

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

FCM

Enforceability ~~of the Liquidation, Setoff, Netting and Credit Support Provisions of Certain Futures Account Agreements and a Cleared Derivatives Addendum~~ upon a Customer's ~~Default or~~ Insolvency, ~~and Enforceability of Certain Offset or Other~~ Default of the Position Liquidation, Margin Liquidation and Determination of Account Provisions ~~Applicable Prior~~ of a Customer Agreement pursuant to which a US Futures Commission Merchant Clears Futures and/or Cleared Swaps for the Customer's Default or Insolvency

17 June 2020

29 September 2022

Anguilla

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Dear Sirs

~~Enforceability of the Liquidation, Setoff, Netting and Credit Support Provisions of Certain Futures Account Agreements and a Cleared Derivatives Addendum upon a Customer's Default or Insolvency, and Enforceability of Certain Offset or Other Default of the Position Liquidation, Margin Liquidation and Determination of Account Provisions~~ Applicable Prior of a Customer Agreement pursuant to which a US Futures Commission Merchant Clears Futures and/or Cleared Swaps for the Customer's Default or Insolvency.

Anguilla

1 Introduction

1.1 We have been asked to advise the International Swaps and Derivatives Association, Inc. (**ISDA**) and the Futures Industry Association (**FIA**) ~~on certain issues with respect to the operation of the U.S. law trusts under which customer assets are held by~~ regarding the enforceability under the laws of Anguilla of the Position Liquidation, Margin Liquidation and Determination of Account provisions (collectively, **remedial provisions**) of a customer agreement (the **Covered Agreement**) pursuant to which a futures commission merchant (the **FCM**) and the enforceability of the liquidation and credit support provisions of certain futures account agreements registered with the Commodity Futures Trading Commission (the **CFTC**) clears Futures and/or Cleared Swaps for a customer located in Anguilla (the **Covered Customer**).

1.2 A Covered Agreement generally consists of (i) a customer account agreement (a **Base Account Agreement**) if the Covered Customer trades only Futures, and (ii) a Base Account Agreement and a Cleared Derivatives Addendum upon a customer's default or insolvency substantially in the form published by FIA and ISDA in 2012 or 2018 (either, the **CDA**) if the Covered Customer trades only Cleared Swaps or trades both Futures and Cleared Swaps.

~~1.2 This opinion is given with respect to Futures Transactions and Cleared Derivatives Transactions of the types described in Appendix A (**Covered Transactions**) entered into under Covered Base Agreements and CDAs by customers organised in Anguilla as any of the types described in Appendix B (including Anguillian branches of entities organised outside Anguilla).~~

- 1.3 The types of transactions that may be cleared for the Covered Customer pursuant to the Covered Agreement include US Futures, Foreign Futures and Cleared Swaps (together, **Covered Transactions** or **Covered Contracts**).
- 1.4 ~~1.3~~ We have been provided with a memorandum dated 17 November 2021 from Sullivan & Cromwell LLP ~~entitled "Analysis of the Relationships Among Customers, FCMs and DCOs Under the U.S. Agency Clearing Model"~~ Regarding Futures and Options Transactions, Cleared Swaps and Foreign Futures Transaction Executed and Carried by Futures Commission Merchants for their Customers" (the **Sullivan & Cromwell memorandum**). We have also been provided with a high-level overview and summary of the main concepts covered, conclusions reached and certain factual assumptions in the Sullivan & Cromwell memorandum, ~~produced by Linklaters LLP~~ (the ~~Linklaters summary~~ or the **Summary Annex**) and which we have included at Annex 1.
- 1.5 This opinion is given with respect to Covered Customers organised in Anguilla as any of the customer types described in Appendix A.
- 1.6 ~~1.4~~ This opinion is subject to the details, definitions, assumptions and fact patterns set out in the instructions from ISDA (the **Instructions**) set out in full in Annex 2. Additional assumptions are contained in Schedule 1. Schedules 2 and 3 set out certain matters of Anguillan law referred to in the body of the opinion.
- 1.7 Terms defined in the Summary Annex or the Instructions have the same meanings in this opinion unless otherwise defined.
- 1.8 ~~1.5~~ This opinion is confined to matters of Anguillan law and nothing herein should be construed to express or imply any opinion with regard to any other system of law. While it is a separate legal jurisdiction Anguilla follows general principles of English common law. The opinion is limited in scope to the matters expressly commented on.
- 1.9 ~~1.6~~ This opinion is addressed to the International Swaps and Derivatives Association, Inc. (**ISDA**) and the Futures Industry Association (**FIA**) solely for the benefit of their members in relation to their use of ~~one or more of the~~ Covered Agreements. No other person may rely on this opinion for any purpose without our prior written consent. This opinion may, however, be shown by ISDA or FIA or an ISDA or FIA member to their advisors, members' advisors or auditors or any competent regulatory or supervisory authority for such members for the purposes of information only, on the basis that we assume no responsibility to such authority or any other person as a result or otherwise.

2 Opinions

PART I ~~Recognition and Operation of the U.S. Trusts and Exercise of the Trust~~ Position Liquidation Rights, Margin Liquidation and Determination of Account

A — Assumptions

Please note the additional assumptions in the Instructions relevant to these questions

B — Issues

1. ~~Would the parties' agreement on governing law of each Covered Base Agreement and CDA and submission to jurisdiction be upheld set out in each of the Base Account Agreement and CDA be given effect by a court in your jurisdiction, and what would be the consequences if they were not?~~

2.1 The parties' agreement ~~on~~ as to governing law ~~of~~ in each ~~Covered~~ of the Base Account Agreement and CDA would be upheld as a valid choice of law by the courts of Anguilla and applied by ~~such~~ the courts in proceedings in relation to the ~~Covered~~ Base Account Agreement and CDA as the proper law of those agreements.

~~2.2 While it is highly unlikely the Anguillan courts would attempt to construe the provisions of a Covered Base Agreement and CDA under anything other than the chosen governing law, if they were to apply Anguillan law it is likely that the effect would be materially similar to the effect if the agreements were governed by English law.~~

2.2 ~~2.3~~ The submission to jurisdiction would be upheld assuming ~~the choice of law and submission to jurisdiction is it was~~ made in good faith ~~and was not intended.~~ However if a dispute in relation to evade the provisions of another legal system with which the Covered Base Account Agreement and/or CDA had a closer connection.

~~2.4 If a dispute in relation to the Agreements is related to the insolvency of a customer organised in Anguilla, it is possible that the Anguillan Anguilla courts would accept jurisdiction notwithstanding the provisions for jurisdiction. The conclusions of this opinion speak to the likely approach taken by an Anguillan Anguilla court in this situation.~~

2. ~~Would the Position Liquidation provisions of each of the methods by which an FCM can bring about the liquidation of a customer's Futures Transactions and Cleared Derivatives Transactions (i.e. the Cleared Derivatives Liquidation Rights), as set out in paragraphs 2.8 Base Account Agreement and the CDA be enforceable under the laws of your jurisdiction and each of the Position Liquidation methods described in Section XI of the S&C Memo and 2.9 paragraph 2.4 of the Linklaters summary, Summary Annex be recognized and upheld under by a court in your jurisdiction? If a particular method would either not be upheld or may be challenged, please provide further detail and explain the reason for this.~~

2.3 ~~2.5~~ On the basis of the following ~~analysis, the methods by which an FCM can bring about the liquidation of a customer's Futures Transactions and Cleared Derivatives Transactions as set out in~~

~~paragraphs 2.8 and 2.9 of the Linklaters summary would be upheld in Anguilla. the Position Liquidation provisions of each of the Base Account Agreement and the CDA will be enforceable under the laws of Anguilla and each of the Position Liquidation methods described in Section XI of the S&C Memo and paragraph 2.4 of the Summary Annex would be upheld in Anguilla.~~

2.4 Position Liquidation under the Base Account Agreement includes the FCM closing out or otherwise liquidating the Customer's open positions in its Contracts, and hedging risk incurred by the FCM in connection with an Event of Default, by any reasonable method, including by means of entering into offsetting transactions, risk-reducing transactions or hedging transactions, and by valuing any transactions entered into by the FCM. The CDA prescribes comparable Position Liquidation methods. In the case of either type of agreement, each of the methods seeks to "remove" or "close out" the position from the relevant omnibus customer positions account (whether at a DCO or foreign clearing organisation).

~~2.6 Our response to question 3 indicates that Anguilla would recognise the Agent Trust and the Statutory Trust as being trusts the terms of which are governed by their constitutive laws. As such and on the understanding that this is the effect under New York law, the Anguillian courts would recognise a customer as holding a beneficial interest in the relevant Trust Property as a whole and not in any specific asset. Our response to question 5 identifies some general risks to close-out, but these are potential challenges to transactions themselves rather than to the methodology of Position Liquidation. Otherwise Anguillian law does not introduce grounds for challenging Position Liquidation as carried out by the FCM as principal under the Covered Agreement using any of the methods above, assuming they have been provided for in the Covered Agreement and are carried out on a basis recognised and commonly used in the derivatives markets.~~

3. *Would the FCM's holding of the Covered Contracts as an "agent-trustee" be recognized by a court in your jurisdiction as creating a valid trust over the Covered Contracts or would the court otherwise recognize the FCM's legal title to, and the Covered Customer's beneficial interest in, the Covered Contracts?*

(a) *If so, would the court characterize Position Liquidation as the FCM's exercising its contractual rights as principal vis-à-vis the DCO under the relevant DCO rules (or vis-à-vis the Foreign Futures Broker under the clearing agreement between the FCM and Foreign Futures Broker) and not as the FCM's acting as the Covered Customer's agent or as the FCM's enforcing its security interest in the Covered Contracts?*

(b) *Could the FCM's holding of the Covered Customer's Contracts be characterized as some alternative arrangement, such as a commission agency or as a collateral security arrangement? If so, how would the FCM's Position Liquidation be characterized under the laws of your jurisdiction?*

2.6 Anguillian law recognises the concept of trusts and the Anguilla courts would generally recognise a trust constituted by the laws of another jurisdiction on the terms of that constitution. Assuming clarity at any time on the Customer's rights to trust assets, we have no reason to believe the Anguilla courts would not uphold such a trust and the courts would therefore recognise the Covered Customer's beneficial interest in the Covered Contracts. Furthermore the Anguilla courts

would generally uphold the right for the FCM as trustee to be reimbursed out of trust property for costs and expenses properly incurred.

2.7 ~~The Cleared Derivatives~~As regards the characterisation of Position Liquidation Rights as set out in paragraphs 2.8 and 2.9 of the Linklaters summary are (i) the entry into of Offsetting Transactions, Sale/Novation Transactions and Replacement Transactions and valuation by determining any losses, costs or gains and (ii) the entry into of Risk-reducing Transactions and Mitigation Transactions. In exercising these rights we understand that that the FCM is not acting as agent for the customer (since the customer has no interest in individual transactions) but is merely using contractually agreed methodologies for valuing the customer's beneficial interest, we do not believe the Anguilla courts would feel compelled to consider the FCM's status vis-à-vis the DCO. From the Anguillan perspective Position Liquidation involves the FCM acting as principal in exercising contractually agreed rights under the Customer Agreement, and not as agent or pursuant to a power of attorney of the Customer and this is not inconsistent with Anguillan law.

~~2.8 Given the analysis of the customer's interest summarised above, the Cleared Derivatives Liquidation Rights should be treated by the Anguillan courts as commercially reasonable contractual methods for reaching a valuation of the customer's aggregate beneficial interest and as such should not in our view be subject to challenge on commencement of Insolvency Proceedings in Anguilla.~~

~~2.9 While we do not believe the Cleared Derivatives Liquidation Rights, assuming they have been applied reasonably and in accordance with the Agreement, would be subject to challenge on the commencement of Insolvency Proceedings, we have set out briefly the risks associated with Insolvency Proceedings.~~

~~(a) Termination of agency. If an Anguillan court is considering the Cleared Derivatives Liquidation Rights in the context of Insolvency Proceedings it follows that the court has not accepted the analysis outlined in paragraphs 2.6 and 2.7 above in which case the FCM is acting as agent of the customer in liquidating transactions, and there is a potential challenge to the exercise of the Cleared Derivatives Liquidation Rights on the basis of the agency having terminated.~~

~~(b) Avoidance risk. Anguilla has very limited grounds for avoidance. Assuming the Covered Base Agreement and CDA are entered into for bona fide commercial reasons and at arms' length by each of the parties and with no intent to defraud creditors it is unlikely these would pose material risk to the exercise of the Cleared Derivatives Liquidation Rights.~~

~~(c) Netting Act. The analysis is simplified where the Netting Act applies. The Netting Act is summarised in Schedule 3 and is likely to apply to derivatives and futures transactions entered into the Agreement, in which case any insolvency risks discussed in the previous paragraphs may be disregarded and the risk of a successful challenge to the liquidation of a customer's Futures Transactions and Cleared Derivatives Transactions is low.~~

~~2.10—Our view is that the risks outlined in paragraph 2.9 above are sufficiently remote, especially given the Netting Act, and it is highly unlikely that the FCM would need recourse to or enforcement of the Trust Security Interest or any Collateral Security Interest.~~

~~3~~

~~4. Would the “agent-trust” and statutory trust be recognized and upheld under the laws of a court in your jurisdiction recognize the statutory trust with respect to the Segregated Funds or Separate Account Funds of each Account Class as creating a valid trust over the relevant customer transactions and assets whereby such Segregated Funds or Separate Account Funds, and that under the terms of that trust, the FCM holds the legal title to, and the relevant customer transactions and assets and the customer Covered Customer holds a beneficial interest in, the statutory trust as a whole (as opposed to maintaining an interest in any specific assets under the trust)—? Could the statutory trust with respect to the Segregated Funds or Separate Account Funds of any Account Class be characterized as some alternative arrangement (e.g., as a collateral security arrangement)?~~

~~2.11—Anguillan law recognises the concept of trusts and the Anguillan courts would generally recognise a trust constituted by the laws of another jurisdiction on the terms of that constitution. The concept of a trustee taking instructions from the beneficiary in respect of the operation of a trust (as opposed to it being a discretionary trust), and therefore limiting its fiduciary obligations or at least limiting its possible liability in respect of those fiduciary obligations, is familiar in Anguilla. Assuming clarity at any time on the customer’s rights to trust assets, we have no reason to believe the Anguillan courts would not uphold such a trust. The Anguillan courts would generally uphold the right for the FCM as trustee to be reimbursed out of trust property for costs and expenses properly incurred.~~

~~4.~~

~~(a) Would the Margin Liquidation provisions of each of the Base Account Agreement and CDA be enforceable under the laws of your jurisdiction and the FCM’s Margin Liquidation in respect of each Account Class be recognized and upheld by a court in your jurisdiction? Could such Margin Liquidation be capable of exercise based on the FCM’s exercise of its right under the applicable Customer Property Rules to withdraw and apply Segregated Funds or Separate Account Funds, as the case may be, for Permitted Uses (the FCM’s “Permitted Uses Rights”) rather than by the enforcement of its security interest in the Covered Customer’s Collateral consisting of securities?~~

~~(b) Would the exercise by the FCM of its Trust Liquidation Rights (including the operation of the Determination of Account), upon the occurrence provisions of an Event each of Default in respect of a customer, be recognized the Based Account Agreement and upheld CDA be enforceable under the laws of your jurisdiction—~~

~~2.12—The exercise by the FCM of its Trust Liquidation Rights (including the operation of the Determination of Account), upon the occurrence of an Event of Default in respect of a customer, would be~~

~~recognised and upheld under the laws of Anguilla on the same basis as discussed for Cleared Derivatives Liquidation Rights in our response to question 2 above. and the FCM's Determination of Account in respect of (i) each Account Class and (ii) all Account Classes on a combined basis be recognized and upheld by a court in your jurisdiction and if so, how could each Determination of Account be characterized (e.g., contractual accounting, netting or set-off, enforcement of the security interest in cash Collateral or some combination of the foregoing)?~~

~~5. — Is there any risk that either the “agent trust” or the statutory trust would be recharacterised under your jurisdiction (e.g. as security)? If so, how would the exercise by the FCM of its Trust Liquidation Rights be characterised under the laws of your jurisdiction.~~

2.8 ~~2.13 As identified in our response to question 3, Anguillan law recognises the concept of a trust and the Anguillan~~ The Anguilla courts would generally recognise a statutory trust constituted by the laws of another jurisdiction on the terms of that constitution.

2.9 ~~2.14 The Anguillan~~ Anguilla courts would be reluctant to ~~recharacterise the Agent Trust or the Statutory Trust~~ characterise a trust as a security interests interest if they would not be ~~recharacterised~~ characterised as such under the laws governing their constitution. ~~Specifically or if the effect under those governing laws would not have the character of a security interest under Anguillan law. In this case,~~ the characteristics of the ~~Agent Trust and the Statutory Trust~~ trust are consistent with the Anguillan concept of a trust. As with English law, the Anguillan concept of a trust shares certain characteristics with that of a security interest: however, our view is that even were the ~~Agent Trust and the Statutory Trust~~ trust to be governed by Anguillan law, ~~their specific~~ its characteristics are not such that ~~an Anguillan~~ a Anguilla court would characterise ~~them~~ it as ~~security interests~~ a security interest.

(a) Margin Liquidation. Our response to question 2 applies equally to Margin Liquidation. We believe the Anguilla courts would uphold Margin Liquidation as carried out by the FCM as principal under the Covered Agreement, assuming it is done in accordance with the Covered Agreement and on a commercially reasonable basis.

While we do not believe it necessary to rely on Permitted Uses Rights to achieve Margin Liquidation, our view is that the Anguilla courts would treat the validity of rehypothecation rights and other rights of use as governed by New York law¹ and would therefore uphold the right under the applicable Customer Property Rules to withdraw and apply Segregated

¹ If the Covered Agreement were governed by the laws of Anguilla there may be arguments as to the FCM's right to use the Collateral as it may be seen as constituting a “clog on the equity of redemption” or otherwise being an “unlawful collateral advantage”. There is no Anguillan case law of which we are aware which is determinative of the issue of whether a provision which is valid under its governing law might still be struck down by the Anguilla courts as a clog on the equity of redemption. In principal, a document which is valid under its governing law should be upheld and enforced in Anguilla unless it is contrary to public policy. In any case our view is that a security interest created over a fungible and shifting pool of collateral creates an entitlement of the collateral provider to receive back identical securities rather than the same securities in which case a right of rehypothecation could not properly be construed as a clog even under Anguillan law.

Funds or Separate Account Funds. The FCM's use of Collateral is therefore a matter of contract between the parties.

(b) *Determination of Account.* For the reasons which follow and subject to our comments in respect of certain entity types, we believe the Determination of Account provisions of each of the Base Account Agreement and CDA would be enforceable under the laws of Anguilla and the FCM's Determination of Account in respect of (i) each Account Class and (ii) all Account Classes on a combined basis would be recognised and upheld by a court in Anguilla. We summarise the analysis using contractual accounting, close-out netting, insolvency set-off and security enforcement below.

(i) *Contractual accounting.* The failure to perform under an agreement gives rise to a claim for damages in accordance with general principles of contract law. Parties are free (with certain exceptions) to use a prearranged method of arriving at the amounts payable on termination of a contract. Calculation of damages by reference to a commercially acceptable and reasonable methodology would be acceptable under Anguillan law. Noting our comments below and in our response to question 5 and our comments on the enforceability of Position Liquidation and Margin Liquidation, we believe the courts would uphold Determination of Account based on contractual accounting, notwithstanding close-out as a result of insolvency proceedings in respect of the Customer.

(ii) *Netting agreements.* The Determination of Account provisions would be enforceable to the extent they are part of a netting agreement as defined in the Netting Act 2006 (the **Netting Act**). The provisions of the Netting Act are summarised in Schedule 3. In our view, a Covered Agreement will constitute a "netting agreement" under the Netting Act for US Futures, Foreign Futures and Cleared Swaps.

(iii) *Insolvency set-off.* To the extent the netting provisions are not part of a netting agreement as defined in the Netting Act, we believe that an Anguillan court would uphold the freedom of the parties to determine the terms of their contract and would seek to give effect to the legitimate expectations of the parties. Anguilla does not have codified insolvency set-off provisions applicable to companies, partnerships or trusts but as the inclusion of such provisions is not contrary to general principals of law or public policy we believe that the most likely approach of an Anguillan court would be to uphold the Determination of Account provisions even following the commencement of liquidation of the Customer. In the unlikely event that an Anguilla court were to apply the mandatory set-off provisions of section 36 of the Bankruptcy Act (*prima facie* applicable to individuals only), we are of the opinion that the result would not differ materially from the result if the contractual netting provisions were applied by the court.

(iv) Security enforcement. The security provisions are covered in Part II of this opinion and, subject to caveats below, will be enforceable through insolvency proceedings. Where there is any question about the legal analysis of Determination of Account on a netting basis, the enforceability of security provisions provides additional reassurance that the effect of the Determination of Account provisions will be upheld.

Segregated portfolio companies. The Netting Act defines a netting agreement as an agreement “between two parties”, “party” being “a person constituting one of the parties to a netting agreement”. There has not yet been any judicial consideration of how far “person” should extend. Nevertheless we believe that a portfolio of a segregated portfolio company should be treated as a person for these purposes. Although the portfolio itself does not have separate legal personality, it only engages in transactions through the segregated portfolio company itself (which does have separate legal personality). Although the strictures relating to the treatment of portfolio assets and portfolio liabilities would prevent recognition or enforcement of any netting of assets and liabilities outside the specific portfolio in question, we believe that the Netting Act should be effective to ensure primacy be given to the Determination of Account provisions in the event of any Insolvency Proceedings and the conclusions in relation to companies above should therefore apply equally to segregated portfolios of SPCs. There is no requirement of Anguillan law that an agreement with an SPC must include contractual terms reflecting the statutory provisions preventing the attribution of liabilities of one portfolio to the assets of a separate portfolio either prior to or after the onset of insolvency. However it is important that the Covered Agreement clearly identifies for the account of which segregated portfolio the SPC is entering into the Covered Agreement.

Partnerships. Subject to our comments below, the conclusions of this opinion in respect of Companies apply to partnerships, and Determination of Account provisions will be enforceable against all forms of partnership. In particular the Netting Act does not specify that the parties must be companies and we believe any form of partnership will still constitute one “party” for the purposes of the Netting Act.

(i) General partnerships. Partners of general partnerships are only liable for the partnership debts which accrue during the time when they are a partner. Mutuality concerns therefore arise where there is a change of a partner. A general partnership would ordinarily be dissolved on the insolvency of a partner. Otherwise there are no provisions in law for the insolvency of general partnerships. Although, in the absence of insolvency law, an Anguilla court would not interfere with the operation of netting provisions there is some question as to how the courts would deal with Transactions entered into by different partners. We therefore make the following recommendations.

- (1) Parties wishing to enter into Covered Agreements with general partnerships should (i) always do so with the same partner and (ii) prohibit any change of partner unless all Transactions have been formally novated to a new partner.
 - (2) Given the likely effect of partner insolvency on the existence of the partnership, consider terminating on the bankruptcy or insolvency of any partner. In any case the bankruptcy or insolvency of the partner with which Transactions are entered into on behalf of the partnership should be treated as a termination event.
 - (3) As a practical measure the identity of the contracting partner should be included in the description of the Customer in all documentation.
- (ii) *Limited partnerships.* General partners of limited partnerships are only liable for the partnership debts which accrue during the time when they are a general partner. Mutuality concerns therefore arise where there is a change of a general partner. A limited partnership would ordinarily be dissolved on the insolvency of a partner. Otherwise there are no provisions in law for the insolvency of limited partnerships. Although, in the absence of insolvency law, an Anguilla court would not interfere with the operation of netting provisions there is some question as to how the courts would deal with Transactions entered into by different general partners. We therefore make the following recommendations.
- (1) Parties wishing to enter into Covered Agreements with limited partnerships should (i) always do so with the same general partner and (ii) prohibit any change of general partner unless all Transactions have been formally novated to a new general partner.
 - (2) Given the likely effect of partner insolvency on the existence of the partnership, consider terminating on the bankruptcy or insolvency of any partner. In any case the bankruptcy or insolvency of the general partner with which Transactions are entered into on behalf of the partnership should be treated as a termination event.
 - (1) As a practical measure the identity of the contracting general partner should be included in the description of the Customer in all documentation.

Trusts and unit trusts. For the reasons which follow and subject to our comments on mutuality on a change of trustee we are of the view that the Determination of Account provisions will be enforceable against trustees in respect of trust funds.

If the trust itself (rather than its trustees) were to become insolvent the trust will not be wound up under Anguillan law as it is not a separate legal entity. Where a single trustee becomes subject to insolvency proceedings but there are other solvent trustees who are jointly or jointly and severally liable for the obligations under the Agreement, a counterparty would be entitled to proceed against any of the remaining solvent trustees who would have recourse to the assets of the trust to meet that liability. Accordingly, a single trustee insolvency would not affect the enforceability of netting provisions. Where the Agreement is silent on whether the trustees are jointly and severally liable there is a presumption that the trustees who execute such agreement will be jointly liable for the obligations under it. Where there is a sole corporate trustee which becomes insolvent, the trust instrument would normally provide for the appointment of a new trustee. Following such substitution, the third party, by subrogation to the original trustee's right of indemnity, would be entitled to enforce its subrogated right of indemnity against the trust assets directly, regardless of the fact that the newly appointed trustee would not be liable for the previous trustee's liabilities.

For similar reasons to those given for general partnerships above we have reservations as to whether mutuality will be preserved across a change of trustee and therefore recommend that parties wishing to enter into Covered Agreements with trusts should prohibit changes of trustees.

5. Are there any other circumstances in your jurisdiction, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, you can foresee that might affect the FCM's ability to exercise Position Liquidation, Margin Liquidation or a Determination of Account in respect of an Account Class or the overall Customer Account (comprising the three Account Classes)?

2.10 There are no grounds under Anguillan law for imposing a moratorium, stay or freeze on the exercise of Position Liquidation, Margin Liquidation or a Determination of Account in respect of an Account Class or the overall Customer Account on the commencement of an Insolvency Proceeding.

2.11 We have set out below other potential risks to the exercise of Position Liquidation, Margin Liquidation or a Determination of Account provisions under Anguillan laws. We do not believe these are material in the context of a Covered Agreement.

(a) Avoidance risk. While the Bankruptcy Act provides for the avoidance of voluntary settlements and preferences on the bankruptcy of individuals, there are no voidable preference rules applicable to the winding-up of companies, partnerships or trusts under the laws of Anguilla other than a provision in the Fraudulent Dispositions Act (c. F60) that provides that every disposition of property made with an intent to defraud and at an undervalue is voidable at the instance of a creditor thereby prejudiced. For this purpose intent to defraud means an intention of a transferor wilfully to defeat an obligation owed to a creditor. Transactions are voided only to the extent necessary to satisfy the

obligations to the creditor who has applied for the transaction to be set aside. There is no suspect period as such under the legislation but proceedings may only be brought within 3 years of the date of the relevant disposition.

(b) Segregated Portfolios. The BC Act states that no steps may be taken to enforce security during a portfolio liquidation order without the leave of the court. To date no judicial view has been published on the interaction between this section and the Netting Act. However our view is that the provisions of the BC Act should not interfere with the enforcement of legitimate security interests, and if an application were made to the court the court would grant leave to enforce a legitimate security interest as a matter of course.

2.12 The analysis is simplified where the Netting Act applies. Section 2(6) of the Netting Act expressly provides that an insolvent party may not avoid any transfer, substitution or exchange of cash, collateral or any other interest pursuant to a netting agreement from the insolvent party to the non-insolvent party or any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party pursuant to a netting agreement on the grounds of it constituting a preference by the insolvent part to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date that such transfer was made or that such obligation was incurred.

6. Under the laws of your jurisdiction, are any rights or processes available to a creditor of a ~~customer~~Covered Customer by which such creditor could make a claim against the ~~customer assets~~Segregated Funds or Separate Account Funds held ~~on~~subject to the statutory trust (or otherwise in accordance with the Customer Property Rules) in respect of each Account Class or against the ~~Futures Transactions and Cleared Derivatives Transactions~~Covered Contracts (and any rights in respect thereof) held ~~on~~by the ~~“FCM as agent-trust” by the FCM trustee~~ for the benefit of the ~~customer~~Covered Customer and the FCM’s other customers in such Account Class as opposed to only having recourse to the final cash balance or single net termination amount that constitutes the Determination of Account for such Account Class or the overall Customer Account (comprising the three Account Classes)?

2.13 ~~2.15~~-For a creditor of a Covered Customer to have a claim against the ~~customer assets held on the Statutory Trust or against the Futures Transactions and Cleared Derivatives Transactions (and any rights in respect thereof)~~Segregated Funds or Separate Account Funds held ~~on~~subject to the ~~Agent Trust by the FCM for the benefit of the customer~~statutory trust, that creditor would have to have a proprietary right to ~~those assets~~the Segregated Funds or Separate Account Funds.

2.14 ~~2.16~~-On the assumption that as a matter of New York law a beneficiary’s interest in respect of the ~~Agent Trust Property or the Statutory Trust Property~~statutory trust is in the ~~relevant Trust Property~~trust property as a whole and not in any specific asset, this will be recognised under Anguillan law. Anguillan law would therefore not treat the ~~customer~~Covered Customer as having a proprietary right to any specific item of the ~~relevant Trust Property outright~~trust property and by

extension a creditor of a Covered Customer will not have a proprietary right to any specific item and will not be entitled to claim against any particular asset.

7. Assuming the parties have entered into ~~the Covered Base Agreement and CDA~~, the ~~customer~~ Covered Customer is insolvent and the FCM has determined a lump-sum cash balance or net termination amount in a currency other than the currency of the jurisdiction in which the insolvent customer is organized:

(1a) ~~would~~ Would a court in your jurisdiction enforce a claim for the cash balance or net termination amount in the currency in which it was determined?

(2b) ~~can~~ Can a claim for the cash balance or net termination amount be proved in insolvency proceedings in your jurisdiction without conversion into the local currency?

If in either case the claim must be converted to local currency for purposes of enforcement or proof in insolvency proceedings, please set out the rules governing the timing and exchange rate for such conversion.

2.15 ~~2.17~~ Since the ~~Anguillan~~ Anguilla courts have power to grant a monetary judgment expressed otherwise than in the currency of the Anguilla, any monetary judgment² of a court in Anguilla in respect of a claim for the cash balance or the net termination amount is likely to be expressed in the currency in which such ~~net termination~~ amount is determined, assuming that is the currency in which such claim is made.

2.16 ~~2.18~~ There are no statutory provisions relating to the lawful currency of proof of debts in ~~insolvency proceedings in Anguilla. So a claim for the net termination amount may be proved in insolvency proceedings in Anguilla without~~ Insolvency Proceedings. Therefore, reasonable provisions in the Covered Agreement for conversion ~~into the local currency~~[†] are likely to be upheld.

² Any final and conclusive monetary judgment for a definite sum obtained in the English High Court may be registered and enforced as a judgment of the Anguilla court provided that (i) application for registration of the judgment is made within twelve months of its date (or such longer period as the Anguilla court may allow), (ii) the relevant party is not appealing and does not have the right and intention to appeal and (iii) the Anguilla court considers it just and convenient that the judgment be so enforced. Judgments of the English County Courts and the New York courts (and the courts of most other jurisdictions) may not be registered under the REJA. However, a judgment obtained in the English County Courts or the New York courts may be treated as a cause of action in itself and sued upon as a debt at common law so no retrial of the issues would be necessary. In this case an appeal is irrelevant unless a stay of execution has been granted. An English High Court judgment may also be enforced in this way, but the applicant may be penalised on costs. Whether registering a judgment or suing upon a judgment as a debt at common law, it will be necessary that (i) the relevant court had jurisdiction in the matter and the parties either submitted to such jurisdiction or was resident or carrying on business within such jurisdiction and was duly served with process, (ii) the judgment was not in respect of penalties, fines, taxes or similar fiscal or revenue obligations, (iii) in obtaining judgment there was no fraud on the part of the person in whose favour judgment was given or on the part of the court, (iv) recognition or enforcement in Anguilla would not be contrary to public policy and (v) the proceedings pursuant to which judgment was obtained were not contrary to the principles of natural justice.

[†] The Eastern Caribbean Dollar

8. Are there any other local law considerations that you would recommend the FCM to consider in connection with the exercise of ~~the Trust~~Position Liquidation Rights (including the operation of the Margin Liquidation or a Determination of Account)?

2.17 ~~2.19~~-No.

~~9. Are there any other circumstances you can foresee that might affect the FCM's ability to exercise the Trust Liquidation Rights (including the operation of the Determination of Account) in your jurisdiction?~~

~~2.20~~-No.

~~10. Assuming that the FCM's ability to exercise the Trust Liquidation Rights (including the operation of the Determination of Account) in your jurisdiction will be recognized in your jurisdiction, will such rights be capable of exercise without recourse to or enforcement of the Trust Security Interest or any Collateral Security Interest described below?~~

~~2.21 See our response to question 2. Even where the Netting Act does not apply, it is highly likely the Anguillan court would uphold the FCM's ability to exercise the Trust Liquidation Rights (including the operation of the Determination of Account) and unlikely that the FCM would need recourse to or enforcement of the Trust Security Interest or any Collateral Security Interest. Where transactions are part of a netting agreement for the purposes of the Netting Act, the Anguillan court would uphold the Trust Liquidation Rights even if our assumptions as to the nature of the trusts and the characterisation of the Trust Liquidation Rights were wrong.~~

~~2.22 Notwithstanding the remoteness of these risks we have included for information a brief analysis of the questions raised in respect of the Security Interests below.~~

PART II Enforceability Creation, Perfection and Enforcement of the FCM's Security Interest and Exercise of the Enforcement Liquidation Rights in Covered Collateral

A Assumptions

Please note the additional assumptions in the Instructions relevant to these questions.

B Issues—Consequences of Security Interest

Consequences of creating a

Creation and perfection of the security interest in Anguilla

~~1. Would the security interest granted by the customer to the FCM be recognized under your jurisdiction as creating a security interest over the customer's Trust Beneficial Interest in the form of a Trust Security Interest or, alternatively, as creating a security interest directly over the Trust Assets themselves in the form of a Collateral Security Interest?~~

~~2.23—The Anguillan courts would recognise a beneficial interest under the specific statutory trust in respect of the Collateral in its customer account and the beneficial interest in the Agent Trust over the Futures Transactions and Cleared Derivatives Transactions. As such, assuming this to be the effect under the governing law of the Agreements, the security interest granted by the customer to the FCM would be recognised in Anguilla as creating a security interest over the customer's Trust Beneficial Interest in the form of a Trust Security Interest.~~

~~2.——In respect of the security interest created, as set out in your answer to question 1 above, are there any local law consequences of the creation of such security interest that should be considered and may affect the arrangements between the FCM and its customers? In particular, are there any provisions under local law that may render such security interest void (for example, as a result of non-compliance with registration formalities) and therefore cause the money secured by the security interest to become immediately payable?~~

~~2.24—Anguillan law has very limited provisions for the avoidance of transactions. See our response to question 13 below~~

~~2.25—We comment on registration of security in our response to question 3 below, though it should be noted that failure to register security would not render the security interest void.~~

~~C——Issues—Trust Security Interest~~

~~Consequences of creating a security interest in Anguilla~~

~~1. Under the laws of your jurisdiction, what law governs the operationcontractual aspects of the Trust Security Interest? Would security interest in the courtsvarious forms of your jurisdiction recognize the validity of the Trust Security Interest, assuming it is valid under the governing law of the Covered Base Agreement and CDACollateral?~~

~~2.26—The~~

~~2.18 Contractual aspects of the security interest in the various forms of Covered Collateral, including the creation and validity of the Trust Security Interestsecurity interest, would be governed by the governingchosen law of the Agreements and the proper laws of the trusts if differentCovered Agreement.~~

~~2. Under the laws of your jurisdiction, what law governs the proprietary aspects of the Trust Security Interestsecurity interest in the different types of Covered Collateral (that is, the formalities required to protect the Trust Security Interestsecurity interest against competing claims) granted by the customerCovered Customer (for example, the law of the jurisdiction of incorporation or organization of the customerCovered Customer, the jurisdiction where the Covered Collateral is Located, or the jurisdiction of location of the FCM or DCOas the Covered Customer's Intermediary, in relation to Covered Collateral in the form of indirectly held securities)? What factors would be relevant to this question? Wherelf the~~

Location (or deemed Location) of the Covered Collateral is the determining factor, please briefly describe the principles governing such determination under the law of your jurisdiction with respect to the different types of Covered Collateral. If relevant, please describe how the laws of your jurisdiction apply to each form in which securities Covered Collateral may be held as described in assumption (b) above.

2.19 ~~2.27~~—Under Anguillan rules, the law governing proprietary aspects of the ~~Trust—Security Interest~~ security interest in the different types of Covered Collateral will be that of the jurisdiction where the Covered Collateral is located at the time the security interest attaches to the Covered Collateral.

- (a) Cash will be ~~considered to be~~ located in the place where the ~~entity with which the cash is deposited is located~~ relevant account is maintained³. This is likely to be the location of Covered Customer’s account on the books of the FCM.
- (b) Anguillan law would ordinarily consider the location of a directly held, registered certificated security to be the place where the register is located ~~and that of a~~ A directly held, ~~bearer~~, physically certificated bearer security ~~to~~ will be located in the place where the relevant certificate is located. ~~Debts and payment rights are generally situated where the debtor or payor resides. For~~ However in certain circumstances the situs of an equity security such as shares or warrants may be the place where the issuing company is incorporated (either generally, or for specific purposes such as validity of transfers). In particular, for the purposes of determining matters relating to title and jurisdiction, the location of the ownership of shares, debt obligations or other securities of ~~an IBC~~ a BC is Anguilla³⁴.
- (c) In relation to securities held indirectly or on a fungible basis with or through a custodian or securities depository, including in a securities account, an ~~Anguillan~~ Anguilla court is likely to adopt the “place of the relevant intermediary approach” (PRIMA)⁴⁵. ~~In the case of securities held under the Covered Base Agreement and CDA, it is likely that PRIMA will be the primary determinant of location for the purposes of perfection and enforcement.~~
- (d) Debts are usually deemed to be located at the place where the debtor ordinarily resides. The main exceptions are debts arising under a letter of credit (which are normally located

³³ Arab Bank v Barclays Bank (Dominion, Colonial and Overseas) 1954 AC 495

³ Section 129 of the IBC Act.⁴ Section 284 of the BC Act. There is some friction between this provision and (i) our views on the application of PRIMA and (ii) our comments in the first sentence of paragraph (b) where the register is held outside Anguilla. Where the register is held outside Anguilla, the Anguilla courts would be bound by the statutory provision and, while it would clearly be advisable to take any perfection steps required in the jurisdiction where the register is held, the courts would usually determine whether title had been transferred under Anguillan law. Bearer shares have effectively been abolished in Anguilla so will not be relevant for this analysis. Where securities are held indirectly, our presumption is that the Anguilla courts would only look as far as the depository in applying Anguillan law to determine title. We believe the Anguilla courts would consider the transfer of any indirect or fungible rights to those shares as equitable interests. Anguillan law does not provide for the transfer of equitable rights so there would be no inconsistency in applying PRIMA to determine applicable law.

⁴⁵ As set out in the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary.

at the place of presentation) and debts arising from a specialty contract (which existing case law suggests are located in the place of the speciality instrument, although some commentators suggest that older case law might not be followed by the courts today).

(e) ~~(d) In the case of other intangible Contract rights an Anguillan court would~~ are generally ~~consider~~ located where those rights ~~may~~ would be enforced ~~in determining location for the purposes of perfection. It may be the case that more than one jurisdiction is of relevance, including, in~~ In the case of contract rights an Anguilla court would, subject to certain restrictions such as public policy issues and any attempt to contract out of statutory provisions regarding title and location of shares, debts and securities, look to the governing law of the underlying contract for issues of perfection.

2.20 ~~2.28~~ In practice, Anguilla is unlikely to be a relevant location for proprietary reasons either because Covered Collateral is not located in Anguilla or because there will be no perfection requirements in Anguilla. Note however our comments on registration of security in our response to question 35 below.

3. Would the courts of your jurisdiction recognize the validity of a security interest in the different types of Covered Collateral, assuming it is valid under New York law? In answering this question, please bear in mind the different forms in which securities Covered Collateral may be held, as described in the assumptions above. Please indicate, in relation to cash Covered Collateral, if your answer depends on the location of the account in which the relevant deposit obligations are recorded and/or upon the currency of those obligations.

2.21 The Anguilla courts would recognise the validity of a security interest in the different types of Covered Collateral provided the security interest was valid under (a) the governing law of the Covered Agreement and (b) the *lex situs* of the Covered Collateral, provided always that any mandatory perfection requirements in relation to the Covered Collateral arising under the laws of any other jurisdiction had been complied with.

2.22 In relation to cash Covered Collateral, the location of the place of the account will normally determine the *lex situs*, and so will be relevant. However the currency of any cash Covered Collateral is not relevant under Anguillan law for these purposes.

2.23 The laws of Anguilla do not impose any additional requirements of form or otherwise for the recognition or validity of a security interest (other than where the assets comprise shares in a BC⁶).

4. What is the effect, if any, under the laws of your jurisdiction of the fact that the amount secured or the amount of any cash or securities Covered Collateral subject to the security interest will fluctuate under

⁶ If the Covered Collateral comprises shares in a BC, in order to create a valid mortgage or charge, the BC Act requires that there must be a written instrument which clearly indicates (a) the intention to create a mortgage or charge and (b) the amount secured by the mortgage or charge or how that amount is to be calculated.

the Covered Agreement (including as a result of entering into additional Covered Transactions from time to time)? In particular:

(a) Would the security interest be valid in relation to future obligations of the Covered Customer?

(b) Would the security interest be valid in relation to future Covered Collateral (that is, Covered Collateral not yet delivered to the FCM at the time of entry into the Covered Agreement)?

(c) Is there any difficulty with the concept of creating the security interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Covered Agreement the specific assets deposited by the Covered Customer with the FCM?

(d) Is it necessary under the laws of your jurisdiction for the amount secured by the security interest to be a fixed amount or subject to a fixed maximum amount?

(e) Is it permissible under the laws of your jurisdiction for the FCM to hold Customer Collateral in excess of its actual exposure to the Covered Customer under the Covered Agreement?

In relation to (a), it is understood that the security interest in any specific Covered Collateral would only be relevant in relation to future obligations, if ever, at the time such future obligations arise and then only in relation to Covered Collateral held at that time. This question concerns whether it would be necessary for either party to perform any action at such time in order to ensure the effectiveness of the security interest as security for such obligations or whether the security interest would take effect in relation to those future obligations without further action by either party.

In relation to (b), it is understood that the security interest in the different types of Covered Collateral to be delivered at some point in the future after the time of entry into the Covered Agreement would not take effect in relation to such Covered Collateral until it had been delivered to the FCM in accordance with the Covered Agreement. This question concerns whether it would be necessary for either party to perform any action at such time in order to ensure the effectiveness of the security interest in relation to such Covered Collateral or whether the security interest in relation to such Covered Collateral would take effect without further action (other than the delivery) by either party.

In relation to (c), you may assume that each specific delivery to the FCM and return by the FCM of Covered Collateral consisting of cash or securities under the Covered Agreement from time to time would be properly recorded by the FCM, so that, while the pool of Collateral would change from time to time, at any specific time the composition of the pool of Collateral could be clearly identified by the FCM.

2.24 There is no difficulty under the laws of Anguilla if the amount of any cash or securities Covered Collateral subject to the security interest will fluctuate under the Covered Agreement.

2.25 In answer to the specific questions on this point:

- (a) Yes, the security interest would be recognised as valid in relation to relation to future obligations of the Covered Customer provided that the future obligations can be determined with sufficient certainty as and when they arise by reference to the terms of the Covered Agreement.
- (b) Yes, the security interest would be valid in relation to future Covered Collateral provided the future Covered Collateral can be ascertained as and when it is provided. Under Anguillan law it is possible to create security interests over future property, and the Anguilla courts would give effect to such a power arising under any foreign legal system.
- (c) No, there is no difficulty with a security interest being created over a fluctuating pool of assets provided the fluctuating pool of assets over which the security interest to be created is identified with sufficient certainty in order to identify the collateral at any given time. Note that where assets may be substituted freely by the Covered Customer there is a risk that an Anguilla court might characterise the security interest as floating.
- (d) No, it is not necessary under the laws of Anguilla for the amount secured by the security interest to be a fixed amount or subject to a fixed maximum amount.
- (e) Yes, it is permissible under the laws of Anguilla for the FCM to hold Customer Collateral in excess of its actual exposure to the Covered Customer under the Covered Agreement, provided it has been agreed by the parties that such excess may be held. In the event of any enforcement the FCM would normally need to account for any excess where the proceeds of enforcing the security exceeds the amount of the secured obligations.

5. Assuming that the courts of your jurisdiction would recognize the ~~Trust Security Interest~~ security interest in each type of Covered Collateral, is any action (filing, registration, notification, stamping, notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required in your jurisdiction to perfect the ~~Trust Security Interest~~ security interest? If so, please indicate what actions must be taken and how such actions may differ, if at all, depending upon the type of Covered Collateral which is subject to the ~~Trust Security Interest~~ security interest.

~~2.29—Assuming the FCM has obtained a valid Trust Security Interest under the governing law of the Agreements, the laws governing the trusts and the laws of any jurisdiction where the Collateral is located, the FCM will have a valid Trust Security Interest so far as the laws of Anguilla are concerned.~~

~~2.26~~ ~~2.30~~—No action is required under the laws of the Anguilla to perfect the ~~Trust Security Interest~~ security interest.

~~2.27~~ However under Anguillan law a security interest created by ~~an IBC~~ a BC over Covered Collateral located in any jurisdiction should be registered in Anguilla in order to maintain priority in the event of an application to enforce before ~~an Anguillan~~ Anguilla court. ~~Registration requires firstly that~~

~~the IBC has elected to file relevant security interests in the register maintained in respect of the IBC at the Companies Registry (the **Register**). Registration may then be made in the Register by submitting an application in the approved form. An IBC/BC is also required to enter particulars of the any security interest created by it on a register of mortgages, charges and other encumbrances and maintain a copy of the register at its registered office, although. However as failure to do so does not affect the security interests but merely gives rise to penalties on the part of the IBC/company there is rarely any need for a secured party to police this requirement.~~

2.28 ~~2.31 Failure~~While failure to register a security interest will not affect the validity of the security interest as against the ~~IBC/BC~~ or any liquidator on its insolvency ~~but may result in, were a loss question~~ of ~~priority as against subsequent registered secured creditors. An unregistered security interest will rank after registered secured interests but before any subsequent priorities to come before the Anguillan court, the court may feel bound to determine any conflict under Anguillan rules. In this case priority of an~~ unregistered security interest might be lost to subsequent security interests, ~~by an application of the rule that when the equities are equal the first in time shall prevail, and subject to the priority accorded to a fixed charge over a floating charge which does not contain a negative pledge, perfection by notice, contractual subordination or similar requirements.~~registered.

2.29 There is no registration regime for security interests created by LLCs, trusts or partnerships.

2.30 ~~2.32 If it is a CAC that creates~~Where security has been created over shares in a BC, the BC may make a notation of the security interest, ~~there is a statutory requirement for filing in a private~~its share register ~~of mortgages, debentures and charges. Failure to comply with such requirement renders directors and officers liable to a fine but. Although the notation~~ has no statutory effect on the validity, effectiveness or priority it will give notice to any party reviewing the share register of the security interest.

~~2.33 No registration regime exists for LLCs, Partnerships or Trusts and we believe an Anguillan court would apply common law rules to questions of priority for these entities as well as CACs. To the extent a partner or trustee is creating a security interest over their own assets and is an IBC or a CAC, the security interest may be registered in accordance with the preceding paragraphs. It is also possible for the BC to file a copy of its annotated share register with the Registrar to make notice of the security interest publicly available.~~

46. *If there are any other requirements to ensure the validity or perfection of the **Trust Security Interest**security interest in each type of Covered Collateral, please indicate the nature of such requirements. Are there any other documentary formalities that must be observed in order for the **Trust Security Interest**security interest in any type of Covered Collateral to be recognized as valid and perfected in your jurisdiction?*

2.31 ~~2.34~~ There are no documentary or any particular additional requirements or formalities to be carried out in order to ensure the validity or perfection of the **Trust Security Interest**. ~~It is not~~

~~necessary as a matter of formal validity that the Covered Base Agreement and CDA be expressed to be governed by the laws of the Anguillan. As the Covered Base Agreement and CDA are drafted in the English language, the question of translation does not arise. No specific form of words is necessary to create a security interest under the laws of the Anguillan as long as the intention to create a security interest is clear from the terms of the document and other relevant circumstances~~[security interest](#).

~~57.~~ Assuming that the FCM has obtained a valid and perfected ~~Trust Security Interest~~[security interest](#) under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions ~~C.1 to 4C.6~~ above, as applicable, will the FCM or the ~~customer~~[Covered Customer](#) need to take any action thereafter to ensure that the ~~Trust Security Interest~~[security interest](#) continues to be and/or remains perfected, particularly with respect to additional ~~cash or securities~~ [Covered Collateral](#) transferred from time to time when required pursuant to the Covered ~~Base Agreement and CDA~~?

~~2.32~~ ~~2.35~~ No additional actions need to be taken by the FCM or the ~~customer~~[Covered Customer](#) in Anguilla in order to ensure that the ~~Trust Security Interest~~[security interest](#) continues to be and/or remains perfected.

~~2.33~~ Where it is not Anguilla the laws of the jurisdiction where the [Covered Collateral](#) is located (~~see our response to question 2 above~~) may impose perfection requirements in respect of additional [Covered Collateral](#).

~~68.~~ Are there any particular duties, obligations or limitations imposed on the FCM in relation to the care of the [Covered Collateral](#) held by it pursuant to the ~~Trust Security Interest~~[security interest](#)?

~~2.34~~ ~~2.36~~ Under the laws of Anguilla the FCM is under an obligation established by case law to take reasonable steps to ensure the safe custody of any charged property in its possession.

~~7. The terms of a Covered Base Agreement and CDA may grant the FCM broad rights with respect to the use of Collateral that constitutes Futures Credit Support and Cleared Derivatives Credit Support and is subject to the Trust Security Interest. Additionally, the Covered Base Agreement and CDA are subject to the rules of DCOs, which may also grant DCOs similar rights with respect to the use of Collateral that has been on-posted from a FCM to a DCO. Such use by the FCM and the DCO might include investing cash posted by the Covered Customer (or on-posted by the FCM to the DCO) in certain types of investments permitted by the CFTC, pledging or rehypothecating the securities pledged by the customer (or repledged by the FCM to the DCO), disposing of the securities under a securities repurchase (repo) agreement or selling securities.~~

~~Such rights of use are, though, subject to the CFTC's customer funds segregation rules, which require that customer funds (including any assets resulting from the investment of customer funds and the cash received from rehypothecating or disposing of securities) must be separately accounted for by each of the FCM and DCO, must not be commingled with its own funds, must be held for the benefit of customers and treated as belonging to customers and must be calculated so as to prevent the use of one customer's funds to margin or secure another customer's positions. However, while CFTC rules generally prohibit the commingling of a~~

~~customer's funds with those of the FCM or any other person, the rules also permit a customer's funds to be commingled with those of other customers of the FCM in segregated customer omnibus accounts and require the FCM to keep its own funds in such segregated omnibus accounts to serve as a cushion in the event of an unexpected shortfall. CFTC rules also permit each of the FCM and a DCO to receive and retain as its own any incremental income or interest income resulting from the investment of customer funds in permitted investments.~~

~~9. Do the laws of your jurisdiction recognize the right of the FCM or DCO to use such cash or securities Covered Collateral (as described in additional assumption II.B.(f) above) pursuant to an agreement with the customer Covered Customer? In particular, how does such use of the Covered Collateral affect, if at all, the validity, continuity, perfection or priority of the ~~Trust Security Interest~~ security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the FCM or DCO with respect to its use of such Covered Collateral under the laws of your jurisdiction? In considering the above question in relation to a DCO, please limit your response to the extent that rights or duties applicable to the DCO under the laws of your jurisdiction are relevant to the validity, continuity, perfection or priority of FCM's Trust Security Interest.~~

2.35 ~~2.37~~ As the Covered ~~Base~~ Agreement ~~and CDA are~~ is governed by New York law⁵⁷, the validity of ~~rehypothecation rights and other rights of use, including investing cash posted by the Covered Customer (or on posted by the FCM to the DCO) in certain types of investments permitted by the CFTC, pledging or rehypothecating the~~ any right of the FCM to use cash or securities pledged by the customer (or repledged by the FCM to the DCO), disposing of the securities under a securities repurchase (repo) agreement or selling securities Covered Collateral will be governed by New York law, and we do not believe there is any reason in principle why an ~~Anguillan~~ Anguilla court would seek to interfere with such an arrangement if it is valid as a matter of New York law. The FCM's use of ~~the~~ Covered Collateral is a matter of contract between the parties.

~~Exercise of Enforcement Liquidation Rights in the Absence of an Insolvency Proceeding~~

Enforcement of the security interest in Covered Collateral in the absence of an insolvency proceeding

Note the additional assumption in the Instructions which applies to questions 810 to ~~1012~~ below.

810. Assuming that the FCM has obtained a valid and perfected ~~Trust Security Interest~~ security interest under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 1 to 46 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the ~~customer~~ Covered Customer or any other person) or other procedures, if any, that the FCM must observe or undertake in

⁵⁷ If the Covered ~~Base~~ Agreement ~~and CDA~~ were governed by the laws of Anguilla there would be a degree of tension between the FCM's right to use the charged property ~~as it may be seen as extinguishing~~ and the customer's "equity of redemption" in the ~~Relevant~~ Covered Collateral, as the right of use ~~constitutes~~ might be construed as constituting a "clog on the equity of redemption" or ~~is~~ otherwise an "unlawful collateral advantage". The position in Anguilla with regard to this issue is the same as the position under English law.

~~exercising enforcing~~ its ~~Enforcement Liquidation Rights (including the operation of the Determination of Account)~~ security interest as an FCM under ~~each the~~ Covered ~~Base Agreement and CDA~~? For example, is it free to sell the Covered Collateral (including to itself) and apply the proceeds to satisfy the ~~customer~~ Covered Customer's outstanding obligations under the Covered ~~Base Agreement and CDA~~? Do such formalities or procedures differ depending on the type of Covered Collateral involved?

2.36 ~~2.38~~ Subject to the following comments on exercise of a power of sale, it is not necessary for any particular formalities to be ~~followed~~ observed or undertaken by the FCM in exercising its ~~Enforcement Liquidation Rights (including the operation of the Determination of Account)~~ security interest.

- (a) In exercising a power of sale, the FCM is subject to a duty to take reasonable care to obtain the best price reasonably available at the time⁶⁸. This will normally be the current market value of the ~~Relevant~~ Covered Collateral comprising securities⁷⁹.
- (b) A secured party may not sell Covered Collateral to itself, either alone or with others, unless the sale is made by the court and the secured party has obtained leave to bid. This is because such a transaction would amount to foreclosure without the leave of the court. In addition, there is a broader policy basis for the rule, which is that a person should not put himself in a position where his duty (in this case, to obtain the best price reasonably available) and his interest (in this case, to pay as low a price as possible) conflict.
- (c) It is established that a secured party may sell mortgaged property to a company in which it has an interest, provided that it can prove that the sale was in good faith and that it had taken reasonable steps to obtain the best price reasonably obtainable at that time⁸¹⁰. *A fortiori*, a secured party may sell mortgaged property to an affiliated company, subject to the same proviso.

9.11. Are there any laws or regulations in your jurisdiction that would limit or distinguish a creditor's enforcement rights with respect to the ~~Trust Security Interest~~ security interest in any type of Covered Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of ~~Collateral~~, or (c) the nature of the creditor or the debtor? For example, are there any types of "statutory liens" that would be deemed to take precedence over a ~~Trust Security Interest~~ security interest?

2.37 ~~2.39~~ There are no laws or regulations in Anguilla that would limit or distinguish a creditor's enforcement rights with respect to the type of ~~Trust Security Interest~~ security interest.

2.38 ~~2.40~~ The Bankruptcy Act specifies certain preferential creditors in the bankruptcy of individuals. However there are no provisions for preferential creditors in the winding-up of ~~Anguillan Companies~~ companies, partnerships or trusts under the laws of Anguilla other than a provision in

⁶⁸ *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1972] Ch 949; 2 All ER 633

⁷⁹ *Downsview Nominees Ltd v First City Corporation Ltd* [1993] AC 295

⁸¹⁰ *Farrars v Farrars Ltd* (1888) 40 ChD 395

the Fair Labour Standards Act that “in the event of Bankruptcy or Judicial Liquidation of an undertaking the employees employed therein shall be treated as being preferential creditors either as regards all the wages due to them for service in respect of any period prior to the bankruptcy or judicial liquidation or up to a prescribed amount, as may be ordered by a court⁹”.

~~10.12.~~ How would your response to questions ~~8.10~~ and ~~9.11~~ change, if at all, assuming that an insolvency proceeding ~~described in assumption (j)~~ above has occurred with respect to the FCM (notwithstanding that the Covered ~~Base Agreement and CDA~~ may not provide for any events of default in respect of the FCM) rather than or in addition to the ~~customer~~ Covered Customer (for example, would this affect this ability of the FCM to ~~exercise~~ enforce its ~~Enforcement Liquidation Rights or the operation of the Determination of Account~~ security interest in Covered Collateral)?

~~2.39~~ ~~2.41~~—The occurrence of insolvency proceedings with respect to the FCM would not change our responses.

~~Exercise of Enforcement Liquidation Rights by~~ of the FCM security interest in Covered Collateral after the Commencement commencement of an Insolvency Proceeding insolvency proceeding

Note the additional assumption in the Instructions which applies to questions ~~11.13~~ to ~~13.15~~ below.

~~11.13.~~ How are competing priorities between creditors determined in your jurisdiction? What conditions must be satisfied if the FCM’s ~~Trust Security Interest~~ security interest in each type of Covered Collateral is to have priority over all other claims (secured or unsecured) of an interest in the Covered Collateral; ~~other than claims of a DCO?~~

~~2.42~~—An Anguillan court would apply Anguillan rules¹⁰ as summarised below to questions of priority.

~~2.43~~—*Companies*

~~2.40~~ An Anguilla court would ordinarily apply Anguilla rules as summarised below to questions of priority. However we note that there is a possibility that an Anguilla court would not consider itself the appropriate forum for enforcement proceedings in respect of collateral located outside Anguilla. Therefore, it will be a matter for the conflict of laws rules applicable in the jurisdiction in which enforcement is sought as to whether Anguillan priority rules would be relevant. Further, even if the Anguilla court accepts such jurisdiction, as ultimate enforcement proceedings in respect

⁹ It is not clear whether the provision includes employees worldwide although there is a presumption among practitioners and we believe it is highly likely that the Fair Labour Standards Act is only applicable to employees in Anguilla. No “prescribed amount” has as far as we are aware ever been stipulated.

¹⁰ We note that there is a possibility that an Anguillan court would not consider itself the appropriate forum for enforcement proceedings in respect of the collateral located outside Anguilla. Therefore, it will be a matter for the conflict of laws rules applicable in the jurisdiction in which enforcement is sought as to whether Anguillan priority rules would be relevant. Further, even if the Anguillan court accepts such jurisdiction, as ultimate enforcement proceedings in respect of the collateral will by necessity take place in the jurisdiction of the location of the asset, it will be a matter for the conflict of laws rules applicable in such jurisdiction as to whether Anguillan priority rules or an Anguillan court judgment based on Anguillan priority rules would be relevant to enforcement.

of the collateral will by necessity take place in the jurisdiction of the location of the asset, it will be a matter for the conflict of laws rules applicable in such jurisdiction as to whether Anguillan priority rules or an Anguilla court judgement based on Anguillan priority rules would be relevant to enforcement.

2.41 BCs

- (a) Fixed security takes priority over floating security save for cases described in (b) below. A charge entered in the register of registered charges maintained in respect of the BC (the *Register of Charges*) has priority over any subsequently registered charge over the same assets.
- (b) Priorities between unregistered security interests are determined by the common law. However where an Anguillan court would apply common law rules (as opposed to the statutory priority rules), they would also look to other principles of substantive law. Therefore in practice, the issues raised by the common law rules would prove academic as an Anguillan court would defer questions of priority to the *lex situs* through application of conflict of laws rules.
- (c) The order of priorities is subject to the express consent of the holder of a prior charge or agreement between creditors.
- (d) A registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the BC to create any future charge ranking in priority to or equally with the charge¹¹.

IBCs

Charges created by a BC in its previous corporate form as an International Business Company (IBC) would, subject to our comments at paragraph 2.39 above, be subject to the priority rules applicable to IBCs.

- (a) ~~(b)~~ Security interests created by an IBC before 16 October 2000 have priority over all security interests created on or after 16 October 2000, and as between themselves, rank in order of creation.
- (b) Where an IBC ~~has had~~ opted to be governed by the registration provisions of the IBC Act relating to registration ~~at with~~ the ~~Companies Registry~~¹¹ Registrar, all security interests

¹¹ Although there is no way of definitively determining the existence of other security interests as a matter of Anguillan law, as a practical matter we do not believe there is any way in which a third party could have a fixed charge over Covered Collateral credited to an account held with the FCM or a DCO without their knowledge or consent.

¹¹ ~~In the case of a CAC, there is a statutory requirement for filing in a private register of mortgages debentures and charges. Failure to comply with such requirement renders directors and officers liable to a fine but has no effect on the validity, effectiveness and priority of the security interest.~~

recorded in the register of registered charges ~~at~~ (the Companies Registry [IBC Register of Registered Charges](#)) take priority over all security interests which ~~have~~ were not ~~been~~ entered in the register (except for security interests created prior to 16 October 2000), ~~and~~ as between themselves recorded securities rank in order of their entry into the register, ~~whether fixed or floating.~~

- (c) Priorities between unregistered security interests created before 16 October 2000, ~~and~~ between security interests created by an IBC which ~~has~~ had not elected to be governed by the registration provisions of the IBC Act¹² ~~and between security interests created by CACs, LLCs, partnerships and trusts~~ are determined by the common law¹³. ~~The rules can be summarised as follows:~~ and the comments at paragraph 2.41(b) above apply.
- (i) ~~a security interest in the nature of a legal estate acquired for value without notice of a security interest in the nature of an equitable interest takes priority over that equitable interest;~~
- (ii) ~~as between themselves, security interests which are in the nature of a legal estate rank in order of creation; and~~
- (iii) ~~as between themselves, security interests which are in the nature of equitable interests rank in order of the giving of notice to the holder of the legal estate¹⁴.~~

[Transitional priority rules for a BC that was formerly an IBC](#)

[Priority of charges between those created by a BC and those created by a BC in its previous corporate form as an IBC are a matter for transitional provisions.](#)

- (a) [Charges registered in the IBC Register of Registered Charges have priority over subsequent charges.](#)
- (b) [Our view as to the priority between unregistered charges created by a BC in its previous corporate form as an IBC and charges entered in the Register of Charges under the BC regime is that, notwithstanding registration in the Register of Charges, priority is](#)

¹² ~~Section 81 of the IBC Act which determines priority of unregistered charges is applicable only where an election to register charges has been made under section 77.~~

¹³ ~~We believe the correct analysis is that, where an Anguillian court would apply common law rules (as opposed to statutory priority rules), they would also look to other principles of substantive law. Therefore in practice, the complexities inherent in the common law rules would prove academic as an Anguillian court would defer questions of priority to the *lex situs* through application of conflict of laws rules. We note however that this point has never been tested in the Anguillian courts.~~

¹⁴ ~~*Dearle v Hall* (1828) 3 Russ 1. As a matter of Anguillian law the priority of unregistered security interests created in both contract rights and in securities held indirectly or on a fungible basis with or through a custodian or securities depository would theoretically be determined by notice rather than creation. There is some question however as to how notice is achieved in relation to investment securities: Goode (Legal Problems of Investment Securities, p159 and p170) for example argues that *Dearle v Hall* is inapplicable.~~

determined in accordance with the common law rules and the comments at paragraph 2.41(b) above apply.

2.42 ~~2.44~~ *Other entities*

There is no registration regime under Anguillan ~~statute~~ law in respect of LLCs, trusts or partnerships ~~or trusts~~ and we believe that an Anguillan ~~Anguilla~~ court would apply common law principles ~~to questions of priority~~¹⁵, in which case the comments at paragraph 2.41(b) above apply.

~~12.14.~~ *Would the FCM's right to Exercise its Enforcement Liquidation Rights (including the operation of the Determination of Account) enforcement of its security interest in any type of Covered Collateral be subject to any stay, moratorium or freeze or otherwise be affected by commencement of the insolvency (that is, how does the institution of an insolvency proceeding change your response to question 8.10 above, if at all)?*

2.43 ~~2.45~~—The FCM's ~~right to exercise its Enforcement Liquidation Rights~~ enforcement of its security interest would not be subject to any stay, moratorium or freeze or otherwise be affected by commencement of the insolvency of the customer.

2.44 ~~2.46~~—Although the position is reinforced if the Covered ~~Base~~ Agreement ~~and CDA~~ constitute ~~constitutes~~ a netting agreement for the purposes of the Netting Act, assets subject to a security interest will in any case fall outside the estate available to a liquidator and ~~subject to the provisions on administration coming into force and avoidance of a transaction~~ there is no provision of Anguillan law which would provide grounds for a stay on enforcement.

~~13.15.~~ *Will the customer Covered Customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Covered Collateral consisting of cash or securities made to the FCM during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference," fraudulent transfer or transaction at an undervalue (however called and whether or not fraudulent) in ~~favor~~ favour of the FCM or on any other basis? If so, how long before the insolvency does this suspect period begin? ~~If such a period exists, would the substitution of Collateral by the customer during this period invalidate an otherwise valid Trust Security Interest if the substitute Collateral constituting Credit Support is of no greater value than the assets it is replacing?~~ Would the posting of additional "variation margin" (an amount that reflects a change in the mark-to-market value which could be required when an Account's net liquidating equity has fallen below the required margin level for the Account due to trading losses in respect of one or more Covered Transactions) during the suspect period be subject to avoidance, either because the Covered Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?*

¹⁵ ~~We believe the correct analysis is that, where an Anguillan court would apply common law rules (as opposed to the statutory priority rules), they would also look to other principles of substantive law. Therefore in practice, the issues raised by the common law rules would prove academic as an Anguillan court would defer questions of priority to the *lex situs* through application of conflict of laws rules. We note however that this point has never been tested in the Anguillan courts.~~

~~2.47—The Fraudulent Dispositions Act (c. F60) (the **Fraudulent Dispositions Act**) applies to every disposition of property by any person including a Company and whether the property that is the subject of the disposition is situated in Anguilla or elsewhere. Every disposition of property made with an intent to defraud and at an undervalue is voidable at the instance of a creditor thereby prejudiced. For this purpose intent to defraud means an intention of a transferor wilfully to defeat an obligation owed to a creditor. Transactions are voided only to the extent necessary to satisfy the obligations to the creditor who has applied for the transaction to be set aside. There is no “suspect period” as such under the legislation but proceedings may only be brought within 3 years of the date of the relevant disposition. If the transferee has not acted in bad faith he is entitled to a first priority charge over the property the subject of the disposition in relation to his costs in defending the action.~~

~~2.48—The Bankruptcy Act specifies certain preferential creditors in the bankruptcy of individuals. However there are no provisions for preferential creditors in the winding up of Companies under the laws of Anguilla.~~

2.45 ~~2.49~~—Anguillan law has ~~provisions~~limited grounds for ~~voidable~~the avoidance of transactions (see question 11). ~~However it~~It is highly unlikely that an ~~Anguillan~~Anguilla court would ~~agree to hold as~~void a transaction entered into for *bona fide* commercial reasons and at arms’ length by each of the parties and with no intent to defraud creditors.

2.46 ~~2.50~~—The position is further reinforced if the Covered ~~Base~~ Agreement ~~and CDA constitute~~constitutes a netting agreement for the purposes of the Netting Act, ~~which provides that “the provisions of a netting agreement are enforceable in accordance with their terms against the insolvent party and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by any action of the liquidator, by any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership, or any other insolvency proceeding the insolvent party may be subject to or by any other provision of law that may be applicable to the insolvent party, subject to the conditions contained in the applicable netting agreement”.~~

Note the additional assumption in the Instructions which applies to question 16 below.

16. Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of the security interest (for example, because such Covered Collateral is Located or deemed Located outside your jurisdiction) and (b) the FCM has obtained a valid and perfected security interest under the laws of such other jurisdiction, are there any formalities, notification requirements or other procedures, if any, that the FCM must observe or undertake in your jurisdiction in enforcing its security interest in Covered Collateral?

2.47 No.

Additional considerations

17. Are there any other local law considerations that you would recommend the FCM to consider in connection with enforcing its security interest in Covered Collateral?

2.48 No.

18. Are there any other circumstances you can foresee that might affect the FCM's ability to enforce its security interest in the Covered Collateral in your jurisdiction?

2.49 No.

Yours faithfully



Harney Westwood & Riegels

APPENDIX AAPPENDIX A
AUGUST 2015**CERTAIN TRANSACTIONS UNDER
THE ISDA MASTER AGREEMENTS**

~~Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.~~

~~Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically settled (where delivery occurs in exchange for payment) or cash settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).~~

~~Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.~~

~~Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.~~

~~Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.~~

~~Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a~~

specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, “Bullion” means gold, silver, platinum or palladium and “Ounce” means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

~~Buy/Sell Back Transaction.~~—A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

~~Cap Transaction.~~—A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

~~Collar Transaction.~~—A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

~~Commodity Forward.~~—A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price, and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

~~Commodity Index Transaction.~~—A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index based on the price of one or more commodities.

~~Commodity Option.~~—A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

~~Commodity Swap.~~—A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a

~~commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.~~

~~Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.~~

~~Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.~~

~~Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.~~

~~Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.~~

~~Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.~~

~~Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.~~

~~Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.~~

~~Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and/or final payments that correspond to the notional amount.~~

~~Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.~~

~~Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.~~

~~Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically settled (where delivery occurs in exchange for payment) or cash settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).~~

~~Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.~~

~~Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may~~

~~be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.~~

~~Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.~~

~~Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).~~

~~Foreign Exchange Transaction. A deliverable or non-deliverable transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.~~

~~Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.~~

~~Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.~~

~~Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).~~

~~Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii)~~

~~a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).~~

~~Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.~~

~~Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.~~

~~Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.~~

~~Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity or mortality contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).~~

~~Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.~~

~~Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.~~

~~Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.~~

~~Securities Lending Transaction.— A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.~~

~~Swap Deliverable Contingent Credit Default Swap.— A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.~~

~~Swap Option.— A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.~~

~~Total Return Swap.— A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.~~

~~A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.~~

~~Weather Index Transaction.— A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.~~

APPENDIX B

APPENDIX B
 SEPTEMBER 2009

COVERED CUSTOMERS¹⁶

CUSTOMER TYPES¹²

Description	Covered by opinion	Legal form(s)
<p><u>Bank/Credit Institution.</u> A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking</p>		

activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a “commercial bank” or, if its business also includes investment banking and trading activities, a “universal bank”. (If the entity only conducts investment banking and trading activities, then it falls within the “Investment Firm/Broker Dealer” category below.) This type of entity is referred to as a “credit institution” in European Community (**EC**) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (**UK**)).

¹⁶¹² In these definitions, the term “legal entity” means an entity with legal personality other than a private individual.

Description	Covered by opinion	Legal form(s)
	Qualified ⁴⁷¹³ 4814.	LLCs ¹⁹ and CACs ²⁰ BCs (including PCCs ²¹ where explicitly approved by the Financial Services Commission (the Commission) see Corporations) regulated by the Banking Act (c. B10) (the Banking Act) under the auspices of the Eastern Caribbean Central Bank (the Central Bank) ¹⁵ . Banking Act regulated banks may also take

⁴⁷¹³ The Official Gazette of Monday 12 August 2013 had notices of intervention by the Eastern Caribbean Central Bank in (i) National Bank of Anguilla Limited and (ii) Caribbean Commercial Bank (Anguilla) Limited, and on 22 February 2016 an administrator was appointed in respect of National Bank of Anguilla (Private Banking & Trust) Ltd and the Caribbean Commercial Investment Bank Ltd, the offshore banking affiliates of those banks. On 22 April 2016, National Bank of Anguilla Limited and Caribbean Commercial Bank (Anguilla) Limited ceased to carry on banking business and their operations (including those of their offshore banking affiliates) were transferred to the National Commercial Bank of Anguilla Limited, which is solely owned by the Government of Anguilla. We recommend taking specific legal advice before dealing with either National Commercial Bank of Anguilla Limited or with any party claiming to represent National Bank of Anguilla Limited, Caribbean Commercial Bank (Anguilla) Limited or any of their affiliates.

⁴⁸¹⁴ This opinion excludes the Caribbean Development Bank and the Eastern Caribbean Central Bank (which has a purely regulatory role in Anguilla).

¹⁹ Companies incorporated under the Limited Liability Company Act (c. L65) and identified by inclusion of the following in the name: "Limited Liability Company" or "LLC".

²⁰ Companies incorporated or foreign companies registered under the Companies Act (c. C65) and identified by any of the following in the last part of the name: "Limited" or "Ltd.", "Corporation" or "Corp.", "Incorporated" or "Inc.", "Sendiran Berhad" or "Sdn Bhd", "Société à Responsabilité Limitée" or "SARL", "Société Anonyme" or "S.A.", "Sociedad Anonima" or "S.A.", "Besloten Vennootschap" or "B.V.", "Gesellschaft mit beschränkter Haftung" or "GmbH", "Naamloze Vennootschap" or "N.V." or any expression approved by the Registrar of Companies as denoting the existence of a body corporate with limited liability. A CAC is not restricted in terms of doing business with persons resident in Anguilla or with respect to holding property situated in Anguilla. A CAC is required to maintain a public register of shareholders and directors. Bearer shares cannot be issued by a CAC and shares can only be issued without nominal or par value.

²¹ Under the Protected Cell Companies Act, 2004 it is possible to form CACs which are PCCs if the CAC is engaged in insurance business or otherwise with the approval of the Commission. PCCs are identified by inclusion in the name of the designation "Protected Cell" or "PCC" or any cognate expression approved by the Commission. The Protected Cell Companies Act, 2004 contains provisions restricting the allocation of assets or liabilities between two or more protected cell accounts and the general account depending on the regulatory treatment of the relevant Counterparty and provisions which, in the absence of an express governing law, may deem Anguillan law to govern a transaction with a PCC. Subject to any specific comments made in respect of PCCs, any reference in this opinion to CACs or Companies may be taken to include PCCs, provided always that (i) any provision that allocates assets or liabilities of a PCC may be invalid if it breaches the provisions for segregation outlined in the previous sentence and (ii) the Agreement contains an express choice of law.

¹⁵ There is nothing to prevent Banking Act regulated banks taking the forms of foundations, limited partnerships or trusts (none of which are legal entities). In practice all existing banks are BCs (former Companies Act companies).

Description	Covered by opinion	Legal form(s)
		<p>the forms of foundations²², limited partnerships²³ or trusts²⁴ (none of which are legal entities).</p> <p>CACs (including PCCs where explicitly approved by the Commission)BCs regulated by the Trust Companies and Offshore Banking Act (c. T60) (the TCOBA) (which also regulates trust companies) under the auspices of the Inspector of Trust Companies and Offshore Banks (the Inspector).</p>
<p><u>Central Bank</u>. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).</p>	No ²⁵¹⁶ .	
<p><u>Corporation</u>. A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this</p>	Yes.	

²² Foundations are organised under the Anguilla Foundation Act, 2008. While our opinion is applicable to Foundations and, as indicated Foundations can theoretically be used for commercial transactions, given the relative novelty of this structure in Anguilla and the potential for the law and its interpretation to change, we would recommend taking specific advice when dealing with Foundations.

²³ Limited partnerships are organised under the Partnership Act (c. P5) and the Limited Partnership Act (c. L70). A partnership under Anguillian law is not a legal entity and does not possess a legal personality distinct from the personality of the individual partners. The partners of a partnership hold the partnership assets on behalf of the partnership and each partner is liable jointly for debts and obligations incurred while a partner of the partnership. In the case of a limited partnership, the limited partners do not take part in the conduct or management of the business and their liability is limited to the amount contributed or agreed to be contributed to the partnership. The general partners hold the partnership assets and are liable for debts and obligations of the partnership.

²⁴ Trusts are organised under the Trusts Act (c. T70). Where a company acts as trustee of a trust, it holds the trust assets and is liable for acts of the trust (possibly only up to the value of the trust assets). A trust is not a separate legal entity as a matter of Anguillian law. Anguillian trusts law places specific duties and powers on trustees of trusts and in particular a trustee may not have the power to enter into derivative transactions where not explicitly empowered to do so by the trust instrument. This may affect the direct recourse of a third party to the assets of the trust itself.

²⁵¹⁶ The central bank has a purely regulatory function in Anguilla.

Description	Covered by opinion	Legal form(s)
Appendix B.		IBCs ²⁶ , LLCs ¹⁷ and CACs BCs ¹⁸ (including PCCs SPCs ¹⁹).
<u>Hedge Fund/Proprietary Trader</u> . A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which	Yes.	IBCs , LLCs and CACs (including PCCs where explicitly approved by the Commission) BCs whether regulated

²⁶ Companies incorporated under the International Business Companies Act (c. 120) and identified by any of the following in the last part of the name: "Limited" or "Ltd.", "Corporation" or "Corp.", "Incorporated" or "Inc.", "Sendiran Berhad" or "Sdn Bhd", "Société à Responsabilité Limitée" or "SARL", "Société Anonyme" or "S.A.", "Sociedad Anonima" or "S.A.", "Besloten Vennootschap" or "B.V.", "Gesellschaft mit beschränkter Haftung" or "GmbH", "Naamloze Vennootschap" or "N.V." or any expression approved by the Registrar of Companies as denoting the existence of a body corporate with limited liability. An IBC may not do business with persons resident in Anguilla or hold an interest, whether legal or beneficial, in real property situated in Anguilla, apart from an office from which to communicate with shareholders or where books of the IBC are prepared or maintained. There is no requirement for a public record to be maintained as to the identity of shareholders or directors, although an IBC may file such registers publicly if it so chooses. Either registered shares or bearer shares, with or without par value, may be issued by an IBC.

¹⁷ Companies incorporated under the Limited Liability Company Act (c. 165) and identified by inclusion in the name of "Limited Liability Company" or "LLC".

¹⁸ Companies incorporated under the Business Companies Act, 2022 (the **BC Act**) as (i) limited companies identified in the last part of the name by "Limited" or "Ltd", "corporation" or "corp", "incorporated" or "inc", "Societe Anonyme" or "s.a.", "Sociedad Anonima" or "s.a.", (ii) unlimited companies identified in the last part of the name by "Unlimited" or "unltd", (iii) private limited companies identified in the last part of the name by "Private Limited" or "pvt", (iv) public limited companies identified in the last part of the name by "spv limited" or "plccc", (v) restricted purposes companies identified in the last part of the name by "spv limited" or "spv ltd" or (vi) segregated portfolio companies identified in the last part of the name by "segregated portfolio company" or "spc". The BC Act repealed and replaced the Companies Act (c. 65) (the **Companies Act**), the International Business Companies Act (c. 120) (the **IBC Act**) and the Protected Cell Companies Act, 2004 (the **PCC Act** and together with the Companies Act and the IBC Act the **Former Acts**) and there have to date been no transitional provisions converting companies incorporated under the Former Acts to BCs. While we believe the intention is for companies incorporated under the Former Acts to have continuous existences in their conversion to BCs, we advise caution in dealing with BCs which have not amended their constitutional documents to comply with the BC Act. See below our additional comments in respect of segregated portfolio companies.

¹⁹ Under the BC Act it is possible to form BCs which are segregated portfolio companies (**SPCs**). The assets and liabilities of SPCs are compartmentalised and the segregated portfolios, although not separate legal entities, are treated as distinct entities for most insolvency related purposes. Except where specified otherwise opinions expressed in relation to BCs relate equally to BCs which are SPCs. However any provision of an Agreement purporting to attribute a liability of one segregated portfolio to the assets of a separate segregated portfolio company is likely to be unenforceable. Prior to the BC Act, it was possible to form companies under the PCC Act which were Protected Cell Companies (**PCCs**) if the company was engaged in insurance business or otherwise with the approval of the Anguilla Financial Services Commission (the **Commission**). As noted above, the PCC Act (along with the Companies Act under which all PCCs were incorporated) was repealed by the BC Act. While PCCs were conceptually similar to SPCs, the provisions of the PCC Act were materially different from those in the BC Act and there have to date been no transitional provisions converting PCCs to SPCs. While we believe the intention is for a PCC and each of its cells to have a continuous existence in its conversion to an SPC and its portfolios, we advise caution in dealing with PCCs which have not amended their constitutional documents (and names) to comply with the SPC provisions of the BC Act.

Description	Covered by opinion	Legal form(s)
is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.		by the Mutual Funds Act (c. M107) ²⁷²⁰ or not and where necessary by the Securities Act (c. S13). These entities may also take the forms of foundations, limited- partnerships or unit (see Partnerships), trusts ²¹ or foundations ²² (none of which are legal entities).
<u>Insurance Company</u> . A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	Yes.	CACs (including PCCs) BCs regulated by the Insurance Act (c. I16).
<u>International Organization</u> . An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.	Not Applicable.	

²⁷²⁰ Mutual funds (defined as entities which (a) collect and pool investor funds for the purpose of collective investment and (b) issue shares that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the entity) are covered in this opinion..

²¹ Trusts are organised under the Trusts Act (c. T70). Where a company acts as trustee of a trust, it holds the trust assets and is liable for acts of the trust (possibly only up to the value of the trust assets). A trust is not a separate legal entity as a matter of Anguillan law. Anguillan trusts law places specific duties and powers on trustees of trusts and in particular a trustee may not have the power to enter into derivative transactions where not explicitly empowered to do so by the trust instrument. This may affect the direct recourse of a third party to the assets of the trust itself.

²² Foundations are organised under the Anguilla Foundation Act, 2008. While our opinion is applicable to Foundations and, as indicated Foundations can theoretically be used for commercial transactions, given the limited use of this structure in Anguilla, we would recommend taking specific advice when dealing with Foundations.

Description	Covered by opinion	Legal form(s)
<p><u>Investment Firm/Broker Dealer</u>. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the “Hedge Fund/Proprietary Trader” category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a “broker-dealer” in US legislation and as an “investment firm” in EC legislation.</p>	<p>Yes.</p>	<p>IBCs, LLCs and CACs (including PCCs where explicitly approved by the Commission) <u>BCs</u> in each case regulated by the Securities Act (c. S13).</p> <p>These entities may also take the forms of foundations, limited partnerships or trusts <u>or foundations</u> (none of which are legal entities).</p>
<p><u>Investment Fund</u>. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a “collective investment scheme” in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out</p>	<p>Yes.</p>	<p>IBCs, LLCs and CACs (including PCCs where explicitly approved by the Commission) <u>BCs</u> whether regulated by the Mutual Funds Act (c. M107) or not.</p> <p>These entities may also take the forms of foundations, limited partnerships or trusts <u>or foundations</u> (none of which are legal entities).</p>

Description	Covered by opinion	Legal form(s)
of the assets comprised in the arrangement.		
<u>Local Authority</u> . A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.	Qualified ²⁸²³ .	IBCs, LLCs and CACs BCs .
<u>Partnership</u> . A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).	Yes.	<u>General partnerships</u> ²⁴ . Limited partnerships ²⁹²⁵ (which are not legal entities) .
<u>Pension Fund</u> . A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a	Yes.	IBCs, LLCs and CACs (including PCCs where explicitly approved by the Commission) , BCs whether regulated

²⁸²³ Whilst there are instances in which a transaction may be entered into for hedging purposes (which may well be an effective risk management strategy for a government department), there being no Anguillian precedent in such matters we believe that a court in Anguilla may well take the view of the Law Lords in *Hazel v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1 that a local authority had no power to enter into interest rate swap transactions with the object of making profit because of their speculative nature. We therefore recommend caution in respect of transactions with government entities in Anguilla as the act of entering into derivatives transactions, if found to be outside the powers of such bodies, may be unlawful.

²⁴ General partnerships are recognised under the Partnership Act (c. P5). Although a partner of a general partnership could theoretically enter into Agreements on behalf of the general partnership, given the lack of requirement for registration or constitutional documents, we do not recommend entering into Transactions with general partnerships.

²⁹ ~~Although a partner of a general partnership could theoretically enter into Agreements on behalf of the general partnership, given the lack of requirement for registration or constitutional documents, we do not recommend entering into Transactions with general partnerships.~~²⁵ Limited partnerships are organised under the Partnership Act (c. P5) and the Limited Partnership Act (c. L7 0). A partnership under Anguillian law is not a legal entity and does not possess a legal personality distinct from the personality of the individual partners. The partners of a partnership hold the partnership assets on behalf of the partnership and each partner is liable jointly for debts and obligations incurred while a partner of the partnership. In the case of a limited partnership, the limited partners do not take part in the conduct or management of the business and their liability is limited to the amount contributed or agreed to be contributed to the partnership. The general partners hold the partnership assets and are liable for debts and obligations of the partnership.

Description	Covered by opinion	Legal form(s)
<p>specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.</p>		<p>by the Mutual Funds Act (c. M107) or not.</p> <p>These entities may also take the forms of foundations, limited partnerships or, trusts <u>or foundations</u> (none of which are legal entities).</p>
<p><u>Sovereign</u>. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see “Sovereign-owned Entity”).</p>	<p>Qualified²⁸.</p>	<p>IBCs, LLCs and CACs<u>BCs</u>.</p>
<p><u>Sovereign Wealth Fund</u>. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an “investment authority”. For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term “Sovereign Wealth Fund” excludes a Central Bank.</p>	<p>Not applicable.</p>	

Description	Covered by opinion	Legal form(s)
<p><u>Sovereign-Owned Entity</u>. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see “Local Authority”).</p>	<p>Qualified²⁸.</p>	<p>IBCs, LLCs and CACsBCs.</p>
<p><u>State of a Federal Sovereign</u>. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.</p>	<p>Not applicable.</p>	

Schedule 1

Additional Assumptions

- 1 The Covered ~~Base Agreement and CDA constitute~~constitutes valid, binding and enforceable obligations in accordance with their express terms under New York law, and the New York courts would accept the calculation of delivery values upon the happening of an Event of Default as a genuine and *bona fide* pre-estimate of a party's loss, and would not construe those provisions as a penalty.
- 2 Each party has all requisite capacity and corporate power to execute, deliver and perform its obligations under the Covered ~~Base Agreement and CDA~~ (and we draw your attention to certain limitations on capacity of specific types of entities outlined in Appendix B) and has taken all necessary steps to authorise, execute, deliver and perform the Covered ~~Base Agreement and CDA~~ and all Covered Transactions ~~entered into under the Covered Base Agreement and CDA~~.
- 3 ~~The Covered~~Any Base Account Agreement and CDA conform in all respects to the descriptions of them in Schedule 1 and ~~the Covered Base Agreement and CDA~~ have not been extended or modified in any way inconsistent with Schedule 1.
- 4 The Covered ~~Base Agreement and CDA are~~is entered into for *bona fide* commercial reasons and at arms' length by each of the parties and with no intent to defraud creditors.
- 5 The Covered ~~Base Agreement and CDA~~ and all Covered Transactions ~~entered into under them~~ are entered into prior to the commencement of Insolvency Proceedings (as defined in Schedule 32) in respect of the ~~customer~~³⁰ Covered Customer²⁶.
- 6 At the time at which a Covered Transaction is entered into under the Covered ~~Base Agreement and CDA~~, neither party has actual notice of the insolvency of the other party.
- 7 No provision of any law (other than Anguillan law) affects the opinions stated herein.
- 8 Subject to our comments in respect of partnerships and trusts, all obligations under the Covered ~~Base Agreement and CDA~~ are mutual between the parties in the sense that there are only two parties and each is personally liable as regards obligations owing by it and is beneficial owner of the obligations owed to it. ~~(though see our response to question 2)~~.
- 9 Transactions do not involve shares, stock, debt instruments, units or derived financial instruments of a company, limited partnership, unit trust or other business entity organised in Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis,

³⁰26 Any Covered Transactions entered into after Insolvency Proceedings have commenced in relation to a BVIBC are void unless the court otherwise orders, as the Insolvent Party does not have capacity to contract.

Saint Lucia and Saint Vincent or the Grenadines or debt instruments of their respective governments³¹²⁷.

³¹²⁷ The Securities Act (c. S13) (the **Securities Act**) regulates among other things the provision of dealership services, advice on securities and custodial services in Anguilla. There is some ambiguity as to whether the provision of such services to Anguillan entities generally are intended to be regulated rather than merely where the underlying securities are those of member states or participating governments. The Securities Act takes the form of a licensing regime. Therefore breach of the Securities Act will not invalidate a transaction, but may cause the offending institution to be liable for a fine by the Eastern Caribbean Securities Regulatory Commission.

Schedule 2

Insolvency Proceedings

1 ~~Insolvency~~ Bankruptcy

~~1.1—The insolvency laws of Anguilla are based in English common law.—~~The Bankruptcy Act (c. B15) (the **Bankruptcy Act**) gives a degree of certainty as regards individuals but there is no ~~primary~~ separate insolvency legislation applicable to ~~Anguillan Companies, Partnerships or Trusts.~~

~~1.2—Unless otherwise specified, **insolvent** as used in~~the entities covered by this memorandum in relation to an Anguillan entity means the entity being unable to pay its debts as they fall due. A reference to the ~~commencement~~ of a winding up means, in the case of a voluntary winding up and in the case of a winding up by the court, the time of presentation of the petition for winding up or, if earlier, the time of the passing of a resolution for voluntary winding up. —

2 **Companies**

~~2.1 There is no equivalent under Anguillan law of the U.S. Chapter 11 protection or of the English administration order. With respect to IBCs and CACs there is the possibility of a scheme being put to creditors upon insolvency, though this would not affect the rights of secured creditors without their express agreement.— Both the IBC Act and the Companies Act provide that where a compromise or arrangement is proposed between an IBC/CAC and its creditors of any class, the court may, upon the application of the IBC/CAC or any creditor, order a meeting of the creditors or class of creditors.— If a majority representing 75 per cent in value of the creditors or class of creditors agrees to any compromise or arrangement and the court by order approves the compromise or arrangement, it shall be binding on all creditors or all members of the relevant class of creditors, as the case may be, and on the company or, in the event of a winding up, on the liquidator.~~There are a number of reorganisational processes under Anguillan law in respect of BCs which are not necessarily related to the insolvency of the party. These are:

(a) solvent voluntary liquidation, striking off or dissolution under Part 15 (*Liquidation, Striking-Off and Dissolution*) of the BC Act;

(b) a reorganisation under Part 11 (*Merger, Consolidation, Sale of Assets, Forced Redemptions, Arrangements and Dissenters*) of the BC Act; and

(c) continuation under foreign law under Part 12 (*Continuation*) of the BC Act.

~~2.2 Otherwise there are no insolvency proceedings for Anguillan Companies in Anguilla except liquidation.—~~There is currently no provision under Anguillan law for insolvent liquidation of a BC. However both the IBC Act and the Companies Act provided for, and the LLC Act provides for, liquidation of a company on the order of the Anguillan court if it is unable to pay its debts or on

just and equitable grounds. Our view is that the Anguillan court would consider an application for the appointment of a liquidator of a BC (or an LLC) on the grounds of cash flow insolvency or on just and equitable grounds. For the purposes of this opinion, *Insolvency Proceedings* in respect of a company means the appointment of a liquidator and *Insolvent* means an entity is unable to pay its debts as they fall due.

~~(a) — The Companies Act provides for liquidation of a CAC whereby the Anguillan court, upon application of a shareholder, debenture holder, creditor, director or officer, may order that the CAC be wound up and dissolved if it is unable to pay its debts or where the court considers it just and equitable that it be wound up and dissolved. Voluntary winding up of a CAC is also possible but the court has discretion to supervise such proceedings and we believe that if such a situation arose it would do so at the request of a creditor.~~

~~(b) — The IBC Act provides for the liquidation of an IBC on the order of the Anguillan court if it is unable to pay its debts or where the court considers it just and equitable that it be wound up and dissolved. The IBC Act also provides for voluntary winding up on a resolution of shareholders.~~

~~(c) — The LLC Act provides for the liquidation of an LLC on the order of the Anguillan court if it is unable to pay its debts or where the court considers it just and equitable that it be wound up and dissolved. The LLC Act also provides for voluntary winding up of an LLC upon the application of a Manager (similar to a director) or of members holding at least 50 percent of the ownership interest in the LLC.~~

2.3 ~~The PCC Act contains insolvency provisions which supplement those applicable to CACs where the CAC is a PCC. Specifically solvency is defined for both the company, as being the general account being able to pay its liabilities as they become due (subject to the modification described above in respect of insurance companies), and for a separate protected cell account, as being that account being able to pay its liabilities (excluding obligations to account owners³² in that capacity) as they become due. The court may make a receivership order in respect of one or more protected cell accounts on application by the company or its directors, any creditor or account owner of that protected cell account, the Commission or the Registrar of Companies. The BC Act contains provisions relating to the liquidation of SPCs. A liquidator of a segregated portfolio company is bound to maintain the segregation of the portfolios and, in discharging the claims of creditors, may only apply the company's assets to those entitled to recourse to them under the segregated portfolio provisions of the BC Act. The principles of segregation of portfolios are therefore maintained through insolvency. The BC Act also contains provisions under which the company, its directors, any creditor in respect of the relevant segregated portfolio, any holder o shares in respect of the segregated portfolio or the Financial Services Commission may apply to the court for a portfolio liquidation order in respect of a specific segregated portfolio and where relevant in this opinion the expression *Insolvency Proceedings* includes portfolio liquidation orders.~~

³² ~~A registered holder of shares of the company which are expressed to be linked to the specific account.~~

3 Partnerships

- 3.1 There are no provisions for the winding-up of Partnerships under Anguillan law. A creditor could proceed separately against the individual partners.
- 3.2 If any individual partner has either been declared bankrupt (for an individual) or has gone into insolvent liquidation (for a company), then the partnership will be dissolved. If upon the dissolution of the partnership it is unable to pay the partnership debts as they fall due, then in the case of a limited partnership the winding up and dissolution of the partnership proceeds as if the partnership was an insolvent company. There is no present guidance under Anguillan law as to how the winding-up and dissolution of an insolvent general partnership could be conducted. In comparable common law jurisdictions courts have sometimes resorted to the fiction of treating the insolvent partnership as a quasi person in order to maintain an orderly distribution amongst creditors, but there is no statutory basis upon which such a procedure might be based.

4 Trusts and unit trusts

- 4.1 Trusts may be terminated under the terms of the trust, by unanimous agreement of the beneficiaries or on the order of a court.

5 Regulated entities

- 5.1 There are no special provisions relating to licensed mutual funds, insolvency proceedings for which proceed as for the relevant entity above.
- 5.2 Additional rules relate to the liquidation of banks licensed under the Banking Act or TCOBA. We are not aware of these powers having been invoked and therefore no authority exists on how these provisions would operate in practice.

(a) Banking Act

Pursuant to section 35 of the Banking Act, the Minister of Finance (the **Minister**) may authorise the voluntary liquidation of a licensee provided it is solvent. Such authorisation does not prejudice the rights of creditors. If the assets of the licensee are not enough for the full discharge of its obligations, the Minister after consultation with the Central Bank may cause the commencement of proceedings leading to compulsory liquidation or reorganisation in accordance with the procedures below.

The Minister, acting on the recommendation of the Central Bank, shall appoint a receiver for any licensee:

- (i) whose capital is impaired or whose condition is otherwise unsound;

- (ii) whose business is being conducted in an unlawful or imprudent manner;
- (iii) when the continuation of its activities is detrimental to the interests of its depositors;
- (iv) that refuses to submit its accounting records and its operations for inspection as provided for in the Banking Act or has otherwise obstructed such inspection; or
- (v) whose licence has been revoked in accordance with the Banking Act.

Within a period of 60 days counting from the date of the appointment of the receiver, the Minister, after consultation with the Central Bank, shall be obliged to commence proceedings leading to compulsory liquidation or reorganisation of the licensee in respect of which a receiver has been appointed, in accordance with the respective provisions of the Banking Act.

The Minister, after consultation with the Central Bank, may, by petition, apply to the court to order the compulsory liquidation or reorganisation of a licensee for which a receiver has been appointed under the Banking Act. Upon such an application, the court may make an order requiring the licensee and any person having an interest in the licensee or a claim against it to show cause at a time and place specified in the order, which must not be less than 30 days after the date of the order, why the licensee should not be liquidated and dissolved.

The court may make any order it thinks fit, including *inter alia*, an order for the compulsory liquidation of the licensee and an order for the reorganisation of the licensee. Where the court orders either the compulsory liquidation or the reorganisation of the licensee, it shall, upon delivering its decision, simultaneously order the appointment of the receiver to be terminated and appoint an official liquidator who will be responsible to the court to direct the compulsory liquidation or the reorganisation, as the case may be, of the licensee. As soon as possible after his appointment, the official liquidator shall make an inventory of the assets of the licensee and transmit a copy thereof to the registrar of the court.

After his appointment by the Minister, the receiver and, subsequent to his appointment by the court, the official liquidator shall be vested with the full and exclusive power of management and control of the licensee including the power *inter alia* to continue or discontinue its operations, to stop or limit the payment of its obligations, to initiate, defend and conduct in its name any action or proceedings to which the licensee may be party and to reorganise or liquidate the financial institution in accordance with the provisions of the Banking Act.

If the court decides to reorganise the licensee, whether pursuant to a request by the Minister after consultation with the Central Bank or by virtue of its authority under the Banking Act, the official liquidator shall, after granting a hearing to all interested parties, send a copy of the reorganisation plan to all depositors and other creditors who will not receive full payment of their claims under the reorganisation plan. The application of the reorganisation plan is subject to the condition *inter alia* that it shall be equitable to all classes of depositors, other creditors and shareholders.

(b) TCOBA

Pursuant to section 17 of the TCOBA, if a licence is or is about to be suspended or revoked the Inspector may apply to the court:

- (i) for the appointment of an administrator to take over and manage the business being carried on by the licensee; or
- (ii) for an order that the licensee be wound up by the court or subject to the supervision of the court under the Companies Act.

On such an application the court may make such order as it considers necessary to safeguard the interests of any depositors. An order made by the court may, *inter alios*, grant an administrator the powers of a licensee under the TCOBA.

In addition, pursuant to section 33 of the TCOBA, where a licensee or a person who has at any time been a licensee is being wound up voluntarily, the Attorney General may, upon request by the Inspector, apply to the court for leave to intervene on behalf of any interested party, if he considers that the winding up is not being conducted in the best interests of its depositors or other creditors and the court shall make such order as it shall consider appropriate.

- 5.3 An insurance company is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency required under the Insurance Act. The Insurance Act provides specific enforcement powers to the [Financial Services Commission](#).

Schedule 3

The Netting Act 2006

Prior to the Netting Act 2006 (the **Netting Act**) there were no specific legislative mandatory set-off provisions applicable to Companies. The Bankruptcy Act (c. B15) (the **Bankruptcy Act**) applies only to personal insolvency and there is no legislative authority for the proposition that it should be extended to legal entities other than natural persons. In the absence of decided law on the subject it remained possible that a court would by interpolation take the view that Bankruptcy Act set-off provisions applied to Anguillan Companies³³. Alternatively a court might simply have given directions that the contractual position be followed notwithstanding insolvency, or that English common law rules of set-off applied.

The Netting Act, based on the ISDA model netting act, therefore brought clarity to a previously ambiguous area of Anguillan law. Under the Netting Act, the provisions of a netting agreement are enforceable in accordance with their terms against the insolvent party and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by any action of the liquidator, by any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership, or any other insolvency proceeding the insolvent party may be subject to or by any other provision of law that may be applicable to the insolvent party, subject to the conditions contained in the applicable netting agreement.

netting agreement means:

- (a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into thereunder by the parties to the agreement (a **master netting agreement**);
- (b) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a **master-master netting agreement**); and
- (c) any collateral arrangement related to an agreement referred to in paragraph (a) or (b).

netting means the occurrence of any or all of the following:

- (a) the termination or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement;
- (b) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement terminated or accelerated under paragraph (a);

³³ ~~This will change if the Insolvency Act is brought into force.~~

- (c) the conversion of any values calculated or estimated under paragraph (b) into a single currency; and
- (d) the offset of any values calculated under paragraph (b), as converted under paragraph (c).

qualified financial contract means a contract, including any terms and conditions incorporated into any such financial contract, pursuant to which payment or delivery obligations that have a market or an exchange price are due to be performed at a certain time or within a certain period of time, without limitation:

- (a) a currency, cross-currency or interest rate swap agreement;
- (b) a basis swap agreement;
- (c) a spot, future, forward or other foreign exchange agreement;
- (d) a cap, collar or floor transaction;
- (e) a commodity swap;
- (f) a forward rate agreement;
- (g) a currency or interest rate future;
- (h) a currency or interest rate option;
- (i) equity derivatives, such as equity or equity index swaps, equity options and equity index options;
- (j) credit derivatives, such as credit default swaps, credit default basket swaps, total return swaps and credit default options;
- (k) energy derivatives, such as electricity derivatives, oil derivatives, coal derivatives and gas derivatives;
- (l) weather derivatives, such as weather swaps or weather options;
- (m) bandwidth derivatives;
- (n) freight derivatives;
- (o) carbon emissions derivatives;

- (p) a spot, future, forward or other commodity contract;
- (q) a repurchase or reverse repurchase agreement;
- (r) an agreement to buy, sell, borrow or lend securities, such as a securities lending transaction;
- (s) a title transfer collateral arrangement;
- (t) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (u) any other agreement similar to any agreement or contract referred to in paragraphs (a) to (t) with respect to reference items or indices relating to, without limitation, interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments and precious metals;
- (v) any derivative or option in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (u); and
- (w) any agreement or contract designated as a qualified financial contract by the Anguilla Financial Services Commission.

ANNEX 1

Summary Annex

ANNEX 2

Instructions

Document comparison by Workshare Compare on 29 September 2022
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Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
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Padding cell	

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