om internationella frågor rörande makars och ambors förmögenhetsförhållanden*).

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 4 (Natural Persons).

2. ADDITIONAL ASSUMPTIONS

We assume the following:

(a) That the Natural Person is solely a citizen of Sweden as set out in the Swedish Citizen Act 2001;

(b) That the Natural Person has his or her habitual domicile in the Sweden, as defined in the International Regulation of Wedlock and Tutelage Act 1904 and in the International Regulation of Spouses and Cohabitants Act 1990;

(c) That the Natural Person is at least eighteen years of age;

(d) That the Natural Person is not subject to any tutelage (Sw. *förmyndare, god man,* or *förvaltare*); and

(e) That the Natural Person is not acting under the influence of any mental illness that would affect that Natural Person's legal capacity as described in the Private Law Effects of Mental Illness Act 1924 (Sw. *lag (1924:323) om verkan av avtal, som slutits under påverkan av en psykisk störning*).

3. MODIFICATIONS TO OPINIONS

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

3.1 **Insolvency Proceedings: Natural Persons**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Natural Person could be subject under the laws of this jurisdiction, and which are relevant for the purpose; (i) a bankruptcy pursuant to the Bankruptcy Act; and (ii) debt restructuring (Sw. *skuldsanering*) pursuant to the Debt Restructuring Act 2006 (*Skuldsaneringslag (2006:548)*).

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

4. **ADDITIONAL QUALIFICATIONS**

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

4.1 **General Qualifications**

Natural Persons may pursuant to the Debt Restructuring Act be subject to debt restructuring. Decisions on whether to initiate debt restructuring is resolved upon by the Swedish Enforcement Authority (Sw. *Kronofogden*) at the request of the Natural Person. A decision to initiate debt restructuring may be granted by the Swedish Enforcement Authority provided that a Natural Person (i) is insolvent and so indebted that it may be assumed that the Natural Person will not be capable of repaying their debt within the foreseeable future, and (ii) it is reasonable with regard to the Natural Persons personal and economic circumstances that a debt restructuring is granted. A debt restructuring encompasses all the Natural Persons debts that arose prior to the date of the decision to initiate the debt restructuring (including future interest on such debt). Although there is some direction of the Swedish Enforcement Authority the debt restructuring would typically entail that the debts are written off considerably, if not in their entirety, after five (5) years under which period the Natural Persons makes repayments under its debts to the extent possible and legally permissible taken into account certain minimum requirements of the living standard of the Natural Person.

SCHEDULE 5
Investment Funds

Subject to the modifications and additions set out in this Schedule 5 (*Investment Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Funds (as defined below). For the purposes of this Schedule 5 (*Investment Funds*), "**Investment Funds**" means funds organised (i) as UCITS (Sw. *värdepappersfonder*) under the Swedish Securities Funds Act 2004 (as amended) (Sw. *lag (2004:46) om värdepappersfonder*) (the "**SFA**") and (ii) as special funds (Sw. *specialfonder*), under the Swedish Alternative Investment Fund Managers Act 2013 (as amended) (Sw. *lag (2004:46) om förvaltare av alternativa investeringsfonder*) ("**AIFMA**").

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"*Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 5 (Investment Funds).*

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Investment Funds

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Funds could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: none, as the Investment Funds cannot acquire rights or obligations, thus, since an investment fund has no legal personality, it is not subject to insolvency laws and no bankruptcy or other insolvency proceedings can be instituted against it.

As Investment Funds are not subject to Insolvency Proceedings, Insolvency Proceedings as specified in the Insolvency Events of Default clause is not applicable.

2.2 Enforceability of the FOA Netting Provision

In relation to a FOA Netting Agreement, or in relation to a Clearing Agreement where the Defaulting Party acts as Client, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its

terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

(1) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

(2) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because of the contractual provisions and general principles of law.

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

No amendments to the FOA Netting Provisions are necessary in order for the opinions expressed in this paragraph 2.2 to apply.

2.3 **Enforceability of the Clearing Module Netting Provision**

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

We are of this opinion because of the same reasons as set out in section 2.2 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 2.3 to apply.

2.4 **Enforceability of the Addendum Netting Provision**

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

the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because of the same reasons as set out in section 2.2 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provisions.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 2.4 to apply.

3. ADDITIONAL QUALIFICATIONS

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

Legal Form

3.1 An Investment Fund must be represented by a fund manager in every aspect of its organisation. Permission to manage the fund is given to a fund company (a "**Fund Company**"). A Fund Company is subject to general insolvency laws for its own behalf but the fund's assets will not be available to the Fund Company's creditors. In the event that the Fund Company becomes insolvent, its authorisation and appointment as fund manager of the fund will lapse automatically. A new Fund Company will be appointed by the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) (the "SFSA"). Pursuant to the SFA as regards UCITS and pursuant to the AIFMA as regards special funds, the fund company is prohibited from exercising any control over property comprising the fund, or in respect of the fund, taking or granting loans, standing surety or selling securities which are not at the disposal of the fund company in respect of the fund.

3.2 The assets of Investment Funds are required to be held in custody by a custodian (Sw. *förvaringsinstitut*) (a "**Custodian**"). The SFA and the AIFMA stipulates that the Custodian shall execute the Fund Company's decisions regarding the Investment Fund unless they contradict the fund statutes or provisions of the SFA and AIFMA respectively, to the extent that no exemption has been granted. The Custodian shall further receive and hold the assets comprising the fund and make sure that the assets comprising the fund are put at the disposal of the Custodian without delay. It shall supervise the sale and redemption of fund units and the calculation of the value of the fund units and shall ensure the use of the assets comprising the fund is in accordance with the provisions of the SFA as regards UCITS, the AIFMA as regards special funds and the fund rules (Sw. *fondbestämmelser*). If the assets comprising the fund include foreign securities, the Custodian may allow a suitable foreign sub-custodian to hold such securities. The Custodian may not enter into loans or extend credits or guarantee the obligations with respect to the fund.

3.3 The type and/or value of Transactions entered into under the FOA Netting Agreement, or as the case may be, the Clearing Agreement is restricted by the investment restrictions and special provisions regarding permissible transactions in the SFA and the AIFMA and the fund rules approved by the SFSA. The fund statutes are individual to each Investment Fund and are available as a matter of public record from the SFSA.

3.4 There are different sets of placement rules for UCITS and special funds. The regulation of special funds in the AIFMA (as referring to Chapter 5 of the SFA) is limited and the bulk of the applicable restrictions would be found in the fund rules of each respective fund. The SFA sets out a number of restrictions on the investments of UCITS; the restrictions also apply to special funds, unless the SFSA has approved exemptions in the fund rules of the special funds.

3.5 Although the matter has not been judicially settled and there is some debate on the issue, the majority view (a view which we share) is that contracts made in breach of the provisions of the SFA and the AIFMA would not be void or voidable solely on the basis of such breach. In egregious cases the courts of Sweden may, however, invoke its equitable powers to vary or set aside such agreements. An example of such an egregious case could be an investment which in itself breaches the limits discussed above and where a counterparty had been informed of the value of the relevant Investment Fund. There is no case-law to decide the issue. The bases of this line of argument have recently been upheld by the Swedish Supreme Court (Sw. *Högsta domstolen*) in a number of cases dealing with tax evasion, in which the court upheld agreements that contravened tax laws, even where such contraventions attracted criminal sanctions.

4. MODIFICATIONS TO QUALIFICATIONS

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

Paragraphs 4.2 through 4.31 of the opinion letter are not applicable.

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SCHEDULE 6
Sovereign Entities

Subject to the modifications and additions set out in this Schedule 6 (*Sovereign Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sovereign Entities (as defined below). For the purposes of this Schedule 6 (Sw. *Sovereign Entities*), "**Sovereign Entities**" means (i) Sveriges Riksbank the central bank of Sweden (Sw. *Sveriges Riksbank*), (ii) the Swedish National Debt Office (Sw. *Riksgälden*), and (iii) the Swedish national pension funds nos. 1, 2, 3, 4 and 7 (Sw. *Första AP-fonden, Andra AP-fonden, Tredje AP-fonden, Fjärde AP-fonden* and *Sjunde AP-Fonden*) regulated by the Swedish AP Funds Act 2000 (as amended) (Sw. *lag (2000:192) om allmänna pensionsfonder (AP-fonder)*) and no. 6 (Sw. *Sjätte AP-fonden*) regulated by the Swedish Sixth AP Fund Act 2000 (as amended) (Sw. *lag (2000:193) om Sjätte AP-fonden*) (there is no fund no. 5).

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 6 (Sovereign Entities).

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Sovereign Entities

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Sovereign Entity could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: none, the Sovereign Entities are agencies of Sweden organised as public authorities and are integral parts of the central administration of Sweden; and as such they cannot enter bankruptcy or become subject to company reconstruction proceedings or any other insolvency proceedings.

As Sovereign Entities are not subject to Insolvency Proceedings, Insolvency Proceedings as specified in the Insolvency Events of Default clause is not applicable.

2.2 Enforceability of the FOA Netting Provision

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

(1) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

(2) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because of the contractual provisions and general principles of Swedish law.

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

No amendments to the FOA Netting Provisions are necessary in order for the opinions expressed in this paragraph 2.2 to apply.

2.3 **Enforceability of the Clearing Module Netting Provision**

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

We are of this opinion because of the same reasons as set out in section 2.2. above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 2.3 to apply.

2.4 **Enforceability of the Addendum Netting Provision**

In relation to a Clearing Agreement which includes the Addendum Netting Provision, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a

CM Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because of the same reasons as set out in section 2.2 above.

We are of this opinion because of the same reasons as set out in section 2.2 above.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of rights under the Addendum Netting Provisions.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 2.4 to apply.

3. ADDITIONAL QUALIFICATIONS

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

Legal Form

3.1 The Sovereign Entities are agencies of the Sweden organised as public authorities and are integral parts of the central administration of Sweden; and as such they cannot enter bankruptcy or become subject to company reconstruction proceedings or any other insolvency proceedings. The Sovereign Entities enjoy immunity from execution on the territory of Sweden in respect of all of its assets but not immunity from suit to which the Sovereign Entities is party in the courts of Sweden. This means that the Sovereign Entities can be sued in the courts of Sweden and that judgements against it in the courts of other states may be recognised in Sweden, but that the executive authorities of Sweden will not take any action to enforce a judgment against the Sovereign Entities. The immunity enjoyed by the Sovereign Entities does not preclude a counterparty from exercising self-help remedies available to it, such as set-off and the sale of collateral in its possession. The immunity thus accorded to the Sovereign Entities under Swedish law does not preclude the Sovereign Entities from entering into contracts under foreign law or to submit to the jurisdiction of a foreign court. The issue of the Sovereign Entities' immunity from suit in such foreign courts, or from execution on the territory of any other sovereign, would be a matter for the laws of the relevant curial or local law.

Netting and Set off

3.2 Although the Sovereign Entities are integral parts of Sweden, netting and/or set off will only be upheld under Swedish law in respect of rights and obligations acquired or contracted by each Sovereign Entity separately. No netting and/or set off would be upheld as between rights and obligations acquired or contracted by different

Sovereign Entities or other agencies of Sweden, unless explicitly contracted (and even so the validity of such provisions could be questionable under Swedish law).

4. MODIFICATIONS TO QUALIFICATIONS

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

Paragraphs 4.2 through 4.31 of the opinion letter are not applicable.

SCHEDULE 7
Sub Sovereign Entities

Subject to the modifications and additions set out in this Schedule 7 (*Sub Sovereign Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sub Sovereign Entities (as defined below). For the purposes of this Schedule 7 (*Sub Sovereign Entities*), "**Sub Sovereign Entities**" means local municipalities (Sw. *kommuner*), regional municipalities (Sw. *landsting*) and regions (Sw. *regioner*) organised under the laws of the Sweden.

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

Paragraph 1.6.3 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 6 (Sub Sovereign Entities).

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Sub Sovereign Entities

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Sub Sovereign Entities could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: none, the Sub Sovereign Entities are immune from insolvency.

As Sub Sovereign Entities are not subject to Insolvency Proceedings, Insolvency Proceedings as specified in the Insolvency Events of Default clause is not applicable.

3. ADDITIONAL QUALIFICATIONS

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

Legal Form

2.1 The Sub Sovereign Entities cannot enter bankruptcy or become subject to company reconstruction proceedings or any other insolvency proceedings. The Sub Sovereign Entities enjoy immunity from execution on the territory of Sweden in respect of all of

its assets but not immunity from suit to which the Sub Sovereign Entities is party in the courts of Sweden. This means that the Sub Sovereign Entities can be sued in the courts of Sweden and that judgements against it in the courts of other states may be recognised in Sweden, but that the executive authorities of Sweden will not take any action to enforce a judgment against the Sub Sovereign Entities. The immunity enjoyed by the Sub Sovereign Entities does not preclude a counterparty from exercising self-help remedies available to it, such as set-off. The immunity thus accorded to the Sub Sovereign Entities under Swedish law does not preclude the Sub Sovereign Entities from entering into contracts under foreign law or to submit to the jurisdiction of a foreign court. The issue of the Sub Sovereign Entities' immunity from suit in such foreign courts, or from execution on the territory of any other sovereign, would be a matter for the laws of the relevant curial or local law.

Title Transfer Provisions

2.2 Sub Sovereign Entities are prohibited under the Swedish Local Municipalities Act (Sw. *kommunallag (1991:900)*) from granting pledges (*pant*) such as the Security Interest Provisions. The effects if they were to enter into such a contract could be that such contract would be deemed null and void. Expert opinion is divided as to whether they have capacity to post collateral under any other heading, e.g. as transfers of title. There is some support against such capacity at least with regards to sale-and-leaseback structures as that position was made clear in a Governmental Report. A strong argument in favour of such capacity would be that it is trite law as Sub Sovereign Entities may sell assets outright. The prohibition on the granting of pledges has been severely criticised in the legal literature as an inconsistent historical residue from the earlier prohibition on Sub Sovereign Entities to dispose of any assets.

2.3 We also note that clause 2.5 of the Title Transfer and Physical Collateral Annex to the Netting Module is not relevant for the Sub Sovereign Entities.

4. MODIFICATIONS TO QUALIFICATIONS

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

Paragraphs 4.2 through 4.31 of the opinion letter are not applicable.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")

2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")

3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")

4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")

5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")

6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")

7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")

8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")

9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")

10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")

11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")

12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")

13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")

14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")

15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")

17. Professional Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")

18. Professional Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")

19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")

20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")

21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")

22. Retail Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")

23. Retail Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")

24. Retail Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")

26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")

27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

28. Eligible Counterparty Agreement (2007 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")

29. Eligible Counterparty Agreement (2009 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2009**")

30. Eligible Counterparty Agreement (2011 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2011**")

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

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

ANNEX 2
List of Transactions

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

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

(i) a contract made on an exchange or pursuant to the rules of an exchange;

(ii) a contract subject to the rules of an exchange; or

(iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

(iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or

(v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

(1) Clause 8(b) (*Clearing Member Events*), 8(c) (CCP Default) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum; or

(2) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

(a) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement; or

(3) any modified version of such clause provided that it includes at least those parts of paragraph 8 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

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

(b) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;

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

(5) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

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

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

(c) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or

(6) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

(d) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or

(7) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

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

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

(a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;

(b) for the purposes of paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*), the Clearing Module Netting Provision together with the defined terms

"Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

(c) for the purposes of paragraph 3.5 (*Enforceability of the Addendum Netting Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

(d) for the purposes of paragraph 3.7.1, the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;

(e) for the purposes of paragraph 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;

(f) for the purposes of paragraph 3.8.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;

(g) for the purposes of paragraph 3.8.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);

(b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);

(c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;

(d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);

(e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);

(f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or

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

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

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

(a) the "**General Set-off Clause**", being:

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

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (***Set-off***);

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (***Set-off***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (***Set-off***);

(vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***);

(viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***); or

(ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (***Set-off on default***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (***Set-off upon default or termination***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (***Set-off on default***),

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (***Set-off upon default or termination***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (***Set-off on default***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (***Set-off upon default or termination***); or

(vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

(a) where the FOA Member's counterparty is not a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);

(iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);

(iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive); or

(vi) provided that any modification of such clauses include at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and

(b) where the FOA Member's counterparty is a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);

(iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); or

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

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

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

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

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

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

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

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

(h) any modified version of such clauses provided that it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Retail Client Agreements**" means each of the Retail Client (with Security Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Security Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Security Provisions)

Agreement 2011 or the Retail Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

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

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

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

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

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

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

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

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

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

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

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

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

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

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

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

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

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

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

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

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

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

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

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

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

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

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

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

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

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. FOA Netting Provision:

a) "**Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "**Non-Defaulting Party**") may, by notice to the party in default (the "**Defaulting Party**"), specify a date (the "**Liquidation Date**") for the termination and liquidation of Netting Transactions in accordance with this clause.

b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:

i. neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;

ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and

iii. the Non-Defaulting Party shall treat each such cost or loss to it as a positive amount and each such gain by it as a negative amount and aggregate all such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "**Liquidation Amount**").

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. General Set-Off Clause:

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

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

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

ii. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "**Custodian**") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;

iii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

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

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

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

5. Title Transfer Provisions:

a) "**Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date *will* be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. Clearing Module Netting Provision / Addendum Netting Provision:

a) [Firm Trigger Event/CM Trigger Event]

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

(a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

(b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from

Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];

2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default

occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first

exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

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

d) Definitions

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

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

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

(a) is attributable to such Client Transactions;

(b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and

(c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

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

7. Clearing Module Set-Off Provision

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

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

8. Addendum Set-Off Provision

(i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("**CM Other Amounts**"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "**X**" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("**EP Other Amounts**" and together with CM Other Amounts, "**Other Amounts**"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at

which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

(ii) For the purposes of this Section 8(ii):

(A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

(B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and

(C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.

4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.

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

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

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

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

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

10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.

11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.

14. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.

15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.

16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).

18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:

- more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
- more than one FOA Clearing Module or Clearing Module Netting Provision
- one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in an FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.

23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3
SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

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

2. Power of Sale Clause:

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

3. Client Money Additional Security Clause

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

4. Rehypothecation Clause

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

and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

   None

2. Desirable amendments

   None

3. Additional wording to be treated as part of the Core Provisions

   None