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LCH.CLEARNET LIMITED

**OPINION ON MEMBERSHIP, INSOLVENCY, SECURITY, SET-
OFF AND NETTING, AND CLIENT CLEARING**

SINGAPORE

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LCH.Clearnet Limited
Opinion on Membership, Insolvency, Security,
Set-off and Netting, and Client Clearing (Singapore)

1. Introduction

1.1 We have been asked to provide an opinion in respect of the laws of Singapore in response to certain questions raised by LCH.Clearnet Limited ("**LCH**") in relation to matters concerning membership, insolvency, security, set-off and netting, and client clearing, where LCH offers clearing services to clearing members incorporated in Singapore.

1.2 For the purposes of this opinion, we have examined copies of the following:

- (a) the LCH rulebook, which includes (i) the general regulations, (ii) the default rules, (iii) the settlement finality regulations, (iv) the procedures, and (v) the product specific contract terms and eligibility criteria manual (but excluding the FCM Rulebook), as published on LCH's website as at 15 October 2015 (the "**Rulebook**");
- (b) the Clearing Membership Agreement in the form appended as Appendix 1 of this opinion (the "**Clearing Membership Agreement**");
- (c) the Deed of Charge to be entered into between a Clearing Member and LCH in the form appended as Appendix 2 of this opinion (the "**Deed of Charge**"); and
- (d) the Security Deed to be entered into between a Clearing Member and LCH in the form appended as Appendix 3 of this opinion (the "**Security Deed**"); and

The Rulebook, Clearing Member Agreement, the Deed of Charge and the Security Deed are referred to together as the "**LCH Agreements**". We have not seen or examined any other contract, instrument or document, nor any corporate records, shareholders resolutions, directors resolutions or constitutive documents of any party, nor have we made any enquiries concerning any party.

1.3 Our opinion is given in respect of clearing members ("**Relevant Clearing Members**") which are:

- (a) companies incorporated under the Companies Act, Chapter 50 of Singapore (the "**Companies Act**") (each a "**Company**");
- (b) branches of foreign companies registered under the Companies Act (each a "**Branch**"),

including banks, credit institutions, investment firms and funds constituted as a Company or a Branch, but excluding any company licensed as an insurance company under the Insurance Act, Chapter 142 of Singapore. A "**Corporation**" shall mean a Company or a Branch.

1.4 Our views expressed in this memorandum are limited to Singapore law of general application as at the date of this memorandum. We have made no investigation of, and do not express or imply any views on, the laws of any country other than Singapore.

- 1.5 Our advice is given in respect of the specific questions raised by LCH in their instructions to us (the "**Instructions**"). We express no opinion as to the validity or enforceability of any provisions of the LCH Agreements other than the matters on which we advise under paragraphs 2 and 3.
- 1.6 Words defined in the LCH Agreements shall, unless the context requires otherwise, have the same meaning when used in this opinion.
- 1.7 This opinion is subject to the following assumptions:
- (a) Each party (i) is lawfully able to and has all requisite capacity and power to enter into and to exercise its rights and perform its obligations under the LCH Agreements under the laws of its jurisdiction of incorporation and under its relevant constitutional documents, (ii) has taken all corporate action necessary to authorise its entry into and the exercise of its rights and performance of its obligations under the LCH Agreements and (iii) has duly executed and delivered the LCH Agreements.
 - (b) Each party has obtained all necessary consents, authorisations, licences or approvals to enter into the LCH Agreements and to perform its obligations thereunder and has complied with all the laws, rules and regulations of each jurisdiction applicable to the LCH Agreements.
 - (c) The LCH Agreements would, when entered into by each party, constitute legally binding, valid and enforceable obligations of each party under English law and all other applicable laws (other than Singapore laws).
 - (d) Each of the parties is acting as principal and not as agent or trustee in relation to its rights and obligations under the LCH Agreements and no third party has any right to, interest in or claim on any right or obligation of any party under the LCH Agreements.
 - (e) The LCH Agreements have been entered into, and each of the transactions thereunder is carried out, by each of the parties thereto as a commercial transaction in good faith, for the purpose of carrying on their respective businesses, for the benefit of each of them respectively, on arm's length commercial terms and for proper value.
 - (f) The LCH Agreements and all transactions thereunder are entered into, and all collateral granted or provided under the LCH Agreements is delivered prior to, the formal commencement of insolvency proceedings against any party and at a time when no party has actual notice or constructive notice of the insolvency of any other party, and no party becomes insolvent as a result of entering into the LCH Agreements or any transaction.
 - (g) No provision of the LCH Agreements has been varied, waived or discharged in any material respect.
 - (h) The parties intend the transactions as reflected on the face of the LCH Agreements and there are no dealings between the parties that affect any of the LCH Agreements or the transactions thereunder,

- (i) There are no provisions of the laws of any jurisdiction other than Singapore which would have any implication for the opinions we express, or which have been or would be contravened by the execution or delivery by any of the parties of the LCH Agreements and that, in so far as any obligation expressed to be incurred under the LCH Agreements is to be performed in or is otherwise subject to the laws of any jurisdiction other than Singapore, its performance of such obligation will not be illegal and such obligation will be valid and binding on and enforceable against the relevant party by virtue of the laws of that jurisdiction.
- (j) The choice of English law as the governing law of each of the LCH Agreements is made based on *bona fide* commercial reasons and not for the purpose of evading the requirements of any applicable law.
- (k) Any net amounts derived amount to a proper and valid assessment and valuation of the relevant outstanding amounts and obligations.
- (l) The security interests created under the LCH Agreements are in such form and contain such terms as is appropriate to create valid security interests under English law and under the laws of each jurisdiction (other than Singapore) where the assets are located, and all arrangements in relation to the creation and perfection of the security interests will be or have been fully carried out.
- (m) Where any property is transferred, the requirements of any laws (other than the laws of Singapore) governing the transfer of such property are complied with.
- (n) Any assets to be delivered or transferred as collateral are beneficially owned by the transferor or are delivered or transferred with the consent of the beneficial owner.
- (o) Where collateral posted under the LCH Agreements is cash, the collateral is in the form of cash credited to an account (as opposed to physical notes and coins) and denominated in a freely convertible currency.

In construing the LCH Agreements, we have assumed that the LCH Agreements would be interpreted under English law in the same way that they would be interpreted under Singapore law if they were governed by Singapore law.

2. Membership

General

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

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

Capacity

We have only addressed issues of capacity in relation to Relevant Clearing Members that are Companies. The capacity of a Relevant Clearing Member that is a Branch would be determined by reference to the laws of the jurisdiction in which it is incorporated or established. In the case of a Relevant Clearing Member that is a Company, the position depends on whether the company was incorporated before 1 April 2004. The Singapore legislature enacted amendments to the Companies Act which abolished the ultra vires doctrine. These amendments came into force on 1 April 2004. The amended Companies Act provides, in section 23(1), that a Company will have "full capacity to carry on or undertake any business or activity, do any act or enter into any transaction", and will have "full rights, powers and privileges" for this purpose. However, the amended Companies Act provides that this remains subject to the provisions of a Company's memorandum and articles of association. In particular, a Company may have its objects included in the memorandum of association, and the memorandum or articles of association of a Company may contain provisions restricting its capacity, rights, powers or privileges.

A Company which is incorporated on or after 1 April 2004 will, by virtue of section 23(1), have full capacity to enter into any type of transaction, subject to any restrictions in its constitutive documents. Accordingly, if the memorandum of association does not restrict the Company to particular activities, the Company will be able to enter into the LCH Agreements. On the other hand, if the memorandum of association lists the types of business that the Company may carry on, those provisions will have to be carefully scrutinised to see if they expressly or impliedly permit the Company to enter into the LCH Agreements.

However, in the case of a Company which was incorporated before 1 April 2004, there is some uncertainty as to the position of a Company that has not, following 1 April 2004, amended its memorandum of association to remove its existing objects clauses so as to take advantage of the expanded capacity under section 23(1). It is not clear whether the capacity of such a Company remains limited to the activities set out in its objects clauses, or whether it will now be broadened by section 23(1) to cover all activities (subject to any provisions which specifically restrict its capacity). In view of this uncertainty, we believe that the better view is that the capacity of the Company that was incorporated before 1 April 2004 is limited to the objects clauses as set out in its memorandum of association. Those provisions will have to be carefully scrutinised to see if they expressly or impliedly permit the Company to enter into the LCH Agreements.

Licensing Requirements

Relevant Clearing Members in Singapore may also be subject to licensing requirements under the Securities and Futures Act, Chapter 289 of Singapore (the "SFA") and/or the Commodities Trading Act, Chapter 48A of Singapore (the "CTA"), depending on the scope of activities undertaken by the Relevant Clearing Member.

A Relevant Clearing Member may trigger licensing requirements for:

- (a) dealing in securities, under the SFA¹;
- (b) trading in futures contracts, under the SFA; and/or
- (c) carrying on business as a commodity broker, under the CTA. A "commodity broker" is defined as a person (whether as principal or agent) who carries on the business of soliciting, or accepting orders, for the purchase or sale of any commodity by way of or relating to any "commodity contract". "Commodity contract" is a term which essentially captures certain types of OTC derivatives contracts with commodities as underlyings, but excludes commodities futures, which are regulated as trading in futures contracts.

The Monetary Authority of Singapore (the "**MAS**") released a Consultation Paper on 11 February 2015 setting out proposed amendments to the SFA. Amongst other things, the MAS is proposing to move certain licensing requirements from the CTA to the SFA. If such proposals are implemented, the SFA will be amended to include a new regulated activity for "dealing in capital markets products". The existing definition of "capital markets products" will be expanded to capture "derivatives contracts", which will capture derivative contracts with commodities as underlyings. The existing regulated activities of "dealing in securities" and "trading in futures contracts" will also be subsumed under the new regulated activity of "dealing in capital markets products".

We assume that all Relevant Clearing Members have obtained all necessary consents, licences and/or exemptions to enter into and to carry out their obligations under the LCH Agreements.

We address issues pertaining to registration of security interests in our responses to question 2.2.2 below.

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

Licensing issues

The establishment or operation of clearing facilities is a regulated activity under the SFA, and may only be conducted by an approved clearing house or a recognised clearing house. Section 339 of the SFA confers extraterritorial reach on these provisions by providing that where:

- (a) a person does an act partly in and partly out of Singapore; or
- (b) a person does an act outside Singapore which has a substantial and reasonably foreseeable effect in Singapore,

¹ "Securities" is defined to include debentures, stocks or shares, and any right, option or derivative in respect of such debentures, stocks or shares.

and that act would, if carried out in Singapore, constitute an offence under certain provisions of the SFA (including licensing requirements), that person shall be guilty of that offence as if the act were carried out by that person in Singapore and may be dealt with as if the offence were committed in Singapore.

Where LCH extends its clearing services to persons in Singapore, there is a risk that LCH would trigger the licensing requirements. As LCH is not incorporated in Singapore, it cannot obtain approval as an approved clearing house, but it may apply for recognition as a recognised clearing house. In addition, the Securities and Futures (Clearing Facilities) (Exemption) Regulation 2013 specifically provides that if LCH made an application to the MAS for approval or recognition during the period beginning on 1 August 2013 and ending on 1 November 2013, section 49(1) of the SFA (which sets out the licensing requirements for clearing houses) will not apply to LCH for the period beginning on 1 August 2013 and ending on the date on which the application is granted or withdrawn. Such applications are not a matter of public record and we do not have visibility as to whether such an application has been made. As of the date of this opinion, LCH is not an approved clearing house or a recognised clearing house.

We would further highlight that, depending on the scope of LCH's operations, it is possible that it may be technically regarded as "dealing in securities" or "trading in futures contracts" under the SFA. However, if it is recognised as a recognised clearing house, it would be exempted from the requirement to hold a capital markets services licence in respect of any regulated activity under the SFA that is solely incidental to its operation of a clearing facility.

Business presence

The Companies Act imposes business registration requirements on a person who carries on business in Singapore. "Carrying on business" is defined to include administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal representative or trustee and would connote some form of system and continuity. Whether LCH is considered to be carrying on business in Singapore is generally a question of fact and degree. Factors that may be taken into account in determining whether LCH is carrying on business in Singapore would include (a) the scale of activities performed in Singapore, (b) whether any decision making or management of business activities takes place in Singapore, and (c) whether any business contracts are concluded and signed in Singapore.

If LCH has no physical presence and employees in Singapore, LCH employees do not travel frequently to Singapore, and where the LCH Agreements and any other documentation or other agreements are executed outside Singapore, LCH is unlikely to be considered to be carrying on business in Singapore for the purposes of the Companies Act.

We express no opinion on whether LCH would be considered to be domiciled, resident or carrying on business in Singapore for the purposes of any tax laws.

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

As mentioned in our responses to question 2.1.1, LCH should obtain the memorandum and articles of association of a Relevant Clearing Member that is a Company in order to verify the Relevant Clearing Member's capacity to enter into the LCH Agreements.

LCH should also obtain a board resolution of such a Relevant Clearing Member to establish that it has authority to enter into the LCH Agreements, and that the signatories to the LCH Agreements are duly authorised to act on behalf of the Relevant Clearing Member. The board resolution should be passed in accordance with any requirements set out in the articles of association.

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

Generally, there are no formalities to be complied with in connection with a contract that is not a deed. A Company may enter into a contract, other than a deed, by way of execution thereof by a director or another person acting under the Company's authority, in accordance with its articles of association and a resolution of the board of directors. Whether or not the company is bound by the contract will depend, among other things, on the authority of the signatory, as described in question 2.1.3 above.

Execution of Deeds

There are certain execution formalities that must be complied with in respect of deeds. A Company may execute a deed by:

- (a) affixing the Company's common seal. It would be prudent to check the constitutional documents of the Company for the specific regulations for the affixing of the seal; or
- (b) by writing under its common seal empowering any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf. A deed signed by such agent or attorney on behalf of the Company and under his seal or under the appropriate official seal of the Company shall bind the Company and have the same effect as if it were under its common seal.

A foreign company may (subject to the laws and practices of its jurisdiction of incorporation) execute a deed by:

- (i) affixing its common seal; or
- (ii) appointing a person as the attorney of the corporation for that person to sign, seal and deliver the document as attorney for and on behalf of the foreign company. Such appointment should be in accordance with the laws and practices of the place in which the foreign company is incorporated. A witness should be present when the attorney is executing

the document and this should be evidenced by the witness signing in the space provided for such witnessing.

Registration of Security Interests

We address issues pertaining to registration of security interests in our responses to question 2.2.2 below.

2.1.5 Would the courts of Singapore uphold the contractual choice of law and jurisdiction set out in Regulation 51?

Singapore courts will uphold the contractual choice of law provided that the application of foreign law would not be contrary to public policy and that the choice is bona fide and legal.

The Singapore courts would respect the contractual choice of jurisdiction. However, even though the submission is expressed to be exclusive, a Singapore court would still have discretion to exercise jurisdiction and hear a dispute concerning the LCH Agreements.

We would note that Singapore signed the Hague Convention of 30 June 2005 on Choice of Court Agreements on 25 March 2015 (the "**Convention**"). The Convention is aimed at ensuring the effectiveness of choice of court agreements between parties to international commercial transactions. Broadly, the Convention provides that courts of a contracting state designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies. The Convention also provides for cross-border recognition and enforcement of judgments rendered by courts of contracting states. Singapore has signed but has not ratified the Convention as yet – accordingly, the Convention is not currently in force in Singapore.

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

English judgments are enforceable in Singapore by registration under statutory enactments or by a suit under common law.

Enforcement by Registration

The easier and faster method of enforcing a money judgment of a superior court of the United Kingdom of Great Britain and Northern Ireland is by registration under the Reciprocal Enforcement of Commonwealth Judgments Act, Chapter 264 of Singapore (the "**RECJ Act**"). Such judgment would be recognised and enforced by the courts in Singapore without re-examination of the merits provided that:

- (a) the judgment is duly registered in Singapore in accordance with the provisions of the RECJ Act and such registration is not set aside;
- (b) the superior court had jurisdiction over the relevant party (and for such purpose an express submission to such court will be sufficient to establish such jurisdiction);
- (c) that judgment was not obtained by fraud;

- (d) the enforcement of that judgment would not be contrary to public policy of Singapore; and
- (e) that judgment had not been obtained in contravention of the principles of natural justice.

Enforcement under Common Law

In general, a foreign judgment will be enforceable in a Singapore court if: (a) it is a final and conclusive judgment for the payment of a sum of money; (b) the foreign court had jurisdiction over the parties in that the relevant party was, at the time such proceeding was instituted, resident in the jurisdiction in which such proceeding had been commenced or had submitted to the jurisdiction of the relevant court; and (c) if the judgment was not procured in breach of the rules of natural justice (e.g. because notice of proceedings was not properly served on a party) or other principles.

Enforcement of Arbitration Awards

In the case of an English arbitration award, enforcement is permitted as the United Kingdom is a Contracting State under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded at New York on 10th June 1958 (the "**Convention**"). The Singapore High Court or a judge thereof, may, on application by a party, grant permission to enforce an award on an arbitration made pursuant to an arbitration agreement contained in any of the relevant documents if the party making the application produces:

- (a) the duly authenticated original award or a duly certified copy thereof; and
- (b) the original arbitration agreement under which the award purports to have been made or a duly certified copy thereof,

(each accompanied, if necessary, by a duly certified English translation thereof), and where permission is so granted, judgment may be entered in terms of the award.

In any proceedings in which the enforcement of the foreign award is sought, the Singapore High Court may refuse enforcement only if:

- (a) the person against whom enforcement is sought proves to the satisfaction of the court that:
 - (i) a party to the arbitration agreement in pursuance of which the award was made was, under the law applicable to him, under some incapacity at the time when the agreement was made;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the laws of the country where the award was made;
 - (iii) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;

- (iv) the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, the award may be enforced to the extent that it contains decisions on matters so submitted;
 - (v) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the laws of the country where the arbitration took place; or
 - (vi) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the laws of which, the award was made; or
- (b) the court finds that:
- (i) the subject-matter of the difference between the parties to the award is not capable of settlement by arbitration under the laws of Singapore; or
 - (ii) enforcement of the award would be contrary to the public policy of Singapore.

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

Singapore courts may refuse to uphold a contractual choice of law and/or to enforce foreign judgments where this would be contrary to public policy. In matters relating to a choice of law, this may include considerations of whether the choice of law is *bona fide* or whether it represents an attempt by the parties to avoid requirements of local law. In matters relating to enforcement of foreign judgments, public policy concerns may include considerations of whether there has been fraud in obtaining a judgment.

Insolvency, Security, Set-off and Netting

2.2 Please opine on insolvency proceedings (the "Insolvency Proceedings") and pre-insolvency reorganisation, restructuring and/or resolution measures (the "Reorganisation Measures") in respect of Relevant Clearing Members under the laws of Singapore and the effect of these on the security interests, and set-off and netting arrangements, provided for under the terms of the LCH Agreements.

2.2.1 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 or Rule 5 of the Default Rules? Are any other

events or procedures not envisaged in Rule 3 or Rule 5 of the Default Rules relevant?*Insolvency Proceedings*

In general, the types of insolvency proceedings to which a Relevant Clearing Member that is a Company may be subject in Singapore are the following:

- (a) Winding-up: A winding-up under Part X of the Companies Act. This may be (i) an involuntary winding-up effected by the court, (ii) a voluntary winding-up approved by a special resolution of its members or (iii) a voluntary winding-up at the end of the fixed term or upon the occurrence of some other event specified in the Company's articles of association and approved by an ordinary resolution of its members. A "members' voluntary winding-up" or solvent voluntary liquidation requires the directors of the Company to make a statutory declaration to the effect that they believe that the Company will be able to pay its debts in full within 12 months of the date of the declaration; a voluntary winding-up in which such a declaration cannot be given is a "creditors' voluntary winding-up" or insolvent liquidation. A provisional liquidator may be appointed by the court at any time after the making of a winding-up application and before the making of a winding-up order.
- (b) Judicial Management: Judicial management under Part VIIIA of the Companies Act (which does not apply to a Company which has gone into liquidation, or banks, finance companies and insurance companies licensed in Singapore, unless the public interest so requires). The Company, its directors or any of its creditors may make an application to court applying for a judicial management order and the court may make the order if it is satisfied that the Company is or will be unable to pay its debts and it considers that to do so would be likely to result in, *inter alia*, the survival of the Company, or the whole or part of its undertaking as a going concern or in a more advantageous realisation of the Company's assets than would be achieved upon a winding-up. The Companies Act expressly allows the court to apply any provisions on winding-up within Part X of the Companies Act to judicial management (and certain provisions of Part X of the Companies Act apply automatically under section 227X(b) of the Companies Act).
- (c) Arrangement: A compromise or arrangement under sections 210, 211, 212 and 309 of the Companies Act (an "**arrangement**") whereby proposals between the Company and its creditors (or a class of them) for a composition in satisfaction of its debts can, if resolved upon by the requisite number of creditors (and, in the case of section 210, if sanctioned by the court), bind all its creditors (or the relevant class).

In the case of a Relevant Clearing Member that is a Branch, it will not be subject to judicial management proceedings. However, winding up proceedings and arrangement proceedings may take place under the Companies Act in respect of a Branch.

These Insolvency Proceedings would be adequately captured under the Default Rules.

Reorganisation Measures

The MAS has powers to undertake the following Reorganisation Measures in respect of Singapore licensed banks, approved merchant banks and financial holding companies:

- (a) require the financial institution to immediately take any action or to do or not to do any act or thing in relation to its business as the MAS may consider necessary;
- (b) appoint one or more statutory advisers to advise the financial institution on the proper management of such of the business of the financial institution as the MAS may determine; or
- (c) assume control of or manage such of the business of the financial institution as the MAS determine, or appoint one or more statutory managers to do so.

The foregoing powers may generally be exercised if:

- (i) the financial institution is, or informs the MAS that it is or is likely to become insolvent or unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (ii) the MAS is of the opinion that the financial institution is or is likely to become insolvent, is or is likely to become unable to meet its obligations, is about to suspend payments, is carrying on business in a manner likely to be detrimental to depositors or policy owners, or has contravened applicable laws or its licence conditions; or
- (iii) the MAS considers it in the public interest to do so.

In addition, the MAS Act confers the following broad resolution powers on the MAS to deal with, inter alia, banks, insurance companies and other financial institutions:

- (a) Power to issue directions: Under section 30AAM, the MAS may issue directions or make regulations concerning any person that has ceased to be a specified financial institution², (a) in order to discharge, or facilitate the discharge of, any binding obligation of the person, or (b) where it is in the public interest to do so;

² A specified financial institution is defined to mean a "pertinent financial institution" (which would be a licensed bank, finance company, merchant bank, financial holding company, operator or settlement institution of a designated payment system, an approved exchange, recognised market operator, licensed trade repository, approved clearing house, approved holding company, holder of a capital markets services licence (other than a holder of a capital markets services licence who carries on a business in the regulated activity of providing credit rating services), an approved trustee for an authorised collective investment scheme or a licensed trust company) or an "excluded financial institution" (which would be a licensed or exempt financial adviser (other than a pertinent financial institution), a person exempted from the requirement to hold a capital markets services licence (other than a pertinent financial institution), a licensed insurer, a

- (b) Power to issue moratoriums: Under section 30AAO(1), the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution³, make an order prohibiting that specified financial institution from carrying on its significant business or from doing or performing any act or function connected with its significant business or any aspect thereof;
- (c) Power to apply for court orders: Under section 30AAO(2), the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution, apply to the Singapore High Court for certain orders (the duration of which may not exceed 6 months). These include orders that no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution, no steps shall be taken to enforce any security over any property of the specified financial institution, and/or that no steps shall be taken by any person to sell, transfer, assign or otherwise dispose of any property of the specified financial institution; and
- (d) Power to order a compulsory transfer of business, transfer of shares or compulsory restructuring of share capital: Under section 30AAS, the MAS may make a determination that (i) the whole or any part of the business of a transferor that is a pertinent financial institution shall be transferred to a transferee⁴, (ii) all or any of the shares held by a transferor in a pertinent financial institution incorporated in Singapore be transferred to a transferee; or (iii) the share capital of a pertinent financial institution incorporated in Singapore be reduced by the cancellation of any share capital (whether paid-up or not). The exact grounds on which the MAS exercise these powers would vary depending on the type of financial institution in question, but in the case of banks and merchant banks, would generally involve the same grounds on which the MAS' powers to appoint a statutory adviser or statutory manager (as described above) may be exercised. In making such a determination, the MAS would generally also have regard to factors such as the interests of affected persons of the transferor and the transferee and the stability of the financial system in Singapore. These powers are subject to approval by the Minister. In the case of a bank incorporated in Singapore, the Minister will not approve the transfer or the restructuring unless he is satisfied that it is in the national interest to do so.

We would highlight that speeches during parliamentary debates in Singapore and responses by the MAS to consultation papers on the resolution regime have made it clear that the policy intention in Singapore is to ensure that bilateral netting

registered insurance intermediary, a licensed money-changer, a licensed remitter, the holder of a stored value facility or a trustee-manager of a registered business trust).

³ In respect of this section 30AAO, a specified financial institution is as set out above in respect of section 30AAM, save that it does not include the trustee-manager of an approved business trust.

⁴ Where the transferor is incorporated or established outside Singapore, any determination shall only be in respect of the transferor's business which is reflected in the books of the transferor in Singapore in relation to the transferor's operations in Singapore.

arrangements are not defeated by the resolution framework. Section 30AAZN of the MAS Act, which makes specific provision for the enactment of regulations exempting set-off arrangements or netting arrangements from the provisions of Part IVB of the MAS Act (the powers set out in sub-paragraphs (a) to (d) directly above), was specifically enacted to address this. To date, such regulations have not been released, but our view is that the MAS would take the policy intent to uphold proper bilateral netting arrangements across all financial institutions (including banks and insurers) into account in exercising its powers under the MAS Act. We would note that the MAS previously had equivalent powers in respect of licensed banks and insurers to order moratoriums, apply to the High Court for orders, and to order compulsory transfers of business, but the MAS has not, to the best of our knowledge, exercised these powers in such a way as to affect the validity of netting arrangements. We are also not aware, to the best of our knowledge, of any exercise by the MAS of its powers under section 30AAS in such a way as to affect the validity of netting arrangements. Accordingly, we are of the view that the abovementioned resolution powers would not affect our conclusion in the response to question 2.2.3 below that the MAS is unlikely to exercise its resolution powers in such a way as to defeat the operation of LCH's set-off and netting rights under the Default Rules.

In addition, in June 2015, the MAS issued a Policy Consultation Paper on Proposed Enhancements to the Resolution Regime for Financial Institutions in Singapore (the "**Resolution Regime Consultation Paper**"). The Resolution Regime Consultation Paper sets out the MAS's policy proposals to further strengthen the resolution regime for financial institutions in Singapore, including *inter alia*, proposals relating to temporary stays on early termination rights on financial contracts.

Key features of the proposals on temporary stays are:

- (1) the MAS' power to implement the stay would be discretionary and may be triggered on the MAS' exercise of control or other resolution actions over a financial institution over which the MAS may exercise its resolution powers. Such financial institutions may include, *inter alia*, banks, finance companies, merchant banks, financial holding companies, insurers, operators or settlement institutions of designated payment systems, and capital markets services licensees;
- (2) the MAS is considering the appropriate scope of financial contracts that should be covered by the regime. However, this is expected to include financial contracts that have early termination and acceleration clauses; and
- (3) the stay will operate from the publication of a notification in the Singapore Government Gazette or any such date specified in the notification. The duration of the stay for financial contracts is generally intended to be up to two business days, or the earlier of the following dates:
 - (i) the completion of a transfer of business, shares, or restructuring of the financial institution in resolution; or

- (ii) the receipt of written notice from the MAS to the party that the financial contract will not form part of the business that is to be transferred.

Importantly, the MAS proposes to have the flexibility to specify a longer duration when imposing the stay (i.e. beyond two business days).

In the context of security interests, as enforcement of the security interest under the Deed of Charge depends on the service of a Default Notice in accordance with Rule 3 of the Default Rules, it is possible that such enforcement may be stayed if the early termination rights of LCH under the Default Rules are subject to the temporary stay. It is not clear at this point how the proposed resolution regime is intended to operate in the context of contracts with central clearing counterparties and whether any safe harbours will be introduced.

These Reorganisation Proceedings would be adequately captured under Rule 5(e) of the Default Rules.

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

Assuming that LCH has obtained a valid and perfected security interest under the Deed of Charge, and that there are no stays on the enforcement of the security interest, the Deed of Charge would be effective in the context of Insolvency Proceedings and Reorganisation Measures in respect of a Relevant Clearing Member, subject to our comments below. We describe the perfection requirements and the situations in which there may be a stay on enforcement of security below, before addressing the procedures for enforcement. Please refer to our responses in question 2.2.4 on enforceability of the security interest during certain suspect periods.

(a) Perfection Requirements

We assume that the collateral does not include Singapore government securities or securities issued by companies incorporated in Singapore listed on Singapore Exchange Securities Trading Limited and traded on a book-entry basis.

Notice Requirements

Under the conflict of law rules of Singapore, the law which governs the proprietary aspects of a security interest in collateral (other than cash collateral) is the law of the jurisdiction where the collateral is situate (the *lex situs*).

Where the *lex situs* is Singapore, and the Relevant Clearing Member has assigned to LCH (by way of security) any debts or choses in action, it

would be necessary to give a notice of assignment or charge to the relevant debtor. This is pursuant to the rule in the English case of *Dearle v Hall* which states that the priority of legal and equitable assignees of choses in action is governed by the order in which notice is given to the debtor. This is considered a perfection requirement as the failure to give the relevant notice will have the effect of postponing the priority of LCH's security interest over the chose in action. Written notice to the debtor is also needed for an assignment to take effect as a legal assignment (rather than only as an equitable assignment) under section 4(8) of the Civil Law Act, Chapter 43 of Singapore.

Registration

Separately, there may be registration requirements under the Companies Act. Unlike the requirement to give notice, which would only apply where the *lex situs* of the collateral is Singapore, the registration requirements are an overriding provision of Singapore law which apply regardless of whether the *lex situs* of the collateral is considered to be Singapore or not.

Under section 131 of the Companies Act, a charge created by a Company over certain assets (described below) is required to be registered with the Registrar of Companies in Singapore within 30 days of the creation of the charge (if the documents creating the charge are executed by the company in Singapore) or within 37 days after the creation of the charge (if the documents creating the charge are executed by the company outside Singapore). A failure to register the charge, if registration is required, renders the charge void as against the liquidator and any creditor of the company.

As for a charge created by a foreign company which would be registrable if created by a Company, the registration requirement will apply but only if the foreign company has a registered Branch and those assets are located in Singapore (for example, in the case of cash, if the cash is maintained with a bank account in Singapore). A foreign company which does not have a Branch does not have to comply with any such requirement.

The following charges are among those to which the registration requirements of the Companies Act apply:

- (a) charges over book debts: A charge over cash will have to be registered, if the cash constitutes a "book debt" of the Relevant Clearing Member. If a security interest extends to the dividends or interest payable on any securities, or to other rights or entitlements attaching to the securities, such security interest should be registered with the Registrar of Companies on the basis that it may constitute a charge over the book debts of the Relevant Clearing Member; and
- (b) floating charges: a floating charge over the undertaking or property of the Relevant Clearing Member, and this will include securities and cash (whether or not such cash constitutes a book debt of the

Relevant Clearing Member). We note that the Deed of Charge is expressed to be a first fixed charge. Notwithstanding this, there is a risk that if the Relevant Clearing Member has the right to use or substitute the Charged Property without the consent of LCH, LCH's security interest may be characterised under Singapore law as a floating charge rather than a fixed charge⁵.

In this regard, we note that Clause 4(2) of the Deed of Charge permits substitution of the Charged Property in the circumstances set out in Section 4.1.3 of the Procedures⁶, which appears to only give LCH the right to reject such substitution in very limited circumstances. If the effect of Clause 4(2) under English law is to allow the Clearing Member to substitute the Charged Property without LCH's consent, or where consent is only required in limited circumstances and/or LCH does not have discretion to withhold such consent, there is a risk that the Deed of Charge may be characterised as a floating charge instead of a fixed charge.

Stamp Duty

Under the Stamp Duties Act, Chapter 312 of Singapore (the "**Stamp Duties Act**"), the Deed of Charge may attract stamp duty of up to S\$500. Such stamping must be effected within 14 days of execution of the Deed of Charge if it was executed in Singapore, or within 30 days of the Deed of Charge being first brought into Singapore, if the Deed of Charge was executed outside Singapore. A document that is not stamped within the prescribed period(s) may still be stamped but would be subject to the payment of a penalty of up to four times the amount stampable. Failure to pay such stamp duty does not affect the validity or enforceability of the Deed of Charge, but it will render the Deed of Charge inadmissible as evidence before a Singapore court and other tribunals. The requirement to stamp the Deed of Charge applies if any mortgage (as defined in the Stamp Duties Act) is created or given therein over any immovable property in Singapore or over any stock or shares, unless such mortgage is over stock or shares and is executed under hand only. This requirement applies regardless of whether the *lex situs* of the Charged Property is Singapore or otherwise.

(b) Stays on Enforcement of Security

There may be delays or stays on the enforcement of security that arise upon the commencement of Insolvency Proceedings or Reorganisation Measures.

Insolvency Proceedings

⁵ We would also highlight that aside from the registration requirement under section 131, a floating charge will generally rank behind a fixed charge over the Charged Property whether created before or after the floating charge and behind certain preferential debts, and a floating charge is generally more vulnerable in the event of the winding-up of the Relevant Clearing Member.

⁶ We assume this refers to Section 1.1.3 of Section 4 of the Procedures.

- (i) Winding-up: Pursuant to section 258 of the Companies Act, in the case where a winding-up proceeding has been commenced against the Relevant Clearing Member, a stay of proceedings may be obtained by the Relevant Clearing Member or any creditor or member of the Relevant Clearing Member at any time after the making of the winding-up application and before the winding-up order is made by application to the court, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

If the security interest in favour of LCH is properly created, there is no requirement for LCH to obtain any judicial consent or approval prior to enforcing its security save in very limited circumstances such as where LCH intends to seek a remedy of foreclosure against the Charged Property. Accordingly, a stay of proceedings would generally not affect LCH's ability to enforce its security. In any case, section 258 is disapplied where LCH can rely on the Exempting Client Clearing Rules, as described in question 3.1 below.

- (ii) Judicial Management: If the Relevant Clearing Member is subject to judicial management proceedings, there may be the following delays in the enforcement of LCH's security interest:

- (1) During the period commencing on the making of an application for a judicial management order and ending on the making of such an order or the dismissal of the application, pursuant to section 227C(b) of the Companies Act, LCH may not take any step to enforce a charge or security against the Relevant Clearing Member's property and may not commence or continue actions and proceedings against the Relevant Clearing Member except with the leave of the High Court of Singapore.
- (2) During the period when the judicial management order is in force, pursuant to the provisions of section 227D(4) of the Companies Act, LCH may not take any step to enforce a charge or security against the Relevant Clearing Member's property and may not commence or continue actions and proceedings against the Relevant Clearing Member except with the leave of the High Court of Singapore or with the consent of the judicial manager.
- (3) If LCH wishes to seek the leave of the High Court of Singapore to enforce its security in the abovementioned circumstances, an application to the High Court by way of originating summons must be made. The length of time required for such a process depends on the circumstances of the application, including whether the application is opposed by the judicial manager. In the ordinary course, a period of approximately two to three months would

generally be required. However, if LCH is able to convince the High Court of the urgency of the application, it may be able to shorten this time period.

We would point out that the exercise by LCH of a right of proper set-off is not subject to the abovementioned delays. Further, such delays in the ability of LCH to enforce its security do not mean that LCH ceases to have a valid security interest in the Charged Property. LCH would continue to have such a security interest, which is valid as against the judicial manager or, as the case may be, the liquidator of the Relevant Clearing Member and which the judicial manager or, as the case may be, the liquidator would have to recognise.

Further, if for any reason the High Court declines to grant leave for the enforcement of LCH's security in the circumstances referred to in paragraphs (1) and (2) above and the Charged Property is subsequently sold by the judicial manager or, as the case may be, the liquidator, LCH will have the same priority in respect of the proceeds of such sale as LCH would have had in respect of the Charged Property. Accordingly, LCH will have the same priority over all other creditors of the Relevant Clearing Member in relation to the Charged Property (assuming that its security interest has been properly and validly created and ranks ahead of any other security created over the same Charged Property), including any preferential debtors of the Relevant Clearing Member. That said, it is open to the court to make an order under section 227X of the Companies Act to confer the same priority that applies by reason of section 328 of the Companies Act in an insolvent winding up to certain preferential creditors, such as to prevail over a floating charge.

If the proceeds of the sale of the Charged Property are insufficient to satisfy the amounts owing by the Relevant Clearing Member to LCH under the LCH Agreements, LCH may claim the balance of such amounts as an unsecured creditor of the Relevant Clearing Member.

- (iii) Arrangement: The effect of an arrangement is less certain as under Singapore law, the scheme of arrangement is theoretically capable of having an unlimited effect on the rights of creditors (subject to approval of the terms of the arrangement by the appropriate majority of the creditors). Accordingly, depending on the terms of the arrangement, the rights of a secured creditor to enforce its security or indeed, the rights of LCH to the Charged Property itself, may be compromised. However, as any

arrangement is only implemented after certain procedural steps have been taken (such as the convening of meetings of creditors) LCH should have sufficient time to enforce its rights under the Deed of Charge before LCH is bound by the arrangement. In addition, there will be a stay of proceedings if the court so orders but this should not, in principle, affect LCH's ability to enforce its security interest by means of out-of-court self-help remedies. In addition, the Exempting Client Clearing Rules provide that schemes of arrangement shall not prevent or interfere with any default proceedings (please see our responses to question 3.1, below).

Reorganisation Measures

The following stays of enforcement on security interests would also arise in connection with the commencement of Reorganisation Measures.

- (1) Moratoriums: The MAS may apply to the Singapore High Court under section 30AAO of the MAS Act for an order that no steps shall be taken to enforce any security over any property of the specified financial institution and/or that no steps shall be taken by any person specified in the order to sell, transfer, assign or otherwise dispose of any property of the specified financial institution.
- (2) Transfers: In the case of a transfer of business, a transfer of share capital or a compulsory restructuring, where the MAS has determined that one of these Reorganisation Measures is in order, the MAS is required to submit such determination to the Minister for approval. Before approving the determination, the Minister is required to (unless he determines that it is not practicable or desirable to do so) publish and provide to the transferor notice of his intention to approve the determination. During the period between the notice is published and ending on the day that the transfer or the compulsory restructuring comes into effect (which is a date specified by the Minister in a certificate of transfer or restructuring), the MAS Act provides that (a) no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution, (b) no steps shall be taken to enforce any security over any property of the specified financial institution, and (c) any sale, transfer, assignment or other disposition of any property of the pertinent financial institution shall be void.
- (3) Temporary Stay under Resolution Regime Consultation Paper: As mentioned under question 2.2.1 above, the temporary stay may, if implemented, prevent LCH from exercising its early termination rights and in turn, from enforcing its security interest for the duration of the stay.

(c) Formalities for Enforcement

Assuming that the LCH has obtained a valid and perfected security interest and that the foregoing stays on enforcement of security do not apply, under Singapore law, LCH as the secured party may immediately enforce its rights under the Deed of Charge upon the occurrence of a Default (as defined in the Deed of Charge) and apply the proceeds to satisfy the Relevant Clearing Member's outstanding obligations under the LCH Agreement in accordance with the provisions of Clauses 12 to 14 of the Deed of Charge. LCH may also proceed to enforce its security over the Charged Property without the requirement to give any notice to the Relevant Clearing Member as long as the Deed of Charge so provides, such as under Clause 13 (although it would be advisable to do so notwithstanding that it is not a requirement, in order to persuade the court to hold that LCH has acted reasonably). This is subject to the duty imposed on LCH under Singapore law to use reasonable efforts to obtain the best available price for the Charged Property which it or its agent is selling and to follow professional advice as to the best method of sale, pursuant to enforcement of such Charged Property.

The position is different if LCH wishes to sell the Charged Property to itself. Quite apart from the fact that LCH may be in the position of conflict of interest if it wishes to transfer title to itself and hold the Charged Property in a proprietary position instead of selling the Charged Property, the sale of the Charged Property by LCH to itself would be akin to a foreclosure on the Charged Property, and under Singapore law, LCH may not transfer title to itself without a foreclosure order and without following the proper procedures. The remedy of foreclosure is discretionary and since it is seen as confiscatory, will only be ordered by the court if the amount of debt outstanding exceeds the value of the security. The Relevant Clearing Member will usually be given six months to redeem the Charged Property before a foreclosure order nisi is made absolute and the foreclosure becomes effective.

Save as stated above, there are no other special formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the Relevant Clearing Member or any other person) or other procedures that LCH must observe or undertake in exercising its rights under the Deed of Charge.

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

affirmative, please identify those specific Insolvency Proceedings and/or Reorganisation Measures to which the answer applies and briefly explain your reasoning.

Insolvency Proceedings

If LCH obtains recognition as a recognised clearing house, the Exempting Client Clearing Rules (as described under question 3.1) will operate to disapply insolvency laws. In this case, LCH would have the right to take the actions provided for under the Default Rules, and such rights would be enforceable in the same manner as any other contractual term, subject to the following qualifications:

- (a) any enforcement of security interests will be subject to our comments under question 2.2.2 above. In particular, we note that Rule 6(e) of the Default Rules provides that LCH has the right to sell any security deposited by the Defaulter pursuant to Regulation 20 or any agreement made between the Defaulter and the Clearing House. Regulation 20(r) provides that all transfers of Collateral are effected on an outright title-transfer basis, save in respect of non-cash Collateral (which is subject to the terms of the Deed of Charge). With respect to Collateral that is not subject to the terms of the Deed of Charge, we assume that the transfers of such Collateral will not be recharacterised as security interests by an English court and that the parties have not, by their conduct, evidenced an intention to create a security interest in the transferred Collateral. Under Singapore law, we wish to point out that the concept of an absolute transfer of title of the Collateral rather than the creation of a security interest over such Collateral has not been tested in the Singapore courts and there is a risk that the transfer of the Collateral by the Relevant Clearing Member to LCH may be re-characterised by the Singapore courts as creating a security interest in favour of LCH, even where such transfers would not be recharacterised as creating a form of security interest by an English court. However, in our view, the risk of the Singapore courts adopting this approach is minimal as the Singapore courts are likely to give effect to the express intent of the parties provided they are acting in good faith and actually intend the transaction to take effect in the manner set out in the LCH Agreements. If these arrangements are recharacterised as a security interest, our comments in respect of perfection of security interests, stays of enforcement and formalities associated with enforcement, as described under question 2.2.2, would apply; and
- (b) where a Relevant Clearing Member is also a bank licensed under the Banking Act, the liabilities of the bank accorded priority under sections 61 and 62 of the Banking Act and the Payment and Settlement Systems (Finality and Netting) Act, Chapter 231 of Singapore⁷ shall have priority over

⁷ Sections 61 and 62 of the Banking Act provide that certain liabilities of a Singapore licensed bank relating to premium contributions, liabilities incurred by the bank in respect of insured deposits, and deposit liabilities incurred by the bank with non-bank customers will have priority over all unsecured liabilities of the bank other than preferential debts under the Companies Act. The Payment and Settlement Systems (Finality and Netting Act) provides for certain modifications to the law of insolvency in respect of transactions made under the rules of a payment system designated under that Act.

any unsecured liabilities of the bank arising from and after the settlement of market contracts, though this does not affect the settlement of market contracts in accordance with the business rules of LCH.

In our view, it is not necessary for LCH to specify that Insolvency Proceedings will constitute an Automatic Early Termination Event, as the commencement of Insolvency Proceedings will not restrain LCH from exercising its rights under the Default Rules.

Reorganisation Measures

Where Reorganisation Measures are implemented, this may result in:

- (a) a temporary stay on LCH's ability to exercise its early termination rights under the Default Rules;
- (b) directions or moratoriums issued by the MAS to the Relevant Clearing Member against carrying on its significant business or from doing or performing any act or function connected with its significant business (although this will not affect LCH directly); and/or
- (c) the MAS obtaining court orders against the enforcement of security and dispositions of property of the Relevant Clearing Member. (For discussions on stays on enforcement of security, please refer to question 2.2.2 above.)

The Exempting Client Clearing Rules will not apply to Reorganisation Measures. Accordingly, LCH's rights to take action under the Default Rules would be subject to any stays, moratoriums or court orders under the Reorganisation Measures. However, if there are no such stays, moratoriums or court orders, LCH should be able to enforce its rights under the Default Rules as a matter of contract. As described in our response to question 2.2.1 above, the policy intention in Singapore is to ensure that bilateral netting arrangements are not defeated by the resolution framework. Accordingly, we are of the view that the MAS is unlikely to exercise its resolution powers in such a way as to defeat the operation of LCH's set-off and netting rights under the Default Rules. In addition, we note that Section 1.3 of the Clearing Membership Agreement provides that the Clearing Membership Agreement, the terms of any other agreement to which LCH and the Relevant Clearing Member are party which relates to the provision of central counterparty and other services by LCH, each Registered Contract, the Rulebook and all amendments to any of the foregoing shall together constitute a single agreement between LCH and the Relevant Clearing Member. This should, in theory, reduce the risk of the MAS "cherry picking" – for instance, by exercising its powers to order a transfer of business of a Relevant Clearing Member and transferring some contracts under the LCH Agreements but not others.

LCH may wish to consider designating compulsory transfers of business, transfers of shares or compulsory restructurings of share capital events as Automatic Early Termination Events. However, this approach has not been tested in Singapore and it is not clear if it would enable LCH to terminate the LCH Agreements prior to the commencement of Reorganisation Measures and to avoid the stays that arise

as a result of Reorganisation Measures. Given that the Reorganisation Measures should not generally operate to extinguish LCH's rights under the Default Rules, we are of the view that it is not necessary to designate the Reorganisation Measures as Automatic Early Termination Events.

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

There are certain suspect periods as describe in further detail below. However if the Exempting Client Clearing Rules discussed under question 3.1 apply, these rules would operate to disapply these provisions.

If the Exempting Client Clearing Rules do not apply, in the event of the winding-up or the judicial management of the Relevant Clearing Member, the following transactions (which will include transfers of collateral by the Relevant Clearing Member) may be set aside.

Transactions at an undervalue

Under the Bankruptcy Act (the "**Bankruptcy Act**"), Chapter 20 of Singapore (which is applied to Corporations pursuant to the Companies Act), transactions entered at an undervalue at the relevant time may be set aside or varied by the court. A transaction is entered into at an undervalue if the Relevant Clearing Member:

- (i) makes a gift or otherwise enters into a transaction where no consideration is received; or
- (ii) enters into a transaction for a consideration the value of which, in money's worth, is significantly less than the value of the consideration provided.

The "**relevant time**" is defined as any time within a period of five years ending with the day of commencement of winding-up or judicial management. For this purpose, winding up should in principle have commenced on the earliest of:

- (a) the filing of the winding up application;
- (b) the passing of the winding up resolution; and
- (c) where a provisional liquidator has been appointed before the resolution for winding up had been passed, at the time when the declaration of the inability by reason of its liabilities of the company to continue its business is lodged with the Registrar of Companies.

In the case of judicial management, judicial management should for this purpose be regarded as having been commenced on the making of the judicial management application.

In addition, the Relevant Clearing Member must, at the time the transaction was entered into, be insolvent, or become insolvent immediately after the transaction.

Unfair preference

Under the Bankruptcy Act (which is applied to Corporations pursuant to the Companies Act), unfair preferences given at the relevant time may be set aside or otherwise altered by the court with a view to restoring the position of parties. An unfair preference is given by the Relevant Clearing Member to a person:

- (i) where that person is one of the Relevant Clearing Member's creditors or a surety or guarantor for any of its debts or other liabilities; and
- (ii) the Relevant Clearing Member does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the winding-up or judicial management of the Relevant Clearing Member, will be better than the position it would have been in if that thing had not been done.

The test for unfair preference is the requirement "that the bankrupt who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect" mentioned in paragraph (ii) above.

The "**relevant time**" for the purpose of unfair preference is:

- (aa) in the case of an unfair preference which is not a transaction at an undervalue and is given to a person who is connected to the Relevant Clearing Member, the period of two years ending with the day of commencement of winding-up or judicial management ("**that day**"); and
- (bb) in any other case of an unfair preference which is not a transaction at an undervalue, the period of six months ending with that day.

The relevant time is subject to one further qualification, i.e., the Relevant Clearing Member must when entering into the transaction be insolvent or become insolvent immediately after the transaction.

Floating charges

If a floating charge was created by a Company or Branch within six months of the commencement of its winding up, section 330 of the Companies Act provides that the floating charge will be invalid, unless it can be shown that:

- (i) the chargor was solvent at the time the floating charge was created; or
- (ii) the chargee advanced cash to the chargor when the charge was created or subsequently, in which case the charge will be valid to cover the amount of the cash advanced together with interest thereon at five per cent. per annum.

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

There is no specific netting legislation in Singapore. There are provisions dealing with mandatory insolvency set-off under the Bankruptcy Act, Chapter 20 of Singapore, which are imported to the Companies Act and apply upon the commencement of winding-up proceedings (and possibly judicial management proceedings) – however, these are disapplied by the Exempting Client Clearing Rules.

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

Yes -- it is possible to file a proof of debt in liquidation proceedings in Singapore for a debt payable in a currency other than Singapore dollars. However, when payments to creditors are made in the course of administering the insolvency, such payments will be made in Singapore dollars. Rule 181 of the Bankruptcy Rules provides that the amount of the debt shall be converted into Singapore dollars at the rate prevailing on the date of the bankruptcy order, such rate being determined as follows:

- (a) the rate will be the average of the buying and selling rates as published in a local newspaper on the date in question; and
- (b) in the absence of any such published rate, it shall be such rate as may be determined by the Official Assignee or the trustee in bankruptcy.

3. Client Clearing

Exempting Client Clearing Rule

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

If, and to the extent that, you consider such an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following questions that LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will not require those Relevant Clearing Members to which that Exempting Client Clearing Rule applies to enter into a Security Deed; and (ii) ignore questions 3.8 to 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 Relevant Clearing Members to enter into a Security Deed; (ii) assume that the Security Deed is legal, valid, binding and enforceable under English law (as its governing law) and complies with all relevant perfection requirements under the law of any jurisdiction(s) (other than Singapore) that you consider to be relevant to that matter; and (iii) provide a response to questions 3.8 to 3.10.

We are of the view that the provisions of Division 4 of Part III of the SFA would qualify as Exempting Client Clearing Rules. These provisions provide for the proceedings of a

recognised clearing house to take precedence over the law of insolvency, and would be available to LCH in respect of all Relevant Clearing Members as long as LCH obtains recognition as a recognised clearing house.

The Exempting Client Clearing Rules do not apply to Reorganisation Measures. However, as discussed in our response to question 2.2.3 above, we are of the view that the MAS should not generally exercise its resolution powers in a manner that would defeat netting arrangements, although some of LCH's rights under the Default Rules may be subject to temporary stays. Accordingly, we have assumed that LCH will be relying on the Exempting Client Clearing Rules and will not be requiring Relevant Clearing Members to enter into a Security Deed.

Briefly, Division 4 of Part III of the SFA provides that:

- (a) market contracts⁸, the provision of market collateral⁹, contracts effected by a recognised clearing house for the purpose of realising property provided as market collateral, dispositions of property in accordance with the recognised clearing house's business rules, market charges¹⁰, any default proceedings and related dispositions of property will not be invalid to any extent at law by reason only of inconsistency with any written law relating to distribution of the assets of a person on insolvency (section 81C(1), SFA);
- (b) an insolvency official or a court applying the law relating to insolvency in Singapore shall not exercise his or its power to prevent or to interfere with the settlement of a market contract in accordance with the recognised clearing house's business rules, or any proceedings or action taken under those business rules, or any default proceedings (section 81C(2), SFA);
- (c) schemes of arrangement under sections 210 and 309 (and consequentially, sections 211 and 212) of the Companies Act, as well as section 258 (court's power to restrain proceedings against the Relevant Clearing Member), and sections 260 and 299 (avoidance of certain attachments after commencement of winding-up) shall not prevent or interfere with any default proceedings (section 81D(3), SFA);
- (d) notwithstanding the rules relating to mandatory insolvency set-off, any net sum certified by the recognised clearing house upon the conclusion of default proceedings as payable by or to the defaulter, or the fact that no sum is payable, shall be provable in the bankruptcy or winding up, or payable to the insolvency official as the case may be, and taken into account where appropriate under

⁸ "Market contract" means:

- (a) a contract subject to the business rules of a recognised clearing house, which is entered into between the recognised clearing house and a participant pursuant to a novation (however described), whether before or after default proceedings have commenced, and which is in accordance with those business rules and for the purposes of the clearing or settlement of transactions using the clearing facility of the recognised clearing house; or
- (b) a transaction which is being cleared or settled using the clearing facility of a recognised clearing house, in accordance with the recognised clearing house's business rules, whether or not a novation referred to in (a) is to take place.

⁹ "Market collateral" means any property held by or deposited with a recognised clearing house, for the purpose of securing any liability arising directly in connection with the ensuring of the performance of market contracts by the recognised clearing house.

¹⁰ "Market charge" means a security interest over market collateral, whether fixed or floating, granted in favour of a recognised clearing house.

Singapore laws relating to proof of debts under the Bankruptcy Act or the Companies Act (section 81F, SFA);

- (e) the insolvency official's rights to disclaim onerous property and rules relating to void dispositions of property upon commencement of winding-up proceedings are disapplied (section 81G, SFA);
- (f) clawbacks and adjustments of prior transactions, such as orders may be made with respect to an unfair preferences or transactions at an undervalue, are disapplied (section 81H);
- (g) market collateral may be applied in accordance with the recognised clearing house's business rules or default rules notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the recognised clearing house had actual knowledge of the interest, right or breach at the time that the property was provided as market collateral, and notwithstanding that the property is deposited by the recognised clearing house in a trust account held for the benefit of a participant (section 81J, SFA); and
- (h) a Singapore court shall not recognise or give effect to an order of a court exercising jurisdiction under the law of insolvency of any place outside Singapore, or the act of any person appointed outside Singapore to perform a function under the law of insolvency in that place, insofar as the making of such order by a Singapore court or the doing of such act by a Singapore insolvency official would be prohibited (section 81L, SFA).

Default Outside Insolvency Proceedings or Reorganisation Measures

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

No, the Relevant Clearing Member or any other third party should not be able to challenge the actions of LCH. LCH's rights to port the Client Contracts and Account Balance should be enforceable in the same way as any other contractual provision.

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

No, the Relevant Clearing Member or any other third party should not be able to challenge the actions of LCH. LCH's rights to return the Client Clearing Entitlement should be enforceable in the same way as any other contractual provision.

Insolvency-related Default

- 3.4 If: (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could an insolvency officer appointed to the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?**

If LCH is a recognised clearing house, the Exempting Client Clearing Rules would prevent the challenge of such porting as it is conducted in accordance with LCH's business rules and default rules.

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

If LCH is a recognised clearing house, the Exempting Client Clearing Rules would prevent the challenge of the return of the Client Clearing Entitlement as it is conducted in accordance with LCH's business rules and default rules.

Reorganisation Measures

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

Where Reorganisation Measures are implemented, this may result in:

- (a) a temporary stay on LCH's ability to exercise its early termination rights under the Default Rules;
- (b) directions or moratoriums issued by the MAS to the Relevant Clearing Member against carrying on its significant business or from doing or performing any act or function connected with its significant business; and/or
- (c) the MAS obtaining court orders against enforcement of security and dispositions of property of the Relevant Clearing Member.

However, unlike Insolvency Proceedings, there are no specific clawbacks (such as those relating to transactions at an undervalue or unfair preferences) and no specific provisions governing set-off and netting. Accordingly, the actions of LCH would not generally be open to challenge unless such actions are conducted in breach of any stay, moratorium or court order under the Reorganisation Measures.

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

Please see our response to question 3.6 above.

Security Deed

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

On the assumption that LCH is relying on the Exempting Client Clearing Rules and will not be requiring the Relevant Clearing Member to enter into a Security Deed, this question is not applicable.

- 3.9 Are there any perfection steps which would need to be taken under the laws of Singapore in order for the Security Deed to be effective?**

On the assumption that LCH is relying on the Exempting Client Clearing Rules and will not be requiring the Relevant Clearing Member to enter into a Security Deed, this question is not applicable.

- 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 Relevant Clearing Member?**

On the assumption that LCH is relying on the Exempting Client Clearing Rules and will not be requiring the Relevant Clearing Member to enter into a Security Deed, this question is not applicable.

General

- 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 Relevant Clearing Member of Client Clearing Services and which are not covered by the questions above.**

We would bring to your attention the following pending development or change in the laws of Singapore. In October 2002, several proposals for changes to the laws of Singapore were published by a committee known as the Company Legislation and Regulatory Framework Committee (the "**CLRFC**"). These proposals have been accepted by the Singapore government and will therefore be implemented in due course. One change recommended by the CLRFC, and accepted by the government, was the consolidation and refinement of Singapore's insolvency legislation, which at present is set out in discrete portions of the Companies Act and in the Bankruptcy Act. There is therefore a possibility that, when this consolidation and refinement takes place, the insolvency laws could be amended in a way which affects the conclusions reached in this Memorandum. Following

the proposals of the CLRFC, the Minister for Law set up the Insolvency Law Review Committee (the "**ILRC**") to review the existing personal and corporate insolvency regimes. The ILRC has come up with key recommendations and the Ministry of Law is conducting a public consultation, from 7 October 2013 to 2 December 2013, on the key recommendations made in a final report by the ILRC in relation to Singapore's personal and corporate insolvency regimes -- this can be accessed at the following link: <http://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-ILRC-report.html>. The Ministry of Law issued its response to the feedback received from its public consultation on the report of the ILRC on 6 May 2014. At present, while much would depend on the final product or legislation, we do not believe that these proposals if implemented, should adversely affect the conclusions reached in this memorandum.

4. Qualifications

- 4.1 The terms "**enforceable**" and "**enforce**", as used in this opinion, means that the obligations assumed by the relevant party under the LCH Agreements are of the type which the Singapore courts enforce. This opinion is not to be taken to imply that any obligation would necessarily be capable of enforcement in all circumstances in accordance with its terms, as:
- (a) a Singapore court will not necessarily grant any remedy the availability of which is subject to equitable considerations or which is otherwise at the discretion of the court. In particular, orders for specific performance and injunctions are, in general, discretionary remedies under Singapore law and specific performance is not available where damages are considered by the court to be an adequate alternative remedy;
 - (b) claims may become barred under the Limitation Act, Chapter 163 of Singapore (the limitation period for any cause of action founded on a contract being six years from the date on which the cause of action accrued) or may be or become subject to the defence of set-off or to counterclaim;
 - (c) where any obligations of any person are to be performed or observed or are based on a matter arising in any jurisdiction outside Singapore or a person's obligations are subject to the laws of a jurisdiction outside Singapore, such obligations may not be enforceable under Singapore law to the extent that performance thereof would be illegal or contrary to public policy under the laws of such other jurisdiction;
 - (d) under Singapore law, any provision of which requires a party to pay amounts (including interest) on any overdue sum might not be enforced in full on the grounds that such provision does not constitute a genuine pre-estimate of the loss suffered in the circumstances therein envisaged;
 - (e) Singapore courts may refuse to give effect to any undertakings with respect to the costs of any unsuccessful proceedings brought before a Singapore court and may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before such courts;
 - (f) where under any provision of the LCH Agreements, a party is vested with a discretion or may determine a matter in its opinion, a court in Singapore would not

necessarily be thereby precluded from further enquiry to establish that such discretion was exercised reasonably or that such opinion was based on reasonable grounds;

- (g) any provision in the LCH Agreements providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent or manifestly incorrect and will not necessarily prevent judicial enquiry into the merits of any claim by an aggrieved party;
- (h) any provision in the LCH Agreements providing that amendments, variations or waivers may only be made or given by written instrument or providing for the deemed acceptance of any amendment, variation or waiver may not be effective;
- (i) a Singapore court may stay proceedings brought in such court if concurrent proceedings are being brought elsewhere;
- (j) in the case of the Deed of Charge and any other security interest under the LCH Agreements:
 - (i) we express no opinion on whether the provisions of the security interests are effective to create any security interest in relation to assets located outside Singapore;
 - (ii) any provision providing for the retention of security after satisfaction of payment obligations may not be effective;
 - (iii) a Singapore court may refuse to give effect to any provision in the LCH Agreements purporting to absolve any holder of a security interest from exercising a duty of care in relation to the enforcement of its security interests over any of the assets over which any security interest has been created; and
 - (iv) we express no opinion on the priority of any security interest, whether any asset in which a security interest is purported to be created pursuant to the LCH Agreements is now or may become subject to any equities or subject to any right or interest of any person ranking now or in the future in priority to or free of that security, nor whether any such asset could be transferred to any other person free of that security.

5. Reliance

This opinion is solely for the benefit of the LCH only and solely in connection with the questions answered herein with respect to the LCH Agreements. It is not to be transmitted to anyone else or quoted or referred to in any public document or filed with anyone without our express consent. We consent to a copy of this opinion being made publicly available by LCH on its website for information purposes only, and solely on the basis that no person (other than LCH) can rely on this opinion and we assume no responsibility to any person other than LCH in relation to the contents of this opinion.



Allen & Gledhill LLP
31 March 2016



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. 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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LCLTD/TRAIN/CMA-05/05(0.1)

2014

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 enforcement of the security created by this Deed, all Distributions received by the Clearing House in respect 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 its 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 4(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**

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)