INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

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 Provisions Applicable Prior to a Customer's Default or Insolvency

1 October 2020

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1 October 2020

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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 Provisions Applicable Prior to a Customer's Default or Insolvency: British Virgin Islands

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 a futures commission merchant (***FCM***) and the enforceability of the liquidation and credit support provisions of certain futures account agreements and a Cleared Derivatives Addendum upon a customer's default or insolvency.

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 the British Virgin Islands as any of the types described in Appendix B (including British Virgin Islands branches of entities organised outside the British Virgin Islands).

1.3 We have been provided with a memorandum from Sullivan & Cromwell LLP entitled "Analysis of the Relationships Among Customers, FCMs and DCOs Under the U.S. Agency Clearing Model" (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 included at Annex 1.

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, 3, 4 and 5 set out certain matters of British Virgin Islands law referred to in the body of the opinion.

1.5 This opinion is confined to matters of British Virgin Islands 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 the British Virgin Islands follows general principles of English common law. The opinion is limited in scope to the matters expressly commented on.

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 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 Liquidation Rights

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 in your jurisdiction, and what would be the consequences if they were not?

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

2.2 While it is highly unlikely the British Virgin Islands 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 British Virgin Islands law it is likely that the effect would be materially similar to the effect if the agreements were governed by English law.

2.3 The submission to jurisdiction would be upheld assuming the choice of law and submission to jurisdiction is made in good faith and was not intended to evade the provisions of another legal system with which the Covered Base Agreement and 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 the British Virgin Islands, it is possible that the British Virgin Islands courts would accept jurisdiction notwithstanding the provisions for jurisdiction. The conclusions of this opinion speak to the likely approach taken by a British Virgin Islands court in this situation.

2. Would 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 and 2.9 of the Linklaters summary, be recognized and upheld under 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.

2.5 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 the British Virgin Islands.

2.6 Our response to question 3 indicates that the British Virgin Islands 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 British Virgin Islands courts would recognise a customer as holding a beneficial interest in the relevant Trust Property as a whole and not in any specific asset.

2.7 The Cleared Derivatives 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.

2.8 Given the analysis of the customer's interest summarised above, the Cleared Derivatives Liquidation Rights should be treated by the British Virgin Islands 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 the British Virgin Islands.

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 a British Virgin Islands 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*. Avoidance risks are summarised in Schedule 5 and apply to customers which are BVIBCs only. 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) *Disclaimer of onerous contracts*. The effect of disclaiming a contract is to create a claim for loss or damage against the estate of the insolvent party. In effect it would result in the same valuation process. A liquidator cannot disclaim a single transaction.

(d) *Part XVII*. The analysis is simplified where Part XVII (*Netting and Financial Contracts*) of the Insolvency Act (***Part XVII***) applies. Part XVII is summarised in Schedule 4 and is likely to apply to derivatives and futures transactions entered into the Agreement, in which case any risks associated with Insolvency Proceedings 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 Part XVII, 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. Would the "agent-trust" and statutory trust be recognized and upheld under the laws of your jurisdiction as creating a valid trust over the relevant customer transactions and assets whereby the FCM holds the legal title to the relevant customer transactions and assets and the customer holds a beneficial interest in the trust as a whole (as opposed to maintaining an interest in any specific assets under the trust).

2.11 British Virgin Islands law recognises the concept of trusts and the British Virgin Islands 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 the British Virgin Islands. Assuming clarity at any time on the customer's rights to trust assets, we have no reason to believe the British Virgin Islands courts would not uphold such a trust. The British Virgin Islands 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. Would 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, be recognized and upheld 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 the British Virgin Islands on the same basis as discussed for Cleared Derivatives Liquidation Rights in our response to question 2 above.

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.

2.13 As identified in our response to question 3, British Virgin Islands law recognises the concept of a trust and the British Virgin Islands courts would generally recognise a trust constituted by the laws of another jurisdiction on the terms of that constitution.

2.14 The British Virgin Islands courts would be reluctant to recharacterise the Agent-Trust" or the Statutory Trust as security interests if they would not be recharacterised under the laws governing their constitution. Specifically, the characteristics of the Agent-Trust and the Statutory Trust are consistent with the British Virgin Islands concept of a trust. As with English law, the British Virgin Islands 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 governed by British Virgin Islands law, their specific characteristics are not such that a British Virgin Islands court would characterise them as security interests.

6. Under your jurisdiction, are any rights or processes available to a creditor of a customer by which such creditor could make 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) held on the "agent-trust" by the FCM for the benefit of the customer as opposed to only having recourse to the single net amount that constitutes the Determination of Account?

2.15 For a creditor 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) held on the Agent-Trust by the FCM for the benefit of the customer, that creditor would have to have a proprietary right to those assets.

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 is in the relevant Trust Property as a whole and not in any specific asset, this will be recognised under British Virgin Islands law. British Virgin Islands law would therefore not treat the customer as having a proprietary right to any specific item of the relevant Trust Property outright and by extension a creditor of a 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 a Covered Base Agreement and CDA, the customer is insolvent and the FCM has determined a lump-sum termination amount in a currency other than the currency of the jurisdiction in which the insolvent customer is organized:

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

(2) can a claim for the 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.

2.17 Since the British Virgin Islands courts have power to grant a monetary judgment expressed otherwise than in the currency of the British Virgin Islands, any monetary judgment[1] of a court in the British Virgin Islands in respect of a claim for 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.

2.18 Any claim in the liquidation of a BVIBC[2] based on a liability incurred or payable in a currency other than US dollars must be converted into US dollars. The rate of exchange used for the purposes of converting a liability into dollars is the closing mid-point rate published in the Financial Times (US Edition) at the commencement of liquidation.

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

2.19 No.

[1] 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 British Virgin Islands court under the Reciprocal Enforcement of Judgments Act (Cap 65) (the ***REJA***) provided that (i) application for registration of the judgment is made within twelve months of its date (or such longer period as the British Virgin Islands court may allow), (ii) the relevant party is not appealing and does not have the right and intention to appeal and (iii) the British Virgin Islands 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 under the REJA 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 the British Virgin Islands 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.

[2] Since there are no statutory insolvency proceedings for partnerships or trusts, there is no equivalent provision for claims in their liquidation. However to the extent the partner or trustee were a BVIBC which was being liquidated, claims would have to be converted into US dollars.

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 Part XVII does not apply, it is highly likely the British Virgin Islands 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 Part XVII, the British Virgin Islands 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 of the Security Interest and Exercise of the Enforcement Liquidation Rights

A Assumptions

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

B Issues – Consequences of Security Interest

Consequences of creating a security interest in the British Virgin Islands

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 British Virgin Islands 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 the British Virgin Islands 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 Provisions for the avoidance of transactions are summarised in Schedule 5 and may apply where Part XVII does not apply. 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 the British Virgin Islands

1. Under the laws of your jurisdiction, what law governs the operation of the Trust Security Interest? Would the courts 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 CDA?

2.25 The creation and validity of the Trust Security Interest would be governed by the governing law of the Agreements and the proper laws of the trusts if different.

2. Under the laws of your jurisdiction, what law governs the proprietary aspects of the Trust Security Interest (that is, the formalities required to protect the Trust Security Interest against competing claims) granted by the customer (for example, the law of the jurisdiction of incorporation or organization of the customer, the jurisdiction where the Collateral is Located, or the jurisdiction of location of the FCM or DCO's Intermediary in relation to Collateral in the form of indirectly held securities)? What factors would be relevant to this question? Where the location (or deemed Location) of the 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 Collateral. If relevant, please describe how the laws of your jurisdiction apply to each form in which securities Collateral may be held.

2.26 Under British Virgin Islands rules, the law governing proprietary aspects of the Trust Security Interest will be that of the jurisdiction where the Collateral is located at the time the security interest attaches to the Collateral.

(a) Cash will be considered to be located in the place where the entity with which the cash is deposited is located[3].

(b) British Virgin Islands 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 directly held, bearer, physically certificated security to be the place where the certificate is located. Debts and payment rights are generally situated where the debtor or payor resides. For the purposes of determining matters relating to title and jurisdiction, the location of the ownership of shares, debt obligations or other securities of a BVIBC is the British Virgin Islands[4].

(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, a British Virgin Islands court is likely to adopt the "place of the relevant intermediary approach" (***PRIMA***)[5]. 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.

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[3] *Arab Bank v Barclays Bank (Dominion, Colonial and Overseas) 1954 AC 495*

[4] Section 245 of the BVIBC 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 the British Virgin Islands. Where the register is held outside the British Virgin Islands, the British Virgin Islands 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 British Virgin Islands law. Bearer shares have effectively been abolished in the British Virgin Islands so will not be relevant for this analysis. Where securities are held indirectly, our presumption is that the British Virgin Islands courts would only look as far as the depository in applying British Virgin Islands law to determine title. We believe the British Virgin Islands courts would consider the transfer of any indirect or fungible rights to those shares as equitable interests. British Virgin Islands law does not provide for the transfer of equitable rights so there would be no inconsistency in applying PRIMA to determine applicable law.

[5] 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.

(d) In the case of other intangible rights a British Virgin Islands court would generally consider where those rights may 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 the case of contract rights the governing law of the underlying contract.

2.27 In practice, the British Virgin Islands is unlikely to be a relevant location for proprietary reasons either because Collateral is not located in the British Virgin Islands or because there will be no perfection requirements in the British Virgin Islands. Note however our comments on registration of security in our response to question 3 below.

3. Assuming that the courts of your jurisdiction would recognize the Trust Security Interest, 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? If so, please indicate what actions must be taken and how such actions may differ, if at all, depending upon the type of Collateral which is subject to the Trust Security Interest.

2.28 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 the British Virgin Islands are concerned.

2.29 No action is required under the laws of the British Virgin Islands to perfect the Trust Security Interest. However under British Virgin Islands law a security interest created by a BVIBC over Collateral located in any jurisdiction should be registered in the British Virgin Islands in order to maintain priority in the event of an application to enforce before a British Virgin Islands court. Registration should be made on the Register of Registered Charges by submitting an application in the approved form to the British Virgin Islands Registry of Corporate Affairs (the ***Registry***). A BVIBC is also required to enter particulars of the security interest on a register of charges and maintain a copy of the register at its registered office, although failure to do so does not affect the security interests but merely gives rise to penalties on the part of the BVIBC.

2.30 Failure to register at the Registry will not affect the validity of the security interest as against the BVIBC or any liquidator on its insolvency but may result in a loss of priority as against subsequent registered secured creditors. An unregistered security interest will rank after registered secured interests but before any subsequent unregistered 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.

2.31 Under the Registration and Records Act 1881 (the ***Registration and Records Act***), every document which is executed as a deed must be registered at the Deeds Registry in the British Virgin Islands or it will be void against a subsequent purchaser for value or mortgagee. The definition of deed for these purposes "includes every document in writing affecting or relating to lands, tenements or hereditaments in the [British Virgin Islands]". While it is widely assumed that this definition was intended to be construed in a restrictive fashion to matters relating to land within the British Virgin Islands, this has never been tested judicially and it remains possible that a court would apply the provisions to any document entered into as a deed by a limited partnership or trust or a company organised under foreign law which maintains a registered office in the British Virgin Islands. BVIBCs are specifically exempted from the Registration and Records Act. There is a time limit for registration of three months if the deed is executed within the British Virgin Islands and twelve months if executed outside the British Virgin Islands.

2.32 Otherwise there is no registration regime for security interests created by limited partnerships, trusts or foreign companies and priority between competing security interests would, subject to our comments above, be determined by common law.

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

2.33 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 British Virgin Islands. 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 British Virgin Islands as long as the intention to create a security interest is clear from the terms of the document and other relevant circumstances.

5. Assuming that the FCM has obtained a valid and perfected Trust 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 4 above, as applicable, will the FCM or the customer need to take any action thereafter to ensure that the Trust Security Interest continues and/or remains perfected, particularly with respect to additional Collateral transferred from time to time when required pursuant to the Covered Base Agreement and CDA?

2.34 No additional actions need to be taken by the FCM or the customer in the British Virgin Islands in order to ensure that the Trust Security Interest continues and/or remains perfected. Where it is not the British Virgin Islands the laws of the jurisdiction where the Collateral is located (see our response to question 2 above) may impose perfection requirements in respect of additional Collateral.

6. Are there any particular duties, obligations or limitations imposed on the FCM in relation to the care of the Collateral held by it pursuant to the Trust Security Interest?

2.35 Under the laws of the British Virgin Islands 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.

Do the laws of your jurisdiction recognize the right of the FCM or DCO so to use such Collateral pursuant to an agreement with the customer? In particular, how does such use of the Collateral affect, if at all, the

validity, continuity, perfection or priority of the Trust 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 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.

2.36 As the Covered Base Agreement and CDA are governed by New York law[6], 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 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 will be governed by New York law, and we do not believe there is any reason in principle why a British Virgin Islands 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 Collateral is a matter of contract between the parties.

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

Note the additional assumption in the Instructions which applies to questions 8 to 10 below.

8. Assuming that the FCM has obtained a valid and perfected Trust 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 4 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the customer or any other person) or other procedures, if any, that the FCM must observe or undertake in exercising its Enforcement Liquidation Rights (including the operation of the Determination of Account) as an FCM under each Covered Base Agreement and CDA? For example, is it free to sell the Collateral (including to itself) and apply the proceeds to satisfy the customer's outstanding obligations under the Covered Base Agreement and CDA? Do such formalities or procedures differ depending on the type of Collateral involved?

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

(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 time[7]. This will normally be the current market value of the Relevant Collateral comprising securities[8].

(b) A secured party may not sell 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.

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

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

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

(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 time[9]. *A fortiori*, a secured party may sell mortgaged property to an affiliated company, subject to the same proviso.

9. 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 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?

2.38 There are no laws or regulations in the British Virgin Islands that would limit or distinguish a creditor's enforcement rights with respect to the type of Trust Security Interest.

2.39 There are statutory "preferential claims" in the British Virgin Islands which may have preference over floating charges. These include employees' wages up to US$10,000 each, certain amounts due to the BVI Social Security Board up to an unlimited amount, certain amounts due in respect of employee health insurance or pension contributions up to US$5,000 each, amounts due to the British Virgin Islands government up to US$50,000 and sums due to the British Virgin Islands Financial Services Commission in respect of fees or penalties up to US$20,000. In practice such preferential claims are not likely to be significant.

10. How would your response to questions 8 and 9 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 (for example, would this affect this ability of the FCM to exercise its Enforcement Liquidation Rights or the operation of the Determination of Account)?

2.40 The occurrence of insolvency proceedings with respect to the FCM would not change our responses.

Exercise of Enforcement Liquidation Rights by the FCM after the Commencement of an Insolvency Proceeding

Note the additional assumption in the Instructions which applies to questions 11 to 13 below.

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

2.41 A British Virgin Islands court would apply British Virgin Islands rules[10] as summarised below to questions of priority.

2.42 *BVIBCs*

[9] *Farrars v Farrars Ltd* (1888) 40 ChD 395

[10] We note that there is a possibility that a British Virgin Islands court would not consider itself the appropriate forum for enforcement proceedings in respect of the collateral located outside the British Virgin Islands. Therefore, it will be a matter for the conflict of laws rules applicable in the jurisdiction in which enforcement is sought as to whether British Virgin Islands priority rules would be relevant. Further, even if the British Virgin Islands 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 British Virgin Islands priority rules or a British Virgin Islands court judgment based on British Virgin Islands priority rules would be relevant to enforcement.

(a) A charge entered in the Register of Relevant Charges has priority over any subsequent charge.

(b) Priorities between unregistered security interests are determined by the common law[11]. Briefly those rules can be summarised as follows:

(i) security interests 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 estate[12].

(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 BVIBC to create any future charge ranking in priority to or equally with the charge[13].

2.43 *IBCs*

Charges created by a BVIBC in its previous corporate form as an International Business Company (***IBC***) are subject to the priority rules applicable to IBCs.

(a) Fixed security took priority over floating security save for cases described in (c) below.

(b) Security interests created before 1 January 1991 had priority over all security interests created on or after 1 January 1991 and as between themselves ranked in order of creation.

(c) Where an IBC created a register of mortgages, charges and other encumbrances (an ***IBC Register of Charges***), all security interests recorded in the IBC Register of Charges took priority over all security interests which had not been entered in the IBC Register of Charges (except for security interests created prior to 1 January 1991) and as between themselves ranked in order of their entry into the IBC Register of Charges, whether fixed or floating.

(d) Priorities between unregistered security interests created on or after 1 January 1991 were determined by the common law rules outlined above.

2.44 *Transitional priority rules for a BVIBC that was formerly an IBC*

Priority of charges between those created by a BVIBC and those created by a BVIBC in its previous corporate form as an IBC are a matter for transitional provisions.

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[11] But see footnote 14 below.

[12] Dearle v Hall (1828) 3 Russ 1. As a matter of British Virgin Islands 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 therefore 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.

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

(a) Charges registered in the IBC Register of Charges take priority over subsequent charges.

(b) Our view as to the priority between unregistered charges created by a BVIBC in its previous corporate form as an IBC and charges entered in the Register of Registered Charges under the BVIBC regime is that, notwithstanding registration in the Register of Registered Charges, priority is determined in accordance with the common law rules outlined above.

Note that the transitional provisions provide that a charge created by a BVIBC in its previous corporate form as an IBC may be entered in the Register of Registered Charges and take priority in accordance with the BVIBC regime.

2.45 *Other entities*

There is no registration regime under British Virgin Islands statute in respect of partnerships or trusts and we believe that a British Virgin Islands court would apply common law principles to questions of priority[14].

12. Would the FCM's right to Exercise its Enforcement Liquidation Rights (including the operation of the Determination of Account) be subject to any stay 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 above, if at all)?

2.46 The FCM's right to exercise its Enforcement Liquidation Rights would not be subject to any stay or freeze or otherwise be affected by commencement of the insolvency of the customer.

2.47 Although the position is reinforced if the Covered Base Agreement and CDA constitute a netting agreement for the purposes of Part XVII, 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 British Virgin Islands law which would provide grounds for a stay on enforcement.

13. Will the customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Collateral 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" (however called and whether or not fraudulent) in favor 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 of one or more Covered Transactions) during the suspect period be subject to avoidance, either because the Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?

2.48 British Virgin Islands law has provisions for voidable transactions. However it is highly unlikely that a British Virgin Islands court would agree to 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.

2.49 The position is reinforced if the Covered Base Agreement and CDA constitute a netting agreement for the purposes of Part XVII, which provides that, notwithstanding anything contained in the

[14] We believe the correct analysis is that, where a British Virgin Islands 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 a British Virgin Islands 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 British Virgin Islands courts.

Insolvency Act or in any rule of law relating to insolvency, "the provisions relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement of a collateral arrangement and the set off of the proceeds thereof, as contained within a netting agreement or a guarantee provided for in such agreement shall be legally enforceable against a party to the agreement and where applicable, against a guarantor or other person providing security". The Insolvency Act defines netting agreement as an agreement "in relation to present or future financial contracts", the (presumably unintended) consequence being that if financial contracts have been entered into before 16 August 2004 (the effective date of the Insolvency Act) it would take a further financial contract to bring the netting agreement within the scope of the Insolvency Act. Otherwise, the Insolvency Act is clear on its face that a netting agreement is legally enforceable against a party notwithstanding that it constitutes a preference, an undervalue transaction, a voidable floating charge or an extortionate credit transaction.

Yours faithfully

Harney Westwood & Riegels

APPENDIX A

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 CUSTOMERS[15]

Description	**Covered by opinion**	**Legal form(s)**
Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking 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***)).	Yes.	BVIBCs[16] regulated by the Banks and Trust Companies Act 1990.
Central Bank. 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).	Not applicable.	
Corporation. A legal entity that is organized as a corporation or company rather than a partnership, is	Yes.	BVIBCs (including SPCs[17] and restricted purposes companies[18]).

[15] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

[16] Companies incorporated, continued or re-registered under the BVI Business Companies Act 2004 (the ***BVIBC Act***) and identified by any of the following in the last part of the name: "Limited", "Corporation" or "Incorporated", "Société Anonyme" or "Sociedad Anonima", "Ltd", "Corp", "Inc" or "S.A.", or in the case of an unlimited company "Unlimited" or "Unltd", or any other word or words, or abbreviations thereof, as may be specified in any regulations promulgated under the BVIBC Act. This includes companies originally incorporated (i) under the International Business Companies Act (Cap 291) and re-registered under the BVI Business Companies Act either voluntarily before 30 November 2006 or automatically on 1 January 2007 or (ii) under the Companies Act (Cap 285) and re-registered under the BVI Business Companies Act either voluntarily before 1 January 2009 or automatically on 1 January 2009.

Description	Covered by opinion	Legal form(s)
engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.		
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which 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.	Yes.	BVIBCs (including SPCs) whether regulated by the Securities and Investment Business Act 2010 or not. These entities may also take the form of partnerships or unit trusts[19].
Insurance Company. 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.	Qualified[20].	BVIBCs (including SPCs) regulated by the Insurance Act 2008.
International Organization. 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.	

[17] Segregated portfolio companies identified by inclusion in the name of the designation "Segregated Portfolio Company" or "SPC". The assets and liabilities of segregated portfolio companies are compartmentalised and the segregated portfolios, although not separate legal entities, are treated as distinct entities for most (but not all) insolvency related purposes. The conclusions reached in this opinion are generally applicable to segregated portfolio companies except where indicated and provided there is no attempt to attribute the liabilities of one portfolio to the assets of a separate portfolio either prior to or after the onset of insolvency.

[18] Restricted purposes companies identified by the designation "(SPV) Limited" or "(SPV) Ltd". Unlike ordinary BVIBCs, restricted purposes companies have limitations on their powers set out in their memoranda and articles of association and actions taken outside those limitations may be *ultra vires*. Provided the entry into of an Agreement is within the powers of a restricted purposes company, the conclusions reached in this opinion are applicable to restricted purposes companies.

[19] British Virgin Islands trusts settled in the British Virgin Islands are regulated by the Trustee Act (Cap 303) (the ***Trustee Act***) and where relevant the Virgin Islands Special Trusts Act 2003 (the ***VISTA***). Trusts are not legal entities.

[20] The Insurance Act 2008 provides that a British Virgin Islands insurance company "shall not invest or trade in a derivative without the prior written approval of the Financial Services Commission". The Regulatory Code 2009 provides that as part of the application for an insurance license, the business plan should include among other things "any plans that the applicant has to purchase or sell derivatives" (a "derivative" being defined in the Regulatory Code as "an option, a future or a contract for differences"). Properly therefore such approval would have been obtained at the time of licensing. If an insurance company were to invest or trade in a derivative without consent, any agreement to that effect would be unenforceable against the counterparty under the Financial Services Commission Act, 2001. Note however that the agreement would still be enforceable against the insurance company by the counterparty, which would also be entitled to recover from the insurance company any money or other property paid or transferred by it under the agreement, as well as compensation for any loss.

Description	Covered by opinion	Legal form(s)
Investment Firm/Broker Dealer. 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.	Yes.	BVIBCs regulated by the Securities and Investment Business Act 2010. These entities may also take the form of partnerships or unit trusts.
Investment Fund. 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 of the assets comprised in the arrangement.	Yes.	BVIBCs (including SPCs) whether regulated by the Securities and Investment Business Act 2010 or not. These entities may also take the form of partnerships or unit trusts.
Local Authority. A legal entity established to administer the functions of local government in a particular region	Qualified[21].	BVIBCs.

[21] 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 British Virgin Islands precedent in such matters we believe that a court in the British Virgin Islands 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 the British Virgin Islands as the act of entering into derivatives transactions, if found to be outside the powers of such bodies, may be unlawful.

Description	Covered by opinion	Legal form(s)
within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.		
Partnership. 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.	General Partnerships[22]. Limited Partnerships without Legal Personality[23]. Limited Partnerships with Legal Personality[24].
Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a 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.	Yes.	BVIBCs (including SPCs) whether regulated by the Securities and Investment Business Act 2010 or not. These entities may also take the form of partnerships or unit trusts.
Sovereign. 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	Qualified[21].	BVIBCs.

[22] Formed or regulated under the Partnership Act 1996. General Partnerships are not legal entities.

[23] Formed or regulated under the Partnership Act 1996 or formed, registered or reregistered under the Limited Partnership Act 2017. Partnerships formed under the Partnership Act 1996 may be reregistered voluntarily as Partnerships without Legal Personality (or as Partnerships with Legal Personality) under the Limited Partnership Act 2017. Any Partnerships which have not been reregistered by 11 January 2028 will be automatically reregistered as Partnerships without Legal Personality under the Limited Partnership Act 2017 on 11 January 2028. Limited Partnerships without Legal Personality are not legal entities.

[24] Formed, registered or reregistered under the Limited Partnership Act 2017. Partnerships formed under the Partnership Act 1996 may be reregistered voluntarily as Partnerships with Legal Personality (or as 2017 Partnerships without Legal Personality) under the Limited Partnership Act 2017.

Description	Covered by opinion	Legal form(s)
personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").		
Sovereign Wealth Fund. 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.	Not applicable.	
Sovereign-Owned Entity. 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").	Qualified[21].	BVIBCs.
State of a Federal Sovereign. 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.	Not applicable.	

SCHEDULE 1

Additional Assumptions

1 The Covered Base Agreement and CDA constitute 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 Base 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 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 2) in respect of the customer[25].

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 British Virgin Islands 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).

[25] 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.

SCHEDULE 2

Insolvency Proceedings

1 The primary legislation governing bankruptcy and insolvency proceedings in the British Virgin Islands is the Insolvency Act 2003 (the ***Insolvency Act***).

2 Except where otherwise defined, ***insolvent*** in relation to an insolvent party means:

(a) it fails to comply with a statutory demand for payment served on it in accordance with the provisions of Part V of the Insolvency Act;

(b) execution or process issued on a judgment, decree or order of a British Virgin Islands court in favour of a creditor is returned wholly or partly unsatisfied;

(c) the value of the insolvent party's liabilities exceed its assets (the ***balance sheet test***); or

(d) the insolvent party is unable to pay its debts as they fall due (the ***cash flow test***).

Companies

3 The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which a party incorporated in or with a branch in the British Virgin Islands would be subject in the British Virgin Islands are the following:-

(a) supervised creditors' arrangements under Part II (*Creditors' arrangements*) of the Insolvency Act;

(b) receivership and administrative receivership[26] under Part IV (*Receivership*) of the Insolvency Act[27]; and

(c) liquidation under Part VI (*Liquidation*) of the Insolvency Act

(collectively ***Insolvency Proceedings***).

In addition, Part III (*Administration*) of the Insolvency Act provides for administration. However this part has not been brought into force and administration is not considered an ***Insolvency Proceeding*** for the purposes of this opinion.

4 There are a number of additional reorganisational processes under British Virgin Islands law in respect of BVIBCs which are not necessarily related to the insolvency of the party. These are:

(a) solvent voluntary liquidation, insolvent voluntary liquidation (in which case it is subject to the provisions of Part VI of the Insolvency Act) or dissolution under Part XII (*Liquidation, Striking-Off and Dissolution*) of the BVI Business Companies Act 2004 (the ***BVIBC Act***);

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

(c) continuation under foreign law under Part X (*Continuation*) of the BVIBC Act.

[26] An administrative receiver is a "receiver of the whole, or substantially the whole, of the business, undertaking and assets of a company".

[27] Which also covers receivership under the Conveyancing and Law of Property Act (Cap 220).

5 Other than a requirement to notify the relevant regulatory body and regulatory capital and solvency margin requirements for banks and insurance companies, there are no special provisions relating to the liquidation of banks, insurance companies, regulated funds or broker dealers. Insolvency proceedings for these entities are generally conducted in the same fashion as for unregulated entities of the same type.

6 The BVIBC Act contains certain additional provisions relating to the insolvency of segregated portfolio companies. Notwithstanding any other provision of British Virgin Islands law, 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 BVIBC Act. The principles of segregation of portfolios are therefore maintained through insolvency. The BVIBC Act also contains provisions under which certain parties 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. The BVIBC Act further contains provision for administration orders in respect of individual segregated portfolios, effectively applying the provisions of Part III (*Administration*) of the Insolvency Act 2003 to segregated portfolios (once the relevant provisions have been brought into force).

Partnerships

7 Section 499 of the Insolvency Act provides that the Insolvency Rules (the ***Rules***) (promulgated under the Insolvency Act) will determine which provisions of the Insolvency Act apply to insolvent partnerships. To date only one set of Rules has been promulgated, the Insolvency Rules 2005. However, these do not address the position in relation to insolvent partnerships. Because a partnership is not a separate legal entity, it cannot be liquidated in the same manner as a company, but it is possible to pursue claims in respect of the partnership against each person who was a member of the partnership at the relevant time. In the event that any partner is unable to satisfy the claims made against them the partner would be subject to insolvency proceedings under British Virgin Islands law in the usual way.

8 The courts of the British Virgin Islands do have jurisdiction to wind-up and dissolve partnerships on various grounds, including:

(a) when the business of the partnership can only be carried on at a loss; and

(b) whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

However the court will only hear an application on these grounds from a partner, not a third party. Further there is nothing in British Virgin Islands law at present that would enable the court to wind up a partnership itself (as distinct from any partners) on the basis that the partnership was insolvent on the basis of the cash flow test or the balance sheet test.

9 Where a limited partnership is being wound-up and dissolved and it appears to either the general partner(s) or the liquidator that the limited partnership is unable to meet its creditor's claims in full, then they are required to immediately give notice to the Registrar of Limited Partnerships and the winding up then proceeds as if the limited partnership was a company. Although the legislation does not specify, the presumption must be that the winding up would proceed as if the limited partnership was an unlimited liability company and the general partners only were members.[28]

[28] The Partnership Act actually provides that "the provisions of the Companies Act relating to winding-up and dissolution … shall apply *mutatis mutandis* to the winding-up of the limited partnership." Unfortunately the provisions of the Companies Act relating to winding-up and dissolution were repealed by the Insolvency Act, and the Partnership Act was not amended, but under normal

10 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 British Virgin Islands 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.

Trusts and unit trusts

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

provisions of statutory interpretation it must be assumed that the references would be construed as references to the Insolvency Act.

SCHEDULE 3

Voidable Transactions

1 Under British Virgin Islands law, certain transactions may be set aside or otherwise varied or amended by orders of the British Virgin Islands court upon the application of a liquidator or administrator when an insolvent party goes into liquidation or into administration. Principally these are where the transaction is an unfair preference, an undervalue transaction, a voidable floating charge or an extortionate credit transaction.

2 Unfair preferences, undervalue transactions, voidable floating charges and extortionate credit transactions are all regulated by the Insolvency Act and in each case the transaction must have been entered into within the relevant vulnerability period, being the period prior to the onset of insolvency[29] or the making of the administration order and (except in the case of extortionate credit transactions) the transaction must either (a) have been entered into at a time that the insolvent party was insolvent or (b) have caused the insolvent party to become insolvent, for which purposes insolvent excludes insolvent under the balance sheet test.

3 An unfair preference is a transaction that has the effect of putting a creditor into a position which, in the event of the insolvent party going into insolvent liquidation, would be better than the position in which that creditor would have been vis-à-vis other creditors of the insolvent party if the transaction had not been entered into. A transaction is not an unfair preference if it took place in the ordinary course of the insolvent party's business. The relevant vulnerability period is six months, except if the creditor is a connected person[30], in which case it is two years.

4 An undervalue transaction is a transaction where the insolvent party makes a gift or otherwise receives no consideration for the transaction, or the value of the consideration that it receives in money or money's worth is considerably less than the consideration provided to the insolvent party. A transaction is not an undervalue transaction if the insolvent party enters into the transaction in good faith and for the purposes of its business and if at the time it entered into the transaction there were reasonable grounds for believing that the transaction would benefit the insolvent party. The relevant vulnerability period is six months, except if the creditor is a connected person, in which case it is two years.

5 A floating charge may be set aside if there was no consideration at the same time or subsequent to the creation of the charge. The relevant vulnerability period is six months, except if the creditor is a connected person, in which case it is two years.

6 An extortionate credit transaction is a transaction for or involving the provision of credit and, having regard to the risk accepted by the person giving credit, (a) the terms of such credit extension are such as to require grossly exorbitant payments to be made (either unconditionally or in certain contingencies) or (b) the transaction otherwise grossly contravenes ordinary principles of fair trading. The relevant vulnerability period is five years.

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[29] For which purposes "insolvency" means (a) it fails to comply with the requirements of a statutory demand that has not been set aside, (b) execution or other process issued on a judgment, decree or order of a British Virgin Islands court in favour of a creditor of the company is returned wholly or partly unsatisfied or (c) the company is unable to pay its debts as they fall due.

[30] In relation to a company, "connected person" means any one or more of: (a) a promoter of the company; (b) a director or member of the company or of a related company; (c) a beneficiary under a trust of which the company is or has been a trustee; (d) a related company; (e) another company one of whose directors is also a director of the company; (f) a nominee, relative, spouse or relative of a spouse of a person referred to in (a) to (c); (g) a person in partnership with a person referred to in (a) to (c); and (h) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person. A company is related to another company if (a) it is a subsidiary or holding company of that other company; (b) the same person has control of both companies; and (c) the company and that other company are both subsidiaries of the same holding company.

7 In addition, any conveyance made by any person with intent to defraud creditors is voidable at the instance of the person thereby prejudiced under British Virgin Islands law. It is not a requirement that the relevant transaction was entered into at time when one party was insolvent or became insolvent as a result of the transaction. It is not a requirement that the transferring party subsequently went into liquidation or administration and the right to challenge is not limited to a liquidation. However, no conveyance entered into for valuable consideration and in good faith to a person who did not have notice of the intention to defraud may be impugned.

SCHEDULE 4

Set-Off and Netting

1 Insolvency set-off is regulated under Part V (*Provisions applicable to the liquidation of companies and the bankruptcy of individuals*) of the Insolvency Act and is applicable to BVIBCs, foreign companies and individuals. Specifically Section 150 provides for automatic set-off of mutual credits and debts incurred prior to the commencement of liquidation.

2 Part XVII (*Netting and Financial Contracts*) of the Insolvency Act (***Part XVII***), based on the ISDA model netting act, provides that notwithstanding anything contained in the Insolvency Act, the insolvency rules promulgated under the Insolvency Act or in any rule of law relating to insolvency, provisions relating to netting and set off, as well as the enforcement of collateral arrangements and the set off of the proceeds thereof, as contained within a netting agreement are enforceable against each party to that contract.

3 Section 150 of the Insolvency Act is expressly made subject to Part XVII, and so if the insolvency set-off rules were to produce a different result from the netting provisions of a "netting agreement" the netting provisions would prevail.

4 A "netting agreement" is defined in Part XVII as an agreement between two parties only in relation to present or future financial contracts between them the provisions of which include the termination of those contracts for the time being in existence, the determination of the termination values of those contracts and the set-off of the termination values so determined so as to arrive at a net amount due.

5 For the purposes of Part XVII of the Insolvency Act, a financial contract is a contract, including any terms and conditions incorporated into any such 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.

6 Without limiting the previous paragraph, the following are financial contracts:

(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 such by the [British Virgin Islands Financial Services] Commission.

SCHEDULE 5

Orders in Aid of Foreign Insolvency Proceedings

1 Under Part XIX of the Insolvency Act, liquidators and representatives of other insolvency proceedings[31] taking place in designated territories[32] may apply to the British Virgin Islands court for assistance.

2 The British Virgin Islands court, when faced with such an application, shall do what will best ensure the economic and expeditious administration of the foreign proceedings to the extent that is consistent with certain guiding principles, specifically the just treatment of all persons claiming in the foreign proceedings, the protection of persons in the British Virgin Islands who have claims against the company against prejudice and inconvenience in the processing of claims in the foreign proceedings, the prevention of preferential or fraudulent disposition of property, the need for distributions to claimants in the foreign proceedings to be substantially in accordance with the order of distributions in a British Virgin Islands insolvency and comity.

3 The orders which the British Virgin Islands court can make in aid of the foreign proceedings are extremely wide and include the restraining of proceedings; orders requiring a person to deliver up the property of the company to the foreign representative, orders to facilitate the co-ordination of insolvency proceedings in the British Virgin Islands with the foreign insolvency proceedings and authorising the foreign representative of any person who could be examined in British Virgin Islands insolvency proceedings.

4 It seems that the provisions are wide enough for the British Virgin Islands court not only to render merely procedural assistance but also to apply substantive principles of British Virgin Islands insolvency law[33]. The British Virgin Islands court has a discretion whether to apply the law of the British Virgin Islands or the law applicable to the foreign proceedings[34]. However, set-off and preferential creditors are protected from this provision in that the court order cannot affect the right of any creditor to benefit from the set-off provisions in Section 150 of the Insolvency Act, or result in a preferential creditor receiving less than he would under a British Virgin Islands insolvency, without the consent of such person.

5 Note that provisions in Part XVIII of the Insolvency Act based on the UNCITRAL Model Law on Cross-Border Insolvency for giving and seeking assistance in insolvency proceedings have not been brought into force.

6 Apart from the statutory provisions, a liquidator appointed under a foreign liquidation may apply to the British Virgin Islands court for relief on behalf of the company in liquidation and the British Virgin Islands court will recognise that liquidator's standing.

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[31] Specifically "collective judicial or administrative proceedings in which the property and affairs of the debtor are subject to control or supervision by a foreign court". It is arguable that administrative receivership is not within the ambit of this definition because it is not a collective proceeding nor is the administrative receiver truly under the control or supervision of the court. See *Mann v Secretary of State for Employment* [1999] ICR 898, House of Lords, holding that receivership was not a collective satisfaction of creditors' claims and therefore not an insolvency proceeding for the purposes of an EC directive.

[32] Australia, Canada, Finland, Hong Kong, Japan, Jersey, New Zealand, United Kingdom and USA.

[33] See *Re BCCI (No. 9)* [1994] 2 BCLC 636 per Rattee J

[34] Section 467(5) of the Insolvency Act.

ANNEX 1

Summary Annex

*The following is intended as a high-level overview and summary only of the main concepts covered, conclusions reached, and certain factual assumptions, in the Sullivan & Cromwell LLP memorandum entitled "Analysis of the Relationships Among Customers, FCMs and DCOs Under the U.S. Agency Clearing Model" dated 21 November 2018 (the "**S&C Memo**") and certain liquidation provisions under a Futures and Options Agreement and a Cleared Derivatives Addendum in order to assist with the interpretation of the S&C Memo. Counsel should not rely on this overview and summary as a substitute for reading the S&C Memo in full, as this overview and summary does not include the assumptions, qualifications and detailed reasoning set out in the S&C Memo.*[1]

1 Legal relationships between DCO, FCM and customer – pre-customer default

1.1 Pursuant to the terms of a customer account agreement (the "**customer agreement**")[2], an FCM establishes one or more accounts in its books in the customer's name (with respect to any customer, its "**account**"), and the customer authorises or appoints the FCM (with the effect that the FCM is appointed to act as the customer's agent), to execute, carry and clear futures[3] and swap contracts (with respect to a customer**,** its "**contracts**" or **"transactions**") on behalf of the customer[4]. The customer agreement establishes (i) the scope and terms of the FCM's authority as agent as well as (ii) certain other contractual rights and obligations of the FCM and its customer relating to aspects of their relationship in which the FCM acts in a principal capacity as the customer's contractual counterparty and not as the customer's agent. The circumstances in which the FCM acts, or is permitted to act, in the capacity of a principal effectively operate to constrain the extent of the agency relationship in relation to the transactions.

1.2 The customer agreement generally comprises: (i) in relation to a customer entering into only futures transactions, a futures customer account agreement (a "**Futures and Options Agreement**") and (ii) in relation to a customer entering into cleared swaps transactions only or both cleared swaps transactions and futures transactions, both a Futures and Options Agreement and a cleared derivatives addendum to the Futures and Options Agreement (a "**Cleared Derivatives Addendum**"). Although a customer agreement may comprise more than one document, it constitutes a single agreement that governs the operation of the customer's account.

The FCM as agent-trustee with respect to transactions

1.3 Although the FCM enters into transactions upon the instruction and for the risk and benefit of the customer, the FCM's relationship with the DCO in relation to transactions is treated by the DCO as a principal-to-principal relationship and is governed by the terms of the DCO's rules and procedures, to which the customer is not a party. The customer is not in privity of contract with the DCO, the DCO has no liability to the customer and the customer has no

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[1] Note that in this overview and summary there are a number of references to "positions", which is terminology used in applicable law and market practice in relation to "transactions". The two terms are used broadly interchangeably in this overview and summary.

[2] A customer agreement will typically specify that the customer's account and its transactions are subject to "**applicable law**", which is generally defined to include applicable U.S. legislation, rules, regulations and interpretations of regulatory agencies and self-regulatory organizations ("**SROs**"), rules of clearing organizations, exchanges and other trading venues and customs, usages and practices of the futures and derivatives industry.

[3] For purposes of this overview and summary, the term "futures" means futures and options on futures that are executed on a contract market designated pursuant to Section 5 of the U.S. Commodity Exchange Act (as amended, the "**CEA**") and cleared by a clearing organization registered with the U.S. Commodity Futures Trading Commission (the "**CFTC**") as a derivatives clearing organization ("**DCO**").

[4] A customer agreement does not typically specify the DCOs through which an FCM clears the customer's transactions.

rights or claims against the DCO. The FCM is fully liable as principal for all amounts owing to the DCO in connection with the FCM's customer transactions. Such transactions are credited to the FCM's omnibus customer positions account (an "**omnibus customer positions account**") at the DCO maintained in the name of the FCM for the benefit of its customers in the relevant CFTC customer account class (which include, for purposes of this overview and summary, futures accounts and cleared swaps accounts), and, in the case of cleared swaps, further credited to a sub-account for the customer within such omnibus customer positions account.

1.4 For every transaction, there are therefore two relevant accounts: (i) the customer's account in the FCM's books in the name of the customer to which all its transactions cleared by that FCM across all DCOs are credited and (ii) an omnibus customer positions account of the FCM at the applicable DCO to which the FCM's customer transactions for all its customers in the relevant CFTC customer account class at that DCO are credited.

1.5 Under this arrangement, the FCM acts in the capacity of "agent-trustee" of the customer with respect to the transactions. This reflects that, as the sole counterparty to the contract made on the customer's behalf with a DCO, the FCM holds legal title to (i.e. it is the legal owner of) the transactions credited to the omnibus customer positions account maintained with the relevant DCO. The customer is, however, the beneficial owner (i.e. the owner in equity) of the transactions credited to the omnibus customer positions account, entitled to the benefit and subject to the burden of the transactions.[5] In other words, these transactions are held on a type of trust for each customer by the FCM (an "**agent-trust**")[6].[7] Each customer will have a beneficial interest in the agent-trust over all the transactions credited to its specific customer account, but will not have an interest in any specific transaction as such. Each agent-trust under which the FCM holds transactions on trust for a customer will be distinct from all other agent-trusts under which the FCM holds transactions on trust for its other customers.

1.6 Under the customer agreement, the customer is typically required (i) to deposit and maintain margin with the FCM[8], (ii) to pay the FCM, among other things, the amount of any trading losses, debit balances or deficiencies (and any applicable interest thereon) in the customer's

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[5] Whilst it is true that the customer at any given point in time is the beneficial owner of the transactions recorded to the omnibus customer positions account under the agent-trust arrangement, this does not mean that the FCM has a duty to account to the customer for trading gains realised in respect of those transactions on a gross basis (or for the entirety of the transactions). See footnote 11 for a more detailed summary of the customer's entitlement against the FCM in relation to the agent-trust.

[6] Under U.S. common-law principles, the distinctions between agent, trustee and agent-trustee include (among other things) the following:

(i) an agent undertakes to act on behalf of the principal and subject to its control but an agent, as such, does not acquire title to the property of its principal (although an agent may have possession of, and be authorized to deal with, its principal's property);

(ii) a trustee has title to property that it holds subject to equitable duties to deal with it for the benefit of another, but is not subject to the control of the trust settlor or beneficiaries except to the extent the terms of the trust reserve or confer some such power over the trustee; and

(iii) an agent-trustee is an agent that has title to property that it agrees to hold for the benefit and subject to the control of its principal, resulting in a technical trust relationship, but one that is generally subject to rules of agency, not trust law.

[7] Notably however, as mentioned in paragraph 1.1 of this overview and summary, notwithstanding such agent-trust relationship being established under the customer agreement, the FCM retains a contractual right under the customer agreement, under certain circumstances specified in that agreement (including certain non-default scenarios), to liquidate the transactions in its capacity as a contractual counterparty to the customer (and not in its capacity as agent- trustee).

[8] In connection with establishing a position for a customer in a contract cleared by a DCO, the amount of initial margin for the position required by the FCM from the customer may exceed the amount of initial margin required by the DCO from the FCM. Margin provided by customers is described in greater detail in footnotes 16 and 18.

account, and brokerage charges and commissions owed to or incurred by the FCM, and fees, fines, penalties and other charges imposed by exchanges or other SROs, relating to any contract cleared for the customer or the customer's account and (iii) to reimburse or indemnify the FCM for any costs or liabilities incurred by the FCM in the course of providing services or exercising remedies under the customer agreement.

The FCM as statutory trustee with respect to customer funds

1.7 Under the U.S. Commodity Exchange Act (as amended, the "**CEA**") and related CFTC regulations (collectively, the "**segregation rules**"), money, securities and other property (collectively, "**funds**") received from the customer by way of margin for, and all funds accruing to the customer as the result of, the customer's transactions ("**customer funds**" – see also the section headed "Net liquidating equity" in footnote 14) must be treated as "belonging to such customer". The segregation rules impose a duty to segregate customer funds and certain funds contributed by the FCM as described in paragraph 1.10 (together, the "**segregated funds**") and thereby establish a specific statutory trust over all segregated funds held by the FCM for the benefit of its customers (and to the extent of its residual interest, for its own benefit[9]) (the "**Statutory Trust**")[10]**.** The extent of the customer funds is defined by the segregation rules described in footnotes 10 and 14. This statutory trust, under which the FCM holds segregated funds, including the customer funds, is distinct from the

[9] See the discussion regarding the FCM's residual interest in paragraph 1.10 of this overview and summary.[10] The segregation rules require an FCM to treat and deal with the customer funds of each of its customers as belonging to such customer, separately account for and segregate from its own assets such customer funds, and not use such customer funds to margin the transactions or secure or extend the credit of any customer or person other than the customer for whom such customer funds are held. Additionally, an FCM may deposit segregated funds only with certain types of permitted depositories, which are banks, trust companies, DCOs and other registered FCMs (a "**depository**"), in accounts with account names that clearly identify the funds therein as belonging to the FCM's customers and show the funds are segregated as required by the applicable segregation rules. As used herein, a "**segregated account**" of an FCM means an account maintained by the FCM in accordance with the segregation rules with an individual depository to hold segregated funds in respect of customers of the same account class, and the "**segregated funds account**" of an FCM means all segregated accounts (on a combined basis) maintained by the FCM with all depositories that hold segregated funds in respect of customers of the same account class. An exception to the requirement to segregate customer funds from its own assets arises in relation to the residual interest of the FCM in the statutory trust (see paragraph 1.10 for more detail on the FCM's residual interest).

[10] The segregation rules require an FCM to treat and deal with the customer funds of each of its customers as belonging to such customer, separately account for and segregate from its own assets such customer funds, and not use such customer funds to margin the transactions or secure or extend the credit of any customer or person other than the customer for whom such customer funds are held. Additionally, an FCM may deposit segregated funds only with certain types of permitted depositories, which are banks, trust companies, DCOs and other registered FCMs (a "**depository**"), in accounts with account names that clearly identify the funds therein as belonging to the FCM's customers and show the funds are segregated as required by the applicable segregation rules. As used herein, a "**segregated account**" of an FCM means an account maintained by the FCM in accordance with the segregation rules with an individual depository to hold segregated funds in respect of customers of the same account class, and the "**segregated funds account**" of an FCM means all segregated accounts (on a combined basis) maintained by the FCM with all depositories that hold segregated funds in respect of customers of the same account class. An exception to the requirement to segregate customer funds from its own assets arises in relation to the residual interest of the FCM in the statutory trust (see paragraph 1.10 for more detail on the FCM's residual interest).

common-law agent-trusts under which the FCM holds the transactions described above[11]. Again, however, this statutory trust is not a classic common-law trust and the duties of the FCM with respect to the statutory trust are determined by the segregation rules, not by common-law trust principles.

1.8 This distinction is exemplified by certain arrangements which are permitted by the segregation rules but would not generally arise under a classic common-law trust. The segregation rules permit the FCM to invest customer funds in certain types of permitted investments specified by the CFTC and retain as its own any income resulting therefrom (however, the FCM must also segregate such investments and bears sole responsibility for any losses resulting from them). Additionally, the FCM is permitted to commingle customer funds of different customers on an omnibus basis in its segregated funds account and required to commingle certain of its own funds as described in paragraph 1.10.

1.9 For every customer's funds, there are therefore two relevant accounts: (i) the customer's account carried by the FCM in its books in the name of the customer that, in addition to recording all the customer's transactions, records the state of account as between the FCM and the customer relating to the customer's funds and (ii) the FCM's segregated funds account (which may comprise multiple segregated accounts maintained by the FCM with one or more depositories (which includes a segregated account at each DCO) to hold segregated funds). A customer of an FCM does not have an interest in any particular asset held in segregation, but rather has a beneficial interest in the total assets held in segregation. The customer's beneficial interest in the assets held in segregation is determined by reference to the net liquidating equity of the customer's account on the books and records of the FCM, as described in the definition of "net liquidating equity" in footnote 14[12].

1.10 The FCM is also required by CFTC regulations to maintain[13] its own funds in its segregated accounts as a cushion of proprietary funds in order to protect against becoming undersegregated by failing to hold a sufficient amount of funds in such accounts to meet the

[11] As noted in footnote 5 above, although the customer is the beneficial owner of the transactions recorded to the omnibus customer positions account under the agent-trust arrangement, this does not mean that the FCM has a duty to account to the customer for trading gains realised in respect of the transactions on a gross basis (or for the entirety of the transactions). This is because, immediately upon any value accruing in respect of those transactions (that is, upon the DCO's determination of the accrued amounts, prior to the DCO and FCM's settlement of the resulting variation margin payments), the accrued amounts become subject to a "statutory trust" pursuant to the segregation rules, as described in paragraph 1.7 and footnote 14, and the terms of the customer agreement. As noted, the "statutory trust" is distinct from the "agent-trust" under which the transactions are held by the FCM. The beneficial entitlement under the agent-trust therefore appears to confer very little value upon the customer, other than to ensure that the beneficial ownership of the transaction does not fall into the estate of the FCM. Put another way, the economic value of the agent-trust to the customer is comprised in the statutory trust because all the proceeds of the agent-trust accrue to the statutory trust. In respect of the amounts comprised in the statutory trust, the FCM's duty to account to the customer is at all times limited to the "net liquidating equity" of the customer's account determined pursuant to the segregation rules and the terms of the customer agreement as described in further detail in footnote 14.

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[12] As a consequence, it cannot be said that any particular assets comprising the segregated funds belong to any particular customer. Rather, each customer (and the FCM to the extent of its residual interest, which is a remainder entitlement subordinate to the aggregate of the customers' beneficial interests) has a beneficial (or equitable) interest in all the assets comprising the segregated funds. The extent of each customer's beneficial interest is to a monetary value of the segregated funds equal to its net liquidating equity (see footnote 14 below) and the FCM's beneficial interest is in the remainder of the value of the segregated funds. This beneficial interest is a proprietary interest in the segregated funds but not in individual segregated funds.

[13] The requirement to maintain funds may mean the FCM is required to deposit its own funds in the segregated funds account to protect against becoming undersegregated.

CFTC's segregation requirement[14]. At any given point in time, the statutory trust over the segregated funds is held by the FCM as a trustee for the benefit of all its customers of the

[14] The segregation requirement. The segregation rules require that an FCM maintain in segregation funds in an amount at least sufficient in the aggregate to cover the FCM's "total obligations" to all customers of the relevant account class and define the FCM's total obligations to customers as the aggregate amount of funds equal to the positive "net liquidating equity" for every customer in the account class, as reflected in the customer's account as described below (the "**segregation requirement**"). Under the segregation requirement, the FCM must maintain in segregation an amount equal to the sum of all positive net liquidating equities of its customer accounts, and this amount may not be reduced by any negative net liquidating equities of its customer accounts. As the FCM must be in compliance with the segregation requirement at all times (otherwise, the FCM would be using funds of one customer to margin positions of another customer or to cover losses of another customer), the FCM maintains its own funds as a residual beneficial interest in its segregated funds account in order to provide a buffer or cushion of funds to protect against the FCM from becoming undersegregated by failing at any time to maintain sufficient funds in segregation to satisfy the segregation requirement. In practice, the FCM establishes a target residual interest that is in an amount that, when maintained as its residual interest in its segregated accounts, reasonably ensures that the FCM remains in compliance with the segregation requirement at all times. The FCM's residual interest constitutes the portion of funds in excess of that necessary for compliance with the segregation requirement (i.e. the aggregate of the positive net liquidating equities of all customers having positive net liquidating equities, with no reduction for customer net liquidating equities that are negative). The FCM may make withdrawals from segregated funds that are not made to or for the benefit of customers (ie the FCM may make withdrawals for its own proprietary uses) to the extent of its actual residual interest, subject to certain limitations and conditions as described in footnote 20.

The undermargined amounts requirement. Additionally, for each customer account whose net liquidating equity is insufficient to cover the margin required for the customer's open positions, the FCM is required to compute, based on information available to it as of the close of each business day, an undermargined amount and to have, prior to specific points in time on the following business day (at the point of daily settlement with the relevant DCOs in the case of cleared swaps and 6:00 pm Eastern Time in the case of futures), residual interest in its segregated funds account in an amount at least equal to the sum of the undermargined amounts in its customer accounts. This requirement provides a mechanism by which an FCM demonstrates its compliance with the prohibition on its use of one customer's funds to margin or settle positions of another customer.

Net liquidating equity. Under the segregation rules an FCM must reflect in a customer's account the "**net liquidating equity**" for such customer, calculated as the market value of any customer funds that the FCM receives from the customer, as adjusted by (i) any permitted uses (as defined in paragraph 1.14 of this overview and summary), (ii) any accruals on permitted investments (as referenced in paragraph 1.8 of this overview and summary) of such collateral that, pursuant to the FCM's customer account agreement with the customer are creditable to the customer; (ii) any gains and losses with respect to the customer's transactions, (iv) any charges lawfully accruing to the customer, including any commission, brokerage fee, interest, tax or storage fee and (v) any appropriately authorised distribution or transfer of such collateral.

In practice, the net liquidating equity reflected in a customer's account is determined in accordance with customer margining standards established by a representative committee of SROs, including the National Futures Association and U.S. futures exchanges, that participate in a joint audit and financial surveillance program with respect to FCMs that has been approved and is overseen by the CFTC. Such standards, which address, among other things, when an FCM must call for margin, how excess margin is calculated and when it may be disbursed to customers and how to compute net liquidating equity for margining purposes, represent applicable law to which the customer's account and transactions are subject, and operate together with the provisions of customer agreements relating to customer margin, payment, reimbursement and indemnification obligations to establish the customer's contractual rights to amounts payable to it under its customer agreement.

Under the margining standards, net liquidating equity of a customer's account -- which is referred to in the standards as "**margin equity**" rather than as net liquidating equity -- is computed by an FCM that utilises the "total equity" method for determining margin deficiencies as equal to the sum of:

(1) the account's open trade equity balance ("**OTE**"), which represents the net cumulative unrealised gains and losses in respect of the customer's open positions (i.e. the OTE of an open position as of any date reflects the net cumulative gain or loss in respect of the position (for the period from the establishment of the position to such date), which is "realised" by the customer only upon the closing of the position, when the net cumulative gain or loss in respect of the position either increases or decreases the cash balance of the customer's account and thereafter is no longer reflected in the account's OTE balance);

(2) the account's cash balance, which (A) is increased by (i) cash deposited as margin with the FCM, (ii) the net cumulative gains realised in respect of the customer's positions when they are closed (which equals the positions' net positive OTE immediately prior to their closure) and (iii) any other amounts payable to the customer under the customer agreement and (B) is decreased by (i) the net cumulative losses realised in respect of the customer's positions when they are closed (which equals the positions' net negative OTE immediately prior to their closure), (ii) any permitted withdrawals of excess cash margin from the account by the customer and (iii) commissions, brokerage fees, taxes, interest and other charges to the account; and

(3) the non-cash margin balance of the account, which equals (A) the collateral value (which is subject to haircut) of securities or other non-cash margin deposited with the FCM less (B) any permitted withdrawals of excess non-cash margin from the account by the customer.

same CFTC account class (to the extent of the aggregate customer funds, which we understand, is broadly equal to the aggregate of the positive net liquidating equities of customers in the account class) and for its own benefit (to the extent the segregated funds in the segregated funds account exceed the aggregate customer funds of all customers whose customer funds are held in the segregated funds account, such excess referred to in this overview and summary as the FCM's "**residual interest**")[15]. The customer funds and the FCM's residual interest together constitute the entirety of the entitlement to the segregated funds, with the extent of the residual interest being defined by exhaustion as the remainder of the segregated funds after accounting for the aggregate customer funds.

1.11 On a day-to-day basis, an FCM is required to deposit any funds received from a customer to margin its transactions and any funds received from a DCO in respect of the customer's transactions in the FCM's segregated funds account. Additionally, when funds received from DCOs in respect of variation margin on a customer's transactions are deposited in the FCM's segregated funds account maintained with the FCM's depositories, the FCM credits the open trade equity balance of the customer account of the relevant customer at the FCM by the relevant amount accruing to such customer and when funds are withdrawn from the FCM's segregated funds account by a DCO in respect of variation margin on a customer's

Although daily trading gains and losses in respect of open positions are settled by exchanges of variation margin between the FCM and DCO and increase or decrease the account's OTE balance, they do not increase or decrease the account's cash balance until the positions are closed and the net gains or losses are realised. Nonetheless, trading gains and losses do increase or decrease the account's margin equity (or in other words, the net liquidating equity) and determine whether an account is undermargined and a margin call must be made or whether there is excess margin that the customer may request be disbursed to it or that will support new trading activity.

As a general matter, when a customer's account is undermargined, an FCM issues a margin call to the customer, and the amount of the call is the difference between the margin equity (or net liquidating equity) and the initial margin requirement for the account. To the extent the account's margin equity (or net liquidating equity) exceeds the initial margin requirement for the account, such excess margin amount constitutes "**free funds**" available for withdrawal by the customer from the account without restriction. When free funds are disbursed to the customer, the amount of the disbursement is debited from the cash balance (if cash is disbursed) or the non-cash margin balance (if non-cash margin is returned) of the customer account.

Under such an account arrangement, the customer does not have a claim against the FCM for payment of trading gains in respect of transactions on a gross basis. Prior to liquidation of the customer's positions, it only has a right to payment of free funds in the account representing the excess of margin equity (net liquidating equity) over the initial margin requirement, and following liquidation of all its positions (and non-cash margin), it has either a right to payment from the FCM of the account's positive cash balance (i.e. its "**credit balance**") or an obligation to pay the FCM the account's negative cash balance (i.e. its "**debit balance**"). A right to gross trading gains would presuppose the existence of trading gains and losses as distinct claims that could be set off against one another when in fact they are represented as individual credits and debits to an account in respect of which only a cash balance is ultimately payable.

[15] As noted in footnote 14, the aggregate amount of funds the FCM must maintain in segregation equals the aggregate of the positive net liquidating equities of all customers having positive net liquidating equities, with no reduction for customer net liquidating equities that are negative.

transactions, the FCM debits the open trade equity balance of the relevant customer's account with the FCM by the relevant amount[16][17].[18]

1.12 In the event of the FCM's insolvency, under the U.S. Bankruptcy Code and pursuant to the CFTC's Part 190 rules (which were promulgated pursuant to authority granted it by the provisions of the Bankruptcy Code applicable to commodity broker liquidations), "customer property", which includes, amongst other things, customer funds, open customer contracts and the FCM's residual interest, are not part of the general bankruptcy estate of an FCM. Customer property forms a separate estate that must be distributed to customers on the basis and to the extent of such customers' "allowed net equity claims"[19]. The customer transactions do not appear on the balance sheet of an FCM as its assets. However, because

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[16] Variation margin owed to or by the DCO is paid out of or into the segregated funds accounts. However, there is no 1:1 correspondence between the variation margin amounts paid to or from the DCO in respect of transactions recorded to the omnibus customer positions account and the amounts credited to or debited from the customer's account balance, as the amounts owed *vis-a-vis* the DCO are calculated on a net basis in respect of all positions of all customers in such omnibus customer positions account (i.e. net across different customers of the same FCM) whereas the FCM's obligations *vis-a-vis* each of its customers arise on an individual customer basis.

[17] In practice, the OTE balance of the customer account may be calculated on the basis of variation margin accrued and may therefore be adjusted prior to the actual settlement of the funds in respect of variation margin, which may occur on the following trading day.

[18] Initial margin. When a customer's position in a contract is established with a DCO, the FCM will use segregated funds to satisfy the DCO's initial margin requirement for the position and the FCM will call for initial margin from the customer (to the extent that the margin equity (net liquidating equity) of the customer's account is less than the account's initial margin requirement after it is increased by the amount of the initial margin the FCM requires for the position from the customer, which may be more than the initial margin for the position the FCM is required to deposit with the DCO). If the customer meets the FCM's margin call by depositing cash with the FCM, the FCM will deposit the cash in its segregated funds account (which will increase the FCM's segregated funds), and the FCM will credit the full amount of the customer's deposit to the cash balance of the customer's account (which will increase the liability of the FCM to the customer and the customer's net liquidating equity claim to the FCM's segregated funds). When the position is closed or settled, the aggregate amount of initial margin the FCM is required to maintain with the relevant DCO will be reduced by the amount of initial margin the FCM was required by the DCO to maintain in respect of the position, and the aggregate initial margin requirement applicable to the customer's account will be reduced by the amount of initial margin the customer was required by the FCM to maintain in respect of the position.

Variation margin. At the end of each trading day, the DCO will mark to market the position and determine a variation margin amount payable by the DCO to the FCM (or by the FCM to the DCO) equal to any trading gain (or loss) in respect of the position for that trading day. The variation margin accrual in respect of the position for each trading day during which the position remains open will increase (or decrease) each of (i) the balance of the FCM's segregated funds account and (ii) the position's open trade equity reflected in the customer's account, but such accrued amount will not increase (or decrease) the customer account's cash balance. When the position is closed, the FCM will credit (or debit) the cash balance of the customer's account by the amount of the position's open trade equity, which will represent the net cumulative (i.e. life-to-date) gain or loss in respect of the position (and thereafter no open trade equity will be reflected in respect of the l closed position).

[19] By way of high level (and approximate) summary, the Part 190 rules provide that the "allowed net equity" claim of a customer is equal to the aggregate of the "funded balances" of such customer's "net equity" claim for each account class (plus or minus certain adjustments specified in the Part 190 rules).

A customer's "net equity" is defined as "the total claim of a customer against the estate of the FCM based on the contracts held by the FCM for or on behalf of such customer less any indebtedness of the customer to the FCM" and, as a general matter, tracks the customer's "net liquidating equity" for purposes of the segregation rule and its "margin equity" for purposes of margining, commencing with a determination of the "equity balance" of the customer account by computing the sum of the cash balance (reflecting cash deposited, realised gains and realised losses, disbursements to or on behalf of the customer and the normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees, insurance and other costs and charges lawfully incurred in connection with the purchase, sale, exercise or liquidation of any contract in the account"), the open trade equity balance and the current realisable market value of any securities or other property held by or for the FCM from or for such account, plus accrued interest.

As a general matter, a customer's "funded balance" is defined to mean a customer's pro rata share of the "customer estate" with respect to each account class available for distribution to customers of the same account class and is computed for each account class by multiplying (A) a fraction equal to (i) the amount of the net equity claim of such customer for such account class divided by (ii) the sum of the net equity claims of all customers for such account class by (B) the property of the FCM's estate that must be allocated for pro rata distribution among customers of that account class (and which so allocated will constitute a separate estate of the customer class and account class) and includes segregated funds.

FCMs traditionally retained the right to receive and retain any income earned on the segregated funds, FCMs have previously been required to include the customer funds consisting of cash on their balance sheets. More recently, some FCMs have disclaimed that right and have taken other measures to permit them to exclude the customer funds consisting of cash from their balance sheets as well. Even prior to the U.S. Bankruptcy Code being revised to provide explicitly that customer funds are not available to creditors of the FCM, courts had awarded customers a preference to funds held in segregation, although there was a lack of certainty (owing to inconsistent reasoning in judicial decisions and the practice of FCMs comingling customer funds with their own assets) as to the basis on which they did so.

Account structures, FCM's duties to customers and reimbursement rights

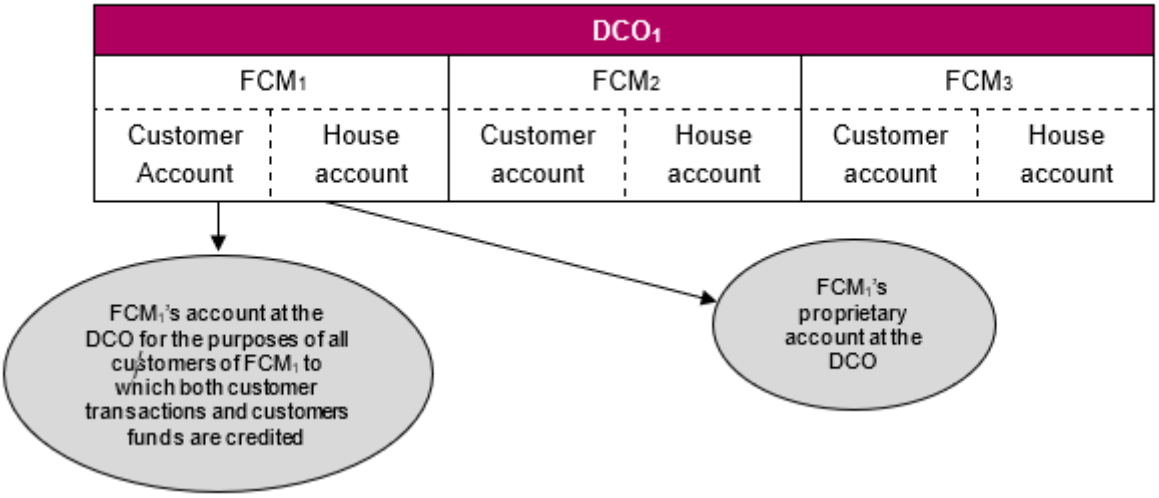
1.13 The terms of a customer agreement permit (and in some circumstances may require) the FCM to deal with the transactions in accordance with the arrangements agreed (or implied) between the FCM and its customer and entitle the FCM to reimburse itself out of the customer's funds for costs and expenses properly incurred in the FCM's performance of its obligations and exercise of its rights under the customer agreement.

1.14 The terms of the statutory trust over the segregated funds permit the FCM to deal with the trust property in accordance with the segregation rules and as provided (or implied) in the customer agreement and entitle the FCM to reimburse itself out of the trust property (the segregated funds) for costs and expenses properly incurred in the FCM's performance of its obligations and exercise of its rights under the customer agreement (in each case, subject to certain statutory limitations). In particular, the FCM is permitted to withdraw from segregation and apply segregated funds as necessary in the normal course of business to margin, guarantee, secure, transfer, adjust or settle a customer's transactions with a DCO or another FCM, including to pay commissions, brokerage, interest, taxes, storage and other charges incurred in connection with the customer's transactions ("**permitted uses**")[20]. Other costs and expenses that are chargeable to the customer but not necessary to the execution of transactions and maintenance of the transactions may be charged to the customer's account maintained with the FCM (by debiting the account's cash balance), but may not be paid directly from segregated funds. However, by charging the customer's account for these costs through a debit to the account's cash balance, the FCM is effectively offsetting a liability of the customer to the FCM (in respect of the customer's reimbursement obligation) against the FCM's liability to the customer in respect of the account's cash balance that causes a reduction of the cash balance and thus the customer's net liquidating equity and a corresponding reduction in the customer's interest in the funds held in segregation (and the

[20] An FCM may also make withdrawals from segregated funds that are not made to or for the benefit of customers (including for its own proprietary uses) to the extent of its actual residual interest, subject to certain limitations and conditions. Among other things, withdrawals of residual interest funds not made to or for the benefit of customers must not (i) occur prior to the completion of a daily segregation calculation for the prior day (adjusted to account for activity that may have decreased residual interest since the prior day's close of business), (ii) exceed 25 per cent of the prior day's residual interest without certain senior management approvals and regulatory notices or (iii) result in the funds of one customer being used to margin or carry the transactions, or extend the credit, of any other customer or person. Additionally, if such a withdrawal causes the FCM to not hold sufficient funds in its segregated accounts to meet its targeted residual interest, it must deposit its own funds to restore the account balance to the targeted amount by the end of the next business day (or revise the targeted amount), and if the FCM discovers at any time that it holds insufficient funds in segregated accounts to meet its obligations with respect to the segregation requirement or its undermargined amounts requirement, it must immediately deposit sufficient funds into segregation to bring the account into compliance.

FCM's residual interest in the segregated funds increases by a corresponding amount)[21]. This permits the FCM to withdraw from the segregated account funds corresponding to the liability provided that the FCM satisfies the conditions and restrictions for withdrawal of residual interest funds.

1.15 A simplified summary of account structures at both the DCO and FCM level is set out at Figure 1 below.



[21] Introducing broker fees are an example of such costs. Fees payable to introducing brokers are typically chargeable to a customer's account but represent general obligations of an FCM to the broker (which are reimbursable by the customer) and may not be paid to the broker directly out of segregated funds. Instead, the FCM must use its own funds to pay the broker and obtain reimbursement from the customer. The FCM may do so by debiting the cash balance of the customer's account, which will reduce the customer's net liquidating equity claim to, and thereby increase the FCM's residual interest in, the FCM's segregated funds. In practice, an FCM may utilize this method in connection with payment of the FCM's commissions and fees payable by the customer to the FCM, as well as reimbursement of amounts paid by the FCM to third parties in respect of the customer's transactions (such as amounts the FCM may be required to pay to counterparties to offsetting transactions the FCM must enter into to liquidate cleared swaps of a defaulting customer).

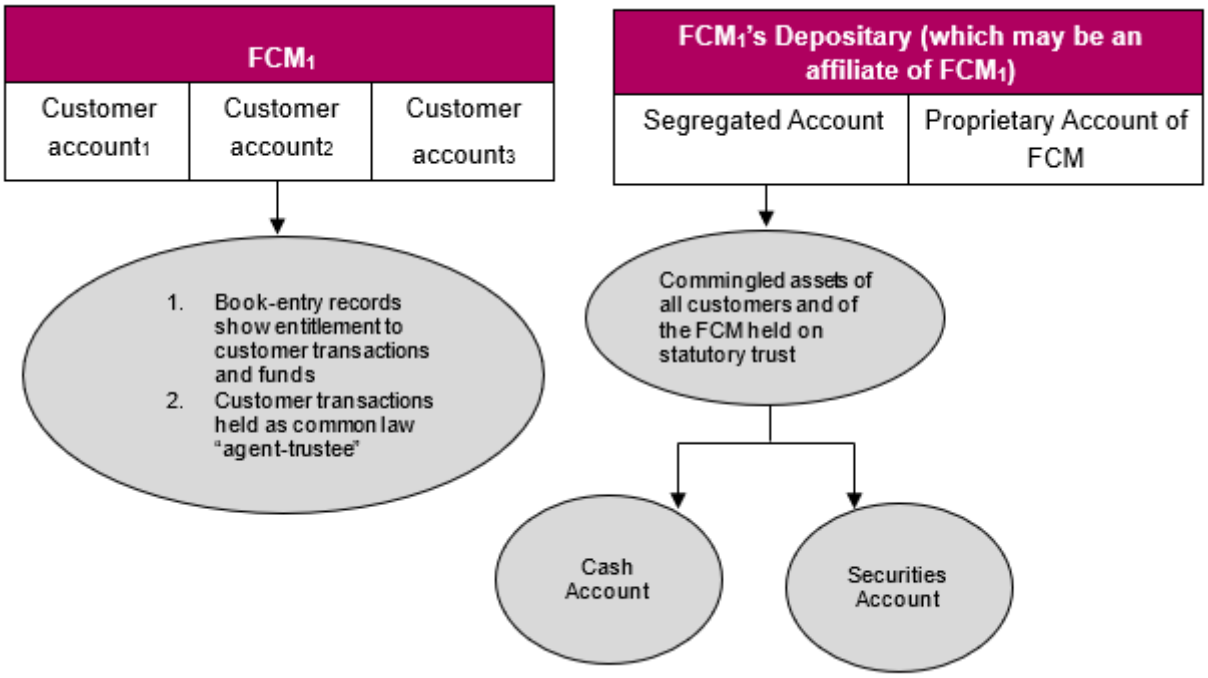


Figure 1: a simplified summary of account structures at DCO and FCM level

1.16 As part of the arrangement between the FCM and the customer, the FCM also has a number of duties to the customer with respect to transactions and the customer account maintained with the FCM. Such duties include accounting to the customer (as the beneficial owner) for all profits and losses arising out of transactions cleared on the customer's behalf as described earlier and, so long as the customer is not in default under the customer agreement and except as otherwise provided by the terms of the customer agreement, following the customer's instructions as to the management of the transactions and the customer account.

Security over the transactions and customer funds

1.17 In addition and separate to the statutory trust, under the terms of the customer agreement, the customer grants to the FCM a security interest over (i) the customer funds and (ii) the transactions. As a matter of strict legal interpretation, as the customer is not the owner in law of the segregated account or the transactions, this will amount to security over the customer's rights in respect of the customer funds and the transactions, which, given that such customer funds and transactions are held on trust for the customer, will be security over the customer's beneficial interest under the specific statutory trust in respect of the customer funds and the beneficial interest in the agent-trust over the transactions as opposed to creating security over the assets themselves. The security interest secures all liabilities of the customer to the FCM under the customer agreement. It may also secure liabilities of the customer to the FCM other than under the customer agreement. This security interest serves the additional purpose in the U.S. of preventing third parties from gaining an intervening interest, or otherwise interfering, in the transactions.

2 Legal relationships between DCO, FCM and customer – post-customer default and the liquidation process

2.1 As noted in Section 1 above, the FCM holds the transactions as agent-trustee under the direction of the customer acting as principal, subject to and in accordance with the customer agreement. When a customer defaults (including upon an insolvency), the FCM is freed of the obligation to follow the customer's instructions[22] and is permitted to act in its own interest. In essence, the FCM is no longer bound to act as agent of the customer, although it continues to hold the transactions on trust for the customer under the agent-trust and the customer funds on trust for the customer under the statutory trust. The FCM may liquidate the customer's transactions and any related collateral, as described below. Although the FCM's right to take these actions arises out of the same contract (the customer agreement) that establishes the agency relationship, the FCM does not take these actions as the customer's agent. Rather, the FCM exercises the contractual rights given to it in the customer agreement to protect itself from the liabilities and losses that it would otherwise suffer as a result of having entered into the transactions and acted as the customer's agent. In doing so the FCM is entitled to prefer its own interest to that of its customer without seeking customer consent with respect to the self-protective steps it takes. These contractual termination rights effectively operate to constrain the extent of the agency relationship (which otherwise requires the FCM as agent to act on the instructions of its principal, the customer).

2.2 As the FCM holds the transactions for the benefit of the customer, the FCM must account to the customer (as the beneficial owner) for all profits and losses arising out of transactions cleared on the customer's behalf as described earlier.[23] As described in paragraphs 1.6., 1.13 and 1.14 of this overview and summary, it is also entitled to reimburse itself for any losses incurred or indemnification rights to which it is entitled out of the segregated funds pursuant to the terms of the customer agreement and the statutory trust.

2.3 We now set out our understanding of the specific liquidation rights available to the FCM (as mentioned in paragraph 2.1 above) under a Futures and Options Agreement and a Cleared Derivatives Addendum.

Liquidation under a Futures and Options Agreement

2.4 The Futures and Options Agreement contains one or more events of default (whether or not described therein as "events of default") the effect of which is to give the FCM the right to exercise certain remedies in respect of the futures transactions and customer funds credited to the customer account at the FCM. Among such events of default are defaults predicated on (a) the customer's filing under applicable bankruptcy or similar insolvency laws, (b) the filing of a petition for the commencement of involuntary proceedings in respect of the customer under applicable bankruptcy or similar insolvency laws which filing results in a judgment of insolvency or bankruptcy or an order for relief and (c) the appointment in respect of the customer or substantially all of its assets of an administrator, conservator, receiver or similar official (a "**Futures Event of Default**").

[22] It should be noted that the obligation to follow the customer's instructions is not unconditional. It is common for customer agreements to provide that the FCM may decline to accept customer orders in certain circumstances, e.g., when doing so would result in a breach of a trading or position limit. An FCM may also be entitled to liquidate customer contracts in some non-default scenarios.

[23] However, as described in footnote 11, the FCM is not required, under the terms of the customer agreement, to account to the customer for the entire value of the transactions held on the agent-trust.

2.5 Following a Futures Event of Default (and in certain circumstances, even where there is no Futures Event of Default), the FCM is entitled to exercise its contractual rights to liquidate the futures transactions (such liquidation will, in practice, be carried out following similar mechanisms to those under the Cleared Derivatives Addendum, as described and discussed further below) and cause the futures transactions to be debited from the customer account at the FCM (the "**Futures Liquidation**"). In carrying out the Futures Liquidation the FCM is also permitted to enter into transactions, either credited to the customer account at the FCM and the omnibus customer positions account at the DCO or not, for the purposes of hedging the risk of the futures transactions (or portions thereof) in a manner similar to Risk-reducing Transactions (in respect of which, see below) and Mitigation Transactions (in respect of which, see below).

2.6 In effecting a Futures Liquidation, an FCM can be viewed as acting in reliance on its contractual entitlement under the Futures and Options Agreement and the relevant DCO rules, which does not need to involve the enforcement of any security interests[24]. In doing so, the FCM acts as principal pursuant to the exercise of its contractual rights under the Futures and Options Agreement (and in accordance with the terms of the applicable DCO rules), and not as agent.

2.7 Following the Futures Liquidation, the net cumulative gains or losses in respect of the customer's futures transactions are realised and the open trade equity in respect of the transactions will increase or decrease the cash balance of the customer's account[25]. The FCM may also liquidate any non-cash margin credited to the applicable segregated funds account (and debit it from the non-cash margin balance of the related customer's account) and credit the amount of the resulting liquidation proceeds to the applicable segregated funds account (and credit it to the cash balance of the related customer's account, leading to an adjustment in the net liquidating equity of the customer reflecting any difference in the value recorded for such non-cash margin and the proceeds received). The FCM will then determine an aggregate net amount payable in connection with the liquidation or deemed liquidation (to the extent permitted under the terms of the Futures and Options Agreement) of the futures transactions, being the final net liquidating equity of the customer's account. Such net amount represents the final cash balance of the customer account following the debit of all costs and the credit of all proceeds associated with the Futures Liquidation. If such amount is a credit balance (and, therefore, represents a liability of the FCM), the FCM will have a duty to account for such amount to the customer or if such amount is a debit balance (and, therefore, represents a liability of the customer), the customer will have a duty to account for such amount to the FCM[26].

[24] In other words, the FCM, as the DCO's contractual counterparty under (and holder of legal title to) the customer's transactions, would exercise rights granted to it by the DCO to cause the closure of, and thereby terminate the customer's beneficial interest in, the transactions.

[25] See footnote 18.

[26] More specifically, when futures position are liquidated, the net cumulative gains or losses in respect of the positions (represented by their OTE) are realised and will increase or decrease the cash balance of the customer's account. The cash balance will also be increased by the amount of any proceeds from the FCM's liquidation of non-cash margin credited to the customer's account (leading to an adjustment in the net liquidating equity of the customer reflecting any difference in the value recorded for such non-cash margin and the proceeds received). The FCM will also debit and credit the cash balance for other amounts due to the FCM or to the customer under the customer agreement. The final cash balance of the customer's account will equal the customer's net liquidating equity in respect of the account. A positive balance will constitute a credit balance due to the customer and a negative balance will be a debit balance due to the FCM.

Liquidation under a Cleared Derivatives Addendum

2.8 Following an event of default[27] under the Cleared Derivatives Addendum (a "**Cleared Derivatives Event of Default**") (and in certain circumstances, even where there has been no event of default), the FCM (or, in the case of certain valuations, its affiliate) is entitled to designate a liquidation date and thereupon cause the liquidation of the customer's cleared derivatives transactions by way of any of the following methods:

2.8.1 entering into "**Offsetting Transactions**", i.e. entering into transactions which are credited to the omnibus customer positions account at the DCO and the customer account at the FCM the effect of which is to offset all or part of one or more transactions which results in a full or proportional reduction from the omnibus customer positions account at the DCO and the customer account at the FCM of the affected transactions. Due to operational limitations on the ability of an FCM to cause Offsetting Transactions it has traded to be directly credited to an omnibus customer positions account, the FCM would either (i) trade Offsetting Transactions for its house account and cause them to be transferred to its omnibus customer positions account to offset the customer transactions or (ii) cause the customer transactions in the omnibus customer positions account to be transferred to its house account, where they would be offset by Offsetting Transactions traded for its house account. Following the determination of the associated costs (or gains) resulting from the entry into of the Offsetting Transactions and the realisation of cumulative gains and losses in respect of the transactions, the FCM will debit or credit the cash balance of the customer account by the net open trade equity of the transactions, determine the customer's net liquidating equity and, if such amount is a credit balance, the FCM will have a duty to account for such amount to the customer or if such amount is a debit balance, the customer will have a duty to account for such amount to the FCM;

2.8.2 entering into "**Sale/Novation Transactions**", i.e. selling, assigning or novating one or more transactions to another entity whereby the obligations of the customer are substituted, in whole or in part, with the obligations of the assignee (and the old obligations are extinguished). The effect of this is to cause transactions to be debited from the omnibus customer positions account at the DCO and the customer account at the FCM against receipt or payment of cash. Following the determination of the associated costs (or gains) resulting from the entry into of the Sale/Novation Transactions, if such amount is a credit balance, the FCM will have a duty to account for such amount to the customer or if such amount is a debit balance, the customer will have a duty to account for such amount to the FCM;

2.8.3 entering into "**Replacement Transactions**", i.e. terminating the affected transactions credited to the omnibus customer positions account at the DCO and the customer account at the FCM and entering into new transactions credited to the FCM's house account at the DCO on materially identical terms. Once such Replacement Transactions are established they are promptly liquidated by the FCM offsetting them against one or more Mitigation Transactions ("**Replacement Offsetting Transactions**"). Following the determination of the associated costs (or gains) resulting from the entry into of the Replacement Transactions and the Replacement Offsetting Transactions, the FCM will debit or credit the cash balance of the customer account by the net open trade equity of the transactions, determine the customer's

[27] Such events will likely be similar to those under the Futures and Options Agreement, as detailed above.

net liquidating equity and, if such amount is a credit balance, the FCM will have a duty to account for such amount to the customer or if such amount is a debit balance, the customer will have a duty to account for such amount to the FCM;[28]; or

2.8.4 valuing all or part of one or more transactions by determining any losses, costs or gains with respect thereto. At the point of valuation, the transactions cease to be trust property and instead are replaced by a duty to account for their value. Equally, at such point, the transactions cease to be the customers' transactions and become FCM proprietary transactions (i.e. for the purposes of the client, they are liquidated). They then need to be removed from the customer account at the FCM and the omnibus customer positions account at the DCO.

2.9 In addition, the FCM (or, in the case of Mitigation Transactions, its affiliate) may enter into one or more transactions credited to the customer account at the FCM and the omnibus customer positions account at the DCO in order to hedge the risk of the transactions (or portions thereof) on an individual or portfolio basis ("**Risk-reducing Transactions**") or enter into similar transactions that are not credited to the customer account at the FCM or the omnibus customer positions account at the DCO, but instead credited to the FCM's house account ("**Mitigation Transactions**"). Following the determination of the associated costs (or gains) resulting from the entry into of the Risk-reducing Transactions and Mitigation Transactions, either the FCM will have a duty to account for such amount to the customer or the customer will have a duty to account for such amount to the FCM (together with paragraphs 2.8.1 to 2.8.3 above, the "**Cleared Derivatives Liquidation**").

2.10 In effecting a Cleared Derivatives Liquidation, an FCM can be viewed as acting in reliance on its contractual entitlement under the Cleared Derivatives Addendum and the relevant DCO rules, which does not need to involve the enforcement of any security interests[29]. In doing so, the FCM acts as principal pursuant to the exercise of its contractual rights under the Cleared Derivatives Addendum (and in accordance with the terms of the applicable DCO rules), and not as agent.

2.11 Following the Cleared Derivatives Liquidation, the FCM will determine an aggregate net amount payable in connection with such Cleared Derivatives Liquidation (the "**Cleared Derivatives Liquidation Amount**"). Such Cleared Derivatives Liquidation Amount represents the final cash balance of the customer account following the debit of all costs and the credit of all proceeds associated with the Cleared Derivatives Liquidation and may reflect any or all of the following: (i) trading gains and losses incurred by the FCM (or, in the case of Mitigation Transactions, the FCM or its affiliates) in entering into or closing out cleared derivatives transactions, Risk-reducing Transactions, Replacement Transactions and Mitigation Transactions, as well as any upfront payments made or received in connection therewith; (ii) valuations associated with cleared derivatives transactions, Risk-reducing Transactions, Replacement Transactions and Mitigation Transactions not closed out through entry into Offsetting Transactions or Replacement Offsetting Transactions (as applicable); (iii) amounts due on account of cleared derivatives transactions, Risk-reducing Transactions, Replacement Transactions and Mitigation Transactions prior to the date on which such transactions are liquidated and (iv) any costs and expenses (including costs of funding),

[28] The method of liquidation by way of "Replacement Transactions" was introduced in the FIA/ISDA 2018 version of the Cleared Derivatives Addendum and will therefore only be relevant where the parties have entered into the 2018 version of the Cleared Derivatives Addendum.

[29] In other words, as in the case of a Futures Liquidation, the FCM, as the DCO's contractual counterparty under (and holder of legal title to) the customer's transactions, would exercise rights granted to it by the DCO to cause the closure of, and thereby terminate the customer's beneficial interest in, the transactions.

incurred in connection with the exercise of remedies under the Cleared Derivatives Addendum. If the Cleared Derivatives Liquidation Amount is positive, the FCM will have a duty to account for such amount to the customer or if such amount is negative, the customer will have a duty to account for such amount to the FCM.

Determination and settlement of net amount owing between FCM and customer where there is no enforcement of security

2.12 Any gains or proceeds from the Futures Liquidation or Cleared Derivatives Liquidation are required to be credited to the customer account (thereby increasing the amount of assets required to be segregated under the segregation rules) and any losses or amounts due in connection with the Futures Liquidation or Cleared Derivatives Liquidation will lead to a reduction of the customer's net liquidating equity (and corresponding increase in the FCM's residual interest), entitling the FCM to withdraw funds from the segregated funds account. Following the liquidation of all transactions pursuant to the relevant methods set out in paragraphs 2.5, 2.8 and 2.9 above (as applicable), a single net amount is determined by the FCM, being the final net liquidating equity of the customer's account. Such amount forms part of the customer's statutory trust entitlement and reflects the net result of the liquidation of all transactions cleared through all the DCOs through which those transactions were cleared, subject to the deduction of any additional costs and expenses incurred in connection with the liquidation of the customer's transactions and any other losses and expenses incurred in the course of acting as the customer's FCM, in each case that are permitted to be charged to the customer not otherwise reflected in the liquidation valuation processes discussed above.

2.13 The determination of a customer's net liquidating equity in its account is a form of determination of account by the FCM of the overall position between the FCM and the customer under the statutory trust in accordance with the customer agreement. This represents a determination of the overall value of the single course of dealing between the FCM and the customer rather than the exercise of close-out netting or set off in respect of a number of different transactions. There is no close-out netting or set-off because, as between the FCM and the customer, there are no distinct transactions or obligations that are separate from the overall contractual and trust relationship giving rise to a duty to account either way between the customer and the FCM that is evidenced by the customer agreement.

2.14 The statutory trust created in respect of the segregated funds (and subject, to the extent permitted by law, to the terms of the customer agreement) expressly permits the FCM to withdraw and apply the segregated funds for the purposes established by the statute (which include those described under paragraphs 2.6, 2.7, 2.10 and 2.11 above). In doing so, the FCM is not foreclosing on or enforcing security over property of the customer or, indeed, exercising any form of legal set-off, but rather the FCM is applying the segregated funds that it holds in the statutory trust created for this purpose in accordance with the terms of the statutory trust to produce a net amount.

2.15 Consistent with the terms of the statutory trust, the FCM is required to account to the customer for the outstanding balance of the customer account and remains entitled to the residual interest, which it may withdraw for its own account provided that this does not cause the FCM's residual interest to fall below its targeted level.

2.16 As noted above at paragraph 1.17, pursuant to the terms of the customer agreement, the customer also grants a security interest over the customer's beneficial interest in respect of the customer funds and the transactions. Accordingly, there are two possible routes by which

the FCM can seek to rely on the remedies provided for in the customer agreement: (i) the operation of the statutory trust in accordance with its terms (as set out in paragraphs 2.12 to 2.15 above), which does not involve the enforcement of security or (ii) the enforcement of security over the customer's interest under the statutory trust, which is discussed in further detail below. The rights giving rise to these remedies are cumulative and an FCM is entitled to choose either.

Determination and settlement of net amount owing between FCM and customer by way of enforcement of security

2.17 Following an event of default relating to the customer, the FCM is entitled to enforce the security interest over the customer's beneficial interest under the statutory trust and to thereby realise the value of the customer funds held in the segregated funds account.[30] In doing so, the FCM is exercising its rights of disposition of collateral provided for under the Uniform Commercial Code ("**UCC**"). In practice, this will involve very similar steps to those discussed in paragraphs 2.12 to 2.15 above and in exercising any Futures Liquidation or Cleared Derivatives Liquidation the FCM will act as principal in its own name.

2.18 Any proceeds from the Futures Liquidation or Cleared Derivatives Liquidation become customer funds to be credited to the customer account. Upon an enforcement of the security interest over the customer funds, the customer funds may be realised and the proceeds applied in order to satisfy any amounts owed by the customer to the FCM under the customer agreement, which will include amounts due from the FCM to others in connection with the Futures Liquidation or Cleared Derivatives Liquidation by reason of the FCM's right of reimbursement and indemnification in the customer agreement. Given that the customer's account balance reflects the net amount due to the customer after all liabilities of the customer under the customer agreement have been accounted for, there seems little reason to enforce the security interest over the customer's beneficial interest under the statutory trust as opposed to following the process described in paragraphs 2.12 to 2.15 above, unless this would be required for some specific reason relating to applicable insolvency laws of a customer outside the US.

2.19 Once all amounts due to the FCM under or in connection with the customer agreement and the enforcement of the security have been paid to the FCM, the FCM, as secured party, is liable to account for any net balance to the customer. The determination of such net balance due to the customer is a form of determination of account by the FCM of the overall position between the FCM and the customer as a result of the enforcement of the security over the transactions and the customer funds in accordance with the security created under the customer agreement. This represents a determination of the overall value of the overall account between the FCM and the customer rather than the exercise of close-out netting or set off in respect of a number of different transactions. There is no close-out netting or set-off because, as between the FCM and the customer, there are no distinct transactions or obligations that are separate from the overall contractual and trust relationship over which the security has been enforced.

[30] There is, however, no need to enforce security over the transactions because the FCM is entitled to liquidate them acting as a principal to the transactions. Upon their liquidation, the proceeds become subject to the statutory trust, as described in footnote 11.

ANNEX 2

Instructions

RECOGNITION OF THE U.S. LAW TRUSTS UNDER WHICH CUSTOMER ASSETS ARE HELD AND ENFORCEABILITY OF THE LIQUIDATION AND CREDIT SUPPORT PROVISIONS OF CERTAIN FUTURES ACCOUNT AGREEMENTS AND A CLEARED DERIVATIVES ADDENDUM UPON A CUSTOMER'S DEFAULT OR INSOLVENCY

Dear Sir or Madam:

On behalf of the International Swaps and Derivatives Association, Inc. ("**ISDA**") and the Futures Industry Association ("**FIA**"), I write this letter to request your advice on certain issues with respect to the operation of the U.S. law trusts under which customer assets are held by a futures commission merchant ("**FCM**") and the enforceability of the liquidation and credit support provisions of certain futures account agreements and a Cleared Derivatives Addendum upon a customer's default or insolvency.

To help you understand the FCM model and applicable U.S. laws, we have provided a memorandum from Sullivan & Cromwell LLP entitled "Analysis of the Relationships Among Customers, FCMs and DCOs Under the U.S. Agency Clearing Model". We have also provided 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.

By way of brief background, certain U.S. statutory and regulatory provisions, as well as the nature of the arrangements between the DCO, FCM and customer dictate that customer assets and transactions are held by the FCM on trust (there are technically two distinct trusts) for the benefit of the customer. The customer assets and transactions do not form part of the bankruptcy estate of an FCM. Following a customer default, a single amount, which represents the determination of account as between the FCM and customer, is either owed to the FCM from the customer or from the FCM to the customer under the terms of the trusts and the contractual arrangements between the FCM and the customer. The customer also grants a security interest over the customer's beneficial interest under the trusts for the benefit of the FCM.

We would like you to provide a legal opinion to address:

(a) whether your jurisdiction would recognize and uphold the "agent-trust" under which the customer transactions are held by the FCM for the benefit of the customer and the statutory trust under which the customer funds and securities are held by the FCM for the benefit of the customer as well as the operation of the close-out procedures under such trusts, as set out in further detail below;

(b) the enforceability of the liquidation and credit support provisions of certain Covered Base Agreements (as defined below) entered into by an entity that is registered with the United States Commodity Futures Trading Commission (the "**CFTC**") as a FCM and is a member of one or more CFTC-registered derivatives clearing organizations and such FCM's customer, setting forth the right of such FCM, upon the occurrence of an event giving rise to any right of such FCM to liquidate all Futures Transactions (as defined below), to liquidate such transactions, determine amounts owing with respect thereto, exercise remedies in respect of Futures Payment Rights (as defined below) and the proceeds thereof with respect to obligations arising from Futures Transactions and apply Futures Credit Support (as defined below) transferred by that customer in connection therewith in order to determine an aggregate net balance of account as between the FCM and the customer; and

(c) the enforceability of the liquidation and credit support provisions of an addendum for Cleared Derivatives Transactions in the form published by FIA and ISDA in 2012 or 2018 (each a "**CDA**"), each of which have been provided to you, entered into by a FCM and such FCM's customer, setting forth the right of such FCM, upon the occurrence of an event giving rise to any right of such FCM to liquidate all Cleared Derivatives Transactions (as defined below) under the CDA, to liquidate such transactions, determine amounts owing with respect thereto, exercise remedies in respect of Cleared Derivatives Payment Rights (as defined below) and the proceeds thereof with respect to obligations arising from Cleared Derivatives Transactions and apply Cleared Derivatives Credit Support (as defined below) transferred by that customer in connection therewith in order to determine an aggregate net balance of account as between the FCM and the customer.

Recognition of U.S. Law Trusts and Enforceability of Liquidation and Credit Support Provisions

The recognition and upholding of the U.S. law trusts under which customer assets are held by an FCM and the enforceability of the liquidation and credit support provisions is of importance to FCMs that have entered into Futures Transactions and Cleared Derivatives Transactions governed by a Covered Base Agreement and CDA as a matter of both credit risk assessment and considerations of capital adequacy.

Accordingly, ISDA and FIA would like to ask your firm to prepare the opinion for England and Wales ("**your jurisdiction**"). In connection with the preparation of the new opinion, we enclose for your information two forms of the FIA-ISDA Cleared Derivatives Addendum published by the FIA and ISDA, one published in 2012 and one published in 2018, and a redline comparing the two. Your opinion should be based on the assumptions describing a CDA below rather than this published form of CDA, but we believe based on the advice of US counsel that both of these published forms meet those assumptions. Please note that there is not an industry-standard published form of Covered Base Agreement.

Assumptions for Covered Base Agreement and CDA

(a) Covered Base Agreements

(i) Pursuant to a futures customer account agreement (a "**Covered Base Agreement**") entered into between a FCM and a customer, the FCM agrees to carry one or more accounts on behalf of that customer (each, an "**Account**") and to execute, carry and clear transactions for the purchase or sale of commodities for future delivery on, or subject to the rules of, a derivatives clearing organization (a "**DCO**") registered as such under the United States Commodity Exchange Act (the "**CEA**") or traded on, or subject to the rules of, a board of trade outside the United States (such contracts executed on a contract market designated pursuant to Section 5 of the CEA and cleared by a U.S.-registered DCO, "**U.S. Futures**", such contracts traded on or subject to the rules of, a board of trade outside the United States, and options thereon, "**Foreign Futures**" and, collectively "**Futures**") and/or options on U.S. Futures subject to Part 33 of the rules of the CFTC (such contracts, "**Options**", and collectively with Futures, "**Futures Transactions**"). With respect to Foreign Futures, the FCM acts for the customer by carrying Foreign Futures on the customer's behalf with, and guaranteeing the customer's performance to, clearing members ("**Foreign FCMs**") of the relevant foreign clearinghouses, which Foreign FCMs may frequently be affiliates of the FCM, and the Foreign FCMs will, in turn, enter into back-to-back futures transactions cleared by foreign clearinghouses.

(ii) Each Covered Base Agreement is governed by New York law.

(iii) Pursuant to a Covered Base Agreement, the customer agrees to transfer, as applicable, initial margin and variation margin payments as the FCM may require in respect of the customer's Futures Transactions. Also, pursuant to the Covered Base Agreement, the customer grants a security interest to the FCM in all of the customer's rights in the following property, whether at the time of the grant or thereafter existing, and the proceeds of those rights:

(A) "**Futures Credit Support**", including:

(1) with respect to U.S. Futures and Options, its Account and all assets credited thereto, including assets held by a DCO, as well as other property of the customer held in respect of Futures Transactions by or for the FCM, the DCO or any agent acting for the FCM, the DCO or the customer;

(2) with respect to Foreign Futures, its Account and all assets credited thereto, including assets held by a Foreign FCM or foreign clearinghouse, as well as other property of the customer held in respect of Futures Transactions by or for, or for the Account and due from, the FCM, any Foreign FCM, any foreign clearinghouse or others, or any agent acting for the FCM, any Foreign FCM, any foreign clearinghouse or others; and

(B) "**Futures Payment Rights**", including:

(1) with respect to U.S. Futures and Options, its Futures Transactions and all rights to payment thereunder (whether constituting obligations of the FCM or a DCO);

(2) with respect to Foreign Futures, its Futures Transactions and all rights to payment thereunder (whether constituting obligations of the FCM, a Foreign FCM or a foreign clearinghouse).

The security interest secures all obligations of the customer to the FCM under the Covered Base Agreement.

As a matter of strict legal interpretation, given that the assets credited to the customer Account and the Futures Transactions are held on trust for the customer, the security interest which the customer grants to the FCM will be a security interest over the customer's beneficial interest under the specific statutory trust in respect of the assets listed in limb (A) above and the beneficial interest under the "agent-trust" in respect of the Futures Transactions as opposed to creating security over the assets and Futures Transactions themselves.

(iv) A Covered Base Agreement contains one or more events of default (whether or not described therein as "events of default") (each, an "**Event of Default**") the effect of which is to give the FCM the right to liquidate (and thereby terminate) the Futures Transactions held in the customer's Account ("**Futures Liquidation Rights**"). Among such Events of Default are defaults predicated on (A) a customer's filing under applicable bankruptcy or similar insolvency laws, (B) the filing of a petition for the commencement of involuntary proceedings in respect of the customer under applicable bankruptcy or similar insolvency laws which filing results in a judgment of insolvency or bankruptcy or an order for relief and

(C) the appointment in respect of the customer or substantially all of its assets of an administrator, conservator, receiver or similar official, including the possession and control of the property of the customer by such an official pursuant to seizure orders.

(v) A Covered Base Agreement includes a provision the effect of which is to permit the FCM, upon the occurrence of an Event of Default in respect of a customer, to liquidate and/or carry out a valuation of all Futures Payment Rights and Futures Credit Support, as set out in paragraphs 2.5 to 2.7 of the Linklaters summary. The FCM is entitled to reimburse itself out of the Futures Payment Rights or the Futures Credit Support (or the liquidation value thereof) for any liabilities, costs and expenses properly incurred in the performance of its agency.

(vi) Pursuant to the terms of a Covered Base Agreement, following the exercise of its rights in limb (v) above, the FCM determines an aggregate net amount payable in connection with the liquidation or deemed liquidation (if applicable) of the Futures Transactions. This represents a determination of the overall value of the single course of dealing between the FCM and the customer rather than the exercise of close-out netting or set off in respect of a number of different transactions (the "**Futures Determination of Account**"). If such amount is positive (and, therefore, represents a surplus for the FCM), the FCM will have a duty to account for such amount to the customer or if such amount is negative (and, therefore, represents a deficit for the FCM), the customer will have a duty to account for such amount to the FCM.

A futures account agreement that does not alone satisfy the above requirements is nevertheless a "Covered Base Agreement" to the extent it is paired with a CDA that supplies any of the otherwise unsatisfied requirements.

(b) The CDA

(i) In addition to entering into a Covered Base Agreement with the customer, the FCM and the customer execute the CDA. The CDA supplements a Covered Base Agreement with respect to, among other things, the liquidation and Determination of Account (as defined below) relating to "Cleared Derivatives Transactions" carried in the customer's account holding Cleared Derivatives Transactions (the "**Cleared Derivatives Account**"), as well as the application of collateral related to those Cleared Derivatives Transactions. "**Cleared Derivatives Transactions**" are swaps, forwards, options, or similar transactions (but excluding Futures Transactions executed on or subject to the rules of a U.S. designated contract market or on a foreign board of trade and subject to regulation in that jurisdiction) that are (a) entered into by a customer in the over-the-counter market, or (b) executed or traded by such customer on or subject to the rules or protocols of any multilateral or other trading facility, system or platform, including any communication network or auction facility permitted under applicable law or any designated contract market and, in either case, subsequently submitted to and accepted for clearing by a DCO and subject to the CFTC's Part 22 rules. To the extent that a security-based swap is, in accordance with applicable law, carried by an FCM in a cleared swaps customer account (as defined in the CFTC's Part 22 rules), such security-based swap constitutes a Cleared Derivatives Transaction.

(ii) Each CDA is governed by New York law.

(iii) Pursuant to the CDA, Cleared Derivatives Transactions become incorporated into the related Covered Base Agreement, which incorporation is accomplished by considering references to "Contracts," "Futures," "Futures Contracts" and similar terms in such Covered Base Agreement to include references to the Cleared Derivatives Transactions. Through this

incorporation, the customer grants a security interest to the FCM in all of the customer's rights in the following property, whether at the time of the grant or thereafter existing, and the proceeds of those rights:

(A) (1) its Cleared Derivatives Account and all assets credited thereto, including assets held by a DCO, and (2) other property of the customer held in respect of Cleared Derivatives Transactions by or for the FCM, the DCO and any agent acting for the FCM, the DCO or the customer (collectively, "**Cleared Derivatives Credit Support**"); and

(B) its Cleared Derivatives Transactions and all rights to payment thereunder (whether constituting obligations of the FCM or a DCO) and the customer's rights, if any, in all cash received by the FCM and all rights to payment in favor of the FCM or the customer arising out of or in connection with the exercise by the FCM of any right to terminate, liquidate or otherwise close out the customer's account or Cleared Derivatives Transactions (collectively, "**Cleared Derivatives Payment Rights**").

As a matter of strict legal interpretation, given that the assets listed in limb (A) above and the Cleared Derivatives Transactions are held on trust for the customer, the security will be over the customer's beneficial interest under the specific statutory trust in respect of the assets listed in limb (A) above and the beneficial interest under the "agent-trust" in respect of the Cleared Derivatives Transactions as opposed to creating security over the assets and Cleared Derivatives Transactions themselves.

(iv) The FCM is entitled, upon the occurrence of an Event of Default, to cause the liquidation of a customer's Cleared Derivatives Transactions by way of a number of different methods and processes, as set out in paragraphs 2.8 and 2.9 of the Linklaters summary (such rights, the "**Cleared Derivatives Liquidation Rights**" and, together with the Futures Liquidation Rights, the "**Liquidation Rights**"). The FCM is also entitled to dispose of or realize on (i) all Cleared Derivatives Credit Support posted by the customer to the FCM in respect of Cleared Derivatives Transactions and (ii) any margin transferred to the customer under Cleared Derivatives Transactions. The FCM can reimburse itself out of such assets and the Cleared Derivatives Payment Rights (or the liquidation value thereof) for any liabilities, costs and expenses properly incurred in the performance of its agency.

(v) Pursuant to the terms of the CDA, following the exercise of its rights in limb (iv) above, the FCM determines an aggregate net amount payable in connection with the liquidation or deemed liquidation (if applicable) of the Cleared Derivatives Transactions. This represents a determination of the overall value of the single course of dealing between the FCM and the customer rather than the exercise of close-out netting or set off in respect of a number of different transactions (together with the Futures Determination of Account, the "**Determination of Account**"). If such amount is positive (and, therefore, represents a surplus for the FCM), the FCM will have a duty to account for such amount to the customer or if such amount is negative (and, therefore, represents a deficit for the FCM), the customer will have a duty to account for such amount to the FCM.

Liquidation Rights

There are two distinct routes by which an FCM can choose to exercise its Liquidation Rights: (i) by reliance on its contractual and trust entitlement under the Covered Base Agreement and/or the CDA (which does not need to involve the enforcement of any security interests) (the "**Trust Liquidation Rights**") or (ii) by way of enforcement of its security over the customer's interest in the "agent-trust" and statutory trust (the "**Enforcement Liquidation Rights**"). Whichever route is preferred by the FCM, the exercise of the Liquidation Rights is carried out by the FCM as principal and not as agent pursuant to the exercise of its contractual and/or security rights under the Covered Base Agreement and/or the CDA (and in accordance with the terms of the applicable DCO rules).

A summary of the operation and legal basis by which an FCM exercises its Trust Liquidation Rights is set out in further detail in the Linklaters summary and, in particular, under paragraphs 2.12 to 2.15 thereof.

A summary of the operation and legal basis by which an FCM exercises its Enforcement Liquidation Rights is set out in further detail in the Linklaters summary and, in particular, under paragraphs 2.17 to 2.19 thereof.

Scope of opinion

Our members have found that it is important (for example, for ensuring the enforceability of the Determination of Account for regulatory capital purposes) that the scope of the opinion be clear and certain, both in terms of the types of transactions covered by the opinion and the types of customers falling within the scope of the opinion.

Scope of Transaction types covered by the opinion

As explained above, the types of transaction that may be entered into under a Covered Base Agreement and CDA include both Futures Transactions and Cleared Derivatives Transactions (together, "**Covered Transactions**"). We do not describe herein the scope of transactions that may be Futures Transactions (other than the requirements of the definition of Futures Transaction set out above). Appendix A dated September 2012 contains a brief description of various types of Cleared Derivatives Transactions that might be documented under a Covered Base Agreement and CDA (although some of those Cleared Derivatives Transactions may not currently be cleared by any DCO and should be attached as Appendix A to your opinion and modified as necessary to indicate clearly in your opinion whether your conclusions in your opinion for any reason do not apply to any of these types of Covered Transactions).

Scope of Customers covered by the opinion

Please indicate the scope of customers covered by your opinion in an Appendix B to your opinion, which references the types of counterparty described in Appendix B dated September 2009. Your opinion should, at a minimum, cover customers falling within the categories "Bank/Credit Institution", "Corporation" and "Investment Firm/Broker Dealer".

Appendix B sets out a series of commercial descriptions. We understand that these may not correspond precisely to legal categories under the laws of your jurisdiction. Please indicate, therefore, for each Appendix B category covered by your opinion, the precise legal form for each counterparty type falling within that category that is covered by your opinion. Please include, if relevant, any naming convention or rule that would help a reader of the opinion to identify and classify the entity (for example, the inclusion of a designation in the legal name of the entity such as "S.A.", "N.V.", "A.G.", "S.p.A", "Plc", "Limited" or the like or the mandatory inclusion of a word or words in the name, for example, "Bank" in relation to banks or "Insurance" or "Assurance" in relation to insurance companies).

In relation to each Appendix B category covered by your opinion, if your opinion does not cover all relevant legal forms of counterparty that are capable of falling within that category in your jurisdiction, please indicate clearly what is excluded. For example, if your opinion covers corporations that fall within the category "Investment Firm/Broker Dealer" but not partnerships that fall within that category, then please indicate that fact.

If you are aware of any potential legal issues with respect to the recognition of the U.S. trusts, the operation of the Determination of Account or the enforceability of the Liquidation Rights with regard to any types of entity that are not covered in your opinion, our members have indicated that it would nevertheless be helpful if you could highlight such potential legal issue such that further analysis can be undertaken separately if desired.

Finally, your opinion may cover one or more category types that do not fall within any of the categories in Appendix B or are otherwise difficult to classify. As above, please indicate the precise legal form and any relevant naming conventions or mandatory naming rules for each additional category covered by your opinion.

An example of an entity difficult to classify would be a German Förderbank (development bank), which is owned by the Sovereign (the Federal Republic of Germany) or by a State of a Federal Sovereign (that is, a Bundesland, such as Nordrhein-Westfalen). Therefore, it would be a Sovereign-Owned Entity. It would also be a Bank/Credit Institution if its core business involves taking deposits and making loans. An entity type that is difficult to classify should be dealt with in your opinion as an additional category.

It is most helpful if all information relating to customer scope is presented in Appendix B to your opinion in table form and the body of the opinion refers to Appendix B without a separate discussion of customer scope. If you feel it is necessary to include a discussion of customer scope within the text of the opinion, please carefully reconcile it with the information presented in Appendix B so that the customer scope of the opinion is clear.

Additional customer types covered by your opinion and for which there is no category set out in the standard Appendix B should be added in additional rows to Appendix B.

Fact Patterns

We set out below three principal fact patterns we would like you to consider in answering the questions below.

The three principal fact patterns concern (a) whether or not the Location (as defined below) of the customer is in your jurisdiction and (b) whether or not the Location of the Collateral (as defined below) is in your jurisdiction.

In particular, when responding to each question, could you please distinguish between the following three fact patterns:

I. The Location of the customer is in your jurisdiction and the Location of the Collateral is outside your jurisdiction.

II. The Location of the customer is in your jurisdiction and the Location of the Collateral is in your jurisdiction.

III. The Location of the customer is outside your jurisdiction and the Location of the Collateral is in your jurisdiction.

For the foregoing purposes:

(a) the "Location" of the customer is in your jurisdiction if it resides, is incorporated or otherwise organized in your jurisdiction and/or if it has a branch or other place of business in your jurisdiction; and

(b) the "Location" of Collateral is the place where an asset of that type is located under the private international law rules of your jurisdiction.

"Located" when used below in relation to a customer or any Collateral should be construed accordingly.

In relation to (a), if under the laws of your jurisdiction, the Location of an entity would be determined on a different basis and this would affect your conclusions, please set out the relevant rules and explain their consequences.

In considering fact patterns I and II, please indicate whether and, if so, in which circumstances it makes a difference whether (i) the counterparty is incorporated or otherwise organized in your jurisdiction or (ii) it is a foreign entity with a branch or other place of business in your jurisdiction.

If the location of the FCM would affect your response to any question, please make this clear in the relevant response.

I. Recognition and Operation of the U.S. Trusts and Exercise of the Trust Liquidation Rights

A. Assumptions

1. On the basis of the terms and conditions of a Covered Base Agreement and CDA and other relevant factors and acting in a manner consistent with the intentions stated in the Covered Base Agreement and CDA, the parties over time enter into a number of Covered Transactions that are intended to be governed by the Covered Base Agreement and CDA. The Covered Transactions entered into include any or all of the transactions described in Appendix A.

2. Some of the Covered Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash.

3. After entering into these Covered Transactions and prior to the maturity thereof, the customer, which is organized in your jurisdiction, becomes the subject of a voluntary or involuntary case under the insolvency laws of your jurisdiction and, subsequent to the commencement of the insolvency, either the customer or an insolvency official seeks to challenge the operation of the Determination of Account (by, for example, assuming the profitable Covered Transactions for the customer and rejecting the unprofitable Covered Transactions for the customer) or otherwise prevent the operation of the "agent-trust" or the statutory trust or the exercise of the Liquidation Rights.

B. Issues

1. Would the parties' agreement on governing law of each Covered Base Agreement and CDA and

submission to jurisdiction be upheld in your jurisdiction, and what would be the consequences if they were not?

2. Would 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 and 2.9 of the Linklaters summary, be recognized and upheld under 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.

3. Would the "agent-trust" and statutory trust be recognized and upheld under the laws of your jurisdiction as creating a valid trust over the relevant customer transactions and assets whereby the FCM holds the legal title to the relevant customer transactions and assets and the customer holds a beneficial interest in the trust as a whole (as opposed to maintaining an interest in any specific assets under the trust).

4. Would 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, be recognized and upheld under the laws of your jurisdiction.

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.

6. Under your jurisdiction, are any rights or processes available to a creditor of a customer by which such creditor could make 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) held on the "agent-trust" by the FCM for the benefit of the customer as opposed to only having recourse to the single net amount that constitutes the Determination of Account?

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

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

(2) can a claim for the 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.

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

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?

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?

II. *Enforceability of the Security Interest and Exercise of the Enforcement Liquidation Rights*

A. Assumptions

Please assume the same facts as set forth in Part I above (as applicable) with the following modifications:

(a) Pursuant to the relevant Covered Base Agreement and CDA, the FCM and the customer agree that Futures Credit Support and Cleared Derivatives Credit Support ("**Collateral**") will include cash credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are Located or deemed Located either (i) in your jurisdiction, or (ii) outside your jurisdiction.

(b) Please assume that any securities provided as Collateral are denominated in either the currency of your jurisdiction or any freely convertible currency and consist of (i) corporate debt securities whether or not the issuer is organized or located in your jurisdiction; (ii) debt securities issued by the government of your jurisdiction; and (iii) debt securities issued by the government of a member of the "G-10" group of countries, in one of the following forms:

(i) directly held bearer debt securities: by this we mean debt securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by a FCM or a DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the FCM or a DCO (that is, not held by the FCM or DCO indirectly with an Intermediary (as defined below));

(ii) directly held registered debt securities: by this we mean debt securities issued in registered form and, when held by a FCM or DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the FCM or DCO so that the FCM or DCO is shown as the relevant holder in the register for such securities (that is, not held by the FCM or DCO indirectly with an Intermediary);

(iii) directly held dematerialized debt securities: by this we mean debt securities issued in dematerialized form and, when held by a FCM or DCO as Collateral under a Covered Base Agreement and CDA, held directly in this form by the FCM or DCO so that the FCM or DCO is shown as the relevant holder in the electronic register for such securities (that is, not held by the FCM or DCO indirectly with an Intermediary);

(iv) intermediated debt securities: by this we mean a form of interest in debt securities recorded in fungible book entry form in an account maintained by a financial intermediary (which could be a central securities depositary ("CSD") or a custodian, nominee or other form of financial intermediary, in each case an "Intermediary") in the name of the FCM or DCO where such interest has been credited to the account of the FCM or DCO in connection with a transfer of Collateral by the customer to the FCM under a Covered Base Agreement and CDA.

The precise nature of the rights of the FCM in relation to its interest in intermediated debt securities and as against its Intermediary will be determined, among other things, by the law of the agreement between the FCM and its Intermediary relating to its account with the

Intermediary, as well as the law generally applicable to the Intermediary, and possibly by other considerations arising under the general law or the rules of private international law of your jurisdiction. The FCM's Intermediary may itself hold its interest in the relevant debt securities indirectly with another Intermediary or directly in one of the three forms mentioned in (i), (ii) and (iii). In practice, there is likely to be a number of tiers of Intermediaries between the FCM and the issuer of such securities, at least one of which will be an Intermediary that is a national or international CSD.

Our expectation is that the FCM will normally hold debt securities in the form of intermediated debt securities rather than directly in one of the three forms mentioned in (i), (ii) and (iii).

(c) Due to regulatory requirements, posted Collateral will be held by intermediaries in a way that identifies the Collateral as belonging to customers of the FCM. For example, if the Collateral is held by the FCM or an intermediary of the FCM, that account will show that it is held for customers generally and the FCM's books will show that such Collateral is held for the individual customer. If posted Collateral is held by the DCO or an intermediary of the DCO, that account will show that it is held for customers generally and, if such Collateral constitutes Cleared Derivatives Credit Support, the DCO's books will show that the Collateral is held for the individual customer.

(d) Please assume that cash Collateral is denominated in a freely convertible currency and is held in an account under the control of the FCM or DCO.

(e) U.S. regulatory requirements impose a duty to segregate customer funds and thereby establish a specific statutory trust over Collateral (including cash Collateral) held by the FCM for the benefit of all its customers (together with the Futures Payment Rights and the Cleared Derivatives Payment Rights, the "**Trust Assets**"). Because it is not possible to trace any particular funds in the commingled segregated account to any particular customer, a customer of an FCM does not have an interest in any particular asset held in segregation, but rather has a fractional interest in the total assets held in segregation.

(f) As the FCM is the sole counterparty to the contract made on the customer's behalf with a DCO, it holds legal title to the Futures Transactions and Cleared Derivatives Transactions credited to such customer's account on behalf of the customer. The FCM holds these transactions on an "agent-trust" for the benefit of each customer. Each customer will, accordingly, have a beneficial interest in the "agent-trust" over the Futures Transactions and Cleared Derivatives Transactions credited to its specific customer account. Each "agent-trust" held by the FCM for a customer will be distinct from all other "agent-trusts" held by the FCM for the benefit of its other customers.

(g) The terms of the statutory trust over the segregated funds and each "agent-trust" permit the FCM to deal with the trust property in accordance with relevant legislation and as provided (or implied) in the customer agreement and entitle the FCM to reimburse itself out of the property for costs and expenses properly incurred in the performance of its agency (in each case, subject to certain statutory limitations). In particular, the FCM is permitted to use the customer funds credited to a customer's account to margin, guarantee, secure, transfer, adjust or settle the customer's transactions, including to pay commissions, brokerage, interest, taxes, storage and other charges relating to the customer's transactions.

(h) A customer's beneficial interest in the statutory trust (which is common to all customers) and its beneficial interest in the "agent-trust" (which is specific to such customer) is not an interest in any specific asset that constitutes the statutory trust or the "agent-trust" but rather is a beneficial interest in the relevant trust property as a whole (the "**Trust Beneficial Interest**").

(i) The customer also grants a security interest over its Trust Beneficial Interest to the FCM. This amounts to creating security over the customer's 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 (i.e. the Trust Beneficial Interest) (the "**Trust Security Interest**") as opposed to creating security over the Trust Assets themselves.

(j) In the case of questions 8 to 10 and 18 in Part C below, if relevant, please also assume that after entering into the Covered Transactions and prior to the maturity thereof, an Event of Default exists and is continuing with respect to the customer (which is located in your jurisdiction), and/or the FCM has designated a date to begin exercising its Futures Liquidation Rights or Cleared Derivatives Liquidation Rights (a "**Liquidation Date**") as a result thereof (however, an insolvency proceeding has not been instituted, which is addressed separately in assumption (k) and questions 11 to 13 below).

(k) In the case of questions 11 to 13 in Part C below, if relevant, please assume that a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "**insolvency**") has been instituted by or against the customer (which is located in your jurisdiction) and an Event of Default has accordingly occurred under the Covered Base Agreement and CDA. If there are different types of insolvency proceedings under the laws of your jurisdiction (for example, bankruptcy or liquidation proceedings where an entity does not emerge as a going concern, on the one hand, and a reorganization or administration proceeding where an entity is restructured and does continue as a going concern, on the other hand), please briefly describe the different types of proceedings and answer each question with respect to each such proceeding.

B. Issues – Consequences of Security Interest

Consequences of creating a security interest in your jurisdiction

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 as set out in assumption A.(i) above or, alternatively, as creating a security interest directly over the Trust Assets themselves in the form of a Collateral Security Interest as described immediately before question 13 below?

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?

Subject to the paragraph below, the provisions and questions that follow only need to be considered and addressed if your response to question 10 in Section I.B above was to confirm 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, but dependent upon recourse to or enforcement of the Trust Security Interest or any Collateral Security Interest. If there is no dependency upon a security interest, please ignore the remainder of this instruction letter.

If your response to question 1 in Section II.B above was to confirm that a security interest would be created directly over the Trust Assets themselves (rather than the Trust Beneficial Interest), please respond to questions 14 to 20 (inclusive) below.

C. Issues – Trust Security Interest

Please note the following point regarding substitution of collateral. We understand that Covered Base Agreements typically provide that, following termination of a position by a customer, a FCM is under no obligation to return the same assets (e.g. a security with the same ISIN/CUSIP number) posted by the customer, but the FCM will endeavor to provide equivalent assets, if practicable. For example, if the customer posted 5-year treasuries, the FCM would endeavor to return 5-year treasuries if practicable, but not necessarily the same ISIN/CUSIP. In some cases, the FCM might agree to a more stringent obligation to return equivalent assets, if practicable. However, it is not market practice for a Covered Base Agreement to provide for an unqualified obligation on a FCM to return the same asset (contrast this position with paragraph 4(d) of either the 1994 ISDA Credit Support Annex (Bilateral Form) or the 1995 ISDA Credit Support Deed (Bilateral Form – Security Interest)).

We also understand that, as a matter of market practice, FCMs often offer their customers the ability to manage the collateral posted by the customer, for example by allowing the customer to post 10-year treasuries and returning 5-year treasuries to the customer. However, this is purely a matter of market practice, not a right of the customer explicitly provided in the agreement.

As the Covered Base Agreements typically do not include a right to substitute collateral, this letter does not include a question regarding the effect of substitution rights on the validity, continuity, perfection or priority of the Trust Security Interest and the Collateral Security Interest, each as defined below (in contrast with opinions obtained by ISDA on the two credit support documents referenced above). However, please let us know if you think the market practice described above raises any questions that should be addressed in the opinion.

Validity of Trust Security Interest

1. Under the laws of your jurisdiction, what law governs the operation of the Trust Security Interest? Would the courts 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 CDA?

2. Under the laws of your jurisdiction, what law governs the proprietary aspects of the Trust Security Interest (that is, the formalities required to protect the Trust Security Interest against competing claims) granted by the customer (for example, the law of the jurisdiction of incorporation or organization of the customer, the jurisdiction where the Collateral is Located, or the jurisdiction of location of the FCM or DCO's Intermediary in relation to Collateral in the form of indirectly held securities)? What factors would be relevant to this question? Where the location (or deemed Location) of the 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 Collateral. If relevant, please describe how the laws of your jurisdiction apply to each form in which securities Collateral may be held as described in assumption (b) above.

3. Assuming that the courts of your jurisdiction would recognize the Trust Security Interest, 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? If so, please indicate what actions must be taken and how such actions may differ, if at all, depending upon the type of Collateral which is subject to the Trust Security Interest.

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

5. Assuming that the FCM has obtained a valid and perfected Trust 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 4 above, as applicable, will the FCM or the customer need to take any action thereafter to ensure that the Trust Security Interest continues and/or remains perfected, particularly with respect to additional Collateral transferred from time to time when required pursuant to the Covered Base Agreement and CDA?

6. Are there any particular duties, obligations or limitations imposed on the FCM in relation to the care of the Collateral held by it pursuant to the Trust Security Interest?

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.

Do the laws of your jurisdiction recognize the right of the FCM or DCO so to use such Collateral pursuant to an agreement with the customer? In particular, how does such use of the Collateral affect, if at all, the validity, continuity, perfection or priority of the Trust 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 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.

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

Note the additional assumption in II.B.(j) above which applies to questions 8 to 10 below.

8. Assuming that the FCM has obtained a valid and perfected Trust 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 4 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the customer or any other person) or other procedures, if any, that the FCM must observe or undertake in exercising its Enforcement Liquidation Rights (including the operation of the Determination of Account) as an FCM under each Covered Base Agreement and CDA? For example, is it free to sell the Collateral (including to itself) and apply the proceeds to satisfy the customer's outstanding obligations under the Covered Base Agreement and CDA? Do such formalities or procedures differ depending on the type of Collateral involved?

9. 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 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?

10. How would your response to questions 8 and 9 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 (for example, would this affect this ability of the FCM to exercise its Enforcement Liquidation Rights or the operation of the Determination of Account)?

Exercise of Enforcement Liquidation Rights by the FCM after the Commencement of an Insolvency Proceeding

Note the additional assumption in II.B.(k) above which applies to questions 11 to 13 below.

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

12. Would the FCM's right to Exercise its Enforcement Liquidation Rights (including the operation of the Determination of Account) be subject to any stay 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 above, if at all)?

13. Will the customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Collateral 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" (however called and whether or not fraudulent) in favor 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 of one or more Covered Transactions) during the suspect period be subject to avoidance, either because the Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?

Collateral Security Interest - Assumptions

Please assume the same facts and assumptions as set forth in Parts I and II above (as applicable) with the following modification:

The security interest granted by the customer to the FCM is over the Trust Assets themselves (i.e. a security interest is created directly over the assets that constitute the Collateral) rather than the Trust Beneficial Interest (the "**Collateral Security Interest**).

14. How would your response to questions 1 to 13 change, if at all, assuming that the security interest created by the customer is a Collateral Security Interest as opposed to a Trust Security Interest? In responding to this question please consider the different Fact Patterns set out above.

15. Would the courts of your jurisdiction recognize the Collateral Security Interest over each type of Collateral as described in assumption (b) above? Please indicate, in relation to cash Collateral, if your answer depends on the location of the account in which the relevant obligations are recorded and/or upon the currency of those obligations.

16. What is the effect, if any, under the laws of your jurisdiction of the fact that the amount secured or the amount of Collateral subject to the Collateral Security Interest will fluctuate under the Covered Base Agreement and CDA (including as a result of entering into additional Covered Transactions from time to time)? In particular:

(a) would the Collateral Security Interest be valid in relation to future obligations of the customer?

(b) would the Collateral Security Interest be valid in relation to future Collateral (that is, Collateral not yet delivered to the FCM at the time of entry into the relevant Covered Base Agreement and CDA)?

(c) is there any difficulty with the concept of creating the Collateral Security Interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Covered Base Agreement and CDA the specific assets transferred by the customer to the FCM?

(d) is it necessary under the laws of your jurisdiction for the amount secured by the Collateral 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 Collateral in excess of its actual exposure to the customer under the related Covered Base Agreement and CDA?

In relation to (a), it is understood that the Collateral Security Interest over any specific 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 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 Collateral 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 Collateral Security Interest over the Collateral to be delivered at some point in the future after the time of entry into the relevant Covered Base Agreement and CDA would not take effect in relation to such Collateral until the Collateral had been delivered to the FCM in accordance with the Covered Base Agreement and CDA. 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

Collateral Security Interest in relation to such Collateral or whether the Collateral Security Interest would take effect in relation to such Collateral 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 Collateral under the Covered Base Agreement and CDA 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.

17. Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of the Collateral Security Interest (for example, because Collateral is located or deemed to be located outside your jurisdiction) and (b) the FCM has obtained a valid and perfected Collateral Security Interest under the laws of such other jurisdiction, will the FCM have a valid Collateral Security Interest so far as the laws of your jurisdiction are concerned? Is any action (filing, registration, notification, stamping or notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required under the laws of your jurisdiction to establish, perfect, continue or enforce the Collateral Security Interest? Are there any other requirements of the type referred to in question 4 above (in relation to a Collateral Security Interest rather a Trust Security Interest)?

Note the additional assumption in II.B.(h) above which applies to question 18 below.

18. Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of the Collateral Security Interest (for example, because such Collateral is located or deemed located outside your jurisdiction) and (b) the FCM has obtained a valid and perfected Collateral 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 exercising its Enforcement Liquidation Rights (including the operation of the Determination of Account)?

Additional considerations

19. Are there any other local law considerations that you would recommend the FCM to consider in connection with exercising the Enforcement Liquidation Rights (including the operation of the Determination of Account)?

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

We would ask that you set forth each question in Sections I.B, II.B and, if relevant, II.C of this letter in italics in your opinion, followed by your response to that question.

Yours faithfully,

[INSERT NAME]

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.

CERTAIN COUNTERPARTY TYPES[1]

Description	**Covered by opinion**	**Legal form(s)**[2]
Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking 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**)).	[Yes][No]	
Central Bank. 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).		

[1] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

[2] If appropriate, please indicate, as discussed in the instruction letter, any naming convention or rule that would help a reader of the opinion to identify and classify the entity.

Description	Covered by opinion	Legal form(s)[2]
Corporation. 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 Appendix B.		
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which 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.		
Insurance Company. 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.		
International Organization. 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.		

Description	Covered by opinion	Legal form(s)[2]
Investment Firm/Broker Dealer. 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.		
Investment Fund. 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 of the assets comprised in the arrangement.		

Description	Covered by opinion	Legal form(s)[2]
Local Authority. 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.		
Partnership. 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).		
Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a 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.		
Sovereign. 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		

Description	Covered by opinion	Legal form(s)[2]
not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").		
Sovereign Wealth Fund. 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.		
Sovereign-Owned Entity. 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").		
State of a Federal Sovereign. 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.		