

Privileged and Confidential
Attorney-Client Communication

December 12, 2013

The Futures and Options Association
2nd Floor
36-38 Botolph Lane
London
EC3R 8DE England

Re: Enforceability of Netting Provision

Ladies and Gentlemen:

You have asked us to give an opinion in respect of the laws of the State of Illinois (“**this jurisdiction**”) as to the enforceability of the Netting Provision (as defined under paragraph 1) of the Rules of The Options Clearing Corporation (the “**Clearing House**”), upon a default by the Clearing House.

We understand that your requirement is for the enforceability and validity of the Netting Provision to be substantiated by a written and reasoned opinion letter.

1. Definitions

In this opinion, unless otherwise indicated:

“**By-Laws**” means the by-laws of the Clearing House in force as at the date of this letter;

“**Clearing House Documentation**” means the By-Laws and the OCC Rules;

“**Contract**” means a futures, swap, or option agreement cleared by the Clearing House;

“**Member**” means a clearing member of the Clearing House;

“**Netting Provision**” means Article VI, Section 27 of the By-Laws;

“**OCC Rules**” means the rules of the Clearing House in force as at the date of this letter and publicly available on the Clearing House’s website at <http://optionsclearing.com/about/publications/bylaws.jsp>;

AUSTIN CENTURY CITY CHARLOTTE CHICAGO HOUSTON IRVING LOS ANGELES
NEW YORK ORANGE COUNTY SAN FRANCISCO BAY AREA SHANGHAI WASHINGTON, DC

LONDON KATTEN MUCHIN ROSENMAN UK LLP

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“**Party**” means the Clearing House or the relevant Member;

references to the word “**enforceable**” and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge; we do not opine on the availability of any judicial remedy;

references to a “**section**” or to a “**paragraph**” are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

2. ASSUMPTIONS

For purposes of rendering the opinions set forth below, we assume that the following will remain at all relevant times true and correct:

- a) Each Party has the capacity, power, and authority under all applicable law(s) to enter into the Clearing House Documentation and Contracts and perform its obligations thereunder.
- b) Each Party has taken all necessary steps to execute, deliver and perform the Clearing House Documentation and Contracts.
- c) Each Party has entered into each relevant Contract for *bona fide* commercial reasons, at arm’s length, in good faith, and for value received and acknowledged.
- d) Each Party has obtained, complied with the terms of, and maintained all authorizations, approvals, licenses, and consents required to enable it lawfully to enter into and perform its obligations under the Clearing House Documentation and Contracts and to ensure the legality, validity, enforceability, or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- e) Each Party is subject to and bound by the By-Laws and the OCC Rules, including, without limitation, the Netting Provision.
- f) The relevant Party has complied with all conditions to admission to membership in connection with clearing Contracts under the Clearing House Documentation.
- g) The Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.

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3. **OPINION**

Based on the foregoing and subject to all of the assumptions and qualifications set forth herein, we are of the opinion that the Netting Provision is legal, valid, and enforceable under the laws of the State of Illinois. We are of this opinion because, absent an insolvency proceeding under the Bankruptcy Code (as defined herein), Dodd-Frank (as defined herein), or otherwise of the Clearing House, the laws of the State of Illinois would enforce the Parties' agreement to be bound by the By-Laws and the OCC Rules, including the Netting Provision.

4. **QUALIFICATIONS**

The opinions in this opinion letter are subject to the following qualifications:

- a) We do not express any opinion as to matters governed by any law other than the laws of the State of Illinois.
- b) The laws of the State of Illinois likely would not apply in the event of a bankruptcy filing by or against the Clearing House pursuant to title 11 of the United States Code (the "**Bankruptcy Code**") or the institution of a proceeding against the Clearing House under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"). While Illinois law on the subject matter of the opinion set forth in Section 3 of this opinion is not necessarily in conflict with the applicable netting provisions of the Bankruptcy Code and/or Dodd-Frank, its applicability is inherently limited in those contexts.
- c) The opinions expressed herein are not a guaranty as to what any particular court would actually hold, but are opinions as to the decisions a court should reach in a properly briefed, argued, and presented case where the court acted reasonably and correctly applied the law to the facts as set forth herein after full consideration of all relevant factors as well as applicable legal and equitable principles. In this regard, we note that legal opinions on insolvency law matters unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions are typically given. These inherent limitations exist primarily because of the pervasive equity powers of courts presiding over insolvency matters. You should take these limitations into account in analyzing the risks associated with the matters described herein.
- d) This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) that subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied

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upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

- e) The opinions set forth herein are expressly subject to no material change hereafter in the law or facts relevant to the opinions expressed herein, and there being no additional facts that would materially affect the validity of the assumptions set forth herein and upon which the opinion is based. We assume no obligation to update or supplement this opinion letter to reflect facts or circumstances that may hereafter come to our attention or any changes in any laws, regulations or judicial decisions that may hereafter occur.

Very truly yours,

KATTEN MUCHIN ROSENMAN LLP