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**INTERNATIONAL SWAPS AND DERIVATIVES
ASSOCIATION, INC.**

FUTURES INDUSTRY ASSOCIATION

Opinion on the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey.



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30 October 2025

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Dear Sirs

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey (the Customer) and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

1 Introduction

We have acted as Jersey legal advisers to ISDA and the FIA and have been requested under a letter dated as of June 2025 (the **Instruction Letter**) by ISDA (on behalf of itself and the FIA) to provide a legal opinion as to the law of the Island of Jersey (**Jersey**) on the following:

- (a) the enforceability of the Position Liquidation, Margin Liquidation and Determination of Account provisions (collectively, the **remedial provisions**) of certain Covered Base Agreements (as defined in paragraph 6 below), entered into by an entity that is registered with the United States Commodity Futures Trading Commission (the **CFTC**) as a futures commission merchant (**FCM**) and is a member of one or more CFTC-registered derivatives clearing organisations 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 and to determine amounts owing with respect thereto,

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to exercise remedies in respect of Futures Payment Rights (as defined below) and the proceeds thereof with respect to obligations arising from Futures Transactions and to 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;

- (b) the enforceability of the liquidation and credit support provisions of an addendum for Cleared Derivatives Transactions, as described in paragraph 6 below, in the form published by ISDA and FIA in 2012 or 2018 (each a **CDA**), 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 relevant CDA, to liquidate such transactions, to determine amounts owing with respect thereto, to 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 to 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; and
- (c) recognition under Jersey law of (i) the agent-trust (as described in paragraph 6 below) under which the Futures Transaction and Cleared Derivatives Transactions are held by the FCM for the benefit of the customer and (ii) the statutory trust (as described in paragraph 6 below) under which certain customer funds are held by the FCM for the benefit of the customer ((i) and (ii) together, the **Trusts**) as well as the determination of the aggregate net balance of account as between the FCM and the customer.

In connection with this legal opinion, we have reviewed the Linklaters LLP high-level overview and summary of the Sullivan & Cromwell LLP memorandum entitled "Analysis of the Relationships Among Customers, FCMs and DCOs Under the U.S. Agency Clearing Model" dated 17 November 2021 (the **S&C Memo**) and certain liquidation provisions under a Futures and Options Agreement and a Cleared Derivatives Addendum (the **Linklaters Summary**).

2 Definitions and Interpretation

- 2.1 Our opinions are provided on the basis of, and should be read together with, the assumptions, qualifications and limitations contained in this Opinion (including its Schedules).
- 2.2 Unless the context requires otherwise, capitalised terms shall have the meanings given to them in Schedule 10.
- 2.3 References to **Covered Transactions** are to transactions of the type described in Schedule 1 and entered into pursuant to a Covered Base Agreement and CDA.

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3 Scope of Opinion

3.1 This Opinion is given only in respect of Jersey Parties, which consist of Jersey Company Parties, Jersey Insurance Companies, Jersey Banks and Foreign Banks acting through their Jersey Branch (each term as defined in Schedule 10). For the avoidance of doubt, this Opinion does not extend to any type of entity or person save those expressly referred to above. In particular, and without limiting the generality of the foregoing, this Opinion is not given in respect of:

- (a) any entities carrying on insurance business or general insurance mediation business other than Jersey Insurance Companies;
- (b) building societies or friendly societies;
- (c) investment funds, pension funds or hedge funds;
- (d) trusts or unit trusts;
- (e) partnerships (whether general, limited or limited liability);
- (f) Protected Cell Companies or Protected Cells, but is given in respect of Incorporated Cell Companies and Incorporated Cells; or
- (g) any private individuals, legal entities, foundations, sovereign-related entities, public or private bodies or organisations other than Jersey Parties.

3.2 The scope of this Opinion is limited to the questions set out herein and the responses thereto and does not extend to any matter not expressly covered in this Opinion.

4 Notes on Applicable Law

Our understanding is that, pursuant to New York law, the relevant governing law under the Covered Base Agreements and CDA, a customer grants a security interest over its Trust Beneficial Interest (as defined, and as further described, in paragraph 8.1(r) below).

The primary Jersey legislation governing the taking of security over intangible movable property is the Security Interests Law. This is relevant, in particular, where the Collateral is Jersey situs.

5 Fact Patterns

For the purposes of this Opinion, we assume the following three fact patterns:

- (a) the Location of the customer is in Jersey and the Location of the Collateral (as defined in paragraph 8.1(d)) is outside Jersey;

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- (b) the Location of the customer is in Jersey and the Location of the Collateral is in Jersey; and
- (c) the Location of the customer is outside Jersey and the Location of the Collateral is in Jersey.

For the foregoing purposes:

- (i) the "Location" of the customer is in Jersey if it is incorporated or otherwise organised under the laws of Jersey and/or if it has a branch or other place of business in Jersey; and
- (ii) the "Location" of the Collateral is the place where an asset of that type is located under the choice of law rules of Jersey (see below relating to situs of Collateral and Schedule 7).
- (iii) "Located" when used below in relation to a customer or any Collateral should be construed accordingly.

6 Covered Base Agreements and CDAs

We assume, on the basis of the Instruction Letter, the following factual background in relation to Covered Base Agreements and CDAs:

6.1 Covered Base Agreements

- (a) If a Customer clears only Futures, the Covered Agreement will consist of a customer account agreement (the **Base Account Agreement**). If the Customer clears only Cleared Swaps or both Futures and Cleared Swaps, the Covered Agreement will consist of a Base Account Agreement and a Cleared Derivatives Addendum substantially in the form published by FIA and ISDA in 2012 or 2018 (the **CDA**).
- (b) The FCM and Customer enter into a Covered Agreement (consisting of a Base Account Agreement and CDA) (a **Covered Base Agreement**) pursuant to which the FCM maintains one or more accounts in the name of the Customer on the FCM's books and records and the Customer authorised the FCM, to execute, clear and carry U.S. Futures, Cleared Swaps and/or Foreign Futures on behalf of the Customer (individually or collectively, the **Customer Account** or the **Account**).
- (c) Each of the Base Account Agreement and the CDA is governed by New York law.
- (d) On the basis of the terms and conditions of the Covered Base Agreement and other relevant factors and acting in a manner consistent with the intentions stated in the Covered Based Agreement, over time, the open positions are established for the Customer in Covered Transactions that are cleared and carried in or credited to the Customer Account.

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- (e) Some of the Covered Transactions cleared for the Customer provide for an exchange of cash and others provide for the physical delivery of shares, bonds or commodities in exchange for cash.
- (f) After commencing clearing and whilst the Customer has open positions in Covered Transactions, the Customer, which is incorporated or established under the laws of Jersey, becomes the subject of the Jersey Insolvency Procedures under the laws of Jersey and, as a result, an Event of Default occurs under each of the Base Agreement and the CDA.
- (g) Subsequent to the commencement of insolvency proceedings, either the Customer or an insolvency official seeks to challenge or otherwise prevent Position Liquidation, Margin Liquidation or a Determination of Account (by, for example, seeking to assume the profitable open positions, and to reject unprofitable open positions, in Covered Contracts cleared for the Customer).
- (h) 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 organisation (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.
- (i) 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 beneficial interests in the following property, whether at the time of the grant or thereafter existing and the proceeds of those rights:
 - (i) Futures Credit Support, including:
 - (A) 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

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Futures Transactions by or for the FCM, the DCO or any agent acting for the FCM, the DCO or the customer;

- (B) 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
- (j) Futures Payment Rights, including:
 - (A) with respect to U.S. Futures and Options, its Futures Transaction and all rights to payment thereunder (whether constituting obligations of the FCM or a DCO);
 - (B) 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).
- (k) The security interest secures all obligations of the customer to the FCM under the Covered Base Agreement. It may also secure liabilities of the customer to the FCM other than under the customer agreement.
- (l) The FCM's relationship with the DCO in relation to the Futures 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 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 rights or claims against the DCO. The FCM acts in the capacity as "agent-trustee" of the customer. 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 Futures Transactions credited to the relevant Account. The customer is the beneficial owner (i.e. the owner in equity) of the Futures Transactions credited to the relevant Account. Therefore, the Futures Transactions are held on a type of trust (an **agent-trust**) for each customer by the FCM and each customer has a beneficial interest in the agent-trust over the Futures Transactions credited to the relevant Account.
- (m) Under the CEA and related CFTC regulations (together, the **Segregation Rules**), the assets described in paragraph 6.1(i)(i) above under the heading "Covered Base Agreements" must be treated as "belonging to such customer". The Segregation Rules impose a duty to segregate such assets (as well as certain funds contributed by the FCM in order to protect against becoming under-segregated by failing to hold a sufficient amount of funds to meet the Segregation Rules) and thereby establish a specific statutory trust (**statutory trust**) over all such assets held by the FCM for

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the benefit of its customers (and to the extent of its residual interest, for its own benefit).

- (n) Each of the agent-trust and statutory trust is distinct from a common law trust. An agent-trustee is an agent that has title to property that it holds on trust for the benefit, and subject to the control, of the customer. Notwithstanding the agent-trust relationship, the FCM retains a contractual right under the Covered Base Agreement or CDA, under certain specified circumstances (including certain non-default scenarios), to liquidate the transactions in its capacity as a contractual counterparty. The duties of the FCM under the statutory trust are determined by the Segregation Rules.
- (o) 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.
- (p) The 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 of all Future Payment Rights and Futures Credit Support, as further described in the clause headed "Liquidation Rights" below. 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 property incurred in the performance of its agency.
- (q) Pursuant to the terms of a Covered Base Agreement, following the exercise of its rights in limb 6.1(o) above, 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. The FCM may also liquidate any non-cash margin 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.
- (r) The FCM then determines an aggregate net amount payable in connection with the liquidation or deemed liquidation (if applicable) of the Futures Transactions, being the final net liquidating equity of the Account. The determination of a customer's net liquidating equity in its Account is a form of determination of account by the FCM

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of the overall position between the FCM under the statutory trust in accordance with the Covered Base Agreement. This represents a determination 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 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.

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.

6.2 The CDA

- (a) 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 in sub-paragraph 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.
- (b) Each CDA is governed by New York law.
- (c) 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 beneficial interests in the following

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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 DCO) and the customer's rights, if any, in all cash received by the FCM and all rights to payment in favour 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**).
- (d) The FCM's relationship with the DCO in relation to the Cleared Derivatives 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 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 rights or claims against the DCO. The FCM acts in the capacity as "agent-trustee" of the customer. 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 Cleared Derivatives Transactions credited to the relevant Account. The customer is the beneficial owner (i.e. the owner in equity) of the Cleared Derivatives Transactions credited to the relevant Account. Therefore, the Cleared Derivatives Transactions are held on a type of trust (an **agent-trust**) for each customer by the FCM and each customer has a beneficial interest in the agent-trust over the Cleared Derivatives Transactions credited to the relevant Account.
- (e) Under the Segregation Rules, the assets described in paragraph 6.2(c)(A) above under the heading "The CDA" must be treated as "belonging to such customer". The Segregation Rules impose a duty to segregate such assets (as well as certain funds contributed by the FCM in order to protect against becoming under-segregated by failing to hold a sufficient amount of funds to meet the Segregation Rules) and thereby establish a specific statutory trust (**statutory trust**) over all such assets held by the FCM for the benefit of its customers (and to the extent of its residual interest, for its own benefit).
- (f) As with the Covered Base Agreements, each of the agent-trust and statutory trust is distinct from a common law trust.

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- (g) 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 further described in the clause headed "Liquidation Rights" below (such rights, the **Cleared Derivatives Liquidation Rights** and, together with the Futures Liquidation Rights, the **Liquidation Rights**).
- (h) The FCM is also entitled to dispose of or realise 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.
- (i) 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, 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.

The "FIA-ISDA Cleared Derivatives Addendum" in the forms published jointly by the FIA and ISDA in 2012 and 2018 satisfy the above requirements.

A CDA that does not alone satisfy the above requirements is nevertheless a "CDA" to the extent it is paired with a Covered Base Agreement that supplies any of the otherwise unsatisfied requirements. In addition, a single document that satisfies the above requirements for a Covered Base Agreement and a CDA is both a "Covered Base Agreement" and a "CDA."

6.3 **Liquidation Rights**

- (a) The Covered Base Agreement typically provides that upon the occurrence of an Event of Default, the FCM has the right to, among other things, (1) close out or otherwise liquidate the Customer's open positions in its Contracts, and hedge risk incurred by the FCM in connection with such Event of Default, by any reasonable method, including by means of entering into offsetting transactions, risk-reducing transactions or hedging transactions, and by valuing any transactions entered into by the FCM (**Position Liquidation**), (2) treat the Customer's obligations to the FCM to be due and immediately payable and net or set off any obligations of the Customer to the FCM with or against any obligations of the FCM to the Customer and (3) sell, liquidate or otherwise dispose of the Customer's Collateral consisting of securities and other non-cash assets and apply the proceeds therefrom to, or net

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or set off the value of such proceeds with or against, any amounts due from the Customer to the FCM (**Margin Liquidation**).

- (b) A summary of the operation and legal basis by which an FCM exercises its Liquidation Rights is set out in further detail in the Linklaters Summary and, in particular, under paragraphs 2.1 to 2.10 thereof.

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PART 1. RECOGNITION AND OPERATION OF THE US TRUSTS AND EXERCISE OF THE LIQUIDATION RIGHTS

7 Recognition and Operation of the US Trusts and Exercise of the Liquidation Rights

In this Opinion, we have made the following assumptions, on the basis of the Instruction Letter.

7.1 Assumptions

- (a) 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 Schedule 1.
- (b) 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
- (c) After entering into these Covered Transactions and prior to the maturity thereof, the customer, which is incorporated or established in Jersey, becomes the subject of a voluntary or involuntary case under the Jersey Insolvency Procedures and, subsequent to the commencement of the insolvency, either the customer or an insolvency official seeks to assume the profitable Covered Transactions for the customer and reject 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.

7.2 Issues and Analysis

Issue 1: Governing Law/Submission to Jurisdiction.

- (a) *Would the parties' agreement on governing law and submission to jurisdiction set out in each of the Base Account Agreement and CDA be upheld in Jersey, and what would be the consequences if they were not?*

The Parties agreement on the governing law and submission to jurisdiction set out in each of the Base Account Agreement and CDA would be recognised in Jersey; provided that the choice of New York law to govern such agreements was *bona fide* and not made with any intention to evade the laws of the jurisdiction with which the Covered Transactions under such Base Account Agreement and CDA have the closest and most real connection.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

Jersey *situs* Collateral

If the Collateral is Jersey *situs* Collateral, it is possible that the Jersey Courts would not view the choice of New York law as the governing law of the security interest created under the Covered Base Agreement and CDA, as being *bona fide* and legal (see our comments on *Re Nield* and Article 4 of the Security Interests Law in Schedule 7). The potential consequences are that security over Jersey *situs* Collateral purported to be created by the Covered Base Agreement and CDA would not be valid under Jersey law.

Non-Jersey *situs* Collateral

The issue would be subject to the law of the relevant jurisdiction where the Collateral is situated and New York law as the governing law of the Covered Base Agreement and CDA.

Issue 2: Liquidation Rights.

- (b) *Would the Position Liquidation provisions of each of the Base Account Agreement and the CDA be enforceable under Jersey law and each of the Position Liquidation methods described in Section XI of the S&C Memo and paragraph 2.5 of the Summary Annex be recognised and upheld in Jersey? If a Position Liquidation particular method would either not be upheld or could be challenged, please provide further detail and explain the reason for this. Are there any circumstances under Jersey law, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, that might affect the FCM's ability to exercise Position Liquidation?*

We are of the opinion that if the Position Liquidation provisions would be recognised and upheld as a matter of New York law under the relevant Covered Base Agreement or CDA (as applicable), then such provisions would be recognised and upheld as a matter of Jersey law.

In support of this opinion, Jersey law generally recognises the freedom of parties to bind themselves contractually. This is expressed in the Jersey law maxim "*la convention fait la loi des parties*". Further, it is common for loan documents to include provisions stating that the insolvency of a Jersey party will constitute an Event of Default allowing the non-defaulting party to terminate the agreement and/or enforce its security (and there is no suggestion from Jersey statutory provisions or case law that such provisions would be unenforceable). Also, the enforceability of close-out netting provisions (which contemplate termination of the transactions) is expressly recognised under the Netting Law.

We have assumed for the purposes of this opinion that the FCM may act in its capacity as the customer's agent or pursuant to a power of attorney granted by the customer. In our view, as the Covered Base Agreement and CDA are governed by

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

New York law, it would primarily be a question of New York law whether such appointment of the FCM should be categorised as an agency or a power of attorney (and the Jersey Courts would find such categorisation under New York law highly persuasive).

Subject to the following comments and the terms of the relevant contract, it is our view that the FCM's agency would not automatically be revoked upon the commencement of insolvency proceedings for the customer and the FCM's authority would not otherwise be affected by any prohibition on the customer's entry into new transactions following the commencement of insolvency proceedings. However, any power of attorney granted by the customer (other than a security power of attorney as referred to in paragraph (1)(b) below) would automatically be revoked upon the commencement of insolvency proceedings for the customer due to the following Jersey statutory provisions:

- (i) under the Powers of Attorney (Jersey) Law 1995:
 - (A) subject to paragraph (b) below, a power of attorney is revoked by the bankruptcy or dissolution of the donor (where the donor is a body corporate);
 - (B) where a power of attorney is expressed to be irrevocable and is given (i) for the purpose of facilitating the exercise of powers of a secured party under the Security Interests Law, or (ii) pursuant to or in connection with or for the purposes of or ancillary to security governed by a law other than Jersey law (e.g. a foreign law security agreement), then such power of attorney shall not be revoked by the bankruptcy or dissolution of the donor; and
 - (C) in addition to a security power of attorney as referred to in paragraph (b) above, a power of attorney may be expressed to be incapable of revocation by the donor for any period not exceeding one year from the date on which it is granted or the date on which it comes into effect, whichever is the later; and
- (ii) please see Schedule 6 for a general summary of Jersey's insolvency regime which may apply to Jersey Parties, including transactions and onerous property/contracts which may be reviewed and potentially challenged by a Jersey insolvency official. Jersey law provides for certain circumstances where transactions and onerous property/contracts may be voidable and/or set aside by application to the Royal Court or at the discretion of the Viscount or liquidator, as applicable, as more fully set in paragraph 3 of Schedule 6.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

As regards an insolvency moratorium, it should be noted that on a declaration of *désastre*, under Article 10(1) and (2) of the *Désastre* Law, with effect from the date of the declaration, no creditor to whom the debtor is indebted in respect of any debt provable in the *désastre* shall have any remedy against the property or person of the debtor in respect of the debt nor shall any creditor commence or continue any action or legal proceedings to recover the debt, except with the consent of the Viscount or the Jersey Court (on such terms as the Viscount or the Jersey Court think fit). (Similar provisions under the Companies Law apply in a creditors' winding up where a liquidator would be appointed.) However, these statutory provisions do not amount to a moratorium on exercise of contractual netting provisions under the Netting Law (please see Schedule 5 for further information).

Issue 3: Recharacterisation of a Trust.

- (c) *Would the Margin Liquidation provisions of each of the Base Account Agreement and CDA be enforceable under the laws of your jurisdiction and the FCM's Margin Liquidation in respect of each Account Class be recognised and upheld in Jersey? Are there any circumstances under Jersey law, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, that might affect the FCM's ability to exercise Margin Liquidation?*

Provided that the Margin Liquidation provisions of each of the Base Account Agreement and CDA are enforceable under New York law and the FCM's Margin Liquidation in respect of each Account Class is recognised and upheld under New York law, then such provisions would be recognised and upheld as a matter of Jersey law.

As regards an insolvency moratorium, it should be noted that on a declaration of *désastre*, under Article 10(1) and (2) of the *Désastre* Law, with effect from the date of the declaration, no creditor to whom the debtor is indebted in respect of any debt provable in the *désastre* shall have any remedy against the property or person of the debtor in respect of the debt nor shall any creditor commence or continue any action or legal proceedings to recover the debt, except with the consent of the Viscount or the Jersey Court (on such terms as the Viscount or the Jersey Court think fit). (Similar provisions under the Companies Law apply in a creditors' winding up where a liquidator would be appointed.) However, these statutory provisions do not amount to a moratorium on exercise of contractual netting provisions under the Netting Law (please see Schedule 5 for further information).

- (d) *Would the Determination of Account provisions of each of the Based Account Agreement and CDA be enforceable under Jersey law and the FCM's Determination of Account in respect of (a) each Account Class and (b) all Account Classes on a combined basis be recognised and upheld in Jersey?*

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

Provided that such Determination of Account provisions are enforceable under New York law, then such provisions would be recognised and upheld as a matter of Jersey law.

Issue 4: Other Circumstances.

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

Save as set out in this Opinion, we cannot foresee any other circumstances that might affect the FCM's ability to exercise a Determination of Account in respect of an Account Class or the overall Customer Account (comprising the three Account Classes) in Jersey.

As regards an insolvency moratorium, it should be noted that on a declaration of *désastre*, under Article 10(1) and (2) of the *Désastre Law*, with effect from the date of the declaration, no creditor to whom the debtor is indebted in respect of any debt provable in the *désastre* shall have any remedy against the property or person of the debtor in respect of the debt nor shall any creditor commence or continue any action or legal proceedings to recover the debt, except with the consent of the Viscount or the Jersey Court (on such terms as the Viscount or the Jersey Court think fit). (Similar provisions under the Companies Law apply in a creditors' winding up where a liquidator would be appointed.) However, these statutory provisions do not amount to a moratorium on exercise of contractual netting provisions under the Netting Law.

Issue 5: Currency.

- (f) *Assuming the parties have entered into a Covered Base Agreement and CDA, an Event of Default has occurred with respect to the Customer 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 organised:*
- (i) *outside the context of insolvency proceedings, would a court in Jersey enforce a claim for the net termination amount in the currency in which it was determined?*
- (ii) *can a claim for the net termination amount be proved (i.e., filed) in insolvency proceedings in Jersey without conversion into the local currency?*

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

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.

- (i) Outside the context of insolvency proceedings, yes, a claim for the net termination amount in the currency in which it was determined other than the currency of Jersey would be enforceable under Jersey law.
- (ii) A claim for the net termination amount could generally be proved (i.e., filed) in insolvency proceedings in Jersey in the Termination Currency without conversion into the local currency (unless otherwise prescribed by the Jersey Court or the Viscount), however please note that under the Bankruptcy (Désastre) Rules 2006 any claim and evidence in support of a claim to be filed in Jersey insolvency proceedings would need to be in the form prescribed by the Viscount or liquidator at the time (and this form may require the sterling equivalent of a claim to be stated, if the claim is for an amount in another Termination Currency).

Issue 6: Other Local Law Considerations.

- (g) *Are there any other local law considerations that you would recommend the FCM to consider in connection with the exercise of the exercise of Position Liquidation, Margin Liquidation or a Determination of Account?*

Please see Schedule 6 of this Opinion for a summary of Jersey insolvency procedures. Save as set out in this Opinion, we are not aware of any other local law considerations that we would recommend to the FCM to consider in connection with exercise of exercise of Position Liquidation, Margin Liquidation or a Determination of Account.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

PART 2. Validity, Perfection and Enforcement of the FCM's Security Interest in Customers Rights and Interests in Respect of Collateral

8 Validity of the Security Interest: Creation and Perfection

8.1 Assumptions

In this section of the Opinion, we have made the following assumptions, on the basis of the Instruction Letter.

- (a) The customer has entered into a Covered Base Agreement and CDA with a FCM and the Parties have entered into a Covered Base Agreement and CDA governed by New York law.
- (b) Although the Covered Base Agreement and CDA are in bilateral form in that they contemplate that either Party may be required to post Collateral to the other depending on movements in exposure under the relevant Covered Base Agreement and CDA, we assume, for the sake of simplicity, that one Party only is the customer at all relevant times under the Covered Base Agreement and CDA.
- (c) The Covered Base Agreement and CDA are enforceable under the laws of New York and each Party has duly authorised, executed and delivered, and has the capacity to enter into each document.
- (d) Pursuant to the relevant Covered Base Agreement and CDA, the Parties agree that 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 Jersey, or (ii) outside Jersey (the **Collateral**), though as a matter of legal interpretation, given that the relevant assets 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 statutory trust or the agent-trust (as applicable).
- (e) Under the terms of the Covered Agreement, the Customer grants to the FCM a first-priority security interest in, lien on and right of set-off against, all the rights and interests of the Customer in respect of the following types of property, whether at the time of the grant or thereafter existing (**Collateral**): (1) the Customer Account (i.e., the account in the name of the Customer that is maintained by the FCM on its books and records), (2) the Covered Contracts carried in or credited to the Customer Account, (3) cash credited to or held in the Customer Account and (4) the types of securities identified below that are credited to the Customer Account and that are Located or deemed Located either (i) in Jersey or (ii) outside of Jersey.
- (f) When the Customer delivers cash margin to the FCM, the FCM credits the cash to the Customer Account (which is not a deposit account, but rather a securities

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

account, commodity account or hybrid securities/commodity account on the books and records of the FCM) and deposits the cash in one or more deposit accounts maintained in the name of the FCM with the FCM's settlement banks (which are banks or trust companies that satisfy CFTC requirements). Such deposit accounts are segregated omnibus accounts in which the cash delivered by the Customer is commingled with cash margin delivered to the FCM by its other customers in the same account class (as well as the FCM's own funds representing its residual interest, which is a buffer intended to ensure the FCM has segregated or set aside sufficient funds to cover the positive net liquidating equities of accounts of customers in the same account class). Such deposit accounts are titled under account names that clearly identify the cash therein as belonging to the FCM's customers in the applicable account class. The FCM's settlement banks maintaining such deposit accounts are permitted to comply with the FCM's withdrawal instructions without further inquiry as to their compliance with the Customer Property Rules (so long as the depositories does not have notice of or actual knowledge of a potential violation by the FCM), and the FCM's customers have no right to access the accounts.

- (g) Under the Customer Property Rules, the FCM is expressly permitted to use funds held in such deposit accounts to, among other things, margin or secure the obligations of the FCM to DCOs or Foreign Futures Broker in respect of Covered Contracts of the Customer and/or other customers in the applicable Account Class that are cleared through the DCOs or Foreign Futures Brokers. When cash is withdrawn from such deposit accounts and transferred to DCOs or Foreign Futures Brokers, the transferred cash is credited to omnibus customer margin accounts maintained by the DCOs or Foreign Futures Brokers on their books and records. Such accounts may not be accessed by customers of the FCM.
- (h) Under the Customer Property Rules related to permitted investments of customer funds (the **Permitted Investment Rules**), the FCM may invest (including by means of reverse repurchase transactions) Customer Funds consisting of cash in certain types of permitted investment specified by the CFTC. The FCM may retain as its own profits resulting from such permitted investments, but it is required to segregate them and it must bear (and not allocate to customers) any losses with respect to them.
- (i) Any securities provided by the Customer as Collateral are held in one of the following forms, denominated in either sterling or any freely convertible currency and consist of (i) corporate debt securities whether or not the issuer is organised or located in Jersey, (ii) debt securities issued by the States of Jersey, the governing body of Jersey, or another jurisdiction, (iii) debt securities issued multilateral development banks and international organisations, and (iv) equity securities whether or not the issuer is organised or located in Jersey:

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- (i) directly held bearer securities meaning 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 a DCO indirectly with an intermediary (as defined below));
 - (ii) directly held registered securities meaning securities issued in registered, certificated 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 dematerialised securities meaning securities issued in dematerialised (i.e. uncertificated) 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); or
 - (iv) intermediated securities meaning a form of interest in securities recorded in fungible book-entry form in an account maintained by a securities intermediary or custodian (which could be a central securities depository (**CSD**) or a custodian, nominee or other form of securities intermediary or custodian, 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.
- (j) The FCM will normally hold securities in the form of intermediated securities rather than directly in one of the three forms mentioned in (i)(i), (i)(ii) and (i)(iii) above.
 - (k) When the Customer delivers margin to the FCM in the form of intermediated securities, the Customer will cause its intermediary to transfer the securities to the FCM's intermediary, which will credit them to the securities account maintained by the intermediary for the FCM, and the FCM will credit the securities to the Customer Account. As the FCM and Customer typically agree in the Covered Agreement to treat the Customer Account as a "securities account" maintained for the Customer by the FCM as the Customer's "securities intermediary," the Customer will obtain "security entitlement(s)" to the securities when they are credited to the Customer Account (as each such term is defined under Article 8 of the UCC). The security interest granted by the Customer to the FCM is in such security entitlement(s).
 - (l) Under the Customer Property Rules, the FCM has significant flexibility to repledge, rehypothecate or otherwise dispose of customers' securities margin, subject in all

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

cases to compliance with the segregation and other requirements of the Customer Property Rules. For example, with the Customer's agreement, the FCM may repledge securities margin delivered by the Customer to a DCO to secure the FCM's obligations to the DCO in respect of contracts cleared through the DCO for the Customer and/or for other customers of the FCM in the same Account Class (for example, securities deposited with the FCM by the Customer may repledge such securities to DCOs that do not clear the Customer's Covered Contracts, so long as the contracts at the DCO secured by the securities are in the same Account Class as the Customer's Covered Contracts). Also, under the Permitted Investment Rules, with the Customer's agreement, the FCM may rehypothecate (including by means of securities repurchase agreements) the Customer's securities margin for cash and may retain for itself the profits resulting from such permitted investments (but the FCM must segregate the rehypothecation proceeds and must bear (and not allocate to any customers) any losses in respect thereof). Additionally, under the Customer Property Rules, if the FCM wishes to offset any net deficit in the Customer's Futures Account against the current market value of securities credited to the Account in its daily segregation computations, the FCM must have written authorization from the Customer to liquidate the securities in the FCM's discretion. You should assume that the Covered Agreement grants the FCM broad rights to repledge and rehypothecate the Customer's securities Collateral, subject to "applicable law" (which includes the Customer Property Rules), and to liquidate the securities in its discretion.

- (m) 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 such Collateral is held for customers generally and the FCM's books will show that the 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.
- (n) Cash Collateral is denominated in a freely convertible currency and is held in an account (as opposed to physical notes and coins) under the control of the FCM or DCO.
- (o) 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.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (p) 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.
- (q) 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.
- (r) 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**).
- (s) 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 (the **Trust Security Interest**) as opposed to creating security over the Trust Assets themselves.

8.2 Issues and Analysis

Issue 1: Law Governing the Creation of a Security Interest in Collateral.

- (a) *Under Jersey law, what law governs the contractual aspects of the security interest in the Customer's rights and interests in respect of the various types of Collateral? Would the courts of Jersey recognise the validity of a security interest created under the Covered Agreement, assuming it is valid under New York Law (as the governing law of the Covered Agreement)?*

Jersey law will generally recognise the parties' choice of law to govern a contract, provided that such choice is bona fide and not made with any intention to evade the laws of the jurisdiction with which the transaction has the closest and most real

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

connection. As regards choice of law and jurisdiction under the Covered Base Agreement and CDA, please see our response above, paragraph 7.2(a), Issue 1.

However, when determining the law that governs the security interest in the various forms of Covered Collateral, the Jersey Courts will refer to the *situs* of the Collateral, which in turn will be determined by the Jersey Courts in accordance with the principles of private international law (see Schedule 7).

For the purposes of this Opinion, we have distinguished between Jersey *situs* Collateral and non-Jersey *situs* Collateral. Generally, the former falls within the remit of Jersey law and the latter is subject to the law of the non-Jersey *situs* of the Collateral.

Following the principles of private international law, the law used to create security over a movable asset should ordinarily be the *lex situs* of the relevant asset (see Schedule 7).

Jersey *situs* Collateral

As regards the scope of the Security Interests Law, Article 4 provides that the Security Interests Law applies to security interests in certain specific categories of intangible movable property. In general terms, these categories relate to intangible movable property which is situated in Jersey (applying Jersey principles of private international law, which are similar to those established under English common law). Article 4(a)(viii) of the Security Interests Law provides that the Security Interests Law also applies to security interests in intangible movable property situated in Jersey where such intangible movable property is held on trust (whether or not the governing law of such trust is Jersey law).

Where Collateral is situated in Jersey, any security interest created pursuant to the Covered Base Agreement and CDA will need to have complied with the provisions of the Security Interests Law to be validly created and capable of enforcement as security.

The Security Interests Law came into full force and effect on 2 January 2014 and applies to Jersey law security interests over intangible movable property created on or after the above date (replacing the Security Interests (Jersey) Law 1983, as amended (the **SIJL 1983**)). Subject to limited exceptions, the SIJL 1983 continues to apply to Jersey law security interests over intangible movable property created before the above date.

Under Article 1A of the Security Interests Law, "security interest" is defined as an interest in intangible movable property that, under a security agreement, secures payment or performance obligations. The Security Interests Law distinguishes between attachment, which is the creation of a security interest enforceable against

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the grantor, and perfection, which ensures that the security interest is binding upon third parties and insolvency officials.

A further issue relates to whether a security interest under the Security Interests Law can be created under a foreign law (i.e. a non-Jersey law) governed Covered Base Agreement and CDA which is amended to comply with the requirements of the Security Interests Law. The Security Interests Law does not expressly prohibit this but there is no relevant Jersey case law on the point (other than *Re Nield* (see Schedule 7) which related to previous legislation) and we are not able to issue an unqualified opinion that it is possible for a document governed by a law other than that of Jersey to create security under the Security Interests Law. Therefore, in our view, to avoid any doubts as to attachment and perfection and to assist enforceability, we would recommend that a security agreement relating to Jersey situs Collateral should be expressed to be governed by Jersey law.

We recommend, therefore, that in respect of Collateral located in Jersey, further advice is taken, as appropriate, to ensure compliance with the Security Interests Law.

Floating charges

It should be noted that floating charges are not capable of being created under Jersey law, although under the Security Interests Law, it is possible to create a similar type of security interest over all present and future intangible movable property. There is no procedure under Jersey law for the enforcement in Jersey of a non-Jersey law floating charge or debenture over Jersey situs property. There is, however, no restriction per se on a Jersey entity granting a non-Jersey law floating charge or debenture over Collateral held outside of Jersey.

Non-Jersey *situs* Collateral

A Jersey Party has capacity (as a matter of Jersey law) to grant security governed by non-Jersey law over Collateral situated outside Jersey. Assuming that the Trust Security Interest is valid and enforceable as a matter of its governing law (and, if different, the law of the jurisdiction where the Collateral is situated), no particular Jersey law issues arise and the validity of the non-Jersey law security interest would be recognised by the Jersey Courts.

Where such agreement is governed by New York law as under the Covered Base Agreement and CDA, the property being secured is New York *situs* property and, we assume, any enforcement action would be taken in New York, the relevant provisions can be enforced (subject to local law) outside Jersey.

Issue 2: Law Governing the Perfection and Priority of a Security Interest in Collateral

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (b) *Under Jersey law, what law governs the proprietary aspects of the security interest in the Customer's rights and interests in respect of the different types of Collateral (i.e., the formalities required to protect the security interest against competing claims) granted by the Customer (for example, the law of the jurisdiction of incorporation or organisation of the Customer, the jurisdiction where the Collateral is Located (or deemed Located), the jurisdiction of the location of the FCM's intermediary or the jurisdiction of the location of the FCM as the Customer's securities intermediary, in relation to Collateral in the form of intermediated securities)? What factors would be relevant to this question? If the Location (or deemed Location) of the Collateral is the determining factor, please briefly describe the principles governing such determination under Jersey law with respect to the different types of Collateral. If relevant, please describe how Jersey law would apply to each form in which securities Covered Collateral may be held as described in assumption 8.1(n) in clause 8.1 above.*

In our view, the law governing the proprietary aspects of the security interest in the different types of Covered Collateral would again be determined by the *lex situs* of the Collateral (see Schedule 7).

Jersey *situs* Collateral

As mentioned above, the Security Interests Law distinguishes between *attachment*, which is the creation of a security interest enforceable against the grantor, and *perfection*, which ensures that the security interest is binding upon third parties and insolvency officials.

The Security Interests Law permits perfection of a security interest by possession, control or registration. Perfection of a security interest by possession, control or registration continues only while such possession, control or registration is maintained (unless continuously perfected by another one of these methods). Failure to perfect or to maintain perfection has a number of adverse consequences for a secured party including:

- (i) a perfected security interest has priority over an unperfected security interest in the same collateral;
- (ii) a third party who acquires collateral for value takes the collateral free of an unperfected security interest in the collateral; and
- (iii) in the case of the bankruptcy of the grantor, the security interest is void as against the Viscount (in a *désastre*) or the liquidator (in a creditors' winding up) and against creditors of the grantor.

A Jersey law security interest which attaches by control (as explained above) will also be perfected by control at the same time. Therefore it is not strictly necessary to perfect this type of security by registration, although market practice is usually

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

also to perfect this type of security by registration on the Jersey Security Interests Register.

A Jersey law security interest which attaches by description only must be perfected by registration of a financing statement on the Jersey Security Interests Register established under Part 8 of the Security Interests Law. The financing statement will contain basic details of the grantor, secured party, collateral and the duration of the registration (in practice, this is often the maximum period of 99 years). The security interest is perfected by registration from the time and date at which the financing statement is filed on the Jersey Security Interests Register.

A registration will be invalid if the financing statement contains a defect, irregularity, omission or error that is seriously misleading. However, the data entry requirements of the Jersey Security Interests Register do not require a financing statement or financing change statement to be updated once it has been registered, so that subsequent material changes in the data contained in the financing statement, such as the name of the grantor, will not result in the financing statement becoming seriously misleading.

Where there are competing security interests under the Security Interests Law, priority is established by reference to the priority rules in Part 4 of the Security Interests Law (although the relevant secured parties may agree priority as between themselves under a subordination agreement or intercreditor agreement). In general (and subject to special priority rules for certain types of collateral), these priority rules give priority to:

- (i) perfected security interests over unperfected security interests;
- (ii) security interests perfected by control over security interests perfected by registration;
- (iii) among perfected security interests, the security interest which was first in time to be perfected (whether by control or registration); and
- (iv) among unperfected security interests, the security interest which was first in time to attach.

When a security interest is transferred, it generally maintains the same priority that it had immediately before the transfer.

Non-Jersey situs Collateral

Following the principles set out in Dicey and Morris, in our view, perfection and priority of a security interest would be governed by the lex situs of the Collateral (see Schedule 7).

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

Issue 3: Security Interest in different types of Covered Collateral

- (c) *Would Jersey law recognise a security interest in the Customer's rights and interests in respect of the different types of Collateral? In answering this question, please bear in mind the different forms in which securities Collateral may be held, as described in the Additional Assumption 8.1(i) above. Please indicate, in relation to cash Collateral, if your answer depends on the Location (or deemed Location) of the Customer Account or the account in which the relevant deposit obligations are recorded and/or upon the currency of those obligations.*

Subject to the following paragraph, Jersey law will recognise security interest in the Customer's rights and interests in respect of the different types of Covered Collateral provided that it is valid and enforceable under New York law.

However, in respect of any Jersey situs Covered Collateral, any purported creation of security under New York law is unlikely to be valid and enforceable from a Jersey law perspective in respect of any Jersey situs assets. The question of the situs of different types of Covered Collateral will be determined by the Jersey Courts in accordance with the principles of private international law, which principles are broadly similar to those accepted under English common law and are set out in more details at Schedule 7.

Issue 4: Fluctuation of the Amount Secured under the Covered Agreement

- (d) *What is the effect, if any, under Jersey law of the fact that the amount secured or the amount of the Collateral subject to the security interest will fluctuate under the Covered Agreement (including as a result of establishing open positions in additional Covered Contracts from time to time)? In particular:*
- (i) *Would the security interest be valid in relation to future obligations of the Customer?*
- (ii) *Would the security interest be valid in relation to future Collateral (i.e., cash and securities Collateral not yet delivered to the FCM and open positions not yet established in Covered Contracts at the time of entry into the Covered Agreement)?*
- (iii) *Is there any difficulty with the concept of creating the security interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Covered Agreement the specific assets deposited by the Customer with the FCM?*
- (iv) *Is it necessary under the laws of Jersey for the amount secured by the security interest to be a fixed amount or subject to a fixed maximum amount?*

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (v) *Is it permissible under the laws of Jersey for the FCM to hold Customer Collateral in excess of its actual exposure to the Customer under the Covered Agreement?*

Jersey situs Collateral

- (i) Any security interests created pursuant to a Jersey law security agreement, in respect of any Jersey situs Covered Collateral, will be valid in relation to the future obligations of the Customer provided that the Jersey law security agreement stipulates that the secured obligations includes any further advances.
- (ii) The Security Interests Law allows a secured party to take a security interest in present and future intangible movable property of the grantor, therefore it would be valid to secure future Covered Collateral under a Jersey law security agreement (please see Schedule 7 for the type of assets that can be secured under the Security Interests Law).
- (iii) Under the Security Interests Law, a security interest over future assets will only attach if the Jersey law security agreement pursuant to which such security interest is created contains a description of the collateral that is sufficient to enable it to be identified.

The Security Interests Law provides that a description of collateral is sufficient to enable the collateral to be identified if the description is:

- (A) a description of the collateral by item;
- (B) a description of the collateral by type;
- (C) a statement that the security agreement covers all present and future collateral; or
- (D) a statement that the security agreement covers all present and future collateral except for specified items or types, and the collateral is not within those exceptions.
- (iv) No, provided that the Jersey law security agreement refers to further advances as referred to in (ii) above. The security interest is not extinguished by repayment of a current advance, unless the parties have agreed otherwise. In addition, where the obligations under the security interest agreement are expressed to include advances and further advances, it will have the same priority for all advances.
- (v) Yes, there is no issue with holding collateral in excess of the secured party's actual exposure under Jersey law.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

Non-Jersey situs Collateral

There are no requirements under Jersey law in this regard. Any requirements in respect of non-Jersey situs Collateral or secured obligations would be determined by the lex situs of the Collateral.

Issue 5: Perfection of a Security Interest in Collateral.

- (e) *Assuming that the Jersey Courts would recognise the security interest in the Customer's rights and interests in respect of each type of Collateral, is any action (filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required in Jersey to perfect the 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 in question.*

Jersey situs Collateral

This will depend on whether the security interest created under the Security Interests Law is perfected by control and/or by registration (please see our response above).

Any Jersey law security interest which attaches by control (specifically in relation to shares/securities, bank accounts and securities accounts) will also remain perfected as long as control is maintained. For example, a secured party can take control over shares by taking possession of the share certificates, and can take control over bank/securities accounts by written agreement with the grantor and the relevant account bank or custodian (although the Security Interests Law provides for different control options).

Any Jersey law security interest which attaches by description only must be perfected by registration of a financing statement on the Jersey Security Interests Register. Please see our answer above at Part 2, paragraph 8.2, Issue 2.

Any Jersey law security interest which attaches by control does not need to be perfected by registration of a financing statement on the Jersey Security Interests Register (although, in practice, it will usually be perfected by registration as well as control).

Other than as referred to in the preceding paragraphs, Jersey law currently imposes no other registration, filing, notification, stamping, notarisation, consent or approval requirements of the type referred to above.

Non-Jersey situs Collateral

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

The requirements of the Security Interests Law in relation to perfection and registration do not apply to non-Jersey law security interests over non-Jersey *situs* Collateral.

Jersey law imposes no filing, registration, notification, stamping, notarisation, consent or approval requirements in relation to non-Jersey law security interests over non-Jersey *situs* Collateral.

However, we cannot opine on the perfection and registration requirements of the law of the *situs* of the Collateral, where the matter will be an issue for the law of the relevant jurisdiction.

Issue 6: Other Requirements to Ensure the Validity or Perfection of a Security Interest in Collateral under Jersey law.

- (f) *If there are any other requirements to ensure the validity or perfection of the security interest in the Customer's rights and interest in respect of each type of Collateral, please indicate the nature of such requirements. For example, is it necessary as a matter of formal validity that the Covered Agreement be expressly governed by the laws of Jersey or translated into any other language or for the Covered Agreement to include the specific wording? Are there any other documentary formalities that must be observed in order for the security interest in the Customer's rights and interests in respect of any type of Collateral to be recognised as valid and perfected in Jersey?*

We are not aware of any other requirements under Jersey law to ensure the validity or perfection of the security interest in the Customer's rights and interest in respect of each type of Collateral. In particular, it is not necessary that a Covered Base Agreement and CDA be expressly governed by Jersey law (although we would recommend this where the Collateral consists of Jersey *situs* Collateral) or translated into any other language or for it to include any specific wording. There are no other documentary formalities that must be observed in order for a security interest created under the Covered Base Agreement and CDA to be perfected in Jersey.

We have assumed that all Parties to each Covered Base Agreement and CDA:

- (i) have the capacity and power to enter into such Covered Base Agreement and CDA and to exercise their rights and perform their obligations under such Covered Base Agreement and CDA; and
- (ii) have taken all corporate or other actions and obtained all necessary agreements or consents required to authorise the execution and delivery of such Covered Base Agreement and CDA and to exercise their rights and perform their obligations under such Covered Base Agreement and CDA

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

and that such Parties have duly authorised, executed and delivered such Covered Base Agreement and CDA in accordance with such authorisations.

Issue 7: Other Requirements to Ensure the Continuity of the Perfected Security Interest.

- (g) *Assuming that the FCM has obtained a valid and perfected security interest under the laws of Jersey, to the extent such laws apply, by complying with the requirements set forth in your responses to Issues 1 to 6 above, as applicable, will the FCM or the Customer need to take any action thereafter to ensure that the security interest continues to be and/or remains perfected, particularly with respect to additional cash or securities Collateral transferred from time to time when required pursuant to the Covered Agreement?*

In our view, the law governing the continuing perfection of the security interest would be determined by the lex situs of the Collateral.

Jersey situs Collateral

As mentioned above, perfection of a Jersey law security interest by possession, control or registration continues only while such possession, control or registration is maintained (unless continuously perfected by another one of these methods). Therefore the FCM should be careful to ensure that its perfection by possession, control or registration is maintained, although no action needs to be taken by the customer to ensure that the security interest continues and/or remains perfected. Please see our answers above at Part 2, paragraph 8.2, Issues 1 and 2 for further information on control and registration.

Article 15(4) of the Security Interests Law provides that a security interest is extinguished in accordance with the provisions of the security agreement, by subsequent agreement between the parties to that agreement, by release of the collateral, or by the operation of law (e.g. following enforcement of the security interest). Therefore the security interest will generally remain in full force and effect (assuming perfection is maintained) until it is extinguished in accordance with one of the above methods.

Non-Jersey situs Collateral

There are no requirements under Jersey law in this regard. Any continuing perfection requirements in respect of non-Jersey situs Collateral would be determined by the lex situs of the Collateral.

- (h) *Assuming that (a) pursuant to the laws of Jersey, the laws of another jurisdiction govern the validity and/or perfection of a security interest in the Customer's rights and interests in respect of any type of Collateral (e.g., because the Collateral is Located or deemed Located outside your jurisdiction) and (b) the FCM has obtained*

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

a valid and perfected security interest in the Collateral under the laws of such other jurisdiction, will the FCM have a valid security interest in the Collateral so far as the laws of Jersey are concerned?

Yes, in so far as the laws of Jersey are concerned.

Is any action (filing, registration, notification, stamping or notarization or any other action or the obtaining or any governmental, judicial, regulatory or other order, consent or approval) required under the laws of your jurisdiction to establish, perfect, continue or enforce the security interest? Are there any other requirements of the type referred to in question Part 2, paragraph 8.2(f) above?

No, there are no such requirements under Jersey law.

Issue 8: Duties Imposed on the Secured Party.

- (i) *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 security interest?*

Subject to any contractual duties, obligations or limitations, or any other duties, obligations or limitations imposed by the laws of a jurisdiction other than Jersey, we are aware of no duties, obligations or limitations imposed on the FCM (other than in respect of a security interest under the Security Interests Law in respect of Jersey situs Collateral, for which the FCM will have various statutory duties on enforcement, as discussed in our response below at Part 2, paragraph 9.2, Issue 1).

Issue 9: The FCM's right to use cash or securities Covered Collateral

- (j) *Do the laws of Jersey recognise the right of the FCM to use cash or securities 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 security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the FCM with respect to its use of such Collateral under the laws of Jersey?*

Jersey situs Collateral

We note that each Covered Base Agreement and CDA grants the FCM broad rights with respect to the use of Collateral, including the rights to pledge or re-hypothecate securities, transfer securities under a securities repurchase agreement or sell securities or pledge or use cash Collateral.

The Jersey Courts would be likely to respect the enforceability of such rights which are contractually agreed between the parties, in accordance with the Jersey law

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

maxim "la convention fait la loi des parties" (the agreement makes the law between the parties).

However, where any Jersey situs Collateral subject to a security interest pursuant to the Security Interests Law is to be rehypothecated by the FCM, the action taken to rehypothecate the Collateral (e.g. transferring possession of the share certificates or title to the securities) may adversely affect the security interest as perfection by control may be lost, which would have serious consequences as explained in our answer above in Part 2, paragraph 8.2, Issue 2.

Further, where there is any Jersey situs Collateral, there is a possibility that where the legal title to the Collateral is held by the FCM itself or another transferee, Jersey law may take a similar approach to English law, and the transfer of title or possession of the securities may be open to challenge as clogging the equity of redemption in the Collateral. Although the latter is an English common law concept, it could be found to be persuasive if argued before the Jersey Courts. This argument would be that the FCM's right to use the Collateral extinguishes the customer's "equity of redemption" in the Collateral and constitutes a "clog on the equity of redemption" or an "unlawful collateral advantage".

On the other hand, we understand that in the Australian case of *Lift Capital Partners Pty Ltd v Merrill Lynch International* (2009) 253 ALR 482, the Supreme Court of New South Wales considered whether rehypothecation rights were voidable on the ground that they constitute a clog on the equity of redemption. It was held that rehypothecation rights granted by a borrower to a lender under a secured margin lending agreement are not of themselves an impermissible clog on the borrower's equity of redemption, although equity will prevent reliance on such rights if that reliance is unconscientious because of factors such as the nature of the contractual bargain, the circumstances in which it was made, and the circumstances in which the mortgagee seeks to assert the mortgagor's promise to defeat the right to redeem. In our view, this case would be persuasive but not binding under Jersey law and the Jersey Courts would be highly likely to follow the English law analysis on clogging the equity of redemption.

Non-Jersey situs Collateral

The issue will be one for New York law and the lex situs of the Collateral.

9 Enforcement of the security interest in the Customer's rights and interests in the Collateral in the absence of an insolvency proceeding

9.1 Assumptions

- (a) We assume the same facts as set out in paragraph 8.1 above as modified below.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (b) After the Customer commences clearing under the Covered Agreement and while it has open positions in Covered Contracts, an Event of Default occurs with respect to the Customer, and/or, if applicable, the FCM has designated a date to begin closing out or otherwise liquidating the Covered Contracts as a result thereof (however, an insolvency proceeding has not been instituted, which is addressed separately in assumption at paragraph 8.1 of this Part 2 and under Issues 1 to 3 of paragraph 9.2 below).

9.2 Issues and Analysis

Issue 1: Exercise of the FCM's Rights as Secured Creditor with respect to Security Interest perfected under Jersey law.

- (a) *Assuming that the FCM has obtained a valid and perfected security interest Jersey law, to the extent such laws apply, by complying with the requirements set forth in your responses to Issues 1 to 6 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 enforcing its security interest as a secured party under the Covered Agreement? 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 Agreement? Do such formalities or procedures differ depending on the type of Collateral involved?*

We assume, for the purposes of this answer, that the Collateral is Jersey *situs*.

The power of enforcement under the Security Interests Law becomes exercisable on the occurrence of an event of default in respect of the security agreement and the secured party serving on the grantor written notice specifying the event of default. The power of enforcement may be exercised by way of the secured party appropriating or selling the collateral or taking ancillary actions. On enforcement, the Security Interests Law:

- (i) imposes certain obligations on secured creditors which cannot be varied by agreement (including, for example, the duty to act in exercising certain of its powers of enforcement in a commercially reasonable manner and the ability to recover reasonable costs on a sale or appropriation). There is no Jersey case law as to the enforceability of contractual provisions which seek to extend or override the statutory provisions of the Security Interests Law and it is uncertain whether the Jersey courts would uphold such provisions;
- (ii) may limit the application of any remedy provided by a security agreement as being exercisable pursuant to the powers of enforcement, or the taking of other actions in respect of the collateral permitted (whether before or after the power of enforcement becomes available) by a security agreement, in

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

each case, to the extent that these are in conflict with the Security Interests Law;

(iii) provides that, prior to appropriating or selling collateral, a secured party must give 14 days written notice to:

(A) the grantor (although this may be waived by agreement and will often be waived in the security agreement); and

(B) any person who has a security interest registered in the Jersey Security Interests Register or who has given the secured party written notice of an interest in the collateral, in each case, more than 21 days before the appropriation or sale,

provided that, in the case of a sale, the notice provisions will not apply to the extent that (A) the collateral is quoted investment securities, (B) the secured party believes on reasonable grounds that the collateral will decline substantially in value if not disposed of within 14 days of the relevant event of default, or (C) the Jersey Court orders that notice need not be given;

(iv) provides that the grantor and those persons referred to in paragraph (c)(ii) may, prior to the secured party appropriating, agreeing to sell or otherwise acting irrevocably in connection with the collateral, redeem the collateral by fulfilling the obligations secured by the collateral and paying a sum equal to certain costs and expenses of the secured party (as specified in the Security Interests Law). The Security Interests Law does not contain any provisions allowing waiver of the right of redemption; and

(v) provides that the grantor may, prior to the secured party appropriating, agreeing to sell or otherwise acting irrevocably in connection with the collateral, reinstate the security interest by paying any arrears, otherwise remedying any event of default and paying a sum equal to certain costs and expenses of the secured party (although these reinstatement rights may be waived by agreement and will often be waived in the security agreement).

Under Article 48 of the Security Interests Law, if collateral is appropriated or sold by a secured party under the Security Interests Law, the secured party is required, within 14 days after the day on which the collateral is appropriated or sold, to give the grantor (and any other person with a registered or notified interest in the collateral) a statement of account in writing, showing:

(i) the gross value realized by virtue of the appropriation, or the amount of the gross proceeds of sale;

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (ii) the amount of the secured party's reasonable costs incurred in relation to the appropriation or sale;
- (iii) the amount of any other reasonable expenses incurred by the secured party in enforcing the security agreement after the event of default;
- (iv) the net value of the collateral, or net proceeds (after deduction of the above reasonable costs and expenses); and
- (v) the surplus owing by, or debt owing to, the secured party, as the case may be.

Any surplus shall be paid by the enforcing secured party first to any subordinated secured party, then to any other person with a notified interest in the collateral, then finally to the grantor (or, alternatively, the secured party may discharge this obligation by paying the surplus into the Royal Court of Jersey which shall determine who is entitled to the surplus).

- (b) *Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the validity and/or perfection of a security interest in the Customer's rights and interests in respect of any Collateral (e.g., because such Collateral is Located or deemed Located outside your jurisdiction) and (b) the FCM has obtained a valid and perfected security interests 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 rights as a secured party under the Covered Agreement?*

No, as far as Jersey law is concerned. Where title to any non-Jersey *situs* Collateral is held by the debtor and has vested in the Viscount under the Désastre Law, it is unlikely that the Viscount's involvement would be required in enforcement (assuming that the provisions of foreign law do not require the Viscount's involvement). Further, it is unlikely that the Viscount would intervene and seek to prevent enforcement of foreign law security (which may require a recognition order from the foreign courts) on the basis that any surplus resulting from enforcement would be returned to him for distribution in accordance with the Désastre Law. The foregoing does not require a FCM which is seeking to enforce or bring an enforcement action under the relevant Covered Agreement in respect of non-Jersey *situs* security to engage, or liaise with, the Viscount or any Jersey liquidator or Jersey Courts in order to be able to do so.

Issue 2. Limitation of the Secured Party's Rights.

- (c) *Are there any laws or regulations in Jersey that would limit or distinguish a creditor's enforcement rights with respect to the security interest in the Customer's rights and interests in respect of any type of Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of Collateral or (c) the nature of the*

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

creditor or the debtor? For example, are there any types of "statutory liens" that would be deemed to take precedence over the security interest?

As a matter of Jersey law, on the basis that security is validly created and perfected, there are no laws or regulations in Jersey which would limit or distinguish a creditor's enforcement rights with respect to a security interest. Please see paragraph 2.5 of Schedule 6 regarding the priority of secured claims.

Issue 3. Event of Default or Specified Condition with respect to the Secured Party.

- (d) *How would your response to Issues 1 and 2 change, if at all, assuming that an insolvency proceeding above has occurred with respect to the FCM (notwithstanding that the Covered Agreement 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 enforce its security interest in the Customer's rights and interests in the Collateral)?*

Assuming the customer would choose to terminate a Covered Base Agreement and CDA upon a default by the FCM, the foregoing responses to Issues 1 and 2 of this paragraph 9.2 would not change assuming the Event of Default or specified condition exists with respect to the FCM rather than or in addition to the customer. The FCM's ability to exercise its enforcement rights with respect to the Collateral would not be affected.

10 Enforcement of the security interest in the Customer's rights and interests in Collateral after the commencement of a Jersey Insolvency Procedure

10.1 Assumptions

- (a) We assume the same facts as set forth in paragraph 8.1 above, as modified below.
- (b) A formal bankruptcy, insolvency, liquidation, reorganisation, administration or comparable proceeding (collectively, the **Insolvency**) has been instituted by or against the customer (which is Located in Jersey) and an event of default has accordingly occurred under the Covered Base Agreement and CDA. If there are different types of insolvency proceedings under Jersey law (for example, bankruptcy or liquidation proceedings where an entity does not emerge as a going concern, on the one hand, and a reorganisation 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.

10.2 Issues and Analysis

Issue 1. Priority of Security Interests.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (a) *How are competing priorities between creditors determined in Jersey? What conditions must be satisfied if the FCM's security interest in the Customer's rights and interests in each type of Collateral is to have priority over all other claims (secured or unsecured) of an interest in the Collateral?*

Please see paragraphs 2.4 and 2.5 of Schedule 6 regarding the priority of unsecured claims and secured claims respectively under Jersey law.

Further, please see our answer above at Part 2, paragraph 8.2, Issue 2 regarding the priority of competing security interests under the Security Interests Law.

Pursuant to Article 8 of the *Désastre* Law, on a declaration of *désastre*, the property and powers of the debtor vest in the Viscount. Where security has been created by assignment of title, the Viscount will only acquire the right of redelivery of the Collateral upon satisfaction of the secured obligations or the right to the return of any surplus after an enforcement and satisfaction of all security interests in such Collateral pursuant to the Security Interests Law. If the security is possessory only (i.e. title remains with the debtor), the Viscount will, as a matter of Jersey law, be vested with title to such Collateral upon the declaration of *désastre*, subject to any pre-existing security rights in respect of such Collateral. Where the Viscount needs to be involved to effect the enforcement of security over the Collateral, she may seek to claim her fees from the proceeds of sale of such Collateral. However, the involvement of the Viscount should generally not be required in enforcement of validly created and perfected security as explained in our answer at Issue 2 of this paragraph 10.2 below. Further, the risk of needing to involve the Viscount may be mitigated by including an irrevocable power of attorney ancillary to security in the relevant security agreement.

The *Désastre* Law is silent as to the ranking in priority of the FCM holding foreign law security over non-Jersey *situs* Collateral. The conditions to be satisfied if the FCM's security interest is to have priority over all other claims (secured or unsecured) of an interest in the Collateral will be ones arising under the *lex situs* of the Collateral (see Schedule 7).

Issue 2. The Secured Party's Right to Liquidate the Collateral.

- (b) *Would the FCM's enforcement of its security interest in the Customer's rights and interests in any type of Collateral be subject to any stay, moratorium or freeze or otherwise be affected by commencement of the insolvency?*

In respect of both Jersey *situs* Collateral and non-Jersey *situs* Collateral, the FCM upon the insolvency of the customer would generally be able to terminate the relevant Covered Base Agreement and CDA and use any Collateral held to satisfy amounts due from the customer. Moreover, the Netting Law provides that the close-out netting provisions contained in Section 7 of the Covered Base Agreement and

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CDA will be effective regardless of the bankruptcy of the Jersey Party (see Schedule 5).

As regards enforcement of security following the commencement of insolvency proceedings in respect of a Jersey Party, it should be noted that on a declaration of *désastre*, under Article 10(1) and (2) of the *Désastre* Law, with effect from the date of the declaration, no creditor to whom the debtor is indebted in respect of any debt provable in the *désastre* shall have any remedy against the property or person of the debtor in respect of the debt nor shall any creditor commence or continue any action or legal proceedings to recover the debt, except with the consent of the Viscount or the Jersey Court (on such terms as the Viscount or the Jersey Court think fit). (Similar provisions under the Companies Law apply in a creditors' winding up where a liquidator would be appointed.) However, these statutory provisions do not amount to a moratorium on enforcement of security for the reasons explained below.

Notwithstanding the above statutory provisions, subject to Issue 3 of this paragraph 10.2 of this Part 2 below on transactions which may be challenged by the Viscount or a liquidator upon insolvency:

- (i) in the case of Jersey situs Collateral subject to a security interest pursuant to the Security Interests Law:
 - (A) Article 10(4) and (5) of the *Désastre* Law provide that Article 10(1) and (2) shall not prevent a secured party exercising a power of enforcement in relation to the relevant collateral (or a transfer of shares in the bankrupt debtor) pursuant to Part 7 of the Security Interests Law, in each case, without the consent of the Viscount or the Jersey Court;
 - (B) Article 56 of the Security Interests Law provides that if the grantor of a perfected security interest becomes bankrupt or the grantor or its property is subjected to Jersey or foreign insolvency proceedings, that shall not affect the power of the secured party to appropriate or sell collateral, or otherwise act in relation to collateral in connection with enforcement. This is subject to Article 59 of the Security Interests Law, which provides that in the case of the bankruptcy of the grantor of a security interest, the security interest is void as against the Viscount (or liquidator) and the grantor's creditors unless the security interest is perfected before the grantor becomes bankrupt; and
 - (C) due to the above statutory provisions, the involvement of the Viscount or a liquidator should not be required in enforcement of a pre-existing security interest which has been validly perfected and created under the Security Interests Law.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

- (ii) in the case of non-Jersey situs Collateral subject to foreign law security, which has been validly created and perfected in accordance with the lex situs, the appointment of the Viscount in désastre proceedings would generally not prevent a secured party from enforcing its foreign law security in accordance with the relevant foreign law, without the involvement of the Viscount or the Jersey Courts. This assumes that the involvement of the Viscount would not be required in enforcement due to title to the debtor's property vesting in the Viscount under the Désastre Law.

Where title to any non-Jersey *situs* Collateral is held by the Secured Party directly through an intermediary, the involvement of the Viscount should not be required in enforcement. Where title to any non-Jersey *situs* Collateral is held by the debtor and has vested in the Viscount under the Désastre Law, it is unlikely that the Viscount's involvement would be required in enforcement (assuming that the provisions of foreign law do not require the Viscount's involvement). Further, it is unlikely that the Viscount would intervene and seek to prevent enforcement of foreign law security (which may require a recognition order from the foreign courts) on the basis that any surplus resulting from enforcement would be returned to him for distribution in accordance with the Désastre Law.

The foregoing does not require a FCM which is seeking to enforce or bring an enforcement action under the relevant Covered Base Agreement and CDA in respect of non-Jersey *situs* security to engage, or liaise with, the Viscount or any Jersey liquidator or Jersey Courts in order to be able to do so.

Issue 3. Suspect Periods.

- (c) *Will the Customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Collateral consisting of cash or securities made to the FCM during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference," fraudulent transfer or transaction at an undervalue (however called and whether or not fraudulent) in favour of the FCM or on any other basis? If so, how long before the insolvency does this suspect period begin? Would the posting of additional margin (which could be required when the Customer Account's net liquidating equity has fallen below the required margin level for the Customer Account due to trading losses in respect of one or more Covered Contracts cleared for the Customer) 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?*

Jersey law does provide for circumstances, which apply in respect of both Jersey *situs* Collateral and non-Jersey *situs* Collateral, where transactions may be voidable and/or set-aside by application to the Royal Court or at the discretion of the Viscount or liquidator, as applicable as more fully set in paragraph 3 of Schedule 4.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

11 Miscellaneous

11.1 Assumptions

We assume the same facts as set forth in paragraph 8.1 above (as applicable).

11.2 Issues and Analysis

Issue 1. Other Local Law Considerations.

- (a) *Are there any other local law considerations that you would recommend the FCM to consider in connection with enforcing its security interest in the Customer's rights and interests in respect of any Collateral?*

We are not aware of any other local law considerations that we would recommend to the FCM to consider in connection with enforcing its security interest in Covered Collateral.

Issue 2. Other Circumstances.

- (b) *Are there any other circumstances you can foresee that might affect the FCM's ability to enforce its security interest in the Customer's rights and interests in respect of Collateral in Jersey?*

We cannot foresee any other circumstances that might affect the FCM's ability to enforce its security interest in the Covered Collateral in Jersey

Issue 3. Financial collateral arrangement.

- (c) *If relevant under Jersey law, please analyze whether or not the Covered Agreement, and the collateral arrangements contemplated thereby, would constitute a financial collateral arrangement under the local implementation of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.*

This is not relevant from a Jersey law perspective as Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements is not applicable under Jersey law.

12 Governing Law and Reliance

- 12.1 This Opinion shall be governed by and construed in accordance with the laws of Jersey and is limited to the matters expressly stated herein. This Opinion is confined to and given on the basis of the laws and practice in Jersey at the date of this Opinion. As at the date of this Opinion, except for Article 72 of the Bank (Recovery and Resolution) (Jersey) Law 2017 (as described in Schedule 9), we are not aware of any pending developments under Jersey law that would materially affect the analysis or conclusions reached in this Opinion.

Opinion on (1) the enforceability under Jersey law of the remedial provisions of a customer agreement pursuant to which a future commission merchant registered with the Commodity Futures Trading Commission clears Futures and/or Cleared Swaps for a customer located in Jersey and (2) the validity, perfection and enforcement of the security interest granted to the FCM by the Customer under the Covered Agreement in the Collateral.

We express no opinion with regard to the laws of any other jurisdiction and we have not made any investigation into any such laws.

12.2 This Opinion is given for the sole benefit of ISDA and its members or the FIA in connection with the Covered Base Agreements and CDAs. With the exception of any professional advisers of ISDA or its members and any regulatory or supervisory bodies (to whom this Opinion may be disclosed on a non-reliance basis), this Opinion may not be disclosed to or relied upon by any person or used for any other purpose or referred to or made public in any way without our prior written consent.

Yours faithfully

Ogier

Ogier (Jersey) LLP

Validity and Enforceability under Jersey law of the liquidation, set-off, netting and credit support provisions of Certain Futures Account Agreements and a Cleared Derivatives Addendum upon a Customer's Default or Insolvency

SCHEDULE 1

**Certain Derivatives Transactions under
the Covered Base Agreements and CDAs
(as provided by ISDA)**

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

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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.

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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

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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).

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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

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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).

Non-deliverable Digital Asset Forward. A transaction in which one party agrees to pay the other party an amount of a given currency to be determined on a specified date in the future, where the amount payable, and the party required to pay it, is determined by the amount by which the prevailing market price of a Reference Digital Asset at the time of settlement either exceeds or is less than a specified forward price, as applied to a specified notional quantity of the Reference Digital Asset. For the purposes of this definition, "Reference Digital Asset" means either Bitcoin or Ether.

Non-deliverable Digital Asset 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 in an amount of a given currency equal to the amount by which the price of the Reference Digital Asset either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike price. For the purposes of this definition, "Reference Digital Asset" means either Bitcoin or Ether.

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.

Renewable Energy Certificate Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of renewable energy certificates, renewable energy credits or other analogous products (each, a "Renewable Energy Certificate" or "REC"), at a specified price for settlement either on a "spot" basis or on a specified future date and is settled by physical delivery, transfer, export, retirement, cancellation, redemption or other analogous utilization of RECs in exchange for a specified price.

A REC Transaction may also be structured as an option for which a quantity of RECs is settled in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay the difference between the market price of that quantity of RECs on the exercise date and the strike price.

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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.

Variance Swap. A transaction in which one party (the "Seller") pays the other party (the "Buyer") a cash settlement amount, if positive, or the Buyer pays the Seller the absolute value of that cash settlement amount, if negative. The cash settlement amount is based on the difference between the realized variance of the underlying asset over a specified period and a fixed implied variance level.

VCC Transaction. A transaction in which one party agrees to buy from, or sell to, the other party a specified quantity of verified carbon credits each with a unique serial number, measured in tCO₂e, representing an emission reduction and quantified, verified and issued into a registry account ("VCCs") at a specified price for settlement either on a "spot" basis or on a specified future date. A VCC Transaction may also be structured as an option whereby 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 VCCs at a specified strike price. A VCC Transaction can be settled by physically delivering or retiring VCCs in exchange for a specified price or specified strike price.

Volatility Swap. A transaction in which one party (the "Seller") pays the other party (the "Buyer") a cash settlement amount, if positive, or the Buyer pays the Seller the absolute value of that cash

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settlement amount, if negative. The cash settlement amount is based on the difference between the realized volatility of the underlying asset over a specified period and a fixed implied volatility level.

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.

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SCHEDULE 2

June 2023

Certain Counterparty Types

(as provided by ISDA)

Description	Jersey Party (covered by this Opinion)?	Legal form(s) / Naming conventions or rules
<p><u>Bank/Credit Institution</u>. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking 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 <u>only</u> 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</p>	<p>Yes, on the basis it is:</p> <p>(a) a Jersey Bank (i.e. a company incorporated under the Companies Law which is registered to carry on deposit-taking business pursuant to the Banking Law); or</p> <p>(b) a Foreign Bank acting through its Jersey Branch (i.e. a company or body corporate incorporated or organised outside of Jersey acting through its Jersey branch which is registered to carry on deposit-taking business pursuant to the Banking Law).</p>	<p>In accordance with the Banking Law, a Jersey Bank or a Foreign Bank acting through its Jersey Branch may have a name including the words "bank", "banker" or "banking" or any cognate expression, whether in English or any other language.</p>

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<p>entity (as in the case of a building society in the United Kingdom (UK)).</p>		
<p><u>Central Bank</u>. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Corporation</u>. A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Schedule 2.</p>	<p>Yes, on the basis it is a company incorporated under the Companies Law (excluding pension funds, hedge funds, Protected Cell Companies and Protected Cells, but including Incorporated Cell Companies and Incorporated Cells).</p>	<p>A limited company incorporated under the Companies Law must have a name ending with "Limited", "Ltd", "avec responsabilité limitée" or "a.r.l". Alternatively, a public limited company incorporated under the Companies Law may (but is not required to) have a name ending with "public limited company" or "Plc".</p> <p>Under the Companies Law, the name of an Incorporated Cell Company must end with the words "Incorporated Cell Company" or with the abbreviation "ICC". The name of an Incorporated Cell must end with "Incorporated Cell" or "IC".</p>
<p><u>Hedge Fund/Proprietary Trader</u>. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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<p>financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.</p>		
<p><u>Insurance Company.</u> A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.</p>	<p>Yes, on the basis it is a company incorporated under the Companies Law which holds a Category B permit pursuant to the Insurance Law. Please see Schedule 6 for a general summary of regulation of Jersey Insurance Companies.</p>	<p>A limited company incorporated under the Companies Law must have a name ending with "Limited", "Ltd", "avec responsabilité limitée" or "a.r.l.". Alternatively, a public limited company incorporated under the Companies Law may (but is not required to) have a name ending with "public limited company" or "Plc". Otherwise there are no naming requirements under the Insurance Law.</p>
<p><u>International Organization.</u> An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Investment Firm/Broker Dealer.</u> A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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<p>an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.</p>		
<p><u>Investment Fund.</u> A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds,</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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<p>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.</p>		
<p><u>Local Authority</u>. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Partnership</u>. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Schedule 2. 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).</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Pension Fund</u>. A legal entity or an arrangement without legal</p>	<p>No.</p>	

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<p>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.</p>		<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Sovereign</u>. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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<p>include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").</p>		
<p><u>Sovereign Wealth Fund</u>. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Schedule 2 the term "Sovereign Wealth Fund" excludes a Central Bank.</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>
<p><u>Sovereign-Owned Entity</u>. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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<p>category does not include local governmental authorities (see "Local Authority").</p>		
<p><u>State of a Federal Sovereign.</u> The principal political subdivision of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.</p>	<p>No.</p>	<p>Further analysis would be required in respect of this counterparty type.</p>

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SCHEDULE 3

Assumptions

For the purposes of this Opinion, we have made the following general assumptions:

- (a) that all Parties to the Covered Base Agreement and CDA have the capacity and power to enter into such Covered Base Agreement and CDA and to exercise their rights and perform their obligations under such Covered Base Agreement and CDA;
- (b) that all Parties to the Covered Base Agreement and CDA have taken all corporate or other actions and obtained all necessary agreements or consents required to authorise the execution and delivery of such Covered Base Agreement and CDA and to exercise their rights and perform their obligations under such documents and that such Parties have duly authorised, executed and delivered such Covered Base Agreement and CDA in accordance with such authorisations;
- (c) that all Parties to the Covered Base Agreement and CDA (and their functionaries) have obtained all consents, licences, permits, approvals, authorisations and registrations required under any applicable laws and regulations;
- (d) that the entry by the Parties into the Covered Base Agreement and CDA and exercise of their rights and performance of their obligations thereunder does not conflict with, or result in a breach of, any consents, licences, permits, approvals, authorisations or registrations (or any prescribed or attached conditions) issued or published by the JFSC or any other governmental or regulatory authority in Jersey;
- (e) that each of the Covered Base Agreement and CDA, when executed and delivered by the Parties, will constitute the legal, valid and binding obligations of the Parties to it, enforceable in accordance with its terms under New York law, by which law such Covered Base Agreement and CDA are expressed to be governed;
- (f) that none of the opinions expressed hereunder will be adversely affected by the laws or public policies of any jurisdiction other than Jersey and, in particular but without limitation, there are no provisions of the laws of any jurisdiction other than Jersey which would be contravened by the execution or delivery of the Covered Base Agreement and CDA or by any Party to such Covered Base Agreement and CDA exercising its rights or performing its obligations under them;
- (g) that the choice of New York law to govern the Covered Base Agreement and CDA is bona fide and not made with any intention to evade the laws of the jurisdiction with which the Covered Transactions under such Covered Base Agreement and CDA have the closest and most real connection;
- (h) that there are no agreements, documents or arrangements other than the documents expressly referred to herein as having been examined by us which materially affect, amend or vary the Covered Transactions envisaged in the Covered Base Agreement and CDA or restrict the powers and authority of the directors of the Jersey Party in any way;

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- (i) the execution and delivery of the Covered Base Agreement and CDA and the performance of any Jersey Party's obligations thereunder will not contravene any applicable provision of Jersey to which the Jersey Party is subject;
- (j) the Covered Base Agreement, the CDA and all Covered Transactions under them have been entered into for bona fide commercial reasons and at an arm's length by each of the Parties and, in resolving to enter into such Covered Base Agreement, CDA and all Covered Transactions pursuant to them, each of the directors of the Jersey Party is not exercising their powers for improper purposes and is acting in good faith with a view to the best interests of the Jersey Party and exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (k) immediately after the Parties entered into the Covered Base Agreement, CDA and any Covered Transactions under them, each Jersey Party is able to pay its debts in full as they fell due;
- (l) that there are no specific terms of a Covered Base Agreement or CDA which adversely impact on the analysis of the questions contained in this Opinion, which analysis is based solely on the assumed terms of the Covered Base Agreement and CDA (as set out in paragraph 6 of this Opinion); and
- (m) the S&C Memo and the Linklaters Summary are accurate and complete in all respects.

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SCHEDULE 4

Qualifications and Limitations

Qualifications

This Opinion is subject to the following qualifications:

- 1 The term "enforceable", when used in this Opinion, means that the relevant obligations are of a type which the Jersey Courts will enforce, but it does not mean that such obligations will necessarily be enforced in all circumstances or in accordance with their terms. In particular, but without limitation:
 - (a) as regards our opinions on the enforceability of certain provisions of the Covered Base Agreement and the CDA under the Netting Law, the Netting Law does not affect:
 - (i) the application of any enactment or rule of law that renders a close-out netting provision or a set-off provision unenforceable, in a particular case, on the grounds of fraud or misrepresentation; or
 - (ii) the enforceability of any provision of an agreement that provides that a close-out netting provision or a set-off provision shall be void in the event of fraud or misrepresentation;
 - (b) enforcement may be limited by general principles of equity and, in particular, equitable remedies such as specific performance and injunction are discretionary and may not be available where damages are considered to be an adequate remedy;
 - (c) claims may be barred under the laws relating to the prescription and limitation of actions or may be subject to the general doctrine of estoppel in relation to representations, acts or omissions of any relevant Party or may become subject to the defence of set-off or counterclaim;
 - (d) the Jersey Courts will not enforce provisions of the Covered Base Agreement or the CDA to the extent that they may be illegal or contrary to public policy in Jersey or purport to exclude the jurisdiction of the Jersey Courts or, if obligations are to be performed in a jurisdiction outside Jersey, to the extent that such performance would be illegal or contrary to public policy under the laws of that jurisdiction. However, although we have not made any specific investigations into such matter, there is nothing contained in the Covered Base Agreement or the CDA that would lead us to believe that the Jersey Courts would hold enforcement of the Covered Base Agreement or the CDA to be illegal or contrary to public policy in Jersey;
 - (e) the Jersey Courts may not enforce provisions of the Covered Base Agreement or the CDA to the extent that the Covered Transactions contemplated under them conflict with or breach economic or other sanctions imposed in respect of certain states or jurisdictions by any treaty, law, order or regulation applicable to Jersey;

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- (f) the enforcement of the obligations of the Parties to the Covered Base Agreement and CDA may be limited by the provisions of Jersey law applicable to documents held to have been frustrated by events happening after their execution;
 - (g) the effectiveness of any provisions in the Covered Base Agreement or the CDA exculpating any Party from a liability or duty otherwise owed may be limited by law;
 - (h) any provisions of the Covered Base Agreement or the CDA purporting to provide for a payment to be made in the event of breach of the Covered Base Agreement and CDA would not be enforceable to the extent that the Jersey Courts were to construe such payment to be a penalty which was excessive, in that it unreasonably exceeds the maximum damages which an obligee could have suffered as a result of the breach of an obligation;
 - (i) any provisions of the Covered Base Agreement or the CDA purporting to fetter any statutory power of a Jersey Party may not be enforceable;
 - (j) the Jersey Courts may refuse to give effect to any provisions in an agreement for the payment of the costs of enforcement (actual or contemplated) or of unsuccessful litigation brought before the Jersey Courts or where the Jersey Courts have themselves made an order for costs;
 - (k) the Jersey Courts may refuse to give effect to any provisions in an agreement which would involve the enforcement of any foreign revenue or penal laws;
 - (l) the Jersey Courts may refuse to allow unjust enrichment or to give effect to any provisions of an agreement that it considers usurious (including provisions relating to contractual interest on a judgment debt); and
 - (m) enforcement of any obligations may be invalidated or vitiated by reason of fraud, duress, misrepresentation or undue influence.
- 2 The Rome II Regulation (EC) No 864/2007 (including as amended and modified by the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019) on the law applicable to non-contractual obligations does not apply in Jersey. Therefore, we give no opinion on the effectiveness of the choice (if any) of any law to govern any non-contractual obligations arising out of or in connection with a Covered Base Agreement and CDA. In our view, the governing law of non-contractual obligations would be determined by reference to general conflict of laws principles (where the Jersey courts apply conflict of laws principles which are broadly similar to the principles accepted under English common law) and therefore the Jersey courts may not recognise the ability of parties to contractually agree on such matters.
- 3 The Jersey Courts may decline to accept jurisdiction in an action where it determines that there is another more appropriate forum in another jurisdiction or that a court of competent jurisdiction has already made a determination of the relevant matter or where there is litigation pending in respect thereof in another jurisdiction or it may stay proceedings if concurrent proceedings are instituted elsewhere.

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- 4 The question of whether or not any provision of a Covered Base Agreement and CDA which may be invalid on account of illegality may be severed from the other provisions thereof would be determined by the Jersey Courts in their discretion.
- 5 Any provision of a Covered Base Agreement and CDA which purports to give conclusive effect to any calculation, determination or certification may be held by the Jersey Courts not to be conclusive as such Courts may review the grounds on which such calculation, determination or certification is made or given.
- 6 Where any Party to a Covered Base Agreement and CDA is vested with a discretion or may determine a matter in its opinion, the Jersey Courts, if called upon to consider the issue, may require that such discretion is exercised reasonably or that such opinion is based on reasonable grounds.
- 7 This Opinion is given only in respect of Jersey Parties, which without limitation excludes Protected Cell Companies and Protected Cells, but includes Incorporated Cell Companies and Incorporated Cells. The law relating to Protected Cells and Incorporated Cells is set out in Articles 127YA to 127YW of the Companies Law. An Incorporated Cell is a separate legal entity in its own right, a company for the purposes of the Companies Law and therefore a Jersey Company Party. A Protected Cell is treated as a company for the purposes of the Companies Law except as otherwise provided therein but is not, in its own right, a separate legal entity or a company. There are important differences between Protected Cells and Incorporated Cells and Jersey legal advice should be obtained when dealing with a Protected Cell Company and its Protected Cells.
- 8 We have not examined a standard form of Covered Base Agreement or CDA and, as per the Instruction Letter, have relied on and based this Opinion on the assumptions describing the Covered Base Agreement and CDA as provided in the Instruction Letter and repeated in paragraph 6.

Limitations

This Opinion is limited to the matters stated in it and, in particular, we offer no opinion:

- 1 in relation to the laws of any jurisdiction other than Jersey (and we have not made any investigation into any such laws);
- 2 on the effect, validity or enforceability of or the validity or effectiveness of any document, save as expressly set out herein;
- 3 in relation to any representation or warranty made or given in any documents or, save as expressly set out herein, as to whether any party will be able to perform its obligations under any documents; or
- 4 as to the commerciality of the transactions envisaged in any documents or, save as expressly stated in this Opinion, whether any documents referred to in this Opinion achieve the commercial, tax, legal, regulatory or other aims of the parties to such documents.

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SCHEDULE 5

The Netting Law

Article 2(1) of the Netting Law provides that, notwithstanding any enactment or rule of law to the contrary, any close-out netting provision or set-off provision (each as defined below) in any agreement is enforceable in accordance with its terms. Article 2(2) of the Netting Law provides that this is the case despite the bankruptcy of a party to the agreement or of any other person or the lack of any mutuality of obligation between a party to the agreement and any other person. Also, the Netting Law provides that such provisions will be enforceable against any of the parties to the agreement, any guarantor or person providing security for a party to the agreement and any creditor of a party to the agreement.

The definition of an "agreement" is widely drafted to include any agreement between two or more parties, a series of inter-related agreements between the same parties (whether pursuant to a master netting agreement or otherwise) or an agreement made between parties whether or not acting through multiple branches and whether operated through a clearing house system or otherwise.

The Netting Law contains the following definitions:

"close-out netting provision", in respect of an agreement, means so much of an agreement as relates to:

- (a) there ceasing to be any time allowed for the performance of an obligation specified in the agreement on the occurrence of an event specified in the agreement (including its automatic termination);
- (b) an obligation in an agreement to pay a specified amount but not immediately becoming an obligation to pay an amount determined pursuant to the agreement; or
- (c) any combination of the matters mentioned in (a) and (b),

whether through the operation of netting or otherwise;

"netting", in respect of an agreement, means the conversion, into one net claim or one net obligation, of all claims and obligations arising under the agreement to the effect that only that net claim can be demanded or that net obligation is owed; and

"set-off provision", in respect of an agreement, means so much of the agreement, other than a close-out netting provision in the agreement, as relates to the netting of amounts due from one party to the agreement to any other party to it.

The Netting Law defines "bankruptcy" as including any procedure analogous to bankruptcy (as defined in Article 8 of the Interpretation (Jersey) Law 1954) or any similar procedure under any applicable law. Article 8 of the Interpretation (Jersey) Law 1954 defines bankruptcy as including (among other Jersey insolvency procedures) *désastre* and a creditors' winding up.

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Article 6 of the Netting Law provides that close-out netting provisions and set-off provisions in any agreement shall also be valid and enforceable in Jersey where one of the parties to the agreement is a branch in Jersey of a body corporate established outside Jersey, despite any other enactment or rule of law that may be applicable to such body corporate, including the law of the jurisdiction under which it is established.

However, under Article 5(2) of the Netting Law, nothing in the Netting Law shall affect (a) the application of any enactment or rule of law that renders a contractual close-out netting provision or a set-off provision unenforceable, in a particular case, on the grounds of fraud or misrepresentation, or (b) the enforceability of any provision of any agreement that provides that a contractual close-out netting provision or a set-off provision shall be void in the event of fraud or misrepresentation.

The customary law of Jersey recognises set-off, but given that Article 2 of the Netting Law provides that it applies despite any enactment or rule of law to the contrary in relation to the areas covered by the Netting Law, we have not addressed this further.

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SCHEDULE 6

Jersey's Insolvency Regime

1 Overview of Jersey's insolvency procedures

Under Jersey law, a number of insolvency procedures have evolved. Some are derived from Norman customary law; others have been created by statute, derived in part from equivalent English statutes. A number of the Jersey insolvency procedures are only relevant to immovable property.

We set out below a summary of each of the Jersey insolvency procedures (the **Jersey Insolvency Procedures**) but would draw your attention to the following:

- (a) the only procedures available to a creditor are adjudication of renunciation, *désastre* and a creditors' winding up (each as defined below);
- (b) a corporate debtor can apply for any of the procedures referred to in paragraph 2 of this Schedule save for adjudication of renunciation; and
- (c) a *désastre* and a creditors' winding up are the principal insolvency procedures available to a corporate debtor and a creditor.

In relation to a *remise des biens*, *cession* (each as defined below) and an adjudication of renunciation, we are of the opinion that:

- (a) it is unlikely that any of these procedures would be used in preference to a *désastre* or a creditors' winding up;
- (b) each of these procedures is principally aimed at individuals rather than companies; and
- (c) although there is no Jersey precedent on this point, the provisions of the Netting Law will apply in respect of each of these procedures.

2 Summary of Jersey's insolvency procedures

The principal circumstances in which a person may be appointed to take control of either a Jersey Party or the assets of a Jersey Party upon its insolvency are as follows:

2.1 A creditors' winding up under the Companies Law

In respect of a Jersey Company Party only as the debtor, until recently a creditors' winding up could only be commenced by special resolution of the shareholders of a Jersey company. However, from 1 March 2022, a creditors' winding up can now also be initiated by a creditor applying to the Jersey Courts to wind up an insolvent Jersey company.

As a result of Article 160 and 157C of the Companies Law, a liquidator must be appointed to conduct the creditors' winding up (such appointment is usually made by the creditors or, in the case of a creditor initiated winding up, the court). The liquidators will stand in the

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shoes of the directors and administer the creditors' winding up, gather in assets, settle claims and distribute assets as appropriate.

After the commencement of the creditors' winding up, no action can be taken or continued against the debtor except with the leave of the Royal Court. This does not:

- (a) affect the enforceability of close-out netting provisions or set-off provisions of agreements under Article 2 of the Netting Law, which provides that such provisions remain enforceable despite the bankruptcy of any person (or the lack of any mutuality of obligation between a party to the agreement and any other person) and that any person dealing with the affairs of the bankrupt person shall give effect to such provisions; or
- (b) prevent secured creditors enforcing their pre-existing security against the property of the debtor.

The corporate state and capacity of the debtor continues until the end of the creditors' winding up, when the debtor is dissolved.

2.2 Just and equitable winding up under the Companies Law

A Jersey Company Party as the debtor may be wound up by the Royal Court (under Article 155 of the Companies Law) if the debtor has not been declared en désastre and the Royal Court is of the opinion that it is just and equitable, or expedient in the public interest, to do so. This procedure is less common than the principal corporate insolvency procedures of a creditors' winding up or a désastre.

The application to the Royal Court for such winding up may be made by the debtor, a director, a shareholder, the Minister or the JFSC on just and equitable grounds, or by the Minister or the JFSC on public interest grounds. The test to be applied by the Royal Court in considering the application is whether it holds the above opinion, as opposed to a test of solvency. If the Royal Court orders a debtor to be wound up, it may appoint a liquidator and direct the conduct of the winding up in the court order.

There have been various cases in which the Royal Court has ordered the just and equitable winding up of Jersey companies, which were summarised in the case of Representation of Maltese Holdings and Zollinger Investments [2012] JRC 239 (the **Maltese and Zollinger Case**). In the Maltese and Zollinger Case, it was held that just and equitable winding up remains a discretionary remedy and the words 'just and equitable' should be given a flexible interpretation. Although there is no exhaustive list of situations that may fall within the scope of such words, there is a wide jurisdiction for the court to order a just and equitable winding up, and reasons why this may be appropriate include:

- (i) loss of the substratum of the company (In the matter of Leveraged Income Fund Limited 2002/209);
- (ii) deadlock in the management of the company (Bisson v Barker [2008] JRC 193);

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- (iii) desire to keep an otherwise insolvent company trading for the benefit of the company's clients and creditors (Representation of Poundworld [2009] JRC 042);
- (iv) there may be a need for investigation into the company's affairs (In the matter of Belgravia Financial Services Group Limited [2008] JRC 161);
- (v) in the context of regulated companies:
 - (A) in Representation of Lumiere Wealth Limited [2016] JRC 179 the Royal Court ordered the winding up of a regulated investment manager and insurance mediator on just and equitable grounds on the application of its directors and the JFSC. The route of declaring the company *en désastre* was likely to be more expensive as the Viscount was likely to appoint insolvency practitioners as well as charging fees. A creditors' winding up was possible, but would not involve any Court supervision. The Royal Court exercised its jurisdiction and followed the Maltese and Zollinger Case as there was: (i) a need to investigate the affairs of the company; (ii) a need to protect investors; and (iii) it was in the best interests of the stakeholders for the process to be overseen by a liquidator who is directly accountable to the court;
 - (B) in Centurion Management Services Limited [2009] JRC 227 the court accepted that a just and equitable winding up of Centurion, an insolvent trust company, was the appropriate way of proceeding for a number of reasons including: (i) the need for flexibility; (ii) the avoidance of conflict with the creditors; (iii) the need to protect the interests of the investors; and (iv) the need for the appointment of an appropriately experienced liquidator;
 - (C) in Horizon Investments Limited [2012] JRC 039, Horizon had ceased business save to the extent necessary to transfer its client assets to a third party purchaser and the court took into account, amongst others, the following factors: (i) there was a clear public interest in completing the transfer of clients to the third party in an orderly fashion without adverse publicity for Jersey's financial services industry; (ii) it would be in the best interests of all the stakeholders for the process to be overseen by a liquidator who was directly accountable to the court; (iii) an Article 155 appointment is preferable to a creditors' winding up given the greater flexibility allowed for and the overriding duty to the court, especially given the potential for conflicts to arise between the shareholders and creditors.

Under the Insurance Law, if a Jersey Insurance Company fails to maintain the prescribed margin of solvency (as described in Schedule 6), fails to notify the JFSC if the prescribed margin of solvency is not at any time maintained, or fails or is unable to submit a short term

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financial scheme remedying any shortfall in the prescribed margin of solvency which is accepted by the JFSC, the JFSC may apply to the Royal Court for a just and equitable winding up order in respect of the Jersey Insurance Company.

2.3 Désastre

This takes place upon the property of the debtor being declared en désastre (a Jersey bankruptcy procedure) under the Désastre Law. This may be commenced on application to the Royal Court by a creditor owed a liquidated sum of not less than £3,000, the debtor itself or, in some circumstances, the JFSC. If a creditors' winding up has already commenced when a declaration of désastre is made, the winding up terminates.

An officer of the Royal Court, Her Majesty's Viscount (the **Viscount**), conducts and administers the désastre procedure and all assets of the debtor vest in the Viscount in order for him to sell such assets and discharge the liabilities of the debtor. On the declaration of désastre, title and possession of the property of the debtor automatically vest in the Viscount. With effect from the date of the declaration of désastre, creditors have no other remedy against the property or person of the debtor, and may not commence or continue any legal proceedings to recover their debt. This does not:

- (a) affect the enforceability of close-out netting provisions or set-off provisions of agreements under Article 2 of the Netting Law, which provides that such provisions remain enforceable despite the bankruptcy of any person (or the lack of any mutuality of obligation between a party to the agreement and any other person) and that any person dealing with the affairs of the bankrupt person shall give effect to such provisions; or
- (b) prevent secured creditors enforcing their pre-existing rights against the property now vested in the Viscount, as the Viscount takes the property of the debtor subject to security.

2.4 Priority of unsecured claims in a creditors' winding up or a désastre

Following a declaration of désastre, under Article 32 of the Désastre Law, the Viscount will apply money received from the realisation of a debtor's property in the following order:

- (a) in payment of the Viscount's fees and emoluments and all costs, charges, allowances and expenses properly incurred by or payable by the Viscount in the désastre and any expenses of a liquidator under Article 15(7) of the Dormant Bank Accounts (Jersey) Law 2017;
- (b) where the debtor subject to désastre is a bank in default, any amount due to the Jersey Bank Depositors Compensation Board by virtue of rights of eligible depositors to compensation under the Banking Business (Depositors Compensation) (Jersey) Regulations 2009;
- (c) in payment to any employee of the debtor of any amount due at the date of the declaration of désastre for arrears of:

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- (i) wages or salary for services provided during the 6 months immediately preceding the declaration, up to a maximum of £6,300;
- (ii) holiday pay and bonuses, up to a maximum of £1,800;
- (d) in payment of:
 - (i) all statutory sums payable in respect of the debtor's health insurance contributions, social security contributions, goods and services tax and income tax (i.e. arrears of tax due for the year of the declaration of *désastre* and for the preceding year);
 - (ii) a preferential amount due by the debtor to its landlord for the payment of rent;
 - (iii) parochial rates due to any parish in Jersey (i.e. a land tax for owners and occupiers of real property) for a period not exceeding 2 years; and
- (e) in payment of all other unsecured debts proved in the *désastre*, on a *pari passu* basis.

The priority claims referred to in paragraph 2.4(c) and (d) above rank equally between themselves, and will be paid in equal proportions if the property of the debtor is insufficient to pay all of them in full.

Under Article 166(1) of the Companies Law, the same order of priority of claims referred to above will apply in a creditors' winding up, as if references to the *désastre* were replaced with references to the winding up and references to the Viscount were replaced with references to the liquidator.

2.5 Priority of secured claims

Under Article 32(7) of the *Désastre* Law, where any property of the debtor is subject to a continuing security interest under the SIJL 1983 or a security interest under the Security Interests Law, the proceeds of sale of such property shall be applied in the following manner as prescribed by Article 8(6) of the SIJL 1983 or Part 7 of the Security Interests Law respectively.

Under Article 8(6) of the SIJL 1983, the proceeds of sale of any intangible movable property subject to a continuing security interest under the SIJL 1983 will be applied in the following order:

- (a) in payment of the costs and expenses of the sale;
- (b) in discharge of security interests according to their chronological order of creation; and
- (c) in payment of the balance to the debtor (or the Viscount or the liquidator if the debtor is insolvent).

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Where the Viscount is required to be involved in the sale of secured assets because title is vested in him, as a matter of practice, the Viscount has sought to claim his fees (which are currently approximately 10% of the value of realised assets and 2.5% of the value of distributed assets) from the proceeds of sale.

Under Article 56 of the Security Interests Law, if the grantor of a perfected security interest becomes bankrupt or the grantor or its property is subjected to Jersey or foreign insolvency proceedings, that shall not affect the power of the secured party to appropriate or sell collateral, or otherwise act in relation to collateral in connection with enforcement. This is subject to Article 59 of the Security Interests Law, which provides that in the case of the bankruptcy of the grantor of a security interest, the security interest is void as against the Viscount (or liquidator) and the grantor's creditors unless the security interest is perfected before the grantor becomes bankrupt.

Under Article 48 of the Security Interests Law, if collateral is appropriated or sold by a secured party under the Security Interests Law, the secured party is required, within 14 days after the day on which the collateral is appropriated or sold, to give the grantor (and any other person with a registered or notified interest in the collateral) a statement of account in writing, showing:

- (a) the gross value realized by virtue of the appropriation, or the amount of the gross proceeds of sale;
- (b) the amount of the secured party's reasonable costs incurred in relation to the appropriation or sale;
- (c) the amount of any other reasonable expenses incurred by the secured party in enforcing the security agreement after the event of default;
- (d) the net value of the collateral, or net proceeds (after deduction of the above reasonable costs and expenses); and
- (e) the surplus owing by, or debt owing to, the secured party, as the case may be.

Any surplus shall be paid by the enforcing secured party first to any subordinated secured party, then to any other person with a notified interest in the collateral, then finally to the grantor (or, alternatively, the secured party may discharge this obligation by paying the surplus into the Royal Court of Jersey which shall determine who is entitled to the surplus).

The Désastre Law and the Companies Law are silent as to the ranking in priority of secured parties holding foreign law security over non-Jersey situs assets.

The other, less common, circumstances in which a person may be appointed to take control of either a Jersey Party, or the assets of a Jersey Party, upon its insolvency apart from a winding up and a désastre are as follows:

2.6 Remise de biens

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This procedure takes place upon the grant by the Royal Court of an application made by the debtor pursuant to the *Loi (1839) sur les remises de biens* to place his property under the control of the Royal Court (*permission de remettre ses biens entre les mains de la justice*).

A remise de biens involves a debtor asking for his affairs to be temporarily placed in the hands of the Royal Court. It is a suspensory procedure which involves two Jurats (Royal Court appointed officers) being appointed to value and dispose of sufficient of the debtor's immovable and movable property to pay off its debts. Provided that charges secured on immovables of the debtor can be discharged in full, unsecured creditors need not be discharged in full and the debtor will be discharged from liability for those unsecured debts. It is therefore unlikely that an unsecured creditor would allow the remise to be declared without applying for a désastre declaration or an adjudication of renunciation (see below).

2.7 Cession Générale (upon an application made by the debtor)

The procedure takes place upon the grant by the Royal Court of an application made by the debtor to make general cession of its property for the benefit of its creditors.

Cession involves a debtor voluntarily renouncing all of his property (movable and immovable) for the benefit of his creditors. The Royal Court has discretion whether or not to order cession. If granted, a dégrèvement of the debtor's immovable property will take place and a réalisation of his movable property (each procedure is explained below). The debtor is discharged from his debts and creditors must rely on the dégrèvement and réalisation procedures for satisfaction of amounts owing.

2.8 Adjudication of renunciation (upon an application made by a creditor)

An adjudication of renunciation takes place upon the decision of the Royal Court adjudging the property of the debtor to be renounced. This is a process available to a creditor of the debtor and which will, if successfully applied for, result in a dégrèvement of the immovables of the debtor and a réalisation of its movables.

The aim of a dégrèvement is to disencumber each individual item of immovable property of the debtor. All parties who have contracted (including any mortgagee) at any time in relation to the immovable property are called to a hearing and are asked in reverse chronological order, most recent first, whether they wish to accept the relevant piece of immovable property. If a person accepts the property of the debtor, they must pay off any prior incurred debts in relation to that property. Any person who is called to accept a piece of immovable property may also instead renounce any claim to such property, whereupon they will lose any secured claim they had against that particular piece of immovable property and will only be able to claim as a general creditor in the estate of the debtor.

A réalisation occurs in relation to all property which is not the subject of a dégrèvement and runs concurrently with the dégrèvement. In a réalisation, two court appointed attorneys are charged with collecting in the debtor's property and selling the property for the benefit of creditors generally. No preference is given to secured creditors.

3 Voidable transactions

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The transactions which are voidable on the application of a liquidator (in a creditors' winding up) or the Viscount (in a désastre) upon the insolvency of a Jersey Party under Jersey law are as follows. However, this does not affect the enforceability of close-out netting provisions or set-off provisions of agreements under Article 2 of the Netting Law, which provides that such provisions remain enforceable despite the bankruptcy of any person (or the lack of any mutuality of obligation between a party to the agreement and any other person) and that any person dealing with the affairs of the bankrupt person shall give effect to such provisions:

3.1 Transactions at an undervalue / preferences

Jersey statute provides that in respect of the transaction types set out below, on the application of a liquidator (in a creditors' winding up) or of the Viscount (in a désastre), the Jersey Courts may make such an order as they think fit for restoring the position to what it would have been if the relevant entity had not entered into the relevant transaction:

- (a) a transaction with any person at an undervalue at any time in the period of five years ending with the date of the commencement of the winding up of a Jersey Company Party or the declaration that the property of the debtor is en désastre; and
- (b) a transaction under which a preference is given at any time within the period of one year ending with the date of the commencement of the winding up of the debtor or the declaration that the property of the debtor is en désastre,

provided that the company was insolvent when it entered into the transaction or became insolvent as a result of the transaction, save where the transaction was entered into with a person connected with the company or with an associate of the company, in which case, unless the relevant person or associate can prove that the company was not insolvent or did not become insolvent as a result of the transaction, the requirement that the company was insolvent at the time of the transaction or became insolvent as a result of the transaction need not be met.

(a) Transactions at an undervalue

A "transaction at an undervalue" is defined in Article 176(7) of the Companies Law as follows:

"For the purposes of this Article, a company enters into a transaction with a person at an undervalue if:

- (a) it makes a gift to that person; or
- (b) it enters into a transaction with that person:
 - (i) on terms for which there is no 'cause'; or
 - (ii) for a 'cause' the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the 'cause' provided by the company."

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The Désastre Law contains provisions in materially similar terms save that it refers to "debtor" rather than to "company" and includes a provision relevant to individuals only.

The Jersey Court shall not make any order in respect of a transaction at an undervalue if it is satisfied that the company entered into the transaction in good faith for the purpose of carrying on its business and that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the company.

(b) Preferences

A "preference" is defined in Article 176A(6) of the Companies Law as follows:

"For the purposes of this Article, a company gives a preference to a person if-

- (a) the person is a creditor of the company or a surety or guarantor for a debt or other liability of the company; and
- (b) the company-
 - (A) does anything, or
 - (B) suffers anything to be done,

that has the effect of putting the person into a position which, in the event of the winding up of the company, will be better than the position he or she would have been in if that thing had not been done."

In addition, Article 176A(7) of the Companies Law provides as follows:

"The Court shall not make an order under this Article in respect of a preference given to a person unless the company when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of the winding up of the company, would be better than the position which the person would be if the preference had not been given".

If the Company gave a preference to a person who was, at the time the preference was given, an associate of or connected with the Company (otherwise than by reason only of being the Company's employee) the Company shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire referred to above.

The Désastre Law contains provisions in materially similar terms save that it refers to "debtor" rather than to "company" and replaces "commencement of winding up of the company" with "declaration in respect of the debtor's property".

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While we do not advise on English law, we understand that the above provisions are broadly similar to Sections 238 to 240 of the UK Insolvency Act.

3.2 Disclaimers of onerous property

The liquidator or the Viscount, as the case may be, has the power to disclaim any onerous movable property (and onerous immovable property situated outside Jersey or any contract lease) within six months of the commencement of a creditors' winding up of a company or the making of a declaration of *désastre* in relation to its property.

"Onerous property" is defined by statute to include any unprofitable contract.

The consequence of a disclaimer of onerous property is to determine, from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed and to discharge the company from all liability in respect of the property as of the date of the commencement of the creditors' winding up or the declaration of *désastre* (as the case may be), but shall not, except so far as is necessary for the purpose of releasing the company from liability, affect the rights or liabilities of any other person (which, in our opinion, would include all creditors of any debtor). Any person who claims an interest in any disclaimed property may apply to the Royal Court for an order (which may be made on such terms as the Royal Court thinks fit) for the vesting of the disclaimed property in, or for its delivery to, such beneficiary or a trustee for such beneficiary. The power of the liquidator or the Viscount to disclaim onerous property has not been the subject of any Jersey judicial authority or judicial decision in the courts of Jersey. However, it should be noted that the relevant provisions of Jersey law do provide that a person sustaining loss or damage in consequence of the operation of a disclaimer (which could include creditors) shall be deemed to be a creditor of the debtor or company (as the case may be) to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up or *désastre*.

While we do not advise on English law, we understand that the above provisions relating to disclaimer of onerous property are broadly similar to Section 178 of the UK Insolvency Act.

3.3 Extortionate credit transactions

The Royal Court may, upon application to it in the course of a creditors' winding up proceedings in respect of a Jersey company, set aside, vary or otherwise make such order as it thinks fit in relation to any extortionate credit transaction entered into in the period of three years ending with the date of the commencement of the creditors' winding up.

Article 179 of the Companies Law defines "extortionate" in the following terms:

- "(3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
 - (A) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

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(B) it otherwise grossly contravened ordinary principles of fair dealing.

(4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate."

Similar provisions are contained in the Désastre Law, save that it refers to "debtor" rather than to "company" and to "declaration" rather than "commencement of the creditors' winding up".

While we do not advise on English law, we understand that the above provisions are broadly similar to Section 244 of the UK Insolvency Act.

3.4 Fraudulent preferences

Under Jersey law, a fraudulent preference may also be set aside by the Royal Court.

4 **Mandatory set-off on insolvency**

In the case of the insolvency of a Jersey Party, where that insolvency is one in respect of which the Jersey Courts have jurisdiction pursuant to the Désastre Law, the issue of mandatory set-off will be determined in accordance with Article 34 (Article 34) of the Désastre Law.

Article 34 requires that, where there have been mutual credits, mutual debts or other mutual dealings between the debtor and a creditor, an account shall be taken of what is due from one party to the other as at the date of the declaration of désastre in respect of such mutual dealings, and that the sum due from one party shall be set off against any sum due from the other party and that the balance of the account, and no more, shall be claimed or paid on either side respectively. In the event of a creditors' winding up of a Jersey Party under the Companies Law, the same rules as to setting off debts apply (because of the application of Article 166(1) of the Companies Law). However, the Netting Law provides that, despite any enactment or rule of law to the contrary (including Article 34), a contractual "set-off provision" is enforceable in accordance with its term despite the bankruptcy of any party.

Article 34 requires mutual dealings (i.e. there must have been "mutual credits, mutual debts or other mutual dealings" between the same parties). In other words, the claims which are to be set-off against each other must be owed between the parties acting in the same capacity.

Article 34 is drafted in substantially similar terms to Rule 4.90 of the United Kingdom Insolvency Rules 1986 as amended by the Insolvency (Amendment) Rules 2005, except that Article 34 has no equivalent to Rule 4.90(3) (which we understand limits the application of the set-off provisions of Rule 4.90(2) where a party had notice, at the time sums to it became due, that a meeting of creditors of its debtor had been summoned or a petition for the winding up of its debtor was pending) and Rule 4.90(6) (which we understand applies Rules 4.90(1) to (3) to Rule 4.90, so that among other things, certain debts incurred are payable in a currency other than the local currency should be converted to the local

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currency). Jersey case law indicates that, where a Jersey statute is based on similar United Kingdom legislation, United Kingdom cases on such legislation will be relevant to the Royal Court when interpreting the Jersey statute.

In the absence of any Jersey case law in relation to Article 34 of the Désastre Law, we believe that the Royal Court would find English cases highly persuasive in interpreting the meaning of the word "due" found in Article 34. In this respect, we note the English case of Stein v Blake [1995] 2 All ER 691 which relates to the interpretation of Section 323 of the UK Insolvency Act. Article 34 contains similar provisions to Section 323 relating to the set-off of mutual credits, debts and other mutual dealings and that an account is taken of what is "due" from each party to the other. In reliance upon Stein v Blake, we are of the opinion that the word "due" in the context of Article 34 is likely to be construed by the Royal Court as meaning "owing" or "outstanding" (although not necessarily payable) rather than "accrued, due and payable".

As noted previously, Article 2(2) of the Netting Law provides that a close-out netting provision or a set-off provision (in each case, having the meaning referred to in Schedule 3) in an agreement remains enforceable despite, inter alia, the bankruptcy of a party to the relevant agreement or any other person (including without limitation, any Jersey Party). Please see Schedule 3 above as regards the definition of 'bankruptcy' under the Netting Law. Article 2(3) of the Netting Law provides that any person dealing with the affairs of the bankrupt party or person shall, when dealing with the property of that party or person, give effect to such provisions. On this basis, it is our view that the provisions of the Netting Law mean that a close-out netting provision or a set-off provision in an agreement would be enforceable in accordance with its terms in accordance with and subject to the Netting Law, and would not be overridden by the provisions of Article 34.

5 Court-sanctioned compromise or arrangement

Under Article 125 of the Companies Law, the Royal Court may sanction a compromise or arrangement between a Jersey Company Party and its creditors, or a class of them, or between a Jersey Company Party and its members, or a class of them. The compromise or arrangement must be agreed by a majority in number of the creditors or class of creditors or members or class of members, present and voting either in person or by proxy at the meeting, being:

¾ths in value of the creditors or class of creditors; or

¾ths of the voting rights of the members or class of members.

If the compromise or arrangement is so agreed by the creditors or class of creditors or members or class of members and so sanctioned by the Royal Court, it is binding upon all creditors or the class of creditors or on all the members or class of members, as well as on the company itself and, where the Jersey Company Party is in the course of being wound up, on the liquidator and all contributories.

6 Assistance to courts of other jurisdictions

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Article 49 of the Désastre Law provides that the Royal Court shall assist the courts of such countries and territories as may be prescribed in all matters relating to the insolvency of any person to the extent it thinks fit, and when doing so may have regard to the extent it considers appropriate to the provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law (e.g. the UNCITRAL Model Law on Cross Border Insolvency). Currently, the prescribed countries are the United Kingdom, Guernsey, the Isle of Man, Finland and Australia. However, Article 49 does not exclude the pre-existing customary or common law right of the Royal Court to exercise its inherent jurisdiction to assist non-prescribed countries or to have regard to principles of comity (see, for example, the case of Re the Bankruptcy of First International Bank of Grenada [2002] JLR Note 7). Such right would extend to the discretion to apply either Jersey law or the law of the requesting court. However, if the primary counterparties are incorporated or organised in Jersey, in our view, it is unlikely that the Royal Court would apply foreign procedures over those of Jersey. This is particularly the case where the procedures (such as those relating to set-off) are materially in conflict with those of Jersey or where the other jurisdiction does not prescribe to the principle of universality or "ring fences" local assets for the benefit of local creditors.

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SCHEDULE 7

Conflict of laws and lex situs

Conflict of laws

As a general principle, the Jersey Courts will, when considering issues relating to conflicts of law, have regard to the principles established under English law. On this basis, English law principles will be relevant to:

- (a) determining the lex situs of an asset;
- (b) determining the governing law of a transfer of movables; and
- (c) determining the proper law of a contract.

However, with regard to paragraph (c) above, please note that the United Kingdom Contracts (Applicable Law) Act 1990 and the Rome Convention of 1980 (and the successor Conventions and Regulations) do not apply in Jersey and, therefore, the Jersey Courts will have regard to the English common law principles set out in the English case of Amin Rasheed Shipping Corp. v Kuwait Insurance Co. ([1984] A.C. 50). In particular, the effect of this is that the express choice of governing law will be the proper law provided that such choice is bona fide and legal and not contrary to public policy.

In Dalemont v Senatorov [2012] JRC 044 it was held that the Brussels and Lugano Conventions on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters respectively are not applied in resolving conflict of laws matters under Jersey law.

We would draw your attention to the Jersey case of Re Nield (1983), where the Jersey Courts were asked to consider the validity of a purported English law mortgage over Jersey law life insurance policies. It was held that "the parties cannot pretend to contract under one law in order to validate an agreement that clearly has its closest connection with another law and under which the agreement would not be valid." Therefore, to the extent that the Covered Base Agreement and the CDA purport to create security over Jersey situs Collateral in a manner that does not satisfy the requirements of the Security Interests Law, it is, in our view, possible that the Jersey Courts would reject the choice of New York law as the governing law of the Covered Base Agreement and the CDA. Accordingly, if any party intends to take a security interest over Jersey situs Collateral, we would recommend that the parties enter into a Jersey law security interest agreement in respect of such Collateral governed by Jersey law and complying with the requirements of the Security Interests Law to ensure that the Secured Party has an enforceable security interest under Jersey law.

Lex situs

The United Kingdom Financial Collateral Arrangements (No. 2) Regulations 2003 are not applicable in Jersey. However, we believe that the Jersey Courts would have regard to the following principles in determining of the location of the Collateral, which we understand are established under English common law:-

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- (a) Cash – the lex situs will be the jurisdiction where the bank account is maintained.
- (b) Rights in a Jersey bank account – the lex situs will be the jurisdiction where the bank account is maintained.
- (c) Securities in bearer form held by the customer – the lex situs will be the jurisdiction where the certificate of title representing the security is from time to time to be found.
- (d) Securities in registered form in the name of the customer – the lex situs will be the jurisdiction where, under the law of the country in which the issuer of such securities was incorporated, the registered securities can be effectively dealt with as between the owner for the time being and the issuer. In effect, this will be the place where the register of securities is maintained. If they are transferable by reference to more than one register, the securities will be situated at the place of the register on which they are dealt with in the ordinary course of affairs by the registered owner for the time being.
- (e) Dematerialised securities in the name of the customer – the lex situs will be the jurisdiction of the place where the register of securities is maintained (see paragraph (d) above).
- (f) Dematerialised securities held through a securities account with an intermediary – the lex situs will be the jurisdiction where the securities account is maintained.
- (g) Rights in immobilised securities held by a CSD – in our view (in reliance upon Dicey and Morris), the customer proprietary rights are located at the place where its account with the depository or clearing system is maintained and the lex situs will be the law governing its relationship with the depository or clearing system (PRIMA).

As regards the scope of the Security Interests Law, Article 4 provides that the Security Interests Law applies to security interests in certain specific categories of intangible movable property. In general terms, these categories relate to intangible movable property which is situated in Jersey (applying Jersey principles of private international law, which are similar to those established under English common law as explained above). Articles 4(a)(ix) and (x) of the Security Interests Law provide that the Security Interests Law also applies to security interests in intangible movable property which consists of:

- (a) obligations owed under a Jersey law contract, agreement or instrument; and
- (b) obligations owed by a Jersey obligor under a contract, agreement or instrument that is governed by the laws of a jurisdiction other than Jersey.

However, the Security Interests (Application of Law – Exceptions) (Jersey) Order 2013 provides that the Security Interests Law does not apply where a security interest in collateral of a kind described in Articles 4(a)(ix) and (x) is created under the laws of a jurisdiction other than Jersey and perfected in accordance with the requirements of that law.

Article 9 provides that the Security Interests Law does not apply to an interest created or provided for by certain types of transaction such as a transfer of a right to damages in tort, a sale coupled with a repurchase, or stock lending or securities lending. This is helpful in distinguishing between repo/stock or securities lending vs security interest transactions under Jersey law.

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SCHEDULE 8

Regulation of Jersey Insurance Companies

The Jersey regulatory regime applicable to insurance business is set out in the Insurance Law, related Orders, and the Codes of Practice for Insurance Business (the Insurance Codes).

Subject to certain exemptions, Article 5(2) of the Insurance Law provides that no person shall carry on insurance business constituting long-term business or general business (each term as defined in Schedule 1 of the Insurance Law) in or from within Jersey, unless that person is authorised by a permit granted under Article 7 of the Insurance Law, namely:

- (a) a Category A permit for any permit holder granted a permit by virtue of its authorisation under the law of a jurisdiction outside Jersey; or
- (b) a Category B permit for any other permit holder (this would be applicable to a company incorporated under the Companies Law which does not have an authorisation under the law of a jurisdiction outside Jersey).

Article 5(6) of the Insurance Law provides that a company incorporated under the Companies Law shall not carry on insurance business in or from within a country or territory outside Jersey unless it is the holder of a Category B permit.

For the purposes of this Opinion, a Jersey Insurance Company is a company incorporated under the Companies Law which holds a Category B permit pursuant to the Insurance Law.

An application for a Category B permit may be granted or refused by the JFSC and, if granted, will be subject to conditions which may be varied by the JFSC from time to time. Under Article 5 of the Insurance Business (General Provisions) (Jersey) Order 1996, the Minister has prescribed certain conditions which are applicable to all Category B permits pursuant to the Insurance Law. Any Category B permit may subsequently be cancelled by the JFSC on prescribed grounds under the Insurance Law.

Under Article 24 of the Insurance Law, every Category B permit holder is required to maintain the margin of solvency (being the excess of the value of its approved assets over the amount of its liabilities) prescribed under the Insurance Business (Solvency Margin) (Jersey) Order 1996. Such Order lists what assets are approved assets, and this list does not include derivatives or other off-balance sheet items.

However, the Insurance Codes (which apply to Category B permit holders) state that the use of derivatives and other off-balance sheet items may be approved by the JFSC to an agreed extent on application by a Category B permit holder. Under the Insurance Codes:

- (a) a Category B permit holder must have comprehensive systems in place, forming part of its wider investment risk management systems, for the identification, measurement, control and reporting of derivatives and other assets and/or liabilities that the permit holder is required to publicly disclose;

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- (b) a Category B permit holder must have in place an appropriate policy for the use of derivatives, formulated, approved and regularly reviewed for adequacy by the directors. The policy must address certain matters described in the Insurance Codes and be consistent with the permit holder's activities, its overall strategic investment policy, its asset/liability management strategy and its risk tolerance; and
- (c) a Category B permit holder must have systems in place that:
 - (i) analyse and monitor derivatives individually and in aggregate, enabling exposures and associated risks to be regularly assessed; and
 - (ii) enable the permit holder to provide, on an accurate and timely basis, the information required by the JFSC as a condition of its consent for the use of derivatives.

Given the regulatory restrictions described above, it would be advisable for any person proposing to enter into a Covered Base Agreement and CDA with a Jersey Insurance Company to obtain confirmations (in addition to the usual confirmations on the counterparty's capacity and authority) that the JFSC has approved the use of derivatives by the Jersey Insurance Company, and that the entry into the Covered Base Agreement, the CDA and the Transactions by the Jersey Insurance Company will not conflict with, or result in a breach of, the conditions of its Category B permit, the JFSC consent for its use of derivatives, or the Insurance Codes.

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SCHEDULE 9

Jersey's Bank Recovery and Resolution Law

The EU Bank Recovery and Resolution Directive (2014/59) (the BRRD) established a framework for the recovery and resolution of credit institutions and investment firms in EU jurisdictions. Although this directive will not apply or be implemented in Jersey, the Bank (Recovery and Resolution) (Jersey) Law 2017 (the Law) came into force in Jersey on 31 January 2022 save for Article 72 of the Law (as further described below). The Law provides a new bank resolution regime reflecting and similar to the BRRD and the UK's Banking Act 2009 (as amended).

Like the BRRD, the Law aims to ensure the continuity of critical banking functions to preserve financial stability and to protect public funds by mitigating the use of public finances to support failing banks. Its principal objectives are:

- 1 to ensure that Jersey can assist a foreign jurisdiction in respect of resolution action being taken on a failing bank conducting business in Jersey; and
- 2 to deal with the scenario where a bank in Jersey fails and additional powers are needed to resolve the local banking business, for instance either as a result of the home jurisdiction not taking action which satisfactorily deals with the local business or because Jersey is the home jurisdiction of the bank.

The Law also seeks to protect, amongst others, retail customers who are currently protected under separate Jersey legislation relating to depositors compensation.

Summary of key changes under the Law

The Law implements a number of "Key Attributes" established in the BRRD and other EU and UK legislation, to establish the Jersey Resolution Authority (the **Authority**) which has administrative powers to stabilise and/or resolve distressed banks and to establish a new fund (the **Resolution Fund**), which is currently capped at £100 million during any 5 year period, to provide short term funding and the provision of guarantees or capital to enhance the effectiveness of the various resolution tools and powers that may be deployed by the Authority.

Entities subject to the Law

The Law applies to any Jersey Bank, any Jersey incorporated company which is a parent or subsidiary of a Jersey Bank and any Foreign Bank acting through its Jersey Branch.

The Authority is permitted to recognise foreign resolution actions or, where the foreign resolution actions might endanger financial stability in Jersey or where Jersey depositors would not receive equal treatment with the depositors in the bank's home or other jurisdictions, to undertake its own action in respect of such branches or subsidiaries of foreign banking groups.

Powers of the Authority

The Authority has a number of resolution tools available to it in the event that an entity to which the Law applies is failing or is likely to fail. Therefore, in addition to the Law applying as a consequence

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of such an entity being cash flow or balance sheet insolvent, the Law may also apply where that entity is not technically insolvent; for instance where it has failed to satisfy the JFSC that it is a fit and proper person to carry on deposit taking business or where it requires extraordinary public financial support.

The tools will include:

- the power to sell all or part of the bank's business to another bank;
- the power to sell all or part of the bank's business to a bank established by the Authority (referred to in the Law as a "bridge bank");
- the power to separate performing from underperforming assets by way of transfer to a bridge bank or asset management vehicle (for instance, to establish "good" and "bad" banks); and
- the bail in of shareholders and creditors (including writing down or converting debt into equity), excluding protected retail customers and secured/guaranteed claims. The bail in tool is most likely to be used in a failing bank scenario.

In each case, the deployment of a tool is subject to resolution safeguards similar to those under the BRRD, for example:

- safeguards for shareholders and creditors (particularly in the case of partial transfers and application of the bail in tool);
- safeguards for partial transfers;
- protection for security arrangements; and
- protection for title transfer collateral arrangements, set-off arrangements and netting arrangements.

Under Article 69 of the Law, the Authority may terminate and close out any derivative contract upon a bank's entry into resolution, and the Authority may only exercise the write down or conversion power in relation to a liability arising from a derivative contract upon or after closing out such contract. Article 69(4) of the Law provides that where a derivative contract is subject to a netting arrangement, the value of the liability for the purposes of the pre-resolution valuation (or provisional valuation, if applicable) shall be determined on a net basis in accordance with the terms of the netting arrangement.

For the purposes of the Law, a "derivative contract" means:

- (a) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

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- (b) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (c) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled if they are traded on a regulated market or a multilateral trading facility;
- (d) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled, not otherwise mentioned in paragraph (c) and not being for commercial purposes, and which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;
- (e) derivative instruments for the transfer of credit risk;
- (f) financial contracts for differences; or
- (g) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognized clearing houses or are subject to regular margin calls.

Impact on entities subject to the Law

The Law also establishes a new procedure for the winding up of a bank in the place of Jersey's normal insolvency procedures. The new procedures are modelled on the combination of the "just and equitable" winding up procedure set out in the Companies Law and the powers given to a liquidator under a creditors winding up under that law.

Article 72 of the Law, once it is in force, will require banks to contractually recognise the bail in provisions to the extent that, amongst other things, the liability that may be subject to the bail in is not governed by Jersey law. Failure to do so will be a criminal offence (subject to a fine of up to £10,000) and in any event will not prevent the bail in tool from being deployed.

Therefore, to the extent not already done when complying with the other international resolution regimes (such as the UK's), Jersey Parties to which the Law applies will, prior to Article 72 of the Law coming into force, need to amend their non-Jersey law terms and conditions and other documentation under which a liability may arise (including any Agreement to which they are a party) to include contractual recognition of bail-in provisions (for instance based on the Loan Market Association's standard bail in clause).

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Jersey Parties to which the Law applies will be required to draw up, for the approval of the JFSC, a recovery plan setting out measures that would be taken to restore the financial position of that entity in the event of a significant deterioration.

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SCHEDULE 10

Definitions

In this Opinion (including its Schedules):

Article 34	has the meaning given to such term in paragraph 4 of Schedule 4;
Banking Law	means the Banking Business (Jersey) Law 1991, as amended;
Collateral	means Futures Credit Support (as defined in paragraph 6 of this Opinion) and Cleared Derivatives Credit Support (as defined in paragraph 6 of this Opinion);
Companies Law	means the Companies (Jersey) Law 1991, as amended;
Covered Transaction	has the meaning given to such term in paragraph 2.3 of this Opinion;
CSD	has the meaning given to such term in paragraph 8.1(i)(iv) of Part 2 of this Opinion;
Désastre Law	means the Bankruptcy (Désastre) (Jersey) Law 1990, as amended;
Dicey and Morris	means Dicey and Morris on "The Conflicts of Law" (14 th edition);
FCM	has the meaning given to such term in paragraph 1(a) of this Opinion;
Foreign Bank	means a Bank/Credit Institution (as described in Schedule 2) which is a company or body corporate incorporated or organised outside of Jersey;
Incorporated Cell	means an incorporated cell as defined in the Companies Law;
Incorporated Cell Company	means an incorporated cell company as defined in the Companies Law;
Insurance Law	means the Insurance Business (Jersey) Law 1996, as amended;
Jersey Bank	means a Bank/Credit Institution (as described in Schedule 2) which is a company incorporated under the Companies Law which is registered to carry on deposit-taking business pursuant to the Banking Law;
Jersey Branch	means the branch in Jersey of a Foreign Bank registered to carry on deposit-taking business pursuant to the Banking Law;

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Jersey Company Party	means a Corporation (as described in Schedule 2) incorporated under the Companies Law (excluding investment funds, pension funds, hedge funds, Protected Cell Companies and Protected Cells, but including Incorporated Cell Companies and Incorporated Cells);
Jersey Courts	means the Royal Court, the Jersey Court of Appeal and the Privy Council;
Jersey Insolvency Procedures	has the meaning given to such term in paragraph 1 of Schedule 6;
Jersey Insurance Company	means an Insurance Company (as described in Schedule 2) incorporated under the Companies Law which holds a Category B permit pursuant to the Insurance Law;
Jersey Party	means a Party which is a Jersey Company Party, a Jersey Insurance Company, a Jersey Bank or a Foreign Bank acting through its Jersey Branch;
JFSC	means the Jersey Financial Services Commission;
legal entity or legal person	means an entity with legal personality other than a natural person;
Minister	means the Minister for Economic Development;
Netting Law	means the Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005, as amended;
Parties	means the parties to a Covered Base Agreement and CDA and Party shall be construed accordingly;
Protected Cell	means a protected cell as defined in the Companies Law;
Protected Cell Company	means a protected cell company as defined in the Companies Law;
Royal Court	means the Royal Court of Jersey;
Schedule	means, unless the context requires otherwise, a schedule to this Opinion;
Secured Party	means the FCM;
Security Interests Law	means the Security Interests (Jersey) Law 2012, as amended;
SIJL 1983	means the Security Interests (Jersey) Law 1983, as amended;

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Trusts Law	means the Trusts (Jersey) Law 1984, as amended;
UK Insolvency Act	means the United Kingdom Insolvency Act 1986, as amended; and
Viscount	has the meaning given to such term in paragraph 2.3 of Schedule 6.