Our ref: P2C

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18 April 2016

Dear Sirs

Opinion letter in respect of the LCH.Clearnet Limited EMIR-compliant model

You have asked us to provide advice in respect of the laws of Ireland in response to certain specific questions raised by LCH.Clearnet Limited ("LCH") in relation to membership, insolvency, security, set-off and netting and client clearing.

The relevant questions are set out in full in Section 3 of this opinion letter (the "Opinion") together with the corresponding responses.

1. TERMS OF REFERENCE

1.1 This Opinion is given in respect of the following types of Clearing Members (each such Clearing Member an "Irish Clearing Member" or a "Relevant Clearing Member"), namely Clearing Members which are:

(a) banks incorporated in Ireland which have permission under section 9 of the Central Bank Act 1971 to accept deposits ("Irish Banks"); and

(b) investment firms (within the meaning of MiFID) incorporated in Ireland ("Irish Investment Firms"),

and which, in each case, are either Irish companies or Royal Charter Corporations.

1.2 For the purposes of this Opinion, "Backup Clearing Member" (as such term is defined in Regulation 1 of the General Regulations section of the Rulebook) shall be deemed to include an Irish Clearing Member only.

1.3 For these purposes, an "Irish company" is a company which is formed and registered under the Companies Act 2014 (the "CA 2014") or the prior Companies Acts (as defined in section 2 of the CA 2014).

1.4 The opinions contained in this Opinion are not limited to any specific Services offered by LCH but do not apply to Services offered by FCM Clearing Members in respect of FCM Contracts.

1.5 Except where otherwise defined herein, terms defined in the Rulebook (as defined below) shall have the same meaning in this Opinion.
1.6 In this Opinion, unless otherwise indicated:

(a) "Agreements" means the Clearing Membership Agreement and the Deed of Charge;

(b) "Arrangements" means the Collateral Arrangements and the Default Arrangements;

(c) "BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;

(d) "BRRD Regulations" means the European Union (Bank Recovery and Resolution) Regulations 2015 (which implement the BRRD into Irish law);

(e) "CC Opinion" means the English law opinion of Clifford Chance LLP dated 12 June 2014, addressed to LCH and entitled "Opinion letter in respect of the LCH.Clearnet Limited EMIR-compliant model";

(f) "Charged Property" has the meaning ascribed to such term in the Deed of Charge;

(g) "Clearing Member" has the meaning given to that term in the introductory section of the General Regulations section of the Rulebook;

(h) "Clearing Membership Agreement" means a clearing membership agreement which is substantially in the form of the Clearing Membership Agreement set out in Schedule 1;

(i) "Collateral" has the meaning given to that term in Regulation 1 of the General Regulations section of the Rulebook;

(j) "Contract" has the meaning given to that term in Regulation 1 of the General Regulations section of the Rulebook;

(k) "Client Contracts" means the Contracts entered into by a Clearing Member in respect of its Client Clearing Business;

(l) "Collateral Arrangements" means the security arrangements provided for in the Rulebook pursuant to which a Clearing Member provides Collateral to LCH;

(m) "CRR" means Regulation (EU) No 575/2013 of the European Parliament and the Council;

(n) references to a "designated system" are to a designated system within the meaning of and for the purposes of the Irish Settlement Finality Regulations;

(o) "CIIWUD Regulations" means the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011;

(p) "Deed of Charge" means a deed of charge entered into between a Clearing Member and LCH which is substantially in the form of the Deed of Charge set out in Schedule 2;

(q) "Default Arrangements" means the default management procedures of LCH, provided for in the Rulebook, including, in particular, under the
Default Rules and, in respect of Client Contracts, under the Client Clearing Annex to the Default Rules;

(r) **"Insolvency Proceedings"** means the procedures described in paragraph 3.2.1;

(s) **"Ireland"** means Ireland excluding Northern Ireland;

(t) **"MiFID"** means the Markets in Financial Instruments Directive (Directive 2004/39/EC);

(u) **"MiFID Regulations"** means the European Communities (Markets in Financial Instruments) Regulations 2007;

(v) **"Netting Act"** means the Netting of Financial Contracts Act 1995;

(w) **"Part VII"** means Part VII of the Companies Act 1989 of the United Kingdom;

(x) **"Party"** means LCH or a particular Clearing Member, and **"Parties"** means both of them;

(y) **"Rulebook"** means the version of the General Regulations, Procedures, Default Rules, UK Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual each as made available on the date of this Opinion at http://www.lchclearnet.com/rules-regulations/rulebooks/ltd; and

(z) **"Secured Obligations"** has the meaning ascribed to such term in the Deed of Charge;

the following principles of interpretation apply:

(aa) a reference to **"this opinion"** is to the opinion given in Section 3;

(bb) a reference to **"EMIR"** is to Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (and includes implementing measures and standards);

(cc) a reference to a **"financial collateral arrangement"** is to an arrangement defined as such in the European Communities (Financial Collateral Arrangements) Regulations 2010 (the **"Irish FCA Regulations"**) which implement into Irish law Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the **"Collateral Directive"**);

(dd) a reference to the **"Irish Settlement Finality Regulations"** is to the European Communities (Settlement Finality) Regulations 2010 which transpose into Irish law Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (the **"Settlement Finality Directive"**);

(ce) a reference to the **"UK Settlement Finality Regulations"** is to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 of the United Kingdom;
any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this Opinion;

unless the context otherwise requires, a reference to a “paragraph” is a reference to a paragraph of this Opinion, a reference to a “Section” is to a Section of this Opinion and a reference to a “Schedule” is a reference to a Schedule to this Opinion; and

headings are for ease of reference only and shall not affect the interpretation of this Opinion.

1.7 For the purposes of preparing this Opinion we have only reviewed the following documents (the “Opinion Documents”):

(a) the Rulebook;
(b) the Clearing Membership Agreement; and
(c) the Deed of Charge.

We have also reviewed the CC Opinion (and have assumed without investigation that it is correct in all material respects).

1.8 This opinion is given in respect of the specific questions raised by you as set out in paragraph 3.

1.9 In this opinion, references to the word “enforceable” and cognate terms are used to refer to the legal character of the obligations assumed by the relevant party under the relevant instrument. It implies no more than the obligations are of a character which the laws of Ireland recognise and will, in certain circumstances, enforce. In particular, it does not mean or imply that the relevant instrument will be enforced in all circumstances in accordance with its terms or by or against third parties or that any particular remedy will be available.

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

1.11 We do not express any opinion as to any matters of fact, the liability of any Party to tax or accounting policy.

1.12 We do not opine on the enforceability of any net obligation resulting from any netting or set-off, including any net obligation certified as payable to LCH and we do not express any view as to the effectiveness of the Default Arrangements in relation to any action which LCH may seek to take outside Ireland.

1.13 We express no opinion as to any provisions of the Opinion Documents other than those to which express reference is made in this Opinion except insofar as any such provisions directly relate to issues covered herein.
1.14 We have not been responsible for advising any party to the Opinion Documents other than LCH for the purposes of this Opinion and the communication of this Opinion to any person other than LCH does not evidence the existence of any relationship of client and adviser between us and such person.

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

2. ASSUMPTIONS

We assume the following:

2.1 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Opinion Documents and Contracts and to perform its obligations under the Opinion Documents and Contracts.

2.2 That each Party has taken all necessary steps and obtained and maintained all authorisations, approvals, licences and consents necessary to execute, deliver and perform the Opinion Documents and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Opinion Documents and the Contracts in Ireland and any other jurisdiction.

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

2.4 That the Agreements are entered into between the Parties prior to the formal commencement of any insolvency procedure under the laws of any jurisdiction in respect of the Clearing Member.

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

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

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

2.8 In entering into the Opinion Documents and each Contract, no Clearing Member is committing fraud or intends to prefer one creditor over another or to put assets beyond the reach of its creditors or is entering into any transaction otherwise than on arm’s length terms.

2.9 That, as a matter of the laws of England (as the governing law of the Opinion Documents and, we assume, the location where the Charged Property is located) the Deed of Charge creates an effective security interest in favour of LCH and the qualified ownership of the Charged Property remains with the Clearing Member.
2.10 That the Clearing Member is not a “bridge institution” as defined in the BRRD Regulations or the Central Bank and Credit Institutions (Resolution) Act 2011.

2.11 That LCH (as a whole) is at all times a single system designated in, and respect of which the required notifications have been made to the European Securities and Markets Authority by, the United Kingdom for the purposes of the UK Settlement Finality Regulations and the Settlement Finality Directive.

2.12 The each Contract results in the assumption or discharge of a payment obligation under the Rulebook.

2.13 That LCH is a central counterparty authorised in accordance with EMIR.

2.14 That, apart from any circulars, notifications and equivalent measures published by LCH in accordance with the Rulebook, there are no other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Opinion Documents.

2.15 That the Charged Property delivered pursuant to the Deed of Charge constitutes financial collateral (as defined in the Irish FCA Regulations) comprising book-entry securities.

2.16 That all Collateral comprise cash or financial collateral (as defined in the Irish FCA Regulations) comprising book-entry securities.

2.17 That title to the Charged Property is evidenced by entries in a register or account maintained by or on behalf of an “intermediary” and that the “relevant account” (each as defined in the Irish FCA Regulations) is located in England.

2.18 That the Deed of Charge secures only obligations that give rise to a cash settlement or the delivery of financial instruments (or both).

2.19 That the provision of Charged Property to LCH can be evidenced in writing or by electronic means and any other durable medium and that such evidencing permits the identification of the Charged Property (provided that, for this purpose, it is sufficient to prove that the Charged Property taking the form of book-entry securities has been credited to, or forms a credit in, the relevant account).

2.20 That LCH at all times exercises its rights under the Opinion Documents and does not waive any requirement for it to consent to the withdrawal of any Charged Property.

2.21 That all Charged Property transferred is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of Charged Property will have been effectively carried out.

2.22 That, in respect of the Clearing Member, no conditions, limits, restrictions or requirements have been or will be imposed, that no direction, order or proposed order has been or will be given or made pursuant to the Credit Institutions (Financial Support) Act 2008, the Credit Institutions (Financial Support) Scheme 2008, the National Asset Management Agency Act 2009, the Credit Institutions (Stabilisation) Act 2010, the Central Bank and Credit Institutions (Resolution) Act 2011, the BRRD Regulations or Council Regulation (EU) No.1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.
3. **OPINION**

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

**MEMBERSHIP**

*Q1. Are there any statutory limitations on the capacity of, or specific regulatory requirements associated with, any Irish Clearing Member entering into the Agreements (including for the purpose of granting of security under the Deed of Charge)?*

3.1 There are no specific statutory limitations or regulatory requirements which would limit the capacity of an appropriately authorised Clearing Member to enter into the Agreements. We have assumed for the purpose of this Opinion that an Irish Clearing Member has obtained the requisite regulatory licences and approvals (see paragraph 2.2 above).

3.2 However, we note that a person’s failure to hold an appropriate licence under the MiFID Regulations can lead to contracts entered into by that person being unenforceable under Regulation 153 of the MiFID Regulations. Therefore, an unauthorised Irish Clearing Member would be unlikely to be able to enforce the terms of the Opinion Documents and/or Contracts against LCH (although an Irish Bank will not be unauthorised in this sense as its licence under section 9 of the Central Bank Act 1971 de facto permits it to undertake MiFID investment services).

3.3 The potential limitations imposed by the constitutional documents of an Irish Clearing Member and the restrictions limiting the capacity of directors of an Irish Clearing Member to enter into the Agreements on behalf of the Irish Clearing Member are discussed below.

*Q2. Would LCH be deemed to be domiciled, resident or carrying on business in this jurisdiction by virtue of providing clearing services to a Clearing Member? If so, would LCH be required to obtain a licence or be registered before providing clearing services to a Clearing Member or are there any special local arrangements for the recognition of overseas clearing houses in these circumstances?*

3.4 LCH would not be deemed to be domiciled or resident in Ireland by virtue of providing clearing services to a Clearing Member. However, it is likely that LCH would, *prima facie*, be deemed to be carrying on business in Ireland by virtue of providing clearing services to a Clearing Member.

3.5 There are two possible ways in which LCH could be viewed as carrying on business in Ireland:

(a) Firstly, under the Central Bank Act 1997 which imposes a licence requirement on “payment systems” being “a system established in the State, or proposed to be established in the State, by any person, in which credit institutions or financial institutions participate and which provides for—(a) all or any of the following, namely, the processing, handling, clearance and settlement of any means of payment or of any securities, or (b) the payment of any moneys by that means of payment, by or as between the members of the system or third parties, whether or not the processing, handling, clearance, settlement or payment of any of the moneys takes place in part or in whole within the State or outside the State”.

However, in our view LCH would not
be viewed as “established in the State” for the purposes of the payment system licensing regime simply by providing clearing services to Irish members as, in our view, “established” should be given its natural meaning, requiring some form of physical presence. As such, in our view, LCH should not trigger the payment system licensing regime.

(b) Secondly, we have considered the possibility of whether under the MiFID Regulations LCH could be viewed as “dealing on own account”. There is a good case for this not applying on the basis of LCH being a central counterparty (and so not trading against proprietary capital and hence not dealing on own account). However, even if LCH potentially triggers the MiFID Regulations (on the basis of it being regarded as dealing on own account), Regulation 8 of the MiFID Regulations contains a licensing exemption which is of assistance given that LCH holds, as far as we are aware, no MiFID related permissions in the EU. Whilst most commonly used by non-EU persons providing services in Ireland, Regulation 8 also exempts persons with no branch in Ireland whose head or registered office is in a Member State outside Ireland (e.g. the UK) where the person does not provide any investment services in respect of which it is required to be authorised in its home Member State for the purposes of MiFID. Regulation 8 should apply to LCH and hence exempt it from regulation under the MiFID Regulations.

As such, LCH should not be required to obtain a licence or be registered before providing clearing services to a Clearing Member in Ireland.

Q3. What type of documents should be obtained by LCH to evidence that an Irish Clearing Member and its officers have the capacity and authority to enter into the Agreements? Is LCH required to verify such evidence?

Constitutional Documents

3.6 Background: Companies Act

(a) The focus of CA 2014 is on a new-form private company limited by shares (commonly known as an “LTD”) and while it is expected that, over time, a significant number of Irish companies will be incorporated as, or will convert to, an LTD to avail of the various advantages open to such companies, it should be noted that Section 18 of CA 2014 provides that a credit institution may not be an LTD. As a result, the law in relation to LTDs is only of potential relevance to a Clearing Member that is an Irish Investment Firm and is incorporated as, or converts to, an LTD. Where the Relevant Clearing Member is an Irish Bank, this Opinion assumes that it is one of the following types of company contemplated by CA 2014: a designated activity company (“DAC”) (similar to the old-form private company limited by shares) or a public company limited by shares (“PLC”).

(b) Private companies limited by shares incorporated in Ireland prior to 1 June 2015 are deemed (in the absence of taking formal steps to re-register as a DAC) to be DACs until 30 November 2016 (following which they will be deemed to be LTDs, and will have to immediately re-register if they are credit institutions or insurance undertakings). Note that credit institutions cannot be LTDs. Accordingly we would expect (and have assumed for the purposes of this opinion) that any Irish Clearing Member that is an Irish Bank and remains a deemed DAC will formally convert to a DAC well before 30 November 2016.
3.7 Constitutional Documents – LTD

(a) Section 38 of the CA 2014 provides that, notwithstanding anything contained in its constitution, an LTD has full and unlimited capacity to carry on and undertake any business or activity, do any act or enter into any transaction. Section 38 goes on to confirm that, for those purposes, an LTD shall have full rights, powers and privileges. As such, the doctrine of ultra vires has been abolished for this type of company and it does not have an objects clause. Its constitutional documents will comprise only one document, known as its “constitution” which (unlike a PLC or a DAC) will not be subdivided into a Memorandum of Association and Articles of Association. In practice, a party transacting with an LTD will still obtain a certificate from a director (noting that an LTD need only have one director, but may have more than that) or the company secretary (who, where there is only one director, cannot be the same person). That certificate should attach its certificate(s) of incorporation, constitution, board resolutions, a list of directors and the secretary and specimen signatures for those executing the documents. That certificate should confirm that all of the attachments are true and up-to-date, and that the board resolutions have not been amended or revoked and remain in full force and effect.

3.8 Constitutional Documents: DAC

(a) A DAC is required to have a Memorandum and Articles of Association (together referred to as its “constitution”) and must also have an objects clause. A DAC has the capacity to do anything stated in its objects clause and Section 973(1) of the Companies Act attempts to mitigate the effect of the ultra vires doctrine by providing that the validity of a DAC’s act cannot be called into question on the grounds of lack of capacity by reason of anything contained in the DACs objects. However, a shareholder in a DAC can bring proceedings to restrain the DAC from doing an act which would be ultra vires. In light of this, when transacting with a DAC in circumstances where it is unclear whether the transaction comes squarely within the DAC’s objects, it is usual to look for an amendment to the objects clause (which will require a special resolution of the shareholders).

(b) Section 973(5) of CA 2014 provides that a party transacting with a DAC is not obliged to enquire whether the transaction is permitted by the DACs objects. However, if that party has actual knowledge that the transaction is ultra vires, in practice it may be unlikely to be able to rely on this subsection.

(c) In light of the above, a party transacting with a DAC should obtain a certificate from a director or the company secretary of the DAC, attaching its certificate(s) of incorporation, constitution, board resolutions, a list of the directors and secretary, and specimen signatures for those who will be executing the documents. That certificate should confirm that all of the attachments are true and up-to-date, and that the directors’ (and, if appropriate, shareholders’) resolutions have not been amended or revoked and remain in full force and effect.
3.9 Constitution Documents: PLC

(a) A PLC is required to have a Memorandum and Articles of Association (together referred to as its “constitution”) and must also have an objects clause. It has the capacity to do anything stated in its objects clause and Section 1012(1) of CA 2014 attempts to mitigate the effect of the ultra vires doctrine by providing that the validity of a PLC’s act cannot be called into question on the grounds of lack of capacity by reason of anything contained in the PLC’s objects. However, a shareholder in a PLC can bring proceedings to restrain the PLC from doing an act which would be ultra vires and an ultra vires action by the directors may only be ratified by way of special resolution of the shareholders. In light of this, when transacting with a PLC in circumstances where it is unclear whether the transaction comes squarely within the PLC’s objects, it is usual to look for amendment to the objects clause (which will require a special resolution of the shareholders).

(b) Section 1012(5) of CA 2014 provides that a party transacting with a PLC is not obliged to enquire whether the transaction is permitted by the PLC’s objects. However, if that party has actual knowledge that the transaction is ultra vires, in practice it may be unlikely to be able to rely on this sub-section.

(c) In light of the above, a party transacting with a PLC should obtain a certificate from a director or the company secretary of the PLC, attaching its certificate(s) of incorporation, constitution, board resolutions, a list of the directors and secretary, and specimen signatures for those who will be executing the documents. That certificate should confirm that all of the attachments are true and up-to-date, and that the directors’ (and, if appropriate, shareholders’) resolutions have not been amended or revoked and remain in full force and effect.

Directors’ Duties

3.10 It should be noted that, in respect of DACs and PLCs, CA 2014 has codified directors’ duties under Irish law however, those duties are generally owed to the company alone and (subject to limited exceptions) a breach of those duties cannot be relied upon:

(a) by a third party to avoid a contract entered into with that company; or

(b) by a company to seek to avoid a contract entered into by it with a third party.

Corporate Approvals/Signing Authority

3.11 An Irish company’s board of directors, together with any registered person (an Irish company may appoint a ‘registered person’ to bind the company generally (and that authorisation may be notified to the Irish Companies Registration Office (“CRO”))) are deemed (subject to limited exceptions) to have authority to bind the company and to authorise others to do so. That deemed authority does not prevent the exercise of the company’s powers by others where they are so authorised, and does not affect the obligations of the directors to comply with their newly-codified duties under the CA 2014.

3.12 An Irish company’s Articles of Association (which form part of its constitution) (or, in the case of an LTD, its single document constitution) generally also contains rules relating to the internal governance of the company.
3.13 It would be usual for a meeting of the board of directors (or a committee of that board) to be held to authorise the entry into of a transaction and related documents. A certificate is generally obtained which appends copies of relevant board resolutions, and specimen signatures for those who will enter into the documents on behalf of the company. Even if an LTD has one director, the practice is that the sole director still holds a board meeting.

3.14 In respect of deeds, where one or more persons (other than directors or registered persons whose ability to execute deeds is set out in the Companies Act and may also be dealt with in the company’s constitution) are being authorised to execute deeds on the company’s behalf, a power of attorney should also be provided. Further details are set out below regarding how that power of attorney should be executed, and how an attorney should execute a deed on behalf of the company.

Duc Execution

3.15 Subject to any stipulations in its constitution to the contrary, an Irish company can execute an agreement directly or can authorise (expressly or impliedly) some other person to sign that agreement on its behalf. We would advise that, where the agreement is being executed by one or more authorised signatories (rather than by one or more directors), express evidence of authorisation be sought (this is generally provided by way of certified copy board minutes).

3.16 Regarding the execution of deeds, under Section 64 of the Land and Conveyancing Law Reform Act 2009 (the “2009 Act”), an Irish company executing a deed must do so under its common seal in accordance with its Articles of Association (which form part of its constitution). Unless its constitution provides to the contrary, the common seal may only be used with the authority of the directors or a committee of the directors, and any deed to which it is affixed must be signed by:

(a) a director (or some other person appointed for that purpose by the directors/a committee of them) and the secretary or a second director or some other person appointed for that purpose by the directors/a committee of them; or

(b) a registered person and the secretary or a director or some other person appointed for that purpose by the directors/a committee of them.

3.17 As mentioned above, an Irish company may also appoint, by way of power of attorney, one or more persons to execute agreements or deeds on its behalf. That power of attorney does not need to be executed under the company’s common seal but, where the attorney is executing a deed on behalf of the company, that attorney’s signature must be witnessed for the deed to be effective. If more than one attorney is executing the deed, each of those attorney’s signatures must be witnessed for the deed to be effective.

Delivery

3.18 Under Section 64 of the 2009 Act, a deed must be “delivered as a deed by the person executing it” for it to be effective. Until the 2009 Act was commenced on 1 December 2009, there was a common law presumption that the affixing by a company of its common seal to a deed imported delivery. This presumption was repealed by Section 65 of the 2009 Act to enable companies to execute deeds in escrow. In light of this, the recommended practice is that, where a company executes a deed, the execution block should reference delivery (i.e. “...and delivered as a deed”) to confirm the effectiveness of the deed itself. Where the deed is to be held in escrow, that approach will not work and, in those circumstances, to ensure that the
deed is effective as such when released from escrow, written confirmation of delivery as a deed should be provided by the Irish company. A deed should not be dated until it is delivered.

**Insolvency**

3.19 There are a number of challenges which can be made where certain transactions are entered into by an insolvent company (whether winding-up proceedings have already been started or not). We would recommend that confirmation is sought from the Irish Clearing Member, at the time that it enters into Opinion Documents that it is not unable to pay its debts as they fall due with the meaning of Section 509(3) of CA 2014 and that no action, proceeding or other step has been taken to appoint a liquidator (provisional or otherwise) to that company. It would be usual to conduct, or instruct local counsel to conduct, searches (using a firm of law searchers) against an Irish company in both the CRO (for the appointment of any liquidator) and the Central Office of the High Court (for the filing of any petition). It should be noted however that the matters disclosed in the results of those searches may not present a complete summary of the actual position as a resolution may have been passed to wind-up an Irish company but may not yet have been filed with the CRO, a liquidator may have been appointed but his/her appointment may not yet have been filed with the CRO and a search in the Central Office of the High Court might not disclose a petition to wind-up the company filed shortly before the search was carried out.

**Royal Charter Corporations**

3.20 The analysis for Clearing Members that are Royal Charter Corporations is more complex and requires a review of the Relevant Clearing Member’s specific constitutional documents. Further advice should be sought in respect of such Clearing Members on a case-by-case basis.

**Q4. Are there any formalities to be complyed with upon entry into of any of the Agreements and, if so, what is the effect of a failure to comply with these?**

3.21 Other than the corporate formalities summarised above, where an Irish company creates a charge, it must register particulars of the property charged with the CRO using either:

(a) a prescribed one-stage procedure involving the registration of those particulars within 21 days of the creation of the charge; or

(b) a prescribed two-stage procedure whereby notice of the intention to create the charge is registered with the CRO before the charge is taken and confirmation of the charge having been created is then registered with the CRO within 21 days of the registration of intention to create the charge.

3.22 Failure to register particulars of the property charged results in that charge being void against any liquidator and any creditor of the Irish company and the amounts secured thereby become immediately payable.

3.23 A filing does not need to be made where the charge is over any of the following property of an Irish company:

(a) cash;

(b) money credited to an account of a financial institution, or any other deposits, and any claims and rights in respect of the foregoing.
(c) shares in Irish companies and any claims and rights (i.e. dividends and interest) in respect of the foregoing;

(d) bonds and any claims and rights in respect of the foregoing;

(e) debt instruments and any claims and rights in respect of the foregoing;

(f) units in collective investment undertakings and any claims and rights in respect of the foregoing; and

(g) money market instruments and any claims and rights in respect of the foregoing.

3.24 Where the charge covers a mix of registrable and non-registrable property, the filing must be made in respect of that part of the charge that is over registrable property.

3.25 Regulation 4 of the Irish FCA Regulations disapplies any filing requirement where such charge constitutes a “security financial collateral arrangement”. A security financial collateral arrangement is defined as an agreement or arrangement, evidenced in writing, where

(a) the purpose of the agreement or arrangement is to secure the relevant financial obligations owed to the collateral-taker;

(b) the collateral-provider creates or there arises a security interest in financial collateral to secure those obligations;

(c) full or qualified ownership of, or full entitlement to, the collateral remains with the collateral-taker;

(d) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute financial collateral of the same or greater value or withdraw excess financial collateral or to collect the proceeds of credit claims until further notice shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; and

(e) the collateral-provider and the collateral-taker are both non-natural persons” (Regulation 3(2) Irish FCA Regulations).

3.26 For the reasons outlined below (and subject to the assumptions and reservations set out in this Opinion, in particular in relation to the matters of “possession” and “control”), in our view the Deed of Charge should comprise a security financial collateral arrangement and accordingly it should not need to be registered. However, whether a particular arrangement constitutes a security financial collateral arrangement is a question of fact and cannot be opined on with certainty in any particular case. In particular, we would draw your attention to the assumption at paragraph 2.16 above and the qualifications at paragraphs 4.3(d) to 4.3(i) below.

Q5. Would the courts of Ireland uphold the contractual choice of law and jurisdiction set out in Regulation 51?

3.27 Contractual obligations

(a) In any proceedings taken in Ireland for the enforcement of the:
(i) **Clearing Membership Agreement**, the choice of the laws of England and Wales as the governing law of the Clearing Membership Agreement;

(ii) **Deed of Charge** and the **Rulebook**, the choice of the laws of England as the governing law of the Deed of Charge (save in respect of Clause 12 and issues arising from the use of the Deed of Charge as a security agreement in accordance with the provisions thereof) and the Rulebook; and

(iii) **Deed of Charge**, the choice of the laws of the State of New York as the governing law of Clause 12 of the Deed of Charge and issues arising from the use of the Deed of Charge as a security agreement in accordance with the provisions thereof,

will, in each case, be recognised by the courts of Ireland pursuant to Article 3 of the Rome I Regulation on the law applicable to contractual obligations (Regulation (EC) No. 593/2008) with respect to matters falling within the scope of the Rome I Regulation.

(b) Where all other elements relevant to the situation are located in a country other than that of the governing law and that country has laws which cannot be derogated from by agreement, the courts of Ireland will apply those overriding laws. This principle also applies to EU law provisions which cannot be derogated from by agreement in circumstances where all other elements are located in one or more EU Member States but the law of a non-EU Member State has been chosen. In addition, it is open to the courts of Ireland to give effect to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those overriding mandatory provisions regard will be had to their nature and purpose and to the consequence of their applicability or non-applicability. To the extent that such mandatory rules affect any part of the transaction, an Irish court is likely to restrict the application of those rules to the relevant part of the transaction and to apply the chosen law in the remainder. The courts of Ireland may however refuse to enforce foreign laws which may be considered repugnant to Irish public policy.

(c) Article 1(2) of the Rome I Regulation sets out matters not governed by the Rome I Regulation. They include, but are not limited to, obligations under negotiable instruments, evidence and procedure, insurance matters and trusts.

3.28 Non-contractual obligations

(a) The Rome II Regulation on the law applicable to non-contractual obligations (Regulation (EC) No. 864/2007) has force of law in Ireland and the incorporation of the laws of England as the governing law of non-contractual obligations arising out of each of the Deed of Charge and the Rulebook is in respect of non-contractual obligations that are within the scope of the Rome II Regulation, valid in accordance with Article 14(1) of the Rome II Regulation and, accordingly, the laws of England will be applied by the courts of Ireland if any claim to enforce such non-contractual obligations against an Irish Clearing Member comes under their jurisdiction. Article 1(2) of the Rome II Regulation sets out matters not governed by the Rome II Regulation. These include, but are not limited to, non-contractual obligations
arising out of (a) bills of exchange, cheques and promissory notes, and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character, (b) the law of companies and other bodies corporate regarding matters such as creation and legal capacity (including the personal liability of officers and members of a company for the obligations of that company) and (c) relations between thesettlor, trustees and beneficiaries of a trust created voluntarily.

(b) It should be noted that, under Article 14 of the Rome II Regulation, the parties may agree to submit non-contractual obligations to the law of their choice either by an agreement entered into after the event giving rise to the damage occurred, or where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred. The choice of law will not, where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than a country whose law has been chosen, prejudice the application of provisions of the law of the country which cannot be derogated from by agreement. Furthermore, the choice of law of a non-EU Member State will not, where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the EU Member States, prejudice the application of provisions of European Union law, where appropriate as implemented in the EU Member State of the forum, which cannot be derogated from by agreement. In addition, the application of the provisions of the law of the forum in a situation where they are mandatory shall not be restricted irrespective of the law otherwise applicable to the non-contractual obligation.

Q6. Will the Irish courts uphold the judgement of the English courts or an English arbitration award?

Judgments

3.29 Clearing Membership Agreement

(a) Subject to the Recast Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation (EU) No. 1215/2012) the submission to the exclusive jurisdiction of the courts of England and Wales in the Clearing Membership Agreement will be upheld by the courts of Ireland. This will not preclude the bringing of proceedings in other courts of competent jurisdiction according to the general rules set out in the Recast Brussels Regulation.

(b) Provided that neither Article 45 nor Article 46 of the Recast Brussels Regulation applies, and subject to compliance with the procedures set out in the Recast Brussels Regulation, any judgment obtained in England and Wales against an Irish Clearing Member in respect of the Clearing Membership Agreement would be recognised and enforced in Ireland without retrial or examination of the merits of the case.\(^1\)

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\(^1\) Articles 45 and 46 provide for both general circumstances in which a judgment might not be enforced (e.g., public policy reasons, judgment in default of appearance, irreconcilable judgments etc.) and specific circumstances in which a judgment might not be enforced (e.g. where the defendant is the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee, or where the Recast Brussels Regulation provides for mandatory exclusive jurisdiction (e.g. in respect of immovable property).
3.30 Rulebook

(a) Subject to the Recast Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation (EU) No. 1215/2012), the submission to the non-exclusive jurisdiction of the courts of England in the Rulebook will be upheld by the courts of Ireland. This will not preclude the bringing of proceedings in other courts of competent jurisdiction according to the general rules set out in the Recast Brussels Regulation.

(b) Provided that neither Article 45 nor Article 46 of the Recast Brussels Regulation applies, and subject to compliance with the procedures set out in the Recast Brussels Regulation, any judgment obtained in England against an Irish Clearing Member in respect of the Rulebook would be recognised and enforced in Ireland without retrial or examination of the merits of the case².

3.31 Deed of Charge

(a) England

(i) Subject to the Recast Brussels Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation (EU) No. 1215/2012), the submission to the non-exclusive jurisdiction of the courts of England in the Deed of Charge (save in respect of Clause 12 and issues arising from the use of the Deed of Charge as a security agreement in accordance with the provisions thereof) will be upheld by the courts of Ireland. This will not preclude the bringing of proceedings in other courts of competent jurisdiction according to the general rules set out in the Recast Brussels Regulation.

(ii) Provided that neither Article 45 nor Article 46 of the Recast Brussels Regulation applies, and subject to compliance with the procedures set out in the Recast Brussels Regulation, any judgment obtained in England against an Irish Clearing Member in respect of the Deed of Charge (save in respect of Clause 12 and issues arising from the use of the Deed of Charge as a security agreement in accordance with the provisions thereof) would be recognised and enforced in Ireland without retrial or examination of the merits of the case³.

(b) State of New York

(i) The courts of Ireland will enforce the submission by an Irish Clearing Member to the jurisdiction of the courts of the State of New York, and a judgment of the courts of the State of New York will be enforced by the courts of Ireland if:

(A) the foreign judgment is for a definite sum;

(B) the foreign court had jurisdiction in relation to the particular defendant according to Irish conflicts of law rules (the submission to jurisdiction by the defendant would satisfy this rule); and

² See Footnote 1 above.
³ See Footnote 1 above.
(C) the foreign judgment must be final and conclusive and the decree must be final and unalterable in the court which pronounces it (a judgment can be final and conclusive even if it is subject to appeal or if an appeal is pending. However, where the effect of lodging an appeal under the applicable law is to stay execution of the judgment, it is possible that in the meantime the judgment would not be actionable in Ireland. It has not yet been determined whether final judgment given in default of appearance is final and conclusive).

(ii) The courts of Ireland may refuse to enforce a judgment of the courts of the State of New York which meets the above requirements for one of the following reasons:

(A) the foreign judgment was obtained by fraud;

(B) the enforcement of the foreign judgment in Ireland would be contrary to natural or constitutional justice;

(C) the foreign judgment is contrary to Irish public policy or involves certain foreign laws which will not be enforced in Ireland; and

(D) jurisdiction cannot be obtained by the courts of Ireland over the judgment debtors in the enforcement proceedings by personal service in Ireland or outside Ireland under Order 11 of the Superior Courts Rules.

Arbitration

3.32 The arbitration agreement contained in the Regulation 33 is a valid and effective agreement to submit to arbitration. The Irish Courts will, on the application of a party to an arbitration agreement, stay proceedings in respect of a matter which under Regulation 33 is to be referred to arbitration.

3.33 Under the Arbitration Act 2010 which adopted the UNCITRAL Model law into Irish law and the New York Convention (The Convention on Enforcement of Foreign Arbitral Awards), an arbitral award made by a duly constituted arbitral tribunal with its seat in England may, by leave of the Irish High Court, be enforced in the same manner as a judgment or order of the Irish High Court to the same effect. In addition to the grounds under the New York Convention and the UNICITRAL Model law, enforcement can be refused if the Irish High Court finds that the subject matter of the dispute is not capable of settlement by arbitration under Irish law or if the recognition or enforcement of the award would be contrary to the public policy of Ireland

Q7. Are there any “public policy” considerations that the courts may take into account in determining matters related to choice of law and/or the enforcement of foreign judgements?

3.34 There are public policy considerations that may be taken into account in determining matters related to the enforcement of foreign judgements. These include the matters specified above (in paragraph 3.31 (b)(ii)) in respect of the enforcement of judgments of the New York courts (e.g. issues of fraud).
INSOLVENCY, SECURITY, SET-OFF AND NETTING

Q8. Please identify the different types of insolvency proceedings and reorganisation measures. Would any of these not be covered by those events entitling LCH to liquidate, transfer or otherwise deal with Contracts as provided for in Rule 3 of the Default Rules? Are any other events or procedures not envisaged in Rule 3 of the Default Rules relevant?

3.35 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Clearing Member could be subject under the laws of Ireland, and which are relevant for the purposes of this Opinion, are liquidation (voluntary or by a court), resolution, examinership, receivership, and schemes of arrangement (together called “Insolvency Proceedings”). Please note that not all Clearing Members may be subject to all Insolvency Proceedings.

3.36 In relation to an obligation which is a transfer order as defined in the Irish Settlement Finality Regulations, the Irish Settlement Finality Regulations will also be applicable. If the Opinion Documents constitute a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the Irish FCA Regulations will also apply.

3.37 We confirm that the events specified in Rule 3 of the Default Rules adequately refer to all Insolvency Proceedings, other than:

(a) a scheme of arrangement conducted on a solvent basis;
(b) the appointment of a receiver otherwise than for failure to pay debts as they fall due; or
(c) a resolution procedure undertaken otherwise than on account of failure to pay debts as they fall due.

Q9. Would the Deed of Charge be effective in the context of insolvency proceedings or reorganisation measures in respect of a Clearing Member? Is there anything that would prevent LCH from enforcing its rights under the Deed of Charge? Would LCH be required to take any particular steps or abide by any particular procedures for the purposes of enforcing against Collateral provided to it by a Clearing Member under the Deed of Charge?

3.38 The security interests under the Deed of Charge, assuming they are (as a matter of English law) validly created by a Clearing Member in favour of LCH as security for the payment or discharge of the Secured Obligation and are enforceable in all applicable jurisdictions (other than Ireland), would be effective in the context of Insolvency Proceedings in respect of a Clearing Member. In this regard we refer in particular to our reservations at paragraphs 4.2 and 4.3 below.

Security Financial Collateral Arrangement

3.39 A security financial collateral arrangement is defined as an agreement or arrangement, evidenced in writing, where

(a) the purpose of the agreement or arrangement is to secure the relevant financial obligations owed to the collateral-taker;
(b) the collateral-provider creates or there arises a security interest in financial collateral to secure those obligations;
(c) full or qualified ownership of, or full entitlement to, the collateral remains with the collateral-taker;

(d) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute financial collateral of the same or greater value or withdraw excess financial collateral or to collect the proceeds of credit claims until further notice shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; and

(e) the collateral-provider and the collateral-taker are both non-natural persons (Regulation 3(2) Irish FCA Regulations).

3.40 We consider (as set out in the following analysis and subject to the assumptions and reservations set out in this Opinion) that the Deed of Charge should comprise a security financial collateral arrangement (within the meaning of the Irish FCA Regulations).

3.41 Insofar as the Charged Property comprises “book entry securities collateral” (as defined in the Irish FCA Regulations) and to the extent that the Charged Property is in the “possession” or “control” (as such terms are used in the Irish FCA Regulations) of LCH, the security arrangements under the Deed of Charge should be regarded as a financial collateral arrangement. Consequently, any question relating to proprietary effects, requirements for perfecting such security arrangements and for rendering them effective against third parties, and the steps required for realisation of the Charged Property, would, on the basis of Regulation 18 of the Irish FCA Regulations, be governed by the domestic law of the country in which the “relevant account” (as defined in the Irish FCA Regulations) is maintained.

3.42 Similarly, under Regulation 11(3) of the Irish Settlement Finality Regulations, the rights of a holder of collateral security in relation to securities shall be governed by the law of the EEA State where the account in which the legal entitlement of such holder is recorded. In our view, the Charged Property qualifies as “collateral security” for these purposes and the account in which the legal entitlement of LCH (as the holder of such collateral security) is recorded would be LCH’s books and records, located in England.

3.43 Insofar as the “relevant account” for the purposes of the Irish FCA Regulations, and since the account recording the entitlement of the holder of the relevant collateral security for the purposes of the Irish FCA Regulations, is maintained in this United Kingdom, we refer to the conclusions of the CC Opinion.

Q10. Would LCH have the right to take the actions provided for 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 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.

3.44 In the ordinary course, under Irish law, the operation of the Default Rules could be challenged by a liquidator on the basis of it being a post-insolvency disposition.
However, in our view if LCH takes action under Rules 6 and 8 of its Default Rules with respect to one or more Contracts to achieve a discharge of such Contracts, the laws of Ireland should give effect to such action to achieve a discharge of the Parties' rights and obligations under each such Contract and to calculate a net sum payable in respect of all such Contracts so discharged. We are of this view due to the operation of Regulation 10 of the Irish Settlement Finality Regulations (in conjunction with our understanding of the effect of Part VII).

In summary (and as set out in more detail below) our analysis is the following:

(a) but for the Irish Settlement Finality Regulations, the operation of the Default Rules would be exposed to a successful challenge under Irish insolvency law;

(b) Regulation 10 of the Irish Settlement Finality Regulations provides that if insolvency proceedings are commenced against a participant in a system designated for the purposes of the Settlement Finality Directive, the rights and obligations of that participant are to be decided by the Irish court in accordance with the law of the system, being in this case English law (i.e. the Irish court would defer to the English law position); and

(c) accordingly, protections available under English law should generally be available if the matters the subject of this question fell to be decided by an Irish court.

**Irish Settlement Finality Regulations**

Regulation 10 of the Irish Settlement Finality Regulations ("**Regulation 10 SFR**") provides that if any Insolvency Proceedings are commenced against a person who participates/has participated in a system designated for the purposes of Settlement Finality Directive, any question that:

(a) relates to the rights and obligations arising from, or in connection with, that participation; and

(b) falls to be determined by an Irish court,

is to be decided in accordance with the law governing the system.

The ambit of Regulation 10 SFR is unclear. No clarification is provided in either the Irish Settlement Finality Regulations or the Settlement Finality Directive regarding:

(a) what jurisdiction’s laws comprise the law of the system;

(b) whether the reference to rights and obligations being decided in accordance with the specified law requires:

(i) the contractual terms of the Opinion Documents and the Contracts, only, to be determined in accordance with such law and its enforceability, once Insolvency Proceedings have been commenced or a reorganisation measure imposed to be determined by local laws (being in the case of an Irish Bank or an Irish Investment Firm, the laws of Ireland);

(ii) both:

(A) the contractual terms; and
(B) the enforceability, regardless of whether an Insolvency Proceeding has been commenced,

of the Opinion Documents and the Contracts to be determined in accordance with such laws, subject to the application of fraud-related provisions of Irish law;

(iii) both:

(A) the contractual terms; and

(B) the enforceability, regardless of whether an Insolvency Proceeding has been commenced,

of the Opinion Documents and the Contracts to be determined in accordance with such laws, without regard to fraud-related provisions of Irish law; and

(c) whether the reference to the law of the system is intended to encompass one or more of following laws of the relevant jurisdiction:

(i) contract law;

(ii) laws relating to enforceability on the commencement of Insolvency Proceedings (excluding the application of fraud-related provisions of law); and

(iii) fraud-related provisions of law.

3.49 In the absence of any authority on these issues, it is not possible to be definitive on these matters. Subject to that qualification, in our view the better view is as follows.

3.50 As regards paragraph 3.48(a) above, we are of the view that the Irish courts would interpret the “law of the system” as the express governing law of the Opinion Documents (i.e. English law for all relevant purposes).

3.51 As regards paragraph 3.48(b), we are of the view that the Irish courts would be likely to apply English law (as the law of the system) to both:

(i) the contractual terms of the Opinion Documents; and

(ii) the enforceability of the Opinion Documents, regardless of whether an Insolvency Proceeding has been imposed.

3.52 To limit the “law of the system” to the nature of the contractual terms of the Opinion Documents would not significantly alter the position from that which applied in Ireland pursuant to the Rome Convention on the Law Applicable to Contractual Obligations 1980 (the “Rome Convention”). In our view an Irish court would consider that the purpose of Regulation 10 SFR (implementing the relevant provision of the Settlement Finality Directive) extends beyond a reiteration of the principles contained in the Rome Convention.

3.53 It is less clear that the Irish courts would disapply Irish laws which relate to voidness, voidability or unenforceability on the grounds of fraud or a preference. In this regard we refer to our assumption at paragraph 2.8 above.
3.54 There is a counter-argument that if the Default Rules are not protected by Regulation 9 of the Irish Settlement Finality Regulations ("Regulation 9 SFR"), they may not be capable of being protected by the law of the system under Regulation 10 SFR.

3.55 Regulation 9 SFR provides extensive protections for “designated systems” (being systems designated by the Minister for Finance for the purposes of the Irish Settlement Finality Regulations). However Regulation 9 SFR, does not extend these protections to “systems” more generally (being systems designated (in any Member State) for the purposes of the Settlement Finality Directive).

3.56 An argument could be made that if a system governed by the laws of another Member State was (even where the system was not designated as a system under the Irish Settlement Finality Regulations) to be capable of being protected from the effect of Irish insolvency law, then Regulation 9 SFR would have provided protection to “systems” designed in other Member States for the purposes of the Settlement Finality Directive as well as systems designated by the Minister for Finance for the purposes of the Settlement Finality Directive (and that Regulation 10 SFR cannot provide a safe harbour where Regulation 9 SFR does not so do).

3.57 However, in our view, such an approach would be incorrect as it would result in the Irish legislature not giving effect to Article 8 of the Settlement Finality Directive which provides that “[i]n the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law of that system”.

3.58 On the basis of the foregoing analysis, provided that the entry by the Clearing Member into Contracts comprises part of its participation in a system designated in England for the purposes of the Settlement Finality Directive (which we assume), the Default Rules and the actions permitted thereby should be decided by the law governing the system upon the commencement of Insolvency Proceedings. We understand this law to be English law.

3.59 On the basis that the Default Rules should (following, and notwithstanding, Insolvency Proceedings) be considered under English law, as the law of the “system”, we refer to the CC Opinion under which, we understand, the Default Rules are found to be effective under English law.

**Irish FCA Regulations**

3.60 In the event the Default Rules were not to be regarded as effective under a combination of Regulation 10 SFR and Part VII, we have considered whether the Irish FCA Regulations would apply on the commencement of Insolvency Proceedings in respect of an Irish Bank or Irish Investment Firm. In relation to any analysis of the Irish FCA Regulations in this Opinion we draw your attention to the effect of the BRRD Regulations on the Irish FCA Regulations (as highlighted in Section 4.4 of this Opinion).

3.61 Under Regulation 12 of the Irish FCA Regulations, a “close-out netting provision” has effect in accordance with its terms, irrespective of whether winding-up proceedings or reorganisation measures have been commenced, or are continuing, in relation to the collateral provider.

3.62 A “close out netting provision” for the purposes of the Irish FCA Regulations means (inter alia) an arrangement:

(a) of which a financial collateral arrangement forms part; and
(b) as a result of which:

(i) the obligations of the parties are:

(A) accelerated so as to be immediately due and are expressed as an amount representing the estimated current value of the obligations; and/or

(B) are terminated and replaced by an obligation to pay such amount; and

(ii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other a net amount equal to the balance of the account.

3.63 We consider that the Default Rules would constitute a term of an arrangement of which a financial collateral arrangement forms part under Regulation 12(1) of the Irish FCA Regulations, the relevant “financial collateral arrangement” for these purposes being a “title transfer financial collateral arrangement” in respect of “financial collateral” in the form of “cash” (as such term is defined in the Irish FCA Regulations). The arrangements for the transfer of Collateral in the form of cash (by way of initial margin and variation margin in accordance with Regulation 20(b) of the General Regulations section of the Rulebook) between each Relevant Clearing Member and LCH constitute the relevant title transfer financial collateral arrangement.

3.64 Therefore the question arises as to whether the requirements of 3.62(b) above are met by the Default Rules. Under the Default Rules we understand that Contracts can be closed-out otherwise than solely as a result of the acceleration or termination of liabilities. However, in our view there are good arguments that, on the basis that the economic effect of the Default Rules is a close-out described in paragraph 3.62(b) above (and no new net liabilities are incurred on behalf of the Clearing Member as a result of such close-out), the Irish FCA Regulations should be interpreted broadly such that the Default Rules constitute a close-out netting provision for the purposes of the Irish FCA Regulations (and therefore have effect in accordance with their terms).

CIWUD Regulations

3.65 We have also considered the Default Rules in the context of the CIWUD Regulations. To the extent that the Clearing Member is an Irish bank and the Default Rules constitute a netting agreement, Regulation 30 of CIWUD will be of relevance. Regulation 30 provides that a netting agreement is governed by the law of the contract that governs the agreement (being English law).

EMIR

3.66 We have also considered the extent to which EMIR may provide protection to the Default Rules in the context of Insolvency Proceedings.

3.67 As a European Regulation, EMIR has direct effect in Ireland. We consider that, applying general principles of European law (as in effect in Ireland), nothing in Irish law should prejudice the effectiveness of Article 48 (Default Procedures) of EMIR. We consider that this may be of some assistance if an Irish court were asked to interpret the Irish FCA Regulations broadly in order to give effect to the Default Rules as a “close-out netting provision”. However, in the absence of domestic

23
legislation analogous to Part VII, in our view EMIR provides merely arguable grounds for a court to uphold the Default Rules following Insolvency Proceedings, and accordingly, limited reliance should be placed on EMIR. This is on the basis that in our view it is not sufficiently clear that Article 48 EMIR provides that the procedures which Article 48 require are enforceable in accordance with their terms on insolvency.

Automatic Early Termination

3.68 Under the laws of Ireland, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination of Contracts. Accordingly, it is not necessary to specify that certain Insolvency Proceedings and/or reorganisation measures constitute Automatic Early Termination Events.

Q11. Is there a “suspect period” prior to insolvency proceedings and/or reorganisation measures where Contracts with a Clearing Member could be avoided or challenged and, if so, what are the grounds? What are the risks for LCH in entering into Contracts and in taking Collateral in respect of those Contracts during such a period? Are any special protections or exemptions from the relevant arrangements for avoidance or challenge available in respect of contracts in financial markets?

Unfair preference (section 604)

3.69 Section 604 (Unfair preference: effect of winding up on antecedent and other transactions) of CA 2014 (“Section 604”) provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor of the company or any person on trust for any such creditor, with a view to giving such creditor (or any surety or guarantor of the debt due to such creditor) a preference over the company’s other creditors, shall be deemed to be an unfair preference of its creditors and be invalid accordingly if a winding up of the company commences within six months of the doing of the act and the company is, at the date of commencement of the winding up, unable to pay its debts (taking into account contingent and prospective liabilities). Case law relevant to Section 286 (Fraudulent preference) of the Companies Act 1963 Act (“Section 286”) (which was replaced by Section 604 with effect from 1 June 2015) indicated that a dominant intent on the part of the company concerned to prefer a creditor over its other creditors was necessary in order for Section 286 to apply (Corran Construction Co Ltd. v Bank of Ireland [1976-7] ILRM 175, Station Motors Ltd v Allied Irish Banks, p.l.c. [1985] IR 756). Where the conveyance, mortgage, delivery of goods, payment, execution or other act is in favour of a “connected person”, the six month period is extended to two years and the act in question shall be deemed, if the company is being wound up and is, at the time that the winding up commences, unable to pay its debts, to have been done with a view to giving the connected person a preference over the company’s other creditors, to be an unfair preference, and to be invalid. Consequently, the burden of proof is on the connected person to show that any such act was not an unfair preference. A “connected person” means a person who was, at the time that the transaction took place, a director or shadow director of the company, a person connected with a director of the company within the meaning of Section 220 (Connected persons) of CA 2104 (spouse, civil partner, parent, sibling, child, trustee or partner in a partnership), a related company, or any trustee of or surety or guarantor for the debt due to any of the foregoing.

3.70 There are no special protections, applicable to the Default Rules, from the application of Section 604. In addition there are other circumstances (which do not have suspect
periods”) in which transactions can be avoided following Insolvency Proceedings. However, as with Section 604 these involve an element of bad faith or preference and in this regard we refer to our assumption at paragraph 2.8 above.

**Q12. Is there relevant netting legislation that, in the context of insolvency proceedings and/or reorganisation measures in respect of a Clearing Member, might apply as an alternative to the relevant arrangements set out in the Default Rules?**

3.71 The set-off of amounts representing terminated obligations may, subject to any contrary statutory rule, such as Regulation 12(1) of the Irish FCA Regulations, be implemented, in a winding-up, under the CA20144 (a “Statutory Insolvency Set-off”), rather than under the specific provisions of the Default Rules. However, unlike the position which we understand prevails in England, Statutory Set-Off is not mandatory.

3.72 Statutory Insolvency Set-off would only be relevant to obligations arising under the Opinion Documents in respect of Cleared Transactions where LCH had not taken action under the Default Rules in respect of a Relevant Clearing Member which was subject to Liquidation and would only apply to the extent that such obligations were 'mutual' between the Parties, in the sense that each Party was personally and solely liable as regards obligations owed by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party. Circumstances in which the requisite mutuality will not be established include, without limitation, where a Party is acting as agent for another person, or is a trustee, or in respect of which a Party has a joint interest or in respect of which a Party's rights or obligations or any interest therein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or by order.

3.73 In addition, Regulation 12(1) of the Irish FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms, notwithstanding that the collateral-provider or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures. This is considered earlier in this Opinion.

3.74 To the extent the Contracts constitute bilateral contracts which are “financial contracts” for the purposes of the Netting Act, the Netting Act would be relevant to the extent the Default Rules could be considered a netting agreement for the purposes of the Netting Act. However, we do not believe that the Netting Act provides a stronger basis than the Irish Settlement Finality Regulations or the Irish FCA Regulations and so have not analysed the Netting Act further.

**12. Can a claim for a close-out amount be proved in insolvency proceedings without conversion into the local currency?**

3.75 A court in Ireland may order the payment of money in a currency other than euro if the creditor is entitled to such other currency under the terms of a relevant agreement. While the rule of law that when a debtor is wound up after a sum expressed in a foreign currency has become due, such sum should be converted into euro at the rate of exchange prevailing on the date it became due has not been varied by a decision of the courts of Ireland, it is likely that in the event of winding up of the Irish Clearing Member, amounts claimed in a foreign currency would (to the extent properly payable in the winding-up) be paid, if not in a foreign currency, in the euro equivalent

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4 Section 619(3) of CA2014.
of the amount due in the foreign currency, converted at the rate of exchange on the
date of the commencement of such winding-up.

CLIENT CLEARING

Q13. Please opine on the availability and effectiveness of any law, regulation or statutory
provision (having the force of law) in this jurisdiction which (if so designated by LCH)
would be expected to qualify as an Exempting Client Clearing Rule. Please clarify whether
the relevant Rule would be expected to apply to Clearing Members of all entity types or to
only certain entity types.

Q14. If, and to the extent that, you consider such an Exempting Client Clearing Rule to be
available, please (i) assume for the purposes of answering the following Questions that
LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will
not require those Clearing Members to which that Rule applies to enter into a Security
Deed; and (ii) ignore Questions 20 to 22 below.

Q15. In cases where you do not consider an Exempting Client Clearing Rule to be
available, please: (i) assume for the purposes of answering the following Questions that
LCH will require Clearing Members to enter into a Security Deed; (ii) assume that the
Security Deed is legal, valid, binding and enforceable under English law (as its governing
law) and complies with all relevant perfection requirements under the law of any
jurisdiction(s) other than this jurisdiction which you consider to be relevant to that matter;
and (iii) provide a response to Questions 20 to 22 below.

Q16. If LCH were to: (i) declare a Clearing Member to be in Default in circumstances
other than the commencement of insolvency proceedings or reorganisation measures in
respect of that Clearing Member and (ii) seek to port the Client Contracts and Account
Balance of a Clearing Client to a Backup Clearing Member as a result, could the Clearing
Member or any other person successfully challenge the actions of LCH and claim for the
amount of the Account Balance?

3.76 In the absence of Insolvency Proceedings or Reorganisation Measures, the laws of
Ireland in principle give full effect to whatever contractual provisions the Parties may
have agreed between themselves with regard to porting of positions.

Q17. If LCH were to: (i) declare a Clearing Member to be in Default in circumstances
other than the commencement of insolvency proceedings or reorganisation measures in
respect of that Clearing Member; and (ii) seek to return the Client Clearing Entitlement to
the relevant Clearing Client or to the Defaultor for the account of such client, could the
Clearing Member or any other person successfully challenge the actions of LCH and claim
for the amount of the Client Clearing Entitlement?

3.77 In the absence of Insolvency Proceedings or Reorganisation Measures, the laws of
Ireland in principle give full effect to whatever contractual provisions the Parties may
have agreed between themselves with regard to close-out and “leapfrogging” of net
payments to clearing clients.

Q18. If (i) following the commencement of Insolvency Proceedings, a Clearing Member
was designated a Defaultor (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 Defaultor or any
other person successfully challenge the actions of LCH and claim for the amount of the
Account Balance?
3.78 In the ordinary course, under Irish law, this could be challenged by a liquidator on the basis of it being a post-insolvency disposition.

3.79 However, the Irish Settlement Finality Regulations are of relevance in this case. As described above with respect to question 9, Regulation 10 SFR provides that if any Insolvency Proceedings are commenced against a person who participates/has participated in a system designated for the purposes of Settlement Finality Directive, any questions that:

(a) relates to the rights and obligations arising from, or in connection with, that participation; and

(b) falls to be determined by an Irish court,

is to be decided in accordance with the law governing the system (being in the case of LCH’s client clearing services, English law).

3.80 The analysis above (see question 9) in relation to the interpretation of Regulation 10 SFR applies equally here. A further question arises as to whether the porting provisions comprise “rights and obligations arising from, or in connection with” a Defaulter’s participation in LCH. Although there is no statutory guidance or, to our knowledge, Irish case-law on this subject, in our view, the better view is that Regulation 10 should be interpreted broadly so as to include the return of the Client Clearing Entitlement (as it results from participation in the LCH system and would not otherwise arise). On this basis, in our view the matters fall to be considered under English law (as the law of the system) and we understand from the CC Opinion that such provisions would be upheld under English law as a result of the operation of Part VII.

Q19. If (i) following the commencement of Insolvency Proceedings, a Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could an insolvency officer appointed to the Default or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

3.81 Our replies to the previous question apply equally here.

Q20. Would the Security Deed provide an effective security interest under the laws of this jurisdiction over the Account Balance or Client Clearing Entitlement in favour of the relevant Clearing Client?

3.82 We understand that the protections provided by Part VII amount to an Exempting Client Clearing Rule and consequently we have not provided an answer to this question (on the basis that English law should apply as the law of the system as a result of the operation of the Irish Settlement Finality Regulations in accordance with the analysis set out above).

Q21. Are there any perfection steps which would need to be taken under the laws of this jurisdiction in order for the Security Deed to be effective?

3.83 We understand that the protections provided by Part VII amount to an Exempting Client Clearing Rule and consequently we have not provided an answer to this question (on the basis that Part VII should apply as a result of the operation of the Irish Settlement Finality Regulations).
Q22. Is there any risk of a stay on the enforcement of the Security Deed in the event of insolvency proceedings or reorganisation measures being commenced in respect of a Clearing Member?

3.84 We understand that the protections provided by Part VII amount to an Exempting Client Clearing Rule and consequently we have not provided an answer to this question (on the basis that Part VII should apply as a result of the operation of the Irish Settlement Finality Regulations).

Q23. Please provide brief details of any other significant legal or regulatory issues which might be expected to arise in connection with the provision by a Clearing Member of Client Clearing Services and which are not covered by the Questions above.

3.85 There is no Irish jurisprudence which deals directly with the opinions expressed in this Opinion under the sections on “Insolvency, Security, Set-Off and Netting” and “Client Clearing” above.

4. QUALIFICATIONS

4.1 Enforceability of claims

Our opinions are subject to:

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

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

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

(d) proceedings to enforce a claim or arbitral award may become barred under the Statute of Limitations 1957 or may be or become subject to a defence of set-off or counterclaim;

(e) in some circumstances an Irish court may, and in certain circumstances it must, terminate or suspend proceedings commenced before it, or decline to restrain proceedings commenced in another court, notwithstanding the provisions of the Opinion Documents providing that the courts of Ireland have jurisdiction in relation to the subject matter of those proceedings;

(f) a party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by a misrepresentation, or there has been any bribe or other corrupt conduct. The Irish courts will generally not enforce an obligation if there has been fraud;

(g) any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent, arbitrary or manifestly incorrect
and an Irish court may regard any certification, determination or calculation as no more than prima facie evidence; and

(h) if a party to any Contract or Agreement (a “Clearing Document”) or any transfer of, or payment in respect of, any Clearing Document is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Union or Irish sanctions or sanctions under the Treaty on the Functioning of the European Union, or is otherwise the target of any such sanctions, then obligations to that party under the relevant Clearing Document or in respect of the relevant transfer or payment may be unenforceable or void.

4.2 Effectiveness of Deed of Charge

(a) We express no opinion as to:

(i) whether a Clearing Member has good legal or other title to the assets or rights which are expressed to be subject to a security interest under the Deed of Charge, or as to the existence or value of any such assets or rights;

(ii) whether any security interest constitutes a legal or equitable security interest or a fixed or specific (rather than a floating) charge; or

(iii) whether the Deed of Charge breaches any other agreement or instrument.

4.3 Collateral

(a) In relation to our opinion at paragraph 3.38 above, please note that (irrespective of whether or not the Deed of Charge benefits from the safe harbours of the Irish FCA Regulations), the enforcement of the Collateral is subject to Irish fraudulent preference, fraudulent conveyance, unfair preference, improper transfer and similar laws (and in this regard we refer to our assumption at paragraph 2.3 above).

(b) It is possible that fixed security interests expressed to be created by the Deed of Charge could be recharacterised as floating charges. The risk of recharacterisation of a security interest as a floating charge depends on whether LCH has the requisite degree of control over the Charged Property. To the extent that the Chargor (as defined in the Deed of Charge) is able to deal with the Charged Property without LCH’s substantive consent, the court is likely to hold that the security interest created under the Deed of Charge constitutes a floating charge. If the security interest created under the Deed of Charge is characterised as a floating charge then the risks set out below might apply:

(i) the floating charge would, in certain circumstances, rank behind the preferential creditors and expenses of certain insolvency proceedings; and

(ii) the Chargor would be able to grant fixed charges and effect other dispositions of the relevant Charged Property which would rank higher than LCH’s security interest.
(c) At paragraph 3.40 above we express the view that the Deed of Charge should (subject to the assumptions and reservations in this Opinion) comprise a “financial collateral arrangement”. If, in fact, this were not the case, please note the following consequences:

(i) under section 409 CA 2014, a charge is void against a liquidator, and a creditor of the company unless registered within the relevant period allowed for delivery (which is 21 days beginning on the day after creation of the charge);

(ii) under section 597 CA 2014 a floating charge may be invalid if created within the period of 12 months before the winding up of the company;

(iii) under section 520 CA 2014, a moratorium (as a result of examinership) may apply which prevents enforcement of a charge;

(iv) under section 530 CA 2014, an examiner may seek leave of the court to realise property subject to a charge;

(d) A security financial collateral arrangement requires that the relevant “financial collateral” (as defined in the Irish FCA Regulations) is in the “possession or control” (as such terms are used in the Irish FCA Regulations) of the collateral-taker, which in this case is LCH.

(e) There is (unlike in England) no statutory definition of “possession” in respect of financial collateral for the purposes of the Irish FCA Regulations and nor is there, to our knowledge, any Irish case law on this issue. English case law is of persuasive authority before the Irish courts. The relevant English case law (as outlined in the CC Opinion).

(f) The Irish FCA Regulations do not contain a definition “control” nor is there any Irish case law on the issue. Again we have reviewed the CC Opinion in this regard and consider that the case-law outlined there would be of persuasive authority before an Irish court.

(g) In our view it is not possible to take a conclusive view as to whether an arrangement is a security financial collateral arrangement on the basis of either possession or control, unless such arrangement would clearly be a fixed charge under the laws of this jurisdiction or unless such arrangement is structured so as to ensure that the rights of the collateral provider are confined to substitution and the right to withdraw excess collateral; and it is possible, that an even more restrictive standard would apply. Please note that whether or not a collateral arrangement constitutes a fixed or floating charge is a question of fact, and we express no opinion as to whether or not the Deed of Charge constitutes a fixed or floating charge.

(h) There is no definition of excess collateral in the Irish FCA Regulations. We are aware that there is concern amongst commentators and practitioners in England that “excess” does not simply mean an excess over any level chosen by the parties. The secured obligations under the Deed of Charge are not restricted to trade exposures, but instead are defined to include all amounts (including fees, unfunded default fund contributions, indemnities etc) owing

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5 However, the requirement to register a charge under this Section does not apply where the charged property comprises solely debt securities.
by a Clearing Member to LCH. Therefore the amount of Charged Property LCH may require the Clearing Member to maintain, and so any agreed level above which excess can be withdrawn, may be lower than the exposure of LCH to the Clearing Member under the Deed of Charge. On this construction it would be impossible to assess accurately the amount of such liabilities from time to time and therefore it would be impossible to determine the “excess amount” which would effectively (and somewhat surprisingly) prohibit any withdrawals. Accordingly, whilst we cannot, in the absence of jurisprudence on the point, give certainty, we believe that the better view is that this extension of the scope of secured obligations does not take the arrangements outside the protections afforded by the Irish FCA Regulations.

(i) Whilst there is no conclusive authority, for the purposes of this opinion we are of the view that in light of the fact that the Charged Property are held by LCH (either held by a Clearance System (as defined in the Deed of Charge) on behalf of, for the account of, to the order of or under the control or direction of LCH or under the control or direction of a Custodian Bank (as defined in the Deed of Charge) for the account of the Clearing House) and that the Clearing Member is prohibited from charging or assigning (by way of security or otherwise) or creating any other proprietary interest over the Charged Property, the relevant conditions that have to be met in order to establish “possession” or “control” for the purposes of the Irish FCA Regulations should be present.

4.4 BRRD

(a) The BRRD Regulations were signed into Irish law on 9 July 2015 and came into force on 15 July 2015 (save for Regulations 79 to 94 (dealing with the bail-in tool) which will come into effect on 1 January 2016). The BRRD Regulations transpose the BRRD into Irish law. The BRRD Regulations apply *inter alia* to Irish Banks and to most Irish Investment Firms.

(b) The BRRD Regulations:

(i) require institutions that are subject to the BRRD Regulations ("BRRD Institutions") to draw up and maintain recovery plans; and

(ii) require the Central Bank as resolution authority to draw up resolution plans for BRRD Institutions;

(iii) allow the competent authority for the relevant BRRD Institution (which may be the European Central Bank or the Central Bank, depending on the scope of the application of the SSM Regulation to that entity) to:

(A) following an assessment of a BRRD Institution’s recovery plan, direct that institution to take steps to reduce its risk profile (such steps can include a change to that institution’s governance structure or funding strategy); and

(B) take certain "early intervention measures" which can include a direction to change business strategy, a direction to change legal or operational structures or a direction to negotiate a debt restructuring;

(iv) allow the Central Bank as resolution authority:
(A) apply to the High Court for a "capital instruments order" to write-down or convert certain capital instruments into shares or equity; and

(B) apply to the High Court for a "resolution order" enabling it to exercise any "resolution tool" available to it under the BRRD Regulations. The resolution tools available to it are the "sale of business tool", the "bridge institution tool", the "asset separation tool" and the "bail-in tool". The making of a resolution order also entitles the Central Bank to appoint a "special manager" to manage the institution under resolution and facilitate the implementation of the relevant resolution tool.

c) The orders mentioned above, although as yet unused in Ireland, could be broad-ranging in scope and could impact the effectiveness of the Default Rules and other agreements the subject of this Opinion.

d) While a detailed analysis of the provisions of the BRRD Regulations is beyond the scope of this Opinion, we note that the following are of particular relevance:

(i) the BRRD Regulations (at Regulation 124) give the resolution authority the power to inter alia suspend certain payment or delivery obligations, restrict the enforcement of certain security interests and suspend certain termination rights. However, Regulation 128 goes on to provide that the taking of a crisis prevention or crisis management measure (which includes steps of the type outlined at (b)(iii) and (b)(iv) above) will not:

(A) be taken to be an "enforcement event" under the Collateral Directive or "insolvency proceedings" within the meaning of the Settlement Finality Directive for the purposes of a contract entered into by the BRRD Institution provided that the substantive obligations (including payment obligations, delivery obligations and obligations to provide collateral) under that contract continue to be performed (the same protections are given in respect of subsidiaries where their obligations are guaranteed by the BRRD Institution, and any group entity which is subject to cross-default provisions (each a "BRRD Related Entity")); or

(B) (subject to the ongoing performance of the substantive obligations under the contract in question) of itself entitle a person to:

(I) exercise any termination, suspension, modification, netting or set-off rights (including in relation to a contract to which a BRRD Related Entity is a party); or

(II) obtain possession, exercise control or enforce security over any property of a BRRD Institution or BRRD Related Entity other than a credit institution or investment firm authorised in Ireland or otherwise affect any contractual rights of such an entity;
(ii) the BRRD Regulations provide that a suspension or restriction of the type mentioned at (i) above will not constitute non-performance of an obligation for the purposes of Regulation 128(1) to (4);

(iii) the BRRD Regulations (at Regulations 132 to 135) give certain protections to shareholders and creditors in the case of partial transfers and in the case of the application of the bail-in tool. These protections are designed to ensure that such shareholders and creditors are no worse off than they would have been had the BRRD Institution been wound up under normal insolvency proceedings;

(iv) the BRRD Regulations (at Regulations 136 to 142) provide for certain safeguards where a resolution order either transfers some only of the BRRD Institution’s assets or liabilities, or cancels or modifies a contract to which the BRRD Institution is a party. Where the BRRD Institution is party to an existing set-off arrangement, netting arrangement or title transfer financial collateral arrangement, (subject to a carve out in respect of covered deposits) a partial transfer of rights and liabilities under that arrangement is not permitted, and neither is a modification of the contractual arrangement;

(v) Regulation 142 also provides that a resolution tool may not affect the operation of systems covered by the Settlement Finality Directive; and

(vi) the BRRD Regulations (at Regulation 191) amend the Irish FCA Regulations to provide that Regulations 6-12 thereof (dealing with the enforcement of financial collateral arrangements, security financial collateral arrangements and the use of financial collateral, and the recognition of title transfer financial collateral arrangements and close-out netting provisions) shall not apply to:

(A) any restriction on the enforcement of financial collateral arrangements;

(B) any restriction on the effect of a security financial collateral arrangement, close out netting or set-off provision:

that is imposed by virtue of Chapter 4 (write-down of capital instruments), Chapter 7 (Resolution authority powers) or Chapter 8 (Resolution powers) of Part 4 of the BRRD;

(C) or to any similar restriction imposed by Irish law to facilitate the orderly resolution of Irish banks or Irish Investment Firms.
4.5 The Single Resolution Mechanism has applied across the eurozone since 1 January 2016. The resolution decision-making for four Irish banks (AIB, Bank of Ireland, permanent TSB and Ulster Bank) and one cross-border bank (Depfa) rested with the Single Resolution Board from that date, with resolution decision making for all other banks and investment firm remaining with the Central Bank as national resolution authority under BRRD.

4.6 Application of foreign law

(a) If any obligation is or is to be performed in a jurisdiction outside Ireland, it may not be enforceable in the Irish courts to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction. An Irish court may give effect to any overriding mandatory provisions of the law of the place of performance insofar as they render the performance unlawful or otherwise take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

(b) We express no opinion on the binding effect of the choice of law provisions in the Opinion Documents insofar as they relate to non-contractual obligations arising from or connected with the Opinion Documents.

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

(d) Irish courts may, in some circumstances, stay Insolvency Proceedings where they are of the opinion that proceedings in another forum would be more convenient or if concurrent proceedings are being brought elsewhere, but will take into account whether or not this will prejudice creditors whose claims have a close connection with Ireland. Specifically, where the Charger has no branch established or located in Ireland, the Irish court’s jurisdiction to wind up such a company may not be exercised at all if the court considers that there is not a sufficient connection with Ireland or the court may exercise its discretion to apply foreign law to the winding-up in Ireland.

(e) The courts having jurisdiction in relation to insolvency law in Ireland may give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in Ireland or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by Irish law. The courts of Ireland may accordingly apply foreign systems of law rather than Irish law where the charger is subject to insolvency proceedings in another jurisdiction.

4.7 Other Qualifications

(a) Under Irish law, interest imposed upon a Clearing Member under the Arrangements, an Agreement or a Contract might be held to be irrecoverable to the extent that it accrues on an unsecured debt after the making of a winding-up order or the passing of a winding-up resolution for the appointment of a liquidator in respect of the Clearing Member, Directive No. 2011/7/EC of the European Parliament and of the Council of February 2011 on combating late payment in commercial transactions was implemented into Irish law by the European Communities (Late Payment on Commercial Transactions) Regulations 2012 (statutory Instrument No. 580/2012) (the
“Irish Late Payment Regulations”). If the Opinion Documents do not provide a contractual remedy for the late payment of any amount payable thereunder, the Party entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed pursuant to Irish Late Payment Regulations.

(b) There is some possibility that an Irish court would hold that a judgment on an Opinion Document, whether given in an Irish court or elsewhere, would supersede the relevant Opinion Document so that any obligations relating to the payment of interest after judgment or any currency indemnities would not be held to survive the judgment.

(c) An Irish court may in its discretion decline to give effect to any provision for the payment of legal costs incurred by a litigant.

(d) The laws of Ireland may have effect so that any discretion or determination to be exercised or made by a party under the Arrangements must be exercised or made reasonably. Any provision in the Opinion Documents providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent, incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party thereto. An Irish court may regard any calculation, determination or certification as no more than prima facie evidence of the matter calculated, determined or certified.

(e) The parties to the Agreements may be able to amend the Agreements by oral agreement or by conduct despite any provision to the contrary.

(f) Any provision of the Opinion Documents which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party to the Agreements or any other person may be ineffective.

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

(h) Any provision of the Opinion Documents stating that a failure or delay, on the part of any party, in exercising any right or remedy under the Opinion Document shall not operate as a waiver of such right or remedy may not be effective.

(i) The effectiveness of any provision of the Opinion Documents which allows an invalid provision to be severed in order to save the remainder of the Opinion Document will be determined by the Irish courts in their discretion having regard to all the circumstances of the case.

(j) This Opinion is given for the exclusive benefit of the addressee. In this opinion we do not assume any obligation to notify or inform you of any developments subsequent to its date that might render its content untrue or inaccurate in whole or in part at such time. It may not, without prior written consent, be relied on by any other person. We consent to a copy of this Opinion being made publically available on the website of the addressee and to it being shown to the relevant regulators and/or any counsel appointed by
the addressee to advise on matters of the laws of other jurisdictions, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result or otherwise.

Yours faithfully

Arthur Cox

Arthur Cox
CLEARING MEMBERSHIP AGREEMENT

DATED

LCH.CLEARNET LIMITED

and

("the Firm")

Address of the Firm
THIS AGREEMENT is made on the date stated above

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

WHEREAS:

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

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

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

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

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION AND SCOPE OF AGREEMENT

1.1. Unless otherwise expressly stated, in this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) References herein to a clause are to a clause hereof and clause headings are for ease of reference only;
(c) Unless the context otherwise requires, words (including defined terms) denoting the singular shall include the plural and vice versa;

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

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

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

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

2 CLEARING MEMBERSHIP

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

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

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

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

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

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

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

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

(e) where the Firm is a registered company, the dissolution of the Firm or the striking-off of the Firm's name from the register of companies;
(f) any step analogous to those mentioned in paragraphs (a) to (e) of this clause 2.4 is taken in respect of such persons as are referred to in those respective paragraphs in any jurisdiction;

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

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

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

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

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

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

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

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

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

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

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

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

2.6. The Firm shall give written notice forthwith to the Clearing House of any change in its name, the address of its principal place of business, registered office or UK office.
2.7. The Firm shall give written notice to the Clearing House forthwith upon its becoming aware that any person is to become or cease to be, or has become or ceased to be, a controller of the Firm, and shall in relation to any person becoming a controller of the Firm state:

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

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

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

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

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

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

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

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

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

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

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

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

2.15. Without prejudice to clause 2.14 the Firm undertakes that its dealings with all its clients or counterparties shall be arranged so as to comply with the requirement that the Firm deals with the Clearing House as principal, and that all sums deposited
with the Clearing House by way of Cash Cover (including the Firm’s Contribution to the Default Fund) shall be deposited unencumbered and by the Firm acting as sole principal and as legal and beneficial owner.

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

3 REMUNERATION

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

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

4 FACILITIES PROVIDED BY THE CLEARING HOUSE

4.1. Provision of Central Counterparty Services

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

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

4.2. Maintenance of Records

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

4.3. Information

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

4.4. Accounts

The Clearing House agrees to establish and maintain one or more accounts for the Firm in accordance with the Rulebook. Accounts will be opened and kept by the Clearing House in such manner as will not prevent the Firm from complying with requirements of any regulations made pursuant to rules and/or legislation applicable to the Firm with
respect to the safeguarding or segregation of clients' money and the rules of such regulatory organisation as the Firm may be subject to in respect of their cleared business.

5 DEFAULT

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

6 DISCLOSURE OF INFORMATION

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

7 PARTNERSHIP

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

8 TERM

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

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

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

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

8.3. If the Firm is in breach of or in default under any term of this Agreement or the Rulebook, or if the Clearing House has issued a Default Notice in respect of the Firm, or if the Clearing House reasonably determines that the Firm no longer satisfies the Criteria for Admission as a Clearing Member, the Clearing House may in its absolute discretion terminate this Agreement in writing either summarily or by notice as follows.
Any termination by notice under this clause 8.3 may take effect (subject as follows) on the expiry of 30 days or such longer period as may be specified in the notice. A notice given by the Clearing House under this clause may at the Clearing House’s discretion allow the Firm a specified period in which to remedy the breach or default or to satisfy the Criteria for Admission as the case may be, and may specify what is to be done to that end, and may provide that if the same is done to the satisfaction of the Clearing House within that period the termination of this Agreement shall not take effect; and if this Agreement has terminated after the Clearing House has allowed the Firm such a period for remedy or satisfaction, the Clearing House shall then notify the Firm of the fact of termination. The Clearing House may, if the Clearing House has issued a Default Notice in respect of the Firm immediately, and in any other case after the effective date of termination, take such other action as it deems expedient in its absolute discretion to protect itself or any other Clearing Member including, without limitation, the liquidation of Registered Contracts but without prejudice to its own rights in respect of such contracts.

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

9 DEFAULT FUND

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

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

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

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

10 FORCE MAJEURE

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

11 THE RULEBOOK

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

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

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

13. LAW

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

13.2. The Firm irrevocably waives, with respect to itself and its revenues and assets all immunity on the grounds of sovereignty or other similar grounds from suit, jurisdiction of any court, relief by way of injunction, order for specific performance or for recovery of property, attachment of its assets (whether before or after judgment) 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
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 chargors and by this Deed on any Receiver or otherwise conferred by law on chargors 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.Clearenct Limited

..............................................................
Signature of Authorised Signatory

..............................................................
Name of Authorised Signatory

..............................................................
Title of Authorised Signatory

..............................................................
Date
Dated

and

LCH.CLEARNET LIMITED

CHARGE BY CLEARING MEMBER
SECURING OWN OBLIGATIONS