**KREMER ASSOCIES & CLIFFORD CHANCE ASSOCIATION D'AVOCATS**

4 PLACE DE PARIS
B.P. 1147
L-1011 LUXEMBOURG
GRAND-DUCHE DE LUXEMBOURG

TEL +352 48 50 50 1
FAX +352 48 13 85
www.cliffordchance.com

**To:**
**International Capital Market Association (*ICMA*)**
**Securities Industry and Financial Markets Association (*SIFMA*)**
**The Securities Lending and Repo Committee (*SLRC*) Capital Adequacy Directive Working Group**

~~26~~31 March 200~~7~~8

Dear Sirs,

**Global Master Repurchase Agreement**
**Global Master Securities Lending Agreement (May 2000 version) (*GMSLA*)**
**Overseas Securities Lender's Agreement (October 1994 version) (*OSLA 1994*)**
**Overseas Securities Lender's Agreement (December 1995 version) (*OSLA 1995*)**
**Master Gilt Edged Stock Lending Agreement (1996 versions) (*GESLA*)**

## CORE OPINION

This opinion consists of a core opinion (the "**Core Opinion**") and Appendices 1 and 2 (together the "**Opinion**").

We have been instructed to give ~~an~~our opinion as to the validity under the laws of Luxembourg of (i) the ~~November~~ 1995 ~~version~~and 2000 versions of the PSA/ISMA Global Master Repurchase Agreement (~~"~~"**GMRA 1995**~~"~~") ~~and~~, the 2000 version of the TBMA/ISMA Global Master Repurchase Agreement (~~"**GMRA 2000**") (each an "**Agreement**") as published by ICMA and SIFMA~~"**GMRA 2000**" and together with the GMRA 1995, collectively referred to as the "**GMRA**") and the annexes listed in Appendix 1, Part I to this ~~opinion~~Opinion (such opinion being expressed in the Core Opinion and Appendix 1 only) and (ii) the OSLA 1994, the OSLA 1995, the GESLA and the GMSLA (such opinion being expressed in the Core Opinion and Appendix 2 only).

The GMRA, the GMSLA, the OSLA 1994, the OSLA 1995 and the GESLA are together referred to as the "**Agreements**", and each an "**Agreement**").

Subject to our assumption ~~in paragraph (j~~(l) below, the term GMRA 2000 and the substance of our ~~o~~Opinion in relation to the ~~Agreement~~GMRA 2000 shall apply to both the GMRA 2000 and the GMRA 1995 as amended by entry by the parties into the amendment agreement in the form published by the ICMA and SIFMA.

Terms defined in ~~the~~an Agreement have the same meaning in this ~~o~~Opinion in relation to that Agreement.

Subject to the assumptions and reservations set out below, this ~~o~~Opinion is given in respect of parties which are:

(a) companies;

(b) banks;

(c) securities dealers;

(d) insurance undertakings; ~~or~~

(e) undertakings for collective investment;

in each case incorporated, organised, established or formed under the laws of Luxembourg and branches established or located in Luxembourg of entities of the type referred to in (a) to (e) above~~. This opinion~~ which are incorporated, organised, established or formed outside Luxembourg; or

(f) the Central Bank of Luxembourg (the "**CBL**").

This Opinion does not address the situation of parties which are reinsurance undertakings, partnerships or business trusts, pension funds or any similar form of organisation under Luxembourg law. Hedge ~~F~~funds are not organised under a specific legal regime and customarily fall within either of category (a) or (e) above.

A company established in Luxembourg is a company either incorporated under the Law of 10 August 1915 on commercial companies (as amended) (~~"~~*loi sur les sociétés commerciales*~~"~~) (~~"~~"**Company Law**~~"~~") and having its registered office ~~or, if different~~, its place of central administration (*siège de l'administration centrale*) and its centre of main interests in Luxembourg, or a company which has moved its ~~principal office~~central administration from its country of incorporation (or the place of its ~~principal place of establishment) to~~central administration) to Luxembourg and which has its centre of main interests in Luxembourg. Article 2, paragraph ~~2~~3 of the Company Law ~~(as amended by a law of 31 May 1999)~~ states that the domicile of any commercial company is located at the place of ~~principal establishment~~central administration of the company. The ~~principal establishment~~central administration of a company is deemed to be the place of the statutory seat (~~"~~*siège statutaire*~~"~~), in the absence of proof to the contrary.

A company may also be a *société civile* established under the laws of Luxembourg (Articles 1832 ff. of the Civil Code): this type of company has a ~~"~~"civil~~"~~" rather than a commercial object and is therefore not subject to the Company Law mentioned above.

The ~~Regulation~~European Union Council Regulation (EC) n°1346/2000 of 29 May 2000 on insolvency proceedings (the "**Regulation**") refers to the ~~"~~"Member State within the territory of which the centre of a debtor's main interests is situated~~"~~" as having jurisdiction to open insolvency proceedings (as

defined in the Regulation). In the case of a company ~~or legal person~~, the place of the registered office ~~shall be presumed to be the centre of its main interests~~is, in the absence of proof to the contrary, deemed to be the centre of its main interests.

For the purpose of this ~~o~~Opinion, ~~"~~"company~~"~~" shall not refer either to economic interest groups or European economic interest groups (~~"~~*groupements d'intérêts économiques*~~"~~ and ~~"~~*groupements d'intérêts économiques européens*~~"~~) and it shall not encompass any entities listed hereafter or any entities that are subject to a specific legislative framework or any specific licensing requirements such as ~~insurance or~~, in particular, reinsurance companies, ~~undertakings for collective investment or~~ pension funds, investment companies in risk capital or securitisation companies.

The word ~~"~~"banks~~"~~" shall, in this ~~o~~Opinion, mean (i) credit establishments (~~"~~*établissements de crédit*~~"~~) as defined by Article 1 of the ~~L~~law dated 5 April 1993 on the financial sector, as amended (the ~~"~~"**Financ~~e~~ial Sector Law**~~"~~") (which are the credit establishments as defined in the Directive 200~~0~~6/~~12~~48/EEC), or, (ii) in relation to branches, ~~branches of credit establishments located in~~ Luxembourg branches of EU/EEA or non-EU/EEA banks as defined in Articles 30 and 32 of the Financ~~e~~ial Sector Law ~~(respectively branches of EU/EEA or non-EU/EEA banks)~~.

The word ~~"~~"securities dealers~~"~~" shall, in this ~~o~~Opinion, mean (i) other professionals of the financial sector (~~"~~*autres professionnels du secteur financier*~~"~~) as defined in Article 13 of the Financ~~e~~ial Sector Law (and including investment firms in the sense of the Directive ~~93/22~~2004/39/EEC), which have capacity to deal in securities either for themselves or for a principal subject to Articles 24 ff. of the Financ~~e~~ial Sector Law, and (ii) branches of other professionals of the financial sector located in Luxembourg, as defined in Article 30 and 32 of the Financ~~e~~ial Sector Law.

The word ~~"~~"insurance undertaking~~"~~" shall, in this ~~o~~Opinion, mean (i) an insurance undertaking (~~"~~*enterprise d'assurance*~~"~~) as defined in ~~a~~Articles 25ff. of the amended law dated 6 December 1991 on the insurance sector (the ~~"~~"**Insurance Sector Law**~~"~~") and (ii) branches ~~established in Luxembourg of foreign~~of EU/EEA or non-EU/EEA insurance undertakings established in Luxembourg and authorised to exercise the activity in Luxembourg on the basis of ~~a~~Articles 2~~7~~8ff. of the Insurance Sector Law. Such term shall not, for the avoidance of doubt, include reinsurance undertakings or pension funds.

As a general principle, insurance undertakings are permitted to enter into the Agreements. However, insurance undertakings may only ~~be~~ enter into ~~T~~transactions within certain limits contained in applicable laws and official regulations. In this respect we refer you to assumption (b) below.

The word ~~"~~"undertaking for collective investment~~"~~" (~~"~~"**UCI**~~"~~") shall, in this ~~o~~Opinion, mean

(i) a *société d'investissement à capital variable* (~~"~~"**SICAV**~~"~~), i.e. an investment company with variable capital~~.~~;

(ii) a société *d'investissement à capital fixe* (~~"~~**SICAF**~~"~~), i.e. an investment company with fixed capital ; or

(iii) a fonds *commun de placement* (~~"~~"**FCP**~~"~~"), i.e. an undivided collection of assets made up and managed by a management company (the ~~"~~"**Management Company**~~"~~") on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units. When entering into the Agreements, the Management Company will act in its own name but on behalf of the FCP~~.~~;

each subject to any of the following laws:

(a) the amended law dated 20 December 2002 on undertakings for collective investment (the ~~"~~"**2002 Law**~~"~~"); or

(b) the law dated 13 February 2007 concerning specialised undertakings for collective investment and the securities of which are intended to be placed with sophisticated investors only (the ~~"~~"**2007 Law**~~"). The 2007 Law replaces, with effect on 13 February 2007, the amended law dated 19 July 1991 concerning undertakings for collective investment the securities of which are not intended to be placed with the public (the "**1991 Law**"). Any UCIs subject to the 1991 Law have, upon the entry into force of the 2007 Law, automatically become subject to the 2007 Law.~~").

An UCI may be constituted of several compartments (in the case of a SICAV or a SICAF) or sub-funds (in the case of an FCP), each of which constitutes a separate pool of assets and liabilities. The assets attributable to a compartment or sub-fund will only be available to the creditors of or investors in such compartment or sub-fund. A compartment ~~of~~for sub-fund can be liquidated separately, and such a liquidation does not affect any other compartment or sub-fund.

When entering into transactions with a SICAV or SICAF constituted of several compartments or an FCP constituted of several sub-funds, it needs to be specified, which compartment or sub-fund the Agreement or the ~~T~~transaction relates to. While the counterparty of the transaction or the ~~a~~Agreement will remain the relevant UCI, any recourse of the counterparty will be limited to the assets of the compartment or sub-fund so specified.

When referring to an UCI constituted of several compartments or sub-funds, ~~an~~a reference to a Luxembourg Party (as defined below) shall be construed as a reference to the relevant compartment or sub-fund with which the Agreement or ~~T~~transaction is being entered into. As a consequence, it is not possible to set-off or proceed to the close-out netting between transactions entered into with different compartments or sub-funds, each of which should be treated as a different counterparty, in particular in terms of credit risk and netting.

As a general principle, UCIs are permitted to enter into the Agreements. However, UCIs may only ~~be~~ enter into ~~T~~transactions within certain limits contained in the UCI's constitutional documents and applicable laws and official regulations. In this respect we refer you to assumption (b) below.

The CBL (*Banque Centrale du Luxembourg*) is governed by the law dated 23 December 1998 on the monetary regime and the Central Bank of Luxembourg, as amended as well as other relevant Luxembourg laws and European treaties and regulations, including, in particular, any rules applicable to the European System of Central Banks of which it is an integral part.

As a general principle, the CBL may enter into repurchase transactions, reverse repurchase transactions and securities lending transactions within the limits and for the purposes specified in its governing legal framework. In this respect, we refer you to assumption (o) below.

When entering into repurchase transactions within the context of its monetary policy operations, the CBL will, in accordance with its general conditions[1], enter into a "Master Repurchase Agreement for use in monetary policy operations in stage three of the European Monetary Union" which, in accordance with its general conditions, will be subject to Luxembourg laws and to the jurisdiction of the courts of Luxembourg.

While the CBL may enter into a GMRA 2000 within the framework of the management of the foreign reserve assets of the European Central Bank, it would do so as agent of the European Central Bank[2]. The present Opinion does not apply to any Agreement entered into by the CBL as agent for the European Central Bank or any other institution.

This ~~opinion~~Opinion only applies to Agreements (i) entered into by the CBL in accordance with the applicable Luxembourg and European rules and regulations and (ii) the terms of which have not been amended or superseded by any other agreements between the parties (including the general conditions of the CBL[3]) or by any law or regulation.

The CBL may, furthermore, not grant overdrafts or any other type of credit facilities to European Community institutions or bodies, central administrations, regional, local or other public authorities or any other bodies governed by public law or public undertakings of a EU Member State. The direct acquisition by the CBL of any debt instruments from a EU Member State is also prohibited and this may restrict its ability to enter into certain transactions.

This Opinion is confined to matters of Luxembourg law and we express no opinion with regard to any system of law other than the laws of Luxembourg. We have made no independent investigation of any other laws for the purpose of this ~~o~~Opinion and do not express or imply any opinion in relation to any

---

[1] Conditions Générales des Opérations (December 2007)

[2] Art. 2.2 of the guideline of the European Central Bank of 21 December 2006 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets (ECB/2006/28), as amended from time to time.

[3] Article 1.3 of the general conditions provides in this respect that "the operations done in the framework of the general conditions, as well as the provisions of the latter, are governed by Luxembourg law"

such laws. Notwithstanding the particular assumptions and reservations below, we have assumed that there is nothing in the law of any jurisdiction other than Luxembourg which would affect this ~~o~~Opinion.

We express no opinion on any taxation consequences of the Agreements or any of the ~~T~~transactions entered into thereunder.

This ~~o~~Opinion is given on the basis that it is governed by and construed in accordance with the laws of the Grand Duchy of Luxembourg (~~"~~"**Luxembourg**~~"~~") and will be subject to the jurisdiction of the courts of the Grand Duchy of Luxembourg.

For the purpose of this opinion, we have assumed that:

a. ~~E~~each party has all requisite capacity and corporate power to execute, deliver and perform its obligations under the Agreements and each party has taken all necessary steps to execute, deliver and perform the Agreements and all transactions ~~carried out~~entered into under the Agreements;

b. the execution and performance of the Agreements or any of the Transactions contemplated therein, does not violate any of the constitutional documents (including the prospectus in case of an UCI, in particular if restrictions that may be contained in the prospectus have been incorporated by way of reference into the articles of association or the management regulations of the UCI), management regulations, investment policies or other corporate or contractual documents or obligations of either party and that the Transactions are no violating any regulatory requirements (such as, without limitation, own fund requirements for credit institutions and securities dealers, risk spreading rules for UCIs or technical reserve requirements for insurance undertakings).

   When dealing with an insurance undertaking, we would hence suggest adding the following warranty:

   ~~"~~"*[Insurance Company] hereby represents and warrants that none of the Purchased Securities, Cash Margin or Margin Securities form part of any technical reserves and that the delivery of the same does not violate any reserve requirements.*~~"~~"

   When dealing with an UCI, we would hence suggest adding the following warranty:

   ~~"~~"*[UCI] hereby represents and warrants that the entry into none of the Transactions will constitute a violation of applicable investment policies or restrictions applicable to it and arising by either applicable laws, its constitutional documents (including its prospectus) or management regulations.*~~"~~"

c. ~~T~~the Agreements ha~~s~~ve been duly authorised, executed and delivered by each party in accordance with all applicable laws;

d. ~~O~~other than by the annexes listed in ~~the~~ Appendix 1 of the GMRA, the Cross-Product Master Agreement (February 2000 and June 2003 versions) in the form published by SIFMA (the ~~"~~"**CPMA**~~"~~") or as stated in this ~~o~~Opinion, none of the terms of the Agreements has been varied, waived or discharged in any material respects and transactions have been entered into as specified in the Agreements. We further assume that the CPMA, if entered into by the parties, is legal, valid, binding and enforceable under all applicable laws;

e. ~~T~~the Agreements (including the provision for the choice of governing law) ~~is~~are legal, valid, binding and enforceable under English law and all other applicable laws (other than Luxembourg law);

f. ~~T~~the Agreements ha~~s~~ve been entered into without any intention of fraud (in particular no intention to defraud creditors), for bona fide commercial reasons and at arm's length by each of the parties, and without any intention to circumvent any applicable laws or regulations or to defraud the rights of any third parties (including creditors), and the execution of and performance under the Agreements is in the corporate interest of each of the parties;

g. ~~T~~the consideration paid for by the Luxembourg Party (as defined below) for the ~~T~~transactions into which it has entered does not notably exceed the value received in return for such consideration;

h. the ownership of all Securities and Collateral has been validly transferred under the Agreements and under the laws of the *situs* of the relevant Securities or Collateral and the provisions regarding the enforcement of any rights granted in respect of the relevant Securities or Collateral are valid, binding and enforceable under all applicable laws, including the *lex situs* of the relevant Securities or Collateral (other than Luxembourg law) and that the relevant Collateral (if not consisting in Securities) is not held by the party having transferred the relevant Collateral (if such party is a Luxembourg Party (as defined below));

i. ~~h. The Agreement~~the Agreements and all transactions carried out under the Agreements are entered into prior to the ~~formal commencement of~~day on which the Insolvency Proceedings (as defined below) ~~against either party~~have been opened;

j. at the time at which a transaction is entered into under the Agreements, neither party meets or threatens to meet the criteria for the opening of any Insolvency Proceedings (as defined below);

k. ~~i. The~~the requirements of any applicable law governing the transfer of Securities ~~and Margin~~, Margin, Collateral, Equivalent Securities, Equivalent Margin, Equivalent Margin Securities and Equivalent Collateral are complied with;

l. ~~j. Where~~where the parties to a GMRA 1995 have subsequently executed an amendment agreement in the form published by ICMA and SIFMA, the effect of such amendment agreement

will be to amend the terms of GMRA 1995 to conform GMRA 1995 to GMRA 2000, and such amendment agreement is legal, valid, binding and enforceable under all applicable laws.

m. ~~k. Where~~where the parties have entered into a CPMA, we repeat our assumptions under (a) to (~~j~~l) above in relation to such CPMA and, in addition, we assume, without further investigation, that such CPMA constitutes a legal, valid, binding and enforceable agreement between the parties under all applicable laws~~.~~;

n. ~~l. Where the~~where an Agreement was entered into prior 1 March 2002, the date on which the Council Regulation (EC) n° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the ~~"~~"**Brussels Regulation**~~"~~") entered into force, we assume that the Luxembourg Party (as defined below) has signed a separate specific acceptance provision in relation to the jurisdiction clause granting jurisdiction to the courts of England;~~ and~~

o. where an Agreement is entered into by the CBL, we assume that the CBL (i) acts as principal and not as agent for any other entity (including as agent for the European Central Bank within the framework of the management of the foreign reserve assets of the European Central Bank), that (ii) the terms of the Agreements are not superseded by any other contractual arrangement (such as, in particular the general conditions providing that the operations done in the framework of the general conditions, as well as the provisions of the latter, are governed by Luxembourg law) or applicable rules and regulations and, generally, that (iii) the CBL is entering into the Agreements in accordance with any applicable (Luxembourg and European) laws, rules and regulations; and

p. ~~m.~~ in this ~~o~~Opinion, Luxembourg legal concepts are expressed (to some extent) in English terms and not in their original French terms. The concepts concerned may not be identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions. This ~~o~~Opinion may therefore only be relied upon under the express condition that any issues of interpretation arising thereunder will be governed by Luxembourg law and will be resolved in the vernacular language.

Subject to the above, we are of the opinion that under the laws of Luxembourg:

## 1. INSOLVENCY PROCEEDINGS

### 1.1 Relevant Insolvency Proceedings

The proceedings referred to in paragraphs (a) to (d) below are together called "**Insolvency Proceedings**", and any party which would, in case of insolvency, be subject to such Insolvency Proceedings is, together with the CBL, referred to as a "**Luxembourg Party**".

(a) The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings which a party (other than the

CBL) incorporated in or with a branch in Luxembourg (in respect of branches we refer you also to paragraph 1.1.e(f) below) and (i) which is not a credit institution or another professional of the financial sector managing third party funds and being subject to the supervision of the *Commission de Surveillance du Secteur Financier*, the supervisory authority of the Luxembourg financial sector ("**CSSF**") (hereinafter a "**Financial Institution**" such term not to include, for the avoidance of doubt, UCIs) or, (ii) an insurance undertaking or (iii) an UCI (except to the extent provided for under paragraph 1.1(d) below), would be subject to in Luxembourg are the following:

(i) "*faillite*" (insolvency) as provided for in Articles 437 ff. of the Code of Commerce;

(ii) "*gestion contrôlée et sursis de paiement*" (controlled management and suspension of payments) as provided for in a Grand-Ducal Decree dated 24 May 1935;

(iii) "*concordat préventif de faillite*" (composition with creditors) as provided for in a law dated 14 April 1886);

(iv) "*liquidation judiciaire*", a form of liquidation ordered by the court under Article 203 of the Company Law upon the request of the public prosecutor, and to which the court may declare applicable some of the provisions mentioned under (i) above in relation to the liquidation of the insolvency proceedings; it should be noted that the court order pronouncing the annulment of a company ("*nullité d'une société*") under Articles 12ter ff. of the Company Law will have the same effects, and that court will have the power to determine the liquidation mode and appoint the liquidators. Article 203-1 of the Company Law further provides that the Luxembourg courts have jurisdiction to order the closure of any Luxembourg establishment of a foreign company which carries on criminally prohibited activities or which seriously contravenes the provisions of the Code of Commerce or the laws governing companies, including the laws regarding business authorisations. However, there is no provision similar to Article 203 causing certain provisions of the insolvency proceedings to be applicable;

(v) "*cession volontaire de biens*" (voluntary composition with creditors), a voluntary arrangement between a debtor and its creditors governed by Articles 1265 ff. of the Civil Code); and

(vi) ~~"~~"*cession judiciaire de biens*"~~"~~ (court-supervised composition with creditors) which is an arrangement which can be granted by the courts to the debtor willing to abandon all its assets to its creditors under certain conditions, as provided for in Article 1268 of the Civil Code. This arrangement is normally not available for commercial persons and would therefore only apply in relation to the scope of this ~~o~~Opinion, to *sociétés civiles* as defined above~~; and~~.

(b) The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which a Financial Institution (in respect of Luxembourg branches of non-Luxembourg Financial Institutions we refer you also to paragraph 1.1~~.g~~(h) below) would be subject in Luxembourg are the following:

(i) ~~(vii) "~~"*sursis de paiement*"~~"~~ (suspension of payments), as provided for in Article 60-2 *et seq.* of the Finance~~e~~ial Sector Law; and

(ii) ~~(viii) "~~"*liquidation*"~~"~~ (liquidation) as provided for in Article 61 of the Finance~~e~~ial Sector Law, to which the court may, in its opening judgement declare applicable some or all of the provisions of ~~"~~"*faillite*"~~"~~ as referred to under 1.1(a) (i) above, in its discretion and as ~~my~~may be necessary for the purposes of the liquidation.

Specific provisions of the Finance~~e~~ial Sector Law (Article 12-8) govern the liquidation of ~~"~~"*banques d'émission de lettres de gage*"~~"~~ (mortgage banks), in particular in relation to the segregation and the non-application of insolvency proceedings to the mortgage bonds (~~"~~"*Pfandbriefe*"~~"~~ or ~~"~~"*lettres de gage*"~~"~~) issued by the mortgage banks and the cover assets (~~"~~"*valeurs de couverture*"~~"~~) which are by priority affected to the repayment of the mortgage bonds.

(c) The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which an insurance undertaking (in respect of Luxembourg branches of non-Luxembourg insurance undertakings we refer you also to paragraph 1.1~~.h~~(i) below) would be subject in Luxembourg are the following:

(i) ~~"~~"*sursis de paiement*"~~"~~ (suspension of payments), as provided for in ~~a~~Article 59 of the Insurance Sector Law; and

(ii) ~~"~~"*liquidation judiciaire*"~~"~~ (judicial liquidation) as provided for in ~~a~~Article 60 of the Insurance Sector Law.

(d) UCIs (in the form of SICAV, SICAF and FCP) may be subject to the following proceedings:

(i) ~~"~~"*sursis à tout paiement*~~"~~" (suspension of payment), as provided for in ~~a~~Article 99 of the 2002 Law or Article 46 of the 2007 Law; and

(ii) ~~"~~"*dissolution et liquidation*~~"~~" (winding-up and liquidation) as provided for in ~~a~~Article 104 of the 2002 Law or ~~a~~Article 47 of the 2007 Law;

SICAVs and SICAFs may~~,~~ in addition be subject to *faillite* proceedings (described under 1.1(a) (i) above). No such proceedings may be opened against an FCP.

An FCP will furthermore be automatically subject to winding-up and liquidation procedures in the following cases:

(1) upon the expiry of the period fixed in the management regulations;

(2) in the event of cessation of their duties by the management company of the FCP or by the depositary entrusted with the custody of the assets of the FCP in accordance with (i) paragraphs b) to e) of ~~a~~Article 21 of the 2002 Law or (ii) paragraphs b) to e) of ~~a~~Article 19 of the 2007 Law respectively, provided they have not been replaced within two months (without prejudice to the specific circumstance referred to under sub-paragraph (B) below).

Article 21 paragraphs b) to e) of the 2002 Law and Article 19 paragraphs b) to e) of the 2007 Law provide for the cessation by the Management Company or by the depositary of their functions:

(A) in the case of voluntary withdrawal of the depositary or of its removal by the Management Company;

(B) where the Management Company or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court controlled management or has been the subject of similar proceedings or has been put into liquidation;

(C) where the CSSF withdraws its authorisation of the Management Company or the depositary; or

(D) in all other cases provided for in the management regulations;

(3) in the event of bankruptcy of the Management Company;

(4) in the event the net assets of the FCP have fallen for more than 6 months below one fourth of the minimum; or

(5) in all other cases provided for in the management regulations.

(e) Luxembourg law does not provide for the possibility to open insolvency or similar proceedings against the CBL which is a public establishment having a separate legal personality.

(f) ~~(e)~~ The Luxembourg branch of ~~a~~an entity listed under 1.1(a) above incorporated in another jurisdiction will in principle not be subject to the ~~i~~Insolvency ~~p~~Proceedings mentioned in paragraph 1.1(a) above, but to the insolvency proceedings ~~existing~~opened against such entity in the jurisdiction in which ~~the~~such party is incorporated, as the Luxembourg courts recognise the principle of unity of an insolvency or bankruptcy (~~"~~"*principe d'unité de la faillite*~~"~~"), subject to the Regulation, where applicable. In this respect, we also refer to 1.1 (~~f~~g) and 1.3 below.

Luxembourg courts may however, in cases where the Regulation does not apply, exercise the discretion to open such proceedings upon request of a foreign receiver, creditor or any other interested party where:

- the foreign insolvency proceedings opened in relation to the head office have purely territorial effects under their applicable law and will therefore not extend to the branch;

- the courts of the registered office or principal place of management of the corporate entity do not open insolvency proceedings over the entity and such insolvency proceedings are necessary for the protection of the creditors and other interested third parties; and

- ~~and~~ the party has in effect its ~~principal~~ place of ~~management~~central administration in Luxembourg despite having its registered office in another jurisdiction or having passed its constitutive instrument in such other jurisdiction.

(g) ~~(f)~~ A party whose centre of main interests is situated within the territory of a EU Member State (as defined in paragraph 1.3(b) below) could be subject in Luxembourg to secondary proceedings, in accordance with the Regulation, but only if such party possesses an establishment within the territory of Luxembourg, i.e. a place of operation where such party carries out a non-transitory economic activity with human means and goods.

The Regulation only applies to insolvency proceedings listed in Annex A to the Regulation, i.e. with respect to Insolvency Proceedings listed in 1.1 (a) (i) *(faillite)*, (ii) *(gestion contrôlée et sursis de paiement)* and (iii) *(concordat préventif de faillite)* above. The Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

Please refer further to paragraph 1.3 below as regards the Regulation.

(h) (g) In relation to Financial Institutions, Luxembourg law considers that the authorities of the home country (i.e. the country where a Financial Institution has its head office) have jurisdiction to implement reorganisation measures which will also be recognised in Luxembourg in relation to the Luxembourg branch, regardless of whether the Financial Institution has its head office within or outside the EU/EEA.

The question whether the Luxembourg authorities can open Insolvency Proceedings referred to under 1.1 (b) (i) *(sursis de paiment)* and (ii) *(liquidation)* above against the Luxembourg branch of a foreign Financial Institution~~s~~ depends on whether such Financial Institution has its head office within or outside the EU/EEA.

In relation to branches of Financial Institutions having their head office in the EU/EEA, ~~a~~Article 60-5 of the Financial Sector Law clearly provides that the authorities of the home country (i.e. the country where a Financial Institution has its head office) are exclusively competent to implement reorganisation measures for such Financial Institution, including in respect of its branch in Luxembourg. As a result, no Luxembourg reorganisation measures can be opened against the Luxembourg branches of Financial Institutions having their head office in the EU/EEA. ~~CSSF circular letters 93/100 and 98/147 which, prior to the implementation of Directive 2001/24 of 4 April 2001 on the reorganisation and winding-up of credit institutions have allowed this, should be considered to have been superseded by the modification of the Financial Sector Law in 1994.~~

Luxembourg courts may however open Insolvency Proceedings against Luxembourg branches of non-EU/EEA Financial Institutions. A petition to this effect may solely be made by the *Commission de Surveillance du Secteur Financier* if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch.

(i) ~~(h)~~ In relation to insurance undertakings, Luxembourg law considers that the authorities of the home country (i.e. the country where an insurance undertaking has its head office) have jurisdiction to implement reorganisation measures which will also be recognised in Luxembourg in relation to the Luxembourg branch, regardless

of whether the insurance undertaking has its head office within or outside the EU/EEA.

The question whether the Luxembourg authorities can open Insolvency Proceedings referred to under 1.1 ~~.~~ (c) (i) (*sursis de paiment*) and (ii) (*liquidation*) above against Luxembourg branch of foreign insurance undertaking depends on whether such insurance undertaking has its head office within or outside the EU/EEA.

The Insurance Sector Law does not provide for the possibility for the Luxembourg authorities or courts to open Insolvency Proceedings against the Luxembourg branch of a foreign insurance undertaking ~~has~~having its head office within the EU/EEA.

Luxembourg courts may however open Insolvency Proceedings against Luxembourg branches of ~~non EU/EEA~~ insurance undertakings having their head office outside the EU/EEA. A petition to this effect may, on the basis of ~~a~~Article 56-2 of the Insurance Sector Law, solely be made by the *Commissari~~on~~at aux Assurances* if it considers this necessary to preserve the interests of the creditors of the Luxembourg branch.

(j) ~~(i)~~ We further refer to the possible application of Article 203-1 of the Company Law as explained under 1.1(a) (iv) (*liquidation judiciaire*) above. ~~The above are together called Insolvency Proceedings, and any party which would, in case of insolvency, be subject to such Insolvency Proceedings is referred to as a "**Luxembourg Party**".~~

(k) ~~(j)~~ In addition to the above we draw your attention to the existence of voluntary winding-up procedures (~~"~~"*dissolution et liquidation*~~"~~") which are governed by specific provisions of the Company Law, the Financial Sector Law and the ~~Finance~~Insurance Sector Law, but which cannot be considered as bankruptcy, rehabilitation, composition or other insolvency proceedings, as they do not presuppose the insolvency of the party subject to such procedures. However, the above Insolvency Proceedings (to the extent applicable) may become applicable to such entity during the winding-up procedures if the relevant conditions are fulfilled.

1.2 We confirm that subject to any differing interpretation thereof under English law, all of the Insolvency Proceedings would be adequately covered by the definition of ~~the~~ "Act of Insolvency" in the Agreements. This confirmation is restricted to the *faillite* (as referred to under 1.1 ~~.~~ (a) (i) above), the *concordat préventif de faillite* (as referred to under 1.1 ~~.~~ (a) (iii) above), the *liquidation judiciaire* (as referred to under 1.1 ~~.~~ (a) (iv) above), the *cession volontaire de biens* (as referred to under 1.1 ~~.~~ (a) (v) above) and the *cession judiciaire de biens* (as referred to under 1.1 ~~.~~ (a) (vi) above) and the *liquidation* (as referred under 1.1 ~~(j), 1.1.~~ (b) (ii), 1.1 (c) (ii) and 1.1 (d) (ii) and 1.1(k) above).

We can however not finally opine as to whether the *gestion contrôlée et sursis de paiement* referred to under 1.1 ~~.~~(a) (ii) and the *sursis de paiement* referred to under 1.1 ~~.~~(b) (i), 1.1 (c) (i) and 1.1 (d) (i) above are comprised with the definition of "Act of Insolvency ~~(and~~" contained particularly in clause 2 (a) (iii) (iv) and (v) ~~thereof)~~of the GMRA and in clause 1 (A) (iii) (iv) and (v) of the OSLA 1994, the OSLA 1995, the GESLA and clause 2.1 (iii) (iv) and (v) of the GMSLA, in particular as the interpretation of such clause would be subject to English law. We have set out ~~in Appendix 4 suggested wording~~below a wording we would suggest inserting at the end of the definition of "Act of Insolvency" contained in the Agreements, which would ensure that these proceedings are comprised within the definition of ~~"Act of Insolvency"~~"Act of Insolvency":

*"Without prejudice to the provisions of [[clause 2 of the GMRA] / [clause 1 (A) the OSLA 1994] / [clause 1 (A) the OSLA 1995] / [clause 1 (A) the GESLA] / [clause 2.1. of the GMSLA]] of the Agreement, the definition of "Act of Insolvency" shall include, in relation to any party established in Luxembourg, whether with its principal office or through a branch (it being understood that the 30 days period referred to in paragraph (iv) of [[clause 2 of the GMRA] / [clause 1 (A) the OSLA 1994] / [clause 1 (A) the OSLA 1995] / [clause 1 (A) the GESLA] / [clause 2.1. of the GMSLA]] of the Agreemen] shall not apply):*

*(i) the filing of a petition for "sursis de paiement" proceedings, as defined in Article 60-2 of the Law dated 5 April 1993 on the financial sector as amended or Article 59 of the amended Law dated 6 December 1991 on the insurance sector;*

*(ii) the opening of "sursis à tout paiement" proceedings as provided for in Article 99 of the amended Law dated 20 December 2002 on UCIs and Article 46 of the Law dated 13 February 2007 concerning specialised undertakings for collective investment; and*

*(iii) the petition for the opening of "gestion contrôlée et sursis de paiement" proceedings as defined in the Grand-Ducal Decree dated 24 May 1935 on suspension of payments and controlled management.*

*In relation to UCIs, the solvent liquidation of one compartment or sub-fund shall not constitute an "Act of Insolvency" in relation to any other compartment of sub-fund of the same UCI".*

The consequence of the lack of coverage of those provisions under Luxembourg law would be the risk that in a case where a Luxembourg ~~p~~Party would be affected by any of those situations, this could not in itself constitute an event of default under the Agreement. However, it is likely that in ~~that~~such a case, one or more other events of default could be applicable.

1.3 EU Regulation on Insolvency Proceedings

(a) On 29 May 2000 the Council of the European Union adopted the ~~Council Regulation (EC) n° 1346/2000 of 29 May 2000 on insolvency proceedings (the~~

~~"~~Regulation~~")~~ which entered into force on 31 May 2002. Denmark (pursuant to recital 33 of the Regulation) is not participating in the adoption of the Regulation and is therefore not bound by it nor subject to its application. The objective of the Regulation is to establish common rules on cross-border insolvency proceedings, based on principles of mutual recognition and co-operation. The Regulation applies to ~~"~~"collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator~~"~~" (Article 1(1)); the Regulation lists the relevant insolvency proceedings to which it applies in each Member State in Annex A thereto (the insolvency proceeding to which the Regulation applies are referred to below as the "***EU Regulation Insolvency Proceedings***"; these are not identical to the Insolvency Proceedings referred to at paragraph 1.1 above of this ~~o~~Opinion). Certain types of entity are specifically excluded from its operation (for example credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties and collective investment undertakings (Article 1(2)) and certain third party rights in rem are not affected by the opening of insolvency proceedings (Article 5).

(b) Broadly, the Regulation serves to grant the courts of the Member State of the European Union (other than Denmark) (a "***Member State***") within the territory of which the centre of a debtor's main interests are located jurisdiction to open EU Regulation Insolvency Proceedings in respect of such debtor. These proceedings which are, with regards to other Member States, international in scope, are to be governed by the law of the Member State where proceedings are opened and are to be effective in all Member States, unless secondary proceedings are opened in another Member State. In the case of companies, the place of the registered office of such company is presumed to be the centre of the company's main interests in the absence of proof to the contrary (Article 3(1)).

(c) Even if the centre of a debtor's main interests ~~are~~is in a Member State, the courts of another Member State may open secondary proceedings in the event that such debtor possesses an establishment (being any place of operations where the debtor carries out a non-transitory economic activity with human goods and means) in the territory of such other Member State (Article 3(2)). The applicable law will be the law of that other Member State. However, secondary proceedings are territorial in scope and so will not extend beyond the Member State where they are opened, save in respect of creditors who have given their consent. Generally they will be opened following the opening of the main proceedings, but there are exceptions to this principle.

(d) The provisions of the Regulation dealing with set-off and those dealing with the interaction between primary and secondary proceedings are not clear. The following is a summary of how we consider a Luxembourg court would apply the Regulation with regard to set-off. No opinion is given on how any court other than a Luxembourg court would apply the Regulation.

Article 4(1) provides that, save as otherwise provided in the Regulation, the law applicable to EU Regulation Insolvency Proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened.

The Regulation specifically states that ~~"~~"the opening of EU Regulation Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor's claim~~"~~" (Article 6(1)).

Article 4(2)(d) provides that any set-off is subject to the conditions under which set-offs may be invoked ~~imposed by~~under the law of the Member State where the EU Regulation Insolvency Proceedings are opened, but this would seem to be subject to Article 6 (as set-off would seem to be otherwise provided for in Article 6).

Article 4(2)(m) provides that the laws of the State of the opening of proceedings shall determine ~~"~~"the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors~~"~~".

Article 6(2) provides that Article 6(1) shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

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

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

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

contravening rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors (i.e. within Article 4(2)(m)).

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

(f) Acts done by a debtor before the entry into force of the Regulation (i.e. before 31 May 2002) shall continue to be governed by the law which was applicable to them at the time they were done. The Regulation shall be binding in its entirety and directly applicable in the EU Member States (except Denmark). Both the questions whether the "act done by a debtor" refers to the Agreements or to a transaction made under the Agreements and at what time such act was done have, in our view, to be analysed under English law as the governing law of the Agreements. If the questions were to be analysed under Luxembourg law, it is our opinion (even though, absent any case-law on the question, no final view can be taken) that courts would, for the purpose of clause 6 of the Regulation, consider the Agreements to be the relevant "act" as the set-off is made pursuant to a clause of the Agreement.

~~2. BANKRUPTCY TREATIES~~

~~2.1 No bankruptcy treaty is currently in force in Luxembourg.~~

~~2.2 Luxembourg has signed but not yet ratified the European Convention on certain international aspects of bankruptcies made in Istanbul on 5 June 1990~~Agreements.

## 2. ~~3.~~ VALIDITY OF THE AGREEMENTS

~~3.1 The Agreement will be effective under the laws of Luxembourg and will take effect in accordance with its terms.~~

2.1 In respect of the GMRA, we refer you to Appendix 1 Part II of this Opinion.

2.2 In respect of the GMSLA, the OSLA 1994, the OSLA 1995 and the GESLA, we refer you to Appendix 2 Part II of the Opinion.

2.3 The opinions expressed under ~~this point 3.1.~~paragraph 1 of Appendix 1 Part II of this Opinion and paragraph 1 of Appendix 2 Part II of this Opinion are subject to the following reservations:

(a) whilst, in the event of any proceedings being brought in a Luxembourg ~~C~~court in respect of a monetary obligation expressed to be payable in a currency other than Euro, a Luxembourg ~~C~~court would have power to give judgement expressed as an order to pay a currency other than Euro, enforcement of the judgement against a party in Luxembourg would be available only in Euro and for such purposes all claims or debts would be converted into Euro;

(b) enforcement of the Agreements and the rights and obligations of the parties thereto will be subject to the general statutory principles of Luxembourg law: a remedy such as specific performance or the issue of an injunction or a remedy such as termination for breach of contract are discretionary. Notwithstanding any agreement purporting to confer the availability of any remedy, such remedy may not be available where damages instead of specific performance or specific performance instead of termination for breach of contract are considered by the court to be an adequate alternative remedy;

(c) a contractual provision conferring or imposing a remedy, an obligation or penalty consequent upon default (including a clause providing for the payment of replacement or unwinding costs in case of a failure to deliver securities) may not be fully enforceable if it were construed by a Luxembourg ~~C~~court as constituting an excessive pecuniary remedy;

(d) with respect to provisions under which determination of circumstances or certification by any party is stated or implied to be conclusive and binding upon another party (such as for instance, but not limited to, provisions in relation to ~~D~~default ~~V~~valuation), a Luxembourg court would be authorised to examine whether such determination occurred in good faith;

(e) we express no opinion as to the validity or enforceability of provisions of the Agreements providing for interest being payable in specified circumstances on due and payable interest, such clauses may not be enforceable against a Luxembourg Party before a Luxembourg court even if they are valid under the respective governing law;

(f) ~~(e)~~ a discretion established in favour of one party by the Agreements will have to be exercised in a reasonable manner;

(g) ~~(f)~~ claims may become barred under the statute of limitations or may be or become subject to defences of set-off or counterclaim;

(h) ~~(g)~~ the admissibility as evidence of ~~an~~the Agreements before a Luxembourg court or public authority (~~“~~"autorité constituée~~”~~") to which ~~an~~the Agreements ~~is~~ are produced may require that the Agreements be accompanied by a complete or partial translation in the French or German language. A Luxembourg court or public authority may require that ~~an~~the Agreements presented to it be registered and in such case, registration taxes will be payable for an amount depending on the nature of the Agreements (which could for instance amount to 0.24% of any amount expressed to be payable in an agreement, depending on the nature of such agreement);

(i) ~~(h)~~ a contractual provision allowing the service of process against a party established in Luxembourg to a service agent or any other third party appointed to such effect could be overridden by Luxembourg statutory provisions allowing the valid service of process against such party in accordance with applicable laws at the registered office of such party;

(j) ~~(i)~~ we express no opinion as regards the effectiveness of a revocation by a Luxembourg ~~p~~Party of a power of attorney or any other agency provisions (including arguably the appointment of a process agent) granted or entered into by it and expressed to be irrevocable; in addition, in the case of the opening of insolvency or similar proceedings over a Luxembourg ~~p~~Party, powers of attorney are automatically revoked by operation of law at 0.00 am on the day of the opening the relevant court order opening such proceedings (except in case of Financial Institutions as outlined ~~in reservation (b) of Point 4~~below), even if they are expressed to be irrevocable~~, except in certain circumstances~~

~~such as where the agreement contains a provision to the contrary (subject to any actions which are per se prohibited by the state of insolvency), or where the agency provisions or power of attorney is in the common interest of the agent and the principal or granted for more than one principal~~. The rule that Insolvency Proceedings are effective at 0.00 am on the day of the relevant court order is not applicable in the case of Financial Institutions: Article 60-2 (7) and Article 61 (8) of the Financial Sector Law provide that payments, operations and other acts, including the constitution of collateral made by and payments made to a Financial Institution on the day of the opening of the Insolvency Proceedings are valid and enforceable against third parties, receivers and liquidators, if they precede the pronouncing of the order, or if they are made in ignorance of such order;

(k) ~~(j)~~ a limitation of liability clause may not be effective to the extent that the parties seek to exclude any liability for gross negligence or wilful misconduct;

(l) ~~(k)~~ a Luxembourg court may consider in specified circumstances a waiver of rights or action to be effective regardless of the provision of the agreement providing that this shall not be the case;

(m) ~~(l)~~ with your consent, and except as otherwise expressly stated herein, we neither express nor imply any opinion in relation to the accuracy of any representation or warranty given by or concerning any of the parties to the Agreements or the ~~T~~transactions contemplated therein or whether such parties or any of them have complied with or will comply with any covenant or undertaking given by them or the terms and conditions of any obligations binding upon them ; ~~and~~

(n) ~~(m)~~ no opinion is expressed as to any risks of lender's liability faced by an original buyer or borrower (as the case may be) established in Luxembourg in case the transactions considered in the Agreements are made with securities to which the original seller or lender (as the case may be) did not have full title; and

(o) we express no opinion on the enforcement of any Luxembourg or foreign judgement rendered against the CBL. While it is generally admitted that a public establishment (*établissement public*) such as the BCL may be sued[4], there are currently no legal provisions regarding the enforcement against the state or a public establishment of a judgement rendered against them. According to legal writing[5], it seems evident that the state and communities do benefit from an immunity of execution. The question is less evident in relation to legal entities of public law in relation to which it seems that one has

[4] G.Ravarani, *La responsabilité civile des personnes privées et publiques*, 2e edition, n°1272 ff.

[5] G.Ravarani, op.cit. n°1290 ff.

to exclude the immunity of execution if they exercise a (mainly) private law activity. The existence of such an immunity of execution would also potentially conflict with article 6 of the European Convention on Human Rights. In the absence of any case law (due at least partially to the fact that the Luxembourg public institutions seem in practice not to refuse to give effect to judgements rendered against them) no final view may however be taken as to whether the BCL benefits from an immunity of execution.

2.4 The opinions expressed under paragraph 2 of Appendix 1 Part II of this Opinion and paragraph 2 of Appendix 2 Part II of this Opinion are subject, in addition to the reservations set out therein, to the following reservations:

(a) a Luxembourg court may stay proceedings if similar proceedings have been brought in another jurisdiction;

(b) in proceedings before the Luxembourg courts, such courts would not apply a chosen foreign law if the foreign law was not pleaded or proved unless the question to be determined under the governing law relates to a matter for which the parties do not have the free disposal of their rights (such as questions of capacity or legal status); and

(c) in a case where the Brussels Regulation applies or either the 1968 Brussels or the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters apply, the Luxembourg courts may be obliged to assume jurisdiction in certain circumstances, including where Article 22 of the Brussels Regulation or, as the case may be, Article 16 of the Lugano Convention applies.

2.5 Without prejudice to any of the specific opinions given above, this Opinion is subject to a general reservation insofar as the obligations of the parties under the Agreements may be limited by general principles of bankruptcy, insolvency, liquidation, reorganisation, reconstruction or other laws affecting the enforcement of creditors' rights generally.

## 3. NETTING PROVISIONS

3.1 In respect of the GMRA, we refer you to Appendix 1 Part III of this Opinion.

3.2 In respect of the GMSLA, the OSLA 1994, the OSLA 1995 and the GESLA, we refer you to Appendix 2 Part III of the Opinion.

## 4. GMRA ANNEXES AND CORE PROVISIONS OF THE GMRA

In this respect, we refer you to Appendix 1 Parts IV and V of this Opinion.

## 5. LOCATION OF SECURITIES

5.1 If the Purchased Securities, Loaned Securities, Margin Securities, or Collateral or Margin comprising of Securities are held outside Luxembourg, Luxembourg law would not apply as *lex situs* and certain questions on which we have opined herein would be considered, under Luxembourg conflict of law rules, to be governed by the law of the country where the assets are held or deemed to be held. We have not independently investigated any other laws and their impact on this Opinion, and we can therefore not determine whether the substance of our Opinion would not be affected by the fact that the Securities would be located abroad.

If the Securities are held in a relevant account opened in the name of either party with a custodian in Luxembourg, these Securities would, for the purpose of Luxembourg conflict of law rules, be deemed to be located in Luxembourg, even if such custodian has sub-deposited the Securities with a sub-custodian outside Luxembourg.

5.2 Under the laws of Luxembourg, if the transfer of Purchased Securities, Loaned Securities, Margin Securities, or Collateral or Margin comprising of Securities located in Luxembourg is made in accordance with the formalities required under the laws of Luxembourg, the transfer would be respected as an outright transfer and would not be recharacterised.

The opinion expressed under this paragraph 5 is subject to our reservations and analysis made in paragraph 2 of the Opinion.

## 6. CROSS-PRODUCT MASTER AGREEMENT

The entry by the parties into a CPMA will not affect the substance of our Opinion on the provisions of the Agreements and their effect under Luxembourg law, nor will it affect the substance of our Opinion on the validity of the Agreements as a whole under Luxembourg law.

This opinion may not be considered as an opinion on the validity or enforceability of the CPMA. In particular we express no opinion as to any choice made by the parties under of Part VIII of the Schedule to the CPMA.

## 7. OTHER MATTERS

7.1 On the assumption that under English law the unenforceability or illegality of a provision of the Agreements would not undermine the efficacy of the remainder of the Agreements generally or of the GMRA Netting Provisions (as defined in Appendix 1 Part III of this Opinion) and the Netting Provisions (as defined in Appendix 2 Part III of this Opinion) in particular, the unenforceability or illegality of any provision of the Agreements would not undermine the recognition of such efficacy of the remainder of the Agreements as a matter of English law generally or of the GMRA Netting Provisions and the Netting Provisions in particular by Luxembourg courts.

We draw your attention to the fact that a Luxembourg court, if seized with such a matter, may not have the same approach as an English court or make a different interpretation of English

law. In addition, Luxembourg courts have accepted in the past to annul agreements because of a nullity under the public policy rules of a third country to which the agreement has a close link.

7.2 The Agreements may be used by any party with any other party wherever either is incorporated, formed or established. However, this Opinion relates only to Luxembourg Parties.

7.3 The GMRA Netting Provisions and the Netting Provisions would be enforceable in all Insolvency Proceedings (including non-liquidation proceedings). In this respect, we refer you to our analysis in Appendix 1 Part III and Appendix 2 Part III.

7.4 There is no necessity for the set-off effected under the GMRA Netting Provisions or the Netting Provisions to be reflected in the records of the parties for it to be effective and no other action is required including, without limitation, any filing or registration for the set-off to be effective.

7.5 Under the laws of Luxembourg, it is not necessary for the efficacy of the GMRA Netting Provisions and the Netting Provisions that all transactions should be treated as a single agreement, although there is a requirement that all transactions are covered by one single netting clause or agreement.

7.6 The use of the Agreements by a Luxembourg Party with a counterparty having branches in a number of jurisdictions, including jurisdiction where the legal basis for set-off is not clear, would not jeopardise the validity of the GMRA Netting Provisions or the Netting Provisions in respect of the Luxembourg Party.

7.7 The GMRA Netting Provisions and the Netting Provisions would be enforceable in Luxembourg notwithstanding that actions may be taken by insolvency officials in other jurisdictions.

We qualify this opinion to the extent that Luxembourg law recognises the principle of unity of insolvency proceedings ("*principe d'unité de la faillite*"): according to this principle, Luxembourg law and the Luxembourg courts recognise in Luxembourg the effects of insolvency proceedings regularly opened in a foreign jurisdiction, apply those effects in conformity with the foreign insolvency law, subject to certain conditions (and in particular depending on whether such laws purport to have an extra-territorial effect) and recognise the powers of foreign insolvency officers even over assets located in Luxembourg (including a Luxembourg branch of a foreign party, except as discussed under 1.1(f), (h) and (i) above).

7.8 We have not investigated the laws of any jurisdictions other than Luxembourg.

7.9 With the exception of an Event of Default which is the presentation of a petition for winding up or any analogous proceedings, or the appointment of a Liquidator or any analogous officer of the defaulting Party, the close-out and set-off provisions of the GMRA Netting Provisions and the Netting Provisions are at the option of the non-defaulting party. We do not consider that the GMRA Netting Provisions and the Netting Provisions would be more likely to be upheld if their operation were automatic. The discretion and flexibility given to the non-defaulting party under the GMRA Netting Provisions and the Netting Provisions do not affect the validity of the close-out and set-off provisions of the GMRA Netting Provisions and the Netting Provisions.

There are no other material issues relevant to the issues raised by this Opinion which we wish to draw to your attention.

Any qualifications which are made in general paragraphs of this Opinion shall apply to the entire Opinion even without being expressly restated in other paragraphs.

The Core Opinion and Appendix 1 only are given for the sole benefit of ICMA and SIFMA and their respective members and associate members (including, in each case, branches of those members or, where the member is itself a branch, the head office).

The Core Opinion and Appendix 2 only are given for the sole benefit of the SLRC Capital Adequacy Directive Working Group and its subscribers (including branches or subsidiaries of those subscribers or, where the subscriber is itself a branch or a subsidiary, the head office or parent company or any subsidiary of such parent company, as applicable) who subscribe to the Original list of opinions.

The Opinion may not be relied upon by any other person without our prior written consent. Without limiting the foregoing, you may provide a copy of this Opinion to any competent regulatory authority including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht; however this Opinion is not addressed to such regulatory authority and may not be relied upon by them.

This Opinion is strictly limited to the matters stated herein, it only speaks as of this day and does not extend to, and is not to be read as extending by implication to, any other matter in connection with the Agreements or otherwise.

This Opinion does not contain any undertaking to update it or to inform you of any changes in the laws of Luxembourg or any other laws which would affect the content thereof in any manner, except where such update will be expressly requested.

Yours faithfully,

**KREMER ASSOCIÉS & CLIFFORD CHANCE**

**Christian KREMER** **Marc MEHLEN**
**Avocat à la Cour** **Avocat à la Cour**

## APPENDIX 1
## PART I

### List of annexes to the GMRA

| GMRA 1995 | GMRA 2000 |
|---|---|
| - Buy/Sell Back Annex | - Buy/Sell Back Annex~~+~~ |
| - Agency Annex | - Agency Annex |
| - Bills of exchange annex | - Bills of exchange annex |
| - EMU annex | - Equities annex |
| - Equities annex | - Gilts annex |
| - Gilts annex | - Italian annex |
| - Net paying securities annex | - Japanese Securities Annex |
| - Italian annex | - Canadian annex |
| - Japanese Securities Annex | |

## APPENDIX 1
## PART II

### Validity of the GMRA

1. The GMRA will, subject to the reservations set out under paragraph 2.3 of the Core Opinion, be effective under the laws of Luxembourg and will take effect in accordance with its terms.

2. ~~3.2~~ A court in Luxembourg would uphold the choice of English law and would uphold the submission of the parties to the English courts.

The opinion expressed in this ~~point 3.~~paragraph 2. is subject to the following reservations and the reservations set out under paragraph 2.4 of the Core Opinion:

(a) the jurisdiction clause contained in Paragraph 17 of the ~~Agreement~~GMRA being non-exclusive, a Luxembourg court would not refuse to take jurisdiction if it was otherwise of competent jurisdiction and regularly seized by one of the parties;

~~(b) a Luxembourg court may stay proceedings if similar proceedings have been brought in another jurisdiction;~~

~~(c) in proceedings before the Luxembourg courts, such courts would not apply a chosen foreign law if the foreign law was not pleaded or proved unless the question to be determined under the governing law relates to a matter for which the parties do not have the free disposal of their rights (such as questions of capacity or legal status);~~

(b) ~~(d)~~ a Luxembourg court may refuse to apply the chosen governing law:

- if the choice of the foreign law was not made bona fide;
- if the ~~such~~ foreign law is contrary to the mandatory rules of Luxembourg law or manifestly incompatible with Luxembourg international public policy or public order;
- all elements of the matter are localised in a country other than the jurisdiction of the chosen governing law in which case it may apply the imperative laws of that jurisdiction~~, or~~;

- if the agreement has a strong connection to another jurisdiction and certain laws of that jurisdiction are applicable regardless of the chosen governing law (~~"~~"*lois de police*~~"~~"), in which case it may apply those laws~~,~~; or

- if a party is subject to insolvency proceedings, in which case it shall apply the insolvency laws of the jurisdiction in which such insolvency proceedings have been regularly opened to the effects of such insolvency except however ~~in cases~~:

  (i) where the Regulation applies, in such cases provided for in the Regulation (in particular ~~a~~Articles 5, 6 and 13 of the Regulation in respect of which we refer you to paragraph 1.3 of the Core Opinion); or

  (ii) where, in respect of Insolvency Proceedings opened against a Financial Institution, laws other than Luxembourg law apply according to the Financial Sector Law to certain aspects of such Insolvency Proceedings. In particular, according to ~~article~~Article 61-14 and Article 61-15 of the Financial Sector Law, netting arrangements and repurchase agreements will be governed solely by the law of the contract which governs such agreements~~, without prejudice however to article~~. Furthermore, Article 61-13 of the Financial Sector Law ~~(providing~~provides that the ~~enforcement~~exercise of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recoding in a register, an account or a centralised deposit system shall be governed by the law of the country where the register, account or centralised deposit system in which those rights are recorded is held or located~~).~~; and

  ~~It should furthermore be noted that, according to articles 20 and 24 of the law dated 5 August 2005 on financial collateral arrangements (the "**Financial Collateral Law**"), repurchase agreements will not be affected by the opening of insolvency proceedings against a Luxembourg Party.~~

(c) ~~(c)~~ Insolvency officers of the Luxembourg Party would not be prevented from bringing actions in relation to Insolvency Proceedings (~~"~~"*actions nées de la faillite*~~"~~") (to the extent such Insolvency Proceedings entail the appointment of an officer and provide him certain rights of action, including any actions for annulment of the netting or any Transactions) before the Luxembourg court having jurisdiction over the Insolvency Proceedings. In our view, repurchase

agreements can however, on the basis of ~~a~~Articles 20 and 24 of the Financial Collateral Law, if applicable, no longer be challenged by ~~such~~ legal actions that are solely based on insolvency laws~~; and~~.

~~(f) In a case where the Brussels Regulation applies or either the 1968 Brussels or the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters apply, the Luxembourg courts may be obliged to assume jurisdiction in certain circumstances, including where Article 22 of the Brussels Regulation or, as the case may be, Article 16 of the Conventions applies.~~

3. ~~3.3~~ Without limiting paragraph ~~3.~~1. above, Transactions entered into under the ~~Agreement,~~ GMRA (whether a Repurchase Transaction or a Buy/Sell Back Transaction) will take effect as a transfer of absolute title in the Purchased Securities from the Seller to the Buyer, and the Buyer will only have a contractual obligation to transfer Equivalent Securities on the Repurchase Date. A court in Luxembourg would not recharacterise the arrangements and would honour the terms of the ~~Agreement~~GMRA.

4. ~~3.4~~ Similarly the transfer of ~~cash~~Cash Margin and ~~securities~~Margin Securities by way of ~~M~~margin pursuant to paragraph 4 of the ~~Agreement~~GMRA would be recognised by a court in Luxembourg as a transfer of absolute title in the assets transferred with an obligation on the transferee to repay Cash Margin or deliver Equivalent Margin Securities as appropriate. A court would not upset or recharacterise transfers made pursuant to paragraph 4 of the GMRA.

5. ~~3.5~~ A court in Luxembourg would uphold the alternative margin methods provided for in paragraphs 4 (i), (j) and (k) of the GMRA.

6. ~~3.6~~ The opinions expressed in paragraphs 3.~~3.~~, ~~3.~~4. and ~~3.~~5. above are reserved as follows:

(a) demand Transactions (as opposed to fixed term Transactions) as referred to in the ~~Agreement~~GMRA may not necessarily be considered to come within the definition of repo under the Financial Collateral Law. As a result, a court could potentially requalify the Transaction into a form of secured lending but this should not invalidate the transfer of title which ~~would~~might in such case be treated as a transfer of ownership for collateral purposes. Since such a transfer of ownership for collateral purposes and a repo under the Financial Collateral Law as well as the GMRA Netting Provisions benefit from the same protections in an insolvency scenario, the risk that a court would ~~effective~~ proceed to such a requalification seems in our view remote even though, in the absence of case-law, it cannot be excluded that a judge might ultimately find otherwise~~.~~; and

(b) in relation to overnight, one-day rolling transactions, which we understand to be transactions where the parties enter into a one day term repo, which is then rolled over into another one day term repo with the delivery of Equivalent Securities pursuant to the termination of the first repo only being deemed to be made, the fact that on the end of the term there is no actual retransfer of title, but a roll-over into another transaction should in our view not exclude the qualification as repo under the Financial Collateral Law, as there is a term and a provision for a retransfer, even though the parties agree otherwise by entering into a further transaction.

~~3.7 Without prejudice to any of the specific opinions given above, this opinion is subject to a general reservation insofar as the obligations of the parties under the Transaction Documents may be limited by general principles of bankruptcy, insolvency, liquidation, reorganisation, reconstruction or other laws affecting the enforcement of creditors' rights generally.~~

~~4. **NETTING PROVISIONS**~~

## APPENDIX 1
## PART III

### GMRA Netting Provisions

1. ~~4.1~~ The central provisions of the ~~Agreement~~GMRA which provide for set-off following an Event of Default are contained in paragraph 10 (Event of Default) of the GMRA and in particular sub-paragraphs (b) to (d) of GMRA 1995 and sub-paragraphs (b) to (f) of GMRA 2000 (together the "**GMRA Netting Provisions**").

2. ~~4.2~~ If an Event of Default has occurred either because of an Act of Insolvency in respect of a Luxembourg Party or following any other default by that party ~~the set-off provisions of paragraph 10~~, the GMRA Netting Provisions would be effective and the effect of those provisions would be that one party would be under a single obligation to pay a net amount in the Base Currency to the other party.

   In the event Insolvency Proceedings are opened against a Luxembourg Financial Institution, it should however be noted that, according to ~~a~~Article 61-15 of the Financial Sector Law, repurchase agreements will be governed solely by the law of the contract which governs such agreements~~, without prejudice however to article~~. Also, according to Article 61-14 of the Financial Sector Law, netting arrangements will also be solely governed by the law of the contract governing such arrangement. As a consequence, the enforceability of the GMRA, including the GMRA Netting Provisions would, following the opening of Insolvency Proceedings against a Financial Institution exclusively, have to be analysed under the governing law of the GMRA and the protections offered by the Financial Collateral Law would not apply.

   Furthermore, Article 61-13 of the Financial Sector Law ~~(providing~~provides that the ~~enforcement~~exercise of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recoding in a register, an account or a centralised deposit system shall be governed by the law of the country where the register, account or centralised deposit system in which those rights are recorded is held or located~~). Article 61-14 of the Financial Sector Law contains a similar provision on netting clauses.~~.

3. ~~4.3~~ In the case of an Agency Transaction ~~the provisions of paragraph 10~~entered into (i) with respect to the GMRA 1995, as specified in Annex IV thereto or (ii) with respect to the GMRA 2000, as specified in the Agency Annex thereto, the GMRA Netting Provisions will apply so that the netting is effected between the principal and the other party. The ~~provisions of Paragraph 10~~GMRA Netting Provisions will be effective as between the Agent in its capacity as agent for each ~~p~~Principal and the other party and will create an obligation on the part of either the other party or the Principal to pay a single net amount in the Base Currency in

respect of all Transactions carried out under the ~~Agreement~~GMRA between the other party and the Agent acting as agent for that Principal in isolation from other transactions between the other party and the Agent. In such case, it will be the Principal rather than the Agent that will be considered to be the Luxembourg Party.

4. ~~4.4~~ The conversion of any cash payment obligation into the Base Currency would be valid under the laws of Luxembourg.

5. ~~4.5 The provisions of paragraph 10~~The GMRA Netting Provisions would be upheld notwithstanding that the Default Market Value may be calculated as late as (i) close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995 or (ii) with respect to the GMRA 2000, as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party became aware of the Event of Default) or, in certain circumstances, at some time thereafter ~~under GMRA 2000~~.

The opinions expressed under this ~~Point 4~~Appendix 1 Part III are reserved as follows:

(a) ~~In~~in relation to opinions ~~4.~~2. and ~~4.~~3. above, where the party required to pay the net amount resulting from the netting is a Luxembourg Party and such party is subject to Insolvency Proceedings, the rights of the other party to claim and receive such net amount are limited by the general restrictions governing creditors' rights to payment and enforcement under the rules of the relevant Insolvency Proceedings. In particular, any filing of a claim in the Insolvency Proceedings for the payment of the net amount resulting from the application of the agreement of the Luxembourg Party would have to be made in Euro;

(b) ~~In~~in relation to opinion ~~4.~~5. above, although it is arguable that the default valuation provisions of the ~~Agreement~~GMRA are protected by Article 18 of the Financial Collateral Law, which declares valid and enforceable even in insolvency situations all ancillary and other clauses making possible the close-out and set-off, it cannot be excluded that the valuation could be challenged by an insolvency officer if it was not done fairly, or if the Default Market Value established on the basis of these provisions, and in particular the late valuation provided for therein, would lead to a considerable and unjustified difference to the fair value on the day of the Event of Default; ~~and~~

(c) it should be noted that Article 3~~6bis~~7 of the Financ~~e~~ial Sector Law requires other professionals of the financial sector managing third party funds (including as the case may be securities dealers as defined herein) to segregate their client's assets and prohibits any measures of execution by personal creditors of such professional on the client's assets. To the extent that the professional has

indicated to act as principal, but has abused assets of its customers, this provision could prevent the effectiveness of the close-out and netting provisions of the ~~Agreement.~~GMRA; and

(d) ~~A~~according to ~~a~~Article 39 of the Insurance Sector Law, the assets of an insurance undertaking representing technical reserves constitute a segregated pool of assets on which policy holders have a first-ranking preference.

~~5. ANNEXES~~

## APPENDIX 1
## PART IV

### GMRA Annexes

1. ~~5.1~~ The use by the parties of any of the annexes to the GMRA specified in ~~the~~ Appendix 1 Part I to this ~~o~~Opinion will not affect the substance of our opinion on the provisions of the ~~Agreement~~GMRA and their effect under Luxembourg law, nor will it affect the substance of our opinion on the validity of the ~~Agreement~~GMRA as a whole under Luxembourg law, except to the extent set out hereafter (and subject to the assumptions and reservations expressed herein, whether or not expressly restated in this section).

2. ~~5.2~~ In relation to the Agency Annex:

   (a) any insolvency analysis made above would have to be carried out also for the Principal ~~(s)~~ and all conditions and assumptions referred to in this opinion will have to be complied with both for the Principal and the Agent;

   (b) we express no opinion on the insolvency consequences in relation to the use of the Addendum for multiple principal transactions, in particular in relation to the insolvency of the Agent or only one of the Principals; and

   (c) we express no opinion on the internal relations between Agent and Principal~~(s)~~.

3. ~~5.3.~~ In relation to the Bills Annex, we express no opinion as to the characterisation of the bills under Luxembourg law.

~~5.4. In relation to the Italian Annex, we repeat our reservations in relation to Replacement Transactions referred to under 3.5. above.~~

4. ~~5.5.~~ In relation to the Gilts Annex, we express no opinion as to the characterisation of DBV Transactions by a Luxembourg court ~~(in particular in relation to the Repo Law)~~.

~~6. LOCATION OF SECURITIES~~

~~6.1 If the Purchased Securities or Margin Securities are held outside Luxembourg, Luxembourg law would not apply as *lex situs* and certain questions on which we have opined herein would be considered, under Luxembourg conflict of law rules, to be governed by the law of the country where the assets are held or deemed to be held. We have not independently investigated any other laws and their impact on this opinion, and we can therefore not determine whether the substance of our opinion would not be affected by the fact that the securities would be located abroad.~~

If the Securities are held with a central depository in Luxembourg, but in effect held with a sub-depository in another country, these Securities would, for the purpose of Luxembourg conflict of law rules, be deemed to be located in Luxembourg.

6.2 Under the laws of Luxembourg if the transfer of Purchased Securities or Margin Securities located in Luxembourg is made in accordance with the formalities required under the laws of Luxembourg, the transfer would be respected as an outright transfer and would not be recharacterised.

In relation to this opinion, we refer to our reservations and analysis made under Point 3 above.

## 7. CROSS-PRODUCT MASTER AGREEMENT

Entry by the parties into a Cross-Product Master Agreement ("**CPMA**") will not affect the substance of our opinion on the provisions of the Agreement and their effect under Luxembourg law, nor will it affect the substance of our opinion on the validity of the Agreement as a whole under Luxembourg law.

This opinion may not be considered as an opinion on the validity or enforceability of the CPMA. In particular we express no opinion as to any choice made by the parties under of Part VIII of the Schedule to the CPMA.

## 8. CORE PROVISIONS

## APPENDIX 1
## PART V

### Core Provisions of the GMRA

1. 8.1 We have been asked:

1.1 8.1.1 to identify any provisions of the GMRA that we regard as so essential to the GMRA that a material alteration thereof could affect the conclusions reached in paragraph 4 of this opinionthis Opinion in relation to the GMRA (each such provision a "**Core Provision**" and together the "**Core Provisions**"),

1.2 8.1.2 to confirm that any modification to any provision of the GMRA that is not a Core Provision (each such provision a "**Modifiable Provision**" and together the "**Modifiable Provisions**") would not affect the conclusions reached in paragraph 4 of this opinionthis Opinion in relation to the GMRA.

1.3 8.1.3 to confirm that the conclusions reached in paragraph 4 of this opinionthis Opinion in relation to the GMRA would not change as a result of the inclusion of additional provisions ("**Additional Provisions**") in a schedule provided by an annex to the GMRA. For the purposes of this paragraph 8.1.3 we assume that none of the Additional Provisions included would have the effect of modifying or affecting the operation or implementation of any Core Provision.

1.4 8.1.4 to confirm that the alterations set forth in the Appendix 2 (the "**Appendix 2 Alterations**") to Core ProvisionsAppendix 1 Part VI to this Opinion to Core Provisions (the "**Amendments to Core Provisions**"), as identified below, of the GMRA 1995 and in the Appendix 3 (the "**Appendix 3 Alterations**") to Core Provisions, as identified below, of the GMRA 2000 would not change the conclusions reached in paragraph 4 of this opinionthis Opinion in relation to the GMRA.

2. 8.2 We believe that the following provisions contained in the GMRA are Core Provisions:

2.1 8.2.1 GMRA 1995:

- Paragraph 3(c) and (f)
- Paragraph 6(a)
- Paragraph 10(a)(iv), (b), (c), (g) and (h)
- Paragraph 13
- Paragraph 16(a)

- Paragraph 17

2.2 ~~8.2.2~~ GMRA 2000:

- Paragraph 3(c) and (f)
- Paragraph 6(a)
- 10 (a)(vi), (b), (c), (d), (e), (i), (j) and (k)
- Paragraph 13
- Paragraph 16(a)
- Paragraph 17

3. ~~8.3~~ We believe that modifications to any Modifiable Provisions would not affect the conclusions reached in ~~paragraph 4 of~~ this ~~o~~Opinion in relation to the GMRA so long as any such modification would not have the effect of modifying or affecting the operation or implementation of any Core Provision.

4. ~~8.4~~ We believe that the conclusions reached in ~~paragraph 4 of~~ this ~~o~~Opinion in relation to the GMRA would not change because of the inclusion of Additional Provisions in a Schedule provided by an annex to the GMRA subject to the assumption in paragraph ~~8.1(c)~~1.3 above.

5. ~~8.5~~ We believe that the ~~Appendix 2 Alterations, the Appendix 3 Alterations~~Amendments to Core Provisions or any similar alteration to a Core Provision, as identified above, of the GMRA would not change the conclusions reached in ~~paragraph 4 of this opinion~~this Opinion in relation to the GMRA (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in Appendix ~~2 or Appendix 3~~1 Part VI of this Opinion and assume that none of the ~~Appendix 2 Alterations or the Appendix 3 Alterations~~Amendments to Core Provisions invalidates or adversely affects the binding effect of any Core Provision).

The opinion contained in paragraph ~~8.~~5 is subject to the following reservation:

(a) ~~8.5.1~~ We believe that any changes to Paragraph 10(c) of the GMRA providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) of the GMRA may be set-off against certain other obligations (the ~~"~~"**Other Obligations**"~~"~~) would not have an adverse effect on the conclusions reached in ~~paragraph 4~~Appendix 1 Part III of this ~~o~~Opinion. However, we express no opinion on the enforceability of such set-offs themselves. Indeed, such a set-off may, as a matter of Luxembourg law (to the extent applicable) not be possible as the Other Obligations are assumedly not resulting from transactions that are governed by a set-off clause or convention~~,~~ and that Article 18 of the Financial Collateral Law may not be applicable; and

(b) ~~8.5.2~~ We believe that an ~~Appendix 2 Alteration or the Appendix 3 Alterations~~Amendment to Core Provisions or any similar alteration to Paragraphs 10(g) and 10(h) of ~~the~~ GMRA 1995 or of Paragraphs 10(i) and 10(j) of ~~the~~ GMRA 2000 would not have an adverse effect on the conclusions reached in ~~paragraph 4~~Appendix 1 Part III of this ~~o~~Opinion. However, we express no opinion on the enforceability (whether by way of set-off or not) of any claim resulting from Paragraphs 10(g) and 10(h) of ~~the~~ GMRA 1995 or Paragraphs 10(i) and 10(j) of ~~the~~ GMRA 2000~~;~~.

## ~~9. OTHER MATTERS~~

~~9.1 On the assumption that under English law the unenforceability or illegality of a provision of the Agreement would not undermine the efficacy of the remainder of the Agreement generally or of paragraph 10 in particular, the unenforceability or illegality of any provision of the Agreement would not undermine the efficacy of the remainder of the Agreement generally or paragraph 10 in particular under Luxembourg law.~~

~~We draw your attention to the fact that a Luxembourg court, if seized with such a matter, may not have the same approach as an English court. In addition, Luxembourg courts have accepted in the past to annul agreements because of a nullity under the public policy rules of a third country to which the agreement has a close link.~~

~~9.2 The Agreement may be used by any party with any other party wherever either is incorporated, formed or established. However, this opinion relates only to Luxembourg Parties.~~

~~9.3 The provisions of Paragraph 10 would be enforceable in all Insolvency Proceedings including non-liquidation insolvency.~~

~~9.4 There is no necessity for the set-off effected under paragraph 10 to be reflected in the records of the parties for it to be effective and no other action is required including, without limitation, any filing or registration for the set-off to be effective.~~

~~9.5 Under the laws of Luxembourg, it is not necessary for the efficacy of paragraph 10 that all Transactions should be treated as a single agreement, although there is a requirements that all Transactions are covered by one single netting clause or agreement.~~

~~9.6 The use of the Agreement with branches of a party in a number of jurisdictions, including one where the legal basis for set-off is not clear, would not jeopardise the validity of paragraph 10 in respect of a Luxembourg party.~~

~~9.7 The provisions of paragraph 10 would be enforceable in Luxembourg notwithstanding that actions may be taken by insolvency officials in other jurisdictions.~~

We qualify this opinion to the extent that Luxembourg law recognises the principle of unity of insolvency proceedings ("*principe d'unité de la faillite*"): according to this principle, Luxembourg law and the Luxembourg courts recognise in Luxembourg the effects of insolvency proceedings regularly opened in a foreign jurisdiction, apply those effects in conformity with the foreign insolvency law, subject to certain conditions (and in particular depending on whether such laws purport to have an extra-territorial effect) and recognise the powers of foreign insolvency officers even over assets located in Luxembourg (including a Luxembourg branch of a foreign party, except as discussed under 1.1. (e), (g) and (h)above).

9.8 We have not investigated the laws of any jurisdictions other than Luxembourg. On the basis of Luxembourg law, we have no reason to believe that the Agreement would be unenforceable in Luxembourg against Luxembourg parties because of the law of any other jurisdiction.

9.9 The close-out and set-off provisions of paragraph 10 are at the option of the non-defaulting party. We do not consider that the provisions of the paragraph would be more likely to be upheld if their operation were automatic. The discretion and flexibility given to the non-defaulting party under paragraph 10 do not affect the validity of the close-out and set-off provisions.

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

Any qualifications which are made in general paragraphs of this opinion shall apply to the entire opinion even without being expressly restated in other paragraphs.

This opinion is given for the sole benefit of ICMA and SIFMA and their respective members and associate members (including, in each case, branches of those members or, where the member is itself a branch, the head office) and may not be relied upon by any other person without our prior written consent. Without limiting the foregoing, you may provide a copy of this opinion to any competent regulatory authority including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht; however this opinion is not addressed to such regulatory authority and may not be relied upon by them.

This opinion is strictly limited to the matters stated herein, it only speaks as of this day and does not extend to, and is not to be read as extending by implication to, any other matter in connection with the Agreements or otherwise.

This opinion does not contain any undertaking to update it or to inform you of any changes in the laws of Luxembourg or any other laws which would affect the content thereof in any manner, except where such update will be expressly requested.

Yours faithfully,

~~**Kremer Associés & Clifford Chance**~~

~~By **Christian Kremer**~~

~~**APPENDIX 1**~~

~~**List of annexes**~~

## APPENDIX 1
## PART VI

| ~~GMRA 1995~~ | ~~GMRA 2000~~ |
|---|---|
| ~~Buy/Sell Back Annex~~<br>~~Agency Annex~~<br>~~Bills of exchange annex~~<br>~~EMU annex~~<br>~~Equities annex~~<br>~~Gilts annex~~<br>~~Net paying securities annex~~<br>~~Italian annex~~<br>~~Japanese securities annex~~ | ~~Buy/Sell Back Annex~~<br>~~Agency Annex~~<br>~~Bills of exchange annex~~<br>~~Equities annex~~<br>~~Gilts annex~~<br>~~Italian annex~~<br>~~Canadian annex~~<br>~~Japanese securities annex~~ |

~~APPENDIX 2~~

**Amendments to Core Provisions**
**of the GMRA 1995 ~~PSA/ISMA Global Master Repurchase Agreement~~**

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the ~~Global Master Repurchase Agreement~~GMRA prepared for ICMA and SIFMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, EMU Annex, Equities Annex, Gilts Annex, Net Paying Securities Annex, Italian Annex and Japanese Securities Annex) in the form published by SIFMA and ICMA~~1~~6 are covered by the opinions.

| **Paragraph 1(a)** |
|---|
| any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not; |
| any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities; |
| **Paragraph 2** |
| Definition of "Act of Insolvency": any change to cover additional cases under Paragraph 2(a); |
| Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer; |
| Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) deleting the third parenthetical in the sixth and seventh line; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the sixth and seventh line, e.g., by more specifically describing a proceeding intended to be covered by the term "analogous proceeding" or by adding any such proceeding; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom |

~~1~~6 Other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association).

| |
|---|
| Building Societies Act 1986) do not constitute an Act of Insolvency; |
| Definition of "Act of Insolvency": any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a); |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) inserting the words "provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature" after the word "filing"; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner; |
| Definition of "Equivalent Securities": any change to Paragraph 2(o) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities; |
| Definition of "equivalent to": any change to Paragraph 2(p) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination; |
| **Paragraph 3(c)**<br><br>(no amendments) |
| |
| **Paragraph 6(a)** |
| any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii); |
| any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system; |
| **Paragraph 6(e)**<br><br>(no amendments) |
| |
| **Paragraph 6(f)**<br><br>(no amendments) |
| |
| **Paragraph 10(a) (other than Paragraph 10(a)(iv))** |

| |
|---|
| any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party; |
| any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period; |
| any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(vii); |
| the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a). |
| In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a); |
| **Paragraph 10(a)(iv)** |
| any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default; |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition "Act of Insolvency"; |
| any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition "Act of Insolvency"; |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(iv) or (v); such changes may or may not by coupled with a change in Paragraph 2(a)(iv) or (v); |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred; |

| |
|---|
| any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required; |
| In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)[(iv)] that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a)[(iv)]; |
| **Paragraph 10(b)**<br><br>(no amendments) |
| |
| **Paragraph 10(c)** |
| any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations; |
| any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii); |
| any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties; |
| any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty; |
| **Paragraph 10(e)** |
| any deletion of, addition to or modification of Paragraph 10(e); |
| **Paragraph 10(f)** |
| any deletion of, addition to or modification of Paragraph 10(f); |
| **Paragraph 10(g)** |
| any deletion of Paragraph 10(g), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.; |
| **Paragraph 10(h)** |
| any deletion of Paragraph 10(h) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to |

| |
|---|
| perform any of its obligations under this GMRA; |
| **Paragraph 13** |
| any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the GMRA, or not; |
| any amendment to add at the end of Paragraph 13 after the word "hereunder" and before the "." the following: ", and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder." |
| **Paragraph 15** |
| any amendment to the first sentence providing that a particular existing agreement survives; |
| any amendment to the second sentence clarifying that each paragraph of an Annex to the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph: |
| any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision. |
| any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the GMRA or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the GMRA; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the GMRA; |

| |
|---|
| **Paragraph 16(a)**<br><br>(no amendments) |
| |
| **Paragraph 17** |
| any change providing that all terms and phrases which are used in the GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles); |
| any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction; |
| in an Agreement entered into between a party incorporated, organised or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction. |

~~**APPENDIX 3**~~

**Amendments to Core Provisions**
**of the GMRA 2000 ~~TBMA/ISMA Global Master Repurchase Agreement~~**

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the ~~Global Master Repurchase Agreement~~GMRA prepared for ICMA and SIFMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, Equities Annex, Gilts Annex, Italian Annex, Japanese Securities Annex and Canadian Annex) in the form published by SIFMA and ICMA[~~2~~7] are covered by the opinions.

| **Paragraph 1(a)** |
|---|
| any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not; |
| any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities; |
| **Paragraph 2** |
| Definition of "Act of Insolvency": any change to cover additional cases under Paragraph 2(a); |
| Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer; |
| Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) deleting the third parenthetical in the seventh and eighth line; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the seventh and eighth line, e.g., by more specifically describing a proceeding intended to be covered by the term "analogous proceeding" or by adding any such proceeding; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) providing that certain acts or proceedings |

[~~2~~7] Other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association).

| |
|---|
| (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency; |
| Definition of "Act of Insolvency": any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a); |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) inserting the words "provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature" after the word "filing"; |
| Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner; |
| Definition of "Equivalent Securities": any change to Paragraph 2(s) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities; |
| Definition of "equivalent to": any change to Paragraph 2(t) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination; |
| **Paragraph 3(c)**<br><br>(no amendments) |
| |
| **Paragraph 6(a)** |
| any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii); |
| any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system; |
| **Paragraph 6(e)**<br><br>(no amendments) |
| |
| **Paragraph 6(f)**<br><br>(no amendments) |
| |

| **Paragraph 10(a) (other than Paragraph 10(a)(vi))** |
|---|
| any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party; |
| any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period; |
| any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(ix); |
| the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a). |
| In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a); |
| **Paragraph 10(a)(vi)** |
| any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default; |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition "Act of Insolvency"; |
| any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition "Act of Insolvency"; |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(vi) or (vii); such changes may or may not by coupled with a change in Paragraph 2(a)(vi) or (vii); |
| any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred; |

| |
|---|
| any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required; |
| In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)[(vi)] that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a)[(vi)]; |
| **Paragraph 10(b)**<br><br>(no amendments) |
| |
| **Paragraph 10(c)** |
| any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations; |
| any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii); |
| any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties; |
| any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty; |
| **Paragraph 10(e)** |
| any deletion of, addition to or modification of Paragraph 10(e); |
| **Paragraph 10(h)** |
| any deletion of, addition to or modification of Paragraph 10(h); |
| **Paragraph 10(i)** |
| any deletion of Paragraph 10(i), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.; |
| **Paragraph 10(j)** |
| any deletion of Paragraph 10(j) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to |

| |
|---|
| perform any of its obligations under this Agreement; |
| **Paragraph 13** |
| any amendment to expand the applicability of the Agreement to transactions that have been effected before the date of the Agreement, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the Agreement, or not; |
| any amendment to add at the end of Paragraph 13 after the word "hereunder" and before the "." the following: ", and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder." |
| **Paragraph 15** |
| any amendment to the first sentence providing that a particular existing agreement survives; |
| any amendment to the second sentence clarifying that each paragraph of an Annex to the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph: |
| any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision. |
| any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the Agreement or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the Agreement; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the Agreement; |
| **Paragraph 16(a)**<br><br>(no amendments) |
| |
| **Paragraph 17** |
| any change providing that all terms and phrases which are used in the Agreement and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles); |
| any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its |

| |
|---|
| right to take proceedings in the courts of any other country of competent jurisdiction; |
| in an Agreement entered into between a party incorporated, organised or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the Agreement or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction. |

**APPENDIX 4**

**Suggested wording to include certain Insolvency Proceedings in the Definition of Act of Insolvency:**

*"Without prejudice to the provisions of Clause 2 (a) of the Agreement, the definition of "Act of Insolvency" shall include, in relation to any party established in Luxembourg, whether with its principal office or through a branch:*

*(i) the filing of a petition for "sursis de paiement" proceedings, as defined in Article 60-2 of the Law dated 5 April 1993 on the financial sector or article 59 of the law dated 6 December 1991 on the insurance sector;*

*(ii) the opening of "sursis de paiement et gestion contrôlée" proceedings as provided for in article 99 of the Law dated 20 December 2002 on UCIs and Articles 55 ff. of the Law dated 21 June 1999 on pension funds; and*

*(iii) the petition for the opening of "gestion contrôlée et sursis de paiement" proceedings as defined in the Grand-Ducal Decree dated 24 May 1935 on suspension of payments and controlled management."*

*In relation to UCIs, the solvent liquidation of one compartment or sub-fund shall not constitute an "Act of Insolvency" in relation to any other compartment of sub-fund of the same UCI.*

Document comparison done by DeltaView on vendredi, 4. avril 2008 19:10:08

| **Input:** | |
|---|---|
| Document 1 | PowerDocs://LUX-1/132931/10 |
| Document 2 | PowerDocs://LUX-1/187038/1 |
| Rendering set | Standard - Deletions shown as Full Text with Strikethrough |

| **Legend:** | |
|---|---|
| Insertion | |
| ~~Deletion~~ | |
| ~~Moved from~~ | |
| Moved to | |
| Style change | |
| Format change | |
| ~~Moved deletion~~ | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| **Statistics:** | |
|---|---|
| | Count |
| Insertions | 724 |
| Deletions | 623 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 1347 |