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MEMORANDUM OF LAW FOR THE FUTURES INDUSTRY ASSOCIATION AND THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

17 December 2025

Dear Sir or Madam:

(1) ENFORCEABILITY UPON A CUSTOMER'S INSOLVENCY OR OTHER DEFAULT OF THE POSITION LIQUIDATION, MARGIN LIQUIDATION AND DETERMINATION OF ACCOUNT PROVISIONS OF A CUSTOMER AGREEMENT PURSUANT TO WHICH A US FUTURES COMMISSION MERCHANT CLEARS FUTURES AND/OR CLEARED SWAPS FOR THE CUSTOMER AND (2) VALIDITY, PERFECTION AND ENFORCEMENT OF THE SECURITY INTEREST GRANTED TO THE FCM BY THE CUSTOMER UNDER THE COVERED AGREEMENT IN THE COLLATERAL

We have been asked to prepare for ISDA and FIA a legal opinion regarding (1) the enforceability under the laws of Spain (“**our jurisdiction**” or “**Spain**”) of the Position Liquidation, Margin Liquidation and Determination of Account provisions (collectively, “**remedial provisions**”) of a customer agreement (the “**Covered Agreement**”) pursuant to which a futures commission merchant (the “**FCM**”) registered with the Commodity Futures Trading Commission (the “**CFTC**”) clears Futures and/or Cleared Swaps for a customer located in our jurisdiction (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 (as further defined below).

Capitalized terms used but not defined in this letter have the meanings given such terms in the annex (the “**Summary Annex**” dated March 23, 2025) attached to your instruction letter dated 12 June 2025 (which is a revision of your letter dated 5 November 2021) (the **Instruction Letter**).

Scope of Opinion

For the purposes of this opinion if a Customer clears only Futures, the Covered Agreement will consist of a customer account agreement (a “**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 together with a Cleared Derivatives Addendum substantially in the form published by FIA and ISDA in 2012 or 2018 (either the “**CDA**”). As each of the Base Account Agreement and CDA has its own remedial provisions, our opinion needs to address the enforceability of the provisions of each of the Base Account Agreement and CDA that, upon an Event of Default with respect to the Customer, provide the FCM the right to engage in Position Liquidation, Margin Liquidation and a Determination of Account to determine a single balance of account as between the FCM and the Customer. As the FCM’s exercise of the remedial provisions may involve the enforcement of the FCM’s security interest in the Customer’s rights and interests in respect of the Collateral, our opinion should also address the validity, perfection and enforcement of the FCM’s security interest.

Our opinion is based on the assumptions describing a CDA below rather than either published form of CDA, but we are allowed to assume that both of these published forms meet those assumptions.

Covered Transactions/Contracts

As explained above, the types of transactions that may be cleared for the Covered Customer pursuant to the Covered Agreement include US Futures, Foreign Futures and Cleared Swaps (together, “**Covered Transactions**” or “**Covered Contracts**”).

We do not describe herein the scope of transactions that may be Futures or Cleared Swaps (other than by the requirements reflected in the definitions set out above).

Types of Customers covered

We indicate the types of Covered Customers covered by our opinion in Appendix A to this letter.

Assumptions

We have assumed for purposes of our opinion, that the statements contained in the Instruction Letter, the Summary Annex and the S&C Memo are true and correct.

For purposes of our opinion, we note that, upon an Event of Default with respect to the Customer, the remedial provisions of the Base Account Agreement typically provide that the FCM would have a right to, among other things, (1) close out or otherwise liquidate the Customer’s open positions in its Covered Contracts, and hedge risk incurred by the FCM in connection with the Event of Default by any reasonable method, including by means of entering into offsetting contracts, risk-reducing contracts or hedging contracts, and by valuing any contracts 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 or set off the value of such proceeds with or against, any amounts due from the Customer to the FCM (“**Margin Liquidation**”). In connection with exercising Position Liquidation and Margin Liquidation, the FCM would make a determination of a single balance or net

termination amount due from one party to the other in respect of each Account Class and all Account Classes on an aggregate basis (a “**Determination of Account**”).

Position Liquidation

Part I Analysis – Position Liquidation by Contractual Enforcement

The FCM could effect the close-out or liquidation of the Customer’s open positions in Covered Contracts credited to the FCM’s omnibus customer position accounts at DCOs and Foreign Futures Brokers by exercising its contractual rights under the rules of such DCOs and provisions of its clearing agreements with such Foreign Futures Brokers that the FCM has by virtue of being the legal owner of, and the party in contractual privity with such DCOs and Foreign Futures Brokers, under the Covered Contracts cleared for the Customer. Additionally, in engaging in such Position Liquidation, the FCM would not act in its capacity as the Customer’s agent. Rather, upon the Event of Default, the FCM would be viewed as acting in its principal capacity as it would no longer be required under the Covered Agreement to follow the Customer’s instructions and would be permitted to act in its own interest (subject to any requirements of the Covered Agreement, which may require the FCM to act in a commercially reasonable manner). Such Position Liquidation would not be equivalent to a foreclosure, and the FCM would not need to enforce its security interest in the Customer’s rights and interests in respect of the Covered Contracts.

We are asked, in our responses to questions I.B.2 and I.B.7 in Part I below, to analyze Position Liquidation assuming the FCM would seek to characterize itself as (i) effecting the closeout or liquidation of the Customer’s open positions by exercising its rights provided to it in the rules of a DCO or the clearing agreement with a Foreign Futures Broker as the legal owner of, and the party in contractual privity with the DCO or Foreign Futures Broker under the Customer’s Covered Contracts and (ii) acting in a principal capacity and not as the Customer’s agent in exercising such rights.

In providing our responses to the Part I questions, we are asked to confirm whether such characterization would be recognized by a court in Spain and explain the reasoning for our conclusion in this respect. For example, would the FCM’s characterization as legal owner of, and the party in contractual privity with the DCO or Foreign Futures Broker under, the Customer’s Covered Contracts be subject to recognition by a court in Spain of the FCM as holding the Covered Contracts as an “agent-trustee,” and if that were the case, would such recognition depend upon the court concluding that there would need to be a valid trust under either New York law or the laws of Spain? Could the characterization of legal ownership and contractual privity be viewed as based on an alternative arrangement, such as a commission agency?

Part II Analysis – Position Liquidation by Collateral Enforcement

The FCM also has a perfected security interest in the Customer’s rights and interests in respect of the Customer Account and the property credited thereto, including the Customer’s open positions in the Covered Contracts cleared for it, and the FCM could alternatively seek to characterize itself as effecting the close-out or liquidation of the Covered Contracts by electing to exercise its rights as a secured party to enforce its security interest and sell, liquidate or otherwise dispose of the Customer’s Covered Contracts.

In our responses to the questions posed in Section C of Part II below we are asked to analyze Position Liquidation assuming it is viewed as involving the FCM’s enforcement of its security interest to sell, liquidate or otherwise dispose of the Customer’s Covered Contracts.

Margin Liquidation

We may assume for purposes of our opinion that “Margin Liquidation” refers to the sale, liquidation or other disposition of securities only (and not also to any non-cash assets other than securities).

Part I Analysis – Margin Liquidation by FCM’s Exercise of its Permitted Uses Rights Under Customer Property Rules

Margin Liquidation may be viewed as involving the FCM’s exercise of its rights under the applicable Customer Property Rules (which we understand have been characterized by US courts and the CFTC as operating to impose a “statutory” trust over an FCM’s Customer Funds) to withdraw and apply Customer Funds for Permitted Uses (the FCM’s “**Permitted Uses Rights**”), including to satisfy amounts due to a DCO, or to other parties, in the course of liquidating a Customer’s Covered Contracts. This process is not considered a foreclosure, and therefore the FCM would not need to enforce its security interest in the Customer’s rights and interests in respect of Collateral consisting of securities to effect their liquidation or use them in this manner.

In our responses to questions I.B.3 and I.B.7 in Part I below we are asked to analyze Margin Liquidation assuming the FCM would seek to characterize itself as effecting Margin Liquidation based on the exercise of its Permitted Uses Rights under the Customer Property Rules rather than the FCM’s enforcement of its security interest in Customer’s rights and interests in respect of Collateral consisting of securities.

Our responses should confirm whether a court in Spain would recognize such characterization and should explain the reasoning for such conclusion. For example, if such recognition be based on the FCM’s status as legal owner of the Segregated Funds or Separate Account Funds of the applicable Account Class or if such legal ownership depends on whether there was a statutory trust over Customer Funds under US law that is recognized as a valid trust under the laws of Spain.

Part II Analysis – Margin Liquidation by Collateral Enforcement

The FCM may also effect Margin Liquidation by exercise of its rights as a secured party to enforce its security interests in the Customer’s rights and interests in respect of Collateral consisting of securities and sell, liquidate or otherwise dispose of such securities.

In our responses to questions posed in Section C of Part II below we are asked to analyze Margin Liquidation assuming the FCM would seek to characterize itself as effecting Margin Liquidation based on the FCM’s enforcement of its security interest in Customer’s rights and interests in respect of Collateral consisting of securities rather than the exercise of its Permitted Uses Rights.

Determination of Account

FCM may be viewed, consistent with the intention of the parties that the Customer Account constitute a mutual, open and running account, as an accounting procedure to determine a running account balance that does not involve netting or set-off of distinct independent obligations of the parties or the FCM’s enforcement of its security interest in the Customer Account or cash credited thereto to bring about a single debt claim of one of the parties. However, if the intention of the parties is not honored, the Determination of Account could also be viewed as involving (i) netting or set-off (of, for example, the respective obligations of the FCM to account for trading gains or to repay the positive cash balance of the Customer Account against the Customer’s obligations to pay an amount equal to trading losses and other chargeable costs) or (ii) enforcement of the FCM’s security interest in the rights and interests of the Customer in the Customer Account or cash credited thereto or otherwise due to the Customer.

In our responses to questions I.B.4 and I.B.7 we are asked to analyze Determination of Account assuming the FCM would seek to characterize the Determination of Account either as (i) a determination of a running account balance that is an accounting procedure not involving netting or set-off or enforcement of the security interest or (ii) involving netting or set-off. In this respect, we are asked to opine on whether a court in Spain will recognize any of each such characterization. If a particular characterization would not be recognized or could be challenged for any reason (or such recognition would depend on whether there was a statutory trust over Customer Funds under U.S. law that is recognized as a valid trust under the laws of your jurisdiction), we are asked to provide further detail and explain the reason for this.

In our responses to questions posed in Part II below we should assume the FCM would seek to characterize a Determination of Account as involving the enforcement of its security interest in the Customer's rights and interests in the Customer Account and the cash credited thereto.

PART I

POSITION LIQUIDATION, MARGIN LIQUIDATION AND DETERMINATION OF ACCOUNT

A. Additional Assumptions

1. The FCM and the Customer enter into a Covered Agreement (consisting of a Base Account Agreement and CDA) 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 authorizes the FCM to execute, clear and carry, US Futures, Cleared Swaps and/or Foreign Futures on behalf of the Customer (individually or collectively, the "**Customer Account**" or the "**Account**").
2. Each of the Base Account Agreement and the CDA is governed by New York law.
3. On the basis of the terms and conditions of the Covered Agreement and other relevant factors and acting in a manner consistent with the intentions stated in the Covered Agreement, over time, open positions are established for the Customer in Covered Contracts that are cleared and carried in or credited to the Customer Account.
4. Some of the Covered Contracts 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.
5. After commencing clearing and while the Customer has open positions in Covered Contracts, the Customer, which is organized in Spain, becomes the subject of a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "**insolvency**") under the insolvency laws of our jurisdiction and, as a result, an Event of Default occurs under each of the Base Account Agreement and CDA.
6. Subsequent to the commencement of the insolvency, either the Customer or an insolvency official seeks to challenge or otherwise prevent Position Liquidation, Margin Liquidation 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.

INTRODUCTION

The issues addressed in this Memorandum are those set out below in italics, followed in each case by our analysis and conclusions. The analysis that follows is based on general principles of Spanish contract law and Spanish insolvency law (in this opinion "**Spanish Insolvency Law**" or "**Insolvency Law**" is meant to refer to Royal Decree Law 1/2020 of 5 May 2020 on Insolvency, the Restated Text of the Insolvency Law, as amended over time) as these relate to the entering into of the Covered Agreement and its enforceability.

The advice in this Memorandum relates only to Spanish law as it stands at the date of this Memorandum, and we have assumed that no law of a jurisdiction other than Spain adversely affects the conclusions in this Memorandum.

In particular, this Memorandum takes into account Royal Decree Law 5/2005 (**RDL 5/2005**) as amended and restated in respect of which the following should be considered:

- (i) RDL 5/2005's scope of application is financial contractual netting agreements and financial collateral agreements¹;
- (ii) the provisions of RDL 5/2005 apply only to a limited number of parties, which list is detailed in Section 3 of this Introduction;
- (iii) netting agreements and collateral agreements need to comply with certain requirements in order to qualify for the benefits of RDL 5/2005; and
- (iv) RDL 5/2005 benefits result in both (a) flexible perfection requirements and enforcement procedures and (b) insolvency protection under the Spanish Insolvency Law.

In this Memorandum the clearing member's right to enforce the liquidation, set-off, netting and credit support provisions under the Agreements is discussed in respect of a Customer incorporated or formed under the laws of Spain. Under Spanish law the status of the Customer will be governed by the following laws:

- (v) *Ley de Sociedades de Capital* (Royal Legislative Decree 1/2010, of 2 July, approving the consolidated text of the Corporate Enterprises Act);
- (vi) Law 3/1994 of 14 April of EU Financial Credit Entities ("*Entidades de Crédito de la Comunidad Europea*") and Law 10/2014 of 26 June on the management, supervision and solvency of credit institutions ("*Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito*");

¹ For the purposes of this opinion, we consider the Covered Agreement to have the elements of a financial collateral agreement and a current account/netting agreement. Our conclusion is consistent with the description and explanations provided in this respect in the Instruction Letter and the S&C Memo.

RDL 5/2005 AS THE SPECIFIC RULE APPLICABLE TO LIQUIDATION RIGHTS/NETTING RIGHTS AND COLLATERAL RIGHTS UNDER THE AGREEMENT

Royal Decree-Law 5/2005, of 11 March ("**RDL 5/2005**"), deals, inter alia, with the implementation of the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Financial Collateral Directive**"). RDL 5/2005 introduces (i) flexible perfection requirements and enforcement procedures and (b) insolvency protection under the Spanish Insolvency Law to contractual relationships which meet certain requirements related to the nature of the agreement under which transactions are documented (both in relation to the agreement itself and the specific documented transactions) and the counterparties to the Agreement which need to qualify as counterparty types under RDL 5/2005 (the "**RDL 5/2005 Requirements**").

The Covered Agreements and the transactions cleared pursuant thereto need to be compliant with the RDL 5/2005 Requirements in order to benefit from the disapplication of the Spanish insolvency law provision which generally restrict both, the ability to terminate and close out agreements on insolvency and enforce over collateral created under such agreements.

It is our view that the RDL 5/2005 Requirements are met with respect to the Covered Agreements. The RDL 5/2005 Requirements are:

1 Single Agreement requirement:

RDL 5/2005 requires the relevant contractual netting agreement to create a single legal obligation covering all the financial transactions included therein, by virtue of which, in the event of early termination, the parties will only be entitled to the net balance of the terminated transactions pursuant to the provisions of the agreement.

Article 5.1 of RDL 5/2005 provides (in translation) as follows;

"[the netting agreement] provide for the creation of one single legal obligation which encompasses all of the financial transactions entered into under such agreement and by virtue of which, where there is an early termination, the parties will only have the right to claim the net sum of the terminated transactions".

We are of the opinion that the Single Agreement requirement is met², on the basis of the wording of the CDA as extracted below.

- (i) Clause 7 of the CDA which provides that upon the early termination thereof, the parties will only have the right to claim the net sum of all the terminated transactions under the agreement:

“(i) In the case of:

² As discussed earlier, we also consider the Covered Agreement to be a financial collateral agreement for purposes of RDL 5/2005. Additionally, it is our understanding that the Covered Agreement would be considered a close-out/netting of a “single agreement” under New York law.

(A) A default [...] that under the terms of the Agreement, gives rise to any right of Clearing Member to liquidate all Cleared Derivates [...] Clearing Member shall be entitled to: (x) with in respect to a Close-out Event, designate a day not earlier than the date of the occurrence of such Close-out Event as the “Liquidation Date” with respect to all Cleared Derivatives Transactions; [...]

- (ii) The Base Account Agreement, which contains an equivalent effects provision to that of a single agreement provision specifying that the terms of the relevant agreement and the terms of the transactions included therein are entered into in reliance upon the fact that such agreement and all such terms constitute a single agreement.
- (iii) the CDA, which pursuant to its clause 1. (a), applies to all Cleared Derivatives Transactions, other than “[...] *futures contracts and options on futures contracts executed on or subject to the rules of a U.S. designated contract market subject to regulation by the Commodity Futures Trading Commission (“CFTC”) (including derivatives transactions entered into over-the-counter and cleared as futures or options on futures contracts) or on a foreign board of trade subject to regulation in its home jurisdiction*”.

Separately, while not required in order to meet the Single Agreement requirement, we recommend that the Covered Base Agreement contain an additional provision with, *mutatis mutanda*, the following wording to this effect,

[...] Upon the occurrence of any Event of Default, [FCM] shall have the right, in addition to any other remedy available to [FCM] at law or in equity, to liquidate, terminate, or close out any or all open Contracts held in or for the Account by any means of lawful disposition (including without limitation through offsetting transactions, any exchange of futures for physicals, block trade, or similar transaction permitted under applicable exchange rules), to sell, set off, apply or otherwise dispose of any cash, securities or other property of Customer held by or for [FCM] and set off or apply the proceeds thereof toward amounts payable by Customer hereunder, to reduce any amounts due and owing to Customer by setting off against such amounts any amounts due to [FCM] [...]

2 Transaction types eligible to be documented under the netting agreement

RDL 5/2005 is applicable to certain financial transactions of a specified or general nature.

The Covered Agreement and the Covered Transactions to which it relates are contracts/transactions referred to directly or by reference in RDL 5/2005. Therefore, to the extent that the Covered Transactions are those documented under the Covered Agreement, the objective RDL 5/2005 requirement will be met. We are of the opinion that the Covered Transactions meet the RDL 5/2005 Requirements.

3 Scope of application – Parties

According to the provisions of RDL 5/2005 at least one of the parties to the Base Account Agreement and the CDA should be any of the following:

1. a public entity;
2. the European Central Bank, the Bank of Spain, a central bank of any Member State of the European Union, a central bank of any third States, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;
3. a credit institution, an investment firm, an insurance undertaking, an undertaking for collective investment in transferable securities or a management company thereof, a pension fund, or any other financial institutions as defined in Article 3(1) of Directive 2013/36/EC of the European Parliament and of the Council, of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions (recast); or
4. a governing body of a secondary exchange, a governing body of a clearing and settlement system, or a central counterparty, a settlement agent or a clearing house as defined in Law 41/1999, of 12 November, or a similar institution acting in the futures, options and derivatives markets, and the members and participants in all those market infrastructures when dealing in such capacity.

As a result, if the FCM qualifies as any of the undertakings in 3 above, then the contractual relation with the Customer will be protected under RDL 5/2005 even if such Customer does not qualify as such. We note that many FCMs qualify by virtue of being a bank or credit institution.

B. *Questions to be addressed*

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

1.1 The choice of New York law to govern the Covered Base Agreement and the CDA will be recognized in Spain in accordance with, and subject to the limitations set out, in Regulation (EC) No. 593/2008 of the European Parliament and the Council, dated 17 June 2008, on the law applicable to contractual obligations ("**Rome I**"). This is the case based on:

- a) Article 2 of Rome I, which, under the principle of "Universal Application", provides that the law chosen by the parties to an agreement need not be the law of a Member State.
- b) The choice of New York law, as the law chosen under the Covered Base Agreement and the CDA, complies with the requirement of article 3.1 of Rome, insofar as such election is made expressly in the Agreement.

We assume that from a contractual basis, New York law, as the law chosen by the parties in the Base Account Agreement and the CDA, exclusively, will be applied by the courts of New York. We therefore don't discuss here any applicable limitations which may result from any overriding mandatory provisions of the law of the country where the obligations arising out of the Base Account Agreement and CDA have to be or have been performed other than in the relevant sections of this opinion were the insolvency laws of this jurisdiction are discussed. In the unlikely event that Spanish courts will be called to apply New York law i.e. that New York law is pleaded in a Spanish court, then we believe that the Spanish courts will do so accordingly, and we are not aware of any overriding mandatory provisions under Spanish law which would apply to the Covered Agreements.

With regards to any judgement rendered in relation to the Base Account Agreement and the CDA by a New York court where such court has been determined to be the competent court to adjudicate on the New York law governed agreement, as explained more fully in Section 1.3 below, we expect that Spanish courts will determine that the New York judgment is eligible to be recognized and enforced against the Customer.

However, the issue of enforceability in respect of assets or rights which are located outside New York may be determined by a law other than New York law if an asset or right (including cash or any other eligible asset), which is the subject of the relevant effects of the agreement³, is situated outside New York, the courts of Spain, if for any reason become competent to review such transfer of title, may take into account the law of the place where the asset or right is legally situated and the governing law of the asset (despite the choice of New York law as the governing law of the Base Account Agreement and CDA).

1.2 The submission by a Spanish counterparty to the jurisdiction of the courts of the state of New York contained in the Covered Agreement is valid and binding under Spanish law. Pursuant to article 54 and 55 of the Law of Civil Procedure (subject to certain exemptions which are not relevant in this context) and related legislation (including the Spanish Civil Code and the Organic Law on the Judicial Power and Law 29/2015 (as defined below), parties may expressly submit to an agreed upon jurisdiction such as the jurisdiction of the courts of New York.

1.3 We expect that a final judgment duly rendered by a court of justice in the state of New York, in response to a legal action filed before the courts of New York in connection with the Base Covered Agreement and the CDA would be recognized in Spain, provided that it complies with the requirements of Spanish Law 29/2015 on International Judicial Cooperation in Civil Matters (*Ley 29/2015, de 30 de julio, de cooperación jurídica internacional en materia civil*) ("**Law 29/2015**"). Pursuant to Law 29/2015 such requirements are the following:

- (a) specific requirements:

³ Please refer to Part II of this opinion in so far as collateral agreements refer.

- (i) the foreign judgment has not been issued in relation to matters for which Spanish courts have exclusive competence (i.e. matters related to *in rem* rights over real estate property or tenancies of real estate property located in Spain; validity of the incorporation, nullity or dissolution of companies or other legal persons or associations of natural or legal persons incorporated in Spain, or of the validity of the decisions of their corporate bodies) or in case of forum shopping;
- (ii) the party against which enforcement of the foreign judgment is sought was served with notice of the proceedings in which the foreign judgment was issued and given the opportunity to be heard and to defend its arguments (Spain has ratified the Hague Convention of November 15, 1965, on the service abroad of judicial and extrajudicial documents in civil or commercial matters). Service of process would be considered correctly performed in cases in which the defendant voluntarily did not appear in the court of origin. The claimant must prove that the defendant was duly and personally served with notice of the proceeding. The service of the claim by way of a public announcement in newspapers or on a notice board is not acceptable in case of a default judgment. In addition, the defendant should have the opportunity to be assisted by a lawyer, and it should have the opportunity to present its arguments in the court of origin;
- (iii) the foreign judgment must not infringe public policy/public order (*orden público*). Public order, as a specific conflict of laws concept (and as opposed to internal public order), is an exception to the application of a foreign law (either as pleaded or on the basis of the recognition of foreign judgements), as a result of its incompatibility with essential legal principles of the home jurisdiction. Public order represents an exception though: according to legal doctrine it should only be applied in situations of manifest injustice, of serious anomaly. It is not enough that the foreign law is different or even contrary to the home jurisdiction laws. Public order should therefore only be pleaded were the basic principles of the legal system of the home jurisdiction are put into question. In this respect, we believe that the better view is that pleading Spanish public order in respect of the substantive law pursuant to which the judgment is rendered will not, in the case of the Covered Agreement, be justified.

What constitutes public order at any point in time depends on the particular circumstances of the time in which public order is called upon to be applied (Spanish Supreme Court Judgment 5 April 1966).

- (iv) the foreign judgment may not contradict a judgment obtained in Spain or a judgment obtained in another state, if the latter complies with the requirements for its recognition in Spain;

- (v) no judicial proceedings previously initiated in Spain shall be on-going in relation to the same parties and object; and
 - (vi) the foreign judgment meets the formal requirements set out in Section 54.4 of Law 29/2015 (Spain has ratified The Hague Convention of October 5, 1961, abolishing the requirement of legalization for foreign public documents) which requires that the recognition filing includes (a) the New York court judgement duly legalized (b) a document which attest if the judgement was issued having the defendant notified or in absence from court, (c) any other document which confirms the judgement as final (a requirement which may be confirmed in the judgment itself or be attested on the basis of the law applied by the court issuing the judgment), and the (d) the translation of the documents which are filed for the purposes of obtaining the recognition.
- (b) general requirements:
- (i) the foreign judgment must be issued by a judicial authority of such foreign country (resolutions issued by administrative authorities, public notaries or other non-judicial authorities are not admissible);
 - (ii) the judicial authority of the foreign country must act in the exercise of its judicial power: the foreign judgment must be the outcome of a proceeding in which facts have been verified and the law applied in order to produce certain legal effects on persons, properties, rights or obligations. Thus, judgments where the judge is not acting as such or judgments which consists of the recognition of a decision by another authority would not be recognized in Spain (e.g., a double *exequatur* is not acceptable);
 - (iii) the foreign judgment must be final and unappealable;
 - (iv) the foreign judgment must have been issued in a contentious proceeding;
 - (v) the foreign judgment must be issued in private law matters, whether civil or commercial matters; and
 - (vi) the foreign judgment must be issued in a foreign country recognized by Spain.

2.- *Would the Position Liquidation provisions of each of the Base Account Agreement and the CDA be enforceable under the laws of Spain 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 recognized and upheld by a court in our jurisdiction? If a particular Position Liquidation method would either not be upheld or could be challenged, we are asked to provide further detail and explain the reason for this.*

Yes, the liquidation methods set out in paragraph 2.5 of the Summary Annex and Section XI of the S&C Memorandum would be recognized and upheld as against the Spanish counterparty in Spain.

Upon the designation of such Event of Default, and where RDL 5/2005 requirements are met (as we confirm they are) the FCM will, in the exercise of its contractual rights;

(a) be entitled to terminate/close-out the Covered Transactions by reason of the insolvency of the Spanish counterparty.

RDL 5/2005 expressly provides that a contractual right to early termination, default, or any equivalent effect in relation to financial transactions included under a contractual netting agreement (and, as discussed below, the Covered Agreement constitutes a contractual netting agreement) cannot be limited, restricted or affected in any way by the initiation of an insolvency proceeding or liquidation proceeding which affects the Customer. The aim pursued in the relevant provision of RDL 5/2005 is to ensure that, in cases involving a defaulting party to the relevant agreement, in this case the Customer insolvency, the non-defaulting party's contractual rights to terminate all the transactions covered by the relevant contractual netting agreement will not be interfered with.

(b) be entitled to apply the liquidation methods which are provided for in the Base Account Agreement and CDA.

Are there any circumstances in Spain jurisdiction, 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?

There are none provided the RDL 5/2005 requirement are met.

3. Would the Margin Liquidation provisions of each of the Base Account Agreement and CDA be enforceable under the laws of Spain and the FCM's Margin Liquidation in respect of each Account Class be recognized and upheld by a court in our jurisdiction?

Yes. RDL 5/2005 (article 5) provides for the acknowledgement, in situations of insolvency, of the inclusion "[...] as a credit or debt of [...], exclusively the net amount of the financial transactions covered by a contractual netting agreement [or in respect of other agreements which are related to such netting/close-out agreement], calculated pursuant to the rules established in it [...]".

The above provision of RDL 5/2005 is not specific to a type of contractual netting agreement but general to any agreement that meets the minimum requirements to be regarded as such (in respect of which please see our discussion in our

Introduction to the opinion) and therefore allows for a calculation directed towards obtaining a single net amount from the values represented by transactions documented or position held under the relevant or related agreement. Financial transactions, for this purpose, include financial collateral agreements (which, amongst other, encompass margin provisions).

Are there any circumstances in our jurisdiction, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, you can foresee that might affect the FCM's ability to exercise Margin Liquidation?

There are none provided the RDL 5/2005 requirement are met.

4. Would the Determination of Account provisions of each of the Base Account Agreement and CDA be enforceable under the laws of Spain and the FCM's Determination of Account in respect of (a) each Account Class and (b) all Account Classes on a combined basis be recognized and upheld by a court in our jurisdiction?

Based on the Summary Annex, “[...] *The Determination of Account with respect to the Customer Account could be viewed as involving netting or set-off of the FCM's obligation to account for the net gains on the Customer's Contracts against the Customer's obligations [...]*”. In addition to this, we note, in what is relevant here, that the “*FCM could achieve a final Determination of Account pursuant to its right to enforce its security interest in the credits made to the Customer's Account to satisfy the Customer's obligations in respect of the debits made to the Account, or by exercising its rights of setoff or netting, or some combination of these remedies*”

Based on our explanation in our answer 3 above. We are of the opinion that the characterization of the Determination Account is one of a combination of a “*current account agreement*” and “*netting*” prior to a situation which results in achieving a final Determination Account as a result of enforcement of a security interest.

Are there any circumstances in our jurisdiction, including any moratorium, stay, freeze or other consequence of the commencement of an insolvency proceeding, we 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)?

There are none.

The entering into insolvency by the Covered Customer will not adversely impact the operation of the Customer Account and the ability to exercise any of Position Liquidation, Margin Liquidation, or a Determination of Account. Whilst any such actions may or may

not be related to the Covered Customer insolvency, we are of the opinion that RDL 5/2005 will protect any rights thereof in such context.

Article 16.1 of RDL 5/2005 states that “*the declaration of early termination, rescission, cancellation, enforcement or equivalent effect of the financial transactions [which for this purpose includes financial collateral agreements] entered into under a contractual netting agreement or in relation to it, shall not be limited, restricted or affected in any manner by the opening of winding-up or reorganization measures*”.

We are of the opinion that the Customer Agreement benefits from the above provision as its effects, when any of a Position Liquidation, Margin Liquidation, or a Determination of Account are effected, are equivalent to a current account/netting agreement.

In essence the Base Account Agreement is an *account* agreement that incorporates account operation and margining standards providing that the balance of the customer account, once the transactions and margin credited thereto have been liquidated, will be payable to the customer (if the balance is positive) or to the FCM (if the balance is negative). On the basis of the clearing model established between the Customer, the FCM and the DCO, there are no transactions between the FCM and client that correspond to the transactions between the FCM and DCO. As a result, the Covered Agreement is an account agreement in which (a) the FCM reflects by entries to the account, the transactions the FCM enters into on behalf of the customer with the DCO, and the value of margin the FCM requires the customer to deposit with it and (b) the customer’s contractual entitlement is limited to (1) prior to default/liquidation, the amount by which the net equity of the customer account exceeds the margin requirement for the account and (2) after default/liquidation, the positive balance (if any) of the account. Whilst the Customer Agreement is not in itself a “master agreement”, it constitutes a single agreement that governs the operation of the customer’s account (as described in the S&C memorandum). As such, the Covered Agreement constitutes a netting agreement under RDL 5/2005.

In addition, we are of the opinion that the operation of the Customer Agreement satisfies the requirement of a financial collateral arrangement under RDL 5/2005 and therefore, the FCM, pursuant to the operation of the agreement will be entitled, under RDL 5/2005 to close the customer’s open positions the FCM has established with the relevant DCO.

The above analysis amounts to recognizing the validity and enforceability of the early termination of transactions following the institution of an insolvency proceeding with respect to the Covered Customer to the extent that the relevant Customer Agreement meets the RDL 5/2005 Requirements.

In addition, Article 16.3 of RDL 5/2005 affords the extra protection of a *modified recognition to the avoidance provisions* of the Insolvency Law: under Article 226 of the Insolvency Law, the courts of Spain can set aside any transactions entered into by an insolvent party within the two-year period preceding the adjudication of the bankruptcy or

restructuring (provided certain requirements are met) (the “**Suspect Period**”) when, inter alia, the relevant transaction results in patrimonial prejudice to the insolvent. When RDL 5/2005 applies, the burden of proof rest with the insolvency representatives: they have the onus to prove that such transactions were “detrimental” to the insolvency estate.

Spanish law does not prescribe what “detrimental” is for these purposes nor has the Spanish Supreme Court formulated a final test in this respect. However, we are of the opinion that transactions at an undervalue and transactions intended to constitute a fraudulent preference fall within the scope of Article 16.3 of RDL 5/2005 in connection with Article 226 of the Insolvency Law (and, in respect of restructuring notices as further provided by articles 599 and 619 of the Insolvency Law).

6. *Assuming the parties have entered into the Covered Agreement, and Event of Default has occurred with respect to the Customer and the FCM has determined a lump-sum cash balance or net termination amount in a currency other than the currency of the jurisdiction in which the insolvent customer is organized:*

(a) *Outside the context of insolvency proceedings, would a court in Spain enforce a claim for the cash balance or net termination amount in the currency in which it was determined?*

In accordance with article 1.170.1 of the Spanish Civil Code a debtor is obliged to pay in the agreed currency unless this becomes impossible, in which case it may discharge its obligation by tendering the equivalent amount in Spanish legal currency. According to the majority of legal doctrine, such impossibility should be interpreted as an objective impossibility. Basically, the reasons for such impossibility are derived from exchange control prohibitions (in Spain or in the country where the “payment” currency is of legal tender).

Since 1984, Spanish Courts have ordered payment in a foreign currency if parties have selected such foreign currency as the agreed tender. Nevertheless, Courts may convert foreign currency into euros when payment in foreign currency is impossible or when plaintiff and defendant accept such form of payment. Spanish Courts seem to interpret these exceptions in a wide manner and are willing to accept circumstances which may release the payer from its obligation to pay in a foreign currency.

Judgements normally apply, when conversion into the legal currency is awarded, either the exchange rate of the date of payment⁴ or the exchange rate of the date of judgement.⁵

⁴ Supreme Court Judgements of 26 December 1985, 20 February 1986, 16 July 2002 and 17 February 1989.

⁵ Supreme Court Judgements of 30 January 1985, 11 September 2007 and decision of Madrid Provincial Court of 19 February 2000.

In the event of insolvency, the debtor's assets and liabilities must be converted into one currency (in our case, Euros), in order to allow the calculations to be made. Article 267.1 of the Insolvency Law provides that all claims will be converted into Euros at the official exchange rate on the date of adjudication of bankruptcy "for the sole purposes of quantifying the liabilities, without such process resulting in a conversion or modification of the claim" of the insolvent party. Such conversion does not necessarily imply that an amount has to be paid in euros but that;

- a) The single net amount which is the Customer's entitlement in a currency other than Euro will to be converted into Euro in order for it to be included in the insolvency of the Covered Customer for the purposes of quantification of the liabilities of the Covered Customer; and
- b) The single net amount will be paid either in the currency originally specified or in Euros.

There is no case law, however, as to the way in which Article 267.1 must be interpreted. Therefore, we cannot fully discard the risk that Spanish courts may not uphold our interpretation of Article 267.1 (even if supported by scholars) and find that the Termination Amount must be paid in Euro by using the official exchange rate on the date of adjudication of bankruptcy.

(b) Can a claim for the cash balance or net termination amount be proved (i.e., filed) in insolvency proceedings in our jurisdiction without conversion into the local currency?

Yes. Please see our discussion on this point in paragraph (a) above.

7. *Are there any other local law considerations that we would recommend the FCM to consider in connection with the exercise of Position Liquidation, Margin Liquidation or a Determination of Account?*

Spanish local law considerations to consider include that which relates to the treatment of an omnibus client account in the name of the FCM with a Spanish Sub-Custodian. Whilst there should not be difficulties in Spain with creating or enforcing the respective security interest over collateral comprising book entry securities held in an omnibus client account in the name of the FCM with a Spanish Sub-Custodian, please note that the FCM will be facing custody risk vis-à-vis the Spanish Sub-Custodian. The Spanish book-entry securities registration system for securities admitted to trading in Spanish regulated markets and multilateral trading facilities is a two-tier system, which is composed of a central registry and a detailed registry. The central registry is kept by the Spanish central securities depository, Iberclear. In such central registry there can be three kinds of accounts: (i) the accounts with the balance of securities held on own account by the participants in the Spanish central securities depository (i.e. the Spanish Sub-Custodians); (ii) the accounts with the balance of securities held on behalf of third parties by the Spanish Sub-Custodians;

and (iii) if requested by the client of a Spanish Sub-Custodian, an individual segregated account with the balance of securities held by such client.

The detailed registry is kept by each of the Spanish Sub-Custodians and client accounts in the detailed registry can either be omnibus client accounts or segregated client accounts.

In the event of insolvency of the Spanish Sub-Custodian, Spanish law (Law 6/2023 on the Securities Market) provides that when the balance of securities with the same International Securities Identification Number (ISIN) registered in all the third party accounts of the Spanish Sub-Custodian held with the central registry kept by Iberclear is insufficient to completely fulfil the rights of the holders of the securities with the same ISIN registered with the detailed registry kept by the Spanish Sub-Custodian, the balance of securities registered in all the third party accounts of the Spanish Sub-Custodian held with the central registry kept by Iberclear will be distributed pro rata in accordance with the rights of the holders registered with the detailed registry. All holders suffering a loss will have a credit right against the Spanish Sub-Custodian for the amount of securities not delivered.

This custody risk vis-à-vis the Spanish Sub-Custodian would only disappear if the relevant FCM requests to the Spanish Sub-Custodian that an individual segregated account is opened in the name of such FCM with the central registry kept by Iberclear.

The same considerations mentioned above are applicable in respect of a segregated client account in the name of the FCM on behalf of its Covered Customer with a Spanish Sub-Custodian.

In addition, if there is a segregated Covered Customer account in the name of the FCM on behalf of Covered Customer with the Spanish Sub-Custodian, there is a risk that the PRIMA rule is put into question because the name of the Covered Customer will be registered in the registry of the Spanish Sub-Custodian, even if there is no direct contractual relationship between the Covered Customer and the Spanish Sub-Custodian. In this situation, where the Covered Customer is registered in the registry of the Spanish Sub-Custodian, there is a risk that the Covered Customer is qualified as true holder under Spanish law meaning that the security interest for it to be valid and enforceable needs to be registered in Spain with the Spanish Sub-Custodian. Therefore, even if the Covered Customer cannot give instructions to the Spanish Sub-Custodian because the Covered Customer is acting through the FCM, there is a risk that third party creditors of the Covered Customer request for an attachment of such securities. This is known as the so-called “upper-tier attachment” risk. Whether or not this is a material risk will depend on the status of the Covered Customer and its eligibility or otherwise to become insolvent in Spain.

PART II
VALIDITY, PERFECTION AND ENFORCEMENT OF FCM'S SECURITY INTEREST IN
CUSTOMER'S RIGHTS AND INTERESTS IN RESPECT OF COLLATERAL

A. *Fact Patterns Regarding Location of the Customer and Collateral*

We are asked to address the below questions even though we have concluded, (a) in our response to question I.B.3 above, that Margin Liquidation would be recognized by a court in our jurisdiction as the FCM's exercise of its Permitted Uses Rights under the Customer Property Rules, and (b) in our response to question I.B.4 above, that a Determination of Account would be characterized as contractual accounting or as involving netting or set-off.

We set out below three principal fact patterns we are asked to consider in answering the questions posed in Section C below.

The three principal fact patterns we are asked to consider concern are (a) whether or not the Location (as defined below) of the Customer is in our jurisdiction and (b) whether or not the Location of the Collateral (as defined below) is in our jurisdiction.

In particular, when responding to each question, we are asked to distinguish between the following three fact patterns:

- I. The Location of the Customer is in Spain and the Location of the Collateral is outside Spain.
- II. The Location of the Customer is in Spain and the Location of the Collateral is in Spain.
- III. The Location of the Customer is outside Spain, and the Location of the Collateral is in Spain.

For the foregoing purposes:

- (a) the "Location" of the Customer is in our jurisdiction if it resides, is incorporated or otherwise organized in our jurisdiction and/or if it has a branch or other place of business in our jurisdiction; and
- (b) the "Location" of Collateral is the place where an asset of that type is located under the private international law rules of our jurisdiction.

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

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

In considering fact patterns I and II, we are asked to indicate whether and, if so, in which circumstances it makes a difference whether the Customer (i) is incorporated or otherwise organized in Spain or (ii) is a foreign entity with a branch or other place of business in Spain.

If the location of the FCM would affect our response to any question, we are asked to make this clear in the relevant response.

B. Additional Assumptions

We are asked to assume the same facts as set forth in Section A of Part I above (as applicable) with the following modifications:

1. 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 your jurisdiction or (ii) outside your jurisdiction.

2. We also assume that Collateral in the form of cash is denominated in a freely convertible currency and is credited to an account (as opposed to physical notes and coins) under the “control” of the FCM for purposes of the New York Uniform Commercial Code (the “**UCC**”), as described in paragraph 1.41 of the Summary Annex. In addition we asked to assume that, as explained in Section X of the S&C Memo and paragraphs 1.14, 1.16, 1.18, 1.19, 1.20 and 1.28, 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 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.

Under the Customer Property Rules, the FCM is expressly permitted to use funds held in the above-described 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.

Additionally, as explained in paragraphs 1.16 and 1.20 of the Summary Annex, 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 them⁶.

3. Any securities provided by the Customer as Collateral are held in one of the following forms, are denominated in either the currency of Spain or any freely convertible currency and consist of (i) corporate debt securities whether or not the issuer is organized or located in our jurisdiction; (ii) debt securities issued by the government of our jurisdiction or another jurisdiction; and (iii) debt securities issued by multilateral development banks and international organizations; and (iv) equity securities whether or not the issuer is organized or located in your jurisdiction::

(i) directly held bearer securities: by which is meant debt securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by the FCM as Collateral under the Covered Agreement, held directly in this form by the FCM (that is, not held by the FCM indirectly through an intermediary (as defined below));

(ii) directly held registered securities: by which is meant securities issued in registered form and, when held by the FCM as Collateral under the Covered Agreement, held directly in this form by the FCM so that the FCM is shown as the relevant holder in the register for such securities (that is, not held by the FCM indirectly with an intermediary);

(iii) directly held dematerialized securities: by which is meant securities issued in dematerialized form and, when held by the FCM as Collateral under the Covered Agreement, held directly in this form by the FCM so that the FCM is shown as the relevant holder in the electronic register for such securities (that is, not held by the FCM indirectly with an intermediary); or

(iv) intermediated securities: by which is meant 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

⁶ As explained in paragraphs 1.28 and 1.30 of the Summary Annex, neither transfers of customer cash to DCOs and Foreign Futures Brokers nor investment of customer cash in permitted investments pursuant to the Permitted Investment Rules results in adjustments to the cash balance of the Customer Account. The Customer Account’s cash balance is adjusted when (i) trading gains or losses are realized in respect of its Covered Contracts when they are closed or settled, (ii) cash is delivered by the Customer to the FCM or is withdrawn by the Customer from the Customer Account, (iii) the Customer’s securities margin is liquidated (other than in connection with making permitted investments) and (iv) any other amounts due to the FCM (e.g., commissions and fees) or due to the Customer (e.g., interest) under the Covered Agreement are debited from or credited to the Account.

intermediary or custodian, in each case an “**intermediary**”) in the name of the FCM where such interest has been credited to the account of the FCM in connection with a deposit of Collateral by the Customer with the FCM under the Covered Agreement.

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

We should also assume that in this case, and as explained in footnote 46 of the Summary Annex, 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).

As explained in paragraph 1.36 and footnote 46 of the Summary Annex, under the Customer Property Rules, the FCM has significant flexibility to repledge, rehypothecate or otherwise dispose of customers’ securities margin, subject in all 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.⁷

4. We are also asked to note the following points regarding substitution of Collateral consisting of cash or securities:

- (i) *Base Account Agreements typically provide that, following closure of an open position by a customer, a FCM is under no obligation to return the same assets (e.g., a security with the same ISIN/CUSIP number) posted by the customer, but the FCM may agree to provide equivalent assets, if practicable. For example, if the customer posted 5-year treasuries,*

⁷ As explained in footnote 46 of the Summary Annex, the FCM does not debit securities from the Customer Account when they are repledged to a DCO or Foreign Futures Broker or rehypothecated pursuant to the Permitted Investment Rules. The FCM debits securities from the Customer Account when (i) they are returned to the Customer or (ii) they are liquidated (including in connection with Margin Liquidation).

the FCM would endeavor to return 5-year treasuries if practicable, but not necessarily the same ISIN/CUSIP. In some cases, the FCM might agree to a more stringent obligation to return equivalent assets, if practicable. However, it is not market practice for a Base Account Agreement to provide for an unqualified obligation on a FCM to return the same asset (contrast this position with paragraph 4(d) of either the 1994 ISDA Credit Support Annex (Bilateral Form) or the 1995 ISDA Credit Support Deed (Bilateral Form – Security Interest)).

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

5. In the case of questions II.C.11 through II.C.14 below, if relevant, we are asked to assume that 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 Customer's open positions in Covered Contracts cleared for it as a result thereof (however, an insolvency proceeding has not been instituted, which is addressed separately in Additional Assumption II.B.6 and questions II.C.15 through II.C.17 below).

6. In the case of questions II.C.15 through II.C.17 below, if relevant, we assume that the Customer has become subject to insolvency proceedings in our jurisdiction.

C. *Questions*

Validity and perfection of the security interest

1. *Under the laws of our jurisdiction, what law governs the contractual aspects of the security interest in the Customer's rights and interests in respect of the various types of Covered Collateral? Would the courts of our jurisdiction recognize 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)?*

In accordance with Article 10.1 of the Spanish Civil Code, "[...] *the possession, property and other rights over immovable assets [...] will be governed by the law of the place where the assets are located. The same law will be applicable to moveable assets [...]*". As a result of this provision the creation of a security interest will be governed by the law of the jurisdiction where the Covered Collateral is located (hereinafter, such law shall be referred to as the "*lex situs*").

Generally, therefore, under Spanish law, the validity of an *in rem* collateral is determined by the relevant *lex situs* even if such *in rem* collateral is valid under the governing law of the security document pursuant to which the security is created (e.g. the contractual undertaking of the parties will not in this respect prevail).

Notwithstanding the above, where Title I, Chapter II of RDL 5/2005 (Articles 2 to 17) applies, the law governing of creation of security and or the transfer of title and/or over securities represented in account entries (*anotaciones en cuenta*) will be that of the jurisdiction where the "principal account" is located (in this case, we would expect it to be New York), it being understood that the

principal account is that in which the account entry is made, and for cash represented as book entries in the Customer Account, that entry is the location where the cash is deposited.

In the unlikely event⁸ the location of the principal account is deemed to be Spain or where the object of the security is cash or securities represented in account entries, and such cash or securities are located in Spain, Spanish law would apply to the transfer or the creation of security interest under Spanish law.

Where the Covered Collateral, including cash and other securities (or the principal account, in the case of book entry securities), is in Spain, the specific rules which apply to the creation of security pursuant to the Covered Agreement under RDL 5/2005 are as follows:

- (a) The collateral arrangements must be evidenced in writing or in a legally equivalent form.

It is not required in this respect for the constitution, validity, perfection, enforceability or admissibility in evidence of the collateral arrangement that this be evidenced in a public deed.

- (a) The creation of security will require, in addition, the delivery of the collateral asset and evidence of this in writing. For this purpose:
 - (i) It will be understood that a valid transfer is effected when the collateral asset has been delivered, transferred, registered or otherwise designated so as to be in the possession or under the control of the beneficiary or of a person acting on the beneficiary's behalf and evidenced in writing. In the case of the securities represented in a book entry, the title transfer is effected upon the entry in the securities registry of the new ownership.
 - (ii) Evidence in writing of the contribution (i.e., delivery) of the financial collateral must allow the identification of its object. For this purpose, it will be sufficient to prove that the object of the financial collateral, represented through an account entry, has been paid or constitutes a credit in the account registry.

2. *Under the laws of our jurisdiction, what law governs the proprietary aspects of the security interest in the Customer's rights and interest 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 organization 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, we are asked to briefly describe the principles governing such determination under the law of our jurisdiction with respect to the different types of Collateral.*

⁸ We note this is unlikely, but it is conceivable that there could be sub-custodian accounts in Spain.

Generally, in accordance with Article 10.1 of the Spanish Civil Code, the perfection of a security interest is governed by the relevant *lex situs*. However, since RDL 5/2005 applies in respect of securities represented in account entries, the jurisdiction of the "principal account" of such account entries will govern the perfection of such security interest, in this regards, RDL 5/2005 aligns with the PRIMA rule because it modifies the general conflict of law rule in respect of securities represented in account entries.

With respect to the issue of how the laws of Spain apply to the Covered Collateral from the point of view of determining where it is located, other than in respect of account entry securities (in respect of which see (c) below), there are no legal or regulatory provisions which set out the principles governing the determination of the location of any assets under the laws of Spain. However, we are of the opinion that the location (or deemed location) of each type of Covered Collateral is as follows:

(a) *Cash*

The place where the entity with which the cash is deposited is located (e.g., the place where the FCM that is the holder of the account is located and not the location of the depository bank).

(b) *Certificated securities in bearer or registered form*

The location of certificated securities should be deemed to be the country where the certificates are held (and not, in respect of securities in registered form, the place of the register).

(c) *Dematerialized securities and immobilized securities held in an account with a CSD*

The law of the place where the account entry by virtue of which the beneficiary registers its security interest in respect of the relevant securities⁹.

3. *Would the courts of our jurisdiction recognize a security interest in the Customer's rights and interests in respect of the different types of Collateral? In answering this question, we are asked to bear in mind the different forms in which securities Collateral may be held, as described in the Assumption IIB.3 above. We are asked to indicate, in relation to cash Collateral, if our answer depends on the Location (or the 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.*

Yes, the courts of Spain will recognize a security interest in each type of Covered Collateral provided that it has been created in accordance with the appropriate law (as to which, see answers to questions 1 and 2 above).

⁹ Care should be taken where the internal rules of the relevant CSDs determine that title over the immobilised securities held with such CSDs are deemed to have been transferred to the relevant CSD. Where this is the case the transferor (former holder of title) retains only a right to the delivery of equivalent securities, and therefore the Covered Collateral should not be the relevant immobilised securities (since they belong to the relevant CSD) but the right to re-delivery of equivalent securities.

Where the Covered Collateral (or principal account, in the case of book entry securities) is located in Spain, the specific rules which apply to the creation of a security interest where RDL 5/2005 applies are as follows:

- (a) The collateral arrangements must be evidenced in writing or in a legally equivalent form, but it is not required in this respect that this be evidenced in a public deed.
- (b) The constitution of the security right will require, in addition, the delivery of the secured asset and evidence of this in writing. For this purpose:
 - (i) It will be understood that a security has been validly created when the secured asset has been delivered, transferred, registered or otherwise designated so as to be in the possession or under the control of the beneficiary or of a person acting on the beneficiary's behalf and evidenced in writing. In the case of the securities represented in a book entry, the security interest is created upon the entry in the securities registry of the new ownership or of the pledge.

In case of credit rights, it will be required that the credit right is included in a list of credits which are provided to the secured party in writing or in an equivalent legal form (but we also note that notice to the obligor is required to avoid the obligor discharging its debt obligation to its original debtor).

- (ii) Evidence in writing of the contribution (i.e. delivery) of the financial collateral must allow the identification of its object. For this, it will be sufficient to prove that the object of the financial collateral, represented through an account entry, has been paid or constitutes a credit in the account registry.

4. *What is the effect, if any, under the laws of Spain 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)?*

Under Article 1861 of the Spanish Civil Code, the amount secured may fluctuate under the Covered Agreement provided it does so in accordance with the terms agreed between the parties. However, if as a result of fluctuations, the relevant Covered Agreement requires the posting of additional Covered Collateral this will require the creation and perfection of a new security interest (which will not impact on the one already created).

However since RDL 5/2005 applies, the parties can agree that, in the case of variations of the price of the secured asset or on the amount of the relevant financial obligation initially established, the new values or cash will have to be contributed or remitted, in order to establish a balance between the value of the collateral obligation and the value of the collateral created to secure it and such additional collateral will be considered part of the original security interest with no further action required.

In particular:

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

Yes, the security interest will be valid in relation to future obligations of the Covered Customer. Future obligations should be able to be identified with certainty as and when they arise, by reference to the terms of the relevant agreement.

- (b) *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)?*

Yes, subject to the valid creation and perfection of such security interest under the relevant laws. Where the Covered Collateral is deemed located in Spain, the delivery of additional collateral will have to comply with the requirements described in 5.1 and 5.2 below.

For the above purposes, it is understood that the security interest in Covered Collateral to be delivered at some point in the future after the time of entry into the relevant agreement would not take effect in relation to such Covered Collateral until the Covered Collateral had been delivered to the beneficiary.

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

Yes, in the absence of identification of the relevant assets. Pursuant to the laws of Spain, the assets must be clearly identified. Therefore, charges over a fluctuating pool of assets are not possible. However, assuming that each specific delivery to the beneficiary and return by the beneficiary of Covered Collateral from time to time would be properly recorded by the beneficiary, so that, while the pool of Covered Collateral would change from time to time, at any specific time the composition of the pool of Covered Collateral could be clearly identified by the beneficiary, this would not cause any difficulty and the security interested would be recognized under Spanish law.

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

No. Is it not necessary under the laws of Spain for the amount secured by the security interest to be a fixed amount or subject to a fixed maximum amount.

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

Yes, if it has been agreed by the parties such excess may be held.

5. *Assuming that the courts of Spain would recognize the security interest in Customer's rights and interests in respect of each type of Collateral, is any action (filing, registration, notification, stamping, notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order,*

consent or approval) required in our jurisdiction 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.

Two alternatives can be discussed: where RDL 5/2005 applies, which in our opinion it will apply, and where RDL 5/2005 does not apply, which is being provided for comparison purposes only.

5.1 If RDL 5/2005 applies

(i) Where Covered Collateral is located in Spain;

The security document may be a private document (e.g., it is not required that the security document is granted in front of a notary or in a public document status) and there must be a transfer, delivery or book-entry registration of the securities, as the case may be, or the deposit or the transfer of cash. Specifically;

1. The collateral arrangements must be evidenced in writing or in a legally equivalent form, with no formal act required for the constitution, validity, perfection, enforceability or admissibility in evidence.
2. The constitution of the collateral will require, in addition, the delivery of the secured asset and evidence of this in writing. For this purpose:

(a) It will be understood that a security has been validly delivered when the secured asset has been delivered, transferred, registered or otherwise designated so as to be in the possession or under the control of the beneficiary or of a person acting on the beneficiary's behalf. In the case of the securities represented in an account entry, it will be understood that the collateral has been constituted and delivered upon the entry in the accounting registry of the new ownership or of the pledge.

(b) Evidence in writing or in a legally equivalent form of the delivery of the financial collateral must allow the identification of its object. For this, it will be sufficient to prove that the object of the financial collateral represented in book entry form, has been paid or constitutes a credit in the account registry (i.e. the account entry is sufficient evidence in writing).

3. In respect of credit rights, it is required that such credit rights are included in a list of credits which is provided to the secured party in writing or in an equivalent legal form. Article 257 of the Spanish Insolvency Law establishes (referring to the lodging of claims) that

" 1. The notice shall be made in writing, signed by the creditor, by any other party with an interest in the credit, or by whoever proves sufficient representation thereof [...]. 2. The notice may also be served by electronic means"

(ii) Covered Collateral is not located in Spain.

There are no formalities which need to be complied with under Spanish Law. However there may be formalities to be complied with which are imposed by the relevant law which

may be (although this is not a Spanish law issue) the *lex situs* or the law chosen by the parties in which respect please refer to our answer below in 5.2 (second paragraph).

5.2 For comparison, if RDL 5/2005 did not apply

We note that under Article 270.6 of the Spanish Insolvency Law establishes that the following shall be considered specially privileged claims: "Claims guaranteed by a pledge constituted in a public deed or on the pledged goods or rights *that are in the possession of the creditor or a third party.*".

Where Covered Collateral is located in Spain, perfection of the security interest in such Covered Collateral will require the following:

- (i) the relevant security document must be executed before a Spanish Notary Public;
- (ii) where Covered Collateral is a cash deposit, and such cash deposit is held in an account with a credit entity other than the FCM, notice of the creation of the security interest shall be served to such party;
- (iii) where Covered Collateral is certificated shares in registered form, by endorsing or delivering (as applicable under the instrument) the relevant certificated shares to the FCM and providing notice of the creation of the security interest to the relevant issuer;
- (iv) where the Covered Collateral is shares represented in bearer certificates: by endorsing or delivering, as applicable, the relevant certificates to the FCM, and
- (v) where Covered Collateral is book-entry securities, the security interest must be recorded in the relevant book-entry register.

Where Covered Collateral is not located in Spain then the actions and formalities required to perfect the security interest in such Covered Collateral will be governed by the relevant law which, may be *lex situs*. However, consideration should be given to the relationship between *lex situs* and *lex concursus*; as the law applicable to the insolvency of the Covered Customer, the provisions of which are mandatory. If the relevant insolvency law requires for the security interest to be effective that certain formalities are met, then those formalities should be met. We are of the opinion that, generally, in a situation where Spanish insolvency law applies (by reason of the fact that the Covered Customer is a Spanish entity) the formalities required under Spanish law to enjoy a security interest which is insolvency proof will be those required (directly or indirectly) under Spanish insolvency laws as discussed in this opinion.

The above, however, should be considered on a case-by-case basis against the following background regulations:

Article 723 of the Insolvency Law which provides that;

"The effects of insolvency over in rem rights [...] over assets of the insolvent [...] which at the time of the declaration of insolvency are located in the territory of another State will be exclusively governed by the law of such State"

The above provision would suggest that foreign law *in rem* rights would be respected in a Spanish insolvency (and therefore, fully recognized as such). However, the position is not straightforward. Article 723 of the Insolvency Law departs from the "strict immunity" system which is recognized under Article 8 of the EU Insolvency Regulation Recast 2015/848 (the "**Insolvency Regulation**"). The reason for this is that the Insolvency Law provision requires, in order to isolate the relevant right, that it is considered an *in rem* right under the *lex situs* but does not (as the EU Insolvency Regulation provides) offer guidance as to what would be the minimum elements for such right to be recognized as such under the *lex concursus*. As a result of this, the interpretation and effects of such provision are unclear and have been the subject of considerable debate amongst scholars.

Article 8 of the Insolvency Regulation provides that:

"Article 8

Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets - both specific assets and collections of indefinite assets as a whole which change from time to time - belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 7(2)(m)."

If RDL5/2005 did not apply, the position would need to be looked at on a case-by-case basis in order to make a determination; however, we are confident that RDL 5/2005 will apply.

6. *If there are any other requirements to ensure the validity or perfection of the security interest in the Customer's rights and interests 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 law of Spain or translated into any other language or for the Covered Agreement to include any specific wording?

No. There are no further requirements to those provided for in the relevant agreement and those identified in 5 above to ensure the validity / perfection of the security interest.

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 recognized as valid and perfected in our jurisdiction?

Please refer to our response to question 5 above.

7. *Assuming that the FCM has obtained a valid and perfected security interest under the laws of our jurisdiction, to the extent such laws apply, by complying with the requirements set forth in our responses to questions II.C.1 through II.C.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?*

Generally, no. However, the posting of additional Covered Collateral shall require compliance with the regime described in our response to questions 4 and 5 above, namely, appropriate transfer of collateral and evidence of this in writing which allows for identification of its object.

8. *Assuming that (a) pursuant to the laws of Spain, 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 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 Spain are concerned?*

Yes. The FCM will have a valid security interest in the Collateral so far as the laws of Spain 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 our jurisdiction to establish, perfect, continue or enforce the security interest? Are there any other requirements of the type referred to in question II.C.6 above?

There are no substantial requirements though certain procedural requirements may apply. In this respect under Article 144 of the Law on Civil Procedure (*Ley de Enjuiciamiento Civil*), any foreign-language documents forming part of the pleadings or evidence must be duly translated by a sworn translator (“*traductor-intérprete jurado*”) officially authorized in Spain, in order to be validly admitted and considered in the judicial process.

9. *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?*

So far as the laws of Spain are concerned, the FCM, or a third party on behalf of the FCM beneficiary, must hold in custody the relevant Covered Collateral and will be liable to the Covered Customer for any damages or losses sustained by the Covered Collateral while held in custody, unless they arise from Force Majeure¹⁰. As such, the FCM or the third party on behalf of the FCM will be subject to the obligations of a custodian under Spanish which are equivalent to those applicable to custodians in comparable jurisdictions.

10. *Do the laws of our jurisdiction recognize the right of the FCM to use cash or securities Covered Collateral (as described in Additional Assumption II.B.2 and II.B.3 above) pursuant to an agreement with the Customer?*

- a) If RDL 5/2005 applies, then the FCM can dispose of the Covered Collateral if the exercise of this right of use is allowed under the relevant agreement (Article 9.2 of RDL 5/2005).
- b) If RDL 5/2005 does not apply:

Pursuant to Article 1.870 of the Spanish Civil Code, the FCM beneficiary cannot use the pledged assets without authorization of the Covered Customer. Therefore, the beneficiary will have the right to use the collateral where there is an agreement with the Covered Customer to that effect. The right of use, however authorized as it may be, does not amount to a right of the FCM to dispose of the relevant assets (i.e. it is a limited right the extent to which will depend on the nature of the asset which is given as collateral). Thus, the beneficiary may not pledge or rehypothecate the securities, dispose of the securities under a securities repurchase agreement or simply sell the securities. Where the Covered Collateral is not in Spain and the governing law is not Spanish law enforcing such right may be challenged by a Spanish court.

Notwithstanding the above, some Spanish legal doctrine has contended that the beneficiary may dispose of the Covered Collateral where such Covered Collateral is cash or fungible securities. This theory however has not been tested in the Spanish courts¹¹ nor would it be in compliance with the regulations on book-entry securities which do not allow pledged securities to be disposed of unless security over the pledged securities is enforced. We are of the view that where the agreement provides for the right to sell the Covered Collateral and return "equivalent" fungible securities or cash, the right to dispose should be recognized provided that the obligation of the FCM to return such Covered Collateral is itself secured (and for this purpose a right to set-off will not be an equivalent security).

¹⁰ Where Force Majeure under Spanish law applies, this means that no one shall be liable for those events that could not have been foreseen, or that having been foreseen are unavoidable, except for those cases expressly stated in the law.

¹¹ However, in its judgment of November 3rd, 1993, Audiencia Provincial de Madrid found the security taker liable for damages caused to the security provider as a consequence of its refusal to substitute encumbered securities when their stock price was falling down.

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?

Since RDL 5/2005 applies, please refer to our answer in Section 9 (a) above. Moreover, such use of the Covered Collateral will not affect the validity, continuity, perfection or priority of a security interest otherwise validly created and perfected prior to such use, there being no obligations, duties or limitations imposed on the FCM with respect to its use of the Covered Collateral other than the obligation to return equivalent Covered Collateral in compliance with the Covered Agreement.

For completeness and comparison purposes, we note that should RDL 5/2005 not apply where the security interest is governed by the laws of Spain (i.e. where the collateral is located in Spain) and authorization has been given to the beneficiary to dispose of the securities, any such disposal (in breach of a legally recognized enforcement procedure) could be treated under Spanish law as null and void with the effect that the disposal would be deemed illegal.

Are there any other obligations, duties or limitations imposed on the FCM with respect to its use of such Collateral under the laws of our jurisdiction?

No.

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

We note the Additional Assumption in II.B.5 above, which applies to questions II.C. 11 through II.C.14 below.

11. *Assuming that the FCM has obtained a valid and perfected security interest under the laws of our jurisdiction, to the extent such laws apply, by complying with the requirements set forth in our responses to questions II.C.1 through II.C. 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 Covered Collateral involved?*

The laws of Spain will apply if the relevant Covered Collateral is located in Spain as Spanish laws will govern the creation (and enforcement) of the security interest. If this is the case, in exercising its rights, the FCM it must comply with the enforcement requirements set forth in the relevant Spanish laws and/or regulations.

The law provides a distinction determined by whether RDL 5/2005 applies or not.

A. If RDL 5/2005 applies:

The FCM will be entitled to enforce the security interest in accordance with the terms of the relevant arrangement. In accordance with RDL 5/2005, enforcement over public debt,

securities (*valores negociables*), credit rights and cash enjoy a specific, more flexible procedure under its articles 11 and 12.

- (i) Public debt (e.g., debt issued by the Spanish Kingdom or Autonomous Communities) and securities (*valores negociables*)

Public debt and securities which are listed may be sold in the relevant secondary market through its governing bodies. The sale of unlisted securities is also possible although appropriate valuation mechanisms will need to be put in place (this may include a third party - accountant or expert - valuation which must fulfil a commercial reasonability test pursuant to art. 13 of RDL 5/2005). Prior notice to the Covered Customer is not required unless expressly provided for in the relevant security instrument of the "principal" obligation.

It will also be possible to foreclose (i.e., appropriate) over the relevant assets if agreement has been reached between the parties in this respect and appropriate valuation mechanisms have been put in place in respect of the relevant assets.

- (ii) Cash

Enforcement may be carried out by set-off or by transfer of the relevant amount to an account designated to such effect by the FCM.

- (iii) Credit Rights

Enforcement may be carried out by means of a sale and appropriation or set-off of the value or contribution of such value to the fulfilment of the principal financial obligations.

B. If RDL 5/2005 does not apply:

The FCM is not free, in general, to sell the Covered Collateral other than in accordance with the Spanish enforcement proceedings.

Spanish legislation provides two different types of enforcement proceedings: (a) judicial proceedings which are conducted by the relevant court, and (b) non-judicial proceedings which do not require the intervention of the court.

The following can be identified as non-judicial proceedings:

- (i) Notarial sale

Article 1.872 of the Spanish Civil Code allows for any pledge to be enforced by liquidating the assets pledged through one or (subject to art. 75.2 of Law of Notarial Function 28/05/1862) more public sales conducted by a Spanish Notary Public and applying the proceeds to satisfy the Covered Customer's obligations. The secured party has to be served prior notice of any such sales.

- (ii) Rights of set-off over cash deposits

Supreme Court judgments dated 19 April 1997, 7 October 1997, 25 June 2001, 26 September 2002, 10 March 2004 and 30 November 2006 have established a line of jurisprudence which implicitly admits the creation of a pledge over payment

rights although imposing on the constitution of the pledge the traditional requirements which apply to pledges expressly recognized in the Spanish Civil Code, e.g. pledges over movable assets (shares, securities, etc.). In this respect, although criticized by certain commentators, the Supreme Court judgments conclude that in order to constitute the pledge it will be necessary to:

- notify the relevant obligor (in our case the counterparty which under the relevant contract is under a duty to make the payment); and
- grant the pledge document in a public deed.

The judgments of the Spanish Supreme Court above have recognized the right of a secured creditor to set off any amounts due by the pledgor against the cash collateral deposited in an account held with the secured creditor provided that the two conditions above are satisfied.

(iii) Pledge over securities listed in Spain in guarantee of loan agreements

Article 322 of the Spanish Commercial Code 1885 provides for a specific enforcement proceeding which applies only to facility agreements (loans/credits) secured by a pledge over securities listed in any official Spanish securities market.

Such proceeding allows the selling of the securities in the relevant secondary market through its governing bodies. Prior notice to the Pledgor is not required, unless expressly provided otherwise in the relevant agreement.

Finally, it must always be borne in mind that, as a matter of Spanish law, no creditor can enforce any security interest granted by the relevant pledgor, unless:

- (i) the rights of the creditor arise from any of the so-called *títulos ejecutivos* listed in Article 517 of the Law of Civil Procedure, which in broad terms include any of the following:
 - (1) final and enforceable judgement;
 - (2) final and enforceable decision of an arbitrator;
 - (3) judicial resolutions approving judicial transactions and agreements achieved during the procedure;
 - (4) public deeds ("*escritura pública*") granted before Spanish notaries (subject to different resolutions depending on whether the same are original copies or not);
 - (5) policies ("*póliza*") of mercantile agreements executed by the parties before a Spanish notary (certified on an original by the relevant notary);
 - (6) bills ("*títulos*") in bearer or registered form, duly issued, representing executable obligations and the coupons;
 - (7) certificates in force issued by the entities in charge of the accounting registries in relation to the securities represented by book-entries;

- (8) the writ establishing the maximum amount to be claimed as a compensation due to facts covered by the compulsory civil liability insurance for the use of motor vehicles; and
 - (9) other judicial resolutions and documents that, by virtue of the Spanish Civil Procedure Act or other law, will attach execution rights.
- (ii) the amount claimed by such creditor is liquid and certain. Calculations made by the creditor are not sufficient for the relevant amount claimed by it to be deemed to be liquid and certain. Therefore, unless such amount is clearly shown in the relevant agreement (e.g., the principal of a loan), or can be calculated pursuant to a simple mathematical operation in accordance with the provisions of the relevant agreement (e.g., the fixed-rate interest accrued under a loan), enforcement is only possible if a judgment stating the amount owed by the debtor has been previously obtained.

However, Article 572 of the Spanish Civil Procedure law provides for an exemption to the above requirement. Pursuant to Article 572, in relation to agreements executed before a Spanish notary public, the amount claimed by the relevant creditor shall be presumed to be certain and liquid, provided that it had been agreed in the relevant public deed that the amount due and payable was that calculated by the creditor in accordance with the provisions of the relevant agreement and such amount has been notified to the debtor.

Notwithstanding the above and where the principal obligation is not governed by Spanish law, it has not been tested before the Spanish courts, as far as we are aware, whether Article 572 applies or not to agreements governed by the laws of a jurisdiction other than Spain. However, we are aware of at least one case in which application of Article 1.435 (which was the Article of the former Spanish Civil Procedure law which is equivalent to Article 572 of the now applicable law) to an agreement governed by the laws of England was upheld by the governing body of a Spanish Securities Market in connection with the specific enforcement proceeding provided in Article 322 of the Spanish Commercial Code 1885; and although the literal wording of Article 572 refers to "*transactions deriving from agreements formalized in a public deed*" (thus including not only facilities but also other types of agreements), it cannot be discounted that there is a risk that the Spanish courts find that Article 572 must only apply to facility (loans/credit type instruments) agreements.

12. *Assuming that (a) pursuant to the laws of our 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 our 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 our jurisdiction in exercising its rights as a secured party under the Covered Agreement?*

Enforcement of any security interest is an *in rem* matter and, therefore, is governed by the relevant *lex situs*. Notwithstanding this, any such enforcement must comply with Spanish public policy principles. Public

order, as a specific conflict of laws concept (and as opposed to internal public order), is an exception to the application of a foreign law (either as pleaded or on the basis of the recognition of foreign judgements), as a result of its incompatibility with essential legal principles of the home jurisdiction. Public policy represents an exception though: according to legal doctrine it should only be applied in situations of manifest injustice, of serious anomaly. It is not enough that the foreign law is different or even contrary to the home jurisdiction laws. Public policy should therefore only be pleaded were the basic principles of the legal system of the home jurisdiction are put into question.

What constitutes public order at any point in time depends on the particular circumstances of the time in which public order is called upon to be applied (Spanish Supreme Court Judgment 5 April 1966). While there is no exhaustive list of what constitutes Spanish public policy (as it is a “blank concept” whose interpretation and application are reserved to the Spanish courts), the following principles are generally understood to form part of public policy in relation to the enforcement of security interests:

- (i) the secured creditor must use its best reasonable efforts to maximize the proceeds from the sale of the relevant assets;
- (ii) appropriation of the assets by the secured creditor is only permissible if expressly agreed by the pledgor and carried out on the basis of a reasonable valuation of such assets; and
- (iii) any valuations must be performed in a commercially reasonable manner. In this respect, we believe that the better view is that pleading Spanish public order in respect of the substantive law pursuant to which the judgment is rendered will not, in the case of the Covered Agreement, be justified.

Finally, please note that if under the relevant *lex situs*, such enforcement requires a prior court judgment, that judgment would not be recognized in Spain unless the Customer has been afforded the opportunity to participate in the relevant judicial proceedings.

13. *Are there any laws or regulations in our jurisdiction 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 creditor or the debtor?*

Where RDL5/2005 applies the rules, which apply to collateral enforcement are different from the general rules.

- (i) The type of transaction underlying the creditor's exposure

RDL 5/2005 requires in order for a special enforcement procedure to apply, that the transaction comply with the objective requirements laid out in the Law. Debate has been held in respect of which transactions are eligible in order to benefit from the provisions of the law. This debate however is not critical to the analysis carried out in this opinion given that we are assuming that only RDL 5/2005 qualifying transactions will be documented under the relevant agreement and no controversy arises in respect of this being eligible under RDL 5/2005.

- (ii) The type of Covered Collateral

As discussed in 12 above, Spanish legislation and Spanish courts recognize non-judicial enforcement proceedings in respect of certain types of Collateral (e.g. cash, securities (*valores negociables*)).

Where RDL 5/2005 applies, the Covered Collateral can only be public debt, securities, cash, equity or credit rights in order to enjoy a flexible enforcement procedure. We note in this respect that Covered Collateral covered by this opinion and described in assumption (h) falls within the scope of RDL 5/2005.

(iii) The nature of the creditor or the debtor

Under RDL 5/2005 at least one of the parties to the contractual netting agreement must be:

- a public entity;
- the European Central Bank, the Bank of Spain, EU Central Banks, Central Banks of Third Party States, the BIS, multilateral development banks, the IMF and the EIB;
- banks, insurance companies, Sociedades de Valores (Securities Broker-Dealers), Agencias de Valores (Securities Brokers), Cajas de Ahorros (Savings Banks), Establecimientos Financieros de Crédito (Financial Credit Entities), Cooperativas de Crédito (Credit Unions);
- collective investment undertakings and its management companies, Spanish securitisation funds and its management companies, pension funds and other financial entities in accordance with Article 3.1 (22) of EC Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC relating to the taking up and pursuit of the business of credit institutions;
- secondary markets bodies and management companies of such secondary markets, clearing system companies, entities which are referred to in Law 41/1999 and equivalent entities which operate in the options, futures and derivatives markets; or
- individuals provided that the counterparty to such individual is any of a governing body of a secondary market, a clearing system company and central counterparty entity or any of the entities referred to in Law 41/1999 of 12 November.

RDL 5/2005 will also apply to financial contractual netting agreements and financial collateral arrangements where one of the parties is a legal entity, not included in any of the related categories above, provided that the other party belongs to any of such categories.

For example, are there any types of “statutory liens” that would be deemed to take precedence over the security interest?

No. Where RDL 5/2005 applies, financial collateral agreements shall not be limited, restricted or somehow affected by the initiation of an insolvency proceeding or winding up proceeding and may be immediately enforced in a separate proceeding and on the terms agreed by the parties and in accordance with RDL 5/2005.

Thus, any "statutory lien" established in favor of a third party will not impede or have any impact on the enforcement of the financial collateral. However, where that third party is a market custodian or market infrastructure (including, without limitation, exchanges, central counterparties and central securities depositories) statutory liens in their favor may take precedence over the FCM interest in the Covered Collateral.

14. *How would our response to questions II.C. 11 through II.C.13 above 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 Customer's rights and interests in the Collateral)?*

Our responses to question 10 and 11 will not change based on this fact pattern and on the assumption that FCM insolvency is not an event of default.

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

Note the Additional Assumption in II.B.6 above, which applies to questions II.C.15 through II.C.17 below.

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

Since RDL 5/2005 applies, the relevance of the priorities described above should be considered in the context of the privilege or special treatment, which is afforded under RDL 5/2005, to financial collateral. In this respect, irrespective of the nature of the security which is created over the relevant collateral, the Law provides that *"the commencement of a winding-up or an administrative liquidation proceeding, shall not be the cause to declare void or terminate a financial collateral arrangement or the provision of financial collateral under such arrangement, provided that the financial collateral arrangement has come into existence, or the financial collateral has been provided prior to the commencement of such proceeding; or in a prescribed period prior to the commencement of such proceeding or measures or by reference to the making of any order or the taking of any other event in the course of such proceedings or measures. [...]"*

The above would allow us to conclude that upon insolvency:

- the termination of the contractual netting agreement is specifically allowed;
- the enforcement of the collateral is permitted; and
- upon enforcement of the collateral, the creditor is entitled to claim against the insolvency estate the net amount which results from the calculation determined pursuant to the terms of the Covered Agreement. This net amount will be calculated pursuant to the terms of the Covered Agreement and the FCM entitled to apply the collateral pursuant to the collateral agreement which is related to it. If the collateral is not sufficient to cover full payment of

the net amount, the FCM will be an unsecured creditor for the balance in the bankruptcy of the Covered Customer.

16. *Would the FCM's enforcement of its security interest in the Customer's rights interest in any type of Collateral be subject to any stay, moratorium or freeze or otherwise be affected by commencement of the insolvency ?*

Where RDL 5/2005 applies and if fraud cannot be proven by the insolvency administrators, in entering into the margin arrangements, the right to liquidate the collateral, will not be subject to any stay or freeze or otherwise be affected by commencement of the insolvency.

For comparison, in cases where RDL 5/2005 does not apply, a two-year period (the "**Suspect Period**") under article 226 of the Insolvency Law applies in certain circumstances in respect of transactions entered into by the insolvent where a presumption is made that the contract is detrimental to the counterparty¹². Generally, in the Suspect Period, the insolvency administrators may seek to question contracts of any nature entered into by the insolvent.

In addition, under articles 145.1 and 148.1 of the Insolvency Law, a freeze on enforcement rights of up to a maximum of one year also applies (the "**Stay Period**").

In addition to the above referred Suspect Period there are other limitations which may or not apply depending on the particular circumstances of the insolvent: (a) Article 430.2 of the Insolvency Law allows insolvency administrators prior to the Stay Period, to prevent any security interest from being enforced by immediately paying those secured, overdue amounts and by undertaking to pay amounts becoming due in the future under the relevant agreement as claims against the insolvency estate (*créditos contra la masa*) (b) a composition agreement or a scheme of arrangement may bound secured creditors therefore affection their enforcement rights (c) if the Customer is an entity subject to the resolution proceedings under Law 11/2015 enforcement of the security interest may be prevented or restricted.

17. *Will the Customer (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Covered Collateral consisting of cash or securities made to the FCM during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference," fraudulent transfer or transaction at an undervalue (however called and whether or not fraudulent) in favor of the FCM or on any other basis?*

Yes. However, as RDL 5/2005 applies, the ability to recover any transfer of collateral will be limited to instances in which there is proof of fraud by the beneficiary. See our explanations to question 16 above.

If so, how long before the insolvency does this suspect period begin?

See our answer in 16 above.

¹² In addition, the courts of Spain can also set aside, if certain conditions apply, any such deemed detrimental transactions entered into within the two-year period preceding the date on which negotiations with creditors in order to achieve a restructuring plan (or the intention to commence such negotiations) were communicated to the Court.

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?

No as RDL 5/2005 applies, unless fraud can be proved.

Miscellaneous

18. *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 interest in respect of any Collateral?*

There are no specific Spanish law considerations to be considered when enforcing a security interest in the Covered Collateral other than those arising from the general recommendation to check the capacity and authority of the relevant counterparty which will allow to assess (i) any limitations applicable to provide collateral, (ii) any limitation for certain assets to become eligible as collateral.

19. *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 interest in respect of Collateral in our jurisdiction?*

No absent fraud, force majeure or generally any other factors or elements which may impact on the ability to validly enter and perform obligations under contract.

Very truly yours,

Iñigo Gomez-Jordana
Partner
Alarde Law S.L.P

APPENDIX A
SEPTEMBER 2009

CUSTOMER TYPES¹³

Description	Covered by opinion	Legal form(s) ¹⁴
<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 entity (as in the case of a building society in the United Kingdom (UK)).</p>	<p><u>Yes</u></p>	<p>“Entidad de Crédito” "Banco" /"Caja de Ahorros"</p> <p>Banks are subject, amongst other regulations to Law 10/2014 of 26 June on the management, supervision and solvency of credit institutions and Royal Decree 84/2015, of 13 February, which develops Law 10/2014.</p> <p>Savings banks are subject, amongst other regulations, to Law 10/2014 of 26 June on the management, supervision and solvency of credit institutions and Law 26/2013 of 27 December savings banks and banking foundations and related regional regulations (<i>regulación autónomica</i>).</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><u>Yes</u></p>	<p>The official name of the Spanish Central Bank is Banco de España ("Bank of Spain"), which is mainly governed by Law 13/1994, of 1 June (Ley13/1994, de 1 de</p>

¹³ In these definitions, the term “legal entity” means an entity with legal personality, other than a private individual.

¹⁴ If appropriate, please indicate, as discussed in the instruction letter, any naming convention or rule that would help a reader of the opinion to identify and classify the entity.

Description	Covered by opinion	Legal form(s) ¹⁴
		junio, de Autonomía del Banco de España).
<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 Appendix A.</p>	<p><u>Yes</u> Yes, provided that the other party to the netting agreement is a party listed in Article 4.1 of Royal Decree Law 5/2005 (i.e. those mentioned in section I (a) (g) of this opinion).</p>	<p>"<i>Sociedad Anónima</i>" or "<i>SA</i>" (or "<i>SAU</i>" where single shareholder applies)/ "<i>Sociedad de Responsabilidad Limitada</i>" or "<i>SL</i>" (or "<i>SLU</i>" where single shareholder applies)</p> <p>These entities are subject, amongst other regulations, to Royal Legislative Decree 1/2010, of 2 July, approving the Spanish Companies Law.</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 financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.</p>	<p><u>No.</u> Such entities exist in Spain but are not contemplated for the purposes of the netting legislation.</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</p>	<p><u>Yes</u></p>	<p>Insurance companies can take the legal form of a limited liability corporation but also a mutual, cooperative ("<i>Sociedad Corporativa</i>"), "<i>mutualidad de prevision</i></p>

Description	Covered by opinion	Legal form(s) ¹⁴
<p>insolvency regime in order to protect the interests of policyholders.</p>		<p><i>social</i>" ("MPS") (which is akin to a building society). Should contain the words "<i>seguro</i>" or "<i>reaseguro</i>" or both depending on its purpose.</p> <p>These entities are subject, amongst other laws and regulations to certain provisions of Royal Legislative Decree 6/2004, of 29 October, Law 20/2015 and Royal Decree 2486/1998, of 20 November, on the Regulation and Supervision of Private Insurance and in this case on a transitional basis pursuant to Transitional Provision 12 of Law 20/2015.</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><u>Yes</u></p>	

Description	Covered by opinion	Legal form(s) ¹⁴
<p><u>Investment Firm/Broker Dealer</u>. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the “Hedge Fund/Proprietary Trader” category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a “broker-dealer” in US legislation and as an “investment firm” in EC legislation.</p>	<p><u>Yes</u></p>	<p>"Sociedad de Valores", "Agencia de Valores", "Sociedad Gestora de Carteras" / "S.V." / "A.V."</p> <p>(iv) "Empresas de Asesoramiento Financiero" (E.A.F.).</p> <p>All of them must take the legal form of public/private limited liability companies (S.A./S.L.).</p> <p>These entities are subject, amongst other regulations to Law on Securities Market and Investment Services (Law 6/2023).</p>
<p><u>Investment Fund</u>. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a “collective investment scheme” in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on</p>	<p><u>Yes</u></p>	<p>Companies or funds incorporated or organised as an "Institución de Inversión Colectiva" (IIC) pursuant to Law 35/2003, of 4 November, on collective investment undertakings ("Law 35/2003") or as an "Entidad de Inversión Colectiva de Tipo Cerrado" or as an "Entidad de Capital Riesgo" pursuant to Law 22/2014, of 12 November, on closed collective investment undertakings ("Law 22/2014").</p> <p>Furthermore, there are various types and sub-types of Investment Funds, depending on whether they are UCITs or AIFs for EU</p>

Description	Covered by opinion	Legal form(s) ¹⁴
<p>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>law purposes, the nature of their permitted investments (securities, real estate, etc.) and their structural features (open/close-ended), including:</p> <p>(i) "<i>Instituciones de Inversión Colectiva de carácter financiero</i>" (UCIT):</p> <ul style="list-style-type: none"> - "<i>Fondos de Inversión Mobiliaria</i>" (FI), if organised as a "fund"; or - "<i>Sociedades de Inversión de Capital Variable</i>" (SICAV), if incorporated as a company; <p>(ii) "<i>Instituciones de Inversión Colectiva Inmobiliaria</i>" (investing on real estate assets):</p> <ul style="list-style-type: none"> - "<i>Fondos de Inversión Inmobiliaria</i> (FII) (if organised as a "fund"); or - "<i>Sociedades de Inversión Inmobiliaria</i> (SIM) (if incorporated as a company); <p>(iii) "<i>Instituciones de Inversión Colectiva de Inversión Libre</i>" (IICIL) (broadly equivalent to some Hedge Funds):</p> <p>(v) "<i>Entidades de Inversión Colectiva de Tipo Cerrado</i>" (EICC):</p> <ul style="list-style-type: none"> - "<i>Fondos de Inversión Colectiva de Tipo Cerrado</i>" (FICC), if organised as a "fund"; or - "<i>Sociedades de Inversión Colectiva de Tipo Cerrado</i>" (SICC), if incorporated as a company; and <p>(vi) "<i>Entidades de Capital Riesgo</i>" (ECR), broadly equivalent to private equity</p>

Description	Covered by opinion	Legal form(s) ¹⁴
		entities:
<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>Yes, if it qualifies as a public entity</p>	<p>"Ayuntamiento" ("corporación municipal") / "Diputación Provincial" / "Área Metropolitana" / "Mancomunidades"</p> <p>These entities are subject, amongst other regulations, to Law 47/2003 of 26 November on the General Budget; and related regional regulations.</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 Appendix. 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. Such entities exist in Spain but are not contemplated for the purposes of the netting legislation</p>	<p>"Sociedad Colectiva" or "S.C." / "Sociedad Regular Colectiva" or "S.R.C."</p>

Description	Covered by opinion	Legal form(s) ¹⁴
<p><u>Pension Fund.</u> A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a 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><u>Yes</u></p>	<p><i>"Fondo de Pensiones"</i></p> <p>These entities are subject, amongst other regulations, to Royal Legislative Decree 1/2002, of 29 November; Royal Decree 304/2004, of 20 February, approving the Regulation of pension funds; and in the Order of the Ministry of Economy and Finance 407/2008, of 7 February.</p>
<p><u>Sovereign.</u> A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").</p>	<p><u>Yes</u></p>	<p><i>"Administración General del Estado" / "Ministerios"</i> (<i>"Ministerio de Economía y Hacienda"</i>, <i>"Ministerio de Fomento"</i> and so on).</p> <p>These entities are subject, amongst other regulations, to Law 47/2003 of 26 November on the General Budget.</p>

Description	Covered by opinion	Legal form(s) ¹⁴
<p><u>Sovereign Wealth Fund</u>. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an “investment authority”. For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix the term “Sovereign Wealth Fund” excludes a Central Bank.</p>	<p>Yes if it qualifies as a public entity</p>	<p>These entities are subject, amongst other regulations, to Law 47/2003 of 26 November on the General Budget</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 category does not include local governmental authorities (see “Local Authority”).</p>	<p>Yes if it qualifies as a public entity</p>	<p><i>"Organismos Públicos":</i> <i>"Organismos Autónomos",</i> <i>"Entidades Públicas Empresariales", "Agencias Estatales".</i></p> <p><i>"Sociedades Mercantiles Estatales"</i></p> <p><i>"Sociedades Mercantiles"</i> (owned in more than 51% by the State)</p> <p><i>"Entidades Reguladoras"</i></p> <p>These entities are subject, amongst other regulations, to Law 47/2003 of 26 November on the General Budget; and related regional regulations, where applicable.</p>

Description	Covered by opinion	Legal form(s)¹⁴
<p><u>State of a Federal Sovereign</u>. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.</p>	<p>Yes, if it qualifies as a public entity</p>	<p>"<i>Comunidades Autónomas</i>" / "<i>Ciudades Autónomas</i>"</p> <p>These entities are subject, amongst other regulations, to Law 47/2003 of 26 November on the General Budget; and related regional regulations.</p>