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Dear Sirs

DANISH LAW LEGAL OPINION GIVEN IN CONNECTION WITH THE LCH CLEARING AND CLIENT CLEARING SERVICES - LCH.CLEARNET LIMITED

We refer to your instruction memo dated 21 October 2013 (the "**Instructions**") where you instructed us to give a legal opinion in respect of the laws of Denmark as to certain questions relating to the clearing and client clearing services of LCH.Clearnet Limited (as further outlined below) in the event of a default or the insolvency of a clearing member.

Our opinion is limited to clearing members which are Danish banks and other credit institutions and investment firms (each a "**Relevant Clearing Member**"). Accordingly, our opinion does not cover other entities, e.g. insurance companies and pension funds.

We understand that we are to opine on Relevant Clearing Members becoming clearing members of LCH and entering into the following agreements (together, the "**LCH Agreements**"):

1. The Clearing Membership Agreement (as defined below);
2. The Deed of Charge (as defined below); and
3. The LCH Rulebook (as defined below) (which becomes a contractual arrangement between each clearing member and LCH through entry into of the Clearing Membership Agreement).

The specific questions which our opinion pertains to are set out under Section 4 below together with our opinions thereon.

We express no opinion on the rights or obligations of any "indirect client" howsoever described.

1. BACKGROUND, DOCUMENTATION AND DEFINED TERMS

As instructions for preparing this legal opinion we have received the Instructions. In this Section 1 we replicate the information contained in the Instructions (amended only to fit in the context) which should be read as a general introduction and background to our legal opinion and contains certain defined terms used herein. Furthermore, this Section 1 includes a list of documents reviewed (Section 1.5) and defined terms used in this legal opinion (Section 1.6).

1.1 LCH.Clearnet Limited

LCH.Clearnet Limited ("**LCH**") is a leading independent clearing house, serving major international exchanges and platforms, as well as a range of over-the-counter ("**OTC**") markets. LCH is based in London and provides clearing services in respect of a range of asset classes, including securities, exchange traded derivatives, energy, freight, inter-bank interest rate swaps and euro- and sterling-denominated bonds.

In its role as clearing house (or central counterparty), LCH acts as an intermediary to transactions between other parties, assuming the roles of buyer to the selling party and seller to the buying party.[1] When a transaction is registered with LCH for clearing, the original bilateral contract between the buying party and the selling party is terminated and is replaced by two separate bilateral contracts on equivalent economic terms: one between LCH (as buyer) and the original selling party, and one between LCH (as seller) and the original buying party. LCH guarantees each original party that it will perform its obligations under a contract, irrespective of whether the other original party fulfils the obligations that it owes to LCH. This allows users of LCH's services to minimise their counterparty risk (and associated regulatory capital requirements). Certain types of transactions will, in certain jurisdictions, also be subject to mandatory clearing requirements going forward.

LCH offers its clearing services to financial institutions who become clearing members. Clearing members can use LCH to clear transactions entered into for their proprietary (or "house") account, and may also use LCH's services to offer clearing services to their underlying clients (referred to as "client clearing", as more fully described in Section 1.4 below). One of the features of the client clearing arrangements is that client assets should be protected from the default of the relevant clearing member, and such protection is required under EMIR.

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[1] Or an equivalent intermediating role in the case of a swap transaction. The references in this memorandum to "buyers" and "sellers" are for ease of reading only, LCH is similarly interposed between the parties to a cleared swap transaction, even if such parties are not typically characterised as buyers and sellers.

The relationship between LCH and the clearing members is governed by the Clearing Membership Agreement and by the provisions of the LCH Rulebook (on which we have been asked to opine). The LCH Rulebook includes the General Regulations, the Default Rules (including a number of Annexes described in more detail below), and the Procedures (which contain further operational detail on certain issues provided for in the General Regulations).

When becoming a clearing member, firms are required to sign the Clearing Membership Agreement. This agreement sets out certain high-level aspects of their relationship with LCH, and makes the clearing member subject to the relevant provisions of the LCH Rulebook. Most clearing members[2] are also required to sign a Deed of Charge (see Section 1.3 below). Clearing members wishing to provide client clearing services may be required to sign additional documentation, as further described in Section 1.4 below.

Clearing members are required to provide LCH with collateral (in the form of cash or liquid assets) for each contract that they clear (as described in more detail in Section 1.3). LCH also maintains a default fund and other financial resources which can be applied against losses suffered on the default of a clearing member, so as to protect against a clearing house default. Additional service-specific default fund rules apply to further mitigate risk in this regard.

LCH offers separate clearing solutions in respect of different products (each referred to as a "**Service**"), and clearing members choose which Service(s) they would like to use. Accounts are held by a clearing member within LCH on a per Service basis (a single account will never contain positions and collateral related to more than one Service) and default funds are specific to individual Services. Individual Services will be governed by certain Service-specific rules (see Rules 53 to 95 of the General Regulations and Procedures 2A to 2K), which will expand upon (and, in some cases, may modify) the general rules set out at the front of the General Regulations (Rules 1 to 52 of the General Regulations). Certain Services also have Service-specific default management procedures, which are set out in various DMP Annexes included at the back of the Default Rules. In addition, the Client Clearing Annex to the Default Rules provides for a special default management process in relation to contracts entered into by a (defaulting) clearing member on behalf of its clients (see further Sections 1.4.3 to 1.4.5 below).

The Services currently provided by LCH include: LME Clearing; RepoClear; SwapClear; EquityClear; EnClear; Turquoise Derivatives Clearing; NODAL Clearing; ForexClear; NLX Clearing; and FEX Clearing.

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[2] A Deed of Charge is required where a clearing member wishes to use non-cash collateral to meet some or all of its initial margin obligations. Where a clearing member exclusively posts cash collateral, the Deed of Charge is not required.

1.2 **Accounts**

A clearing member will hold one or more proprietary (or house) account(s) with LCH in respect of clearing business conducted on a proprietary basis (as opposed to for clients). Separately, a clearing member providing client clearing services will hold one or more client account(s) on behalf of its clients. Client accounts are dealt with in more detail in Section 1.4.2 below.

Clearing members utilising more than one Service will have at least one account per relevant Service. Clearing members providing client clearing services will have at least one house account and at least one client account per relevant Service.

Each account is made up of two sub-accounts: One for recording positions entered into in the name of the clearing member, and one for recording the collateral provided by or to that clearing member.

1.3 **Margin**

Collateral, or margin, has to be provided for every contract cleared through LCH. Collateral takes the form of initial margin or variation margin.

Initial margin is intended to offset any losses between the last payment of variation margin and the close-out amount (if any) payable upon the termination of a contract. Initial margin is only provided by clearing members to LCH, but not vice versa. Initial margin can be posted in the form of cash, or in the form of gold or securities meeting certain requirements specified by LCH.

Variation margin represents changes in the daily mark-to-market value of contracts. Variation margin is always provided in cash, and can be provided by either LCH or the clearing member, depending on which party is currently in-the-money.

Cash collateral is provided by way of title-transfer, whereas non-cash collateral is provided pursuant to a security arrangement. Assets constituting non-cash collateral are held by the relevant clearing member with LCH subject to a security interest in favour of LCH under an English law-governed Deed of Charge (the "**Deed of Charge**"). Upon enforcement, the Deed of Charge grants LCH a right to appropriate or sell the charged assets, with a view to applying (by way of set-off in the case of cash) the proceeds against any amounts owed to LCH in accordance with LCH's Default Rules.

1.4 Client Clearing

1.4.1 General

Clearing members providing client clearing services deal with LCH and with their clearing clients on a principal-to-principal basis. The clearing clients do not have any direct relationship with LCH. Regardless of whether a clearing member is clearing contracts with LCH on a proprietary basis or on behalf of clients, accounts are opened with LCH, contracts are registered with LCH and collateral is provided to LCH in the name of the clearing member, and the contractual relationship between the clearing member and LCH is governed by the LCH Rulebook.

In a client clearing context, however, the contracts are entered into, and the accounts and collateral are held, with LCH, by the clearing member on behalf of its client. Clearing members wishing to provide client clearing services will also need to enter into clearing documentation with their underlying client (the "**Client Clearing Documentation**"). LCH is not a party to these agreements, and does not mandate the use of any particular documentation for documenting the transactions between clearing members and their clients.

Under the principal-to-principal model of clearing, the bilateral contract originally entered into by a client and put up for clearing is replaced by a contract between the client's clearing member and LCH (a "**Client Contract**") and a back-to-back transaction between that clearing member and the relevant client (a "**Client Transaction**"). Each Client Transaction will be on the same terms as the relevant original bilateral contract and will be governed by the relevant Client Clearing Documentation. The Client Contract is governed by the LCH Rulebook and is on terms mirroring those of the relevant Client Transaction.

1.4.2 Accounts

Client accounts can take the form of Individual Segregated Accounts ("**ISAs**") or Omnibus Segregated Accounts ("**OSAs**"). An ISA is specific to an individual clearing client, and positions and collateral in an ISA are segregated from the positions and collateral of both the clearing member and of any other clearing client of that clearing member; the clearing client does not share risk or losses with any other clients. An OSA is segregated from the clearing member's house account, but commingles the positions (and collateral) of multiple clearing clients of the clearing member; there is no mutualisation of risk or loss as between the positions and assets held within LCH on behalf of an OSA client and the (house) positions and assets of the relevant clearing member. However, there is mutualisation of risk and loss between the positions and assets of one OSA client and the positions and assets of other clearing clients recorded in the same OSA. LCH and its clearing members are required to offer both segregation options to clearing clients.

LCH offers three different types of OSAs (and clearing members may use any combination of these):

a) Non-Identified Client Omnibus Net Segregated Accounts ("**NOSAs**") – this type of account is opened in respect of clearing clients whose identities have not been recorded by LCH in accordance with its procedures and who are grouped together simply because they share the same clearing member;

b) Identified Client Omnibus Segregated Accounts ("**IOSAs**") – this type of account is opened in respect of clearing clients of a clearing member whose identities are known to LCH, but who have not asked for an ISA; and

c) Affiliated Client Omnibus Segregated Accounts ("**AOSAs**") – this type of account is a special kind of IOSA opened in respect of clearing clients who have elected to be grouped together due to the existence of a common relationship between them.

Collateralisation in respect of a NOSA takes place on a net basis, i.e. the required collateral amount will be calculated by reference to the net exposure in respect of all client contracts held in the relevant account. As a result, there is a mutualisation of loss and a pooling of risk between the clients in terms of differentials between (i) the performance of the clients' respective positions recorded in the relevant OSA; and (ii) the relative quality and haircut value of the collateral provided by the different clients to the clearing member in respect of those positions and onwards delivered by the clearing member to LCH.

AOSAs and IOSAs can be collateralised either on a net basis or on a gross basis. Where collateralisation is on a net basis, the position is the same as that described above for NOSAs. Where collateralisation is on a gross basis (each such account, a "**GOSA**"), the exposure of each clearing client (or of each group of clearing clients who have specifically chosen to be grouped together for the purposes of collateralisation) is calculated separately, and margin is called and provided accordingly. As a result, in the case of a GOSA, there is a mutualisation of loss and a pooling of risk between the clients in terms of differentials between the relative quality and haircut value of the collateral provided by the different clients, but not in terms of differentials between the performance of the relevant clients' respective positions.

Client clearing services are offered to clients on a per-Service basis. Therefore, a clearing member will have at least one client account with LCH in respect of each Service cleared on behalf of clients. Beyond this, a clearing member may have different combinations of one or more ISAs and/or one or more OSAs in respect of a particular Service and the positions and assets of an individual clearing client relating to a single Service may be recorded in more than one client account.

Each account (ISA or OSA) is made up of two sub-accounts: one for recording positions entered into on behalf of the relevant clearing client (or group of clients), and one for recording the collateral provided on behalf of that client (or group of clients).

1.4.3 Clearing Member Default

The default management process in respect of Client Contracts is set out in the Client Clearing Annex to the Default Rules. Pursuant to this, the Client Contracts of a defaulting clearing member may be (i) transferred (together with associated assets) either live or by means of termination and replication to a backup clearing member (a process known as "porting"); or (ii) closed out in conjunction with the return of the Client Clearing Entitlement (as described further below) to or for the account of the relevant client.

In order to prevent the return of the Client Clearing Entitlements or the porting of client assets and positions to a backup clearing member from being challenged under anti-deprivation principles or other similar principles of insolvency law, LCH intends to rely on either:

a) any law, regulation or statutory provision (having the force of law) of a governmental authority the effect of which is to protect the operation of the Client Clearing Annex of the Default Rules from challenge under the insolvency laws applicable to the relevant clearing member (any such provision, an "**Exempting Client Clearing Rule**"); or

b) if no Exempting Client Clearing Rule has been enacted in the relevant jurisdiction, the Security Deed (as defined below). Clearing members in respect of whom a suitable Exempting Client Clearing Rule is not available and who wish to offer client clearing are required to enter into a security deed (the "**Security Deed**") in favour of each of their clearing clients. Under the Security Deed, the clearing member grants a security interest in favour of its clearing client over the receivable from LCH in respect of assets and positions held in an account with LCH on the relevant clearing client's behalf.

1.4.4 Porting

The purpose of porting is to enable LCH, upon the default of a clearing member, to transfer Client Contracts to a backup clearing member. By this process, there is continuity in the provision of client clearing services to the relevant client and the positions and assets to which the relevant client is beneficially entitled are ring-fenced from any insolvency proceedings (or analogous) in respect of the defaulting clearing member.

Porting of Client Contracts may be effectuated by either (i) a close-out of the relevant Client Contracts between LCH and the defaulting clearing member followed by the replication of such Contacts (by the opening of new Client Contracts on the same terms) be-

tween LCH and the backup clearing member; or (ii) a transfer of the relevant Client Contracts (in the form of open positions and without close-out) from the defaulting clearing member to the backup clearing member. In either case, the corresponding Client Contracts between the clearing client and the original clearing member will be closed out, and the clearing client will enter into new Client Contracts on equivalent terms to the original ones with the backup clearing member.

There are two options for the transfer of collateral. Either the collateral associated with the client account may be transferred in the form it is in, or that collateral may be liquidated and the proceeds of liquidation will be transferred instead.

LCH will port positions and assets held on behalf of an ISA client, provided that the relevant client has confirmed its wish for porting to occur and the appointed back-up clearing member has confirmed its willingness to receive the relevant positions and assets. Porting of positions held in an OSA (other than a NOSA) will only occur if all of the clearing clients in that OSA appoint the same backup clearing member and that backup clearing member is prepared to accept all of the relevant positions. Clearing clients in a NOSA cannot port at all, as LCH will not be able to establish with certainty the identity of all clients "participating" in the relevant account.

1.4.5 Liquidation and Return of Client Clearing Entitlement

If porting is either not possible or not desired, LCH will close out the positions held on behalf of each client of the defaulting clearing member and (except in the case of NOSA clients) calculate a "**Client Clearing Entitlement**" in respect of each such client.

The Client Clearing Entitlement represents the relevant client's entitlement to amounts due in respect of the close-out values of its positions and in respect of the collateral (or its liquidation value) covering those positions following the deduction of certain amounts, including the costs of hedging the relevant positions, and (other than in the case of ISA or GOSA clients) any amounts due in respect of positions held on behalf of other clearing clients in the same OSA, pro rated between the relevant clearing clients. There is no such mutualisation of losses factored into the Client Clearing Entitlements of ISA and GOSA clients.

In the case of SwapClear, ForexClear and some aspects of the RepoClear Service, unported Client Contracts will be hedged and auctioned (for the purposes of determining close-out values) in accordance with the provisions of the relevant DMP Annexes to the Default Rules.

LCH will return Client Clearing Entitlements directly to the relevant clearing clients, provided that their identities are known to LCH and that certain documentary requirements are met. If, however, LCH cannot be certain of the identity of a client and/or (in

circumstances where no Exempting Client Clearing Rule is available) a client has not enforced its rights under the relevant Security Deed, LCH will be bound to return a Client Clearing Entitlement to the defaulting clearing member (or its insolvency officer) for the account of the relevant client.

It will never be possible for LCH to ascertain the identities of (all of) the clients "participating" in a NOSA. For this reason, LCH will calculate an aggregate Client Clearing Entitlement in respect of all such clients collectively and will in all circumstances return the relevant amount to the defaulting clearing member (or its insolvency officer) for the account of the relevant clients, rather than to such clients directly.

1.5 Documents

For the purpose of preparing our advice and giving our legal opinion, we have reviewed the following documents (as provided to us on 9 June 2014), several of which were not final at the time of our review. We have referenced the version reviewed:

1. Clearing Membership Agreement, dated 2005
2. LCH Charge by Clearing Member, draft 14 April 2014
3. Security Deed, revised draft 17 December 2013
4. General Regulations of LCH.Clearnet Limited, fourth Bank of England submission (the "**General Regulations**")
5. Default Rules, fourth Bank of England submission (the "**Default Rules**")
6. Procedures Section 1 - Clearing Member and Dealer Status, fourth Bank of England submission
7. Procedures Section 2A - LME Clearing Service, fourth Bank of England submission
8. Procedures Section 2B - RepoClear Service, fourth Bank of England submission
9. Procedures Section 2C - SwapClear Service, fourth Bank of England submission
10. Procedures Section 2D - EquityClear Service, fourth Bank of England submission
11. Procedures Section 2E - LCH EnClear OTC Service, fourth Bank of England submission
12. Procedures Section 2F - Turquoise Derivatives Service, fourth Bank of England submission
13. Procedures Section 2G - Nodal Service, fourth Bank of England submission
14. Procedures Section 2H - HKMEx Service, fourth Bank of England submission

15. Procedures Section 2I - ForexClear Service, fourth Bank of England submission

16. Procedures Section 2J - NLX Service, fourth Bank of England submission

17. Procedures Section 2K - FEX Service, fourth Bank of England submission

18. Procedures Section 3 - Financial Transactions, fourth Bank of England submission

19. Procedures Section 4 - Margin and Collateral, fourth Bank of England submission

20. Procedures Section 5 - Disciplinary Proceedings, fourth Bank of England submission

21. Procedures Section 6 - Business Continuity, fourth Bank of England submission

22. Procedures Section 7 - Appeal Procedures, fourth Bank of England submission

23. Procedures Section 8 - Complaints, fourth Bank of England submission

24. Settlement Finality Regulations, fourth Bank of England submission (the "**Settlement Finality Regulations**")

25. Product Specific Contract Terms and Eligibility Criteria Manual, fourth Bank of England submission

(the documents in nos. 6 to 23 collectively referred to as the "**Procedures**")

(the documents in nos. 1 to 25 collectively referred to as the "**Documents**").

We have reviewed the Documents in connection with the Instructions.

1.6 **Defined Terms**

Terms defined in the LCH Rulebook have the same meaning when used in this opinion, unless otherwise stated herein. In addition thereto, and to terms defined elsewhere in this legal opinion, the following definitions are used in this opinion (words denoting the singular include the plural and vice versa):

"**Bankruptcy Act**" means the Danish Bankruptcy Act (*konkursloven),* Consolidated Act no. 11 of 5 January 2014 as amended;

"**Client**" has the meaning given to it in the Security Deed;

"**Client Collateral**" means Collateral provided by a Client as collateral in accordance with the terms of a Client Clearing Documentation;

"**Collateral**" has the meaning set forth in Regulation 1 (*Definitions*) of the General Regulations;

"**Collateral Directive**" means Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements as amended;

"**Default**" has the meaning set forth in Regulation 1 (*Definitions*) of the General Regulations;

"**Documents**" has the meaning set forth in Section 1.5;

"**EMIR**" means Regulation (EU) no. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended;

"**Financial Business Act**" means the Danish Financial Business Act (*lov om finansiel virksomhed*), Consolidated Act no. 948 of 2 July 2013 as amended;

"**Financial Collateral**" means financial collateral under Section 58f, cf. Section 2, Subsection 1, nos. 1-3 of the Securities Trading Act, being:

1. Cash standing to the credit of an account;

2. Transferable securities (with the exception of instruments of payment (*betalingsinstrumenter*) which are negotiable on the capital market, including:

   a) Shares in companies and other securities equivalent to shares in companies, partnerships and other entities, and depositary receipts in respect of shares;

   b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and

   c) any other securities giving the right to acquire or sell such securities as listed under item a) or b) hereof or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

3. Money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment;

4. Units in collective investment undertakings covered by the Danish Act on Investment Associations etc. (*lov om investeringsforeninger m.v.*) and units in other institutions for collective investment; and

5. Credit claims (*gældsfordringer*), as defined in Subsection 2 of Section 58f, provided both parties are covered by Section 58b, no. 1-5 of the Securities Trading Act;

except cash deposits which cannot be made subject to legal proceedings, for example client accounts and certain pensions, cf. Section 58f, Subsection 4, or own shares, shares in affiliated undertakings within the meaning of Directive 83/349/EEC, shares in undertakings whose exclusive purpose is to own means of production that are of material significance to the collateral provider's activities or shares in companies with the purpose of owning real property for the use of their shareholders, cf. Section 58f, Subsection 3 of the Securities Trading Act;

"**Financial Entity**" means an entity comprised by Section 58b, nos. 1-5 of the Securities Trading Act, being:

a) a public authority (excluding publicly guaranteed undertakings unless they, inter alia, fall under b) to e) below) including:

   1. public bodies in European Union Member States and countries that the Community has entered into a financial agreement with, which are responsible for, or assist, in public debt management, and

   2. public bodies in European Union Member States and countries that the Community has entered into a financial agreement with, which are authorised to keep accounts for clients;

b) central banks, the European Central Bank, the Bank for International Settlements, any multilateral development bank as defined in Article 1(19) of Directive 2000/12/EC, the International Monetary Fund and the European Investment Bank;

c) financial institutions subject to supervision, including:

   1. credit institutions as defined in Article 1(1) of Directive 2000/12/EC, including the institutions listed in Article 2(3) of that Directive,

   2. investment firms as defined in Article 1(2) of Directive 2004/39/EC,

   3. financial institutions as defined in Article 1(5) of Directive 2000/12/EC,

   4. insurance undertakings as defined in Article 1(a) of Council Directive 92/49/EEC and a life assurance undertaking as defined in Article 1(a) of Council Directive 92/96/EEC,

   5. undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC, and

   6. management companies as defined in Article 1a(2) of Directive 85/611/EEC;

d) central counterparties, settlement agents and clearing houses, as defined respectively in Article 2(c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by the Directive; and

e) persons, other than natural persons, who act in a trust or representative capacity on behalf of any one or more persons that include any bondholders or holders of other forms of securitised debt or any institution as defined in a) to d) above.

"**Financial Obligations**" means financial obligations as defined in Section 58e, Subsection 2 of the Securities Trading Act, being obligations giving the right to cash settlement or delivery of financial instruments;

"**FSA**" means the Danish Financial Supervisory Authority (*Finanstilsynet*);

"**Insolvency Proceedings**" means bankruptcy (*konkurs*) and formal restructuring proceedings (*rekonstruktion*) regulated by the Bankruptcy Act and as described in Section 3.2;

"**Insolvency Representative**" means a trustee (*kurator*) or restructuring administrator (*rekonstruktør*) regulated by the Bankruptcy Act and as described in Section 3.2;

"**LCH Rulebook**" means the General Regulations, the Default Rules, the Default Fund Rules, the Procedures and the Settlement Finality Regulations collectively;

"**Limitation Day**" means the limitation day (*fristdagen*) as set forth in Section 1 of the Bankruptcy Act, which for the purpose of this opinion is the date of filing a petition for bankruptcy or formal restructuring proceedings with a bankruptcy court *(skifteretten)*;

"**Reorganisation Measure**" has the meaning set out in Section 3.3; and

"**Securities Trading Act**" means the Danish Securities Trading Act (*værdipapirhandelsloven*), Consolidated Act no. 227 of 11 March 2014 as amended.

2. ASSUMPTIONS

In addition to the assumptions and factual background set out above, this opinion is based on the following assumptions and those additional assumptions set out in Section 3 below:

a) all copies of Documents e-mailed to us and reviewed by us are accurate, complete and up-to-date versions of those Documents;

b) the relevant parties have entered into the Documents and the Client Clearing Documentation (where there is a Client) and on the basis of the terms and condi-

tions thereof and other relevant factors, and acting in a manner consistent with the intentions stated therein, the Relevant Clearing Member enters into transactions cleared through LCH and in addition, the Client, where there is a Client, submits certain transactions for clearing with the Relevant Clearing Member (and for the purpose of this opinion "entered into" (or any variations thereof) shall include incorporation by reference);

c) any perfection requirement under the laws of any relevant jurisdiction in respect of any Collateral has been complied with;

d) the relevant parties have executed the Deed of Charge and/or the Security Deed, as applicable (see Section 4.3.2.5) substantially in the form reviewed by us for the purposes of this opinion and that any perfection requirement under English law in respect of the Deed of Charge and/or the Security Deed, as applicable, have been complied with;

e) the Documents, including the Clearing Membership Agreement and the Deed of Charge, and other security arrangement, and any other relevant agreement entered into by LCH and the Relevant Clearing Member in order to offer any Service are legal, valid, binding and enforceable under the laws of the country which they are subject to;

f) the Client Clearing Documentation is legal, valid, binding and enforceable under the laws that it is governed by and the Client Collateral is duly perfected under applicable law;

g) all Collateral actually posted by the parties constitutes Financial Collateral ;

h) any Collateral provided by a Relevant Clearing Member on its own behalf or on behalf of its Clients is held with LCH or a third party in the name of LCH (outside Denmark) and LCH's interest in such Collateral is established, duly perfected and enforceable in accordance with the LCH Rulebook, the Deed of Charge or other security arrangement and applicable law, and each such security arrangement constitutes a financial collateral arrangement under Danish law;

i) no agreements or transactions entered into by LCH, the Relevant Clearing Member and/or the Client materially amend the Documents or affect the validity thereof;

j) the Contracts and/or Client Contracts and Client Transactions (as relevant) are derivatives as defined in Article 2(5) of EMIR;

k) to the extent that any obligation arising under the Documents or the Client Clearing Documentation (where there is a Client) will be performed in a jurisdiction outside Denmark, that its performance will not be illegal or ineffective under the laws of such jurisdiction;

l) LCH is a central counterparty as defined in Article 2(c) of Directive 98/26/EC, and LCH is a CCP as defined in EMIR;

m) the Client is a Financial Entity or a corporate entity and not a natural person acting as a private individual;

n) based on the records and accounts of LCH it is possible to identify and distinguish the positions and assets held with LCH for the account of the Relevant Clearing Member from the positions and assets held for the account of the Relevant Clearing Member's Clients at LCH;

o) each of LCH, the Relevant Clearing Member and the Client is duly incorporated or organised and validly existing under the laws of its jurisdiction of incorporation and its place of business;

p) the Documents and the Client Clearing Documentation (where there is a Client), are duly authorised, executed and delivered by or on behalf of each of LCH, the Relevant Clearing Member and the Client (where there is a Client) (as applicable) under its constitutional documents and the laws of its jurisdiction of incorporation and its place of business;

q) each of LCH, the Relevant Clearing Member and the Client (as applicable) has obtained all applicable authorisations and licences to enter into the Documents and the Client Clearing Documentation (where there is a Client), and to enter into and perform the Contracts and/or Client Contracts and Client Transactions (as relevant) there under;

r) none of LCH, the Relevant Clearing Member and the Client (where there is a Client) is or, as at the date of entering into or the effective date of the Documents and the Client Clearing Documentation (where there is a Client), will be, or, as a result of the transactions effected pursuant to such documents, will become, or will be deemed to be, insolvent or unable to pay its debts under any applicable law, statue, decree, rule or regulation;

s) each of LCH, the Relevant Clearing Member and the Client (where there is a Client) is acting as principal and not as agent in relation to its rights and obligations under the Documents or the Client Clearing Documentation (where there is a Client) and no third party has any right to, or interest in, or claim on any party's rights or obligations under the Documents or the Client Clearing Documentation (where there is a Client) other than as set out above in relation to the Security Deed, Deed of Charge or as set out in the LCH Rulebook;

t) the terms of the Documents and the Client Clearing Documentation (where there is a Client) have been entered into for *bona fide* commercial reasons and on arms' length terms and in good faith by each of the parties thereto, and involve

no element of gift or undervalue from the Relevant Clearing Member and the Client;

u) the Contracts and/or Client Transactions and Client Contracts (where there is a Client) are entered into on or after 1 January 2004;

v) the Documents and Client Clearing Documentation (where there is a Client) do not provide for liquidated damages which are not a genuine estimate of the loss likely to be suffered;

w) the Client Clearing Documentation (where there is a Client) provides for a legal, valid, binding and enforceable (i) close-out netting agreement under Danish law, and (ii) collateral arrangement which constitutes a financial collateral arrangement under Danish law, as further described in Section 3.4; and

x) no law (other than Danish law) and no special terms or deviations from the standard terms of the Documents agreed between the parties affect the conclusions in this opinion.

3. DANISH BANKRUPTCY LAW AND CLOSE-OUT NETTING REGULATION

3.1 Introduction

Before discussing your specific questions in Section 4 below, we discuss the general Danish bankruptcy law which will apply to a Relevant Clearing Member which is subject to Insolvency Proceedings. Because Danish bankruptcy law (as further discussed below) contains mandatory creditor protection provisions which serve to protect the creditors of a Relevant Clearing Member that becomes subject to Insolvency Proceedings, we also discuss below the Danish close-out netting legislation which deviates from general Danish bankruptcy law in material respects in order to enable close-out netting in respect of Financial Obligations to be effective under Danish law, including with effect for a bankruptcy estate (as further discussed below).

3.2 Danish bankruptcy law

Under the Bankruptcy Act, a Relevant Clearing Member may be subject to the following Insolvency Proceedings in Denmark:

a) Bankruptcy proceedings (*konkurs*). Bankruptcy proceedings are initiated by the debtor or a creditor filing a petition with a bankruptcy court. Upon receipt of the petition, the court sets a hearing date and notifies the debtor and any petitioning creditor. If the court is satisfied that the petitioning creditor has a valid claim against the debtor (applies only if a creditor has filed the petition) and the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature) the court will issue a bankruptcy order (*konkursdekret)* against the debtor. The bankruptcy order will

be made public by an announcement in the Danish Official Gazette (*Statstidende*). The court will then appoint a bankruptcy trustee (*kurator*) to manage the estate. The bankruptcy estate will consist of the assets that belong to the debtor at the time the bankruptcy order is issued, together with any assets that accrue during the bankruptcy proceedings. The assets are realised and the proceeds are distributed among the creditors according to an order of priority set out in the Bankruptcy Act. Secured creditors are not part of this order of priority. Bankruptcy proceedings under Danish law are designed to ensure a high degree of equality of treatment of all creditors, enabling the estate to set aside / avoid (*omstøde*) certain pre bankruptcy transactions, see Section 4.2 below.

b) Formal restructuring proceedings (*rekonstruktion*). Formal restructuring proceedings are initiated by the debtor or a creditor filing for restructuring with a bankruptcy court and are regulated by the Bankruptcy Act. It is a condition of the initiation of a restructuring process that the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature). The main purpose of the restructuring proceedings is to secure an otherwise healthy debtor's survival through a period of insolvency by way of:

1. a transfer of the debtor's business,

2. a compulsory composition[3] (*tvangsakkord*), or

3. a combination of 1 and 2.

Once initiated, the restructuring proceedings cannot be recalled or otherwise annulled. If the restructuring proceedings do not result in an outcome as described in 1-3 above, adopted by the creditors, the bankruptcy court will immediately commence bankruptcy proceedings over the assets of the debtor. This is the case if a restructuring plan or proposition is voted against by the creditors, and also if the bankruptcy court decides to stop the restructuring proceedings, e.g. due to the debtor's failure to cooperate in good faith or if the restructuring proceedings for some reason prove to be pointless. The restructuring proceedings, however, will stop if the debtor becomes solvent during the proceedings.

When restructuring proceedings are initiated the bankruptcy court immediately appoints a restructuring administrator (*rekonstruktør*) and an accountant (*regnskabskyndig tillidsmand*) to oversee and administrate the restructuring proceedings, to work out the restructuring plan and final restructuring proposal and to present these to the creditors.

[3] A compulsory composition entails that all claims are either reduced pro rata or annulled. A compulsory composition may furthermore include a suspension of payments.

The bankruptcy court will then announce the restructuring of the debtor in the Danish Official Gazette (*Statstidende*) making the restructuring official. The restructuring administrator encourages all creditors to file their claims in order to build a foundation for the potential restructuring of the debtor. The claims will then be ranked in the same way as in the case of a bankruptcy.

The Bankruptcy Act applies to all types of Danish legal entities, including Relevant Clearing Members. Financial institutions regulated by the Financial Business Act are subject to certain supplementary provisions and measures (which includes in respect of Danish credit institutions the possibility to transfer assets and liabilities to the Danish Financial Stability Company (*Finansiel Stabilitet A/S*) or a subsidiary of the Danish Financial Stability Company, see Section 3.3 below), which ensure that the FSA be involved during insolvency proceedings related to financial institutions. The FSA is entitled to file a petition for bankruptcy in respect of a financial institution if it becomes insolvent.

Under Danish law, bankruptcy proceedings may be initiated in Denmark in respect of the assets in Denmark of a legal entity incorporated in Denmark. Under Danish law, assets outside Denmark of such Danish entity may also be included, although, in practice whether it is possible to collect such assets will depend on whether the Danish bankruptcy proceedings are recognised in the relevant jurisdiction.

A legal entity incorporated outside Denmark, which does not conduct business from a place in Denmark, cannot be subject to insolvency proceedings in Denmark. If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity, and cannot (as the main rule) be declared bankrupt in Denmark.

The EU Insolvency Regulation 1346/2000 (as amended), which came into force on 31 May 2002, does not apply in Denmark.[4] Under Danish law the only cross-border regulation relevant to consider on a general level is the Nordic Bankruptcy Convention.[5]

Under Danish choice of law rules the application of the law of a foreign jurisdiction to a contractual relationship in case of a Danish bankruptcy depends on whether Danish choice of law rules point to such law or whether the application of such law has been validly agreed. However, it is generally recognised that Danish law aimed at protecting the creditors and/or preserving the debtor's assets, including the mandatory provisions in the Bankruptcy Act concerning cherry picking and voidability, will prevail over the parties' choice of law.

[4] See preamble 33 of the EU Insolvency Regulation.

[5] Order (*anordning*) no. 251 of 1 September 1934 as amended.

Accordingly, as the general rule the bankruptcy estate of a Relevant Clearing Member may apply the mandatory creditor protection rules in the Bankruptcy Act to the assets and liabilities of that Relevant Clearing Member unless exemptions are specifically provided for by Danish law.

According to Section 55, Subsection 1 of the Bankruptcy Act, a Danish bankruptcy estate has the right to step into (cherry pick) agreements of the bankrupt entity (on the terms thereof) provided the agreement has not been materially breached by such Danish entity prior to the commencement of the bankruptcy proceedings for reasons other than the bankruptcy proceedings. Pursuant to Section 58 of the Bankruptcy Act, bankruptcy cannot *per se* constitute a material breach.

If it were not for certain exemptions that apply under Danish law (as further discussed in Section 3.3 below and in our answers to the specific questions in Section 4 below), there would, in our view, be a material risk that a Relevant Clearing Member's bankruptcy estate would have the right to step into any Contract of a bankrupt Relevant Clearing Member, regardless of the fact that LCH has an agreed right to port transactions or terminate transactions for certain insolvency related reasons.

Denmark has implemented the Banks Winding-up Directive[6] by Executive Order (*bekendtgørelse*) no. 674 of 24 June 2004 (the "**Winding-up Order**"), which applies to winding-up of an EU based bank or other credit institution. Section 19 of the Winding-up Order provides that netting agreements will be governed by the agreed choice of law. We are not aware of any Danish authority concerning the scope of this provision in the Winding-up Order. In the limited Danish legal literature on the topic it is assumed that Section 19 of the Winding-up Order will apply to an agreement concerning close-out netting (*slutafregning*). However, in our view it is not certain that an Insolvency Representative would consider this choice of law provision in Section 19 of the Winding-up Order to be overruling and conclusive in a situation where applying mandatory Danish bankruptcy provisions would lead to a result which is different from the law of the netting agreement, and therefore we include below our analysis of the Danish close-out netting provisions. As set out in the opinions below, we are of the view that the close-out netting provisions applicable to the Contracts benefit from the close-out netting regime under Danish law.

3.3 Reorganisation Measures

According to the Danish Act on Financial Stability (Consolidated Act no. 875 of 15 September 2009 as amended, *lov om finansiel stabilitet*), the Danish Financial Stability Company (*Finansiel Stabilitet A/S*) or a subsidiary thereof may purchase the assets and certain liabilities of an ailing Danish bank, savings bank or cooperative savings bank, if

[6] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions.

such institution has been given a deadline by the FSA to comply with the capital requirements of the Financial Business Act and the entity decides to be taken over by the Danish Financial Stability Company (a "**Reorganisation Measure**"). As such, the takeover is in practice often the alternative to Insolvency Proceedings.

It follows from the preparatory works to Section 16(g), Subsection 5 of the Danish Act on Financial Stability that contracts concerning derivative financial products which the ailing entity is party to, can be taken over by the Danish Financial Stability Company or a subsidiary thereof if such takeover is allowed under the terms of such contracts.

3.4 Close-out Netting Regulation

3.4.1 Close-out Netting of Financial Obligations

The Collateral Directive has been implemented into Danish law in the Securities Trading Act with effect for agreements entered into on or after 1 January 2004. The rules on bilateral netting are contained in Chapter 18a (Sections 58 to 58m) of the Securities Trading Act.

The main close-out netting provision (Section 58h, Subsection 1 of the Securities Trading Act) provides that a Relevant Clearing Member and its counterparty can agree, with legal effect for third parties (including a bankruptcy estate of a Relevant Clearing Member) that Financial Obligations under an agreement may be closed-out and netted upon the occurrence of an event of default or the commencement of insolvency proceedings of a party (irrespective of the jurisdiction in which such insolvency proceedings take place). It is a requirement that the netting agreement be in writing or be capable of being documented in another manner legally similar thereto.

According to Section 58d of the Securities Trading Act, the realisation and valuation of the Financial Collateral or Financial Obligations, which are being close-out netted, must be conducted in a commercially reasonable manner.

3.4.2 Notice of Termination

Section 58h, Subsection 2 of the Securities Trading Act provides that it can be agreed with legal effect for a bankruptcy estate and creditors that upon the occurrence of an event of default, close-out netting of Financial Obligations shall occur when the non-defaulting party gives notice to this effect to the defaulting party. The said Section further provides, that, if insolvency proceedings are commenced against the defaulting party, such party may require that close-out netting of Financial Obligations be effected so that the parties are placed in a position as if close-out netting had occurred without undue delay after such time when the non-defaulting party became, or should have become, aware that Insolvency Proceedings were commenced against the defaulting party.

3.4.3 Restrictions on Close-out Netting

Section 58h, Subsections 3-6 of the Securities Trading Act sets out certain restrictions as to the Financial Obligations, which may be included in close-out netting.

According to the Securities Trading Act, Section 58h:

- Subsection 3: Close-out netting, which is carried out after the defaulting Danish party has commenced a restructuring process, may include claims that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day.
- Subsection 4: Close-out netting, which is carried out after the defaulting Danish party has been declared bankrupt, may include claims that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day. A close-out netting balance may not include claims which came into existence after the day the bankruptcy of the Danish party was announced in the Danish Official Gazette (*Statstidende*).
- Subsection 5: A claim covered by Section 42, Subsections 3 and 4 of the Bankruptcy Act may be included in a close-out netting unless the non-defaulting party knew, or ought to have known, that the defaulting Danish party was insolvent when the claim against such defaulting Danish party was acquired or came into existence.
- Subsection 6: A close-out netting is voidable pursuant to Section 69 of the Bankruptcy Act, if the close-out netting covered claims, which could not have been included in an agreed close-out netting in case of the Danish party's bankruptcy, see Section 58h, Subsections 4-5.

3.4.4 Financial Collateral Arrangements

As mentioned in Section 3.4.1 above the Collateral Directive, including the provisions relating to financial collateral arrangements, was implemented into Danish law as of 1 January 2004.

Section 58 of the Securities Trading Act states that the provisions of chapter 18a of the Securities Trading Act apply to financial collateral arrangements and to financial collateral after such financial collateral has been provided. Financial collateral shall be regarded as having been provided when the relevant act of perfection has been carried out.

A financial collateral arrangement is an agreement between parties covered by Section 58b (which includes a Relevant Clearing Member) on the posting of collateral for finan-

cial obligations (as defined in Section 58e) in the form of Financial Collateral (which includes the asset types set out in the definition thereof, see Section 1.6 above). In order for LCH to benefit from the rights relating to financial collateral arrangements set out in this opinion, the Collateral actually posted by a Relevant Clearing Member must qualify as Financial Collateral. We note that the definition of Collateral in the General Regulations provides to the ability of LCH to accept Collateral which would not qualify as Financial Collateral, e.g. physical gold and cash not credited to an account.

According to Section 58e of the Securities Trading Act, it must appear from the financial collateral agreement which of the parties' Financial Obligations are covered by the close-out netting agreement.

"Collateralisation" means provision of Financial Collateral in the form of transfer of title (*overdragelse af ejendomsret*) as well as charges/pledges (*pant*). In particular, Section 58k of the Securities Trading Act provides that financial collateral arrangements may include transfer of title as a valid form of posting Financial Collateral in relation to the act of perfection and realisation of the collateral. We understand that collateralisation is made by transfer of title in respect of Collateral and Client Collateral in the form of cash Collateral provided to LCH by a Relevant Clearing Member and by way of a charge in respect of securities Collateral provided to LCH by a Relevant Clearing Member.

In respect of financial collateral arrangements, Section 58k of the Securities Trading Act recognises that such arrangements may include transfer of title as a valid form of posting financial collateral in relation to act of perfection and realisation of the collateral. Accordingly, pursuant to Section 58k of the Securities Trading Act a financial collateral arrangement in respect of Financial Collateral, e.g. cash credited to an account, under the control of LCH in the form of title transfer is effective in accordance with the terms of the arrangement in relation to the act of perfection and realisation of the collateral.

According to the preparatory works to Section 58k of the Securities Trading Act, if a financial collateral arrangement in the form of title transfer is in its substance creating a security interest, it will be characterised as a security interest in respect of the voidability rules of the Bankruptcy Act.

Pursuant to Section 58l, Subsection 1, of the Securities Trading Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the financial obligation secured by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72

of the Bankruptcy Act, unless such provision of financial collateral does not appear ordinary.

Pursuant to Section 58m it is possible for a transferor, upon agreement with the transferee, to substitute financial collateral with other financial collateral of substantially the same value. If such substitution collateral is provided no later than at the same time as the transferor gains possession of the substituted collateral, the substitution collateral may only be avoided if the substituted collateral was voidable due to circumstances existing at the time when the substituted collateral was posted.

The parties may agree that the value of financial collateral posted under an agreement may be included in a close-out amount calculation under Section 58h in accordance with the provisions on realisation in Section 58j of the Securities Trading Act. In addition, Section 58d of the Securities Trading Act provides that realisation or valuation of financial collateral by a non-defaulting party in a close-out netting scenario to cover financial obligations must be on commercially reasonable terms.

In respect of applicable law in Denmark questions regarding choice of law in contractual relationships are governed by the Rome Convention of 19 June 1980 incorporated into Danish law by Act No. 188 of 9 May 1984. Consequently, the parties are in general free to decide on the choice of law in their *inter-partes* relationship (subject to Danish *ordre public*).

However, the Convention does not apply vis-à-vis third parties. Thus, it is necessary to apply principles of private international law when deciding on the applicable law governing, inter alia, the required act of perfection when posting collateral.

Under Danish private international law the general rule is the principle of lex rei sitae, i.e. that the law of the country where the subject matter is situated at the time of the establishment of a proprietary interest (including security interests and ownership rights) applies. This means that proprietary interest in Financial Collateral located in Denmark will, as the general rule, be governed by substantive Danish law. We have assumed that Client Collateral is held in accounts in the name of the Relevant Clearing Member to the extent held in Denmark or is duly perfected under applicable law to the extent held outside Denmark; and that Collateral provided to LCH by a Relevant Clearing Member is held outside Denmark and is duly perfected under applicable law.

3.5 Conclusions on general Danish bankruptcy law and close-out netting provisions

As it transpires from the above, if the close-out netting provisions of Section 58h of the Securities Trading Act and/or Section 57f (see 4.3.2.3 below) of the Securities Trading Act did not apply to the Contracts and the related Collateral, there is in our view a ma-

terial risk that an Insolvency Representative of a bankrupt Relevant Clearing Member would be able to step into (cherry pick) any favourable Contracts and leave the unfavourable Contracts as claims against the bankruptcy estate. We discuss below how Section 58h and 57f of the Securities Trading Act deal with these potential problems.

4. SPECIFIC QUESTIONS AND OPINION

Our opinions and answers to the specific questions you have asked us to address in this Section 4 are based on the assumptions and analysis set out in Section 2 and 3 (respectively) and subject to the general qualifications set out below and in Section 5.

We have been asked to address the following questions (in *italics*), which is each followed by our opinion in relation thereto.

4.1 General

4.1.1 *Please opine on the ability of a Relevant Clearing Member to enter into the LCH Agreements and if there is anything which would prevent a Relevant Clearing Member from performing its obligations under the LCH Agreements. In particular, please can you answer the following:*

Are there any statutory limitations on the capacity of, or specific regulatory requirements associated with, any Relevant Clearing Member entering into the LCH Agreements (including for the purpose of granting of security under the Deed of Charge)?

Yes, Relevant Clearing Members are subject to certain restrictions outlined below.

Banks/credit institutions

Danish banks/credit institutions (*kreditinstitutter*) are subject to (i) licensing requirements as described below and (ii) any restrictions in the bank's/credit institution's articles of association with respect to the objects clause of its articles of association.

Banks/credit institutions which are licensed under Section 7(1) of the Financial Business Act, may only carry out banking activities as described in appendix 1 to the Financial Business Act and ancillary activities thereto pursuant to Sections 24-26 of the Financial Business Act. These activities include dealings on own account in Contracts. A bank/credit institution may therefore normally enter into Contracts and be a clearing member if the bank/credit institution is dealing on its own account.

Banks may also carry out certain activities with respect to Contracts on the account of investors if they are licensed as a securities dealer (*værdipapirhandler)*, cf. Sections 7(2) and 9 of the Financial Business Act. A bank/credit institution therefore normally has the legal capacity to enter into the LCH Agreements and perform Client Clearing Services for the account of Clients if the bank is licensed as a securities dealer.

Investment firms

Danish investment firms (*fondsmæglerselskaber*) are securities dealers which are not licensed as another type of financial entity, and are subject to any restrictions in the investment firm's articles of association with respect to the objects clause of its articles of association as well as the limits of its license from the FSA, which may e.g. be limited to trading in only specific categories of financial instruments. Only some investment firms are licensed to trade for their own account in Contracts and accordingly, it should be checked that an investment firm applying to become a Clearing Member by entering into the LCH Agreements is licensed by the Danish FSA to trade Contracts for its own account, and, if relevant, to perform Client Clearing Services for the account of Clients.

4.1.2 *Would LCH be deemed to be domiciled, resident or carrying on business in the Relevant Jurisdiction by virtue of providing clearing services to a Relevant Clearing Member? If so, would LCH be required to obtain a licence or be registered before providing clearing services to a Relevant Clearing Member or are there any special local arrangements for the recognition of overseas clearing houses in these circumstances?*

No, LCH would not be deemed domiciled, resident or carrying on business in Denmark by virtue of providing clearing services to a Relevant Clearing Member.

4.1.3 *What type of documents should be obtained by LCH to evidence that a Relevant Clearing Member and its officers have the capacity and authority to enter into the LCH Agreements? Is LCH required to verify such evidence?*

In respect of confirming a Relevant Clearing Member's capacity and authority to enter into the LCH Agreements and perform its obligations thereunder, LCH should review the Relevant Clearing Member's articles of association.

As a main principle, the Relevant Clearing Member will only be bound by agreements within the limits of its objects as set out in the articles of association and it should therefore be checked that the objects cover the contemplated Contracts and the LCH Agreements. Normally, the objects clause describes the objects of the company in rather broad terms, and it may not be immediately clear whether the objects are prohibitive in relation to something as specific as Contracts or the LCH Agreements. In our experience it would be highly unusual for the objects clause of a Relevant Clearing Member to be prohibitive in relation to specific types of Contracts.

The articles of associations also contain the signature rule of the Relevant Clearing Member. LCH should also as part of its due diligence request to receive a complete and up to date transcript from the Danish Business Authority's (*Erhvervsstyrelsen)* online register in respect of the Relevant Clearing Member, including the signature rule of the Relevant Clearing Member. Based on that information it should be checked that any agreement entered into directly by the Relevant Clearing Member is signed (i) by per-

sons authorised to bind the Relevant Clearing Member according to the registrations with the Danish Business Authority, or (ii) by persons authorised to execute such agreement in accordance with a power of attorney or list of authorised traders executed by persons registered with the Danish Business Authority.

Persons authorised to bind an entity in accordance with the signature rule registered with the Danish Business Authority (see the paragraph immediately above) can bind the entity without further inquiry into their underlying authorisation, unless they are acting in contravention of the articles of association of the entity or the contract party (e.g. LCH) knew or ought to have known that the person was acting in contravention of an internal authorisation or the Danish Companies Act (*selskabsloven*). In order to avoid a situation where the persons acting on behalf of the Relevant Clearing Member are acting without proper authorisation from the board of directors of the Relevant Clearing Member, we do recommend that a copy of the decision of the board of directors approving to become a clearing member of LCH is obtained, if possible.

The license of a Relevant Clearing Member as a financial entity can be checked on-line at the register of the FSA: http://www.dfsa.dk/en/Tal-og-fakta/Virksomheder-under-tilsyn/VUT-database.aspx.

4.1.4 *Are there any formalities to be complied with upon entry into of any of the LCH Agreements and, if so, what is the effect of a failure to comply with these?*

Danish law does not mandate any special formalities in order for an agreement to be validly entered into. We refer to Section 4.3.2.5 below with respect to the act of perfection in relation to the security interest created under the Security Deed.

4.1.5 *Would the courts of the Relevant Jurisdiction uphold the contractual choice of law and jurisdiction set out in Regulation 51?*

The choice of English law to govern the Documents is a valid choice of law for a Relevant Clearing Member, subject to Danish *ordre public* and the mandatory rules of the laws of any country with which a transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law (cf. Article 3 (3), Article 7 and Article 16 of the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980 as implemented in Denmark by Danish Act No. 188 of 9 May 1984).

4.1.6 *Will the courts uphold the judgement of the English courts or an English arbitration award?*

A judgment of an English court against a Relevant Clearing Member in respect of any suit, action or proceeding arising out of or relating to any of the Documents will be

recognised and enforced by the courts of Denmark, subject to and in accordance with the provisions of Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 22 December 2000, as amended by Commission Regulation (EC) No. 1496/2002 of 21 August 2002 and Commission Regulation (EC) No. 2245/2004 of 27 December 2004 (the "Brussels I-Regulation") and the bilateral agreement in relation thereto between Denmark and the European Community of 19 October 2005 (and any protocol and accession convention in respect thereof) and Danish Act No. 1563 of 20 December 2006 as amended, implementing the Brussels I-Regulation and such bilateral agreement in Denmark.

Subject to compliance with the 10 June 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an arbitral award obtained against a Relevant Clearing Member in an arbitration proceeding pursuant to the provisions of the Documents will be enforced by Danish courts without re-examination or re-litigation of the matters thereby adjudicated.

Are there any "public policy" considerations that the courts may take into account in determining matters related to choice of law and/or the enforcement of foreign judgements?

We are not aware of any such considerations of general relevance to the type of dealings contemplated in this legal opinion.

4.2 **Insolvency, Security, Set-off and Netting**

Please opine on insolvency proceedings and pre-insolvency reorganisation, restructuring and/or resolution measures in respect of Relevant Clearing Members under the laws of the Relevant Jurisdiction and the effect of these on the security interests and set-off and netting arrangements provided for under the terms of the LCH Agreements.

Please do not address issues specifically related to Contracts entered into, and Collateral delivered, in respect of client clearing in your answer since these are examined separately in Section 4.3. In addition, please assume (i) that the LCH Agreements are legal, valid, binding and enforceable under English law (as the law which governs them) and (ii) the compliance with all relevant perfection requirements and the effectiveness of the collateral arrangements provided for under the Deed of Charge under the law of any jurisdiction(s) other than the Relevant Jurisdiction that you consider to be relevant to those matters.

In particular, please can you answer the following:

4.2.1 *Please identify the different types of Insolvency Proceedings and Reorganisation Measures. Would any of these not be covered by those events entitling LCH to liquidate,*

transfer or otherwise deal with Contracts as provided for in Rule 3 of the Default Rules? Are any other events or procedures not envisaged in Rule 3 of the Default Rules relevant?

The relevant Insolvency Proceedings are (1) bankruptcy, and (2) restructuring proceeding, see Section 3.2 above.

The relevant Reorganisation Measure is, in relation to banks (*banker*), savings banks (*sparekasser*) and cooperative savings banks (*andelskasser*) only, the takeover of assets and liabilities by the Danish Financial Stability Company, see Section 3.3 above.

We are of the opinion that all of the relevant Insolvency Proceedings and Reorganisation Measures listed above are covered by the events listed in Rule 5 of the Default Rules.

4.2.2 *Would the Deed of Charge be effective in the context of Insolvency Proceedings or Reorganisation Measures in respect of a Relevant Clearing Member? Is there anything that would prevent LCH from enforcing its rights under the Deed of Charge? Would LCH be required to take any particular steps or abide by any particular procedures for the purposes of enforcing against Collateral provided to it by a Relevant Clearing Member under the Deed of Charge?*

As mentioned above in Section 4.1, the choice of English law to govern the Deed of Charge is a valid choice of law subject to Danish *ordre public* and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law.

In our understanding, the security interest established pursuant to the Deed of Charge is a security interest over securities.

With respect to a security interest in securities held in an account with LCH, according to Section 58 n of the Securities Trading Act, Danish private international law will apply the PRIMA-principle (place of relevant intermediary) meaning that English substantive law will govern the security interest in such assets, including the act of perfection.

Based on the above assumption, we are of the opinion that Danish law will not govern the effectiveness of the security interest created under the Deed of Charge and accordingly we express no opinion thereon.

Pursuant to Section 58l, Subsection 1, of the Securities Trading Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the financial obligation secured by

the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72 of the Bankruptcy Act, unless such provision of financial collateral does not appear ordinary.

Under Section 86 of the Bankruptcy Act, the bankruptcy administrator of a Danish bankruptcy estate has a 6 months' deadline to sell (for the account of a secured creditor) assets which are in the possession of the bankruptcy estate and over which such secured creditor has a valid security right. After the expiry of the 6 months' deadline, the relevant secured creditor can demand that the bankruptcy administrator sells the assets in question without undue delay.

Based on the assumption that any Collateral provided under the Deed of Charge is in the possession of LCH (and not the Relevant Clearing Member or (in due course) its Insolvency Representative)), Danish law does not grant the Insolvency Representative of a Relevant Clearing Member any rights to stay the enforcement of the Deed of Charge in the event of Insolvency Proceedings being commenced in respect of a Relevant Clearing Member. Further, Section 58j of the Securities Trading Act provides that Financial Collateral may be sold without further formalities provided that this has been agreed between the parties, which in our view prevents a stay on enforcement.

There are no relevant provisions of Danish law providing for a stay in enforcement in case of Reorganisation Measures.

4.2.3 *Would LCH have the right to take the actions provided for in the Default Rules (including exercising rights to deal with Contracts under Rule 6 and rights of set-off under Rule 8 but not at this stage considering those actions specifically provided for in the Client Clearing Annex to the Default Rules) in the event that a Relevant Clearing Member was subject to Insolvency Proceedings or Reorganisation Measures? Is it necessary or recommended that LCH should specify that certain Insolvency Proceedings and/or Reorganisation Measures will constitute an Automatic Early Termination Event in accordance with Rule 3 of the Default Rules? If the answer is affirmative, please identify those specific Insolvency Proceedings and/or Reorganisation Measures to which the answer applies and briefly explain your reasoning.*

Referring to our discussion of the Danish close-out netting regime in Section 3.4 above, we are of the opinion that LCH will under Danish law have the right to take the actions provided for in the Default Rules (including exercising rights to deal with Contracts under Rule 6 and rights of set-off under Rule 8, but excluding the actions specifically provided for in the Client Clearing Annex to the Default Rules in relation to which we refer

to Section 4.3 below) in the event that a Relevant Clearing Member was subject to Insolvency Proceedings or Reorganisation Measures.

It is possible with binding effect on a bankruptcy estate governed by Danish law to agree that upon the occurrence of an event of default a close-out netting agreement in respect of Financial Obligations shall not be given effect until the non-insolvent party gives notice to this effect. If insolvency proceedings are commenced against the defaulting party, such party may require that the close-out netting be effected as if close-out netting had occurred without undue delay after the time the non-defaulting party became aware or should have become aware that insolvency proceedings were commenced against the defaulting party. Accordingly, termination does not have to occur before the relevant insolvency proceeding commences in order for the close-out netting provisions of the Securities Trading Act to be enforceable under Danish law and, therefore, it is not necessary to specify that Automatic Early Termination Events should apply. Whether to agree to Automatic Early Termination Events for commercial reasons should be decided on a case-to-case basis and we are not able to give a general recommendation in relation thereto.

4.2.4 *Is there a "suspect period" prior to Insolvency Proceedings and/or Reorganisation Measures where Contracts with a Relevant Clearing Member could be avoided or challenged and, if so, what are the grounds? What are the risks for LCH in entering into Contracts and in taking Collateral in respect of those Contracts during such a period? Are any special protections or exemptions from the relevant arrangements for avoidance or challenge available under the law of the Relevant Jurisdiction in respect of contracts in financial markets?*

There are several rules on avoidance under the Danish Bankruptcy Act which are intended to render certain transactions carried out during a particular time (the "suspect period") leading up to Insolvency Proceedings voidable. Below, we have listed the provisions that are in our view most relevant to the Contracts.

There is no "suspect period" relevant to Reorganisation Measures.

Section 74 of the Bankruptcy Act: A contract may be voidable if such contract unduly favours one creditor (e.g. LCH) at the expense of the other creditors of the Relevant Clearing Member provided the debtor was insolvent at the time where the relevant contract was entered into and the favoured creditor knew or could not have been unaware of the insolvency. It is for the Insolvency Representative to prove such knowledge or constructive knowledge of insolvency. No specific time limit ("suspect period") applies to voidability under Section 74 of the Bankruptcy Act.

The consequence of voidability under Section 74 of the Bankruptcy Act is that the favoured creditor is obliged to compensate the estate for any loss suffered by the estate as a result of the void transaction.

Section 70 of the Bankruptcy Act: Collateral posted and not perfected without undue delay following the incurrence of the secured debt and collateral in respect of pre-existing debt, in each case if it is perfected within a three-month period[7] preceding the Limitation Day is voidable regardless of fraudulent intent or knowledge of insolvency. Pursuant to Section 58l, Subsection 1, of the Securities Trading Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the Financial Obligations secured by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72 of the Bankruptcy Act, unless such provision of financial collateral does not appear ordinary, please also see Section 3.4.4 above.

Section 64 of the Bankruptcy Act: Gifts given by the debtor within six months of the Limitation Day may be voidable. Further, gifts made between six months and one year[8] before the Limitation Day may be voidable unless it is proven that the debtor neither was nor by giving the gift became insolvent. Payments for goods or services made at an undervalue during the suspect period are often equalised as a gift and ruled voidable by the Danish courts.

The consequence of voidability under Sections 70 and 64 of the Bankruptcy Act is that the favoured creditor is obliged to return the benefit gained by that creditor to the bankruptcy estate.

4.2.5 *Is there relevant netting legislation in the Relevant Jurisdiction that, in the context of Insolvency Proceedings or Reorganisation Measures in respect of a Relevant Clearing Member, might apply as an alternative to the relevant arrangements set out in the Default Rules?*

No, the Danish close-out netting legislation in the Securities Trading Act assumes that the parties will have agreed which events of default or termination events trigger close-out netting, please also see our general description of the Danish close-out netting legislation in Section 3.4 above.

[7] This time limit is extended to two years in respect of persons closely related (typically by having the same controlling shareholders or being in the same group of companies) to the bankrupt person unless it is proven that the debtor neither was nor became insolvent when making the voidable transaction.
[8] See note 7.

4.2.6 *Can a claim for a close-out amount be proved for in Insolvency Proceedings without conversion into the local currency?*

No, Section 40, Subsection 2 of the Bankruptcy Act provides that any money claims in foreign currency filed in Danish bankruptcy or under a restructuring must be converted into Danish Kroner at the exchange rate on the date of the order of such Insolvency Proceedings. There is no authority on how Section 40, Subsection 2 of the Bankruptcy Act shall be applied in respect of claims under close-out netting agreements. In our view the requirement for conversion will only relate to the net amount to be filed with the bankruptcy estate or under a formal restructuring proceeding (i.e. after close-out netting has been effected).

4.3 Client Clearing

4.3.1 Overview

This Section 4.3 addresses any legal issues that may arise in relation to the provision by a Relevant Clearing Member of Client Clearing Services to Clients (whether incorporated in the Relevant Jurisdiction or any in other jurisdiction). The following has been included in the Instructions:

It is contemplated that Relevant Clearing Members will be entitled to offer Client Clearing Services to their Clients in accordance with the provisions of the LCH Rulebook (including, in particular, Regulation 11 and the Client Clearing Annex to the Default Rules). LCH requires local law advice on whether the default arrangements providing for (i) the porting of the Client Contracts and the associated Account Balance to a Backup Clearing Member; or (ii) the liquidation of Client Contracts and the return of the relevant Client Clearing Entitlement directly to the relevant Client or (failing that) to the relevant Defaulter for the account of such client, would be effective in the event of a Default (whether insolvency-related or otherwise) of a Relevant Clearing Member.

Please note that porting of Client Contracts may be effectuated by either (i) a close-out of the relevant Client Contracts between LCH and the Defaulter followed by the replication of such Contacts (by the opening of new Client Contracts on the same terms) between LCH and the Backup Clearing Member; or (ii) a transfer of the relevant Client Contracts (in the form of open positions and without close-out) from the Defaulter to the Backup Clearing Member. Please consider both alternative porting mechanisms when providing your answers below and (if applicable) highlight any differences in the analysis of one compared to the other.

Please note that it cannot be assumed in all cases where LCH returns a Client Clearing Entitlement to a Defaulter for the account of a Client, that the relevant Client will (i) have taken enforcement action under the Security Deed; (ii) have instructed LCH to

take that course of action; and/or (iii) necessarily even be known to LCH. In these circumstances, LCH will return the Client Clearing Entitlement to the Defaulter on the basis that the relevant assets are client assets and should be treated as such. Please indicate any critical concerns associated with this approach.

4.3.2 Questions

4.3.2.1 Exempting Client Clearing Rule

Please opine on the availability and effectiveness of any law, regulation or statutory provision (having the force of law) in the Relevant Jurisdiction which (if so designated by LCH) would be expected to qualify as an Exempting Client Clearing Rule. Please clarify whether the relevant Exempting Client Clearing Rule would be expected to apply to Relevant Clearing Members of all entity types or to only certain entity types.

If, and to the extent that, you consider such an Exempting Client Clearing Rule to be available, please (i) assume for the purposes of answering the following Questions that LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will not require those Relevant Clearing Members to which that Exempting Client Clearing Rule applies to enter into a Security Deed; and (ii) ignore Questions 3.13 to 3.15. [9]

In cases where you do not consider an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following Questions that LCH will require Relevant Clearing Members to enter into a Security Deed; (ii) assume that the Security Deed is legal, valid, binding and enforceable under English law (as its governing law) and complies with all relevant perfection requirements under the law of any jurisdiction(s) other than the Relevant Jurisdiction which you consider to be relevant to that matter; and (iii) provide a response to the Questions in 4.3.2.5.

As further discussed under Section 4.3.2.5, in order for the Client to avail itself of the protection under Section 57f of the Securities Trading Act (see Section 4.3.2.3), Danish law in our view requires that the Client has a right against the Relevant Clearing Member which follows, for example, from an agreement between the Relevant Clearing Member and the Client. Such right could be either a right of ownership or a security interest. As discussed below, we understand and assume that the Client's rights under the Security Deed are a security interest in the form of an assignment of a receivable. The secured obligations under the Security Deed are all liabilities incurred by the Relevant Clearing Member to the Client under the Client Clearing Documentation. Accordingly, while Danish law contains regulation (Section 57f of the Securities Trading Act) aimed at supporting client clearing, we do not believe that the regulation can be characterised as an Exempting Client Clearing Rule, because in our view it requires the ex-

[9] These questions have not been answered in this opinion as we do not consider Danish law to provide for an Exempting Client Clearing Rule.

istence of a right for the Client against the Relevant Clearing Member as set out in the Security Deed (or a similar agreement).

4.3.2.2 Default Outside Insolvency Proceedings or Reorganisation Measures

If LCH were to: (i) declare a Relevant Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganisation Measures in respect of that clearing member and (ii) seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could the Relevant Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?

The Relevant Clearing Member would, pre-Insolvency Proceedings, be bound by the choice of law and venue of the Documents and the Client Clearing Documentation in the same manner and to the same extent as discussed in our answer under 4.1 above. Danish law does not provide for mandatory law which would derogate from the LCH Agreements prior to Insolvency Proceedings. We have not reviewed the Client Clearing Documentation, but we note that Section 57f, Subsection 1 (see Section 4.3.2.3) and Section 58h of the Danish Securities Trading Act both apply in case of insolvency and non-insolvency events of default by the Relevant Clearing Member.

Accordingly, if LCH were to: (i) declare a Relevant Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganisation Measures in respect of that clearing member and (ii) seek to port the Client Contracts and Account Balance of a Client to a Backup Clearing Member as a result, neither the Relevant Clearing Member nor any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

If LCH were to: (i) declare a Relevant Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganisation Measures in respect of that clearing member; and (ii) seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could the Relevant Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

We refer to our answer to the question immediately above which applies equally to this question.

4.3.2.3 Insolvency-related Default

If (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a

Backup Clearing Member as a result, could an insolvency officer appointed to the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?

In our response to this question we refer to Section 3.2 above concerning general Danish bankruptcy law. We discuss below other relevant Danish law in respect of the possibility of porting assets and positions in order to provide the opinion at the end of this section.

In our view, Section 55, Subsection 1 of the Bankruptcy Act (on a Danish bankruptcy estate's right to step into agreements of the bankrupt entity) could create a risk that the bankruptcy estate in case of a Relevant Clearing Member's bankruptcy could, where porting was effected by a transfer of the relevant Client Contracts (in the form of open positions and without close-out) from the Defaulter to the Backup Clearing Member, have a mandatory right to step into Contracts and related Collateral between LCH and a Relevant Clearing Member with the effect that LCH could not port the Contracts and related Collateral to a Backup Clearing Member. However, as set out below, we are of the view that relevant Danish law exemptions apply.

Section 57f, Subsection 1 of the Securities Trading Act provides that positions which a clearing member takes on behalf of its clients with a CCP as counterparty and assets belonging to the clearing member which the clearing member has posted as collateral to a CCP as security for its clients' positions are protected from execution by the creditors of the clearing member.

Section 57f, Subsection 2 of the Securities Trading Act further provides that a client's rights to the positions and assets mentioned in Section 57f, Subsection 1 of the Securities Trading Act are exempt from voidability under the Bankruptcy Act, provided that the position or collateralisation (as the case may be) appears bona fide (*ordinær*).

It follows from the preparatory works[10] to section 57f that the provision has been introduced in Danish law in order to, *inter alia*, ensure portability of positions and related collateral with a CCP entered into and collateralised by a clearing member on behalf of its clients and the right to liquidate the positions and assets held with the CCP by the clearing member for the account of the client.

It further follows from the preparatory works[11] that in the context of Section 57f of the Securities Trading Act:

[10] See the remarks to the provision set out in proposed act no. L 46, dated 31 October 2013 (*Folketingstidende A*).

[11] Op. cit.

- "positions" means a binding obligation to purchase or sell e.g. a financial instrument, and
- "assets" means collateral posted as security for positions, including the right to receive assets with a value corresponding to the collateral provided and/or the revenues from a liquidation of the collateral under the CCP's default management procedure, but not contributions to the default fund of the CCP.

The terms "positions" and "assets" are used in EMIR, for example in Articles 39 and 48. Accordingly, in our view, the term "position" in Section 57f of the Securities Trading Act will cover a Client's position in an interest rate swap.

In our view, which is supported by the preparatory works of the provision, Section 57f, Subsection 1 of the Securities Trading Act ensures that the Insolvency Representative of a Relevant Clearing Member has no claims against (including no right to step into) positions and assets posted as Collateral with LCH by the Relevant Clearing Member for Client Contracts entered into as part of its Client Clearing Service towards its Clients.

It is in our view a condition for this position under Danish law that assets posted as collateral by the Relevant Clearing Member for the positions of its Clients can be identified and separated from assets posted as Collateral for the positions of the Relevant Clearing Member itself.

In relation to whether the taking of a position or collateralisation (as the case may be) appears bona fide (*ordinær*) under Section 57f, Subsection 2, under the preparatory works to the provision, the posting of collateral in accordance with the Client Clearing Documentation and the LCH Rulebook (even if this results in overcollateralisation by posting Initial Margin or Additional Collateral) will be considered bona fide if the Collateral is called and posted in accordance with the Client Clearing Documentation and the LCH Rulebook. A transfer of value which is not in accordance with the LCH Rulebook and benefits the Client over the other creditors of the Relevant Clearing Member is likely not to be bona fide and consequently be at risk of being voidable under the rules of the Bankruptcy Act, e.g. Section 64 of the Bankruptcy Act relating to gifts, see Section 4.2.4 above.

Further, in order for the Client to avail itself of the protection under Section 57f of the Securities Trading Act, in our view the law requires that the Client (by some other means than Section 57f of the Securities Trading Act) has a right against the Relevant Clearing Member and a related right to the assets and positions to be ported to a Back-up Clearing Member and/or paid to the Client in the form of the Client Clearing Entitlement. Such right could in our view be either a right of ownership or a security interest (established by agreement or law). As discussed in Section 4.3.2.5 below, in our understanding the security right under the Security Deed will as a matter of Danish law be a security right over a receivable. The secured obligations under the Security Deed are all

liabilities incurred by the Relevant Clearing Member to the Client under the Client Clearing Documentation.

In addition to the above, whether porting can be carried through will as a matter of Danish law also depend on:

a) The Documents and the Client Clearing Documentation provide for porting,

b) That the Security Deed is effective, and

c) The enforceability of the close-out netting provisions agreed between the Relevant Clearing Member and LCH (to the extent that Client Contracts will need to be closed-out and netted as a part of porting) and between the Client and the Relevant Clearing Member.

Re. a):

With respect to choice of law and venue we refer to Sections 4.1.5 and 4.1.6 above.

We assume that the Documents and Client Clearing Documentation as a matter of applicable law provide for porting as described in Section 1.4.4 in case of a Relevant Clearing Member becoming subject to Insolvency Proceedings.

Re. b):

In respect of effectiveness of the Security Deed, see Section 4.3.2.5 below.

Re. c):

With respect to the general efficacy of close-out netting under Danish law we refer to Section 3.4 above.

Accordingly, assuming that the close-out and netting of the relevant Client Contracts and Client Transactions is carried out in accordance with the close-out netting regime of the Securities Trading Act as discussed in 3.4 above, in our opinion an Insolvency Representative of a Relevant Clearing Member could not successfully challenge the close-out and netting of such Client Contracts and Client Transactions.

Based on the above, we are of the opinion that if (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Client to a Backup Clearing Member as a result, neither

an insolvency officer appointed to the Defaulter nor any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

If (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could an insolvency officer appointed to the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

With respect to Section 57f of the Securities Trading Act and the protections it affords the Client of a Relevant Clearing Member subject to Insolvency Proceedings, we refer to our discussion thereof immediately above. We further refer to our discussion of the Danish close-out netting regulation in Section 3.4 above.

Based on the above, we are of the opinion that if (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Client or to the Defaulter for the account of such Client, an insolvency officer appointed to the Defaulter could not and no other person could successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement.

We do however refer to our discussion in Section 4.3.2.6 below in respect of certain risks materialising if LCH were to seek to return the Client Clearing Entitlement to the Defaulter for the account of one or more Clients.

4.3.2.4 Reorganisation Measures

If (i) following the implementation of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could the representative appointed to reorganise/manage the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?

With respect to applicable Reorganisation Measures, we refer to our discussion thereof in Section 3.3 above.

The Danish Financial Stability Company or a subsidiary thereof invoking a Reorganisation Measure in relation to a Relevant Clearing Member (where such entity is a bank, savings bank or cooperative savings bank) prior to Insolvency Proceedings would be bound by the choice of law and venue of the Documents and Client Clearing Documentation in the same manner and to the same extent as discussed in our answer under Section 4.1.5 and 4.1.6. Danish law does not provide for mandatory law which would derogate from the LCH Agreements prior to Insolvency Proceedings. We have not reviewed the Client Clearing Documentation, but we note that Section 57f, Subsection 1 and Section 58h of the Danish Securities Trading Act both apply in case of insolvency and non-insolvency events of default by the Relevant Clearing Member.

There are no special Reorganisation Measures for Relevant Clearing Members which are investment firms.

Based thereon, we are of the opinion that if (i) following the implementation of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Client to a Backup Clearing Member as a result, neither the representative appointed to reorganise/manage the Defaulter nor any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

If (i) following the commencement of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could the representative appointed to reorganise/manage the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

We refer to our answer to the question immediately above which applies equally to this question.

4.3.2.5 Security Deed

Would the Security Deed provide an effective security interest under the laws of the Relevant Jurisdiction over the Account Balance or Client Clearing Entitlement in favour of the relevant Client?

Under the Security Deed, a Relevant Clearing Member as assignor assigns by way of security to a Client as assignee, its right to receive the Account Balance or the Client Clearing Entitlement from LCH, as the case may be.

The claim of the Client against the Relevant Clearing Member will in our understanding not be a charge of a cash or securities deposit account located in Denmark.

In respect of the Client Clearing Entitlement, the Client's right is a right for the Client to have transferred to it an amount of cash after close-out of the relevant Client Contracts. In respect of the Account Balance, the Client's right is a right for the Client to have Collateral and positions transferred to a Backup Clearing Member. Consequently in our understanding the security right under the Security Deed will as a matter of Danish law be a security right over a receivable.

The fact that in some instances (such as those regulated in Clauses 6.2 and 8.2 of Schedule 1 to the Default Rules), the Client is entitled to instruct LCH to transfer its Individual Segregated Account Balance to a Backup Clearing Member, does in our interpretation under Danish law not mean that the Client will be treated as having a security interest over the securities posted as Collateral. We are of this view because to our understanding, the Client does not have a right to such specific securities, including to have them transferred to itself but could be obliged to only receive the monetary value thereof less certain costs (as further set out in Clauses 9.1 - 9.3 of Schedule 1 to the Default Rules).

The Danish rules on financial collateral arrangements (implementing the Collateral Directive in Danish law) allow only Financial Collateral to be posted as collateral in a financial collateral arrangement. Because receivables not standing to the credit of an account do not in our view qualify as Financial Collateral, the security provided under the Security Deed is in our view not a financial collateral arrangement under the Securities Trading Act.

The choice of English law to govern the Security Deed is a valid choice of law subject to Danish *ordre public* and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law.

Accordingly, the choice of English law to govern the Security Deed is binding on the Relevant Clearing Member, and to the extent English law provides for a legal, valid, binding and enforceable right under the Security Deed for the Client, such Security Deed creates a security interest, which is effective in the bilateral relationship between the Client and the Relevant Clearing Member, in the event of default of a Relevant Clearing Member pre Insolvency Proceedings.

It is however not clear under Danish private international law whether the Danish courts would apply the substantive law of the assignor or that of the debtor to the perfection requirements applicable to the assignment of a receivable. In the Client Clearing

Services arrangement, the laws of the debtor (LCH) would be English law whereas the laws of the assignor (the Relevant Clearing Member) would be Danish law. Accordingly, we would advise that both English and Danish perfection requirements be complied with under the Security Deed. Provided that LCH receives evidence of the entry into a Security Deed in relation to each Client, this perfection requirement will in our opinion be met. We have assumed that any perfection requirement under English law has been complied with.

Perfection of a security assignment of receivables under Danish law, as mentioned, requires notification to the debtor. To maintain perfection of a receivables security assignment, it is further required that the assignor is deprived of control over the pledged cash flow on an on-going basis. This requirement can be fulfilled by requiring that payment of said cash flow is to be made to the assignee.

The Security Deed provides for the security interest contained therein to be perfected by notification to LCH by delivering to LCH a copy of the original and each additional Security Deed granted by the Relevant Clearing Member. However, as discussed immediately above, Danish law also requires that the pledgor (the Relevant Clearing Member) is deprived of control over the pledged cash flow, which normally means that the pledged receivable cannot be paid to the pledgor (the Relevant Clearing Member) without the express prior consent of the pledgee (the Client). We understand that under the LCH Rulebook the Client is neither operationally able nor legally entitled to control or consent to the release of Collateral from LCH to the Relevant Clearing Member on an on-going basis. Accordingly, it could be argued that the Client does not exercise the prerequisite deprivation of the Relevant Clearing Member's control over the pledged cash flow to have maintained the perfection of the Client's security interest under the Security Deed under substantive Danish law.

However, under Section 57f of the Securities Trading Act and the preparatory works thereto, deprivation of control over the pledged cash flow between LCH and the Relevant Clearing Member in relation to the Client's positions and assets will have been properly exercised provided that such collateral is administered in accordance with the LCH Rulebook. Accordingly, Danish law should not be able to lead to the result that the act of perfection under the Security Deed has, for lack of deprivation of control, not been performed on an on-going basis.

Accordingly, we are of the opinion that the Client will as a matter of Danish law have an effective security interest under the Security Deed to the extent it relates to a receivable provided that the procedures set out in the Security Deed and the LCH Rulebook are complied with.

Are there any perfection steps which would need to be taken under the laws of the Relevant Jurisdiction in order for the Security Deed to be effective?

Under Danish law LCH would be required to be put on notice of the security interest created under the Security Deed, see our further discussion of Danish perfection requirements immediately above. Provided that LCH receives evidence of the entry into a Security Deed in relation to each Client, this perfection requirement will in our opinion be met. However, as also described immediately above, Danish private international law may require that also any act of perfection under English law be complied with.

Is there any risk of a stay on the enforcement of the Security Deed in the event of Insolvency Proceedings or Reorganisation Measures being commenced in respect of a Relevant Clearing Member?

Based on our understanding that the security interest given under the Security Deed under Danish law will be a security right over a receivable, it follows from Section 91 of the Bankruptcy Act that the Insolvency Representative of a Relevant Clearing Member does not have any rights to stay the enforcement of the Security Deed in the event of Insolvency Proceedings or Reorganisation Measures being commenced in respect of a Relevant Clearing Member (but please see Section 4.3.2.6 below).

4.3.2.6 General

Please provide brief details of any other significant legal or regulatory issues which might be expected to arise in connection with the provision by a Relevant Clearing Member of Client Clearing Services and which are not covered by the Questions above.

We note one important point. Where a Relevant Clearing Member becomes subject to Insolvency Proceedings in the form of bankruptcy and where LCH (in accordance with the LCH Rulebook, see Schedule 1 (Client Clearing Annex), Clauses 9.1 - 9.3 to the Default Rules) pays the Client Clearing Entitlement or Aggregate Omnibus Client Clearing Entitlement in cash to the Insolvency Representative of the bankrupt Relevant Clearing Member for the account of Clients, such Clients' claim against the bankruptcy estate of the Relevant Clearing Member for their respective share of the Client Clearing Entitlement will in our view risk being a preferred claim (*massekrav*) under Section 93 of the Bankruptcy Act. This means that:

1. Such Clients will have to share the amount with other preferred creditors under Section 93 of the Bankruptcy Act and if there are insufficient funds to cover all preferred creditors, will not be fully paid, and

2. If there is (ultimately) sufficient funds to cover the preferred creditors of the

3. Relevant Clearing Member, such Clients may not be able to get paid immediately upon making their claim if at such time the bankruptcy estate is short on cash.

Accordingly, if LCH were to pay the Client Clearing Entitlement to the bankruptcy estate of the Relevant Clearing Member that entails both a potential credit risk and a liquidity risk for the relevant Clients.

Preferred creditors under Section 93 of the Bankruptcy Act are the first unsecured creditors which are paid out of the assets of a Danish bankruptcy estate and are constituted by the following claims:

1. Costs associated with the institution of bankruptcy proceedings,

2. Costs associated with the administration of the estate, and

3. Debts taken on by the estate during the estate's administration, except for revenue taxes falling due in respect of the debtor.

Preferred claims are paid as soon as possible and will not have to await the payment of dividends to senior unsecured (simple) creditors.

We also refer to our qualification in respect of receivers in Section 5.7.

5. QUALIFICATIONS

This opinion is subject to the following additional qualifications:

5.1 This opinion is limited to the issues addressed herein and speaks only as of its date. In particular, it is noted that no opinion is expressed as to the validity and enforceability of any provisions of the Documents other than those to which express reference is made herein.

5.2 This opinion is limited to matters of the laws of Denmark as in effect today and we express no opinion with respect to the laws of any other jurisdiction (including provisions that refer to such laws), nor have we made any investigation as to any laws other than the laws of Denmark.

5.3 This opinion does not result in any obligation on our part to inform you of any changes in law or other developments after the date of this opinion, which would result in an amendment to this opinion.

5.4 The term "enforceable", "effective" or "enforceable in accordance with its terms" as used in this opinion means that the obligations referred to are of a type normally recognised and enforced by the courts of Denmark. It does not mean that the obligations will be enforced in all circumstances or that any particular remedy will be available.

5.5 Claims may become barred under Danish statutes of limitation or principles of passivity or may be or become subject to set-off or counterclaim.

5.6 Subject to as discussed elsewhere in this opinion, enforcement may be limited by insolvency, bankruptcy, formal restructuring proceedings (*rekonstruktion*) or other laws affecting creditors' rights in general pursuant to the Bankruptcy Act, which includes claw back provisions (*omstødelige dispositioner*) which may be used if a creditor has received an otherwise preferential position in the period up to the insolvency proceeding.

5.7 Referring to Section 5.6 above, it is in particular (without prejudice to the generality of the foregoing) unlikely that the provision on receivership in Clause 20 of the Deed of Charge will be fully effective in relation to a Relevant Clearing Member which is subject to Insolvency Proceedings, and we are of the view that Clause 20(2)(b) of the Deed of Charge which purports to create a power of attorney by the Chargor in favour of the Receiver (as defined in the Deed of Charge) will not be effective against a Relevant Clearing Member which is subject to bankruptcy proceedings, because Section 29 of the Bankruptcy Act provides that a power of attorney granted by the Relevant Clearing Member prior to its bankruptcy will lapse upon the bankruptcy decree of the Danish bankruptcy court.

5.8 The express choice of English law to govern non-contractual obligations arising out of or in connection with the Documents may not be upheld by the courts of Denmark as (i) Regulation (EC) No. 864/2007 of 11 July 2007 (the "Rome II-Regulation") does not apply to Denmark (on account of the general Danish opt-out, (cf. The European Council's Edinburgh Decision of 12 December 1992 and the Protocol to the Treaty of Amsterdam on the position of Denmark)) and (ii) according to Danish principles of private international law, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable.

5.9 A Danish court may deliver judgment in a foreign currency, but such judgment can generally only be enforced in Denmark by a Danish enforcement court in Danish Kroner calculated at the rate of exchange as at the date of enforcement.

5.10 The enforceability of claims and court decisions ordering the payment of money in a currency other than Danish Kroner is subject to the Bankruptcy Act which provides for the conversion of such foreign currency debt into Danish Kroner on the date of the commencement of such bankruptcy proceedings (*dekretdag*).

5.11 Any claim against a Relevant Clearing Member on interest accrued after the insolvency order in respect of Insolvency Proceedings regarding the Relevant Clearing Member will be a deferred claim in the Insolvency Proceedings.

5.12 Provisions providing that certain calculations or certificates will be conclusive and binding (or prima facie evidence) may not be effective, if such calculations or certificates are incorrect and such provisions will not necessarily prevent juridical inquiry into the merits of such calculations or certificates.

5.13 There may be circumstances where Danish law will not give effect to provisions (i) according to which a party is vested with discretion or may determine a matter in its opin-

ion or (ii) which may be considered to be unreasonable or contrary to principles of fair dealing (e.g. where a party has waived its rights to put forward any and all defences whatsoever against a claim under an agreement).

5.14 A Danish court may refuse to give effect to undertakings pursuant to which a party is obligated to pay another party's legal expenses and costs in respect of any action before the Danish courts.

5.15 Any provision providing that terms of an agreement may be amended or varied only by an instrument in writing may be held by a Danish court not to be effective.

5.16 This opinion expresses and describes Danish legal concepts in the English language and not in their original Danish terms; consequently this opinion may only be relied upon on the express condition that the opinion shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with Danish law and be subject to the exclusive jurisdiction of the Danish courts, and we express no opinion as to the exact interpretation which would be placed upon any particular wording in an agreement by a court.

This opinion is addressed exclusively to LCH.Clearnet Ltd. and (i) is for the sole benefit of LCH.Clearnet Ltd.; (ii) may not be relied upon by, or disclosed to, any other person or legal entity without our prior written approval; but (iii) may be made available by LCH.Clearnet to the appropriate regulatory authorities and its Clearing Members established or operating in Denmark information purposes only and solely on the basis that (a) we assume no responsibility to any such parties and (b) such parties may not disclose the opinion to any other person or legal entity.

We are qualified to practise law in the Kingdom of Denmark.

Yours faithfully,
Kromann Reumert

Susanne Schjølin Larsen