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12 June 2014

Dear Sirs,

Responses to Instructions to Counsel – Membership, Insolvency, Security, Set-off & Netting and Client Clearing (Japan)

You have asked us to provide advice in respect of the laws of Japan ("**this jurisdiction**") in response to certain specific questions raised by LCH.Clearnet Limited ("**LCH**") in relation to membership, insolvency, security, set-off & netting and client clearing. The relevant questions are set out in full in paragraph 3 of this advice together with the corresponding responses. Terms not otherwise defined in this advice shall have the meaning ascribed to such terms in LCH's Rulebook (as defined below).

1. TERMS OF REFERENCE

1.1 Our advice is given in respect of Clearing Members which are (i) FIBO, (ii) Banks or Insurance Companies registered as RFI or (iii) SFC incorporated in Japan and all references to a "**Clearing Member**" in this advice shall be construed accordingly. For these purposes:

CLIFFORD CHANCE LLP IS A LIMITED LIABILITY PARTNERSHIP REGISTERED IN ENGLAND AND WALES UNDER NO. OC323571. THE FIRM'S REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS IS AT 10 UPPER BANK STREET LONDON E14 5JJ. THE FIRM USES THE WORD "PARTNER" TO REFER TO A MEMBER OF CLIFFORD CHANCE LLP OR AN EMPLOYEE OR CONSULTANT WITH EQUIVALENT STANDING AND QUALIFICATIONS. THE FIRM IS AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY.

(a) a reference to a "**Bank**" is a reference to a "bank" (*ginko*) under the Banking Act (*ginko ho*) (Act No. 59 of 1981, as amended) (the "**Banking Act**") which is a KK or a branch in this jurisdiction of a company incorporated under the laws of another jurisdiction;

(b) a reference to the "**Cabinet Order**" is a reference to the cabinet order for enforcement of the FIEA (*kinyu shohin torihiki ho sekou rei*) (No. 321 of 1965, as amended);

(c) a reference to the "**Civil Code**" is a reference to the Civil Code (*min po*) (Act No. 89 of 1896, as amended);

(d) a reference to the "**Companies Act**" is a reference to the Companies Act (*kaisha ho*) (Act No. 86 of 2005, as amended);

(e) a reference to the "**DIA**" is a reference to the Deposit Insurance Act (*yokin hoken ho*) (Act No. 34 of 1971, as amended);

(f) a reference to the "**FIEA**" is a reference to the Financial Instruments and Exchange Act (*kinyu shohin torihiki ho*) (Act No. 25 of 1948, as amende);

(g) a reference to the "**FIBO**" is a reference to any operator registered under the FIEA for conducting Financial Instruments Business (*kinyu shouhin torihiki gyou*) as defined in the FIEA which is a KK or a branch in this jurisdiction of a company incorporated under the laws of another jurisdiction;

(h) a reference to the "**FSA**" is a reference to the Financial Services Agency (*kinyu cho*) of Japan;

(i) a reference to the "**FSA Notice**" is a reference to the notice *(kokuji)* (No.105 of 2011, as amended) issued by the FSA;

(j) a reference to an "**Insurance Company**" is a reference to an "insurance company" (*hoken kaisha*) under the Insurance Business Act *(hoken gyo ho)* (Act No. 105 of 1995, as amended) (the "**Insurance Business Act**") which is a KK or SK or a branch in this jurisdiction of a company incorporated under the laws of another jurisdiction;

(k) a reference to a "**KK**" is a reference to a joint stock company (*kabushiki kaisha*) incorporated under the Companies Act;

(l) a reference to the "**RFI**" is a reference to a financial institution (including, but not limited to, a Bank and an Insurance Company) registered as a registered financial institution (*touroku kinyu kikan*) under Article 33-2 of the FIEA;

(m) a reference to the "**SFC**" is a reference to a securities finance company (*shouken kinyu kaisha*) as defined in Article 2(30) of the FIEA, namely, a KK with a licence under Article 156-24 of the FIEA; and

(n) a reference to a "**SK**" is a reference to a mutual company (*sougo kaisha*) incorporated under the Insurance Business Act.

1.2 Our advice is applicable to all Services other than those governed by the FCM Regulations, i.e. each of: the LME Service, the SwapClear Service, the RepoClear Service, the EquityClear Service, the LCH Enclear OTC Service, the Turquoise Derivatives Service, the Nodal Service, the ForexClear Service, the NLX Service and the FEX Service. However, please see the limitations in paragraphs 3.1.1 and 3.1.2.

1.3 In this advice:

(a) a reference to the "**Account Balance**" is a reference to the Account Balance as defined in the General Regulations (as defined below);

(b) a reference to the "**Charged Assets**" is a reference to the Charged Assets as defined in the Security Deed;

(c) a reference to the "**Charged Property**" is a reference to Securities (as such term is defined in the Deed of Charge (as defined below)) lodged by the Clearing Member with LCH pursuant to the Deed of Charge in accordance with the Procedures of LCH;

(d) a reference to "**Collateral**" is to the Collateral (as such term is defined in the General Regulations) (including, without limitations, the Charged Property);

(e) a reference to the "**Contract**" is a reference to the Contract as defined in the General Regulations;

(f) a reference to the "**Default Arrangements**" is a reference to the contractual arrangements by which a Clearing Member is bound to the default management procedures of LCH;

(g) a reference to the "**Parties**" is a reference to LCH and a single Clearing Member to which this advice applies, and a reference to a "**Party**" is a reference to either of them;

(h) a reference to "**Regulation 51**" is a reference to Regulation 51 of the General Regulations;

(i) a reference to the "**Security Deed**" is a reference to the security deed entered into by the Clearing Member by way of deed poll which is substantially in the form of the Security Deed set out in Schedule 1;

(j) unless the context otherwise requires, a reference to a "paragraph" is a reference to a paragraph in this advice; and

(k) headings are for ease of reference only and shall not affect interpretation of this advice.

1.4 The bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Clearing Member could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this advice, are the following (the "**Insolvency Proceedings**"):

1.4.1 special liquidation (*tokubetsu seisan*) proceedings (the "**Special Liquidation Proceedings**");

1.4.2 bankruptcy (*hasan*) proceedings (the "**Bankruptcy Proceedings**");

1.4.3 corporate reorganisation (*kaisha kosei*) proceedings (the "**Corporate Reorganisation Proceedings**"); and

1.4.4 civil rehabilitation (*minji saisei*) proceedings (the "**Civil Rehabilitation Proceedings**").

The legislation applicable to Insolvency Proceedings is (as amended up to the date hereof, the "**Japanese Insolvency Acts**"):

1.4.5 in relation to Special Liquidation Proceedings, Articles 510 to 574 of the Companies Act;

1.4.6 in relation to Bankruptcy Proceedings, the Bankruptcy Act (*hasan ho*) (Act No. 75 of 2004, as amended) (the "**Bankruptcy Act**");

1.4.7 in relation to Corporate Reorganisation Proceedings, the Corporate Reorganisation Act (*kaisha kosei ho*) (Act No. 154 of 2002, as amended) (the "**Corporate Reorganisation Act**"); and

1.4.8 in relation to Civil Rehabilitation Proceedings, the Civil Rehabilitation Act (*minji saisei ho*) (Act No. 225 of 1999, as amended) (the "**Civil Rehabilitation Act**"),

provided that, the Japanese Insolvency Acts are amended by the Act on Special Procedures for Reorganisation Proceedings in relation to Financial Institutions (*kinyu kikan tou no kousei tetsuzuki no tokurei tou ni kansuru houritsu*) (Act No. 95 of 1996, as amended) to the extent that they are applied to a Bank, or an Insurance Company.

In addition, the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (*gaikoku tosan shori tetsuduki no shonin enjo ni kansuru horitsu*) (Act No. 129 of 2000, as amended) (the "**Foreign Insolvency Proceedings Act**") sets out the procedures for dealing with the assets of foreign corporations, regardless of the type of business conducted by it (including, but not limited to, banks, investment firms and broker-dealers) situated in this jurisdiction upon the commencement of insolvency proceedings in a foreign court.

Special Liquidation Proceedings are applicable only to a KK and SK and a company incorporated or formed under the laws of another jurisdiction with its office or assets located in this jurisdiction. Corporate Reorganisation Proceedings are applicable only

to a KK and SK and a company incorporated or formed under the laws of another jurisdiction with its office or assets located in this jurisdiction.

1.5 For the purposes of preparing our advice we have only reviewed the following documents (the "**Opinion Documents**"):

1.5.1 the General Regulations, Procedures, Default Rules, Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual as provided to us on 9 June 2014 (the "**LCH's Rulebook**");

1.5.2 the clearing membership agreement entered into between the Clearing Member and LCH which is substantially in the form of the clearing membership agreement set out in Schedule 2 (the "**Clearing Membership Agreement**");

1.5.3 the Security Deed; and

1.5.4 the deed of charge entered into between the Clearing Member in favour of LCH which is substantially in the form of the deed of charge set out in Schedule 3 (the "**Deed of Charge**" and together with the Clearing Membership Agreement and the Security Deed, the "**Agreements**").

1.6 We have reviewed the Opinion Documents in connection with the instructions to counsel dated 21 October 2013 (the "**Instructions**") and the Services Description (as defined in the Instructions).

1.7 Our advice is given in respect of the specific questions raised by you as set out in paragraph 3. We express no opinion in this advice as to the validity and enforceability of any provisions of the Agreements and the Contracts other than the matters on which we advise under paragraph 3. We have assumed that any matters which are or could be material in the context of the delivery of this Opinion Letter have been disclosed to us.

1.8 This advice is given on the basis that LCH is not itself insolvent for the purposes of any insolvency law and is not subject to any Insolvency Proceeding.

1.9 This advice relates solely to matters of Japanese law (as in force at the date hereof) and does not consider the impact of any laws (including insolvency laws) other than Japanese law, even where, under Japanese law, any foreign law falls to be applied. This advice and the opinions given in it are governed by Japanese law and relate only to Japanese law as applied by the Japanese courts as at today's date. We express no opinion on the laws of any other jurisdiction.

1.10 We are not expressing any opinion as to any matters of fact.

1.11 We do not opine on the enforceability of any final sum certified as payable to LCH (as descried at the end of our response in paragraph 3.2) and we do not express any view as to the enforceability of the Default Arrangements in relation to any action which LCH may seek to take outside this jurisdiction.

1.12 We have not been responsible for advising any party to the Opinion Documents other than LCH for the purposes of this Opinion Letter and the delivery of this Opinion Letter to any person other than LCH to whom a copy of this Opinion Letter may be communicated does not evidence the existence of any relationship of client and adviser between us and such person.

1.13 We express no opinion as to any liability relating to tax which may arise or be suffered as a result of or in connection with the Opinion Documents or the transactions contemplated thereby.

1.14 This advice is given on the basis that any limitation on the liability of any other advisor to any addressee of this letter, whether or not we are aware of that limitation, will not adversely affect our position in any circumstances.

1.15 We assume no duty to update this Opinion Letter or inform LCH or any other person to whom a copy of this Opinion Letter may be communicated of any change in Japanese law, or the legal status of any party to the Services, or any other circumstance that occurs, or is disclosed to us, after the date on which this Opinion Letter is given, which might have an impact on the opinions given in this Opinion Letter.

2. ASSUMPTIONS

We assume the following:

2.1 That, except as discussed and opined upon in this Opinion Letter, the obligations expressed to be assumed by any Party in the Opinion Documents and the Contracts constitute its legal, valid, binding and enforceable obligations.

2.2 That each Party is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the capacity, power and authority under all applicable law(s) to enter into the Opinion Documents and Contracts and to exercise the rights and to perform its obligations under the Opinion Documents and Contracts.

2.3 That each Party has taken all necessary steps (including, without limitation, the making of all necessary filings, lodgements, registrations and notifications and the payment of stamp duties and other documentary taxes) and obtained and maintained all authorisations, approvals, licences and consents necessary to execute and deliver, and exercise the rights, and perform the obligations under, the Opinion Documents and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Opinion Documents and the Contracts in this jurisdiction and any other jurisdiction, and that such steps, authorisations, approvals, licences or consents have not been revoked or superseded and remains in full force and effect.

2.4 That the Clearing Members and LCH have duly executed and delivered the Agreements.

2.5 The Opinion Documents and each of the Contracts accurately reflect the true intentions of the Parties and have been entered into and are carried out by the Parties in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.6 That there is no bad faith, fraud, undue influence, coercion or duress on the part of or in relation to any Party or their respective directors, employees or agents.

2.7 That LCH is at all times licensed in the United Kingdom under a licence which is equivalent to the licence of Financial Instrument Debt Assumptions Business under Article 156-2 of the FIEA. The FIEA does not prescribe any particular criteria to determine such equivalence.

2.8 That the Agreements are entered into between the Parties prior to the commencement of any Insolvency Proceeding in respect of the Clearing Member.

2.9 That LCH is at all relevant times able to meet its obligations in respect of the Contracts and not subject to any insolvency procedure under the laws of any jurisdiction.

2.10 Save in relation to any non-performance leading to the taking of action by LCH under the Default Rules, that each Party performs its obligations under the Opinion Documents and each Contract in accordance with their respective terms.

2.11 That, apart from any circulars, notifications and equivalent measures published by LCH in accordance with the Rulebook, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Opinion Documents.

2.12 That the arbitration agreement contained in Regulation 51 is a valid and effective agreement to submit to arbitration under all applicable laws (other than the laws of this jurisdiction).

2.13 That the arbitration agreement contained in the Relevant Rules (as defined in the General Regulations) is a valid and effective agreement to submit to arbitration under all applicable laws.

2.14 That the submission to the jurisdiction under the ATS Rules (as defined in the General Regulations) is legal, valid and binding.

2.15 That each Clearing Member has the capacity, power and authority to create the security constituted by the Opinion Documents and the Contracts.

2.16 That all Collateral and the Charged Assets over which security interests are created under the Opinion Documents is freely transferable, all acts or things required by the laws of any jurisdiction (other than this jurisdiction) to be done to ensure the validity and perfection of each security interest created over the Collateral and the Charged Assets pursuant to the Opinion Documents will have been effectively carried out and each security interest created over the Collateral and the Charged Assets pursuant to

the Opinion Documents is legal, valid and enforceable under the laws of any jurisdiction (other than this jurisdiction).

2.17 That any cash provided as Collateral is in a currency that is freely transferable internationally under the laws of Japan.

2.18 That Collateral or the Charged Assets expressed to be subject to a security interest, in the Deed of Charge or the Security Deed, as the case may be, is not any Securities issued by the government of this jurisdiction or by any company or entity incorporated under the laws of this jurisdiction.

2.19 LCH has no licence of the Financial Instruments Debt Assumption Business (as defined below) under Article 156-20-2 of the FIEA.

2.20 That no Clearing Member is entitled to claim in relation to itself or its assets immunity from suit, attachment, execution or other legal process.

3. ADVICE

On the basis of the foregoing terms of reference and assumptions and subject to the reservations set out in paragraph 4 below, we make the following statements of opinion. These statements of opinion are summary conclusions on specific questions which you have raised.

We do not consider an Exempting Client Clearing Rule to be available and consequently, in accordance with the Instructions, we have responded to the questions on the Security Deed at paragraphs 3.3.8 to 3.3.10 below.

3.1 MEMBERSHIP

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

The limitations imposed on the capacity of a Clearing Member and the restrictions limiting the capacity of the directors of a Clearing Member to enter into the Agreements on behalf of the Clearing Member are discussed in paragraph 3.1.3 below.

As discussed in paragraph 3.1.2 below, assuming that LCH has no licence of the Financial Instruments Debt Assumption Business under Article 156-20-2 of the FIEA (please see paragraph 2.19 above), LCH may only provide the clearing services under the RepoClear Service to a Clearing Member and only in respect of the Relevant Securities (as defined in paragraph 3.1.2). In addition neither a RFI nor SFC is permitted to clear the transactions for a Clearing Client through any clearing institution that does not have the licence of the Financial Instruments Debt Assumption Business required under Article 156-2 or 156-20-2 of the FIEA. It is

therefore only possible to offer Client Clearing Services (as defined in the General Regulations) in respect of the Relevant Securities to Clearing Members which are licensed FIBOs.

Assuming that the Agreements are entered into between LCH and the Clearing Member to the extent that (a) agreed scope of services provided under Agreements is limited to clearing of sale or clearing of lending of the Relevant Securities under the RepoClear Service and (b) a Clearing Member is a licensed FIBO, RFI or SFC (in this regard kindly refer to paragraph 2.8 above) and (c) if the Clearing Member is a RFI or SFC, the Clearing Member clears through LCH its own transactions only, there are no specific statutory limitations or regulatory requirements which would limit the capacity of an appropriately authorised Clearing Member to enter into the Agreements.

Therefore, our advice (other than paragraphs 3.1.1 and 3.1.2) is applicable to the RepoClear Service only.

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

In this jurisdiction, the issue of whether LCH is deemed to be a resident of this jurisdiction is not directly linked to the issue of whether LCH is required to obtain the licence. We understand that the question here is whether LCH would be required to obtain a licence or be registered before providing clearing services to a Clearing Member.

Generally in order for LCH to provide clearing service as a central counterparty in this jurisdiction, LCH must obtain the licence in respect of Financial Instruments Debt Assumption Business required under Article 156-20-2 of the FIEA.

However, pursuant to Article 2(28) of the FIEA, Article 1-18-2 of the Cabinet Order and the FSA Notice, if LCH's clearing services rendered to a Clearing Member fall within any of the following categories, LCH would not be required to obtain a licence or be registered before providing clearing services to a Clearing Member:

(a) clearing of sale of the Relevant Securities at a Relevant Foreign CCP; and

(b) clearing of lending of the Relevant Securities at a Relevant Foreign CCP.

Pursuant to Article 2(28) of FIEA, Article 1-18-2 of the Cabinet Order and the FSA Notice, LCH may provide clearing service as a central counterparty to a FIBO or RFI in this jurisdiction for clearing of the Relevant Transactions only indirectly (i.e. where a FIBO or RFI is a client of a Clearing Member). Accordingly, if a Clearing Member of LCH outside of this jurisdiction assumes the obligations of a FIBO or RFI under

the Relevant Transactions in order for LCH to assume the obligations of such Clearing Member, or such Clearing Member acts as agent for a FIBO or RFI in order for LCH to assume the obligations of such FIBO or RFI, LCH is not required to obtain the licence of Financial Instruments Debt Assumption Business required under Article 156-20-2 of the FIEA.

For the avoidance of doubt, LCH may not provide such services to a Clearing Client through any Clearing Member without the licence in respect of Financial Instruments Debt Assumption Business required under Article 156-20-2 of the FIEA.

Therefore, LCH can only provide Client Clearing Services to a Clearing Member through the RepoClear Service and in any event only to the extent that the services are limited to the clearing of sale or lending of Relevant Securities.

For the purpose of this advice:

the "**Financial Instruments Debt Assumption Business**" means Financial Instruments Debt Assumption Business (*kinyuu shohin saimu hikiuke gyou*) as defined in Article 2(28) of the FIEA, namely, the business to assume the obligations of a FIBO or RFI in this jurisdiction under certain transactions related to securities and derivatives by way of assumption of obligations, novation or otherwise;

the "**Relevant Foreign CCP**" means the relevant foreign clearing institution (*taishou gaikoku seisan kikan*) as defined in Article 1(2) of FSA Notice including a foreign clearing institution which conducts activities equivalent to Financial Instruments Debt Assumption Business with the licence equivalent to the one under Article 156-2 of the FIEA in the United States of America or the United Kingdom.

the "**Relevant Securities**" means the relevant securities (*taishou yuuka shouken*) as defined in Paragraph 5 Article 1 of the FSA Notice including:

- bonds issued by governments (excluding Japan);
- bonds issued by local governments (excluding local governments in Japan);
- bonds issued by special companies incorporated under a special legislation/statute which applies to such special company only (e.g. a central bank) (excluding such companies incorporated in Japan); and
- bonds issued by companies/corporations (excluding companies incorporated in Japan).

the "**Relevant Transaction**" means:

(i) the transactions set out under Item 3 of Article 2 of the FSA Notice, which are, in summary, (1) forward rate agreements whereby a party agrees to pay to the other party a certain amount calculated in respect of a certain amount of principal (denominated in a currency other than Japanese Yen) based upon a difference

between a certain interest rate be agreed and an actual interest rate on a certain date to be agreed or (2) interest rate swap transactions whereby a party agrees to pay to the other party a certain amount calculated in respect of a certain amount of principal (denominated in a currency other than Japanese Yen) based upon interest rate to be agreed between the parties or volatility of market interest rate in a certain period, and such other party agrees to pay to such party a certain amount calculated in respect of a certain amount of principal (denominated in the same currency other than Japanese Yen) based upon interest rate to be agreed between the parties or volatility of market interest rate in a certain period; or

(ii) the transactions set out under Item 1 of Article 2 of the FSA Notice, which are, in summary, credit default swap transactions whereby a party agrees to pay a certain amount to the other party, and such other party agrees to pay to such party a certain amount agreed between the parties (including, certain securities, options related to securities, or monetary obligations) upon occurrence of certain credit events related to a third party corporation (incorporated outside of Japan) or foreign country or any other events beyond the control of the parties and having material adverse effect on business of a party or any other enterprise as provided for in the Cabinet Order.

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

The capacity of a KK or SK is limited to the purposes of the company set out in the articles of incorporation. Thus, it is advisable to request a certified copy of the articles of incorporation (*teikan*) and a certified copy of the commercial registration (*rireki jikou zenbu shomeisho*), together with their English translation, from each Clearing Member to check whether execution of the Agreements falls within the purposes of the company.

The authority to bind the company varies depending on the organisation of the company. The organisation of the company can be checked through review of the articles of incorporation. For the purpose of this paragraph, we assume that a Clearing Member is:

(a) a KK or SK with the committees (*iinkai secchi kaisha*) and the board of directors delegating its powers to the representative executive officer (*daihyo shikkoyaku*) in accordance with Article 416(4) of the Companies Act or Article 53-30(4) of the Insurance Business Act, as applicable (a "**Company with Committees**"); or

(b) a KK or SK with the board of directors (*torishimariyaku kai*) but without any special director (*tokubetsu torishimariyaku*) under Article 373(1) of the Companies Act or Article 53-16 of the Insurance Business Act as applicable and not a Company with Committees (a "**Company with a Board of Directors**").

In order to check if the director or officer of a Clearing Member has the capacity and authority to enter into the Agreements, it is advisable to obtain the following documents, together with their English translation:

- A certified copy of the commercial registration (*rireki jikou zenbu shomeisho*);
- A certified copy of the articles of incorporation (*teikan*); and
- A certified copy of the board regulations (*torishimariyakukai kisoku*) (if any) or any other rules referred to in the articles of incorporation.

In addition, where a Clearing Member is a Company with a Board of Directors, it is advisable to obtain the following documents, together with their English translation:

- A certified copy of the minutes of a meeting of the board of directors approving, among others, execution of the Agreements by its specified director or officer;
- A certificate of the representative director *(daihyo torishimariyaku)* including a specimen of signature of the authorised signatory with the registered seal of the representative director *(daihyo torishimariyaku)* affixed; and
- A certificate of the seal impression of the registered seal (*inkan shomeisho*) of the representative director *(daihyo torishimariyaku).*

Where a Clearing Member is a Company with Committees it is advisable to check the following documents, together with their English translation:

- A certified copy of the minutes of a meeting of the board of directors approving, among others, delegation of the powers of the board of directors to the representative executive officer (*daihyo shikkoyaku*) in accordance with Article 416 (4) of the Companies Act or Article 53-30(4) of the Insurance Business Act, as applicable;
- A certificate of the representative executive officer *(daihyo shikkoyaku)* including a specimen of signature of the authorised signatory with the registered seal of the representative executive officer *(daihyo shikkoyaku)* affixed; and
- A certificate of the seal impression of the registered seal (*inkan shomeisho*) of the representative executive officer *(daihyo shikkoyaku).*

As a practical matter, LCH will need to rely on the documents provided by the Clearing Member. LCH should therefore require each Clearing Member to submit a certificate of representative director or representative executive officer, as the case may be, to certify that the documents are true, complete and up to date copy, that there have been no amendments to the versions of the documents delivered to LCH, and that the English translation of each document is accurate.

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

Based upon the assumptions in particular in paragraphs 2.16 and 2.18, there are no formalities to be complied with upon entry into any of the Agreements. In respect of the internal corporate authority to be obtained in respect of the entry into the Agreements please see paragraph 3.1.3 above.

3.1.5 ***Would the courts of this jurisdiction uphold the contractual choice of law and jurisdiction set out in Regulation 51?***

In any proceedings taken in this jurisdiction for the enforcement of the obligations of a Clearing Member under the General Regulations, the Japanese courts would recognise the choice of English law as the governing law of the General Regulations.

The arbitration agreement contained in Regulation 51 is a valid and effective agreement to submit to arbitration.

The submission to the jurisdiction of the courts of England by a Clearing Member contained in Regulation 51 is legal, valid and binding.

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

Subject to paragraph 4.11 below, a judgment of a foreign court may be enforced in a court of this jurisdiction, without further consideration of the merits of the case.

Subject to paragraph 4.13 below, an arbitral award made in England pursuant to the arbitration agreement between LCH and a Clearing Member under Regulation 51 would be recognised and enforced in the courts of this jurisdiction against the Clearing Member.

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

Please refer to paragraph 3.1.6 above.

3.2 INSOLVENCY, SECURITY, SET-OFF AND NETTING

3.2.1 ***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 types of Insolvency Proceedings are listed at paragraph 1.4 above.

The pre-insolvency reorganisation, restructuring and/or resolution measures (the "**Reorganisation Measures**") in respect of Clearing Members under the laws of this jurisdiction are as follows:

(a) In the case of a Bank, Insurance Company or FIBO, (i) the application for special mediation (*tokutei chotei*) under the Special Mediation Act (*tokutei chotei ho*) (Act No. 158 of 1999), or (ii) the application for turnaround ADR proceedings (*jigyou saisei ADR)* (the "**Turnaround ADR Proceedings**") under the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004, as amended) and the Act on Special Measures concerning Industrial Revitalisation and Industrial Innovation (Act No. 131 of 1999, as amended);

(b) In the case of a Bank, the measures as provided for in Chapter V (*Administration by Financial Administrator*), or Chapter VII (*Measures for Financial Crisis*) of the DIA;

(c) In the case of an Insurance Company, the measures as provided for in Chapter X (*Special Measures for Protection of Policyholders*) of the Insurance Business Act; and

(d) In the case of a Bank, Insurance Company or FIBO, the measures as provided for in Chapter VII-2 (*Measures for Orderly Resolution of Assets and Liabilities of Financial Institutions for the Purpose of Ensuring Financial System Stability*) of the DIA.

The Insolvency Proceedings would be covered by any of paragraphs (i) through (p) of Rule 5 of the Default Rules and the Reorganisation Measures would be covered by paragraph (e) of Rule 5 of the Default Rules.

3.2.2 ***Would the Deed of Charge be effective in the context of Insolvency Proceedings or Reorganisation Measures in respect of a 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 Clearing Member under the Deed of Charge?***

Based upon the assumptions set out in paragraphs 2.16 and 2.18, the Deed of Charge would be recognised under the laws of Japan as having created a valid security interest over such the Charged Property. However, the enforcement of the security interest created by the Deed of Charge on such Charged Property is subject to the Japanese Insolvency Act and the Insolvency Proceedings. In particular, it must be noted:

(a) Summary

(i) Bankruptcy/Civil Rehabilitation

LCH's ability to enforce the pledge over the Charged Property is not affected by the imposition of a stay or moratorium by a court in Japan in Bankruptcy Proceedings or in Civil Rehabilitation Proceedings.

(ii) Corporate Reorganisation

LCH's ability to enforce the pledge over the Charged Property is affected by the imposition of a stay or moratorium by a court in Japan in Corporate Reorganisation Proceedings. Automatic stay may be applicable. With regard to the effect of the stay, please see paragraph (c) below.

(b) Bankruptcy/Civil Rehabilitation

Secured creditors have the right to enforce their security interest outside the Bankruptcy or Civil Rehabilitation Proceedings (*betsujo ken*), provided that the security interest has been perfected as against third parties in accordance with applicable law by the earlier to (i) occur of the suspension of payments generally by the debtor or (ii) the presentation of the petition for Bankruptcy Proceedings or Civil Rehabilitation Proceedings. Note that under Japanese law the trustee is construed as a third party. If not duly perfected, the enforcement of such security interest is prohibited unless the trustee otherwise agrees with the court's permission.

In Bankruptcy Proceedings, the bankruptcy trustee has the right to request the court to permit the discharge of a security interest through a voluntary sale of secured assets, if such voluntary sale and discharge of security interest would be of benefit to all creditors and would not unduly harm the interest of the relevant secured creditor. The secured creditor may recover its claim from the sales proceeds of the secured asset paid to the court in accordance with the priority of the security interest. If the court permits the discharge of a security interest, such process will delay LCH's recovery of its claim from the sales proceeds of the secured asset.

In Civil Rehabilitation Proceedings, the court has the power to permit the discharge of a security interest at the request of the debtor. In order for this power to be exercised, (a) the secured assets must be determined to be the assets indispensable for the continuation of the business of the debtor; and (b) the debtor must file with the court a petition for permission for the discharge and pay to the court an amount (supported by evidence) equal to the value of the secured assets. If the secured creditor does not agree with the amount offered by the debtor, the relevant secured creditor may within one month of the delivery to the secured creditor of the documents of the debtor's request the court to determine the value of the secured assets. The court will in turn appoint an appraiser and determine the amount based on the appraised value. If the court permits the discharge of the security interest against payment into court of an amount equal to the value of the secured assets, the secured creditor may recover its claim from such amount paid to the court, in

accordance with the priority of the security interest. If the court permits the discharge of a security interest, such process will delay LCH's recovery of its claim from the sales proceeds of the secured asset.

(c) Corporate Reorganisation

Claims held by unsecured creditors arising from any cause before the date of commencement of Corporate Reorganisation Proceedings are categorised as "reorganisation claims" *(kosei saiken)*, and claims held by secured creditors arising from any cause before the date of Corporate Reorganisation Proceedings are categorised as "reorganisation secured claims" (*kosei tanpo ken*). To the extent of any shortfall between the amount of the secured claims and the amount recovered or recoverable from the secured assets, such shortfall shall constitute a "reorganisation claim" and the secured creditors will be treated as unsecured creditors in respect thereof. As of the date of commencement of Corporate Reorganisation Proceedings, no creditor of the debtor, whether secured or unsecured, is entitled to enforce its rights outside Corporate Reorganisation Proceedings, and each creditor is required to submit a proof of claims. Creditors will receive payment only in accordance with the reorganisation plan.

Security interests must have been perfected as against third parties in accordance with applicable laws not later than the earlier to (i) occur of the suspension of payments generally by the debtor or (ii) the making of an application for Corporate Reorganisation Proceedings given that the trustee (*kanzainin*) is construed as a third party under Japanese law. If not duly perfected, secured creditors are treated as unsecured creditors.

Upon the commencement of Corporate Reorganisation Proceedings, the enforcement proceedings already instituted by creditors, whether secured or unsecured, against the debtor's assets instituted against the debtor shall stay or cease to be effective automatically.

We note that it is proposed that the Charged Property will be held in one or more accounts opened by the Clearing Member with LCH. We understand that such accounts will be located outside of Japan. As such, our comments regarding procedure for and restrictions on the enforcement of security in this jurisdiction will be relevant only if the relevant Insolvency Proceedings are recognised in the jurisdiction where such accounts are located.

3.2.3 ***Would LCH have the right to take the actions provided for the Default Rules (including exercising rights to deal with Contracts under Rule 6 of the Default Rules and rights of set-off under Rule 8 of the Default Rules 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 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.

As advised in paragraph 3.2.1 above, the Insolvency Proceedings would be covered by paragraphs (i) through (p) of Rule 5 of the Default Rules and the Reorganisation Measures would be covered by paragraph (e) of Rule 5 of the Default Rules.

Based upon the assumptions stated in (b) and (c) below, if LCH takes action under Rule 8 of its Default Rules with respect to one or more Contracts to achieve a discharge of such Contracts, the laws of this jurisdiction will give effect to such action to achieve a discharge of the Parties' rights and obligations under each Contract and to calculate a net sum payable in respect of all such Contracts so discharged and Rule 8 of the Default Rules would be recognised by the Japanese courts as legal, valid and enforceable under the laws of this jurisdiction.

Netting and the processes for the calculation of a net sum will only be available under the laws of this jurisdiction in circumstances where the obligations assumed under the Agreements and the Contracts are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owed by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party. Such mutuality will not be established where a Party is acting as agent for another person, or in respect of which a Party's rights or obligations have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or by order.

In a client clearing context, the Clearing Member grants a security interest over the Charged Assets in favour its Client under the terms of the Security Deed. Such Charged Assets would include any amount due from the Clearing Member to the relevant Client in respect of the payment of a net sum calculated in accordance with Rule 8 of the Default Rules. Since, however, the security interest in these circumstances is over an amount resulting from netting having already occurred, it would not undermine the mutuality required for netting to take place as described in the preceding paragraph.

We are of this view due to the following reasons:

(a) Although there are no prevailing scholarly views nor reported controlling judicial precedents which have directly ruled on the issue, we believe that, under the laws of this jurisdiction, the discharge of the Parties' rights and obligations under each Contract and the determination of net sums payable between LCH and the Defaulter in accordance with the Rule 8 of the Default Rules would be recognised by the courts in this jurisdiction as valid, effective and enforceable, provided that certain requirements are satisfied as described in paragraphs (b) or (c) below.

(b) Set-Off under Article 505.1 of the Civil Code

Article 505.1 of the Civil Code requires that the relevant obligations are:

(i) of the same type (i.e. payment obligations) are owing between two parties (following, where applicable, conversion by reference to market value); and

(ii) due and payable or capable of being declared due and payable upon the occurrence of a Default (as defined in the General Regulations).

In the event of a Default not relating to the commencement of Insolvency Proceedings (except in the case where those Insolvency Proceedings are Special Liquidation Proceedings), Rule 8 of the Default Rules would satisfy the requirements of Article 505.1 of the Civil Code if: (i) a Default has occurred in relation to a Clearing Member, (ii) LCH has sent a Default Notice which shall include its express intention to exercise its rights of set off under the Rule 8 of the Default Rules, and (iii) the Parties' respective obligations are payment obligations in the same currency which are due and payable on the date of such Default Notice or such obligations are of different types (e.g. payment obligations, on the one hand, and delivery obligations of securities, on the other hand) but are converted into obligations of the same type (i.e. payment obligations) by reference to market value.

However, in circumstances where the defaulter is subject to Insolvency Proceedings excluding the Special Liquidation Proceedings

(i) The requirements under the Japanese Insolvency Acts set out in paragraphs 4.1.1 and 4.1.2 would also need be satisfied in order to exercise the right of set-off under Article 505.1 of the Civil Code;

(ii) Rule 8 of the Default Rules would not benefit from protection under Article 505.1 of the Civil Code if Parties' respective obligations are of different types; and

(iii) Article 58.5 of the Bankruptcy Act would, instead, need to be relied upon.

(c) Close-out Netting under upon Article 58.5 of the Bankruptcy Act

Parties' rights and obligations under Rule 8 of the Default Rules would be recognised by the courts in this jurisdiction as valid, effective and enforceable, if they comply with all of the requirements set out in Article 58.5 of the Bankruptcy Act (Article 58.5 of the Bankruptcy Act is applicable not only to Bankruptcy Proceedings but also to Civil Rehabilitation Proceedings and Corporate Reorganisation Proceedings by virtue of Article 51 of the Civil Rehabilitation Act and Article 63 of the Corporate Reorganisation Act).

Article 58.5 of the Bankruptcy Act requires as follows:

(i) two parties have entered into the master agreement to cover all individual contracts of the same types of transactions;

(ii) the parties have entered into an individual contract concerning a transaction of the commodity and the financial instrument which can be valued at the market price;

(iii) such contract cannot achieve its purpose unless the obligations thereunder are duly performed on the agreed due date;

(iv) at least one agreed due date of the trades under that same master agreement has not come yet at the time of the commencement of Bankruptcy Proceedings, Civil Rehabilitation Proceedings or Corporate Reorganisation Proceedings; and

(v) the master agreement has a close-out netting provision, namely, each individual contract covered thereunder will be terminated, the termination value will be determined by reference to the market price or any other reasonable method and will be payable under each individual contract, and all termination values under all individual contract will be netted.

Rule 8 of the Default Rules would qualify for protection under Article 58.5 of the Bankruptcy Act (by virtue of its forming a part of a "master agreement" for the such purposes) if (i) the financial instrument to be delivered can be valued at the market price and the value of the product is determined by reference to the market value of the product, and (ii) each Contract will be automatically terminated pursuant to the Rule 5 of the Default Rules at the time of submission of the application for Bankruptcy Proceedings, Civil Rehabilitation Proceedings or Corporate Reorganisation Proceedings.

In view of the above, it is recommended that LCH should designate Japan as a jurisdiction in respect of which Automatic Early Termination Events apply in accordance with the procedure of Rule 3 of the Default Rules.

To the extent the Default Rules permit discretionary valuation, the netting may not be valid under Article 58.5 of the Bankruptcy Act unless the valuation is made on a market basis.

3.2.4 ***Is there a "suspect period" prior to Insolvency Proceedings and/or Reorganisation Measures where Contracts with a 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 this jurisdiction in respect of contracts in financial markets?***

Please refer to paragraph 4.2 below. As advised therein, any act which has the effect of creating a preference carried out by the insolvent party after or within 30 days prior to the occurrence of a certain critical event (basically, a general suspension of payment of debts (*shiharai teishi*), or application for the commencement of any Insolvency Proceedings) may be avoided or set aside by the trustee (*kanzainin*), as described in more detail therein. There is no exemption available for contracts in financial markets.

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

The netting legislation in this jurisdiction is the Act concerning Close-out Netting of Specified Financial Transactions to be entered into by Financial Institutions etc. (the "**Netting Act**") (*kinyu kikan tou ga okonau tokutei kinyu torihiki no ikkatsu seisan ni kansuru houritu*) (Act No. 108 of 1998).

The Netting Act confirms the validity and enforceability of certain types of close-out netting (*ikkatsu seisan*) arrangements for certain types of financial transactions to which certain Japanese financial institutions are a party. The purpose of the Netting Act is generally interpreted as an official announcement to the international financial markets to confirm the validity and enforceability of certain types of close-out netting arrangements, rather than to validate otherwise invalid or unenforceable close-out netting arrangements. Further, the Netting Act does not purport to have any adverse effects, whether express or implied, on the efficacy and validity of close-out netting arrangements that do not meet the requirements prescribed therein.

The netting under Rule 8 of the Default Rules would not satisfy the requirements for "Close-out Netting" (*ikkatsu seisan*) as defined in the Netting Act, because, among other reasons, the Agreements do not satisfy the requirements for the "Master Agreement" (as defined in the Netting Act). For the avoidance of doubt the "master agreement" under Article 58.5 of the Bankruptcy Act and the "master agreement" under the Netting Act are construed differently.

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

A proof of claim in respect of a claim for a close-out must also set out the amount in Japanese Yen under the Insolvency Proceedings.

3.3 CLIENT CLEARING

3.3.1 ***Please opine on the availability and effectiveness of any law, regulation or statutory provision (having the force of law) in this 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 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 Clearing Members to which that Exempting Client Clearing Rule applies to enter into a Security Deed; and (ii) ignore Questions 3.3.8 to 3.3.10.

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 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 this jurisdiction which you consider to be relevant to that matter; and (iii) provide a response to Questions 3.3.8 to 3.3.10.

We do not consider an Exempting Client Clearing Rule to be available in this jurisdiction, and consequently, in accordance with the Instructions, we have responded to the questions on the Security Deed at paragraphs 3.3.8 to 3.3.10 below.

For the purpose of our advice under paragraph 3.3, we assume that the Clearing Member is not a RFI or SFC, but an FIBO. Please refer to paragraph 3.1.1 above. For the avoidance of doubt, LCH may only offer Client Clearing Services to Clearing Members which are licensed FIBOs and only to the extent that the services provided are limited to the clearing of the sale or the clearing of the lending of Relevant Securities (as defined at 3.1.2 above).

3.3.2 ***If LCH were to: (i) declare a 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 Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could the Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?***

Assuming that the defaulting Clearing Member's liabilities do not exceed its assets, such Clearing Members is not insolvent or unable to pay its debts and does not suspend payments to its creditors generally and a petition for any Insolvency Proceedings has not been filed with the relevant authority yet, the Clearing Member or any other person would not be able to successfully challenge the actions of LCH or claim for the amount of the Account Balance.

3.3.3 ***If LCH were to: (i) declare a 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 (as defined in the Service Description) to the relevant Clearing Client or to the Defaulter for the account of such client, could the Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

Please see our response in paragraph 3.3.2 above.

3.3.4 ***If (i) following the commencement of Insolvency Proceedings, a 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 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 the event of the commencement of Insolvency Proceedings in respect of a Clearing Member, the porting of Contacts and the Account Balance to a Backup Clearing Member would rely upon the effectiveness of the relevant Security Deed (in relation to which, please refer to paragraph 3.3.8 below) on the assumption that (i) the porting is effectuated by termination and a close-out of the relevant Contracts between LCH and such defaulting Clearing Member followed by replication of such Contracts between LCH and a Backup Clearing Member, and (ii) the relevant Client has an effective security interest under the relevant Security Deed and, subject to the discussions under paragraph 3.3.8 below, such Client should be entitled to dispose of the Account Balance as a result of enforcement of such security interest.

In the absence of an effective Security Deed, the relevant insolvency officer might be entitled to challenge the actions of LCH and claim for the amount of the Account Balance under the Rights of Avoidance set out under paragraph 4.2.

3.3.5 ***If (i) following the commencement of Insolvency Proceedings, a 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?***

In the event of the commencement of Insolvency Proceedings in respect of a Clearing Member, the direct return of the Client Clearing Entitlement to the relevant Client would rely upon the effectiveness of the relevant Security Deed (in relation to which, please refer to paragraph 3.3.8 below).

In the absence of such effective Security Deed, (i) if LCH returns the Client Clearing Entitlement to the relevant Clearing Client, LCH's obligation to return the Client

Clearing Entitlement to such defaulting Clearing Member would not be discharged and the defaulting Clearing Member (or the insolvency officer appointed to such defaulting Clearing Member) would demand that the Client Clearing Entitlement should be returned to it and (ii) there is a risk that in circumstances where the Client Clearing Entitlement was, instead, returned to the Clearing Member for the account of the relevant Client, that the Client Clearing Entitlement would be comingled with the general insolvency estate of the Clearing Member (as opposed to being segregated for the relevant Client).

3.3.6 ***If (i) following the implementation of Reorganisation Measures, a 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 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?***

Based upon the assumption that (i) the defaulting Clearing Member's liabilities do not exceed its assets, (ii) such Clearing Member is not insolvent or unable to pay its debts and does not suspend payments to its creditors generally, and (iii) a petition for any Insolvency Proceedings has not been filed with the relevant authority yet, the representative appointed to reorganise or manage the Defaulter (if any) would not be able to successfully challenge the actions of LCH or claim for the amount of the Account Balance.

3.3.7 ***If (i) following the commencement of Reorganisation Measures, a 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?***

In our view, our response to paragraph 3.3.6, would apply equally in this scenario.

3.3.8 ***Would the Security Deed provide an effective security interest under the laws of this jurisdiction over the Account Balance or Client Clearing Entitlement in favour of the relevant Clearing Client?***

Subject to the assumptions set out in paragraphs 2.16 and 2.18, the Security Deed would be recognised under the laws of Japan as having created a valid security interest over the Charged Assets. However, the enforcement of the security interest created by the Security Deed on such Charged Assets is subject to the Japanese Insolvency Acts and the Insolvency Proceedings. In respect of the restrictions of the enforcement of the security interests under the Insolvency Proceedings, please refer to

paragraph 3.2.2 above. Furthermore, the entering into the Security Deed by the defaulting Clearing Member might be challenged by the insolvency officer appointed to the Defaulter under the Rights of Avoidance set out under paragraph 4.2.

3.3.9 ***Are there any perfection steps which would need to be taken under the laws of this jurisdiction in order for the Security Deed to be effective?***

Subject to the assumptions under paragraphs 2.16 and 2.18, no perfection steps would need to be taken under the laws of this jurisdiction in order for the Security Deed to be effective.

3.3.10 ***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 Clearing Member?***

In respect of the restrictions of the enforcement of the security interests under the Insolvency Proceedings, please refer to paragraph 3.2.2 above. If a defaulting Clearing Member is subject to any Reorganisation Measures but not subject to any Insolvency Proceedings, such restrictions under the Insolvency Proceedings would not apply. Please note that LCH will be contractually prohibited from enforcing the security interests created under the Security Deed under the Turnaround ADR Proceedings if LCH agrees so at the creditors' meeting.

3.3.11 ***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 Clearing Member of Client Clearing Services and which are not covered by the Questions above.***

There are no other material issues relevant to the issues addressed in this advice which we wish to draw to your attention.

4. RESERVATIONS

Our advice in paragraph 3 is subject to the following reservations.

4.1 Statutory Right of Set-Off in Insolvency Proceedings

4.1.1 Statutory Right of Set-Off

In any Insolvency Proceedings commenced in respect of the Clearing Member, LCH would be granted a statutory right to set off any obligations owed to it by the Clearing Member against any obligations owed by it to the Clearing Member at the time of:

(a) the issuance of the court decision for commencement (the "**Commencement Decision**") in relation to Bankruptcy Proceedings (Article 67 of the Bankruptcy Act);

(b) the Commencement Decision in relation to Special Liquidation Proceedings (there is no express provision in this regard, but Articles 517 and 518 of the Companies Act allow set-off as mentioned in paragraph 4.1.2 below);

(c) the Commencement Decision in relation to Corporate Reorganisation Proceedings (Article 48 of the Corporate Reorganisation Act); or

(d) the Commencement Decision in relation to Civil Rehabilitation Proceedings (Article 92 of the Civil Rehabilitation Act),

in each case, as applicable, provided that:

(a) (in the case of Bankruptcy Proceedings or Special Liquidation Proceedings) LCH must exercise its statutory right of set off against the bankruptcy trustee (*hasan kanzainin*) or the special liquidator (*tokubetsu seisan nin*) before the end of Bankruptcy Proceedings or special liquidation proceedings, as the case may be; or

(b) (in the case of Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings):

(i) the obligations which LCH is seeking to set off must be due and payable or declared due and payable before the end of the period for proof of claims (the "**Window Period**"); and

(ii) LCH must exercise its rights of set-off during the Window Period (or the automatic set-off must occur during the Window Period).

4.1.2 **Limitation of Set-Off in Insolvency Proceedings**

Notwithstanding the above, the netting under Rule 8 of the Default Rules will be avoided or set aside, and the statutory right of set-off may not be exercised, in the following cases pursuant to Articles 71 and 72 of the Bankruptcy Act, Articles 517 and 518 of the Companies Act, Articles 49 and 49.2 of the Corporate Reorganisation Act and Articles 93 and 93.2 of the Civil Rehabilitation Act:

(a) if LCH incurs an obligation to the Clearing Member after the Commencement Decision in relation to the relevant Insolvency Proceeding;

(b) if LCH incurs an obligation to the Clearing Member after the Clearing Member has become unable to pay its debts as they fall due (*shiharai funou*), where LCH has the intention to set off such obligation of the Clearing Member against obligations it owes, and is aware of the inability of the Clearing Member to pay its debts as they fall due (*shiharai funou*) at the time of incurring of the relevant obligation;

(c) if LCH incurs an obligation to the Clearing Member before the Commencement Decision in relation to the relevant Insolvency Proceedings but after the payments of the Clearing Member have been suspended generally (*shiharai teishi*), with the knowledge thereof; except where the Clearing Member has not become unable to pay its debts as they fall due (*shiharai funou*) at that time; or

(d) if LCH incurs an obligation to the Clearing Member after the application for the Commencement Decision in relation to the relevant Insolvency Proceedings has been filed, with the knowledge thereof;

provided that the prohibition against set-off described in paragraphs (b) through (d) above shall not apply where LCH incurred such obligation to the Clearing Member after the relevant event (in the case of paragraph 4.1.2(b), the Clearing Member's inability to pay (*shiharai funou*); in the case of paragraph 4.1.2, the Clearing Member's general suspension of payments (*shiharai teishi*); or in the case of paragraph 4.1.2, application for the Commencement Decision, in relation to an Insolvency Proceeding, has been filed:

(i) by operation of law;

(ii) by any cause which arose before LCH was aware that the Clearing Member had become unable to pay its debts as they fell due (*shiharai funou*), that payments of the Clearing Member had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to an Insolvency Proceeding had been made; or

(iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding;

(e) if any obligation sought to be set off owed by the Clearing Member to LCH arose as a result of an assignment, transfer, novation or otherwise to LCH after the Commencement Decision in relation to the relevant Insolvency Proceeding;

(f) if any obligation sought to be set off owed by the Clearing Member to LCH arose as a result of an assignment, transfer, novation or otherwise to LCH after the Clearing Member has become unable to pay its debts as they fall due (*shiharai funou*), with LCH's knowledge thereof;

(g) if any obligation sought to be set off owed by the Clearing Member to LCH arose as a result of an assignment, transfer, novation or otherwise to LCH prior to the Commencement Decision in relation to the relevant Insolvency Proceedings, but after the payments of the Clearing Member have been suspended generally (*shiharai teishi*), with the knowledge of LCH thereof; except where the Clearing Member has not

become unable to pay its debts as they fall due (*shiharai funou*) at that time; or

(h) if any obligation sought to be set off owed by the Clearing Member to LCH arose as a result of an assignment, transfer, novation or otherwise to LCH after the application for the Commencement Decision of the relevant Insolvency Proceedings has been filed, with the knowledge of LCH thereof,

provided that the prohibition against set off described in paragraphs 4.1.2(f) through 4.1.2(h) above shall not apply where the Clearing Member incurred such obligation after the relevant event (in the case of paragraph 4.1.2(f), the Clearing Member's inability to pay (*shiharai funou*); in the case of paragraph 4.1.2(g), the Clearing Member's general suspension of payments (*shiharai teishi*); or described in the case of paragraph 4.1.2, the application for the Commencement Decision of the relevant Insolvency Proceedings has been filed:

(i) by operation of law;

(ii) by any cause which arose before LCH was aware that the Clearing Member had become unable to pay its debts as they fell due (*shiharai funou*), that payments of the Clearing Member had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to a relevant Insolvency Proceeding had been made;

(iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding; or

(iv) by a contract between LCH and the Clearing Member.

4.2 Right of Avoidance (*hininken*)

If the Clearing Member is subject to Bankruptcy Proceedings, Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings, the trustee in any such Insolvency Proceedings may avoid or set aside any act of such Clearing Member, which has the effect of creating a preference (if, for example, the Clearing Member would, as a consequence of such act, become insolvent or unable to pay its debts as they fall due) (any such act, a "**Preferential Act**"). This right of avoidance expires upon the earlier of: (i) a statutory limitation of two years from the Commencement Decision in relation to the relevant Insolvency Proceedings, and (ii) twenty years from the Preferential Act. The Companies Act does not have a provision for right of avoidance for Special Liquidation Proceedings. The relevant types of avoidance are as follows:

4.2.1 Avoidance due to Fraudulent Preference (*koi hinin*)

Any Other Preferential Act (as defined below) carried out by the Clearing Member (whether or not insolvent at the time) with the intention to prefer LCH over other creditors or to harm other creditors may be avoided or set aside as a fraudulent preference, unless LCH is able to successfully prove that it was unaware that other creditors would be harmed as a consequence of such Preferential Act.

4.2.2 **Avoidance due to Preference in Critical Period (*kiki hinin*)**

If a Critical Event occurs, it is considered to be a sign that the financial condition of the Clearing Member is in danger and that the Clearing Member is on the verge of Insolvency Proceedings.

A "**Critical Event**" means:

(a) a general suspension of payment of debts (*shiharai teishi*); or

(b) a presentation by any person so entitled of an application for the Commencement Decision of:

(i) Bankruptcy Proceedings in relation to Bankruptcy Proceedings,

(ii) Bankruptcy Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings in relation to Civil Rehabilitation Proceedings: or

(iii) Bankruptcy Proceedings, Corporate Reorganisation Proceedings, Civil Rehabilitation Proceedings, or Special Liquidation Proceedings in relation to Corporate Reorganisation Proceedings, as the case may be.

The Companies Act does not have a provision for right of avoidance for special liquidation proceedings.

A "**Modified Critical Event**" means (i) the inability to pay debts as they fall due (*shiharai funou*) (instead of a suspension of payments generally (*shiharai teishi*)) or (ii) a presentation by any person so entitled of an application for the Commencement Decision of such Insolvency Proceedings as referred to in the definition of the Critical Event above.

Preferential Acts after or just before the occurrence of a Critical Event or a Modified Critical Event are categorized as either (1) the payment of debts, creation of a security interest or any other act to discharge existing debts (the "**Discharging Acts**"), or (2) other type of preferential acts (the "**Other Preferential Acts**").

Any Preferential Act carried out by the Clearing Member after or just before the occurrence of such a critical event may be avoided or set aside by the trustee as described in more detail below:

(a) **Other Preferential Act**

Any Other Preferential Act by the Clearing Member made after the occurrence of a Critical Event may be avoided or set aside by the trustee unless LCH successfully proves that it did not know of the occurrence of the Critical Event or harm of the other creditors at the time of such act.

(b) **Discharging Act pursuant to a Pre-existing Agreement**

Any Discharging Act carried out by the Clearing Member pursuant to a pre-existing agreement after the occurrence of a Modified Critical Event may be avoided or set aside by the trustee if the trustee successfully proves that LCH was aware of the occurrence of the Modified Critical Event at the time of such act.

(c) **Discharging Act where no Pre-existing Agreement is in place**

Any Discharging Act carried out, where the Clearing Member is not so obliged by operation of law or by any pre-existing agreement, after the occurrence of a Modified Critical Event or within 30 days prior to a Modified Critical Event, may be avoided or set aside by the trustee, unless LCH can successfully prove that it did not know that other creditors of the Clearing Member would be harmed as a consequence of such act.

However, if such Discharging Act or any Other Preferential Act was carried out more than one year before the filing of a petition for the Commencement Decision in relation to Bankruptcy Proceedings, Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings, as the case may be, it may only be set aside if it was carried out (A) after the occurrence of the inability to pay debts as they fall due (*shiharai funou*) and the trustee successfully proves that LCH was aware of such inability to pay or (B) within 30 days prior to the occurrence of such inability to pay and LCH cannot successfully prove that it did not know that other creditors of the Clearing Member would be harmed as a consequence of such act.

4.2.3 **Avoidance of Gratuitous Act (*musho hinin*)**

A preferential act which is "**gratuitous**" may be set aside if a Critical Event occurs within 6 months of such act. In order for an act not to be deemed to be "**gratuitous**", it must have been carried out in return for a commercial benefit. If such act is the issuance of a guarantee or the grant of third party security interest, Japanese courts generally take the view that commercial benefit must be in the nature of a fee. If it is the grant of security interest to secure the Clearing Member's own obligations to the creditor, it is not considered as "**gratuitous**" but such act might be avoided or set aside as a Discharging Act as mentioned above.

4.2.4 **Special Liquidation Proceedings**

No rights of avoidance arise in Special Liquidation Proceedings.

4.3 **Foreign Insolvency Proceedings Act**

Pursuant to the Foreign Insolvency Proceedings Act, if any bankruptcy, insolvency, arrangement, readjustment, compromise or rescheduling of debt, dissolution, liquidation, winding up or similar judicial proceedings in any foreign court is commenced against a debtor who holds assets in Japan, and any liquidator, receiver, trustee, administrator or similar officer has been appointed for the purpose of such foreign insolvency proceedings, such officer may apply to the Tokyo District Court for recognition of such foreign insolvency proceedings. The Tokyo District Court, which has an exclusive jurisdiction in respect thereof, may, upon its decision to recognize such foreign insolvency proceedings, issue any of the following orders to facilitate the implementation of such foreign insolvency proceedings:

(a) to stay enforcement proceedings already instituted by creditors in Japan, whether secured or unsecured, against the debtor's assets, provided that, in case of secured creditors, this would not cause unjustified damage to the secured creditors who instituted such enforcement proceedings;

(b) to prohibit all unsecured creditors from initiating any enforcement proceedings;

(c) to prohibit the debtor from changing the present status of its assets and liabilities, including, among other things, selling, leasing or otherwise disposing of any asset, or paying any debt to any creditor; and

(d) to appoint a trustee (*kanzainin*) for the purpose of management and control of the business and the assets of the debtor in Japan.

However, if Bankruptcy Proceedings, Corporate Reorganisation Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings have already commenced against such debtor in Japan, such foreign insolvency proceedings may not be recognised unless:

(e) such foreign insolvency proceedings have been commenced in the jurisdiction where the debtor has its principal place of business;

(f) it will meet the creditors' general interests to recognize such foreign insolvency proceedings; and

(g) the recognition of such foreign insolvency proceedings would not cause unjustified damage to creditors in Japan.

4.4 **Risk of Discharge of Security Interest**

An insolvency officer to the Defaulter (including, without limitations, the trustee (*kanzainin*)) may request the court to permit the discharge of a security interest under

Corporate Reorganisation Proceedings, Civil Rehabilitation Proceedings or Bankruptcy Proceedings as described below:

4.4.1 Corporate Reorganisation Proceedings

In order for the right to request the court to permit the discharge of a security interest to be exercised, (a) the secured assets must be determined to be the assets necessary for the continuation of the business of the debtor; and (b) the trustee must file with the court a petition for permission for the discharge and pay the court an amount (supported by evidence) equal to the value of the secured assets. If the secured creditor does not agree with the amount offered by the trustee, the relevant secured creditor may within one month of such petition request the court to determine the value of the secured assets. The court will in turn appoint an appraiser and determine the amount based on the appraised value. If the court permits the discharge of the security interest against payment into court of an amount equal to the value of the secured assets, the secured creditor may recover its claim from the value of the secured asset paid into court in accordance with the priority of the security interest, subject to any adjustment to the value of the secured claims under the overall reorganisation plan.

In addition, it is possible that the reorganisation plan subsequently adopted could provide for certain security interests to be discharged. Secured creditors as well as unsecured creditors will receive payment only in accordance with the reorganisation plan. Note, however that three quarters of the secured creditors by value must vote in favour of any adopted reorganisation plan if a release of the security interest is included in the plan.

4.4.2 Civil Rehabilitation Proceedings

In order for the court to exercise its power to permit the discharge of a security interest at the request of the debtor, (a) the secured assets must be determined to be the assets indispensable for the continuation of the business of the debtor; and (b) the debtor must file with the court a petition for permission for the discharge and pay into court an amount (supported by evidence) equal to the value of the secured assets. If the secured creditor does not agree with the amount offered by the debtor, the relevant secured creditor may within one month of such petition request the court to determine the value of the secured assets. The court will in turn appoint an appraiser and determine the amount based on the appraised value. If the court permits the discharge of the security interest against payment into court of an amount equal to the value of the secured assets, the secured creditor may recover its claim from such amount paid into court, in accordance with the priority of the security interest.

4.4.3 Bankruptcy Proceedings

Following the amendment to the Bankruptcy Act effective as from January 1, 2005, the court has the power to permit the discharge of a security interest by voluntary sale of the secured assets at the request of the bankruptcy trustee. In order for this power to be exercised by the court, the voluntary sale and discharge of the security interest must be of general benefit to all creditors of the company.

It is important to note that this power does not allow the court to set aside, discharge or affect the rights or priority of the secured creditor. The value of the secured assets under the voluntary sale shall be paid into the court and the secured creditor may recover its claims from such value in accordance with the priority of its security interest. It only allows the court to convert the right of the secured creditors from rights over the secured assets to rights over the value of the proceeds of sale of the secured assets paid into court. As such it only really affects the ability of the secured creditor to control the timing of realisation of the secured assets. However, a portion of the proceeds of sale of the assets may be paid to the bankruptcy estate, as compensation for the bankruptcy trustee executing the voluntary sale.

4.5 Risk of Denial of Acceleration

As a matter of Japanese law, a provision for the ability to accelerate payments upon the insolvency of the Clearing Member will be upheld, as Japanese law allows for a general freedom of contract, subject to public policy or mandatory provisions of Japanese law. However, where the Clearing Member is subject to Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings, there is a judicial precedent to suggest that there is a risk that a trustee in such Insolvency Proceedings may seek to deny the provisions which provide for the acceleration of payment, if the acceleration is regarded as having a materially adverse effect on the continuance of the party's business. However, such judicial precedent is related to acceleration of payments under a conditional sale agreement, where it is likely that the property purchased by the buyer on a deferred payment condition would be necessary for continuance of the buyer's business. It is not certain whether such judicial precedent is also applicable to acceleration of payments or deliveries under the Rule 3 of the Default Rules. We are not aware of any judicial precedent which denied provisions for acceleration of payments for netting.

4.6 Governing Law

(a) A Japanese court may not apply English law if its application would be contrary to public policy or mandatory rules of Japanese law.

(b) It is uncertain whether the parties can agree in advance the governing law of claims connected with the contract but which are not claims on the contract.

4.7 **Jurisdiction**

If any proceedings are brought in the Japanese courts, those courts may accept jurisdiction if there is a strong case for doing so, notwithstanding the provisions of the Finance Documents providing that the courts of England have jurisdiction in relation thereto.

4.8 **Application of Foreign Law**

(a) If any obligation is to be performed in a jurisdiction outside Japan, it may not be enforceable in Japan to the extent that performance would be illegal or contrary to public policy or exchange control regulations under the laws of any such jurisdiction and a Japanese court may take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

(b) We express no opinion as to whether any Party has created a valid security interest over any asset or right which is situated outside Japan or governed by a foreign law.

4.9 **Deposit Insurance Act of Japan**

The DIA provides for (i) special resolution regimes for banks, to be commenced by a confirmation of the Prime Minister of Japan (the "**Prime Minister**") under Article 102, Paragraph 1 of the DIA (the "**Confirmation**") and (ii) special resolution regimes for certain financial institutions (including Banks, Insurance Companies and FIBOs), and certain holding companies and affiliates of such financial institutions, to be commenced by a special confirmation of the Prime Minister under Article 126-2, Paragraph 1 of the DIA (the "**Special Confirmation**").

Under the DIA, when making the Confirmation or the Special Confirmation, the Prime Minister may determine that Special Termination Clauses (as defined below) of certain agreements to be triggered by the Special Confirmation, Confirmation or the Related Measures (as defined below) shall cease to be effective during a period designated by the Prime Minster (the "**Designated Period**"), to the necessary extent to prevent a significant disruption of the financial system in Japan, based on deliberations at the Financial Crisis Response Council of Japan (the "**Temporary Stay**"). "**Special Termination Clauses**" means one or more clauses under which, among other things, (i) the agreement will be terminated, (ii) the counterparty to the agreement will be entitled to terminate the agreement, or (iii) closing-out will occur in respect of the transactions under the agreement.

If it is determined by the Prime Minister that the Temporary Stay applies to an agreement and if a Special Termination Clause of such agreement is triggered by the Special Confirmation, the Confirmation, or the implementation of any measure relating to the Special Confirmation or the Confirmation (the "**Related Measures**") in respect of a party to the agreement or any other designed person, each of which is a financial institution covered by the DIA, then the Special Termination Clause will be

subject to the Temporary Stay. If a Special Termination Clause is not triggered by the Special Confirmation, the Confirmation or the Related Measures, it should not be subject to the Temporary Stay.

The DIA does not provide for any specific length of the Designated Period. The length of the Designated Period, which, by its definition is limited to the extent required to take necessary measures to prevent the possibility of the occurrence of a significant disruption of the financial system in Japan, is to be determined by the Prime Minister on a case-by-case basis.

4.10 **Insolvency Proceedings and Reorganisation Measures**

With respect to our advice under paragraph 3.2.1, although we believe that the Insolvency Proceedings would be covered by any of paragraphs (i) through (p) of Rule 5 of the Default Rules and the Reorganisation Measures would be covered by paragraph (e) of Rule 5 of the Default Rules, a Japanese court may take a different view because paragraphs (e) and (i) through (p) of Rule 5 of the Default Rules do not specifically refer to the Insolvency Proceedings or the Reorganisation Measures in this jurisdiction.

4.11 **Enforceability**

In this letter "**enforceable**" means that an obligation is of a type which the Japanese courts enforce. It does not mean that those obligations will be enforced in all circumstances in accordance with the terms of the Agreements. In addition to the other reservations in paragraph 4, in relation to the limitations on enforceability, please note, in particular, that:

(a) the power of a Japanese court to order specific performance of an obligation, injunctive relief or any other equitable remedy is discretionary and, accordingly, a Japanese court might make an award of damages where specific performance of an obligation, injunctive relief or any other equitable remedy was sought;

(b) where any party is vested with a discretion or may determine a matter in its opinion, that party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds;

(c) enforcement may be limited by the provisions of Japanese law applicable to agreements held to have been frustrated by events happening after its execution;

(d) enforcement of rights may be or become limited by prescription or by the lapse of time or may be or become subject to a defence of set-off or counterclaim;

(e) a Japanese court may stay proceedings if concurrent proceedings are being brought elsewhere and may decline to accept jurisdiction in certain cases;

(f) a party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by

a misrepresentation and the Japanese courts will generally not enforce an obligation if there has been fraud;

(g) any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification proved to be fraudulent, arbitrary or manifestly incorrect or not made in good faith and a Japanese court may regard any certification, determination or calculation as no more than prima facie evidence of the matter calculated, determined or certified;

(h) any document or agreement written in a language other than Japanese would require a Japanese translation for enforcement or admissibility in evidence before a Japanese court;

(i) any matters arising in relation to the Finance Documents and the legality, validity and enforceability thereof are subject to the appropriate court procedures and the full discretion of the courts, which must consider the public order and good morals doctrine, general principles of good faith and sincerity and the obligation to act in a reasonable manner, and the abuse of rights doctrine; and

(j) Japanese courts will not observe and give effect to an agreement on exclusive jurisdiction for any Japanese court in situations where they deem it necessary for any other Japanese court to examine the relevant case or where any other Japanese court has, as a matter of Japanese law, exclusive jurisdiction over the relevant case.

4.12 **Enforceability of Foreign Judgements**

A judgment of a foreign court may be enforced in a court of Japan, without further consideration of the merits of the case, only if all of the following conditions are satisfied:

(a) the foreign judgment concerned is duly obtained and is final and conclusive;

(b) the jurisdiction of the foreign court is recognised by the applicable law or treaty;

(c) service of process has been duly effected on the party against which such judgment is to be enforced in Japan (the "**Counterparty**") other than by public notice or some other similar method, or the Counterparty has appeared in the relevant proceedings in the foreign jurisdiction without receiving service thereof;

(d) the foreign judgment (including the court procedures leading to such judgment) is not contrary to public order or the good morals doctrine in Japan;

(e) judgments of Japanese courts receive reciprocal treatment in the courts of the foreign jurisdiction concerned; and

(f) the dispute resolved by the foreign judgment has not been resolved by a judgment given by a Japanese court and is not being litigated before a Japanese court.

4.13 **Enforcement of arbitral award**

An arbitral award made pursuant to the arbitration agreement between LCH and a Clearing Member under Regulation 51 would be recognised and enforced in the courts of Japan against the Clearing Member, provided that in case where any of the following events exist, such arbitral award may not be enforced in Japan if:

(a) the arbitration agreement is not valid due to limits to a party's capacity;

(b) the arbitration agreement is not valid for a reason other than limits to a party's capacity under the law to which parties have agreed to subject it (or failing any indication thereon, the law of the country under which the place of arbitration falls);

(c) a party was unable to present its case in the arbitral proceedings due to (i) lack of notice as required by the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the law that do not relate to public policy, such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings or (ii) any other reason;

(d) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;

(e) the composition of an arbitral tribunal or the arbitral proceedings were not in accordance with the provisions of the law of the country under which the place of arbitration falls (or where the parties have otherwise reached an agreement on matters concerning the provisions of the laws that do not relate to public policy, such agreement);

(f) according to the law of the country under which the place of arbitration falls (or where the law of a country other than the country under which the place of arbitration falls was applied to the arbitral proceedings, such country), the arbitral award has not yet become binding, or the arbitral award has been set aside or suspended by a court of such country;

(g) the claims in the arbitral proceedings relate to a dispute that cannot constitute the subject of an arbitration agreement under the laws of Japan; or

(h) the content of the arbitral award would be contrary to the public policy or good morals of Japan.

4.14 **Other Qualifications**

(a) Any provision of an agreement or document may be amended or waived by oral agreement between the parties, notwithstanding any provision to the contrary.

(b) Any provision which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any person may be ineffective.

(c) To the extent that any matter is expressly to be determined by future agreement or negotiation, the relevant provision may be unenforceable or void for uncertainty.

(d) Any provision stating that a failure or delay, on the part of any person, in exercising any right or remedy under any instrument or agreement shall not operate as a waiver of such right or remedy may not be effective.

(e) If a party is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations or Japanese sanctions implemented or effective in Japan, or is otherwise the target of any such sanctions, then the obligations of that party and of any other party to that party under the Agreements and the Contracts may be unenforceable or void.

(f) In this Opinion Letter, Japanese legal concepts are expressed in the English language and not in their original Japanese language. The concepts concerned may not be identical to the concepts described by the equivalent English terminology as they exist under the laws of other jurisdictions. Therefore, this Opinion Letter may only be relied upon under the express condition that any issues of interpretation arising with respect to such concepts will be governed by Japanese law and be brought before a Japanese court.

(g) We express no opinion as to the existence of any property or assets to be transferred pursuant to the Agreements and the Contracts whether any such property or assets is owned by the transferor thereof or whether the same is or may become subject to any equities, rights or interests in favour of any other person ranking in priority to the transferee thereof. Under conflicts of law principles of this jurisdiction, generally the law of the country where property is situated will determine the manner and effectiveness of any purported transfer of title in that property.

(h) The proceeds from execution of a judgement expressed in any currency other than Japanese currency by attachment in Japan (of property other than such currency or claims denominated therein) may be obtained only in Japanese currency at the exchange rate prevailing at the time of enforcement of judgement.

(i) Ultimately the question of whether or not any particular action satisfies any provision of law would be decided by the Japanese courts and our views are based on our interpretation of the relevant laws having regard to appropriate precedents and other research and our view of a reasonable application of that interpretation of the law to the facts stated. It should of course be noted that a court may, for whatever reason, take a different view (whether reasonable or not).

(j) The court in this jurisdiction would also have regard to public order and the good morals doctrine in this jurisdiction in determining the enforceability or effectiveness of any of the Opinion Documents.

(k) A creditor of the Clearing Member may be entitled to exercise the right of avoidance (*sagaikoi torikeshiken*) under Article 424 of the Civil Code in respect

of the law to the facts stated. It should of course be noted that a court may, for whatever reason, take a different view (whether reasonable or not).

(j) The court in this jurisdiction would also have regard to public order and the good morals doctrine in this jurisdiction in determining the enforceability or effectiveness of any of the Opinion Documents.

(k) A creditor of the Clearing Member may be entitled to exercise the right of avoidance (*sagaikoi torikeshiken*) under Article 424 of the Civil Code in respect of any security interest created by the Clearing Member under any Opinion Document if such Clearing Member is insolvent and both such Clearing Member and a security holder are aware that creation of such security interest would harm the creditors of the Clearing Member generally.

This advice is given for the exclusive benefit of the addressee. It may not, without prior written consent, be relied on by any other person. We consent to a copy of this advice being made publically available on its website and to it being shown to the Bank of England, the U.S. Commodities and Futures Trading Commission, the Federal Reserve, the U.S. Securities and Exchange Commission and/or any counsel appointed by the addressee to advise on matters of the laws of other jurisdictions, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result or otherwise.

Yours faithfully

Clifford Chance Law Office (*Gaikokuho Kyodo Jigyo*)

SCHEDULE 1
SECURITY DEED

REVISED DRAFT 17/12/2013

SECURITY DEED

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THIS SECURITY DEED is dated [*Insert Date of Execution*] and made by way of deed poll by **[CLEARING MEMBER]** in its capacity as chargor (the "**Chargor**").

WHEREAS:

(A) In order to facilitate the clearing of certain transactions with LCH.Clearnet Limited (the "**Clearing House**"), the Chargor has entered into one or more agreements with one or more of its clients and may enter into further agreements with such clients and/or one or more agreements with further clients, in each case that govern the terms upon which the Chargor will act as Clearing Member in respect of Client Clearing Business of that client (each such agreement, together with any related collateral, security or margining agreement, a "**Clearing Agreement**").

(B) The Chargor is executing this Security Deed in order to maximise the ability to move positions corresponding to transactions under the Clearing Agreements to Backup Clearing Members upon the occurrence of an Enforcement Event or to provide for certain receivables to be delivered from the Clearing House to the Clients directly.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

Capitalised terms used but not defined in this Security Deed including in the Recitals shall have the meaning given to them in the LCH Rules. In addition, the following expressions shall have the following meanings:

"**Associated LCH Transactions**" means, in respect of a Client, the Contracts entered into by the Chargor with the Clearing House on behalf of such Client.

"**Authorisation Date**" means the date falling 6 months after 25 October 2013, unless the Clearing House notifies the Chargor that the Authorisation Date will be a date (the "**New Authorisation Date**") other than the then current Authorisation Date, in which case the Authorisation Date will be such New Authorisation Date. For the avoidance of doubt multiple notifications may be made and the New Authorisation Date specified in the last such notification will be the Authorisation Date.

"**Charge**" means the security interest created or expressed to be created by this Security Deed.

"**Charged Assets**" means the assets subject, or expressed to be subject, to the Charge or any part of those assets.

"**Clearing Agreement**" has the meaning ascribed to such term in Recital (A) to this Security Deed.

"**Clearing Default**" means the Chargor becoming a defaulter for the purposes of Rule 4 of the LCH Default Rules.

"**Clearing House**" has the meaning ascribed to such term in Recital (A) to this Security Deed.

"**Client**" means each of the clients listed in Schedule 2 to this Security Deed being, in each case, a Clearing Client who is party to a Clearing Agreement. For the avoidance of doubt, an individual Clearing Client may be party to more than one Clearing Agreement with the Chargor (due to such Clearing Client (i) receiving Client Clearing Services from the Chargor in respect or more than one Service and/or (ii) being a Clearing Client in respect of whom the Chargor has opened more than one Client Account relating to a Relevant Client Clearing Business), and in each such capacity the relevant Clearing Client will constitute a separate "Client" for the purposes of this Security Deed and will be separately identified (including with details of the relevant Service and details of the LCH identifier for the relevant Client Account) in Schedule 2 to this Security Deed.

"**Effective Date**" means the Authorisation Date or the date of this Security Deed, whichever is later.

"**Enforcement Event**" means the occurrence of a Clearing Default in relation to the Chargor in accordance with the LCH Rules.

"**Insolvency Act**" means the Insolvency Act 1986.

"**LCH Rules**" means the rules, regulations, procedures or agreements (including the LCH General Regulations and the LCH Default Rules), applicable to the Chargor and/or Associated LCH Transactions, in each case as published by the Clearing House and as the same may be amended from time to time.

"**Liabilities**" means all present and future obligations, moneys, debts and liabilities due, owing or incurred by the Chargor to a Client under or in connection with the Transaction Documents.

"**LPA**" means the Law of Property Act 1925.

"**Relevant Account Property**" means, in respect of a Client, the Account Balance relating to such Client, as determined by the Clearing House in accordance with the LCH Rules following an Enforcement Event.

"**Relevant Clearing Agreement**" means, in relation to a Client, the Clearing Agreement to which such Client is a party.

"**Relevant Client Clearing Return**" means, in respect of a Client, the Client Clearing Entitlement relating to such Client, as determined by the Clearing House in accordance with the LCH Rules following an Enforcement Event.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Transaction Documents**" means this Security Deed and the Relevant Clearing Agreement.

1.2 **Construction:**

1.2.1 Unless a contrary indication appears, any reference in this Security Deed to:

(a) "**assets**" includes present and future properties, revenues and rights of every description;

(b) the "**Chargor**", a "**Client**" or any "**party**" shall be construed so as to include its successors in title and permitted transferees;

(c) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;

(d) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(e) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(f) the singular includes the plural and vice versa; and

(g) a provision of law is a reference to that provision as amended or re-enacted.

1.2.2 Clause and Schedule headings are for ease of reference only.

2. UNDERTAKING TO PAY

The Chargor undertakes to pay each of its Liabilities when due in accordance with its terms.

3. SECURITY

With effect from the Effective Date, the Chargor, with full title guarantee and as security for the payment of all Liabilities, charges absolutely in favour of each Client all its present and future right, title and interest in and to the Relevant Client Clearing Return and the Relevant Account Property.

4. MULTIPLE DEEDS

This Security Deed shall be treated as if it were a separate deed in favour of each of the Clients listed in Schedule 2 to this Security Deed, as if the Chargor had executed a separate deed in favour of each such Client so that this Security Deed confers rights severally in favour of each Client.

5. RESTRICTIONS AND FURTHER ASSURANCE

5.1 Security

The Chargor agrees that it shall not create or permit to subsist any Security over any Charged Assets except for the Charge.

5.2 Distribution of Charged Property

The Chargor hereby acknowledges and agrees that, following the occurrence of a Clearing Default, the Clearing House shall act in accordance with the LCH Rules and any other laws and regulations applicable to it in determining how the Charged Assets are to be distributed and that such action by the Clearing House shall be without prejudice to any protections afforded to it pursuant to the LCH Rules and any such other laws and regulations.

5.3 Margining

The Chargor agrees that, prior to the operation of Clause 13.1, it shall provide margin in respect of any Associated LCH Transactions to the Clearing House on an Individual Segregated Account basis or an Omnibus Segregated Account basis (as may be agreed between the Chargor and the relevant Client) in accordance with the LCH Rules.

6. PAYMENTS

6.1 No Enforcement Event

Subject as otherwise provided in this Security Deed, and for so long as no Enforcement Event has occurred, the Chargor shall be entitled to receive and retain all payments or transfers made to it in respect of the relevant Client Account in accordance with the LCH Rules. For the avoidance of doubt, the Chargor shall not be entitled to deal with the Charged Assets at any time while the Charge is in effect.

6.2 Post Enforcement Event

Following the occurrence of an Enforcement Event, the Client shall be entitled to receive directly from the Clearing House all Charged Assets and payments or transfers made in respect of a Charged Asset.

7. ENFORCEMENT AND REMEDIES

7.1 Enforcement Event

The Security created on the Effective Date shall only be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Security Deed shall only be exercisable, following the occurrence of an Enforcement Event.

7.2 **Power of Sale**

The statutory power of sale and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Security Deed shall arise on the Effective Date of this Security Deed.

7.3 **Section 103 LPA**

Section 103 of the LPA shall not apply to this Security Deed.

8. PROVISIONS RELATING TO CLIENT

8.1 **Client's Rights**

At any time after the occurrence of an Enforcement Event, the Client shall have the rights set out in the Schedule hereto.

8.2 **Application of Proceeds**

Subject to Clause 13.1, all amounts or assets received or recovered by the Client in the exercise of its rights under this Security Deed shall be applied in the following order: (i) in or towards the payment of the Liabilities in such order as the Client thinks fit, but in any case acting in good faith and in a commercially reasonable manner, and (ii) in payment of any surplus to the Chargor.

8.3 **Power of Attorney**

The Chargor by way of security irrevocably appoints the Client as its attorney (with full power of substitution), on its behalf and in its name or otherwise, in such manner as the attorney thinks fit, but in any case acting in good faith and in a commercially reasonable manner, to exercise (following the occurrence of an Enforcement Event only) any of the rights conferred on the Client in relation to the Charged Assets or under the LPA or the Insolvency Act. The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 8.3.

9. NOTIFICATION OF NEW AUTHORISATION DATE

9.1 The Chargor agrees that the Clearing House may notify the Chargor of a New Authorisation Date by publishing a notification on the Clearing House's website.

9.2 The Chargor agrees that notice of a New Authorisation Date will be deemed to have been delivered to the Chargor upon the publication of a notice of such New Authorisation Date on the Clearing House's website.

10. AMENDMENTS TO THE SECURITY DEED

The Chargor may from time to time amend or revoke the terms of this Security Deed without the Client's consent, provided, however, that the Chargor undertakes:

10.1 not to amend or revoke this Security Deed without the prior written consent of the Clearing House; and

10.2 to amend this Security Deed from time to time in order to reflect such changes as may be prescribed by the Clearing House to the "Security Deed" (as defined in the LCH Rules, and upon which this Security Deed is based) from time to time in accordance with the LCH Rules.

11. ADDITIONAL CLIENTS

The Chargor may, after the date of this Security Deed, grant a charge on the terms of this Security Deed to one or more additional clients. On each occasion when the Chargor wishes to exercise this right, it will execute a further security deed substantially in the form set out in Schedule 3 to this Security Deed (an "**Additional Security Deed**") and will deliver to the Clearing House a copy of such Additional Security Deed, including an annex which sets out the details of the relevant client(s). For the avoidance of doubt, an Additional Security Deed may be given in respect of one or more clients.

12. SAVING PROVISIONS

12.1 Continuing Security

Subject to Clause 13, the Charge is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

12.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is made by the Client in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Chargor and the Charge shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

12.3 Waiver of Defences

Neither the obligations of the Chargor under this Security Deed nor the Charge will be affected by an act, omission, matter or thing which, but for this Clause 12.3, would reduce, release or prejudice any of its obligations under any Transaction Document or the Charge (without limitation and whether or not known to the Chargor or the Client) including:

12.3.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;

12.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any affiliate;

12.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over

assets of, the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

12.3.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Transaction Document or any other document or security; or

12.3.5 any insolvency or similar proceedings.

12.4 **Immediate Recourse**

The Chargor waives any right it may have of first requiring the Client (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Security Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

12.5 **Additional Security**

The Charge is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by the Client.

13. **DISCHARGE OF SECURITY**

13.1 **Final Redemption**

Immediately upon there no longer being any Liabilities remaining (or, if earlier, immediately upon it no longer being possible for an Enforcement Event to occur), the Client shall be deemed to have immediately released, reassigned or discharged (as appropriate) the Charged Assets from the Charge and therefore:

13.1.1 the Chargor may retain for its own account; and

13.1.2 the Client shall therefore promptly pay or transfer to the Chargor,

any amounts or other assets received by such party from the Clearing House in respect of the Charged Assets. For the avoidance of doubt, it is acknowledged that the Chargor's rights under this Clause 13 shall constitute an equity of redemption (and therefore a proprietary interest to the extent of such equity of redemption) in the Charged Assets and any amounts or other assets the subject of such rights shall be returned by the Client to the Chargor.

13.2 **Consolidation**

Section 93 of the LPA shall not apply to the Charge.

14. MISCELLANEOUS PROVISIONS

14.1 Payments

All payments by the Chargor under this Security Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as the Client may direct.

14.2 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Client any right or remedy under this Security Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Security Deed are cumulative and not exclusive of any rights or remedies provided by law.

14.3 Partial Invalidity

If, at any time, any provision of this Security Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.4 Governing Law

This Security Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

14.5 Jurisdiction

In relation to any proceedings, each party to this Security Deed irrevocably submits to the exclusive jurisdiction of the courts of England and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum. Each such submission is made for the benefit of the other party and shall not affect the right of any party to take proceedings in any other court of competent jurisdiction nor shall the taking of proceedings in any court of competent jurisdiction preclude any party from taking proceedings in any other court of competent jurisdiction (whether concurrently or not) unless precluded by law.

14.6 [Agent for Service of Process; Chargor

The Chargor hereby irrevocably appoints [Name of Agent] of [Address in England] to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent ceases to be such agent for service of process, the Chargor shall forthwith appoint a new agent for service of process in England. Nothing in this Security Deed shall affect the right to serve process in any other matter permitted by law.]

This Security Deed has been delivered on the date stated at the beginning of this Security Deed.

[CHARGOR]

[***INSERT APPROPRIATE SIGNATURE BLOCK***]

SCHEDULE 1
RIGHTS OF CLIENT

Following the occurrence of an Enforcement Event, the Client shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Client thinks fit, but in any case, acting in good faith and in a commercially reasonable manner, and either alone or jointly with any other person:

1. **Take possession**: to take possession of, get in and collect the Charged Assets and to require payment to it of revenues deriving therefrom;

2. **Deal with Charged Assets**: to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

3. **Borrow money**: to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charge or otherwise);

4. **Rights of ownership**: to manage and use the Charged Assets and to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Client would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets;

5. **Claims**: to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;

6. **Legal actions**: to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets;

7. **Redemption of Security**: to redeem any Security (whether or not having priority to the Charge) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets; and

8. **Other powers**: to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Client under or by virtue of any Transaction Document, the LPA or the Insolvency Act.

SCHEDULE 2
CLIENTS

CLIENT NAME	RELEVANT SERVICE	CLIENT ACCOUNT (LCH IDENTIFIER)

SCHEDULE 3
ADDITIONAL SECURITY DEED

THIS SECURITY DEED is dated [*Insert Date of Execution*] and made by way of deed poll by **[CLEARING MEMBER]** in its capacity as chargor (the "**Chargor**").

WHEREAS:

(A) In order to facilitate the clearing of certain transactions with LCH.Clearnet Limited (the "**Clearing House**"), the Chargor has entered into one or more agreements with one or more clients (each such agreement, a "**Clearing Agreement**").

(B) The Chargor has previously entered by deed poll into a security deed dated [•] in favour of certain of its clearing clients (such security deed as amended from time to time, after as well as before the date of this Security Deed, the "**Original Security Deed**").

(C) The Chargor is executing this Security Deed in order to maximise the ability of one or more additional Client(s) to move positions corresponding to transactions under the Clearing Agreements to Backup Clearing Members upon the occurrence of an Enforcement Event or to provide for certain receivables to be delivered from the Clearing House to the Clients directly.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

(a) For the purposes of this Security Deed, the following defined terms shall have the following meanings:

"**Client**" means each of the additional client(s) listed in the Annex to this Security Deed. For the avoidance of doubt, an individual Clearing Client may be party to more than one Clearing Agreement with the Chargor (due to such Clearing Client (i) receiving Client Clearing Services from the Chargor in respect or more than one Service and/or (ii) being a Clearing Client in respect of whom the Chargor has opened more than one Client Account relating to a Relevant Client Clearing Business), and in each such capacity the relevant Clearing Client will constitute a separate "Client" for the purposes of this Security Deed (save where the relevant Clearing Client in the relevant capacity is already a client for the purposes of the Original Security Deed or a another security deed entered into prior to the date of this Security Deed on substantially the same terms as this Security Deed) and will be separately identified (including with details of the relevant Service and details of the LCH identifier for the relevant Client Account) in the Annex to this Security Deed.

"**Effective Date**" means the Authorisation Date or the date of this Security Deed, whichever is later;

(b) Capitalised terms used but not defined in this Security Deed including in the Recitals shall have the meaning given to them in the Original Security Deed.

1.2 **Construction:**

(a) Unless a contrary indication appears, any reference in this Security Deed to:

(i) "**assets**" includes present and future properties, revenues and rights of every description;

(ii) the "**Chargor**", a "**Client**" or any "**party**" shall be construed so as to include its successors in title and permitted transferees;

(iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;

(iv) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(v) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(vi) the singular includes the plural and vice versa; and

(vii) a provision of law is a reference to that provision as amended or re-enacted.

(b) Clause and Schedule headings are for ease of reference only.

2. OPERATIVE PROVISIONS

With effect from the Effective Date, this Security Deed is entered into on the same terms as the Original Security Deed, and each Client listed in the Annex to this Security Deed shall have the same rights and protections (subject to the same conditions and qualifications) as a "Client" under the Original Security Deed.

3. MULTIPLE DEEDS

The Chargor agrees that, where there is more than one Client listed in the Annex to this Security Deed, this Security Deed shall be treated as if it were a separate deed in favour of each such Client, as if the Chargor had executed a separate deed in favour of each such Client.

This Security Deed has been delivered on the date stated at the beginning of this Security Deed.

[CHARGOR]

[*INSERT APPROPRIATE SIGNATURE BLOCK*]

ANNEX

CLIENTS

CLIENT NAME	RELEVANT SERVICE	CLIENT ACCOUNT (LCH IDENTIFIER)

SCHEDULE 2
CLEARING MEMBERSHIP AGREEMENT

CLEARING MEMBERSHIP AGREEMENT

DATED

LCH.CLEARNET LIMITED

and

("the Firm")

Address of the Firm

THIS AGREEMENT is made on the date stated above

BETWEEN the Firm and LCH.CLEARNET LIMITED ("the Clearing House"), whose registered office is at Aldgate House, 33 Aldgate High Street, London, EC3N 1EA.

WHEREAS:

A The Clearing House is experienced in carrying on the business of a clearing house and undertakes with each Clearing Member the performance of contracts registered in its name in accordance with the Rulebook;

B The Clearing House has been appointed by certain Exchanges to provide central counterparty and other services in accordance with the terms and conditions of the Rulebook and certain agreements entered into between the Clearing House and such Exchanges;

C The Clearing House also provides central counterparty and other services to participants in certain over-the-counter ("OTC") markets in accordance with the terms of this Agreement and the Rulebook;

D The Firm desires to be admitted as a Clearing Member of the Clearing House to clear certain categories of Contract agreed by The Clearing House with the Firm and, the Clearing House having determined on the basis inter alia of the information supplied to it by the Firm that the Firm satisfies for the time being the relevant Criteria for Admission, the Clearing House agrees to admit the Firm as a Clearing Member subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1 INTERPRETATION AND SCOPE OF AGREEMENT

1.1. Unless otherwise expressly stated, in this Agreement:

(a) "Cash Cover" means cover for margin (within the meaning of that term in the "Definitions" section of the Rulebook) provided in the form of a cash deposit with the Clearing House;

(b) "Clearing Member" means a Person who has been admitted to membership of the Clearing House and whose membership has not terminated;

(c) "Contract" means a contract or transaction eligible for registration in the Firm's name by the Clearing House in accordance with the Rulebook;

(d) "Contribution" and "Contribution to the Default Fund" mean the sums of cash deposited by the Firm as cover in respect of the Firm's obligation to indemnify the Clearing House as provided by clause 9 of this Agreement and the Default Rules;

(e) "Criteria for Admission" means criteria set out in one or more documents published from time to time by the Clearing House, being criteria to be satisfied by an applicant for admission as a Clearing Member in respect of the Designated Contracts which the applicant wishes to clear with the Clearing House;

(f) "Default Fund" means the fund established under the Default Rules of the Clearing House to which the Clearing Member is required to contribute by virtue of clause 9 of this Agreement;

(g) [DELETED]

(h) "Default Notice" means a notice issued by the Clearing House in accordance with the Default Rules in respect of a Clearing Member who is or is likely to become unable to meet its obligations in respect of one or more Contracts;

(i) "Default Rules" means that part of the Rulebook having effect in accordance with Part IV of the Financial Services and Market Act 2000 (Recognition Requirements for Investment Exchange and Clearing Houses) Regulations 2001 to provide for action to be taken in respect of a Clearing Member subject to a Default Notice;

(j) "Designated Contract" has the meaning given to it in clause 2.1;

(k) "Exchange" means an organisation responsible for administering a market with which the Clearing House has an agreement for the provision of central counterparty and other services to Clearing Members;

(l) "Exchange Contract" means any contract which an Exchange has adopted and authorised Exchange Members to trade in under its Exchange Rules and in respect of which the Clearing House has agreed to provide central counterparty and other services;

(m) "Exchange Member" means any person (by whatever name called) being a member of, or participant in, a Market pursuant to Exchange Rules;

(n) "Exchange Rules" means any of the regulations, rules and administrative procedures or contractual arrangements for the time being and from time to time governing the operation of a Market administered by an Exchange and includes, without prejudice to the generality of the foregoing, any regulations made by the directors of an Exchange or by any committee established under the Rules, and, save where the context otherwise requires, includes Exchange Contracts, and the Rulebook;

(o) "Rulebook" means the Clearing House's General Regulations, Default Rules, Settlement Finality Regulations and Procedures and such other rules of the Clearing House as published and amended from time to time;

(p) "Market" means a futures, options, forward, stock or other market, administered by an Exchange, or an OTC market, in respect of which the Clearing House has agreed with such Exchange or, in respect of an OTC market, with one or more participants in that market, to provide central counterparty and related services on the terms of the Rulebook and in the case of an Exchange, pursuant to the terms of any agreement entered into with the Exchange;

(q) "Person" includes any firm, company, corporation, body, association or partnership (whether or not having separate legal personality) or any combination of the foregoing;

(r) "Procedures" means that part of the Rulebook by that name;

(s) "Registered Contract" means a contract registered in the Firm's name by the Clearing House in accordance with the Rulebook;

1.2 (a) References to "the parties" are references to the parties hereto, and "party" shall be construed accordingly;

(b) References herein to a clause are to a clause hereof and clause headings are for ease of reference only;

(c) Unless the context otherwise requires, words (including defined terms) denoting the singular shall include the plural and vice versa;

(d) References to writing include typing, printing, lithography, photography, facsimile transmission and other modes of representing or reproducing words in a visible form; and

(e) References herein to statutes, statutory instruments, the Rulebook, or provisions thereof are to those statutes, statutory instruments, Rulebook or provisions thereof as amended, modified or replaced from time to time.

1.3 This Agreement, the terms of any other agreement to which the Clearing House and the Clearing Member are party which relates to the provision of central counterparty and other services by the Clearing House, the terms of, and applicable to, each and every Registered Contract, the Rulebook and all amendments to any of the foregoing shall together constitute a single agreement between the Clearing House and the Clearing Member and both parties acknowledge that all Registered Contracts are entered into in reliance upon the fact that all such items constitute a single agreement between the parties.

1.4 A person who is not a party to this Agreement shall have no rights under or in respect of this Agreement.

2 CLEARING MEMBERSHIP

2.1. The Firm is hereby admitted as a Clearing Member on the terms set out in this Agreement. The Firm shall be eligible to clear such categories of Contract (each a "Designated Contract") as the Clearing House shall from time to time notify to the Firm.

2.2. The Firm warrants that the information supplied by the Firm to the Clearing House in connection with the enquiry conducted by the Clearing House to determine whether the Firm satisfies for the time being the Criteria for Admission was and is at the date of this Agreement true and accurate in all material respects.

2.3. The Firm will ensure that it will at all times satisfy the Criteria for Admission. If at any time it has reason to believe that it no longer satisfies or may cease to satisfy any of such criteria the Firm shall immediately notify the Clearing House of the circumstances.

2.4. The Firm shall give written notice forthwith to the Clearing House of the occurrence of any of the following of which it is aware:-

(a) the presentation of a petition or passing of any resolution for the bankruptcy or winding-up of, or for an administration order in respect of, the Firm or of a subsidiary or holding company of the Firm;

(b) the appointment of a receiver, administrative receiver, administrator or trustee of the estate of the Firm;

(c) the making of a composition or arrangement with creditors of the Firm or any order or proposal in connection therewith;

(d) where the Firm is a partnership, an application to dissolve the partnership, the presentation of a petition to wind up the partnership, or any other event which has the effect of dissolving the partnership;

(e) where the Firm is a registered company, the dissolution of the Firm or the striking-off of the Firm's name from the register of companies;

(f) any step analogous to those mentioned in paragraphs (a) to (e) of this clause 2.4 is taken in respect of such persons as are referred to in those respective paragraphs in any jurisdiction;

(g) the granting, withdrawal or refusal of an application for, or the revocation of any licence or authorisation to carry on investment, banking or insurance business in any country;

(h) the granting, withdrawal or refusal of an application for, or the revocation of, a license or authorisation by the Financial Conduct Authority, the Prudential Regulation Authority or membership of any self-regulating organisation, recognised or overseas investment exchange or clearing house (other than the Clearing House) under the Financial Services and Markets Act 2000 or any other body or authority which exercises a regulatory or supervisory function under the laws of the United Kingdom or any other state;

(i) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the Firm(other than an inspection of a purely routine and regular nature);

(j) the imposition of any disciplinary measures or sanctions (or similar measures) on the Firm in relation to its investment or other business by any Exchange, regulatory or supervisory authority;

(k) the entering of any judgment against the Firm under Section 150 of the Financial Services and Markets Act 2000;

(l) the conviction of the Firm for any offence under legislation relating to banking or other financial services, building societies, companies, credit unions, consumer credit, friendly societies, insolvency, insurance and industrial and provident societies or for any offence involving fraud or other dishonesty;

(m) the conviction of the Firm, or any subsidiary or holding company of the Firm for any offence relating to money laundering, or the entering of judgment or the making of any order against the Firm in any civil action or matter relating to money laundering;

(n) any enforcement proceedings taken or order made in connection with any judgement (other than an arbitration award or judgement in respect of the same) against the Firm; and

(o) any arrangement entered into by the Firm with any other Clearing Member relating to the provision of central counterparty and associated services by the Clearing House of Contracts or transactions entered into by the Firm after the effective date of termination of this Agreement.

2.5. The Firm shall give written notice forthwith to the Clearing House of any person becoming or ceasing to be a director of or a partner in the Firm or of the occurrence of any of the following in relation to a director of or a partner in the Firm, if aware of the same:-

(a) the occurrence of any event specified in clause 2.4 (insofar as it is capable of materially affecting him); or

(b) any disqualification order under the Company Directors Disqualification Act 1986 or equivalent order in overseas jurisdictions.

2.6. The Firm shall give written notice forthwith to the Clearing House of any change in its name, the address of its principal place of business, registered office or UK office.

2.7. The Firm shall give written notice to the Clearing House forthwith upon its becoming aware that any person is to become or cease to be, or has become or ceased to be, a controller of the Firm, and shall in relation to any person becoming a controller of the Firm state:-

(a) the controller's name, principal business and address;

(b) the date of the change or proposed change.

In this clause and in clause 2.9 "controller" means a person entitled to exercise or control the exercise of 20 per cent or more of the voting power in the Firm.

2.8. The Firm shall give written notice forthwith to the Clearing House of any change in its business which affects the Firm's ability to perform its obligations under this Agreement.

2.9. Where the Clearing House receives notification pursuant to any of clauses 2.3 to 2.8, or the Clearing House reasonably suspects that the Firm may no longer satisfy some or all of the Criteria for Admission or the criteria for clearing a Designated Contract, the Clearing House shall be entitled in its absolute discretion to call for information of whatsoever nature in order to determine whether the Firm continues to satisfy the Criteria for Admission or the criteria for clearing a Designated Contract. Without prejudice to the foregoing, the Clearing House may at any time call for information relating to the affairs (including the ownership) of any controller of the Firm or any person who is to become a controller of the Firm. The Firm shall forthwith on demand supply to the Clearing House information called for under this clause and shall ensure that such information is true and accurate in all respects.

2.10. The Firm undertakes to abide by the Rulebook and undertakes at all times to comply with other provisions of Exchange Rules so far as they apply to the Firm.

2.11. The Firm undertakes that at all times, to the extent the Firm is required under any applicable law to be authorised, licensed or approved in relation to activities undertaken by it, it shall be so authorised, licensed or approved.

2.12. The Firm agrees that in respect of any Contract for which central counterparty services are to be provided to the Firm by the Clearing House in accordance with the Rulebook, including, but not limited to, any contract made by the Firm under Exchange Rules on the floor of a Market (or through a Market's automated trading system) or otherwise, whether with a member of that Market or with a client or with any other person, and including any Contract entered into in an OTC market, the Firm shall contract as principal and not as agent.

2.13. The Firm shall furnish financial information to the Clearing House in accordance with the requirements of the Rulebook or such other requirements as the Clearing House may from time to time prescribe.

2.14. The Firm undertakes that, in its terms of business with its clients (being clients in respect of whom the Firm is subject to any regulations made pursuant to rules and/or legislation applicable to the Firm with respect to the safeguarding or segregation of clients' money):

(a) where it is subject to Exchange Rules, it will at all times include a stipulation that contracts made under Exchange Rules with or for them shall be subject to Exchange Rules (including the Rulebook); and

(b) that money of such clients in the possession of the Clearing House may be dealt with by the Clearing House in accordance with the Rulebook without exception.

2.15. Without prejudice to clause 2.14 the Firm undertakes that its dealings with all its clients or counterparties shall be arranged so as to comply with the requirement that the Firm deals with the Clearing House as principal, and that all sums deposited

with the Clearing House by way of Cash Cover (including the Firm's Contribution to the Default Fund) shall be deposited unencumbered and by the Firm acting as sole principal and as legal and beneficial owner.

2.16. The Firm undertakes not to assign, charge or subject to any other form of security, whether purporting to rank in priority over, pari passu with or subsequent to the rights of the Clearing House, any Cash Cover provided to the Clearing House, including its entitlement to repayment of its Contribution to the Default Fund or any part of it. Any purported charge, assignment or encumbrance (whether by way of security or otherwise) of Cash Cover provided to the Clearing House shall be void. The Firm shall not otherwise encumber (or seek to encumber) any Cash Cover provided to the Clearing House.

3 REMUNERATION

3.1. The Clearing House shall be entitled to charge the Firm such fees, charges, levies and other dues, on such events, and calculated in accordance with such scales and methods, as are for the time prescribed by the Clearing House and, where relevant, for Exchange Contracts, after consultation with the relevant Exchange.

3.2. The Clearing House shall give the Firm not less than fourteen days' notice of any increase in such fees, charges, levies or other dues.

4 FACILITIES PROVIDED BY THE CLEARING HOUSE

4.1. Provision of Central Counterparty Services

(a) Details of all Contracts to be registered by the Clearing House in the name of the Firm and in respect of which central counterparty services are to be provided shall be provided to the Clearing House in accordance with the Rulebook and any other agreement entered into between the Clearing House and the Firm.

(b) Provided that a Contract meets the criteria for registration of that Contract in the name of the Firm and is a Designated Contract, and subject to the Rulebook, the Clearing House shall enter into a Registered Contract with the Firm in respect thereof. Each such Contract shall be registered in accordance with the Rulebook and the Clearing House shall perform its obligations in respect of all Registered Contracts in accordance with this Agreement and the Rulebook.

4.2. Maintenance of Records

The Clearing House agrees that for a period of ten years after termination of a Registered Contract it shall maintain records thereof. The Clearing House may make a reasonable charge to the Firm for the production of any such records more than three months after registration.

4.3. Information

The Clearing House will provide to the Firm such information at such times as is provided for by the Rulebook.

4.4. Accounts

The Clearing House agrees to establish and maintain one or more accounts for the Firm in accordance with the Rulebook. Accounts will be opened and kept by the Clearing House in such manner as will not prevent the Firm from complying with requirements of any regulations made pursuant to rules and/or legislation applicable to the Firm with

respect to the safeguarding or segregation of clients' money and the rules of such regulatory organisation as the Firm may be subject to in respect of their cleared business.

5 DEFAULT

In the event of the Firm appearing to the Clearing House to be unable, or to be likely to become unable, to meet any obligation in respect of one or more Registered Contracts, or failing to observe any other financial or contractual obligation under the Rulebook, the Clearing House shall be entitled to take all or any of the steps set out in that regard in the Rulebook, including (but not limited to) the liquidation of all or any of the Registered Contracts.

6 DISCLOSURE OF INFORMATION

The Firm agrees that the Clearing House shall have authority to disclose any information of whatsoever nature concerning the Firm to such persons as is provided for by the Rulebook.

7 PARTNERSHIP

If the Firm is a partnership, the liability of each partner in the Firm hereunder and under any Registered Contract shall be joint and several and, notwithstanding an event which would by operation of law give rise to the dissolution of the partnership, or entitle a partner to seek an order to dissolve the partnership, including, but not limited to, the event of the death, bankruptcy, winding-up or dissolution of any such partner, the respective obligations of the Clearing House and all other partners shall remain in full force and effect. If the Firm is a partnership, the Firm undertakes that if any new partner joins the Firm, the Firm shall procure that such new partner becomes jointly and severally liable alongside existing partners in respect of obligations of the Firm to the Clearing House outstanding at the date of such new partner's accession to the Firm.

8 TERM

8.1. Subject to clause 8.3 either party (provided, in the case of the Firm, that the Clearing House has not issued a Default Notice in respect of the Firm) may terminate this Agreement by giving to the other party notice in writing, such notice to specify the effective date of termination ("the termination date") which shall be a business day not less than three months after the date of the notice, and this Agreement shall, subject to clause 8.2(b), terminate on the termination date. By the close of business on the termination date the Firm shall ensure that all Registered Contracts in the Firm's name have been closed-out or transferred so that there are no open Registered Contracts to which the firm is party at the end of the termination date.

8.2. If, under clause 8.1, the Firm has not closed out or transferred all Registered Contracts by the set termination date the Clearing House shall, at its sole discretion, be entitled to:

(a) liquidate any such Registered Contracts in accordance with the Rulebook; and

(b) require that the Firm remains a member of the Clearing House until such time as there are no Registered Contracts in existence to which the Firm is a party and the effective date of termination of this Agreement shall be postponed until such time.

8.3. If the Firm is in breach of or in default under any term of this Agreement or the Rulebook, or if the Clearing House has issued a Default Notice in respect of the Firm, or if the Clearing House reasonably determines that the Firm no longer satisfies the Criteria for Admission as a Clearing Member, the Clearing House may in its absolute discretion terminate this Agreement in writing either summarily or by notice as follows.

Any termination by notice under this clause 8.3 may take effect (subject as follows) on the expiry of 30 days or such longer period as may be specified in the notice. A notice given by the Clearing House under this clause may at the Clearing House's discretion allow the Firm a specified period in which to remedy the breach or default or to satisfy the Criteria for Admission as the case may be, and may specify what is to be done to that end, and may provide that if the same is done to the satisfaction of the Clearing House within that period the termination of this Agreement shall not take effect, and if this Agreement has terminated after the Clearing House has allowed the Firm such a period for remedy or satisfaction, the Clearing House shall then notify the Firm of the fact of termination. The Clearing House may, if the Clearing House has issued a Default Notice in respect of the Firm immediately, and in any other case after the effective date of termination, take such other action as it deems expedient in its absolute discretion to protect itself or any other Clearing Member including, without limitation, the liquidation of Registered Contracts but without prejudice to its own rights in respect of such contracts.

8.4. Upon the termination of this Agreement for whatever reason the Firm shall unless otherwise agreed cease to be a Clearing Member.

9 DEFAULT FUND

9.1. In this clause the term "Excess Loss" bears the meaning ascribed to it in the Rulebook.

9.2. The Firm, as primary obligor and not surety, hereby indemnifies the Clearing House in respect of any Excess Loss, and undertakes to deposit cash with the Clearing House as collateral for its obligations in respect of such indemnity, in accordance in each case with the Default Rules.

9.3. The Firm shall, in accordance with the Default Rules, continue to be liable to indemnify the Clearing House in respect of any Excess Loss arising upon any default occurring before the effective date of termination of this Agreement. Subject thereto, the indemnity hereby given shall cease to have effect on the effective date of termination of this Agreement, unless a Default Notice is issued by the Clearing House in respect of the Firm, in which case the indemnity hereby given shall cease to have effect after the date three months after the date of issue of such Default Notice.

9.4. Save as provided expressly by the Default Rules, the Firm shall not be entitled to exercise any right of subrogation in respect of any sum applied in satisfaction of its obligations to the Clearing House under this clause 9.

10 FORCE MAJEURE

Neither party shall be liable for any failure in performance of this Agreement if such failure arises out of causes beyond its control. Such causes may include, but are not limited to, acts of God or the public enemy, acts of civil or military authority, fire, flood, labour dispute (but excluding strikes, lock-outs and labour disputes involving the employees of the party intending to rely on this clause or its sub-contractors), unavailability or restriction of computer or data processing facilities or of energy supplies, communications systems failure, failure of a common depository, clearing system or settlement system, riot or war.

11 THE RULEBOOK

In the event of conflict between the Rulebook and the provisions of this Agreement the Rulebook shall prevail.

12 NOTICES

12.1. Any notice or communication to be made under or in connection with this Agreement shall be made in writing addressed to the party to whom such notice or communication is to be given; save that a notice or communication of an urgent nature shall be given or made orally and as soon as reasonably practicable thereafter confirmed in writing in conformity hereto. A notice may be delivered personally or sent by post to the address of that party stated in this Agreement, or to such other address as may have been notified by that party in accordance herewith.

12.2. Where a notice is sent by the Clearing House by post it shall be deemed delivered 24 hours after being deposited in the post first-class postage prepaid in an envelope addressed to the party to whom it is to be given in conformity to clause 12.1, or in the case of international mail, on the fourth business day thereafter. In all other cases notices shall be deemed delivered when actually received.

13 LAW

13.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any action or dispute which may arise herefrom. The Clearing House and the Firm each irrevocably submits to such jurisdiction and to waive any objection which it might otherwise have to such courts being a convenient and appropriate forum.

13.2. The Firm irrevocably waives, with respect to itself and its revenues and assets all immunity on the grounds of sovereignty or other similar grounds from suit, jurisdiction of any court, relief by way of injunction, order for specific performance or for recovery of property, attachment of its assets (whether before or after judgement) and execution or enforcement of any judgement to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees that it will not claim any such immunity in any proceedings.

14 SERVICE OF PROCESS

Without prejudice to any other mode of service, and subject to its right to change its agent for the purposes of this Clause on 30 days' written notice to the Clearing House, the Firm (other than where it is incorporated in England and Wales or otherwise has an office in England and Wales) appoints, as its agent for service of process relating to any proceedings before the courts of England and Wales in connection with the Firm the person in London as notified to the Clearing House in writing with the application for admission.

IN WITNESS whereof the parties hereto have caused this Agreement to be signed by their duly authorised representatives the day and year first before written.

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

LCH.CLEARNET LIMITED

Aldgate House 33 Aldgate High Street London EC3N 1EA

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SCHEDULE 3
DEED OF CHARGE

A company whether incorporated in England and Wales or an overseas company.

CHARGE BY CLEARING MEMBER

CHARGE SECURING OWN OBLIGATIONS

Date of Execution: _____

Date of Delivery:
(to be completed by LCH.Clearnet Limited) _____

Name and Address of Chargor: _____

_____

_____

Clearing Membership Agreement Date: _____

Chargor's Account: _____

THIS DEED made on the date above-stated **BETWEEN THE ABOVE-NAMED CHARGOR** ("**the Chargor**") and **LCH.CLEARNET LIMITED** ("**the Clearing House**")

WITNESSES as follows :

1. **Interpretation**

(1) Any reference herein to any statute or to any provisions of any statute shall be construed as a reference to any statutory modification or re-enactment thereof and to any regulations or orders made thereunder and from time to time in force.

(2) The clause headings shall not affect the construction hereof.

(3) A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Deed.

2. **The Secured Obligations**

(1) The Chargor shall pay to the Clearing House all monies (including settlement costs, interest and other charges) which now are or at any time hereafter may be or become due or owing by the Chargor to the Clearing House on the account identified above (or, but only if no account is identified, on all accounts of the Chargor with the Clearing House) and discharge all other liabilities of the Chargor (whether actual or contingent, now existing or hereafter incurred) to the Clearing House on the said account (or, if no account is identified, on all accounts of the Chargor with the Clearing House) in each case when due in accordance with the Clearing Membership Agreement and the Clearing House's Rulebook referred to therein (the Clearing Membership Agreement and the Clearing House's Rulebook as from time to time amended, renewed or supplemented being hereinafter referred to as "**the Agreement**") or, if the Agreement does not specify a time for such payment or discharge, promptly following demand by the Clearing House.

(2) In the event that the Chargor fails to comply with sub-paragraph (1), the Chargor shall pay interest accruing from the date of demand on the monies so demanded and on the amount of other liabilities at the rate provided for in the Agreement or, in the event of no such rate having been agreed, at a rate determined by the Clearing House (the rate so agreed or determined to apply after as well as before any judgment), such interest to be paid upon demand of the Clearing House in accordance with its usual practice and to be compounded with rests in the event of its not being duly and punctually paid.

(3) The monies, other liabilities, interest and other charges referred to in paragraph (1) of this clause, the interest referred to in sub-paragraph (2) of this clause and all other monies and liabilities payable or to be discharged by the Chargor under

or pursuant to any other provision of this Deed are hereinafter collectively referred to as "**the Secured Obligations**".

2A. **Custody of Collateral**

(1) The Chargor shall, in accordance with the Procedures, transfer collateral to the Clearing House. Where such collateral takes the form of Securities, the Clearing House shall hold such Securities as custodian for the Chargor, subject to the terms of this Deed.

(2) From time to time, in accordance with the Procedures and in the context of a transfer of one or more contracts and related cover from one member of the Clearing House to the Chargor at the request of a client of that other member or the Chargor, the Clearing House shall designate that certain Securities which it previously held as custodian for a third party are instead held by the Clearing House as custodian for the Chargor and form part of the collateral provided by the Chargor in satisfaction of its requirements under the Procedures. Upon such designation, the Clearing House shall hold such Securities as custodian for the Chargor, subject to the terms of this Deed.

(3) Where any Securities referred to in sub-paragraphs (1) or (2) are held by or for the account of the Clearing House in any Clearance System or with any Custodian Bank, the Clearing House will identify in its books that such Securities are held by it as custodian for the Chargor.

(4) All Distributions received by the Clearing House on any Securities which are held by the Clearing House as custodian for the Chargor in accordance with sub-paragraphs (1) or (2) shall be deposited by the Clearing House in a Cash Account and held by the Clearing House as custodian for the Chargor.

(5) For the avoidance of doubt, the Clearing House may hold any Securities and Distributions pursuant to this Clause 2A (*Custody of Collateral*) in one or more omnibus accounts together with other Securities and cash amounts which it holds as custodian for other third parties which have granted a charge over such Securities in favour of the Clearing House in a form substantially the same as this Deed (each a "**Relevant Charge**"). The Clearing House shall ensure that any such account with a Clearance System or Custodian Bank is clearly identified as a custody account relating to Relevant Charges.

(6) The Clearing House undertakes to the Chargor that it will at all times ensure that, pursuant to the terms governing any account with any Clearance System or Custodian Bank in which any Securities or cash (including any Distributions) are held for the Chargor, any claim or security interest which that Clearance System or Custodian Bank may have against or over such Securities or cash (including any Distributions) shall be limited to any unpaid fees owed by the Clearing House to such Clearance System or Custodian Bank in respect of such account.

3. **Charge**

(1) The Chargor acting in due capacity (as defined in sub-paragraph (3) below) (and to the intent that the security so constituted shall be a security in favour of the Clearing House extending to all beneficial interests in the assets hereby charged and to any proceeds of sale or other realisation thereof or of any part thereof including any redemption monies paid or payable in respect thereof) hereby assigns, charges and pledges by way of first fixed security and by way of continuing security to the Clearing House, until discharged by the Clearing House in accordance with this Deed, for the payment to the Clearing House and the discharge of all the Secured Obligations, the Charged Property (as defined in paragraph (3) below).

(2) It shall be implied in respect of Clause 3(1) that the Chargor is charging the Charged Property free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment) except for any charge or lien arising in favour of a Custodian Bank or Clearance System and for any third party's beneficial interest in the Charged Property which ranks behind the rights of the Clearing House in respect of the Charged Property.

(3) In this Deed:

"**acting in due capacity**" in relation to the Chargor means that each of the dispositions of property hereby effected by the Chargor is made with full title guarantee subject to any other charge or lien arising in favour of a Custodian Bank or Clearance System;

"**Cash Account**" means an account with a Custodian Bank in which the Clearing House will deposit and hold all monies forming part of the Charged Property from time to time;

"**Charged Property**" means at any time all present and future right, title and interest of the Chargor in and to:

(i) all Securities held by the Clearing House as custodian for the Chargor pursuant to Clauses 2A(1) and (2) which are for the time being held by, or by any Clearance System on behalf of, for the account of, to the order of or under the control or direction of the Clearing House; and

(ii) all Securities held by the Clearing House as custodian for the Chargor pursuant to Clauses 2A(1) and (2) which are for the time being held by, or by any Clearance System on behalf of, for the account of or to the order of or under the control or direction of a Custodian Bank, for the account of the Clearing House.

"**Clearance System**" shall be construed as a reference to any system from time to time used or constituted for the clearing, collective safe custody or central deposit of securities, and any depository for any of the foregoing;

"**Clearing Membership Agreement**" means in relation to the Chargor the "Clearing Membership Agreement" between the Chargor and the Clearing House having the date specified on the first page of this Deed, as such agreement may be amended and or replaced from time to time;

"**Custodian Bank**" means a bank or custodian with which the Clearing House maintains any Cash Account or any securities account in which it holds any Securities belonging to the Chargor or any nominee company or trust company which is a subsidiary of such a bank or custodian;

"**Deed**" means this charge made between the Chargor and the Clearing House on the date above-stated, as the same may be amended, supplemented or restated from time to time;

"Distributions" means all rights, benefits and proceeds including, without limitation, any dividends or interest, annual payments or other distributions attaching to or arising from or in respect of any Securities forming part of the Charged Property;

"**Procedures**" means the one or more documents containing the working practices and administrative requirements of the Clearing House for the purposes of implementing the Clearing House's Rulebook and Default Rules from time to time in force, or procedures for application for and regulation of clearing membership of the Clearing House;

"**Receiver**" means a receiver or manager or an administrative receiver as the the Clearing House may specify at any time in the relevant appointment made under this Deed, which term will include any appointee made under a joint and/or several appointment by the Clearing House; and

"**Securities**" shall be construed as a reference to bonds, debentures, notes, stock, shares, bills, certificates of deposit and other securities and instruments and all monies, rights or property which may at any time accrue or be offered (whether by way of bonus, redemption, preference, option, substitution, compensation or otherwise) in respect of any of the foregoing (and without limitation, shall include any of the foregoing not constituted, evidenced or represented by a certificate or other document but by any entry in the books or other records of the issuer, a trustee or other fiduciary thereof, or a Clearance System).

4. **Release**

(1) Upon the Clearing House being satisfied (acting in good faith) that the Secured

Obligations have been irrevocably paid or discharged in full, the Clearing House shall, at the request and cost of the Chargor, release or discharge (as appropriate) all the Charged Property from the security created by this Deed provided that, without prejudice to any remedy which the Chargor may have if the Clearing House fails to comply with its obligations under this Clause, such actions shall be without recourse to, and without any representations or warranties by, the Clearing House or any of its nominees.

(2) The Chargor may, in the circumstances specified in Sections 4.1.2 and 4.1.3 of the Procedures, request that part or all of the Charged Property, or the proceeds thereof, be returned or repaid to, or to the order of, the Chargor. Where, pursuant to such a request, any of the Charged Property, or the proceeds thereof, is actually returned or repaid pursuant to Sections 4.1.2 or 4.1.3 of the Procedures, such Charged Property shall be released or discharged (as appropriate) from the security interest created over such Charged Property and the proceeds thereof pursuant to Clause 3(1) with effect from the time such Charged Property, or the proceeds thereof, are transferred by the Clearing House to, or to the order of, the Chargor in accordance with the Procedures.

5. **Income**

Prior to the enforcemetn of the security created by this Deed, all Distributions received by the Clearing House in repsect of any Charged Property shall be paid by the Clearing House to the Chargor

6. **Reinstatement**

If any discharge, release or arrangement is made by the Clearing House in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor and the security created by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

7. **Warranties and Undertakings**

The Chargor hereby represents and warrants to the Clearing House and undertakes that:

(i) the Chargor is duly incorporated or organised and validly existing under the laws of its jurisdiction of organisation or incorporation;

(ii) the Chargor and each of its subsidiaries has the power to own its assets and carry on it business as it is being conducted;

(iii) subject to any legal or equitable interest which any common depository, Clearance System or Custodian Bank may have in any Securities and to any

third party's beneficial interest in the Charged Property which ranks behind the rights of the Clearing House in respect of the Charged Property, the Chargor is and will at all times during the subsistence of the security and security interest hereby constituted, be the sole and lawful owner of, and be entitled to the entire beneficial interest in, the Charged Property free from mortgages or charges (other than as a result of the security created under this Deed, any charge or lien arising in favour of any Clearance System or Custodian Bank and any charge in favour of the Chargor) or other encumbrances and no other person (save as aforesaid) has any rights or interests therein;

(iv) save as contemplated by Clause 5(2), the Chargor has not sold or agreed to sell or otherwise disposed of or agreed to dispose of, and will not at any time during the subsistence of the security hereby constituted sell or agree to sell or otherwise dispose of or agree to dispose of, the benefit of all or any rights, titles and interest in and to the Charged Property or any part thereof;

(v) the Chargor has and will at all material times have the necessary power to enable the Chargor to enter into and perform the obligations expressed to be assumed by the Chargor under this Deed;

(vi) this Deed constitutes a legal, valid, binding and enforceable obligation of the Chargor and is a security over, and confers a first security interest in, the Charged Property and every part thereof effective in accordance with its terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

(vii) all necessary authorisations to enable or entitle the Chargor to enter into this Deed have been obtained and are in full force and effect and will remain in such force and effect at all times during the subsistence of the security hereby constituted;

(viii) the execution of this Deed does not violate any agreement to which the Chargor is a party or breach any obligation to which the Chargor is subject;

(ix) it has been and shall at all times remain expressly agreed between the Chargor and each of the Chargor's clients or other persons who are for the time being (or would be, but for the provisions of this Deed) entitled to the entire beneficial interest in all or any parts of the Charged Property that, in relation to any assets from time to time held by the Chargor or delivered to the Chargor for the account of any such client or other person which at any time form part of the Charged Property, the Chargor may, free of any interest of any such client or other person therein which is adverse to the Clearing House, charge or otherwise constitute security over such assets with the result that the Chargor may charge or otherwise constitute security over such assets in favour of the Clearing House on such terms as the Clearing House may from time to time

prescribe and, in particular but without limitation, on terms that the Clearing House may enforce and retain such charge or other security in satisfaction of or pending discharge of all or any obligations of the Chargor to the Clearing House;

(x) in no case is the Chargor or the Chargor's client or other person who is for the time being the lawful owner of or person entitled to the entire beneficial interest in any part of the Charged Property, nor will the Chargor, client or other such person be, in breach of any trust or other fiduciary duty in placing or authorising the placing of any Charged Property (or rights, benefits or proceeds forming part of the Charged Property) under this Deed;

(xi) no corporate actions, legal proceedings or other procedure or steps have been taken in relation to, or notice given in respect of, a composition, compromise, assignment or arrangement with any creditor of the Chargor or in relation to the suspension of payments or moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of, or the appointment of an administrator to, the Chargor (other than any which will be dismissed, discharged, stayed or restrained within 15 days of their instigation) and no such step is intended by the Chargor (save for the purposes of any solvent re-organisation or reconstruction which has previously been approved by the Clearing House);

(xii) the Chargor undertakes to abide by the Procedures as in effect from time to time.

8. **Negative Pledge**

(1) The Chargor hereby undertakes with the Clearing House that at no time during the subsistence of the security hereby constituted will the Chargor, otherwise than:

(i) in favour of the Clearing House; or

(ii) with the prior written consent of the Clearing House and in accordance with and subject to any conditions which the Clearing House may attach to such consent,

create, grant, extend or, except in relation to any charge or lien in favour of any Clearance System or Custodian Bank, permit to subsist any mortgage or other fixed security or any floating charge or other security interest on, over or in the Charged Property or any part thereof. The foregoing prohibition shall apply not only to mortgages, other fixed securities, floating charges and security interests which rank or purport to rank in point of security in priority to the security hereby constituted but also to any mortgages, securities, floating charges or security interests which rank or purport to rank pari passu therewith or thereafter.

(2) Sub-paragraph (1) above does not, during the subsistence of the security hereby constituted, operate to prevent the Chargor from continuing to hold a security interest in the Charged Property previously created in favour of the Chargor, *provided always* that the interest in favour of the Chargor shall rank after the security created by this Deed.

9. **Preservation of Charged Property**

Until the security hereby constituted shall have been discharged:

(a) the Chargor shall ensure, so far as the Chargor is able, that all of the Charged Property is and at all times remains free from any restriction on transfer; and

(b) the Chargor shall pay all payments due in respect of any part of the Charged Property, and in any case of default by the Chargor in this respect the Clearing House may if it thinks fit make any such payments on behalf of the Chargor in which event any sums so paid shall be reimbursed on demand by the Chargor to the Clearing House and until reimbursed shall bear interest in accordance with Clause 2(2) above.

10. **Rights Attaching to the Charged Property**

(1) The Chargor shall not, to the extent that the same is within the control of the Chargor, permit or agree to any variation of the rights attaching to or conferred by the Charged Property or any part thereof without the prior consent of the Clearing House in writing.

(2) Subject to sub-paragraph (3), the Clearing House and its nominees may at the Clearing House's discretion (in the name of the Chargor or otherwise whether before or after any demand for payment hereunder and without any consent or authority on the part of the Chargor) exercise in respect of any Securities which form part of the Charged Property the powers and rights conferred on or exercisable by the bearer or holder thereof.

(3) The Clearing House shall not have any right of use or re-hypothecation right, in respect of the Charged Property, whether under Regulation 16 of the Financial Collateral Arrangements (No.2) Regulations 2003, the New York Uniform Commercial Code or any applicable Federal law of the United States or otherwise, *provided that* this provision shall not affect the powers of the Clearing House under Clauses 13 (*Power of Sale*) and 14 (*Right of Appropriation*) or any other rights to enforce the security interest herein created against the Charged Property.

11. **Further Assurance**

(1) In the case of any part of the Charged Property situated in the United States of America, it is acknowledged and agreed by the Chargor that this Deed shall

also constitute a security agreement for the purpose of creating a security interest in the Charged Property under applicable provisions of the Uniform Commercial Code or other applicable laws or regulations of the State of New York. For purposes hereof, "**Charged Property situated in the United States of America**" means (i) in the case of any securities account and/or securities entitlements or other rights or assets or investment property credited to a securities account as financial assets, a securities account maintained with a securities intermediary whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC; (ii) in the case of any deposit account and/or any amounts credited to a deposit account, a deposit account maintained with a bank whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC; and (iii) in the case of any commodity account or any commodity contract credited to a commodity account such commodity account is maintained with a commodity intermediary whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC . In furtherance of the foregoing and without limiting the generality of Clause 3 above, in order to secure the payment, performance and observance of the Secured Obligations, the Chargor hereby grants to the Clearing House a continuing security interest in, right of setoff against, and an assignment to the Clearing House of all of the Charged Property situated in the United States of America and all rights thereto, in each case whether now owned or existing or hereafter acquired or arising and which shall include, without limitation, all of the Chargor's interests in any deposit accounts, investment property and securities entitlements (as such terms are defined in the Uniform Commercial Code of the State of New York; the "**NY UCC**"), together with all Proceeds (as defined in the NY UCC) and products of all or any of the property described above.

(2) The Chargor undertakes promptly to execute and do (at the cost and expense of the Chargor) all such deeds, documents, acts and things as may be necessary or desirable in order for the Clearing House to enjoy a fully perfected security interest in the whole of the Charged Property, including without limitation the deposit of the Charged Property with a Custodian Bank and the perfection of pledges or transfers under such laws, of whatever nation or territory, as may govern the pledging or transfer of the Charged Property or part thereof or other mode of perfection of this Deed and the security interest expressed to be created hereby. Without limiting the foregoing, the Chargor agrees with and covenants to the Clearing House that with respect to all Charged Property situated in the United States of America consisting of investment property, money, instruments, securities, securities entitlements, other financial assets and commodity contracts (as defined in the NY UCC), such Charged Property shall be held, maintained or deposited, as applicable, in a securities account or commodity account (in the case of commodity contracts) (such that, in each case, the Clearing House shall become the entitlement holder thereof, as defined in the NY UCC) or a deposit account (as defined in the NY UCC), in the case of Charged Property that may be credited to a Deposit Account, in the name of the Clearing House, or, if permitted by the

Procedures, may be maintained and held in the Chargor's name at a Custodian Bank (whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC) which shall have executed and delivered to the Clearing House an agreement whereby such Custodian Bank agrees that it will comply with entitlement orders of the Clearing House without further consent by the Chargor. Notwithstanding anything to the contrary herein, in respect of any Charged Property situated in the United States of America, the Clearing House shall comply with all non-waivable requirements of the NY UCC with respect to how the secured party must deal with Collateral under its control or in its possession.

12. **Enforcement of Security**

On and at any time:

(i) if a Default Notice is served on the Chargor in accordance with Rule 3 of the Default Rules; or

(ii) if the Chargor requests the Clearing House to exercise any of its powers under this Deed,

(each such event a "**Default**"), the security created by or pursuant to this Deed is immediately enforceable and the Clearing House may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

(a) enforce all or any part of the security created by this Deed (at the times, in the manner and on the terms it thinks fit) and take possession of and hold, sell, or otherwise dispose of all or any part of the Charged Property (at the time, in the manner and on the terms it thinks fit); and

(b) whether or not it has appointed a Receiver, exercise all or any of the powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on chargees and by this Deed on any Receiver or otherwise conferred by law on chargees or Receivers.

13. **Power of Sale**

(1) If a Default has occurred, the Clearing House shall have and be entitled without prior notice to the Chargor to exercise the power to sell or otherwise dispose of, for any consideration (whether payable immediately or by instalments) as the Clearing House shall think fit, the whole or any part of the Charged Property and may (without prejudice to any right which it may have under any other provision hereof) treat such part of the Charged Property as consists of money as if it were the proceeds of such a sale or other disposal. The Clearing House shall be entitled to apply the proceeds of such sale or other disposal in paying the costs of such sale or other disposal and (subject to the rights or claims of

any person entitled in priority to the Clearing House) in or towards the discharge of the Secured Obligations, the balance (if any) to be paid to the Chargor or other persons entitled thereto. Such power of sale or other disposal shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925.

(2) The restriction contained in section 103 of the Law of Property Act 1925 on the exercise of the statutory power of sale shall not apply to any exercise by the Clearing House of its power of sale or other disposal which shall arise, as shall the statutory power under the said section 101 of appointing a receiver of the Charged Property or the income thereof, immediately upon any such default by the Chargor as is referred to in sub-paragraph (1) of this clause. In favour of a purchaser a certificate in writing by an officer or agent of the Clearing House that either or both of such powers has arisen and is exercisable shall be conclusive evidence of that fact.

(3) Upon any such default or failure as aforesaid the Clearing House shall also have with respect to any part of the Charged Property situated in the United States of America all of the rights and remedies of a secured party under the NY UCC or any other applicable law of the State of New York and all rights provided herein or in any other applicable security, loan or other agreement, all of which rights and remedies shall to the full extent permitted by law be cumulative.

14. Right of Appropriation

To the extent that any of the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**") the Clearing House shall have the right (at any time following the occurrence of a Default) to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be the market price of the Charged Property determined by the Clearing House by reference to a public index or by such other process as the Clearing House may select (acting in a commercially reasonable manner), including independent valuation. The parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

15. Immediate Recourse

The Chargor waives any right it may have of first requiring the Clearing House to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of this Deed to the contrary.

16. **Consolidation of Securities**

Subsection (1) of section 93 of the Law of Property Act 1925 shall not apply to this Deed.

17. **Effectiveness of Security**

(1) This Deed shall be in addition to and shall be independent of every other security which the Clearing House may at any time hold for any of the Secured Obligations. No prior security held by the Clearing House over the whole or any part of the Charged Property shall merge into the security hereby constituted.

(2) This Deed shall remain in full force and effect as a continuing security unless and until the Clearing House discharges it.

(3) Nothing contained in this Deed is intended to, or shall operate so as to, prejudice or affect any bill, note, guarantee, mortgage, pledge, charge or other security of any kind whatsoever which the Clearing House may have for the Secured Obligations of any of them or any right, remedy or privilege of the Clearing House thereunder.

18. **Avoidance of Payments**

If the Clearing House considers (acting in good faith) that any payment or discharge of the Secured Obligations is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws then such payment or discharge shall not be considered to have been made for the purposes of determining whether the Secured Obligations have been irrevocably paid or discharged in full.

19. **Power of Attorney**

The Chargor hereby irrevocably appoints the Clearing House to be the Chargor's attorney and in the Chargor's name and on the Chargor's behalf and as the act and deed of the Chargor to sign, seal, execute, deliver, perfect and do all deeds, instruments, mortgages, acts and things as may be, or as the Clearing House may consider to be, requisite for carrying out any obligation imposed on the Chargor under Clause 11 above, or for enabling the Clearing House to exercise its power of sale or other disposal referred to in Clause 13 above or for carrying any such sale or other disposal made under such power into effect, or exercising any of the rights and powers referred to in Clause 10 above, including without limitation the appointment of any person as a proxy of the Chargor. The Chargor hereby undertakes to ratify and confirm all things done and documents executed by the Clearing House in the exercise of the power of attorney conferred by this clause.

20. **Receivers and Administrators**

(1) At any time after having been requested to do so by the Chargor or after this Deed becomes enforceable in accordance with Clause 12 the Clearing House may by deed or otherwise (acting through an authorised officer of the Clearing House), without prior notice to the Chargor:

(a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Property;

(b) appoint one or more Receivers of separate parts of the Charged Property respectively;

(c) remove (so far as it is lawfully able) any Receiver so appointed; and

(d) appoint another person(s) as an additional or replacement Receiver(s).

(2) Each person appointed to be a Receiver pursuant to Clause 20(1) will be:

(a) entitled to act individually or together with any other person appointed or substituted as Receiver;

(b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Clearing House; and

(c) entitled to remuneration for his services at a rate to be fixed by the Clearing House from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

(3) The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Clearing House under the Law of Property Act 1925 (as extended by this Deed) or otherwise and such powers shall remain exercisable from time to time by the Clearing House in respect of any part of the Charged Property.

(4) Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Property in respect of which he was appointed, and as varied and extended by the provisions of this Deed (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

(a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;

(b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

(c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do;

(d) the power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise any subsequent delegation or any revocation of such power, authority or discretion by the Receiver itself; and

(e) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:

(i) any of the functions, powers, authorities or discretions conferred on or vested in him;

(ii) the exercise of any rights, powers and remedies of the Clearing House provided by or pursuant to this Deed or by law (including realisation of all or any part of the Charged Property); or

(iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Property.

(5) The receipt of the Clearing House or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Clearing House or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

(6) No purchaser or other person dealing with the Clearing House or any Receiver shall be bound to inquire whether the right of the Clearing House or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Clearing House or such Receiver in such dealings.

(7) Any liberty or power which may be exercised or any determination which may be made under this Deed by the Clearing House or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

21. **No liability**

Neither the Clearing House nor any receiver appointed pursuant to this Deed shall be liable by reason of (a) taking any action permitted by this Deed or (b) any neglect or default in connection with the Charged Property or (c) the taking possession or realisation of all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

22. **Remedies, Time or Indulgence**

(1) The rights, powers and remedies provided by this Deed are cumulative and are not, nor are they to be construed as, exclusive of any right of set-off or other rights, powers and remedies provided by law.

(2) No failure on the part of the Clearing House to exercise, or delay on its part in exercising, any of the rights, powers and remedies provided by this Deed or by law (collectively "**the Clearing House's Rights**") shall operate as a waiver thereof, nor shall any single or partial waiver of any of the Clearing House's Rights preclude any further or other exercise of that or any other of the Clearing House's Rights.

(3) The Clearing House may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person not party hereto (irrespective of whether such person is liable with the Chargor) in respect of the Secured Obligations or in any way affecting or concerning them or any of them or in respect of any security for the Secured Obligations or any of them, without in any such case prejudicing, affecting or impairing the security hereby constituted, or any of the Clearing House's Rights or the exercise of the same, or any indebtedness or other liability of the Chargor to the Clearing House.

23. **Costs, Charges and Expenses**

All costs, charges and expenses of the Clearing House incurred in the exercise of any of the Clearing House's Rights, or in connection with the execution of or otherwise in relation to this Deed or in connection with the perfection or enforcement of all security hereby constituted shall be reimbursed to the Clearing House by the Chargor on demand on a full indemnity basis together with interest from the date of the same having been incurred to the date of payment at the rate referred to in Clause 2(2) above.

24. **Accounts**

All monies received, recovered or realised by the Clearing House under this Deed (including the proceeds of any conversion of currency) may in the discretion of the Clearing House be credited to any suspense or impersonal account and may be held in such account for so long as the Clearing House shall think fit (with interest accruing thereon at such rate, if any, as the Clearing House may deem fit) pending their

application from time to time (as the Clearing House shall be entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations.

25. **Currency**

(1) For the purpose of or pending the discharge of any of the Secured Obligations the Clearing House may convert any monies received, recovered or realised or subject to application by the Clearing House under this Deed (including the proceeds of any previous conversion under this clause) from their existing currency of denomination into such other currency of denomination as the Clearing House may think fit, and any such conversion shall be effected at such commercial spot selling rate of exchange then prevailing for such other currency against the existing currency as the Clearing House may in its discretion determine.

(2) References herein to any currency extend to any funds of that currency and for the avoidance of doubt funds of one currency may be converted into different funds of the same currency.

26. **Notices**

(1) Any notice or demand (including any Default Notice) requiring to be served on the Chargor by the Clearing House hereunder may be served on any of the officers of the Chargor personally, or by letter addressed to the Chargor or to any of its officers and left at its registered office or any one of its principal places of business, or by posting the same by letter addressed in any such manner as aforesaid to such registered office or any such principal place of business.

(2) Any notice or demand (including any Default Notice) sent by post in accordance with paragraph (1) of this clause shall be deemed to have been served on the Chargor at 10 a.m. Greenwich Mean Time on the business day next following the date of posting. In proving such service by post it shall be sufficient to show that the letter containing the notice or demand (including any Default Notice) was properly addressed and posted and such proof of service shall be effective notwithstanding that the letter was in fact not delivered or was returned undelivered.

27. **Provisions Severable**

Each of the provisions contained in this Deed shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of each of the remaining provisions of this Deed shall not in any way be affected, prejudiced or impaired thereby.

28. **Clearing House's Discretions**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Clearing House may (save where stated to the contrary) be exercised or made in the absolute and unfettered discretion of the Clearing House which shall not be under any obligation to give reasons thereof.

29. **Law and Jurisdiction**

This Deed, and any non-contractual obligations arising herefrom, shall be governed by and construed in accordance with English law, and the Chargor hereby irrevocably submits to the non-exclusive jurisdiction of the English courts; provided that with respect to issues arising as a result of the provisions of Clause 11(1) above or the use of this Deed as a security agreement as provided therein, this Deed shall be governed by and construed in accordance with applicable laws of the State of New York.

The Chargor
Executed as a **DEED** by

The Chargor
[CHARGOR NAME]

.....
Signature of Director

.....
Name of Director

.....
Date

.....
Signature of Director/Secretary

.....
Name of Director/Secretary

.....
Date

The Clearing House
LCH. Clearnet Limited

.....
Signature of Director

.....
Name of Director

.....
Title of Director

.....
Date

Dated 2014

_____

and

LCH.CLEARNET LIMITED

CHARGE BY CLEARING MEMBER SECURING OWN OBLIGATIONS