

MEMORANDUM

1 January 2021

RESPONSES TO INSTRUCTIONS TO COUNSEL – MEMBERSHIP, INSOLVENCY, SECURITY, SET-OFF & NETTING AND CLIENT CLEARING

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

1 Terms of Reference

1.1 Our advice is given in respect of Clearing Members which are Finnish entities (including Finnish credit institutions and investment service firms but excluding insurance companies, pension institutions, mutual funds, fund management companies and fund depository companies) and all references to a “**Relevant Clearing Member**” in this advice shall be construed accordingly. For these purposes:

- (a) a reference to a ‘credit institution’ (in Finnish: *luottolaitos*) is a reference to an institution which has permission to engage in credit institution activity (in Finnish: *luottolaitostoiminta*)) as a deposit bank (in Finnish: *talletuspankki*) or other credit institutions (in Finnish: *luottoyhteisö*) within the meaning of the Act on Credit Institutions (in Finnish: *laki luottolaitostoiminnasta*, 610/2014, as amended), being a commercial or a corporate bank established and operating under the Commercial Banks Act (in Finnish: *laki liikepankeista ja muista osakeyhtiömuotoisista luottolaitoksista*, 1501/2001, as amended, the “**Commercial Bank Act**”), a savings bank (in Finnish: *säästöpankki*) established and operating under the Savings Bank Act (in Finnish: *säästöpankkilaki*, 1502/2001, as amended, the “**Savings Bank Act**”) or a cooperative banks (in Finnish: *osuuspankki*) established and operating under the Act on Cooperative Banks and Credit Institutions (in Finnish: *laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista*, 423/2013, as amended, the “**Co-operative Bank Act**”). Please note, however, that certain other types of institutions, not covered by our advice, may also have permission to engage in banking activity, namely a mortgage association (in Finnish: *hypoteekkiyhdistys*) established and operating under the Act on Hypothec Association (in

Finnish: *hypoteekkiyhdistyksistä annettu laki*, 936/1978, as amended) and a mortgage credit bank (in Finnish: *kiinnitysluottopankki*) established and operating under the Finnish Covered Bond Act (in Finnish: *laki kiinnitysluottopankkitoiminnasta*, 688/2010, as amended);

- (b) a reference to a ‘investment service firm’ is to an company which is incorporated as a limited liability company in Finland, and authorised under Investment Services Act (in Finnish: *sijoituspalvelulaki*, 747/2012, as amended, the “**Investment Services Act**”) to provide investment services and investment activities;
- (c) a reference to an ‘Finnish entity’ is a reference to a company (including a credit institution and an investment firm), which is formed and registered under the Companies Act (in Finnish: *osakeyhtiölaki*, 624/2006, as amended, the “**Companies Act**”), a savings bank which is formed and registered under the Savings Bank Act and a co-operative bank which is formed and registered under the Act on Cooperatives (in Finnish: *osuuskuntalaki*, 421/2013, as amended) and the Co-operative Bank Act each as in force at the time of formation/registration of the relevant Finnish entity;
- (d) a reference to an ‘insurance company’ is a reference to a mutual or non-mutual undertaking, which is established and operating under the Insurance Companies Act (in Finnish: *vakuutusyhtiölaki*, 521/2008, as amended), the “**Insurance Companies Act**”). The Insurance Companies Act applies to two categories of insurance undertaking: insurance companies limited by shares (in Finnish: *vakuutusosakeyhtiö*) established under the Insurance Companies Act and mutual insurance companies (in Finnish: *keskinäinen vakuutusyhtiö*) established under the Insurance Companies Act;
- (e) a reference to a ‘pension institution’ is a reference to a mutual or non-mutual undertaking, which is established and operating under the Insurance Companies Act and the Act on Pension Insurance Companies (in Finnish: *laki työeläkevakuutusyhtiöistä*, 354/1997, as amended); and
- (f) a reference to a ‘mutual fund’, ‘fund management company’ and ‘fund depository company’ is a reference to a mutual fund, fund management company and fund depository company established and operating under the Act on Mutual Funds (in Finnish: *sijoitusrahastolaki*, 213/2019, as amended).

1.2 Definitions

In this advice:

“**Arrangements**” means the Client Clearing Arrangements, the Collateral Arrangements and the Default Arrangements;

“**Brexit**” means the withdrawal of the United Kingdom from the European Union on 31 January 2020, pursuant to its service of notice to the European Council under Article 50 of the Treaty on European Union.

“**BRRD**” means Directive 2014/59/EU providing for the establishment of an EU-wide framework for the recovery and resolution of credit institutions and investment firms;

“**Brussels I Regulation**” means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast);

“**Charged Property**” has the meaning ascribed to such term in the Deed of Charge;

“**Clearing Membership Agreement**” means the Clearing Membership Agreement (as defined in the Rulebook) which is substantially in the form appended as Appendix 1 of this memorandum.

“**Client Clearing Arrangements**” means the contractual arrangements by which a Relevant Clearing Member is bound to the default management procedures of LCH in respect of Client Contracts, constituted by the Relevant Clearing Member's Clearing Membership Agreement and the General Regulations, including the Client Clearing Annex of the Default Rules of LCH;

“**Client Contracts**” means the Contracts entered into by a Clearing Member in respect of its Client Clearing Business;

“**Collateral Arrangements**” means the security arrangements which govern the provision of Collateral by a Relevant Clearing Member to LCH, constituted by the relevant executed Deed of Charge, the General Regulations of LCH (in particular those set out in Section 4 (Collateral) of the Procedures of the LCH) and the relevant instruction(s) through LCH's Collateral Management System;

“**Collateral**” means (i) Securities (as defined in the Deed of Charge) transferred by the Relevant Clearing Member to LCH pursuant to the Deed of Charge in accordance with the Procedures of LCH (and in particular, section 4 (Collateral) of the Procedures of LCH) and the term, for the avoidance of doubt, includes the Charged Property (as defined in the Deed of Charge) and (ii) cash transferred by the Relevant Clearing Member to LCH on a title-transfer basis and held on held in an account of LCH in a European Union Member State other than Finland;

“**Deed of Charge**” means a deed of charge entered into between a Relevant Clearing Member and LCH in respect of all Charged Property transferred to LCH by that Relevant Clearing Member which is substantially in the form of the Deed of Charge set out in Appendix 2 of this memorandum, and which contains no material modifications to the wording set out in Clause 2 of that annexed form (for the avoidance of doubt, a change to the numbering of the clause or other provision in which the relevant wording appears in a particular deed of charge would not (in either such case) of itself constitute a “material modification” for these purposes);

“**Default Arrangements**” means the contractual arrangements by which a Relevant Clearing Member is bound to the default management procedures of LCH, constituted by the Relevant Clearing Member's Clearing Membership Agreement and the General Regulations, including the Default Rules of LCH;

“**EMIR**” means Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“**EU Insolvency Regulation**” means Regulation (EU) of the European Parliament and of the Council No. 2015/848 of 20 May 2015 on insolvency proceedings;

“**financial collateral arrangement**” means a collateral arrangement (in Finnish: *vakuus*) within the meaning of the Act on Financial Collateral Arrangements (in Finnish: *Rahoitusvakuuslaki*, 11/2004, as amended¹, the “**Act on Financial Collateral Arrangements**”);

“**Financial Collateral Directive**” means Directive of the European Parliament and of the Council on financial collateral arrangements (2002/47/EC) (as amended);

“**Finnish credit institution**” means a ‘credit institution’ as described in paragraph (a) of paragraph 2.1 above incorporated in and formed under Finnish law and having its head office in Finland;

“**Finnish Resolution Laws**” means the Resolution Act and the Act on the Financial Stability Authority (1195/2014, as amended; in Finnish: *laki rahoitusvakausviranomaisesta*, the “**Authority Act**”) and the relevant provisions of the Act on Credit Institutions (in Finnish: *laki luottolaitostoinnasta*, 610/2014, as amended) and other related legislation implementing BRRD in Finland;

“**Netting Act**” means the Act on Certain Conditions of Securities and Currency Trading and of Settlement Systems (in Finnish: *Laki eräistä arvopaperi- ja valuuttakaupan sekä selvitysjärjestelmän ehdoista*, 1999/1084, as amended)²;

“**Parties**” is a reference to LCH and a single Relevant Clearing Member to which this advice applies, and a reference to a “Party” is a reference to either of them;

“**Reorganization Measures**” means Company Reorganization Measures (as defined in section 1.5) and Recovery and Resolution Measures (as defined in section 1.6);

“**Resolution Act**” means the Act on Procedure for the Resolution of Credit Institutions and Investment Firms (in Finnish: *laki luottolaitosten ja sijoituspalveluyritysten kriisinratkaisusta*, 1194/2014, as amended);

“**Resolution Authority**” means the Finnish Stability Authority (in Finnish: *rahoitusvakausvirasto*);

“**Rome I Regulation**” means Council Regulation (EC) No 593/2008 on the law applicable to contractual obligations;

“**Rulebook**” means the General Regulations, Procedures, Default Rules, Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual published on LCH's website as at the date of this memorandum;

“**Secured Obligations**” has the meaning ascribed to such term in the Deed of Charge;

“**Settlement Finality Directive**” or the “**SFD**” means Directive 98/26/EC of the European Parliament and of the Council of 19 May 2008 on settlement finality in payment and securities settlement systems and the Financial Markets;

¹ By which the provisions the Collateral Directive are implemented into Finnish law.

² By which the provisions of the Settlement Finality Directive are implemented into Finnish law.

“**Withdrawal Agreement**” means the fully ratified agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community dated 21 October 2019.

Unless the context otherwise requires, a reference to a “paragraph” is a reference to a paragraph in this advice and a reference to a “Part” is a reference to a part in this advice; and

Headings are for ease of reference only and shall not affect interpretation of this advice.

- 1.3 The bankruptcy, reorganisation or other insolvency procedures to which a Relevant Clearing Member could be subject under Finnish law, and which are relevant for the purposes of this advice are (i) bankruptcy, (ii) company reorganisation and (iii) temporary interruption of the operations of a deposit bank. The Recovery and Resolution Measures to which a Relevant Clearing Member could be subject to under Finnish law and which are relevant for the purposes of this advice are the Recovery and Resolution Measures under the Finnish Resolution Laws and the SRM Regulation, as applicable.
- 1.4 The legislation applicable to Finnish insolvency proceedings (the “**Insolvency Proceedings**”) as at the date of this advice is included in the Bankruptcy Act (in Finnish: *konkurssilaki*, 120/2004, as amended, the “**Bankruptcy Act**”), the Commercial Bank Act, the Savings Bank Act, the Co-operative Bank Act, the Order of Priority Act (in Finnish: *laki velkojien maksunsaantijärjestyksestä*, 1578/1992, as amended, the “**Order of Priority Act**”) and the Act on Recovery to the Bankruptcy Estate (in Finnish: *laki takaisinsaannista konkurssipesään*, 758/1991, as amended, the “**Recovery Act**”).
- 1.5 The legislation applicable to Finnish corporate reorganisation measures (the “**Company Reorganisation Measures**”) as at the date of this advice is included in the Act on Company Reorganisation (in Finnish: *laki yrityksen saneerauksesta*, 47/1993, as amended, the “**Reorganisation Act**”), the Recovery Act, the Commercial Bank Act, the Savings Bank Act and the Cooperative Banks Act as well as the Act on the Temporary Interruption of the Operations of a Deposit Bank (in Finnish: *laki talletuspankin toiminnan väliaikaisesta keskeyttämisestä*, 1509/2001, as amended, the “**Temporary Interruption of the Operations of a Deposit Bank Act**”). The Reorganisation Act does not primarily apply to Finnish credit institutions, and the bankruptcy proceedings of such institutions are partially governed by the Bankruptcy Act. Special provisions regarding insolvency of the respective forms of credit institutions are included in the Commercial Bank Act, the Savings Bank Act and the Cooperative Banks Act as well as Act on the Temporary Interruption of the Operations of a Deposit Bank. Although the provisions of the Reorganisation Act regarding reorganisation proceedings of a company do not primarily apply to Finnish credit institutions, the Reorganisation Act is *mutatis mutandis* applicable with regard to commercial credit institutions in accordance with the Act on Temporary Interruption of the Operations of a Deposit Bank. Applicable provisions of the Reorganisation Act include, *inter alia*, provisions regarding the appointment and obligations of the receiver, provisions regarding the legal effects regarding commencement of restructuring proceedings and restrictions on enforcement and insolvency recovery, as well as provisions regarding the debtor’s business activities during restructuring proceedings.
- 1.6 The legislation applicable to Finnish recovery and resolution measures (“**Recovery and Resolution Measures**”) as at the date of this advice is included in the Finnish Resolution Laws. The Finnish Resolution Laws implement the BRRD in Finland.
- 1.7 For the purposes of preparing our advice we have only reviewed the following documents (the “**Opinion Documents**”):

- (i) the Rulebook;
- (ii) the Clearing Membership Agreement to be entered into between LCH and each Relevant Clearing Member, which incorporates LCH's Rulebook; and
- (iii) the Deed of Charge, together with the Clearing Membership Agreement, the "**LCH Agreements**").

1.8 We also refer to the Decision of the Board of Supervisors of the European Securities Market Authority (ESMA) of 25 September 2020 to recognise LCH Limited as a third-country CCP pursuant to Article 25 of EMIR.

1.9 We have reviewed the Opinion Documents in connection with the instructions to counsel that LCH have provided to us (the "**Instructions**").

1.10 Our advice is given in respect of the specific questions raised by you as set out in Part 3. We express no opinion in this advice as to the validity and enforceability of any provisions of LCH's Rulebook in respect of any law other than Finnish law.

1.11 Our advice is given in respect of obligations (a) arising under Contracts (as defined in LCH's General Regulations) to which LCH is a party, which have been duly registered as a cleared Contract by LCH; (b) which are legal, valid, binding and enforceable under their governing law; and (c) which are mutual between the Parties in the sense that each Party is personally and solely liable as regards obligations owing by it and is the sole and beneficial owner of obligations owed to it.

Accordingly and without limitation, no opinion is expressed where a Relevant Clearing Member is acting as agent for another person, or is a trustee, or in respect of which a Relevant Clearing Member has a joint interest (including partnership) or in respect of which a Relevant Clearing Member's rights or obligations or any interest therein have been assigned, charged, attached, garnished or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law.

1.12 This advice is given on the basis that LCH is not itself currently insolvent for the purposes of any insolvency law and is not subject to any insolvency proceeding applicable to it under any relevant law.

1.13 As Finnish lawyers, we are not qualified to assess the meaning and consequences of the terms of the Opinion Documents under their governing law and we have made no investigation into such law as a basis for the opinion expressed hereafter and do not express or imply any opinion thereon. Accordingly, our review of the Opinion Documents has been limited to the terms of such documents as it appears on the face thereof without reference to laws of England and Wales ("**English law**").

1.14 This advice relates solely to matters of Finnish law (as in force at the date hereof)³ and does not consider the impact of any laws (including insolvency laws) other than Finnish law, even where, under Finnish law, any foreign law falls to be applied. However, In Part 3 of this advice we have referred to, and based our advice on, the application of English law.

1.15 This advice and the opinions given in it are governed by Finnish law and relate only to Finnish law as applied by the courts of Finland as at today's date. We express no opinion on the laws of any other jurisdiction.

³ Except that in this opinion we have assumed that the legal effects resulting from the United Kingdom having exited from the European Union, have taken effect (see our assumption in section 2.1 below) after the expiry of the transition period under the Withdrawal Agreement.

- 1.16 We are not expressing any opinion as to any matters of fact the liability of any Party to tax or accounting policy.
- 1.17 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 Finland to the extent that such action is subject to laws other than Finnish law.
- 1.18 We express no opinion as to any provisions of the Opinion Documents other than those to which express reference is made in this advice except insofar as any such provisions directly relate to issues covered herein.
- 1.19 We have not been responsible for advising any party to the Opinion Documents other than LCH for the purposes of this advice and the communication of this advice to any person other than LCH does not evidence the existence of any relationship of client and adviser between us and such person.
- 1.20 We assume no duty to update this advice or inform LCH or any other person to whom a copy of this advice may be communicated of any change in Finnish 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 advice is given, which might have an impact on the opinions given in this memorandum.
- 1.21 The opinions contained in this memorandum are not limited to any specific Service offered by LCH but do not apply to Services offered by FCM Clearing Members in respect of FCM Contracts.
- 1.22 Except where otherwise defined herein, terms defined in LCH's Rulebook shall have the same meaning in this advice.

2 Assumptions

We assume the following:

- 2.1 That as a result from the UK's exit from the European Union⁴:
- (i) LCH does not have the benefit of the protections of the Settlement Finality Directive as a settlement system;
 - (ii) the UK incorporates a regime, which is materially equivalent to the current regime, which implements the Financial Collateral Directive and the Settlement Finality Directive, and
 - (iii) the Deed of Charge and Security Deed constitute financial collateral arrangements under English law.
- 2.2 That under English law to which they are expressed to be subject and under all other relevant laws (other than Finnish law):
- (i) the Opinion Documents and each Cleared Transaction constitute and will at all times constitute the valid and legally binding obligations of all parties thereto (including the

⁴ Despite of our assumption 1.14 where we rely on Finnish law on the date of the advice, we have prepared the advice as if Brexit had taken place. This means, for example, that in our advice we have not referred to the Winding-up of Credit Institutions Directive provisions on applicable law (as implemented in Finland) although they would apply to arrangements of a Finnish credit institution with LCH on the date of this advice (unless such provisions apply to arrangements governed by third country law). In relation to Brexit, the Withdrawal Agreement (sets forth a transition period ending 31 December 2020 during which Union law (as defined therein) shall be applicable to and in the United Kingdom. This issue is not, however, covered by this opinion.

Relevant Clearing Member) enforceable against them in accordance with their respective terms;

- (ii) the compliance with all relevant perfection requirements relating to, and the effectiveness of, the collateral arrangements under the Deed of Charge under the law of any jurisdiction(s) (other than the Relevant Jurisdiction) that we have considered to be relevant to those matters;
- (iii) the choice of English law as the governing law of the Opinion Documents is a valid and binding selection;
- (iv) the netting and default management procedures incorporated in the Opinion Documents and the Clearing Rules are valid and enforceable;
- (v) each Cleared Transaction under the Opinion Documents is capable of being terminated, closed out, liquidated and/or ported in the manner envisaged by the Default Provisions and capable of having a net sum determined in accordance with the Default Provisions;
- (vi) the submission by the Relevant Clearing Member to the non-exclusive jurisdiction of the English courts with regard to proceedings arising out of or in relation to the Opinion Documents is valid and binding upon the Relevant Clearing Member; and
- (vii) the submission by the Relevant Clearing Member to the arbitration proceedings to which it may elect to submit with regard to proceedings arising out of or in relation to the Opinion Documents is valid and binding upon the Relevant Clearing Member.

2.3 That each Party is duly incorporated and has the capacity, power and authority under all applicable laws to enter into the Arrangements and each Contract and to perform its obligations under the Arrangements and each Contract and that each Party has taken all necessary steps to enter into, execute, deliver, be bound by and perform the Arrangements, and each Contract, and that such steps have not been revoked or superseded.

2.4 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents and has otherwise complied with all applicable laws and regulations required to enable it lawfully to enter into and perform its obligations under the Arrangements and the Contracts and to ensure the legality, validity, enforceability and admissibility in evidence of the Arrangements and each Contract in this jurisdiction.

2.5 That the Arrangements are entered into by the Relevant Clearing Member prior to the formal commencement of any Insolvency Proceedings or Reorganization Measures in respect of that Relevant Clearing Member.

2.6 The EU Insolvency Regulation does not apply to any Relevant Clearing Member⁵.

2.7 That each Party acts in accordance with the powers conferred by the Arrangements, and that (save in relation to any non-performance leading to the taking of action by LCH under the Default Rules) each Party performs its obligations under the Arrangements and each Contract in accordance with their respective terms.

2.8 That the contractual arrangements and obligations established pursuant to and by the Opinion Documents and each Contract are not capable of being avoided for any reason other than as discussed in our responses to question 3.2.4 below.

⁵ With reference to Article 1(2) of the Insolvency Regulation, i.e., because the Relevant Clearing Members are either credit institutions or investment service firms.

- 2.9 That there are not and will not be any other agreements, instruments or arrangements between the Parties, which modify or supersede the terms of the Arrangements and/or any Opinion Document.
- 2.10 The Agreements have been entered into, and each of the Contracts referred to therein are carried out, by each of the parties thereto 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.
- 2.11 That the obligations assumed under the Agreements, and the Contracts are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing 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.
- 2.12 That none of the balances held in a Client Account opened by a Relevant Clearing Member with LCH in respect of one or more of its Clearing Clients will have the benefit of the client money protections provided for by any rules applicable to the Relevant Clearing Member.
- 2.13 That the Relevant Clearing Members and LCH have properly executed a Clearing Membership Agreement and Deed of Charge and that each Clearing Membership Agreement and Deed of Charge granted by a Relevant Clearing Member in favour of LCH is executed by the relevant parties thereto in substantially the same form as the Agreements reviewed by us as described in paragraph 1.7 above and LCH's Rulebook (which is incorporated as part of the Clearing Membership Agreement) is in the same form as the draft version of the Rulebook available at <https://www.lch.com/resources/rules-and-regulations/ltd-rulebooks>.
- 2.14 Each Relevant Clearing Member has the capacity, power and authority to create the security constituted by the relevant Agreements and that each Relevant Clearing Member has the capacity, power and authority to enter into and to exercise its rights and to perform its obligations under the relevant Agreements.
- 2.15 All acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreements under the laws of any jurisdiction other than England and Wales have been duly fulfilled, performed and effected.
- 2.16 Charged Property consists of dematerialised Securities (as defined in the Deed of Charge) and cash, and title and other rights to Securities and cash is evidenced by entries in a register or account maintained by or on behalf of an "intermediary", and that the relevant securities account and cash account is located in a European Union member state other than Finland.
- 2.17 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 or cash has been credited to, or forms a credit in, the relevant account).
- 2.18 That the Collateral transferred under the Collateral Arrangements constitutes financial collateral under English law to secure the Relevant Clearing Member's obligations arising from transactions in securities (as defined in the Settlement Finality Directive), and that the Collateral is held in cash

accounts or securities accounts operated, maintained and administered by LCH in a European Union member state other than Finland.

- 2.19 Until such time as the security interest created by the Deed of Charge has been released, the Securities (as defined in the Deed of Charge) and cash will be held by LCH in accordance with the terms of the Agreements.
- 2.20 That LCH at all times exercises its rights under the Agreements and does not waive any requirement for it to consent to the withdrawal of any Securities (as defined the Deed of Charge) or cash.
- 2.21 That LCH has no notice of any Collateral or Contribution being subject to any prior equitable interest or right or remedy arising from a breach of fiduciary duty.
- 2.22 That all Collateral or Contributions transferred are freely transferable and all acts or things required by Finnish laws or laws of any other jurisdiction to be done to ensure the validity of each transfer of Collateral or Contributions will have been effectively carried out.
- 2.23 That each Party, which receives Collateral or Contribution from the other Party, does not treat that Collateral or Contribution in a manner, which could indicate that the other Party retains any proprietary interest in that Collateral or Contribution.
- 2.24 That none of the Collateral belongs to a Relevant Clearing Member's clients or, to the extent that it does, all relevant legal requirements have been met permitting such Collateral to be validly charged or transferred under applicable laws.

3 Advice

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

The advice under this memorandum is subject to Hannes Snellman General Terms and Conditions (available at: www.hannessnellman.com).

3.1 Membership

General

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

We believe that LCH would not be deemed to be domiciled, resident or carrying on business in Finland by virtue of providing clearing services to a Relevant Clearing Member.

Insolvency, Security, Set-off and Netting

- 3.1.2 ***Please identify the different types of Insolvency Proceedings and Reorganisation Measures. Would any of these not be covered by those events entitling LCH to liquidate, transfer or otherwise deal with Contracts as provided for in Rule 3 or Rules 5 of the Default Rules? Are any other events or procedures not envisaged in Rule 3 or Rule 5 of the Default Rules relevant?***

The types of Insolvency Proceedings and Reorganization Measures that are covered by this advice are listed in paragraph 1.3 above.

The Clearing Membership Agreement entered into by a Clearing Member incorporates the provisions of the Rulebook and provides for such provisions (including the Default Rules) to be applicable to the Relevant Clearing Member. It is the Default Rules, which set out the provisions relating to actions, which may be taken by LCH upon the default of a Relevant Clearing Member.

We believe that events entitling LCH to liquidate, transfer or otherwise deal with Contracts as provided for in Rule 3 and Rule 5 of the Default Rules (including by reference the Automatic Early Termination Events defined in Rule 5 of the Default Rules) would cover the Insolvency Proceedings and the Company Reorganisation Measures. We have not identified any other events or procedures not envisaged in Rule 3 or Rule 5 of the Default Rules relevant in respect of the Relevant Clearing Members.

We have come to this conclusion on the basis that the definition of an event of default in Rule 3 is broad and includes the failure to perform any obligation under the LCH Rules and when read in conjunction with the list of scenarios in Default Rule 5, encompasses not only insolvency, cessation of business, winding-up, prevention procedures and measures for the treatment of business difficulties, but also any equivalent procedures.

As regards Recovery and Resolution Measures, pursuant to Finnish law implementing BRRD⁶, the taking up of a crisis prevention measure or a crisis management measure under the Resolution Act, including the occurrence of any event directly linked to the application of such a measure shall not be deemed to constitute an insolvency event⁷ within the meaning of the Netting Act or under the Act on Financial Collateral Arrangements, or an event of default, which enables a party to enforce close-out netting or other enforcement under a contract provided that the substantive terms and obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. In such a case, the law prohibits a counterparty to an institution subject to resolution from taking measures the purpose of which is to modify rights of the institution under a contract, terminate a contract, and restrict the enforcement of a contract or netting of payment obligation, set-off of debts or enforcement of collateral. The prohibition is partly applicable also to contracts to which a subsidiary of the institution is party if the institution or another group company has guaranteed or granted security for such contract. Therefore, liquidation or close-out pursuant to termination events Rule 3 or Rule 5 of the Default Rules, which refer to resolution measures by competent authorities, may not be available or protected pursuant to the netting rules under the Netting Act and the Act on Financial Collateral Arrangements.

According to the Temporary Interruption Act, a deposit bank is obliged to submit a notice to the Financial Stability Authority, the Bank of Finland and the FIN-FSA without delay if it is not able to fulfil its liabilities. Upon consulting with the Bank of Finland, the FIN-FSA and the bank in question, the Financial Stability Authority may interrupt the operations of the depositary bank for one month at most, if it is obvious that the continuance of the activity would seriously harm the stability of the financial markets, the undisturbed functioning of the payment systems or the interests of creditors.

⁶ Pursuant to Chapter 12 Section 7 of the Resolution Act, which implements Article 68(1) and (2) of BRRD, Recovery and Resolution Measures under the Finnish Resolution Laws and the SRM Regulation do not amount to ‘insolvency proceedings’ within the meaning of the Netting Act provided that the substantive terms and obligations under the contract continue to be performed. As regards the application of resolution and recovery provisions to a Relevant Clearing Member, please see our responses to 3.1.4 below.

⁷ That is, “commencement of insolvency proceedings” against a party or other event that enables a party to use netting or other means of enforcement against its counterparty.

However, the operations of a deposit bank which is under resolution in accordance with the Finnish Resolution Laws may not be interrupted.

The commencement of the interruption procedure has essentially the same legal effect as the commencement of the restructuring proceedings as provided in the Restructuring Act. During the interruption, the right of the bank to dispose of its assets is restricted. For example, the bank cannot take any deposits or repayable funds from the public without a permission from the Financial Stability Authority. The property of the deposit bank may not be subject to enforcement, and the entity may not be placed in bankruptcy or liquidation. Finally, a pledge given by the credit institution may not be converted into money during this period.

If the conditions for the interruption are no longer present, the interruption must be withdrawn by the Financial Stability Authority after consulting the Bank of Finland and the FIN-FSA. The interruption is terminated also, if the Finnish Ministry of Finance (in Finnish: *valtiovarainministeriö*) decides on an exceptional basis, to apply for the restructuring process for the bank. Otherwise, the interruption proceeding ceases after the time limit stated in the interruption decision has ended.

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

Pursuant to the Deed of Charge, the Relevant Clearing Member agrees to grant, with full title guarantee, in favour of LCH a first fixed security over certain specified Charged Property (as defined in the Deed of Charge). The Charged Property is rendered subject to the charge by submission of the appropriate details to LCH as provided at Section 4 of the LCH Procedures by the Relevant Clearing Member to LCH, and by the delivery of securities matching the description to a designated securities account maintained in the name of LCH. Charged Property is released from the charge when the chargeor submits a release instruction to LCH (as provided at Section 4 of the LCH Procedures) to LCH and LCH discharges the charge under clause 3 of the Deed of Charge by redelivering the securities specified in the release instruction to the Relevant Clearing Member.

Applicable statutory provisions protecting the Collateral Arrangements in Insolvency Proceedings and Company Reorganisation Measures

We are of the opinion that, as a matter of Finnish law, English law will govern both the rights between the Parties (*inter partes*) and the rights in rem to the Collateral provided by the Relevant Clearing Member under the Deed of Charge. We believe that, as regards the question whether or not the Collateral under the Deed of Charge is effective against the Relevant Clearing Member, or in the Insolvency Proceedings or Reorganisation Measures, against third parties, Finnish law points to English law because (i) Collateral Arrangements are governed by English law and (ii) the Collateral is considered to be located in England and Wales.

Our view is based on the following analysis.

Validity of the choice of English law

We believe that Finnish courts uphold the contractual choice of law and jurisdiction set out in the Deed of Charge⁸. Finnish law recognises the principle of freedom of contract, whereby the parties to an agreement are in principle free to agree on the applicable law to their relationship and the rights and obligations under it. This principle is further expressed by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (“**Rome I Regulation**”). Rome I Regulation is, as a European Union regulation, binding and directly applicable in Finland. Rome I Regulation provides that a contract shall primarily be governed by the law chosen by the parties even if such law is not the law of a contracting state, provided that the application of such laws is not contrary to such overriding mandatory provisions of Finnish law which due to their public nature or general interest shall be considered to be applicable irrespective of the agreed choice of laws.⁹

Hence, as a matter of Finnish law, the choice of English law to govern the Deed of Charge will be recognised by Finnish courts. In order to determine the validity, perfection and enforceability of the Collateral between the Parties under the Deed of Charge granted by the Relevant Clearing Member to LCH a Finnish court would apply the law applicable to the contractual obligations of the Collateral (governing law of the Deed of Charge), i.e., English law.

Insolvency Proceedings and Company Reorganisation Measures

As discussed above, for the purposes of this advice we have assumed that the Collateral (Charged Property) is located in England and Wales. As regards the validity, perfection and enforceability of the Collateral against third parties in the event of Insolvency Proceedings or Company Reorganisation Measures having been commenced against the Relevant Clearing Member, we believe that as a matter of Finnish law, the right of LCH as the holder of Collateral would be governed by law other than Finnish law, in this case either English law. This is because:

- (i) the general Finnish rules on the law applicable to rights in rem in respect of collateral point at the law of the location of the relevant assets used as collateral (*lex rei sitae*); and
- (ii) Finnish law implementing the Settlement Finality Directive points at the law of the Member State where Collateral is located as the law applicable to the right of LCH to Collateral.

As regards the position in (i) above, under Finnish law, the general view is that proprietary aspects (rights *in rem*; rights against third parties) of collateral are governed by law of the location of the relevant assets (*lex rei sitae*).

As a matter of Finnish law, the location of the relevant assets¹⁰ would be determined as follows:

- (a) directly held bearer securities: Finnish law would point at the law of the location of the relevant certificate;
- (b) directly held registered securities: Finnish law would point at the law of the location of the underlying certificate evidencing the existence of the debt. In the event that there does not exist any certificate, Finnish law would most likely point at the law of the location of the debtor;

⁸ Clause 29.

⁹ We note that despite (even no-deal) Brexit, Finnish courts would continue to recognize the parties' submission to English law on the basis of the Rome I Regulation.

¹⁰ In this, “assets” would be securities (including equity securities, e.g. shares in a company and debt securities).

- (c) directly held dematerialised securities: Finnish law would point at the location of the register where the rights of the holder has been entered into;
- (d) indirectly held securities: Finnish law would point at the law of the location of the account where the rights of the interests in the securities have been entered into (i.e., the place where an intermediary keeps its records on the security interest¹¹).

The law applicable to the Collateral over cash, the *lex rei sitae* principle would point at the law of the location of the account in which the relevant deposit obligations are recorded (de facto the location of the institution¹² that maintains the account).

Netting Act and its scope of application

The same conclusion, i.e., the application of English law as the governing law of the Collateral, can be arrived at where Finnish law implementing the Settlement Finality Directive – the Netting Act – is applicable.

The Netting Act applies to netting and other settlement of payments in a settlement system as well as netting and other settlement of payment and delivery obligations, which relate to:

- (a) the trading in financial instruments referred to in Section 14 of the Investment Firms Act¹³ (in Finnish: *sijoituspalvelulaki*, 747/2012, as amended) as well as to other trading in securities and derivatives contracts comparable thereto; or
- (b) the trading of currency or currency units legal in Finland or in another country;

(below, “**Financial Transactions**”).

The Netting Act applies also to netting of payment and delivery obligations relating to Financial Transactions, which are not settled in a settlement system, i.e., obligations between two contracting parties.

The Netting Act applies further to collateral arrangements, both arising from the rules of settlement systems pursuant to which a party must provide collateral to a member of the system as security of the party’s obligations arising from settlement, and from provisions of ordinary agreements in the trading in securities, derivatives and currencies pursuant to which a party must provide collateral to its counterparty for its netted obligations, as well as collateral provided to central banks in connection with it carrying out central bank activities.

The application of the Netting Act is not limited to netting or settlement of payments or transactions in “systems” designated as such under the Settlement Finality Directive. This follows from the definition of a “settlement system” (in Finnish: *selvitysjärjestelmä*), which is used in the Netting Act, which is not restricted to “systems” designated as such under the Settlement Finality Directive only.

Pursuant to Section 2, subsection 1 of the Netting Act, ‘a settlement system’ is, for the purposes of the application of the Netting Act, a system based on rules,

- (a) which is maintained solely or jointly, by a central bank, a credit institution (referred to in Chapter 1, Section 7, sub-section 1 of the Credit Institutions Act), a central securities depository or a central counterparty (emphasis added) (as defined in part 5 and part 7, respectively, of Chapter 1, Section 3 of the Act on Book-entry System and Clearing Activity

¹¹ In this case, England and Wales.

¹² In this case, LCH which is located in England and Wales.

¹³ This section corresponds in substance with the list of financial instruments as set out in Annex I to MiFID. In this advice, we have assumed that the underlying transactions cleared at LCH fall within MiFID definition of “financial instruments”.

(348/2017, as amended)¹⁴, or a foreign entity corresponding to the aforementioned entities;
or

- (b) where monetary obligations are cleared and settled¹⁵ (in Finnish: *määritetään ja toteutetaan*) and where funds (in Finnish: *kate*) of the payment system are transferred through a bank account in a central bank; or
- (c) a system, which the Ministry of Finance has, on the basis of an application, approved as a system falling to the scope of the Settlement Finality Directive or as a corresponding system.

Netting Act – Governing law provisions applicable to collateral arrangements

Section 12(3) of the Netting Act includes a general provision on applicable law relating to collateral (security) arrangements¹⁶ in respect of dematerialised securities. This provision reads:

If no certificate has been issued for a security or if it has been deposited with a deposit system, a pledge or other right on the security shall be governed by the laws of the country where the security has been entered in a register or in an account. [The law applicable to a right to a book-entry is governed by the provisions of Section 5 a, paragraph 4 of the Act on Book-Entry Accounts.]¹⁷

We have assumed that (i) the Relevant Clearing member provides the Collateral to LCH as security for its obligations arising from clearing and settlement of trading in financial instruments¹⁸ (ii) title and other rights (including security interest) to Securities and cash (forming the Collateral) is governed by English law, (iii) is evidenced by entries in a register or account maintained by or on behalf of an ‘intermediary’, and (iv) that the Securities Account and the Cash Account (each as defined in the Deed of Charge) is located in a European Union member state, which is other than Finland. On the basis of operation of Section 12(3) of the Netting Act and the application of general principle of *lex rei sitae* for collateral arrangements, we are of the opinion that as regards the question on whether or not the Deed of Charge valid and enforceable is the context of Insolvency Proceedings or Corporate Reorganisation Measures in respect of a Relevant Clearing Member, would be a matter of the law of the relevant member state of the European Union, where the security interest has been entered into the relevant register or an account¹⁹.

3.1.4 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 Relevant

¹⁴ The relevant section defines a central counterparty by reference to an entity referred to in Article 2(1) of EMIR. Hence, with reference to our assumption that LCH is a recognised central counterparty under EMIR, LCH should fall within the definition of a “settlement system” under the Netting Act.

¹⁵ The Finnish wording “*määritetään ja toteutetaan*” directly translates as “determine and carried out” and refers to settlement of obligations – “clear and settle” is admittedly somewhat repetitive as the concepts here refer to the same activities.

¹⁶ Entered into in connection with trading in financial instruments.

¹⁷ As regards Finnish securities issued in the Finnish book-entry securities system, the choice of law in relation to rights in rem would be subject to the Act on Book-Entry Accounts (in Finnish: *laki arvo-osuustileistä*, 827/1991, as amended), (the “**Act on Book-Entry Accounts**”). Section 5a paragraph 4 of the Act on Book-Entry Accounts provides that if the account holder of a custody account or its nominee maintains in another country a register or an account on rights pertaining to book-entries, the rights (of such holder of rights) shall be governed by the laws of that country, unless otherwise provided in entries relating to the account. We have, however, assumed that the reference to the Finnish Act on Book-Entry Accounts is not relevant for this analysis on the basis that none of the Securities consisting Collateral are Finnish securities issued/held within the Finnish book-entry securities system.

¹⁸ That is, securities and derivatives within the meaning of Annex I MiFID and other comparable securities and derivatives.

¹⁹ That is, the location of the institution, which maintains the relevant accounts.

Clearing Member was subject to Insolvency Proceedings and Reorganisation Measures? Is it necessary or recommended that LCH should specify that certain Insolvency Proceedings 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 Reorganisation Measures to which the answer applies and briefly explain your reasoning.

Insolvency Proceedings and Company Reorganisation Measures

We have assumed that under English law, if LCH takes action under Rule 8 of its Default Rules with respect to one or more Contracts to achieve a discharge of such Contracts, English law will 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 and Rule 8 of the Default Rules would be legal, valid and enforceable under English law. We have assumed that the rights and obligations of the Relevant Clearing Member in connection the Default Rules would constitute “rights and obligations arising from, or in connection with, the participation of that participant ... in the system” within the meaning of Article 8 of the Settlement Finality Directive.

We note that English law governs the Default Provisions. This being the case, as a matter of Finnish law, English law will also govern the validity of the actions provided for in the Default Rules against a Relevant Clearing Member also in case the Relevant Clearing Member was subject to Insolvency Proceedings or Company Reorganisation Measures.

We have come to this conclusion because first, such actions are governed by the laws applicable to the Rulebook, i.e., English law, and second, Finnish law points to the application of English law in such case pursuant to the application of Section 12(2) of the Netting Act,²⁰

Namely, Section 12(2) of the Netting Act reads:

Where an entity governed by the laws of Finland is party to a settlement system that falls within the scope of the Settlement Finality Directive or to a corresponding settlement system in a country outside the European Economic Area, (emphasis added), which is not governed by the laws of Finland, rights and obligations arising out of or in connection with the participation of the entity in that settlement system after the opening of insolvency proceedings against the entity are governed by the laws of the country that are applied to the settlement system in question.

Therefore, the laws of the country that apply to a settlement system (within the meaning of the Netting Act), apply also to the rights and obligations arising out of or in connection with the participation of Finnish entity (in this case, the Relevant Clearing Member) in that settlement system after the opening of insolvency proceedings²¹.

This analysis or the conclusions would not change if LCH was not a designated “system” under the Settlement Finality Directive as implemented in Finland²². This because Section 12(2) of the Netting Act (which implements Article 8 of the Settlement Finality Directive) has applied provisions

²⁰ Section 12(2), which implements Article 8 of the Settlement Finality Directive. As to the scope of application of the Netting Act, please refer to our responses to question 3.1.3.

²¹ Please refer to our responses to questions 3.1.3 and 3.1.6 on the application of Section 12(2) of the Netting Act.

²² By this we refer to leg (c) of Section 2(1) of the Netting Act, which reads: “a system, which the Ministry of Finance has, on the basis of an application, approved as a system falling to the scope of the Settlement Finality Directive or as a corresponding system”.

contemplated by Recital 7²³ and does not require that the “settlement system” referred to in that section, be a “designated system” within the meaning of the Settlement Finality Directive. It is sufficient that the relevant settlement system is a “corresponding settlement system” in a country outside the European Economic Area²⁴. This is confirmed in the legislative materials to the Netting Act (Government Proposal 99/1999), which refer to the application of the Netting Act to Finnish entities, which are members to third country systems and to collateral given to such systems.

Recovery and Resolution Measures

The BRRD entered into force on 2 July 2014 and it was implemented in Finland with effect as of 1 January 2015 principally by the Finnish Resolution Laws.

The Authority Act concerns the operation and powers of the Finnish Resolution Authority i.e., the Financial Stability Authority (in Finnish: *Rahoitusvakausvirasto*), which has been established for the purposes of the enforcement of the Resolution Act and other regulation relating to recovery and resolution of financial institutions. In addition to the Finnish Resolution Laws, the resolution and recovery of most significant financial institutions are subject to the rules of the single resolution mechanism (the “**SRM**”) under the authority of the Single Resolution Board (the “**SRB**”) as set out in the Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (as amended, the “**SRM Regulation**”), which applied in full from 1 January 2016. The primary scope of the SRM is the euro area. The SRM Regulation establishes a single European Resolution Board having resolution powers over the institutions that are subject to the SRM, thus replacing or exceeding the powers of the national authorities. Finnish Resolution Laws contains various provisions, which might affect the effectiveness of the Arrangements as Finnish Resolution Laws enable authorities to take a range of actions in relation to financial institutions considered to be at risk of failing. The Resolution Authority may intervene and take intervention measures with respect to the Relevant Clearing Member.

The aim of the BRRD and the SRM Regulation is to provide authorities with a broad range of powers and instruments to address failing financial institutions in order to safeguard financial stability and minimise taxpayers’ exposure to losses. The new regime imposes an obligation on the Financial Stability Authority or the SRB, as applicable (each below, the “**Resolution Authority**”), and financial institutions to prepare resolution and recovery plans, authorises the Resolution Authority to assess the resolvability of a financial institution, and to address or remove impediments to resolvability. The European Central Bank (the “**ECB**”) assesses recovery plans for significant banks, after consulting the SRB, and resolution plans are prepared by the SRB after consulting the ECB.

In the event a Relevant Clearing Member is in distress, the resolution and recovery regime allows the Financial Stability Authority together with the Finnish Financial Supervisory Authority (the “**FIN-FSA**”) or the SRB together with the ECB, as applicable, to intervene and take early intervention measures with respect to the financial institution.

²³ Recital 7 of the Settlement Finality Directive permits member states to apply the provisions of the SFD to their domestic institutions which participate directly in third country systems and to collateral security provided in connection with participation in such systems.

²⁴ In this, we have relied on LCH being currently a SFD designated system in the UK, and that following the UK’s exit from the EU (after the transition period under the Withdrawal Agreement), the UK incorporates a regime, which is materially equivalent to the current regime which implements the EU Financial Collateral Directive and the Settlement Finality Directive.

The Resolution Authority is vested with power to implement Recovery and Resolution Measures with respect to a financial institution where the authority considers that the financial institution in question is failing or likely to fail, and where there is no reasonable prospect that any measures could be taken to prevent the failure of the institution and that the taking of the Recovery and Resolution Measures is necessary to protect significant public interest. An institution will be considered as failing or likely to fail when it is, or is likely in the near future to be, in breach of its requirements for continuing authorisation; its assets are, or are likely in the near future to be, less than its liabilities; it is, or is likely in the near future to be, unable to pay its debts as they fall due; or it requires extraordinary public financial support (except in limited circumstances).

The measures available in respect of Relevant Clearing Member subject to resolution procedures (in Finnish: *kriisihallinto*) include the power and obligation on the Financial Stability Authority or the SRB, as applicable, to write down or convert capital instruments (shares or other equity) in the institution, in order to cover losses of the distressed Relevant Clearing Member. The resolution tools (in Finnish: *kriisinratkaisuvälineet*) available for the Resolution Authority under the Resolution Laws or the SRM Regulation include the powers to:

- (a) enforce bail-in – the resolution authority has the power to write down certain claims of unsecured creditors of the distressed financial institution and to convert certain unsecured debt claims to equity (the general bail-in tool, in Finnish: *velkojen arvonalentaminen ja muuntaminen*). Such equity could also be subject to any future write-down. This applies also to derivatives²⁵, save for that the resolution authority may exercise the write-down and conversion powers in relation to a liability arising from a derivative contract only upon or after closing out (termination and netting) the derivative contract (i.e., on a net basis). As such, upon entry into resolution, the resolution authority shall be empowered to terminate and close out any derivative contract for that purpose;
- (b) enforce the transfer of the business (assets or shares) of the Relevant Clearing Member as a whole or part on commercial terms without requiring the consent of its shareholders (or holders of other equity instruments) (the sale of business tool, in Finnish: *liiketoiminnan luovuttaminen*);
- (c) redeem shares and transfer shares or assets to another institution – the Resolution Authority may transfer all or part of the business of the institution to a “bridge institution” which is an entity created for this purpose by the Resolution Authority (the bridge institution tool, in Finnish: *väliaikainen laitos*); and
- (d) transfer all or part of assets in the distressed Relevant Clearing Member to one or more asset management vehicles to allow them to be managed with a view to maximising their value through eventual sale or orderly wind-down (the asset separation tool, in Finnish: *omaisuudenhoitoyhtiö*).

Bail-in tool

Chapter 8 of the Resolution Act²⁶ introduces a bail-in tool, allowing Resolution Authorities to write down and/or convert into equity, liabilities of a failing Relevant Clearing Member as provided in

²⁵ The Finnish Resolution Laws do not define ‘derivatives’. Therefore, it is not possible for us to opine on whether or not the provisions in the Finnish Resolution Laws relating to “derivatives” apply to all types of derivative transactions. However, with reference to Article 2(1)(65) we note that BRRD applies to derivatives within the meaning of Article 2(5) of EMIR with a further reference to Annex I Section C (4) – (10) of Directive 2014/65/EU (“**MiFID**”).

²⁶ Implementing Articles 43 – 46 and 49 – 53 BRRD.

Chapter 13 of the Resolution Act²⁷. The objective of the bail-in tool is to absorb the losses of the failing entity. Pursuant to Chapter 13 Section 1 of the Resolution Act, the Resolution Authority is vested in power *inter alia* to modify, reduce (even to zero) or cancel equity or debt instruments or other eligible liabilities²⁸ of a Relevant Clearing Member as well as to close out and terminate financial contracts or derivatives contracts for the purposes of writing down derivatives.

Bail-in in respect of derivative positions may, however, take place only upon such positions having been closed out²⁹. In part, this rule protects the application of netting arrangements. However, the protection does not extend to the net position following the close-out (including the application of any collateral arrangements included in the close-out where permitted), as the net position would be eligible to bail-in and the resolution powers of the Resolution Authority.

However, Chapter 8 Section 4 restricts the use of the bail-in tool in respect of certain “protected liabilities”. For the purposes of this advice, such liabilities include (i) secured liabilities³⁰ provided that the market value (in Finnish: *käypä arvo*) covers the amount of the liability, and (ii) liabilities with a maturity of less than seven days from the decision of the Resolution Authority to enforce the bail-in against the entity, owed to a settlement system within the meaning of the Netting Act, and arising from the settlement of payments or securities in such a system.

We would expect that contracts³¹ between a central counterparty and its clearing members, which are covered by collateral arrangements, fall within the definition of secured liability and thus would benefit from the protection under Chapter 8 Section 4 of the Resolution Act. However, to the extent that a liability arising from the close-out was no longer covered by a collateral arrangement, it would not be protected against Recovery and Resolution Measures.

As regards the protection of liabilities owed to a settlement system, Finnish law appears apply the provision wider than provided in Article 44(2)(f) as it does not limit its application to systems designated as such under the Settlement Finality Directive. Rather, the wording of the relevant provision refers to settlement system within the meaning of Section 2(1) of the Netting Act. As discussed in our response to question 3.1.3 such definition includes *inter alia* “a system based on rules, which is maintained solely or jointly by ... a central counterparty”³².

Chapter 13 Section 4 of the Resolution Act protects³³ rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person. The same protection is available where the Resolution Authority proposes to exercise ancillary powers vested to it under the Resolution Laws.

²⁷ Implementing Article 63 BRRD.

²⁸ Including derivative contracts.

²⁹ Chapter 8 Section 12 of the Resolution Act implementing Article 49 BRRD.

³⁰ Cf. Article 44(2)(f) BRRD. Finnish law does not define “secured liability”. For the definition of a “secured liability”, see Article 1(67) of BRRD: “a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements”.

³¹ Or positions under contracts.

³² Under Finnish law, this applies to central counterparties within the meaning of Article 2(1) EMIR. As regards the definition of a “settlement system” under the Netting Act, please see our responses in 3.1.3.

³³ According to Chapter 13 Section 4, the Resolution Authority may not transfer some, but not all, of the rights and liabilities that are covered by a title transfer financial collateral arrangement, a set-off arrangement or a netting or modify or terminate rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers. However, notwithstanding the above-mentioned rules, the Resolution Authority may transfer indemnifiable deposits from the other assets covered by the financial collateral, set-off or netting arrangement in order to secure access to such deposits.

Stays and partial property transfers

Pursuant to Chapter 12 Section 7 of the Resolution Act, which implements Article 68(1) and (2) of BRRD, Recovery and Resolution Measures under the Finnish Resolution Laws and the SRM Regulation do not amount to ‘insolvency proceedings’ within the meaning of the Netting Act provided that the substantive terms and obligations under the contract continue to be performed. In such a case, the law prohibits a counterparty to an institution subject to resolution from taking measures the purpose of which is to modify rights of the institution under a contract, terminate a contract, and restrict the enforcement of a contract or netting of payment obligation, set-off of debts or enforcement of collateral. The prohibition is partly applicable also to contracts to which a subsidiary of the institution is party to, if the institution or another group company has guaranteed or granted security for such contracts. This means that the implementation of Recovery and Resolution Measures does not amount proceedings, where e.g. netting or financial collateral arrangements would be protected under Finnish law.

The operation of the sale of business tool or transfer of assets in the Relevant Clearing Member may apply to only part of the Relevant Clearing Member’s assets and liabilities. This could cause the transfer of some, but not all, of the property, rights and/or liabilities of the relevant Clearing Member in relation to Contracts and/or the Charged Property associated with such Contracts, with the result that the netting arrangements under the Default Rules of LCH would be impaired.

However, in line with the BRRD, the Resolution Laws contain provisions regarding the protection of collateral, set-off and netting agreements where the Resolution Authority exercises resolution powers. Implementing Article 77 BRRD, Chapter 13 Section 4 of the Resolution Act protects³⁴ rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person. The same protection is available where the Resolution Authority proposes to exercise ancillary powers vested to it under the Resolution Laws.

Further, in accordance with Article 71 of the BRRD, as implemented in Chapter 12 Section 10 of the Resolution Act, the Resolution Authority has the power to temporarily suspend termination rights of any party to a contract with an institution (e.g. the Relevant Clearing Member) under resolution until midnight on the banking day following its publication. The suspension of termination rights applies not only to the obligations of the distressed institution but also those of its counterparty. The Resolution Authority may also declare a temporary stay on the exercise of termination rights against a subsidiary of the distressed institution if the obligations under the contract are guaranteed or otherwise supported by the distressed institution and if the termination rights under the contract are based solely on the insolvency or financial conditions of the distressed institution. It is required that in the case of a transfer power that has been or may be exercised in relation to the distressed institution, either all the assets of the distressed institution in such subsidiary and all the debts owed to such subsidiary relating to that contract have been or may be transferred to and assumed by the recipient, or as the Resolution Authority provides in any other way similar protection for such obligations. Pursuant to Chapter 12 Section 9, the Resolution Authority has similar right of suspension in respect of enforcement of security interests. There is no authority as to whether the provisions of the Default Rules, which permit LCH to terminate Contracts with a Clearing Member,

³⁴ According to Chapter 13 Section 3, the Resolution Authority may not transfer some, but not all, of the rights and liabilities that are covered by a title transfer financial collateral arrangement, a set-off arrangement or a netting or modify or terminate rights and liabilities that are protected under such a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement through the use of ancillary powers. However, notwithstanding the above-mentioned rules, the Resolution Authority may transfer indemnifiable deposits from the other assets covered by the financial collateral, set-off or netting arrangement in order to secure access to such deposits.

would constitute termination or enforcement rights within the meaning of Chapter 12 of the Resolution Act. In the event that the Default Rules are deemed to fall within scope and a Resolution Authority decides to take action under Chapter 12, the netting arrangements under the Default Rules or the enforcement of security under the Deed of Charge would be impaired. However, we note that the temporary suspension of termination or enforcement rights is not applicable to settlement systems within the meaning of the Netting Act or corresponding settlement systems within the EEA, or to parties to the same, to central counterparties, or to central banks. We refer to our answer to 3.1.3 where we discuss the provisions of the Netting Act relating to a “settlement system” (which would include both a “designated system” within the meaning of the SFD, also a central clearing party³⁵ and a “corresponding settlement system” in a country outside the European Economic Area).

In addition, pursuant to Chapter 13 Section 7 of the Resolution Act³⁶, the resolution tool does not affect the operation of systems within the meaning of the Netting Act or the application of rules in such systems, where the Resolution Authority transfers some, but not all, assets or obligations of the institution. The same protection is available if the Resolution Authority uses its ancillary powers to cancel or amend a contract to which the distressed institution is a party.

Please note that on the date of this advice in the absence of any precedents as of yet it is not possible to assess the full impact of the Finnish Resolution Laws or the SRM Regulation on the obligations of the Relevant Clearing Member if the Relevant Clearing Member was subject to Recovery and Resolution Measures.

Automatic Early Termination

Under Finnish law, 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.

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

Generally, Finnish law allows the recovery of transactions and/or security arrangements in the case where such were carried out with the intention of preferring one creditor of the insolvent entity over others.

Section 5 of the Recovery Act stipulates general grounds for recovering assets. It covers all transactions of an insolvent debtor or a debtor who becomes partially insolvent as a result of such transactions.

In general, subject to certain preconditions, transactions (e.g. entering into transaction or providing collateral) carried out within five years before the date when the petition for bankruptcy is filed to a court (the “**Record Date**”) and transactions performed before the company is placed in bankruptcy (the “**Critical Time**”) may also be recovered on the basis of the general grounds for recovery. However, transactions between a debtor and its related parties may always be recovered, regardless of the date of the relevant transaction.

³⁵ With reference to Article 2(1) EMIR.

³⁶ Implementing Article 80 BRRD.

In order for a recovery claim to succeed according to Section 5 of the Recovery Act, a transaction must be concluded within the Critical Time and fulfil all of the following preconditions, as stipulated in Section 5 of the Recovery Act:

- (a) the transactions, either alone or in conjunction with other transactions, has inappropriately:
 - (i) favoured a creditor at the expense of other creditors;
 - (ii) removed assets beyond the reach of other creditors; or
 - (iii) increased obligations to the detriment of creditors;
- (b) the debtor was insolvent at the time when the transaction was being carried out or it contributed to the debtor's insolvency;
- (c) the counterparty was aware or should have been aware of the insolvency or over-indebtedness or the impact of the transactions on the debtor's financial condition; and
- (d) the counterparty was aware or should have been aware of the circumstances mentioned above in item (a), on the basis of which the transaction is considered inappropriate.

Pursuant to Section 10 of the Recovery Act, a payment of a debt may be recovered if the payment had been made within a time period of three (3) months prior to the date on which an application for the commencement of insolvency proceeding against a party had been filed at the court, and:

- (a) claim had not fallen due at the time of payment; or
- (b) unusual means of payment had been used (e.g. payment of the debt was performed by providing goods instead of money); or
- (c) the amount of the payment was considerable³⁷ taking into account the assets of the insolvent party.³⁸

Recovery of such payment would not, however, be available if the payment would nevertheless be considered ordinary with regard to the preceding business relationship of the parties.

According to Section 14 of the Recovery Act, any security³⁹, collateral given later than three months prior to the Record Date may be recovered if:

- (a) the parties did not agree upon the security when the debt emerged; or
- (b) the possession of the collateral assets was not assigned or any other measures required by the creation of the right to security were not carried out without undue delay after the debt emerged⁴⁰.

The above applies to situations where the security de facto was not a condition for the debt and the security is given when the debtor's insolvency appeared. In general terms, a debt is considered to have emerged when the creditor hands over the loan amount.

³⁷ According to Finnish legal praxis, amounts representing about ten (10) per cent of the insolvent party's assets have been regarded as considerable.

³⁸ The actual recovery of a legal act is ultimately subject to a judgment by the court having jurisdiction over the insolvency proceedings.

³⁹ That is, 'security interest'.

⁴⁰ This may affect the validity of any 'top-up' security.

If a security was provided to the debtor's related party within two years prior to the Record Date, the security may be recovered. The related party can, however, prevent this if it can prove that the debtor was neither insolvent nor became insolvent because of the security adjustments.

Notwithstanding the above, where either the Netting Act or the Act on Financial Collateral Arrangements applies⁴¹, recovery of collateral arrangements or netting is not available on the basis Section 10 or Section 14 of the Recovery Act.

Namely, pursuant to Section 4 of the Netting Act, netting will not be avoided (subject to recovery) pursuant to Section 10 of the Recovery Act even if the payment had not fallen due, unusual means of payment had been used, or the amount of the payment was considerable taking into account the assets of the insolvent party. Also, pursuant to Section 10 of the Netting Act, collateral given in accordance with collateralised clearing agreement shall not be subject to avoidance on the basis of Section 14 of the Recovery Act (e.g. additional collateral, see above).

Further, pursuant to Section 7(3) of the Act on Financial Collateral Arrangements, netting may not be avoided even if the payment had not fallen due, unusual means of payment had been used, or the amount of the payment was considerable taking into account the assets of the insolvent party. However, netting may be recoverable (i) where a creditor had acquired a claim from a third party later than three months prior to the Record Date and (ii) in respect of an obligation to which a creditor become bound later than three months prior to the Record Date in a manner that corresponds to a payment of a debt, unless such acquisition or obligation is considered customary. Also, a claim that would be available to be so recovered cannot be netted after the commencement of insolvency proceedings.

It should also be noted that neither the Netting Act nor the Act on Financial Collateral Arrangements provide protection against recovery on the basis of Section 5 of the Recovery Act, i.e., where the arrangements favour a creditor or are detrimental to other creditors and the relevant party was or become insolvent as a result of such actions (see above).

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

There is not netting legislation in Finland that could explicitly apply to the netting of Cleared Transactions between LCH and a Relevant Clearing Member in the context of Insolvency Proceedings or Reorganisation Measures.

This is because, as set out in paragraph 3.1.3 above, we are of the opinion that Finnish law would point to English law as the governing law of the Default Provisions. This follows from the application of Section 12(2) of the Netting Act as described in our response to question 3.1.3 above and the application of the choice of law rule under Finnish law implementing Article 25 of the Winding-up Directive⁴².

If Finnish law were nevertheless to apply, netting of obligations of a Relevant Clearing Member in relation to its obligations to LCH would be subject to general Finnish netting rules set forth in the Netting Act and the Act on Financial Collateral Arrangements.

⁴¹ As to the application of Netting Act and the Act on Financial Collateral Arrangements, please see our responses in 3.1.3 above.

⁴² Section 24(f) of the Commercial Banks Act. By operation of Chapter 13a Section 2 of the Investment Services Act, the same rule applies to investment service firms. Also, the rule applies to savings banks and co-operative banks pursuant to the applicable Banking Laws.

In Finland, close-out netting in insolvency is governed by the Netting Act, which implements the Settlement Finality Directive and by the Act on Financial Collateral Arrangements, which implements into Finnish law Directive 2002/47/EU of the European Parliament and of the Council of 6 June 2002 on Financial Collateral Arrangement (the “**Collateral Directive**”)⁴³.

The Netting Act is a specific piece of legislation addressing the validity and enforceability of netting in events of insolvency in its variable forms (including bankruptcy and a company restructuring). By virtue of the Netting Act, netting of obligations relating to Financial Transactions (as defined in the Netting Act; see above in 3.1.1) is generally enforceable in the event of the insolvency of one of the parties to an agreement. However, netting may not be available in respect of an obligation that has arisen subsequent to the time when a counterparty was notified of such an obligation being subject to attachment proceedings initiated in accordance with the Finnish Enforcement Act (in Finnish: *ulosottoaari*, 705/2007). In addition, netting may in certain circumstances be subject to recovery (claw-back; see below). Generally, the Netting Act recognises closing out (termination) and netting of obligations (transactions) both automatically upon the commencement of Insolvency Proceedings against a party and by giving notice to the insolvent party.

The Netting Act applies to netting of payment and delivery obligations relating to Financial Transactions, which are not settled in a settlement system, i.e., obligations between two contracting parties.

The Netting Act applies also to collateral arrangements, both arising from the rules of settlement systems pursuant to which a party must provide collateral to a member of the system as security of the party’s obligations arising from settlement, and from provisions of ordinary agreements in the trading in securities, derivatives and currencies pursuant to which a party must provide collateral to its counterparty for its netted obligations, as well as collateral provided to central banks in connection with it carrying out central bank activities.

Section 2, subsection 2 of the Netting Act defines netting as:

- (a) the combining of opposite payment or delivery obligations of two contracting parties into one payment obligation or delivery obligation of an investment object of the same kind in accordance with the due date; or
- (b) the obligations of several participants of a settlement system are combined as set out in sub-paragraph (a) in the settlement system; or
- (c) all payment and delivery obligations between contracting parties fall due or may be accelerated to fall due and combined as agreed if insolvency proceedings are commenced against one of the parties,

in a contract term that is to be deemed ordinary.

Netting pursuant to the Netting Act is available to “*a contract term that is to be deemed ordinary*”. This means that the scope of application of the netting provisions in the Netting Act is limited to netting terms, which are normally used in the trading of securities, derivatives and currencies.

⁴³ As between the Netting Act and the Act on Financial Collateral Arrangements, the former applies generally to netting of obligations arising out of trade in financial instruments (including derivatives), payment and clearing systems and central bank operations. The Netting Act applies also to netting of obligations outside clearing systems provided, that the obligations relate to payment and delivery obligations in the trade in securities, derivatives and currencies. Further, the Netting Act applies also to collateral (netting of collateral positions) that is posted in connection with such activity. The Act on Financial Collateral Arrangements applies to collateral arrangements (both a pledge and title transfer constitute security interest, in Finnish: *vakuusoikeus*, under Finnish law) in financial markets and corporate lending when the collateral consists of securities, account money, loan receivables and collateral provided to a central counterparty in connection with collateral requirements pursuant to EU Regulation 648/2012 (EMIR).

Pursuant to the preparatory works to the Netting Act, such terms may be included in the rules of settlement systems or terms and conditions in general agreements to be used in bi-lateral transactions as published by international organizations (such as ISDA Master Agreement, IFEMA etc.). Also, netting terms that are similar to those set forth in such rules or terms and conditions or that are used generally in the financial markets⁴⁴ fall within the Netting Act (i.e., are protected in the event of insolvency of the Finnish counterparty). The requirement for relevant contract terms to be ordinary applies also to collateral arrangements that are entered into as security for a party's obligations arising from netting.

Pursuant the Netting Act, netting and settlement of obligations, which have arisen before the commencement of bankruptcy proceedings or temporary interruption of a deposit bank, may be netted irrespective of bankruptcy of a party, and netting is enforceable and binding in the bankruptcy of a contracting party. Where obligations are entered into a settlement system in accordance with the rules of the system after the moment of commencement of Insolvency Proceedings in respect of a participant, the obligations may be netted or settled with binding effect irrespective of such insolvency proceedings, if (i) carried out within the settlement day as defined by the rules of the system during which the opening of such proceedings occurred, and (ii) the system operator can prove that when such transfer orders became irrevocable by its rules, it was neither aware, nor should have been aware, of the opening of such proceedings.

In the Netting Act, "commencement of insolvency proceedings" is defined in the Netting Act as the commencement bankruptcy, proceedings for the restructuring of a company or private person, or a decision relating to the suspension of activities of a credit institution, liquidation, closure or revocation of authorisation of a credit institution and any other comparable decisions of authorities to initiate execution proceedings.

The Netting Act protects netting of obligations also in restructuring proceedings under the Restructuring Act and during the period of the interruption of activities of a deposit bank under the Temporary Interruption Act. Namely, the restrictions to pay, collect or enforce obligations set by the court upon the commencement of restructuring proceedings under the Restructuring Act or the Temporary Interruption Act⁴⁵ do not generally apply to netting of mutual obligations that fall within the Netting Act. The insolvent party cannot, however, continue to enter into the Transactions after the commencement of restructuring proceedings without the permission of either the administrator or the competent court. If such permission is received, the obligations, which originate from the time after the commencement of the restructuring proceedings can be netted against the obligations, which originate from the time prior to such proceedings.

The Netting Act provides that netting or settlement of obligations (including payment instructions) arisen/created before the commencement of Insolvency Proceedings against a party is not subject to recovery (claw-back) on the basis of Section 10 of the Recovery Act, even though such payment could be seen as effected with unusual means of payment or prematurely or the payment was considerable compared to the assets of the buyer. Section 4 of the Netting Act also provides that collateral arrangements within the meaning of the Netting Act may not be subject to recovery pursuant to Section 14 of the Recovery Act.

However, the Netting Act does not remove the right to recovery that the insolvency estate has under Section 5 of the Recovery Act, which provides that an improper transaction can be revoked if, as a result of the execution of the transaction (either as such or together with other transactions) (i) a

⁴⁴ In this, "financial markets" are viewed internationally, i.e., not for example in relation to Finnish financial markets only.

⁴⁵ See e.g. our response to question 3.1.2.

creditor has been favoured at the expense of other creditors, (ii) assets of the debtor have been transferred beyond the control of the other creditors or (iii) the debtor's debts have increased to the detriment of the other creditors⁴⁶. Such a transaction can be revoked and assets recovered to the bankruptcy estate within five (5) years after the execution of the transaction, provided that the debtor was insolvent when the transaction was executed or became insolvent as a result of the transaction.

Netting under the Netting Act is restricted in cases where obligation owed to a party has been subject to attachment (in Finnish: *ulosmittaus*) within the meaning of the Finnish Enforcement Act. Namely, in case where an obligation owed to a party has been attached but has been netted before a payment prohibition order (in Finnish: *maksukielto*) has been served, attachment applies to the netted payment or delivery obligation. An obligation, which has been attached, may not be netted with an obligation, which has arisen subsequent to the servicing of the payment prohibition order.

Act on Financial Collateral Arrangements

The Act on Financial Collateral Arrangements applies to financial collateral in the form of (a) securities within the meaning of the Finnish Securities Market Act, (b) account money (i.e., funds credited to a cash account, including also foreign currencies) and (c) loan receivables (receivable based on loan issued by a Finnish or a foreign credit institution or an institution within the meaning of Article 2(1) subsection (o) of the Collateral Directive). The definition of securities generally covers all types of negotiable and fungible securities. The Act on Financial Collateral Arrangements (together with its preliminary works) explicitly recognises not only Finnish securities, but also foreign securities as suitable collateral. Further, the Act on Financial Collateral Arrangements is also applicable in respect of other types of collateral accepted by a central clearing counterparty in connection with collateral requirements pursuant to EU Regulation 648/2012 (EMIR) (collectively with the instruments in (a) to (c) in the above, ("**Eligible Instruments**").

In terms of counterparties, the Act on Financial Collateral Arrangements is applicable (i) where the collateral provider is an institution (in Finnish: *laitos*, as defined in the Act on Financial Collateral Arrangements) or (ii) where the collateral taker is an institution and the collateral-provider is another type of legal person, provided further that the collateral is of the nature set forth in the Act on Financial Collateral Arrangements.

The Act on Financial Collateral Arrangements permits parties to agree that "upon a debt having fallen due" all mutual obligations of the parties are netted or may be netted. Netting may include obligations that are secured by the relevant collateral arrangement (in Finnish: *vakuusvelka*) and delivery obligations relating to such collateral arrangements. Where the Act on Financial Collateral Arrangements is applicable, netting of obligations pursuant to such arrangements is available irrespective of the commencement of insolvency proceedings⁴⁷ [against a collateral provider] provided that such obligations (i) have arisen prior to the commencement of Insolvency Proceedings and (ii) have been secured by a financial collateral in the form of Eligible Instruments. Netting will not be subject to recovery (claw-back) based on Section 10 of the Recovery Act (see above in 3.1.5).

However, pursuant to Section 7 of the Act on Financial Collateral Arrangements (i) an obligation (receivables), which a creditor has acquired from a third party later than three months before the Record Date (filing of bankruptcy), and (ii) an obligation of the counterparty (creditor to the

⁴⁶ Section 5 of the Recovery Act contains grounds for recovery where the parties have entered into arrangements in mala fide i.e., the parties have been aware of the insolvency of a party and of the fact that the arrangement is detrimental to the interests of the other party (see above in 3.1.5).

⁴⁷ "Commencement of insolvency proceedings" is defined as "commencement of bankruptcy or restructuring proceedings for a company, a decision on the temporary interruption of a deposit bank and other decision to commence an enforcement action, which demands the participation of authorities and which restricts the competence (in Finnish: *määräysvalta*) of the debtor.

insolvent party) to which the counterparty has committed to during such period in a manner, which can be compared to a payment of a debt, may be recovered unless acquiring of the obligation/receivable or assuming of the obligation may be regarded customary under the circumstances. The netted receivable, which could be recovered pursuant to Section 7 of Act on Financial Collateral Arrangements, cannot be included in netting after commencement of insolvency proceedings. Also, as regards obligations subject to attachment, similarly as set out in the Netting Act (see above), in case where an obligation owed to a party has been attached but has been netted before a payment prohibition order (in Finnish: *maksukielto*) has been served, attachment applies to the netted payment or delivery obligation and an obligation, which has been attached, may not be netted with an obligation, which has arisen subsequent to the servicing of the payment prohibition order.

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

Under the Bankruptcy Act, a claim for a close-out amount may be presented without conversion into euro. However, in Insolvency Proceedings the value of the claim in other currency will be converted into euro on the basis of the exchange rate as of the date of the commencement of the bankruptcy proceedings (the bankruptcy estate has an obligation to make payments only in euro).

3.2 Client Clearing

Exempting Client Clearing Rule

3.2.1 *Please opine on the availability and effectiveness of any law, regulation or statutory provision (having the force of law) in the Relevant Jurisdiction, which (if so designated by LCH) would be expected to qualify as an Exempting Client Clearing Rule⁴⁸. Please clarify whether the relevant Rule would be expected to apply to Relevant Clearing Members of all entity types or to only certain entity types.*

If, and to the extent that, you consider such an Exempting Client Clearing Rule to be available, please (i) assume for the purposes of answering the following Questions that LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will not require those Relevant Clearing Members to which that Rule applies to enter into a Security Deed; and (ii) ignore Questions 3.1.3 to 3.1.5.

In cases where you do not consider an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following Questions that LCH will require Relevant Clearing Members to enter into a Security Deed; (ii) assume that the Security Deed is legal, valid, binding and enforceable under English law (as its governing law) and complies with all relevant perfection requirements under the law of any jurisdiction(s) other than the Relevant Jurisdiction which you consider to be relevant to that matter; and (iii) provide a response to Questions 3.1.3 to 3.1.5.

Porting under Finnish law

We have assumed that the rules relating to the porting of the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member to a Backup Clearing Member follow from the obligations arising from Article 39 and 48 of EMIR, which in general require LCH to maintain client asset segregation and portability solutions for its clients, so that if a clearing member defaults, its client's positions and assets can be transferred to another clearing member.

⁴⁸ For the definition of Exempting Clearing Rule, please see our response to Question 3.2.4 below.

Chapter 2 Section 25 of the Finnish Act on Book-entry Securities System and Clearing Operations (in Finnish: *laki arvo-osuusjärjestelmästä ja selvitystoiminnasta*, 348/2017, as amended), provides that:

“Agreements within the meaning of Article 48 of [EMIR] on the transfer of the assets and contracts of a client to a clearing member to a central clearing party to another clearing member may be carried out irrespective of bankruptcy, corporate re-organisation, temporary interruption of a deposit bank and other corresponding procedure against the first clearing member.”

While the language of this section refers to “assets and contracts of a client to clearing member” (in Finnish: *asiakkaille kuuluva omaisuus ja sopimukset*), the legislative materials to this provision⁴⁹ refer to “assets and positions” with reference to Article 48(5) and 48(6) of EMIR.

We believe that the provision under Chapter 2 Section 25 of the Finnish Act on Book-entry Securities System and Clearing Operations should constitute an Exempting Client Clearing Rule with reference to Article 48 EMIR. For the purposes our opinions, we have assumed that each “Account Balance” and “Client Contracts” constitute “assets and positions” within the meaning of Article 48 EMIR.

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

A Relevant Clearing Member is contractually bound to the Client Clearing Arrangements by way of its agreement to the Clearing Membership Agreement. In the absence of the insolvency of a defaulting Relevant Clearing Member, the validity and enforceability of the contractual arrangements under the Opinion Documents would be subject to English law, as it is the governing law of the Opinion Documents. Pursuant to Article 12 of the Rome I Regulation, the law determined to be applicable to a contract will govern the interpretation and performance of the contract as well as the consequences of nullity or a breach of contract (including the assessment of damages and termination) and the statutory limitations on bringing suit for a breach. With respect to the Opinion Documents, this entails that in principle English law governs the contractual remedies provided to the parties thereby. Therefore, if these remedies are enforceable in accordance with the terms of the Opinion Documents under English law, this will in principle be recognised by Finnish courts.

Assuming that the contractual arrangements are legal, valid and enforceable under English law, we are not aware of a Finnish law rule based on which the Relevant Clearing Member or any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

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

⁴⁹ Government Proposition 114/2014, page 10. The Government Proposition notes also that the same conclusion could be reached where client assets do not belong to the general assets of the clearing member (segregated client assets may be separated irrespective of insolvency proceeding against the clearing member).

successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

Please see our response in paragraph 3.2.2 above which applies *mutatis mutandis* to the return of the Client Clearing Entitlement to the relevant Client or to the Defaulting Clearing Member for the account of such client.

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

Pursuant to the Default Rules, including in particular the Client Clearing Annex to the Default Rules⁵⁰, the Contracts of Clearing Clients may be (i) transferred to a Backup Clearing Member, together with the Account Balances (a process known as “porting”); or (ii) closed out and liquidated in conjunction with the return of the Client Clearing Entitlement to the Clearing Client (or to the Defaulter for the account of the Clearing Client).

In both cases, the Relevant Clearing Member is “deprived” of any entitlement to the collateral posted by it (in the form of either the Account Balance or the Client Clearing Entitlement) which in the case of porting is transferred to the Backup Clearing Member, whilst in the case of close-out is returned to the Clearing Client (or to the Defaulter for the account of the Clearing Clients).

In order to prevent the return of the Client Clearing Entitlements or the operation of the porting mechanism from being challenged under mandatory application of insolvency laws in respect of the Relevant Clearing Member, LCH intends to rely on either:

- (a) any law, regulation or statutory provision (having the force of law) of a governmental authority, the effect of which is to protect the operation of the LCH Rules, including in particular the Client Clearing Annex of the Default Rules, from challenge under the insolvency laws applicable to the Relevant Clearing Member (any such provision, an “**Exempting Client Clearing Rule**”); or
- (b) Clearing Members in respect of whom a suitable Exempting Client Clearing Rule is not available and who wish to offer client clearing are required to enter into a security deed (the “**Security Deed**”) in favour of each of their Clearing Clients. Under the terms of the Security Deed, the Relevant Clearing Member grants a security interest in favour of its Clearing Client over the receivable from LCH in respect of assets and positions held in an account with LCH on the relevant Clearing Client's behalf.

The LCH Rulebook permits LCH to designate a Clearing Member as an “Exempt Clearing Member” if, in its sole determination, an Exemption Client Clearing Rule would apply to a Relevant Clearing Member upon it becoming a Defaulter.⁵¹

In accordance with the provisions of the Client Clearing Annex, an Exempt Clearing Member must either:

⁵⁰ The relevant rules are General Regulation 11 and Rules 4 to 9 of the Client Clearing Annex (set out in Schedule 1 to the Default Rules).

⁵¹ General Regulation 11(b)

- (i) pay or deliver (as applicable) to or to the order of LCH the Account Balances of those of its Clearing Clients whose contracts are ported to a Backup Clearing Member; or
- (ii) pay or deliver (as applicable) to or to the order of LCH the Client Clearing Entitlements of its Individual Segregated Account Clients, Affiliated Omnibus Segregated Clearing Clients and Identified Omnibus Segregated Clearing Clients whose contracts are closed out and liquidated,

which obligations constitute an “Undertaking to Pay and Deliver” between the Exempt Client Clearing Member and LCH and are secured under the Deed of Charge.⁵² The Undertaking to Pay and Deliver applies to those Clearing Clients who are Individual Segregated Account Clearing Clients and those Clearing Clients that are all Identified Omnibus Segregated Clearing Clients or Affiliated Omnibus Segregated Clearing Clients comprising a single Omnibus Segregated Account who have appointed a single Backup Clearing Member. The Undertaking to Pay and Deliver does not apply to Non-Identified Omnibus Segregated Clearing Clients. For these Clearing Clients an “Aggregate Omnibus Client Clearing Entitlement” will always be returned to the Defaulting Clearing Member, regardless of whether the Defaulting Clearing Member is an Exempt Clearing Member.⁵³

If a Relevant Clearing Member were designated as an Exempt Client Clearing Member, then the operation of the Client Clearing Annex of the Default Rules should be capable of being protected from challenge under Finnish insolvency laws, being the laws generally applicable to the Relevant Clearing Member upon its insolvency, and the entering into of a Security Deed would not be necessary.

If a Clearing Member does not qualify as an “Exempt Clearing Member” then it must enter into a Security Deed in respect of each Clearing Client, which is an Individual Segregated Account Client, Affiliated Omnibus Segregated Clearing Client or Identified Omnibus Segregated Clearing Client.

The Finnish Exempting Client Clearing Rule

As discussed in our responses to question 3.2.1 above, the rule provided in Chapter 2 Section 25 of the Finnish Act on Book-entry Securities System and Clearing Operations should constitute an Exempting Client Clearing Rule with reference to Article 48 EMIR⁵⁴.

Where Finnish law is applicable in the Insolvency Proceedings against the Relevant Clearing Member, the Rulebook’s provisions on porting of client assets and positions from a Defaulting Clearing Member to a Backup Clearing Member would be recognised also in case the Defaulting Clearing Member were subject to Insolvency Proceedings to the extent that porting falls within in Article 48 EMIR .

The effect of Chapter 2 Section 25 of the Finnish Act on Book-entry Securities System and Clearing Operations is to protect the right of a central counterparty to transfer assets and contracts of a client to a clearing member to a central clearing party to another clearing member even in the insolvency of the first clearing member. Assuming that each “Client Contracts” and “Account Balance” constitutes “assets and positions” within the meaning of Article 48 EMIR, we believe that if LCH were to seek to port the Relevant Contracts and Account Balance of a Clearing Client to a Backup Clearing Member, Finnish law would give effect to such porting.

⁵² General Regulation 11(c)

⁵³ Paragraph 9.3, Client Clearing Annex.

⁵⁴ For the purposes our opinion below, we have assumed that each “Account Balance” and “Client Clearing Entitlement” constitutes “assets and positions” within the meaning of Article 48 EMIR.

Application of English law

In addition, where the Netting Act is applicable⁵⁵, we refer to Section 12(2) of the Netting Act, which implements Article 8 of the Settlement Finality Directive, pursuant to which

“in 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 governing that system”.

Article 8 of the Settlement Finality Directive is a private international (conflict of laws) provision with an aim to protect the orderly operation and the finality of settlements in payment and settlement/clearing systems by allowing such a system to rely on its relevant governing law to determine the effects of the insolvency of a participant instead of the rights and obligations of the participant being subject to the laws of the location of the participant (where the participant is located in another country than the system).

Pursuant to Section 12(2) of the Netting Act:

Where an entity governed by the laws of Finland is party to a settlement system that falls within the scope of the Settlement Finality Directive or to a corresponding settlement system in a country outside the European Economic Area, which is not governed by the laws of Finland, rights and obligations arising out of or in connection with the participation of the entity in that settlement system after the opening of insolvency proceedings against the entity are governed by the laws of the country that are applied to the settlement system in question.

The effect of the operation of Section 12(2) of the Netting Act is that the rights and obligations arising from, or in connection with, the participation of that Relevant Clearing Member within the LCH system would be determined by the application of substantive English insolvency law, being the law governing LCH (i.e., English law).

Further, Finnish law⁵⁶ implementing Article 25 of the Winding-up Directive provides that “netting agreements shall be governed solely by the law of the contract which governs such agreements” unless such arrangements are subject to resolution measures (see “*Recovery and Resolution Measures*” in section 3.2.7 below).

We are therefore of the opinion, that if LCH were to seek to port the Relevant Contracts and Account Balance of a Clearing Client to a Backup Clearing Member, the associated “Relevant Contracts” and “Account Balance” constitute “assets and positions” within the meaning of Article 48 EMIR and such porting would be effective under English law, Finnish law would give effect to such porting by operation of Section 12(2) of the Netting Act and by operation of Finnish conflicts of law provisions.

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

⁵⁵ Please see our responses to question 3.1.3 and 3.1.6 above.

⁵⁶ Section 24(f) of the Commercial Banks Act. By operation of Chapter 13a Section 2 of the Investment Services Act, the same rule applies to investment service firms. Also, the rule applies to savings banks and co-operative banks pursuant to the applicable Banking Laws.

If porting does not take place, then pursuant to the Client Clearing Annex LCH shall close out the contracts and calculate the entitlement to collateral, being the “Client Clearing Entitlement”, of the Defaulter in respect of each Clearing Client.⁵⁷ LCH will then take instruction from those Clearing Clients who are Individual Segregated Account Clients, Identified Omnibus Segregated Clearing Clients and Affiliated Omnibus Segregated Clearing Clients and either (i) pay the Client Clearing Entitlements to the Defaulter for the account of the relevant Clearing Clients or (ii) pay the Client Clearing Entitlement directly to the relevant Clearing Client (subject to execution of documentation required by LCH). In each case this applies to both Clearing Clients who are exercising their rights under a Security Deed and Clearing Clients of an Exempt Client Clearing Member, following acceleration of its “Undertaking to Pay and Deliver”, as provided for in the LCH Rulebook. In respect of all Non-Identified Omnibus Segregated Clearing Clients, an “Aggregate Omnibus Client Clearing Entitlement” will always be returned to the Defaulter for the account of the relevant Clearing Clients.⁵⁸

Article 48(7) EMIR reads:

Clients’ collateral distinguished in accordance with Article 39(2) and (3) shall be used exclusively to cover the positions held for their account. Any balance owed by the CCP after the completion of the clearing member’s default management process by the CCP shall be readily returned to those clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Pursuant to Article 48(7) EMIR, LCH would be required to return Client Clearing Entitlements calculated as part of the Default Arrangements directly to the relevant Clearing Client(s) (where the clients are known to LCH) or (where the clients are not known to LCH) to the Clearing Member for the account of its clients.

We are not aware of an explicit Finnish insolvency law provision, which would deal with this question⁵⁹. However, we believe that on the basis that the relevant Client Clearing Entitlements do not belong to the Relevant Clearing Member and provided that the Client Clearing Entitlements are segregated from the assets of the Relevant Clearing Member in the books and records of LCH⁶⁰, an insolvency the insolvency officer of the Clearing Member would be prevented from challenging the return of the Client Clearing Entitlement to the relevant Clearing Client or to the Clearing Member on behalf of such client. This would follow from the operation of the rule under Chapter 5 Section 6 of the Finnish Bankruptcy Code, which provides that assets of a third party, which may be segregated from the assets of the [insolvent] debtor, do not belong to the asset of the bankruptcy estate and that such assets must be returned to the owner or its nominee under terms and conditions, which the bankruptcy estate has the right to request⁶¹.

In addition, as discussed in our response to question 3.2.4 above, we believe that Finnish law would point at English law as regards the rights and obligations of a Relevant Clearing Member arising out of or in connection with the participation of the Relevant Clearing Member in LCH also after the commencement of Insolvency Proceedings against the Relevant Clearing Member. Therefore, if LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client directly, or to the Defaulter for the account of such client, assuming the return was effective under English law, we

⁵⁷ Paragraph 9, Client Clearing Annex.

⁵⁸ Paragraph 9.3, Client Clearing Annex.

⁵⁹ EMIR is directly applicable legislation in Finland and hence Article 48(7) is effective under Finnish law.

⁶⁰ We have assumed that this is the case (cf. Article 39 EMIR).

⁶¹ This would generally apply e.g. to unpaid purchase price or other consideration.

believe that Finnish law would give effect to the return of the Client Clearing Entitlement to the relevant Clearing Client or to the Clearing Member on behalf of such client.

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

Company Reorganisation Measures

The types of Corporate Reorganisation Measures (outside actual bankruptcy) which are relevant to this opinion are the reorganisation pursuant to the Reorganisation Act and reorganisation measures applicable to credit institutions under the Act on Temporary Interruption of the Operations of a Deposit Bank.

In our view, our response to paragraph 3.2.5 would apply equally in this scenario. This is because both Chapter 2 Section 25 of the Finnish Act on Book-entry Securities System and Clearing Operations the reference “commencement of insolvency proceedings” in Section 12(2) of the Netting Act encompasses not only bankruptcy but also reorganisation of a company within the meaning of the Recovery Act and temporary interruption of a deposit bank within the meaning of the Act on the Temporary Interruption of the Operations of a Deposit Bank.

Recovery and Resolution Measures

See our responses to question 3.1.4 above.

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

Company Reorganisation measures

In our view, our response to paragraph 3.2.6, would apply equally to the return of the Client Clearing Entitlement for the account of the relevant Client.

Recovery and Resolution Measures

See our responses to question 3.1.4 above.

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

[Not responded]

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

[Not responded]

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

[Not responded]

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

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

3.3 **Settlement Finality**

3.3.1 *If your responses to the Evolution Phase 1 questionnaire confirmed that local law in your jurisdiction afforded protections to LCH as contemplated in Recital 7 of the Settlement § Directive (or if there is uncertainty on which protections may apply, counsel should advise on the points of certainty and respond to the remainder of this question accordingly), will the analysis in relation to settlement finality protections be the same as in the existing Opinion⁶²? Would protections afforded to a third country system be equivalent to those LCH currently benefits from under the EU Settlement Finality Directive?*

The provisions on the finality and enforceability of transfer orders and netting in Article 3(1) of SFD have been implemented in Finland in the Netting Act. The Netting Act regulates netting of payments and delivery obligations as well as other settlement in settlement systems⁶³.

The Netting Act provides two distinct bases for finality of settlement instructions. Pursuant to the general principle contained in Section 3 of the Netting Act, netting of obligations that have arisen prior to the opening of insolvency proceedings against a party may be netted irrespective of the opening of such insolvency proceedings. Under Section 8 of the Netting Act, an obligation that may be netted under the Netting Act notwithstanding a party's insolvency proceedings may also otherwise be settled in the settlement system despite the opening of such insolvency proceedings.

For the purposes of the Netting Act, a 'settlement system' is a system based on rules,

- (a) which is maintained solely or jointly, by a central bank, a credit institution (referred to in Chapter 1, Section 7, sub-section 1 of the Credit Institutions Act), a central securities depository or a central clearing organisation (as defined in part 5 and part 7, respectively, of Chapter 1, Section 3 of the Act on Book-entry System and Clearing Activity (348/2017, as amended), or a foreign entity corresponding to the aforementioned entities; or
- (b) where monetary obligations are cleared and settled (in Finnish: *määritetään ja toteutetaan*) and where funds (in Finnish: *kate*) of the payment system are transferred through a bank account in a central bank; or

⁶² **Hannes Snellman comment:** We note that our opinion from 2014 did not include an analysis on settlement finality.

⁶³ As regards the scope of application of the Netting Act, please see our responses to question 3.1.3.

- (c) a system, which the Ministry of Finance has, on the basis of an application, approved as a system falling to the scope of the Settlement Finality Directive or as a corresponding system.

Hence, the rules on settlement finality under the Netting Act apply not only to Settlement Finality Directive designated systems but also to systems based on rules, which are maintained by central counterparties (within the meaning of Article 2(1) EMIR) and ‘foreign entities corresponding’ to Finnish credit institutions and central depositories and clearing organisations. Therefore, we believe that the benefits afforded to a third country system would be equivalent to those LCH currently benefits from under the Settlement Finality Directive.⁶⁴

- 3.3.2** *On the basis that LCH will no longer receive protections pursuant to the Settlement Finality Directive (or on the basis it will not receive the protections as contemplated in Recital 7 of the Settlement Finality Directive), would the commencement of Insolvency Proceedings in respect of a Relevant Clearing Member affect finality of settlement of transfers of funds or securities (or both) from the Relevant Clearing Member to LCH? If so, please clarify from which point in time and in which circumstances finality protections in respect of such transfers would be lost. Can settlement of transfers of funds or securities (or both) be subject to challenge in your jurisdiction? What would constitute the grounds for such challenge? For example, will only post-petition transactions or transactions at an undervalue be likely to be vulnerable to challenge? In relation to such challenges, would the underlying transactions be deemed to be voided automatically or would the underlying transaction be voidable and require challenge by the insolvency officer?*

[Not responded on the basis of Recital 7 being applicable]

- 3.3.3** *On the basis that LCH will no longer receive the protections pursuant to the Settlement Finality Directive (or on the basis it will not receive the protections as contemplated in Recital 7 of the Settlement Finality Directive), are there any circumstances (such as the commencement of Reorganisation Measures) which might give rise to a loss of finality protections before the commencement of Insolvency Proceedings? If so, please clarify from which point in time and in which circumstances finality protections would be lost.*

[Not responded on the basis of Recital 7 being applicable]

4 Qualifications

The views expressed above in this advice are subject to the following qualifications:

- (a) Save as explicitly stated otherwise, the opinions expressed in this advice are subject to all bankruptcy, moratorium, reorganisation, administration, insolvency and other laws affecting creditors’ rights generally.
- (b) The enforcement of the rights of a party under the Arrangements may be limited by general statutory time limits or the doctrine of laches. The obligations under the Arrangements may be subject to statutory limitation under Finnish law, the general limitation period being three (3) years calculated from the date as set forth in more detail in the Act on Statutes of Limitations (in Finnish: *laki velan vanhentumisesta*, 728/2003, as amended) and in any

⁶⁴ That is, until the end of the transition period under the Withdrawal Agreement.

event the maximum limitation period being ten (10) years from the date of origination of a legal liability.

- (c) Pursuant to Finnish law on contracts, a term of a contract may be modified or set aside if it is adjudged to be unreasonable or unfair. In particular, where a party is vested with discretion, power or may determine a matter in its opinion, it may be required that such discretion is exercised reasonably or that such opinion is based on reasonable grounds and there could be circumstances in which a Finnish court would not treat as conclusive a determination or certificate that the Arrangements states to be so treated. Accordingly, any provision in the Arrangements 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.
- (d) The term “enforceable”, where used herein, means that the obligations assumed by the relevant party under the relevant document are of a type, which Finnish law generally enforces or recognizes. It does not mean that those obligations will be enforced in all circumstances in accordance with the terms of the Agreements. Enforcement before the courts of Finland will in any event be subject to the remedies available in such courts (some of which may be discretionary in nature) and to the availability of defenses such as set-off, abatement, counter-claim, force majeure and remedies such as specific performance and injunction are at the discretion of the court and may not be available.
- (e) A judgment obtained in the courts of England against a Relevant Clearing Member in connection with proceedings that are instituted before the end of transition period under the Withdrawal Agreement, would be recognised and enforceable in Finland on the basis of and subject to the Withdrawal Agreement and the limitations imposed by Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) of 12 December 2012 (the “**Brussels Regulation**”), as in force and applied in Finland. Upon the expiry of the transition period, and in the absence of any new arrangements between the United Kingdom and the European Union, a judgment rendered by an English court against a Relevant Clearing Member would not be enforceable nor recognised in Finland as a matter of Union law without a retrial of the case on its merits.
- (f) The courts of Finland will on the basis of and subject to limitations imposed by the Rome I Regulation observe and give effect to English law as the governing law of Arrangements, as far as substantive law is concerned, provided that:
 - (i) English law is not contrary to such overriding mandatory provisions of Finnish law, which due to their public nature or general interest shall be considered to be applicable irrespective of the agreed choice of law;
 - (ii) the application of English law is not manifestly incompatible with the public policy (*ordre public*) of the Finnish legal system; and
 - (iii) Sufficient evidence as to the contents of English law is submitted to a Finnish court.
- (g) The choice of law of English law to govern the Arrangements may have no effect with respect to third parties including – without limitation – the effectiveness of dispositions (e.g. transfers, assignments or pledges) of *in rem* rights.

- (h) We express no opinion as to:
 - (i) whether a Relevant 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; or
 - (ii) whether the Deed of Charge breaches any other agreement or instrument.
- (i) Our opinions are subject to:
 - (i) any asset being capable of forming the subject of a security interest under all applicable laws;
 - (ii) the creation of such security interest not requiring any authorisation, consent or fulfilment of any other pre-condition or formality which has not been satisfied, obtained or done;
 - (iii) the creation of such security interest, do not alone or together with other arrangements or transactions constitute acts by which either (a) a particular creditor has in an inappropriate manner been favoured before others, (b) assets of the Relevant Clearing Member have been removed beyond the reach of creditors, or (c) the obligations of the Relevant Clearing Member have been increased to the detriment of creditors, in each case in a situation where the Relevant Clearing Member at the time of the arrangement or transaction was insolvent within the meaning of the Recovery Act or the arrangement or transaction contributed to the Relevant Clearing Member becoming insolvent and the contracting party (including LCH) knew or should have known of the insolvency or the impact of the arrangement or transaction on the economic situation of the Relevant Clearing Member and also about the circumstances due to which the arrangement or transaction was inappropriate; and
 - (iv) any relevant contract comprised in such security being capable of being set aside as a result of any fraud, misrepresentation or any bribe or corrupt conduct.
- (j) As regards the transfer of securities as collateral, as a matter of Finnish law, the transfer of securities is effective against third parties (e.g. creditors of a party) provided that the transfer has been perfected in accordance with the law applicable to the rights in rem. Under Finnish law, the perfection of the transfer is completed by physically delivering physical securities or by means of entering the transfer in a securities account (in respect of non-physical securities).
- (k) Netting of obligations may not be available under Finnish law in the event that an obligation to be netted is subject to attachment under Finnish Enforcement Code, which may occur where a creditor is seeking to enforce a judgment for unpaid debts against a debtor, who may be a clearing member for these purposes. Whilst the Netting Act and the Act on Financial Collateral Arrangements mitigate the application of the restrictions to net obligations that are subject to attachment, netting is not available in respect of an attached obligation subsequent to the counterparty having been notified of the prohibition on payment arising as a result of the enforcement proceedings. In the event that netting took place prior to such notification, only the netted amount may be subject to attachment. However, pursuant to the Netting Act attachment/execution proceedings do to restrict the netting of obligations entered for clearing in accordance with the rules of the settlement system subsequent to the notification of payment prohibition provided that the obligations

are netted on the date when the notification is delivered (such date being a settlement date in accordance with the rules of the settlement system) and the operator of the settlement system can prove that at the time the orders become final in accordance with the rules of the settlement system, it was not aware, nor should it have been aware of the payment prohibition.

- (l) We are not aware of Finnish legal precedents on the validity or enforcement of the Arrangements against the Relevant Clearing Members, in particular as regards the application of the Netting Act to the Arrangements. Therefore, whilst we believe that the Arrangements would be valid and enforceable against the Relevant Clearing Members as opined elsewhere in this opinion, it is not possible for us to opine with absolute certainty the outcome of a ruling by a Finnish court if it were to be asked to rule on the validity and enforceability of the Arrangements against the Relevant Clearing Members.
- (m) Any provision in the Arrangements which involves (or indicates) an indemnity for legal costs or costs of litigation is subject to the discretion of the Finnish court to decide whether and to what extent a party to litigation should be awarded the legal costs incurred by it in connection with the litigation or otherwise.
- (n) Any provision of the Arrangements, which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party to the Agreement or any other person may be ineffective.
- (o) The effectiveness of any provision in the Arrangements exculpating a party from liability or duty otherwise owed may be limited by law or subject to mitigation.
- (p) Any person who is not party to any agreement may not be able to enforce any provisions of that agreement, which are expressed to be for the benefit of that person.
- (q) Powers of attorney (including appointment of agents), although stated to be irrevocable, may under Finnish law be revocable. Such powers will terminate by operation of law and without notice upon the bankruptcy of the party granting such powers.
- (r) As regards our views in paragraph 3.1.3 above, the courts of Finland will on the basis of and subject to limitations imposed by Rome I Regulation observe and give effect to English law as the governing law of the Arrangements, as far as substantive law is concerned⁶⁵, provided that:
 - (i) English law is not contrary to such overriding mandatory provisions of Finnish law which due to their public nature or general interest shall be considered to be applicable irrespective of the agreed choice of English law;
 - (ii) the application of English law is not manifestly incompatible with the public policy (*ordre public*) of the Finnish legal system; and
 - (iii) sufficient evidence as to the contents of English is submitted to a Finnish court.
- (s) The choice of English law to govern the Arrangements may have no effect with respect to third parties including – without limitation – the effectiveness of dispositions (e.g. transfers, assignments or pledges) of *in rem* rights.

⁶⁵ Please note that this opinion does not take into account the impact of (a no-deal) Brexit on the enforceability of English court judgments against a Relevant Counterparty in Finland.

- (t) Finnish courts may require that documents drawn up in English or any other language than Finnish or Swedish, and presented to the court shall be translated into Finnish or Swedish.
- (u) As regards jurisdiction, a Finnish court may stay proceedings if concurrent proceedings are being brought elsewhere.
- (v) As a matter of Finnish law, to perfect a transfer of rights against a Finnish entity or person to a third party, it is necessary to notify such Finnish entity or person of the transfer, should private international law designate Finnish law as the relevant law for the determination of what circumstances will constitute a valid transfer.
- (w) In this opinion, Finnish legal concepts are described in English terms and not by their original Finnish terms. The concepts concerned may not be exactly identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions.

5 **Reliance**

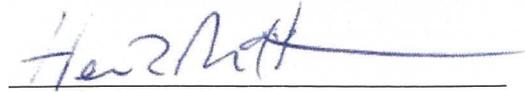
This opinion letter is given for the exclusive benefit of the addressee. In this opinion, we do not assume any obligation to notify or inform you of any developments subsequent to its date that might render its content untrue or inaccurate in whole or in part at such time. It may not, without prior written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

(Signature page to follow)

HANNES SNELLMAN

Yours faithfully,

HANNES SNELLMAN ATTORNEYS LTD



Henrik Mattson
Partner



Jari Tukiainen
Specialist Partner

Appendix 1
Clearing Membership Agreement

CLEARING MEMBERSHIP AGREEMENT

DATED

LCH.CLEARNET LIMITED

and
("the Firm")

Address of the Firm

THIS AGREEMENT is made on the date stated above

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

WHEREAS:

- A The Clearing House is experienced in carrying on the business of a clearing house and undertakes with each Clearing Member the performance of contracts registered in its name in accordance with the Rulebook;
- B The Clearing House has been appointed by certain Exchanges to provide central counterparty and other services in accordance with the terms and conditions of the Rulebook and certain agreements entered into between the Clearing House and such Exchanges;
- C The Clearing House also provides central counterparty and other services to participants in certain over-the-counter ("OTC") markets in accordance with the terms of this Agreement and the Rulebook;
- D The Firm desires to be admitted as a Clearing Member of the Clearing House to clear certain categories of Contract agreed by The Clearing House with the Firm and, the Clearing House having determined on the basis inter alia of the information supplied to it by the Firm that the Firm satisfies for the time being the relevant Criteria for Admission, the Clearing House agrees to admit the Firm as a Clearing Member subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1 Interpretation and Scope of Agreement

1.1. Unless otherwise expressly stated, in this Agreement:

- (a) "Cash Cover" means cover for margin (within the meaning of that term in the "Definitions" section of the Rulebook) provided in the form of a cash deposit with the Clearing House;
- (b) "Clearing Member" means a Person who has been admitted to membership of the Clearing House and whose membership has not terminated;
- (c) "Contract" means a contract or transaction eligible for registration in the Firm's name by the Clearing House in accordance with the Rulebook;
- (d) "Contribution" and "Contribution to the Default Fund" mean the sums of cash deposited by the Firm as cover in respect of the Firm's obligation to indemnify the Clearing House as provided by clause 9 of this Agreement and the Default Rules;
- (e) "Criteria for Admission" means criteria set out in one or more documents published from time to time by the Clearing House, being criteria to be satisfied by an applicant for admission as a Clearing Member in respect of the Designated Contracts which the applicant wishes to clear with the Clearing House;
- (f) "Default Fund" means the fund established under the Default Rules of the Clearing House to which the Clearing Member is required to contribute by virtue of clause 9 of this Agreement;
- (g) [DELETED]

- (h) "Default Notice" means a notice issued by the Clearing House in accordance with the Default Rules in respect of a Clearing Member who is or is likely to become unable to meet its obligations in respect of one or more Contracts;
 - (i) "Default Rules" means that part of the Rulebook having effect in accordance with Part IV of the Financial Services and Market Act 2000 (Recognition Requirements for Investment Exchange and Clearing Houses) Regulations 2001 to provide for action to be taken in respect of a Clearing Member subject to a Default Notice;
 - (j) "Designated Contract" has the meaning given to it in clause 2.1;
 - (k) "Exchange" means an organisation responsible for administering a market with which the Clearing House has an agreement for the provision of central counterparty and other services to Clearing Members;
 - (l) "Exchange Contract" means any contract which an Exchange has adopted and authorised Exchange Members to trade in under its Exchange Rules and in respect of which the Clearing House has agreed to provide central counterparty and other services;
 - (m) "Exchange Member" means any person (by whatever name called) being a member of, or participant in, a Market pursuant to Exchange Rules;
 - (n) "Exchange Rules" means any of the regulations, rules and administrative procedures or contractual arrangements for the time being and from time to time governing the operation of a Market administered by an Exchange and includes, without prejudice to the generality of the foregoing, any regulations made by the directors of an Exchange or by any committee established under the Rules, and, save where the context otherwise requires, includes Exchange Contracts, and the Rulebook;
 - (o) "Rulebook" means the Clearing House's General Regulations, Default Rules, Settlement Finality Regulations and Procedures and such other rules of the Clearing House as published and amended from time to time;
 - (p) "Market" means a futures, options, forward, stock or other market, administered by an Exchange, or an OTC market, in respect of which the Clearing House has agreed with such Exchange or, in respect of an OTC market, with one or more participants in that market, to provide central counterparty and related services on the terms of the Rulebook and in the case of an Exchange, pursuant to the terms of any agreement entered into with the Exchange;
 - (q) "Person" includes any firm, company, corporation, body, association or partnership (whether or not having separate legal personality) or any combination of the foregoing;
 - (r) "Procedures" means that part of the Rulebook by that name;
 - (s) "Registered Contract" means a contract registered in the Firm's name by the Clearing House in accordance with the Rulebook;
- 1.2. (a) References to "the parties" are references to the parties hereto, and "party" shall be construed accordingly;
- (b) References herein to a clause are to a clause hereof and clause headings are for ease of reference only;
- (c) Unless the context otherwise requires, words (including defined terms) denoting the singular shall include the plural and vice versa;

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

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

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

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

2 Clearing Membership

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

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

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

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

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

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

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

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

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

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

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

- (h) the granting, withdrawal or refusal of an application for, or the revocation of, a license or authorisation by the Financial Conduct Authority, the Prudential Regulation Authority or membership of any self-regulating organisation, recognised or overseas investment exchange or clearing house (other than the Clearing House) under the Financial Services and Markets Act 2000 or any other body or authority which exercises a regulatory or supervisory function under the laws of the United Kingdom or any other state;
 - (i) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the Firm (other than an inspection of a purely routine and regular nature);
 - (j) the imposition of any disciplinary measures or sanctions (or similar measures) on the Firm in relation to its investment or other business by any Exchange, regulatory or supervisory authority;
 - (k) the entering of any judgment against the Firm under Section 150 of the Financial Services and Markets Act 2000;
 - (l) the conviction of the Firm for any offence under legislation relating to banking or other financial services, building societies, companies, credit unions, consumer credit, friendly societies, insolvency, insurance and industrial and provident societies or for any offence involving fraud or other dishonesty;
 - (m) the conviction of the Firm, or any subsidiary or holding company of the Firm for any offence relating to money laundering, or the entering of judgment or the making of any order against the Firm in any civil action or matter relating to money laundering;
 - (n) any enforcement proceedings taken or order made in connection with any judgement (other than an arbitration award or judgement in respect of the same) against the Firm; and
 - (o) any arrangement entered into by the Firm with any other Clearing Member relating to the provision of central counterparty and associated services by the Clearing House of Contracts or transactions entered into by the Firm after the effective date of termination of this Agreement.
- 2.5. The Firm shall give written notice forthwith to the Clearing House of any person becoming or ceasing to be a director of or a partner in the Firm or of the occurrence of any of the following in relation to a director of or a partner in the Firm, if aware of the same:-
- (a) the occurrence of any event specified in clause 2.4 (insofar as it is capable of materially affecting him); or
 - (b) any disqualification order under the Company Directors Disqualification Act 1986 or equivalent order in overseas jurisdictions.
- 2.6. The Firm shall give written notice forthwith to the Clearing House of any change in its name, the address of its principal place of business, registered office or UK office.
- 2.7. The Firm shall give written notice to the Clearing House forthwith upon its becoming aware that any person is to become or cease to be, or has become or ceased to be, a controller of the Firm, and shall in relation to any person becoming a controller of the Firm state:-
- (a) the controller's name, principal business and address;
 - (b) the date of the change or proposed change.

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

- 2.8. The Firm shall give written notice forthwith to the Clearing House of any change in its business which affects the Firm's ability to perform its obligations under this Agreement.
- 2.9. Where the Clearing House receives notification pursuant to any of clauses 2.3 to 2.8, or the Clearing House reasonably suspects that the Firm may no longer satisfy some or all of the Criteria for Admission or the criteria for clearing a Designated Contract, the Clearing House shall be entitled in its absolute discretion to call for information of whatsoever nature in order to determine whether the Firm continues to satisfy the Criteria for Admission or the criteria for clearing a Designated Contract. Without prejudice to the foregoing, the Clearing House may at any time call for information relating to the affairs (including the ownership) of any controller of the Firm or any person who is to become a controller of the Firm. The Firm shall forthwith on demand supply to the Clearing House information called for under this clause and shall ensure that such information is true and accurate in all respects.
- 2.10. The Firm undertakes to abide by the Rulebook and undertakes at all times to comply with other provisions of Exchange Rules so far as they apply to the Firm.
- 2.11. The Firm undertakes that at all times, to the extent the Firm is required under any applicable law to be authorised, licensed or approved in relation to activities undertaken by it, it shall be so authorised, licensed or approved.
- 2.12. The Firm agrees that in respect of any Contract for which central counterparty services are to be provided to the Firm by the Clearing House in accordance with the Rulebook, including, but not limited to, any contract made by the Firm under Exchange Rules on the floor of a Market (or through a Market's automated trading system) or otherwise, whether with a member of that Market or with a client or with any other person, and including any Contract entered into in an OTC market, the Firm shall contract as principal and not as agent.
- 2.13. The Firm shall furnish financial information to the Clearing House in accordance with the requirements of the Rulebook or such other requirements as the Clearing House may from time to time prescribe.
- 2.14. The Firm undertakes that, in its terms of business with its clients (being clients in respect of whom the Firm is subject to any regulations made pursuant to rules and/or legislation applicable to the Firm with respect to the safeguarding or segregation of clients' money):
- (a) where it is subject to Exchange Rules, it will at all times include a stipulation that contracts made under Exchange Rules with or for them shall be subject to Exchange Rules (including the Rulebook); and
 - (b) that money of such clients in the possession of the Clearing House may be dealt with by the Clearing House in accordance with the Rulebook without exception.
- 2.15. Without prejudice to clause 2.14 the Firm undertakes that its dealings with all its clients or counterparties shall be arranged so as to comply with the requirement that the Firm deals with the Clearing House as principal, and that all sums deposited with the Clearing House by way of Cash Cover (including the Firm's Contribution to the Default Fund) shall be deposited unencumbered and by the Firm acting as sole principal and as legal and beneficial owner.
- 2.16. The Firm undertakes not to assign, charge or subject to any other form of security, whether purporting to rank in priority over, *pari passu* with or subsequent to the rights of the Clearing House, any Cash Cover provided to the Clearing House, including its entitlement to repayment of its Contribution to the Default Fund or any part of it. Any purported charge, assignment or encumbrance (whether by way of security or otherwise) of Cash Cover provided to the Clearing House shall be void. The Firm shall not otherwise encumber (or seek to encumber) any Cash Cover provided to the Clearing House.

3 Remuneration

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

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

4 Facilities Provided by the Clearing House

4.1. Provision of Central Counterparty Services

- (a) Details of all Contracts to be registered by the Clearing House in the name of the Firm and in respect of which central counterparty services are to be provided shall be provided to the Clearing House in accordance with the Rulebook and any other agreement entered into between the Clearing House and the Firm.
- (b) Provided that a Contract meets the criteria for registration of that Contract in the name of the Firm and is a Designated Contract, and subject to the Rulebook, the Clearing House shall enter into a Registered Contract with the Firm in respect thereof. Each such Contract shall be registered in accordance with the Rulebook and the Clearing House shall perform its obligations in respect of all Registered Contracts in accordance with this Agreement and the Rulebook.

4.2. Maintenance of Records

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

4.3. Information

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

4.4. Accounts

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

5 Default

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

6 Disclosure of Information

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

7 Partnership

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

8 Term

- 8.1. Subject to clause 8.3 either party (provided, in the case of the Firm, that the Clearing House has not issued a Default Notice in respect of the Firm) may terminate this Agreement by giving to the other party notice in writing, such notice to specify the effective date of termination ("the termination date") which shall be a business day not less than three months after the date of the notice, and this Agreement shall, subject to clause 8.2(b), terminate on the termination date. By the close of business on the termination date the Firm shall ensure that all Registered Contracts in the Firm's name have been closed-out or transferred so that there are no open Registered Contracts to which the firm is party at the end of the termination date.
- 8.2. If, under clause 8.1, the Firm has not closed out or transferred all Registered Contracts by the set termination date the Clearing House shall, at its sole discretion, be entitled to:
 - (a) liquidate any such Registered Contracts in accordance with the Rulebook; and
 - (b) require that the Firm remains a member of the Clearing House until such time as there are no Registered Contracts in existence to which the Firm is a party and the effective date of termination of this Agreement shall be postponed until such time.
- 8.3. If the Firm is in breach of or in default under any term of this Agreement or the Rulebook, or if the Clearing House has issued a Default Notice in respect of the Firm, or if the Clearing House reasonably determines that the Firm no longer satisfies the Criteria for Admission as a Clearing Member, the Clearing House may in its absolute discretion terminate this Agreement in writing either summarily or by notice as follows.

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

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

9 Default Fund

- 9.1. In this clause the term "Excess Loss" bears the meaning ascribed to it in the Rulebook.
- 9.2. The Firm, as primary obligor and not surety, hereby indemnifies the Clearing House in respect of any Excess Loss, and undertakes to deposit cash with the Clearing House as collateral for its obligations in respect of such indemnity, in accordance in each case with the Default Rules.

- 9.3. The Firm shall, in accordance with the Default Rules, continue to be liable to indemnify the Clearing House in respect of any Excess Loss arising upon any default occurring before the effective date of termination of this Agreement. Subject thereto, the indemnity hereby given shall cease to have effect on the effective date of termination of this Agreement, unless a Default Notice is issued by the Clearing House in respect of the Firm, in which case the indemnity hereby given shall cease to have effect after the date three months after the date of issue of such Default Notice.
- 9.4. Save as provided expressly by the Default Rules, the Firm shall not be entitled to exercise any right of subrogation in respect of any sum applied in satisfaction of its obligations to the Clearing House under this clause 9.

10 Force Majeure

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

11 The Rulebook

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

12 Notices

- 12.1. Any notice or communication to be made under or in connection with this Agreement shall be made in writing addressed to the party to whom such notice or communication is to be given; save that a notice or communication of an urgent nature shall be given or made orally and as soon as reasonably practicable thereafter confirmed in writing in conformity hereto. A notice may be delivered personally or sent by post to the address of that party stated in this Agreement, or to such other address as may have been notified by that party in accordance herewith.
- 12.2. Where a notice is sent by the Clearing House by post it shall be deemed delivered 24 hours after being deposited in the post first-class postage prepaid in an envelope addressed to the party to whom it is to be given in conformity to clause 12.1, or in the case of international mail, on the fourth business day thereafter. In all other cases notices shall be deemed delivered when actually received.

13 Law

- 13.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and determine any action or dispute which may arise herefrom. The Clearing House and the Firm each irrevocably submits to such jurisdiction and to waive any objection which it might otherwise have to such courts being a convenient and appropriate forum.
- 13.2. The Firm irrevocably waives, with respect to itself and its revenues and assets all immunity on the grounds of sovereignty or other similar grounds from suit, jurisdiction of any court, relief by way of injunction, order for specific performance or for recovery of property, attachment of its assets (whether before or after judgement) and execution or enforcement of any judgement to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees that it will not claim any such immunity in any proceedings.

14 Service of Process

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

before the courts of England and Wales in connection with the Firm the person in London as notified to the Clearing House in writing with the application for admission.

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

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

LCH.CLEARNET LIMITED

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Appendix 2
Deed of Charge

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

CHARGE BY CLEARING MEMBER

CHARGE SECURING OWN OBLIGATIONS

Date of Execution:

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

Name and Address of Chargor:

Clearing Membership Agreement Date:

Chargor's Account:

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

WITNESSES as follows :

1. **Interpretation**

- (1) Any reference herein to:
 - (a) 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; and
 - (b) an agreement or instrument shall be to that agreement or instrument as amended from time to time.
- (2) A reference herein to collateral or cash being "provided" includes the act of (i) transferring, (ii) delivering, or (iii) crediting to an account or effecting, directly or indirectly, any of the foregoing.
- (3) The Clause headings shall not affect the construction hereof.

1A. **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) above, the Chargor shall pay interest accruing from the date of demand on the monies so demanded and on the amount of all 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 practices and to be compounded with principal and accrued interest in the event of its not being duly and punctually paid.

- (3) The monies, other liabilities, interest and other charges referred to in sub-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**".

1B. **Holding 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 for the Chargor, subject to the terms of (and including the security constituted by) 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 for a third party are instead held by the Clearing House 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 for the Chargor, subject to the terms of this Deed.
- (3) The Clearing House will identify in its own books that any Securities referred to in sub-paragraphs (1) or (2) above are held by it for the account of and (as between the Chargor and the Clearing House) belong to the Chargor (subject to the terms of this Deed) and shall be recorded in the Securities Account (as defined below) which shall be subject to the security constituted by this Deed. Where the Clearing House holds any such Securities in an account (including an omnibus account) at any Clearance System or with any Custodian Bank with any other Securities, the Clearing House will take all actions within its control to ensure that such Securities are recorded in accounts with the Clearance System or Custodian Bank (as applicable) in which the Clearing House's own assets are not recorded.
- (4) All Distributions in the form of cash received by the Clearing House on any Securities which are held by the Clearing House for the account of the Chargor in accordance with sub-paragraphs (1) or (2) above and any cash provided to the Clearing House in connection with transactions relating to Securities

recorded in the Securities Account (excluding, for the avoidance of doubt, any cash provided directly by the Chargor to the Clearing House as collateral on a title transfer basis) shall be received by the Clearing House for its own account and paid into one or more accounts in the Clearing House's name, with a corresponding and equal credit arising on and being recorded in the Cash Account (as defined below) whereupon such Distributions and other cash so provided to the Clearing House as recorded in the Cash Account shall be held by the Clearing House for the account of the Chargor and shall be subject to the security constituted by this Deed and designated as such in the Clearing House's books and records.

- (5) The Clearing House may hold any Securities pursuant to this Clause 1B (*Holding of Collateral*) in one or more omnibus accounts with a Custodian Bank or Clearance System, as the case may be, together with other Securities which it holds for other third parties which have granted a charge over such assets in favour of the Clearing House in a form substantially the same as this Deed but no other Securities. The Clearing House shall ensure that any such omnibus account with a Clearance System or Custodian Bank is clearly identified as an account relating to Securities held by the Clearing House on behalf of third parties.
- (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 are held for the Chargor, any claim or security interest which that Clearance System or Custodian Bank may have against or over such Securities shall be limited to any unpaid fees owed by the Clearing House to such Clearance System or Custodian Bank in respect of such account.

2. **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 separately 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.
- (2) It shall be implied in respect of sub-paragraph (1) above 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 routinely arising in favour of a Custodian Bank or Clearance System and applying to assets held by the Clearing House with that Custodian Bank or Clearance System and 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 in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 except as expressly permitted or contemplated under this Deed;

"Cash Account" means any account maintained by the Clearing House on its books for the account of the Chargor in which an amount equal to any cash Distributions or cash provided to the Clearing House in connection with transactions relating to Securities recorded in the Securities Account (excluding, for the avoidance of doubt, any cash provided directly by the Chargor to the Clearing House as collateral on a title transfer basis) are recorded;

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

- (i) all Securities from time to time recorded in and represented by the Securities Account and held by the Clearing House for the account of the Chargor in accordance with Clause 1B;
- (ii) all Distributions including without limitation Distributions in the form of cash;
- (iii) all cash provided to the Clearing House in connection with transactions relating to Securities recorded in the Securities Account (excluding, for the avoidance of doubt, any cash provided directly by the Chargor to the Clearing House as collateral on a title transfer basis);
- (iv) the Securities Account; and
- (v) the Cash Account;

"Chargor Custodian Bank" means a bank or custodian or any nominee company or trust company which is a subsidiary of such a bank or custodian with which the Chargor maintains any cash account or securities account;

"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 or any nominee company or trust company which is a subsidiary of such a bank or custodian with which the Clearing House maintains any cash account or securities account;

"Default Notice" has the meaning given to it in the Default Rules;

"Default Rules" has the meaning given to such term in the Clearing Membership Agreement;

"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:

- (a) any dividends or interest, annual payments or other distributions; and
- (b) any proceeds of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,

in each case 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, receiver and manager or an administrative receiver as 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;

"Securities" shall be construed as a reference to bonds, debentures, notes, stock, shares, bills, certificates of deposit and other securities and instruments, including Distributions in the form of Securities (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); and

"Securities Account" means any account maintained by the Clearing House on its books for the account of the Chargor in which Securities are recorded.

3. **Release**

- (1) Upon the Clearing House being satisfied 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 1.1.2 and 1.1.3 of the Procedures Section 4 (*Margin and Collateral*), 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, the Clearing House returns or repays any of the Charged Property, or the proceeds thereof, pursuant to sections 1.1.2 or 1.1.3 of the Procedures Section 4 (*Margin and Collateral*), 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 2(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.

4. **Income**

Prior to a Default (as defined in Clause 11(1) below), the Clearing House consents to the payment or transfer of any and all Distributions received by the Clearing House in respect of any Charged Property to the Chargor (and upon such payment or transfer, the Distributions shall be released from the security constituted by this Deed) provided that, in the Clearing House's reasonable view, the Clearing House would still have sufficient security, following such payment or transfer, to secure the Secured Obligations.

5. **Voting rights, calls and other obligations in respect of the Securities**

- (1) The Chargor must pay all calls and other payments due and payable in respect of any Securities and must comply with all requests (including requests for

information by any listing or other authority), obligations and conditions relating to the Securities. 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 (but shall be under no obligation to do so) in which event any sums so paid shall be reimbursed by the Chargor on demand by the Clearing House and until reimbursed shall bear interest in accordance with Clause 1A(2) above.

- (2) The Chargor shall not exercise or be entitled to exercise any voting rights, powers and other rights in respect of the Securities which are held by the Clearing House for the account of the Chargor pursuant to this Deed.

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 on an ongoing basis 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 3(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 legal, valid, binding and enforceable obligations 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, resolution, 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 and filings 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 and does not conflict with any law or regulation applicable to it (if such conflict would adversely affect the Clearing House's rights under this Deed) or its constitutional documents;
- (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 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
 - (iii) 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**

- (1) Until the security hereby constituted shall have been discharged, the Chargor shall ensure, unless required by law or regulation to restrict any transfer (in which case the Chargor shall immediately notify the Clearing House of such restrictions), that all of the Charged Property is and at all times remains free from any restriction on transfer.
- (2) 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.
- (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 12 (*Power of Sale*) and 13 (*Right of Appropriation*) or any other rights to enforce the security interest herein created against the Charged Property.

10. **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 2 (*Charge*) 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 set-off 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 Clearance System or Custodian Bank (as applicable) 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 Chargor 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 Chargor 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.

11. **Enforcement of Security**

- (1) 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 (provided that the Clearing House will not be liable, by reason of entering into possession of any Charged Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession may be liable unless such loss, default or omission is caused by the Clearing House's gross negligence or wilful misconduct) and hold, sell, or otherwise dispose of all or any part of the Charged Property (at the time, in the manner and on the terms it thinks fit); and
 - (b) whether or not it has appointed a Receiver, exercise all or any of the powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed) on chargees and by this Deed on any Receiver or otherwise conferred by law on chargees or Receivers.
- (2) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed and shall be exercisable in accordance with Clause 11(1).

12. **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. 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.

13. **Right of Appropriation**

- (1) 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 determined as follows:
 - (a) if the financial collateral is listed or traded on a recognised exchange or by reference to a public index, its value will be taken as the value at which it could have been sold on the exchange or which is given in the public index on the date of appropriation; and
 - (b) in any other case, the value of the financial collateral will be such amount as the Clearing House reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.
- (2) 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.

14. **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.

15. **Consolidation of Securities**

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

16. **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.

17. **Avoidance of Payments**

If the Clearing House considers 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.

18. **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 10 (*Further Assurance*) above, or for enabling the Clearing House to exercise its power of sale or other disposal referred to in Clause 12 (*Power of Sale*) above or for carrying out any such sale or other disposal made under such power into effect, or exercising any of the rights and powers referred to in Clause 9 (*Preservation of Charged Property*) 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.

19. **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 11 (*Enforcement of Security*) above 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 sub-paragraph (1) above 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 law including 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. Such delegation shall not preclude either the subsequent exercise or 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.

20. **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.

21. **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) The obligations of the Chargor under this Deed shall not be affected by any act, omission or circumstance which, but for this provision, might operate to release or otherwise exonerate the Chargor from its obligations under this Deed or affect such obligations including (without limitation and whether or not known to the Chargor or the Clearing House):
- (a) any unenforceability, illegality, invalidity or non-provability of any obligation of the Chargor or any other person; or
- (b) any incapacity or lack of power, authority or legal personality or dissolution or change in the members or status of the Chargor or any other person.
- (3) 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.
- (4) 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.

22. **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 1A(2) above.

23. **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.

24. **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.

25. **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 sub-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.

26. **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.

27. **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.

28. **Third Party Rights**

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.

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 10(1) above or the use of this Deed as a security agreement as provided therein, this Deed shall be governed

by and construed in accordance with applicable laws of the State of New York.

The Chargor

Executed as a **DEED** by

The Chargor

[CHARGOR NAME]

.....
Signature of Director

.....
Name of Director

.....
Date

.....
Signature of Director/Secretary

.....
Name of Director/Secretary

.....
Date

**The Clearing House
LCH.Clearnet Limited**

.....
Signature of Authorised Signatory

.....
Name of Authorised Signatory

.....
Title of Authorised Signatory

.....
Date

.....
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**
