Dear Sirs

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 Scotland ("this jurisdiction") in response to certain specific questions raised by LCH.Clearnet Limited ("LCH") in relation to membership, insolvency, security, set-off & netting and client clearing. The relevant questions are set out in full in Section 3 of this opinion letter together with the corresponding responses. Terms not otherwise defined in this opinion letter shall have the meaning ascribed to such terms in the Rulebook (as defined below).

1. TERMS OF REFERENCE

1.1 This opinion is given in respect of Clearing Members which (as further specified in paragraph 2.12) are:

1.1.1 banks incorporated in Scotland which have permission to accept deposits by virtue of Part 4A of the Financial Services and Markets Act 2000 ("FSMA") but not including insurance companies which have such permission to carry out contracts of insurance. (Please note that certain other types of person, not covered by this opinion, may also have permission to accept deposits, including building societies and credit unions within the meaning of section 1 of the Credit Unions Act 1979);

1.1.2 banks incorporated in another jurisdiction but with a branch in this jurisdiction; and

1.1.3 investment firms incorporated in Scotland or incorporated in another jurisdiction but with a branch in this jurisdiction,

which, in each case, are either Scottish companies or foreign companies.

For these purposes, a "Scottish company" is a company which is formed and registered under the Companies Act 2006 (the "CA 2006") or the former Companies Acts (as defined in section 1171 of the CA 2006), and a "foreign company" is a company (other than a "Societas Europaea" established pursuant to EU Council Regulation No. 2157/2001 of 8 October 2001 on the European Company Statute)
which is incorporated or formed under the laws of another jurisdiction with a branch or branches established or located in Scotland.

1.2 The opinions contained in this opinion letter 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.

1.3 Except where otherwise defined herein, terms defined in the Rulebook (as defined below) of LCH shall have the same meaning in this opinion letter.

1.4 In this opinion letter, unless otherwise indicated:

1.4.1 "Agreements" means the Clearing Membership Agreement and the Deed of Charge;

1.4.2 "Arrangements" means the Collateral Arrangements and the Default Arrangements;

1.4.3 "Charged Property" has the meaning ascribed to such term in the Deed of Charge;

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

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

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

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

1.4.8 "Scottish Clearing Member" means a Clearing Member which is a Scottish company;

1.4.9 "Party" means LCH or a particular Clearing Member, and "Parties" means both of them;

1.4.10 "Rulebook" means the General Regulations, Procedures, Default Rules, Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual as provided to us on 9 June 2014;

1.4.11 "Secured Obligations" has the meaning ascribed to such term in the Deed of Charge;
the following principles of interpretation apply:

1.4.12 a reference to "this opinion" is to the opinion given in Section 3;

1.4.13 references to a "designated system" are to a designated system within the meaning of and for the purposes of the Settlement Finality Regulations;

1.4.14 references to a "recognised clearing house" and to a "recognised central counterparty" are to a recognised clearing house and a recognised central counterparty, respectively, within the meaning of and for the purposes of Part 7 of the Companies Act 1989 (Part 7);

1.4.15 a reference to the "Cross-Border Insolvency Regulations" means the Cross-Border Insolvency Regulations 2006;

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

1.4.17 a reference to the "EUIR" is to EU Council Regulation No. 1346/2000 on insolvency proceedings;

1.4.18 a reference to a "financial collateral arrangement" is to an arrangement defined as such in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "FCA Regulations");

1.4.19 a reference to the "Settlement Finality Regulations" is to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

1.4.20 a reference to a "Scottish bank" is to an undertaking incorporated in and as formed under the laws of Scotland and having its head office in the Scotland, which has permission under Part 4A of FSMA to accept deposits; but for the purposes of this opinion does not include insurance companies or credit unions within the meaning of section 31 of the Credit Unions Act 1979;

1.4.21 a reference to a "Scottish investment bank" is to an undertaking to which the Investment Bank Regulations apply (being, broadly, an institution which is incorporated in Scotland, authorised under FSMA to safeguard and administer investments or deal in investments as principal or agent, and holds assets for clients);

1.4.22 in relation to a Scottish bank, the terms "liquidator" and "administrator" include a bank liquidator and bank administrator respectively; and, in relation to a Scottish investment bank, these terms include any individual(s) appointed as administrator pursuant to the investment bank special administration procedure, the special administration (bank insolvency) procedure or the special administration (bank administration) procedure under the Investment Bank Regulations and the Investment Bank Special Administration (Scotland) Rules (2011/2262) ("Investment Bank Rules");

1.4.23 in relation to a Scottish bank, the terms "liquidation" and "administration" include a bank insolvency and a bank administration respectively; and, in
relation to a Scottish investment bank, these terms include an investment
bank special administration, a special administration (bank insolvency) and/or
a special administration (bank administration) under the Investment Bank
Regulations and the Investment Bank Rules, as the context may require;

1.4.24 a reference to an "EEA Credit Institution" is to an EEA credit institution as
defined in the Credit Institutions (Reorganisation and Winding Up)
Regulations 2004 (the "Credit Institutions Regulations"), which means an
EEA undertaking which qualifies as a credit institution under Directive
2000/12/EC but which is not a Scottish credit institution incorporated in the
United Kingdom;

1.4.25 a reference to the "Investment Bank Regulations" is to the Investment Bank
Special Administration Regulations 2011;

1.4.26 a reference to the "UNCITRAL Model Law" is to the Model Law on cross-
border insolvency as adopted by the United Nations Commission on
International Trade Law on 30th May 1997;

1.4.27 any reference to any legislation (whether primary legislation or regulations or
other subsidiary legislation made pursuant to primary legislation) shall be
construed as a reference to such legislation as the same may have been
amended or re-enacted on or before the date of this opinion letter;

1.4.28 unless the context otherwise requires, a reference to a "paragraph" is a
reference to a paragraph of this opinion letter and a reference to a
"Schedule" is a reference to a Schedule to this opinion letter; and

1.4.29 headings are for ease of reference only and shall not affect interpretation of
this opinion letter.

1.5 For the purposes of preparing this opinion letter we have only reviewed the following
documents (the "Opinion Documents"):

1.5.1 the Rulebook;

1.5.2 the Clearing Membership Agreement; and

1.5.3 the Deed of Charge.

1.6 This opinion letter relates solely to matters of Scots law (as in force at the date
hereof) and does not consider the impact of any laws (including insolvency laws) oth-
er than Scots law, even where, under Scots law, any foreign law falls to be
applied. This opinion letter and the opinions given in it are governed by Scots law
and relate only to Scots law as applied by the Scottish courts or, where expressly
stated, a duly constituted arbitral tribunal with its seat in Scotland as at today's date.
We express no opinion on the laws of any other jurisdiction.

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

1.9 We express no opinion as to any provisions of the Opinion Documents other than those to which express reference is made in this opinion letter except insofar as any such provisions directly relate to issues covered herein.

1.10 We have not been responsible for advising any party to the Opinion Documents other than LCH for the purposes of this Opinion Letter and the communication of this Opinion Letter to any person other than LCH does not evidence the existence of any relationship of client and adviser between us and such person.

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

2. ASSUMPTIONS

We assume the following:

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

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

2.3 The Opinion Documents 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.

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

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

2.6 Save in relation to any non-performance leading to the taking of action by LCH under the Default Rules, that each Party performs its obligations under the Opinion Documents and each Contract in accordance with their respective terms.
2.7 That no Clearing Member is entitled to claim in relation to itself or its assets immunity from suit, attachment, execution or other legal process.

2.8 That the Clearing Member is not a "bridge bank" as defined in section 12 of the Banking Act 2009.

2.9 That in all circumstances LCH will take action under its Default Rules in respect of a defaulting Clearing Member with the result that sections 166(2) and 167(3) of the Companies Act 1989 will not apply. As to the effect of sections 166(2) and 167(3) of the Companies Act 1989 please see paragraph 4.6 below.

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

2.11 That none of the Rules of the Clearing House or the other provisions of the Opinion Documents discussed and opined on in this opinion letter has been disallowed pursuant to section 300A of the FSMA.

2.12 That each Clearing Member is:

2.12.1 a UK Credit Institution or an EEA Credit Institution;

2.12.2 an investment undertaking which provides services involving the holding of funds or securities for third parties (within the meaning of Article 1(2) of the European Union Insolvency Regulation 2000); or

2.12.3 a bank incorporated in a jurisdiction other than the United Kingdom or another member state of the EEA, with a branch in this jurisdiction,

and the term "Backup Clearing Member" shall be construed accordingly when used in this opinion letter.

2.13 That the Charged Property delivered pursuant to the Deed of Charge constitutes financial collateral (as defined in the FCA Regulations)\(^1\).

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

2.15 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

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\(^1\) In our view the Charged Property delivered by a Clearing Member should constitute "financial instruments" and, therefore, constitute "financial collateral" (as each such term is defined in the FCA Regulations). However, we cannot exclude the possibility that a Clearing Member might deliver (and LCH might accept) Charged Property in the form of other types of Collateral.
sufficient to prove that the Charged Property taking the form of book-entry securities has been credited to, or forms a credit in, the relevant account);

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

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

3. **OPINION**

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

3.1 **Membership**

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

We have assumed for the purpose of this opinion that a Scottish Clearing Member has obtained the requisite regulatory licences and approvals (see paragraph 2.2 above). There are no specific statutory limitations or regulatory requirements which would limit the capacity of an appropriately authorised Clearing Member to enter into the Agreements. However, we note that no person may carry on a regulated activity unless he is authorised or exempt. Pursuant to section 26 FSMA an agreement made by an unauthorised non-exempt person in the course of carrying on a regulated activity is unenforceable against the other party. Therefore, an unauthorised Scottish Clearing Member would be unlikely to be able enforce the terms of the Opinion Documents and/or Contracts against LCH.

The potential limitations imposed by the constitutional documents of a Scottish Clearing Member and the restrictions limiting the capacity of directors of a Scottish Clearing Member to enter into the Agreements on behalf of the Scottish Clearing Member are discussed at section 3.1.3 below.

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

LCH would not be deemed to be domiciled, resident or carrying on business in Scotland by virtue solely of providing clearing services to a Scottish Clearing Member. In any event, the relevant regulatory system applies in Scotland in the same manner as England and Wales.
3.1.3 **What type of documents should be obtained by LCH to evidence that an Scottish Clearing Member and its officers have the capacity and authority to enter into the Agreements? Is LCH required to verify such evidence?**

**Constitutional Documents**

Prior to 1 October 2009, a company's capacity and powers were generally defined by and the objects of a company were set out in its memorandum of association. Transactions outside the scope of the company's capacity and powers could be *ultra vires*. After 1 October 2009 objects clauses contained in the memorandum of an existing company will be treated as provisions of the company's articles (section 28 CA 2006), unless and until the company chooses to remove them. As such "existing objects will thus just become limitations on directors' authority contained in the articles and amendable by special resolution", thereby are rendering the doctrine of *ultra vires* redundant. In addition, with respect to new and existing companies, section 31(1) CA 2006 provides that "unless a company's articles specifically restrict the objects of the company, its objects are unrestricted". Unless a company's objects are expressly restricted in its articles, its powers will be unlimited and will include the power to enter into the Agreements. It is important to note, however, that the directors will not be able to exercise these powers unchecked. Directors must exercise their powers in furtherance of the business of the company and for its benefit, in accordance with their statutory duty to act in good faith to promote the success of the company for the benefit of its members. Please note that we have assumed for the purpose of the opinion that the relevant directors are acting in accordance with the duty of good faith (see paragraph 2.3 above).

The cumulative effect of the 1 October 2009 changes is that it is no longer necessary to check that a transaction is within the capacity of the company but it is important to ensure that the directors have not breached their authority by exceeding their powers. If, on the other hand, the directors have abused their powers (thereby breaching their fiduciary duties) by entering into a transaction which is not in the interests of, and will confer no benefit on, the company, then this will amount to a breach of duty and the transaction may be set aside at the option of the company. Please note that we have assumed for the purpose of the opinion that the relevant directors are acting in accordance with their fiduciary duties (see paragraph 2.3 above).

Section 40 CA 2006 affords protection to third parties by providing that "in favour of a person dealing with a company in good faith, the power of the directors to bind the company or authorise others to do so, is deemed to be free of any limitation under the company's constitution". Section 40 is however unlikely to protect LCH where it has actual knowledge that the directors have abused their powers.

In view of the above, LCH should request a copy of the articles of association and memorandum of association (if any) of each Scottish Clearing Member and check these documents for evidence of express restrictions on directors' powers (but not for evidence that those powers have been expressly conferred as was the case prior to 1 October 2009). If relevant restrictions are identified, it will be necessary to obtain a special members' resolution from the members of the Scottish Clearing Member approving an amendment of the articles to remove these restrictions. As a practical matter, LCH will need to rely on the constitutional documents as actually provided by
the Scottish Clearing Member, LCH should therefore require each Scottish Clearing Member to represent and certify that there have been no amendments to the versions of the constitutional documents delivered to LCH.

Corporate Approvals/Signing Authority

The authority to bind the company must be conferred either by the articles of association or by delegation under a power contained in them. In most cases, the general power to manage the company is vested in the board of directors. The articles describe how this power is to be exercised by setting out the internal procedures of the company and the limitations on the directors. A board meeting will usually be required for a company to authorise entering into an agreement. Alternatively, the board may delegate any of its powers to committees consisting of one or more directors. The directors act through resolutions passed at these committee meetings.

In addition to verifying that there are no limits on the directors' powers imposed by the constitutional documents of the Scottish Clearing Member, it is also necessary to verify that the signatories signing the Agreements have been appropriately authorised to do so. Accordingly, each Scottish Clearing Member should be required to provide a certified copy of the minutes of the quorate board meeting or committee meeting at which a resolution was passed authorising the execution of the Agreement(s), specifying those persons who are authorised to execute them on the part of the Scottish Clearing Member and providing their specimen signatures.

Due Execution

A contract (such as the Clearing Membership Agreement) may be executed by or on behalf of a Scottish Clearing Member by a person acting under its authority in accordance with Section 48 CA 2006 and the Requirements of Writing (Scotland) Act 1995. Schedule 2, paragraph 3 of the Requirements of Writing (Scotland) Act 1995 provide that a document is signed by the Scottish Clearing Member if it is signed on its behalf by a director, or by the secretary of the Company or by a person authorised to sign the document on its behalf, in each case where witnessed (with details of the name and address being provided). Alternatively, if not witnessed, a document shall be presumed to have been signed on behalf of the Scottish Clearing Member if it is subscribed by either two directors, a director and the secretary of the company or by two authorised signatories.

It is important to note that searches at the Companies House in Edinburgh cannot conclusively disclose whether an interim or final administration order or winding up order has been made or resolution passed for the winding up of a company or whether notification of a moratorium has been given or a receiver, administrative receiver, administrator or liquidator has been appointed (or petition made for the winding up) of a company. In particular, notice of these matters may not yet have been filed with the Registrar of Companies in Scotland (or if filed, may not yet be publicly available) and notice of a petition for winding up is not required to be filed with the Registrar.
3.1.4 *Are there any formalities to be complied with upon entry into of any of the LCH Agreements and, if so, what is the effect of a failure to comply with these?*

In respect of the execution formalities to be complied with in respect of the entry into the Agreements please see paragraph 3.1.3 above.

There are no regulatory filings which need to be made upon the entry into the Clearing Membership Agreement.

Pursuant to section 859A CA 2006 a company entering into a charge, or any person interested in the charge, may register the prescribed particulars relating to such charge with Companies House. For the purposes of the relevant provisions of CA 2006, charge is defined as "(a) a mortgage and (b) a standard security, assignment in security, and any other right in security constituted under the law of Scotland, including any heritable security, but not including a pledge" (section 859A(7) CA 2006). Accordingly, the Deed of Charge is likely to constitute a registrable charge for the purposes of the Act although if the Securities in question are shares in a Scottish registered company then it is unlikely that Companies House in Edinburgh would register a Scottish shares pledge over such Securities; however, we would still recommend that the shares pledge be submitted for registration.

Failure to register within 21 days of the execution of the charge renders the charge "void" against the liquidator, administrator and any creditor of the company (section 859H CA 2006). However, Regulation 4(4) of the FCA Regulations disapplies the effects of section 859H CA 2006 where such charge constitutes a security financial collateral arrangement. A security financial collateral arrangement is defined as:

"an agreement or arrangement, evidenced in writing, where -

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

(b) the collateral-provider creates or there arises a security interest\(^2\) in financial collateral to secure those obligations;

(c) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the"

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\(^2\) A security interest means "any legal or equitable interest or any right in security, other than a title transfer financial collateral arrangement, created or otherwise arising by way of security including - (a) a pledge; (b) a mortgage; (c) a fixed charge; (d) a charge created as a floating charge where the financial collateral charged is delivered, transferred, held, registered or otherwise designated so as to be in the possession of under the control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute financial collateral of the same or greater value or withdraw excess financial collateral or to collect the proceeds of credit claims until further notice shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; or (e) a lien" (Section 3(1) FCA Regulations).
control of the collateral-taker or a person acting on its behalf; any right of the collateral-provider to substitute [financial collateral of the same or greater value] or withdraw excess financial collateral [or to collect the proceeds of credit claims until further notice] shall not prevent the financial collateral being in the possession or under the control of the collateral-taker; and

(d) the collateral-provider and the collateral-taker are both non-natural persons" (Regulation 3(1) FCA Regulations).

For the reasons outlined at paragraph 3.2.2 below, in our view the Deed of Charge is likely to constitute a security financial collateral arrangement and accordingly it should not need to be registered. However, whether a particular arrangement constitutes a security financial collateral arrangement is a question of fact and cannot be opined on with certainty in any particular case. In particular, we would draw your attention to the assumption at paragraph 2.13 above and the qualifications at paragraphs 4.3 to 4.4 below.

3.1.5 Well the courts of the Relevant Jurisdiction uphold the contractual choice of law and jurisdiction set out in Regulation 51?

The choice of English law as the governing law of the Agreement would be upheld as a valid choice by the Scottish Courts except that:

(a) in certain limited circumstances set out in the Contracts (Applicable Law) Act 1990 (as amended) (the 1990 Act) or, if the 1990 Act (or as otherwise provided in the Rome Convention on the Law Applicable to Contractual Obligations 1980 (Rome I) and Regulation (EC) No 864/2007 on the Law Applicable to Non-Contractual Obligations (Rome II)), Rome I or Rome II do not apply, in the common law of Scotland, the choice of law may be overridden;

(b) effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the Agreement have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the Agreement unlawful;

(c) where the application of a provision of English law is manifestly incompatible with the public policy of Scotland although on the basis of our understanding of the current application of public policy by the Scottish Courts, we do not believe that the provisions of the Agreements are incompatible with the public policy of Scotland; and

(d) in relation to the manner of performance and the steps to be taken in the event of defective performance, the Scottish courts will have regard to the law of the country in which performance takes place.
3.1.6 **Will the courts uphold the judgement of the English courts or an English arbitration award?**

A Scottish court will uphold a judgement of an English court or an English arbitration award upon (i) enforcement of a judgment of the courts of the proper law under the procedures in the Civil Jurisdiction and Judgement Act 1982 (the 1982 Act) and applicable subordinate legislation or rules of court or (ii) if the 1982 Act does not apply, enforcement of such a judgment through an action of decree-conform under common law in the Court of Session in Scotland, provided that (1) the court which issued the judgment had jurisdiction and acted judicially with no element of unfairness, (2) such judgment was final, not obtained by fraud, or a revenue action, remained capable of enforcement in the place it was pronounced and was not contrary to natural justice and (3) enforcement of the judgment is not contrary to Scottish public policy.

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

Scottish law may not permit enforcement of foreign judgements where they are in contravention of Scottish public policy rules. Such rules are not comprehensive but relate primarily to fraud and attempts to circumvent mandatory rules of Scots law; we do not believe the arrangements set out in the Agreements would breach Scottish public policy rules.

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

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

The bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Clearing Member could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are liquidation (including provisional liquidation), administration, bank insolvency, bank administration, investment bank special administration, special administration (bank insolvency), special administration (bank administration), administrative receivership, receivership, voluntary arrangements and schemes of arrangement (together called "Insolvency Proceedings"). The legislation applicable to Insolvency Proceedings as at the date of this opinion letter is:

(a) in relation to all Insolvency Proceedings initiated after the date of this opinion except schemes of arrangement, the provisions of the Insolvency Act 1986 and the Insolvency (Scotland) Rules 1986;

(b) in relation to schemes of arrangement, section 895 to section 901 of the CA 2006;
(c) in relation to a Scottish Clearing Member which is a Scottish bank, the Banking Act 2009, the Bank Insolvency (Scotland) Rules 2009, the Bank Administration (Scotland) Rules 2009, the Banking Act 2009 (Restrictions of Partial Property Transfers) Order 2009 and the Credit Institutions Regulations and in relation to a Clearing Member which is a Scottish investment bank, the Investment Bank Regulations and the Investment Bank Rules and, in relation to an EEA Credit Institution, the Credit Institutions Regulations;

(d) Part 7; and

(e) the Cross-Border Insolvency Regulations.

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

However, subject to section 426 of the Insolvency Act 1986:

(a) a Clearing Member that is a foreign company may not enter administration or make a voluntary arrangement unless it is incorporated in an EEA member state, or has its centre of main interests in an EU member state (other than Denmark);

(b) administrative receivership is not available in respect of a Clearing Member that is a foreign company, with the possible exception of foreign companies who have registered particulars under the Overseas Companies Regulations 2009;

(c) bank insolvency and bank administration are procedures only available in respect of a Clearing Member that is a Scottish bank;

(d) investment bank special administration is a procedure only available in respect of a Clearing Member that is a Scottish investment bank which is not a deposit-taking bank with eligible depositors, special administration (bank administration) is a procedure only available in respect of a Clearing Member that is a Scottish investment bank which is a deposit-taking bank; and special administration (bank insolvency) is a procedure only available in respect of a Clearing Member that is a Scottish investment bank which is a deposit-taking bank with eligible depositors; for these purposes, "eligible depositors" has the meaning given in section 93(3) of the Banking Act 2009, being, broadly, depositors who are eligible for compensation under the Financial Services Compensation Scheme; and

(e) in relation to a Clearing Member that is an EEA Credit Institution, liquidation (including provisional liquidation), administration and voluntary arrangements cannot take effect on or after 5 May 2004. Furthermore, a scheme of arrangement in relation to an EEA Credit Institution which is, broadly, intended to enable it to survive, but affects creditors' rights, or to enable its assets to be realised and distributed to creditors, may not be sanctioned by
the court unless the relevant insolvency officer or administrative or judicial authority (which would usually be the officer or authority of the EEA Credit Institution’s home state) has been notified and has not objected.

Under Part 24 of FSMA, the "appropriate regulator" (being the PRA and/or the FCA, as more particularly defined therein) is given specific powers to petition to commence and otherwise to participate in certain Insolvency Proceedings relating to (a) any person that is (or has been) an authorised person under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA. In relation to Insolvency Proceedings which are bank insolvency, bank administration, investment bank special administration, special administration (bank administration) and special administration (bank insolvency), the PRA and/or the FCA, as the case may be, are given similar powers to intervene and rights to participate under the Banking Act 2009 and the Investment Bank Regulations, respectively.

We confirm that the events specified in Rule 3 of the Default Rules adequately refer to all Insolvency Proceedings.

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

The Deed of Charge is governed by English Law. Pursuant to the Deed of Charge, the Clearing Member agrees to grant, with full title guarantee, in favour of LCH an English law first fixed security over certain specified Charged Property. The Charged Property is rendered subject to the charge by submission of the appropriate details, as provided at Section 4 of the LCH Procedures, by the 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 chargor submits a release instruction to LCH (as provided at Section 4 of the LCH Procedures) to LCH and LCH discharges the charge under clause 4(1) of the Deed of Charge by redelivering the securities specified in the release instruction to the relevant Clearing Member.

To the extent that Scots law is relevant, the security interests under the Deed of Charge would be effective in the context of Insolvency Proceedings in respect of a Clearing Member.

If a company enters into administration or an application is presented to the court for the making of an administration order in respect of a company or notice of intention to appoint an administrator to a company is filed with the court, the leave of the court (or, if an administrator has been appointed to the relevant company, the consent of

3 Subject to any other charge or lien arising in favour of a Custodian Bank or Clearance System (each as defined in the Deed of Charge).
that administrator) would be required under Paragraph 43 or 44 of Schedule B1 to the Insolvency Act 1986 in order for a secured party to enforce its rights under a security interest granted by the relevant company. Furthermore, under Paragraphs 70 and 71 of Schedule B1 to the Insolvency Act 1986, an administrator may seek leave of the court to realise property subject to security interest (other than a floating charge) as if it were not subject to that security. However, section 175(1) of Part 7 disapplies the provisions of the Insolvency Act 1986 referred to in this paragraph in respect of any market charge (which will include security arrangements provided for under the Deed of Charge).

Security Interest

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

Similarly, under Regulation 23 of the Settlement Finality Regulations, the rights of a holder of collateral security in relation to securities shall be governed by the law of the EEA State where the account in which the legal entitlement of such holder is recorded. In our view, whether the Charged Property qualifies as "collateral security" is a matter for English law.

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

Instead of or in addition to Insolvency Proceedings, a Scottish bank may be subject to a "property transfer instrument" under sections 11 and 12 of the Banking Act 2009 if the Prudential Regulation Authority is satisfied that the Scottish bank is failing, or likely to fail, to satisfy the threshold conditions for authorisation under section 55B of FSMA.

Banking Act 2009

The Banking Act 2009 contains various provisions which might affect the effectiveness of the Arrangements. In particular, Part I of the Banking Act 2009
provides for various remedies for a failing Scottish bank, which include the ability of the Treasury or the Bank of England to cause the transfer of securities issued by a Scottish bank, or property of a Scottish bank, to another person, by means of a "share transfer order", a "share transfer instrument", or a "property transfer instrument".

Section 75 of the Banking Act 2009 gives power to the Treasury to change the law (except the Banking Act 2009 itself) for the purpose of enabling the powers granted to the PRA, the FCA, the Treasury and the Bank of England under Part I of the Banking Act 2009 to be used effectively. Such changes might affect private law rights and might be used with retrospective effect. Furthermore, under sections 23 and 40, a share transfer instrument or order, or a property transfer instrument, may include incidental, consequential or transitional provisions which might have an impact on private law rights.

A property transfer instrument may apply to only part of a Scottish bank’s assets and liabilities (such a transfer being referred to as a "partial property transfer"). This may be the case because the property transfer instrument concerned expressly applies to only part of the Scottish bank’s business or because it is ineffective in relation to foreign property.

A partial property transfer could apply so as to 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 this regard, article 7 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (the "Safeguards Order") prohibits a partial property transfer which "would have the effect of modifying the operation of or rendering unenforceable (a) market contract; (b) the default rules of a recognised investment exchange or recognised clearing house; or (c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules". If LCH takes action under Rules 6 and 8 of its Default Rules with respect to one or more Contracts to achieve a discharge of such Contracts, the laws of this jurisdiction 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. We are of this view due to the application of the provisions of Part 7.

Section 159(1)(b) of Part 7 provides that the default rules of a recognised clearing house (including such a recognised clearing house which, as in the case of LCH, is a recognised central counterparty) are not to be regarded as to any extent invalid at law on the grounds of inconsistency with the law relating to the distribution of the assets of a person in insolvency. Similarly, section 159(2)(c) provides that an insolvency office-holder may not exercise its powers in any way so as to prevent or
interfere with *inter alia* the settlement of a clearing member house contract⁴, in accordance with the default rules of a recognised central counterparty.

Accordingly, the enforceability or effectiveness of the Default Rules (including the rights to deal with Contracts under Rule 6 and rights of set-off under Rule 8 of the Default Rules) will not be affected by the commencement of Insolvency Proceedings in respect of the Clearing Member.

Under the laws of this jurisdiction, 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 constitute Automatic Early Termination Events.

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

**Gratuitous Alienation**

Under Section 242 of the Insolvency Act 1986, if, within two years of the transfer of any part of a Scottish Clearing Member's property or the discharge or renunciation of any claim or right of a Scottish Clearing Member (an "Alienation"), a winding up of a Scottish Clearing Member commences or an administration order is made in respect of the Scottish Clearing Member, the Alienation may be challenged by a creditor, the liquidator or the administrator of the Scottish Clearing Member, unless:

(a) immediately, or at any other time after the Alienation, the Scottish company's assets were greater than its liabilities; or

(b) the Alienation was made for adequate consideration.

Under section 165(2) of the Companies Act 1989, no order can be made by a court under section 242 of the Insolvency Act 1986 to set aside a market contract to which a recognised clearing house is party or which has been entered into under the default rules of LCH, unless section 167(3) of the Companies Act 1989 applies (as to the (lack of) application of section 167(3) of the Companies Act 1989 to this advice, please refer to the assumption set out in paragraph 3.9 above).

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⁴ The term "clearing member house contract" is defined in section 155(1)(b) to mean a "contract between a recognised central counterparty and clearing member recorded in the accounts of the recognised central counterparty as a position held for the account of a clearing member".
Unfair Preference

Under Section 243 of the Insolvency Act 1986, if a transaction entered into by a Scottish company has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors of the Scottish Clearing Member, and within 6 months of that transaction a winding up of the Scottish company commences or an administration order is made in respect of the Scottish Clearing Member, it may be challenged by a creditor, the liquidator or the administrator of the Scottish Clearing Member, unless it was:

(a) a transaction in the ordinary course of trade or business; or

(b) a payment in cash for a debt which when it was paid had become payable, and the transaction was not collusive with the purpose of prejudicing the general body of creditors of the Scottish Clearing Member; or

(c) a transaction whereby the Scottish Clearing Member and the counterparty undertook reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) and the transaction was not collusive as above.

As with gratuitous alienations, on a successful challenge of an unfair preference being brought, the Scottish Court will make such decree of reduction or for restoration of property or other redress as may be appropriate.

The Courts will not make an order under Section 243 of the Insolvency Act unless the transactions were collusive for the purpose of prejudicing the general body of creditors.

Under section 165(2) of the Companies Act 1989, no order can be made by a court under section 243 of the Insolvency Act 1986 in respect of a market contract to which a recognised clearing house is a party or which has been entered into under the default rules of LCH unless section 167(3) of the Companies Act 1989 applies (as to the (lack of) application of section 167(3) of the Companies Act 1989 to this advice, please refer to the assumption set out in paragraph 2.10).

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

Unlike the English insolvency set-off rules, the Scottish rules are common law and not statutory. On the insolvency of a Scottish Clearing Member, a Scottish court will consider these rules and we believe will give effect to the contractual set-off provisions in so far as these are not inconsistent with the Scottish set-off rules on insolvency. These rules must be pled, however, and do not operate ipso jure.

The Scottish common law set-off rules on insolvency are fairly wide. They allow an illiquid claim (ie, a claim which is not actually due or ascertainable) to be set-off against a liquid claim; but the illiquid claim must be capable of ascertainment almost immediately and must arise out of the same contract. A claim arising after insolvency
cannot be set off against a pre-insolvency debt. Both parties to the set-off must be debtor and creditor in the same capacity.

In addition, Regulation 12(1) of the FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms notwithstanding that one of the parties to the relevant financial collateral arrangement is subject to "winding-up proceedings" or "reorganisation measures" (both as defined in the FCA Regulations). We mention Regulation 12 of the FCA Regulations because, technically, it is an example of a piece of netting legislation implemented in this jurisdiction. Close-out netting in accordance with a close-out netting provision under Regulation 12(1) of the FCA Regulations would prevail over the application of the Scottish common law insolvency rules in the event of liquidation or administration proceedings relating to a Scottish Clearing Member.

In our view, the Default Rules (in particular, Rules 3, 6, 7 and 8) would qualify as a close-out netting provision constituting a term of which a financial collateral arrangement forms part under Regulation 12(1) of the FCA Regulations, the relevant "financial collateral arrangement" for these purposes being a "title transfer financial collateral arrangement" in respect of "financial collateral" in the form of "cash" (as each term is defined in the FCA Regulations). The arrangements for the transfer of Collateral in the form of cash between (i) LCH and each Clearing Member in respect of their respective variation margin obligations and (ii) by each Clearing Member to LCH in respect of its initial margin obligations constitute the relevant title transfer financial collateral arrangement.

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

The question does not seem to be relevant to a Scots law analysis where the close-out mechanics and net sum determined by LCH would be denominated in (or at least converted into) pounds sterling as would any Insolvency Proceedings conducted in respect of a Scottish Clearing Member and the claims proved therein.

3.3 *Client Clearing*

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

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

For the avoidance of doubt, we are of the opinion that the protections provided by Part 7 amount to an Exempting Client Clearing Rule and have responded to the questions below accordingly.

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

On the assumption that a Clearing Member has defaulted (whether as a result of the commencement of an Insolvency Proceeding or not):

(a) LCH would be entitled to exercise its rights under the provisions of the Client Clearing Annex (which forms part of the Default Rules) providing for the porting of Client Contracts and the Account Balance of a Clearing Client; and

(b) the terms of the provisions of the Client Clearing Annex would be valid and effective under the laws of this jurisdiction.

In our view, there is no rule of the laws of this jurisdiction which would apply to prohibit the Parties from entering into a contract upon the terms of the Clearing Membership Agreement or the Client Clearing Annex.

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

Our response in paragraph 3.3.2 above would apply equally in this scenario.

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

If LCH takes action under its Default Rules with respect to one or more Client Contracts of a defaulting Clearing Member to achieve a porting of such Contracts, Scots law will give effect to such action to achieve the relevant porting. We are of this view because section 158 of the Companies Act 1989 extends the insolvency protections provided by Part 7 to (i) action taken to transfer qualifying collateral arrangements in conjunction with a transfer (ie. port) of clearing member client contracts (which would include the Client Contracts) and (ii) qualifying property transfers.

For the purposes of Part 7, the definition of:

"qualifying collateral arrangement" includes (a) an arrangement by which property is provided as margin and is recorded in the accounts of a recognised central counterparty as an asset held for the account of a client and (b) an arrangement by which margin is provided to a client or clearing member for the purpose of providing cover for exposures arising out of present or future client trades (section 155A(2) of the Companies Act 1989); and

"qualifying property transfer" includes transfers of property to the extent that it involves transfers to a non-defaulting Clearing Member (ie. a Backup Clearing Member) in accordance with the default rules of the recognised central counterparty, either by way of transferring the contracts and associated collateral or terminating and closing the relevant client contracts and transferring the termination or close out value.

Accordingly, a liquidator or administrator appointed to a defaulting Clearing Member would be prevented from challenging the porting of Client Contracts and the Account Balance.

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

As discussed above at paragraph 3.3.4, the insolvency protections provided by Part 7 apply to qualifying property transfers. The definition of qualifying property transfer includes transfers of property made in accordance with Article 48(7) of EMIR. In accordance with Article 48(7) of 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. Accordingly, 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.

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

Article 7 of the Safeguards Order provides for protections in relation to (amongst other things) market contracts and the default rules of a recognised clearing house in the event of a partial property transfer. Hence, the arrangements in the Client Clearing Annex of the Default Rules of LCH for the porting of Client Contacts and the Account Balance of the relevant Clearing Client would remain intact and not be challengeable by the Special Resolution Unit of the Bank of England (or any of the other Authorities involved in implementing the powers under the Banking Act 2009) in the event of a partial property transfer under that Act.

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

Please see the response in paragraph 3.3.6. The protections available in the event of a partial property transfer under the Banking Act 2009 would apply equally to the return of the Client Clearing Entitlements to, or for the account of, the relevant Clearing Clients.

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

We are of the opinion that the protections provided by Part 7 amount to an Exempting Client Clearing Rule and consequently we have not provided an answer to this question.

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

We are of the opinion that the protections provided by Part 7 amount to an Exempting Client Clearing Rule and consequently not provided an answer to this question.
3.3.10  *Is there any risk of a stay on the enforcement of the Security Deed in the event of insolvency proceedings or reorganisation measures being commenced in respect of a Clearing Member?*

We are of the opinion that the protections provided by Part 7 amount to an Exempting Client Clearing Rule and consequently we have not provided an answer to this question.

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

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

4.  QUALIFICATIONS

4.1  **Effectiveness of Deed of Charge**

4.1.1  We express no opinion as to:

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

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

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

4.1.2  Our opinions are subject to:

(a)  any asset being capable of forming the subject of a security interest and not otherwise being personal to a Clearing Member;

(b)  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; and

(c)  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.

4.2  If a winding-up order has been made or a provisional liquidator appointed in respect of a Clearing Member and the liquidator or provisional liquidator is in possession of the Charged Property, in order to exercise any power of sale or appoint a receiver, LCH or its receivers will require leave of the court to take possession of the Charged Property to avoid the risk of being held in contempt of court as a consequence of
interfering with the functions of the liquidator or provisional liquidator as court-appointed officers. However, it appears this leave will be given as of right where there is no dispute as to the validity of the security interest.

Financial Collateral Arrangements

Whether or not a collateral arrangement constitutes a fixed or floating charge is a matter for English law as the governing law of the security interest purported to be created by the Deed of Charge.

Furthermore, if, contrary to our view stated in paragraphs 3.1.4 and 3.2.2 of this opinion the security interest created under the Deed of Charge were not a "financial collateral arrangement":

4.2.1 under section 859H of the CA 2006 a charge is void against a liquidator, an administrator and a creditor of the company unless registered within the relevant period allowed for delivery (which is ordinarily 21 days beginning on the day after creation of the charge)

4.2.2 under section 245 of the Insolvency Act 1986 a floating charge may be invalid if created within the period of 12 months before the onset of insolvency (as defined in paragraph 3.2.4 above);

4.2.3 under paragraphs 43 and 44 of Schedule B1 to the Insolvency Act 1986, a moratorium may apply which prevents enforcement of a charge without leave of the court or, where relevant, the consent of the administrator; and

4.2.4 under paragraphs 70 and 71 of Schedule B1 to the Insolvency Act 1986, an administrator may seek leave of the court to realise property subject to a charge.

However, as stated in paragraph 3.2.2, the powers of the administrator referred to in paragraphs 4.2.3 and 4.2.4 are disapplied under Part 7.

4.3 A security financial collateral arrangement requires that the relevant "financial collateral" (as defined in the FCA Regulations) is in the "possession or control" (as such terms are used in the FCA Regulations) of the collateral-taker, which in this case is LCH. In our view, the question of whether there is "possession or control" is a matter for English law.

4.4 Enforceability of claims

Our opinions are subject to:

4.4.1 the power of a Scottish court to order specific implement of an obligation or is discretionary and, accordingly, a Scottish court might make an award of damages where specific implement of an obligation or other equitable remedy is sought;

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

4.4.3 enforcement may be limited by the provisions of Scots law applicable to agreements held to have been frustrated by events happening after its execution;

4.4.4 in some circumstances a Scottish court may, and in certain circumstances it must, terminate or suspend proceedings commenced before it, or decline to restrain proceedings commenced in another court, notwithstanding the provisions of the Opinion Documents providing that the courts of Scotland have jurisdiction in relation to the subject matter of those proceedings;

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

4.4.6 any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent, arbitrary or manifestly incorrect and a Scottish court may regard any certification, determination or calculation as no more than prima facie evidence.

**Market Contracts and Default Rules under Part 7**

4.5 A recognised clearing house is not obliged to operate its default rules following the default of a member unless required to do so pursuant to directions given by the Bank of England under section 166 of the Companies Act 1989. The Bank of England may direct LCH not to take action (or certain types of action) under its default rules in certain circumstances permitted by section 166.

4.6 Sections 166(2) of the Companies Act 1989 applies if a recognised clearing house has not taken action under its default rules in respect of a clearing member or client (as applicable) which is subject to certain Insolvency Proceedings, and empowers the Bank of England to direct a recognised clearing house to take or refrain from taking actions under its default rules. Section 167(3) of the Companies Act 1989 applies if a recognised clearing house has not taken action under its default rules in respect of a clearing member or client (as applicable) which is subject to certain Insolvency Proceedings, and fails to take action (or to notify the Bank of England, which is the agency designated for such purposes by the Secretary of State, of its intention to take such action forthwith) within 3 business days from the date of receipt of a notice from the Bank of England.

4.7 Whilst section 177 of the Companies Act 1989 permits a clearing house to apply margin or a default contribution in relation to a market contract in accordance with its rules notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty if the clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin or a default contribution such property will be subject to the prior interest and/or right.
Settlement Finality Regulations

4.8 The provisions of the Settlement Finality Regulations will not apply in relation to any transfer order entered into by the designated system of LCH (which we take to mean registered with LCH) after the court has made a winding-up or administration order in relation to LCH or LCH has passed a resolution for creditors’ voluntary winding-up, unless the transfer order is carried out on the same business day of the designated system as the order or resolution, and the system operator can show it did not have notice of the order or resolution. It seems unlikely that LCH would not have such notice of such an order or resolution and, accordingly, we express no view as to whether obligations between the Parties (in respect of Contracts or otherwise) which are, or arise from, transfer orders entered into after the commencement of the relevant Insolvency Proceedings may be included in the termination and liquidation under the Default Arrangements but the exclusion of any such obligation would not affect the effectiveness of the Default Arrangements in respect of any other obligations entered into before such time.

4.9 In relation to our opinion at paragraph 3.2.2 and 3.2.3, there is an argument that amounts due under Contracts which constitute derivatives do not constitute "transfer orders" for the purposes of the Settlement Finality Regulations. A "transfer order" may be either a "payment transfer order" or a "securities transfer order" (as defined in the Settlement Finality Regulations). While a cash sum due to be paid under a Contract ought to constitute, or give rise to, a "payment transfer order", it may be that the entirety of the Contract cannot properly be so regarded. Further, if under the terms of a Contract, title to, or an interest in, a commodity or other thing which is not a "security" (meaning an instrument referred to in section C of Annex I to Directive 2004/39/EC (MiFID)) is transferred, that Contract would not appear to constitute a "transfer order". If those arguments were to prevail, the additional protections provided by the Settlement Finality Regulations which are mentioned in paragraph 3.2.2 may not be available in respect of those Contracts.

4.10 There is an argument that, in the case of a central counterparty such as LCH, which clears a number of different products in distinct product-specific clearing services, there would not be one single designated system for the purposes of the Settlement Finality Regulations (being the single centralised cross-product clearing system operated by the central counterparty) but, instead, the system in respect of each product cleared by the central counterparty should be treated as representing a separate designated system. If this were the case, then notwithstanding that the Bank of England (as the relevant "designating authority" under the Settlement Finality Regulations) has, as at the date of this opinion, indicated on its website that LCH as a whole constitutes a single designated system, it may be that certain Services cleared by LCH constitute or contain a designated system, whilst others do not. A possible consequence of this might be that, for certain Services, and for the Contracts cleared on those Services, the Default Arrangements would not constitute "default arrangements" for the purposes of Regulation 14 of the Settlement Finality Regulations and, therefore, that the protections provided for under that statutory rule would not be available in respect of the close-out netting under the Default Arrangements of the relevant Contracts and in the relevant Services.
Other Insolvency Issues

4.11 In a winding-up of a Clearing Member by the courts of this jurisdiction, any dispositions by such Clearing Member of its property made on or after the commencement of the compulsory winding-up of such Clearing Member are void under section 127 of the Insolvency Act 1986 unless the court otherwise orders. However, pursuant to section 164(3) of the Companies Act 1989, a market contract to which LCH is a party and any disposition of property pursuant to such market contract made by the relevant Clearing Member after the commencement of its compulsory winding-up will not be void under section 127 of the Insolvency Act 1986 and the value of such market contract can be included in the netting under LCH's Default Rules, unless section 164(3) is disapplied by section 167(3) of the Companies Act 1989 (as to the (lack of) application of section 167(3) of the Companies Act 1989 to this opinion letter, please refer to the assumption set out in paragraph 2.9 above).

4.12 In relation to paragraph 3.2.5 above, Regulation 12(1) of the FCA Regulations does not apply if at the time that (any of) the relevant financial obligations came into existence:

4.12.1 LCH was aware, or should have been aware, that winding up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations) had commenced in relation to the Member;

4.12.2 LCH had notice that a meeting of creditors of the Member had been summoned under section 98 of the Insolvency Act 1986 or that a petition for the winding-up of the Member was pending; or

4.12.3 LCH had notice that an application for an administration order was pending, or that a person had given notice of intention to appoint an administrator, in respect of the Member.

Accordingly, in such circumstances, the protection granted under the FCA Regulations to a close-out netting provision may not be effective.

4.13 If any creditor of LCH were to attach, execute, levy diligence or otherwise exercise a creditor's process (whether before or after judgment) over or against any claim owing by the Member to LCH, then the Member would be able to exercise its rights under a Netting Provision against the creditor of LCH in respect of claims which existed at the date of the attachment or other process, including the claim which is the subject of the attachment or other process. However, if the attaching creditor has become subject to Scottish common law insolvency set-off before a Termination Date has occurred, it may be possible for the liquidator or administrator of the attaching creditor to claim the amounts subject to the attachment free of the Member's rights under the Netting Provision. This is because it may be argued that the Member seeks to exercise a set-off right in respect of any amount which is now owed by the Member to the attaching creditor rather than to LCH, and a contractual provision which purports to create a right of set-off between non-mutual claims may not be effective in Scottish common law insolvency set-off when applied to the attaching creditor.
4.14 However, after the commencement of a winding-up of LCH any attachment will be ineffective unless the court otherwise orders, and in our view the court would not validate the attachment in order to defeat the rights of the Member under the Netting Provision. Further, the protections available under the Financial Collateral Regulations, the Settlement Finality Regulations and Part 7 may have effect to override the claim of the attaching creditor.

4.15 There is provision in both the CA 2006 and the Insolvency Act 1986 for schemes of arrangement, or voluntary arrangements in respect of companies, to be agreed by creditors or, in some cases, shareholders of the company. The courts will not sanction a scheme of arrangement under sections 895-901 of the CA 2006 unless reasonable efforts were made to notify those creditors, whose rights would be affected by the scheme, of the meeting to approve that scheme. In relation to company voluntary arrangements under Part I of the Insolvency Act 1986, a creditor can be bound by an arrangement even if he has not been given notice of the creditors' meeting to approve the arrangement. In the case of either a scheme of arrangement or a company voluntary arrangement, approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting. Such arrangements could affect both the set-off rights of creditors and the value of claims which the creditors may have against the company. The disapplication of certain aspects of the general law of insolvency by Part 7 may not be effective to disapply the consequences of a scheme of arrangement under the CA 2006, since this procedure does not appear to fall within the meaning of "insolvency law" under section 190(6) of the Companies Act 1989.

If the default rules of a recognised clearing house have been operated to achieve a discharge of market contracts before the approval of such an arrangement, any provision of such an arrangement which purports to unwind the application of such default rules would not bind the affected creditor if timely objection to the arrangement is made to the applicable court. An arrangement could, however, affect the value of any resulting net claim.

Application of foreign law

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

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

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

4.19 The courts having jurisdiction in relation to insolvency law in this jurisdiction may give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in this jurisdiction or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by Scots law. The courts of this jurisdiction may accordingly apply foreign systems of law rather than Scots law where the Chargor is subject to insolvency proceedings in another jurisdiction. Under section 426 of the Insolvency Act 1986, a court with insolvency law jurisdiction in Scotland has a discretion to apply the law of one of a list of specified jurisdictions to the insolvency of an entity (including a company incorporated and registered in Scotland) if so requested by the competent court of that other jurisdiction. Those specified jurisdictions are currently the other parts of the United Kingdom, the Channel Islands, the Isle of Man, Anguilla, Australia, the Bahamas, Bermuda, Botswana, Brunei, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Ireland, Malaysia, Montserrat, New Zealand, South Africa, St. Helena, Turks and Caicos Islands, Tuvalu and the Virgin Islands. In exercising its discretion, the Scottish court must have regard to the rules of private international law.

4.20 Furthermore, where the Clearing Member is an EEA Credit Institution, a liquidator or administrator may not be appointed in relation to proceedings initiated on or after 5 May 2004.

4.21 Under the Cross-Border Insolvency Regulations, a court may recognise a foreign insolvency proceeding, and in consequence of such recognition may limit the application of Scotland insolvency law, or apply certain of such provisions at times, or in circumstances, where they would not otherwise be available.

However, Regulation 2 of the Cross-Border Insolvency Regulations provides that the UNCITRAL Model Law shall have the force of law in Scotland and, under Regulation 4 of Article 1 of the UNCITRAL Model Law, a Scottish court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of the UNCITRAL Model Law if and to the extent that such relief or modified relief or co-operation or coordination would be prohibited by virtue of Part 7.

4.23 Whilst Section 177 of the Companies Act 1989 permits a recognised clearing house to apply margin or a default contribution in relation to a market contract in accordance with its rules notwithstanding any prior equitable interest or right, or any remedy or right arising from a breach of fiduciary duty if the clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin or a default contribution such property will be subject to the prior interest and/or right.
Other Qualifications

4.24 Under Scots law, interest imposed upon a Clearing Member under the Arrangements, an Agreement or a Contract might be held to be irrecoverable to the extent that it accrues on an unsecured debt after the making of a winding-up order or the passing of a winding-up resolution in respect of the Clearing Member, but the fact that it was held to be irrecoverable would not of itself prejudice the legality or validity of the netting arrangements under the Default Rules of LCH. If the Opinion Documents do not provide a contractual remedy for the late payment of any amount payable thereunder that is a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998, the Party entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed pursuant to that Act. Any term of the Arrangements and/or the Agreements may be void to the extent that it excludes or varies the right to statutory interest, or purports to confer a contractual right to interest that is not a substantial remedy for late payment of that amount, within the meaning of that Act. We express no opinion as to whether any such provisions in the Opinion Documents do in fact constitute a “substantial remedy” in compliance with the conditions set out in section 9 of such Act.

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

4.26 Any undertaking or indemnity given by a Clearing Member in respect of stamp duty payable in Scotland may be void.

4.27 A Scottish court may in its discretion decline to give effect to any provision for the payment of legal costs incurred by a litigant.

4.28 If a Party is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Community or UK sanctions implemented or effective in the United Kingdom under the United Nations Act 1946, the Emergency Laws (Re-enactments and Repeals) Act 1964, the Anti-terrorism, Crime and Security Act 2001 or the Counter-Terrorism Act 2008, or under the Treaty establishing the European Community, or is otherwise the target of any such sanctions, then the obligations of the other Party to that Party under the Arrangements may be unenforceable or void.

4.29 The laws of this jurisdiction may have effect so that any discretion or determination to be exercised or made by a party under the Arrangements must be exercised or made reasonably. Any provision in the Opinion Documents providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent, incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party thereto. A Scottish court may regard any calculation, determination or certification as no more than prima facie evidence of the matter calculated, determined or certified.
4.30 The parties to the Agreements may be able to amend the Agreements or the Arrangements by oral agreement or by conduct despite any provision to the contrary.

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

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

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

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

4.36 In some circumstances a Scottish court may, and in certain circumstances it must, terminate or suspend proceedings commenced before it, or decline to restrain proceedings commenced in another court, notwithstanding the provisions of the Opinion Documents providing that the courts of Scotland have jurisdiction in relation to the subject matter of those proceedings.

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 its website and to it being shown to the relevant regulators and/or any counsel appointed by the addressee to advise on matters of the laws of other jurisdictions, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result or otherwise.

Yours faithfully

[Signature]

CMS Cameron McKenna LLP
SCHEDULE 1 - CLEARING MEMBERSHIP AGREEMENT
[Insert Date]

[CLEARING MEMBER]

and

[CLIENT]

CLIENT CLEARING AGREEMENT
SwapClear Client Clearing
Template Client Clearing Agreement Version 3.2 dated 6 December 2013

This Agreement is made on [Insert Date] between:
(1) [CLEARING MEMBER] ("Party A"); and
(2) [CLIENT] ("Party B").

It is agreed as follows:

1  Definitions and Interpretation

1.1 Definitions: Capitalised terms used but not defined in this Agreement shall have the meaning given to them in the Client Clearing Standard Terms. In addition, the following expressions shall have the following meanings:

"Client Clearing Agreement" has the meaning given in Clause 2.

"Client Clearing Standard Terms" means the SwapClear Client Clearing Standard Terms published on [●] with Version number [2.3 dated [●] December 2013].

1.2 Schedules and Clauses: References to the Schedule and Clauses are to the schedule and clauses of this Agreement (unless stated otherwise). The Schedule is incorporated into and forms part of this Agreement.

1.3 Headings: Clauses and Schedule headings are for ease of reference only.

2  Incorporation of Client Clearing Standard Terms

Party A and Party B agree that their execution of this Agreement shall constitute their entry into, on the date hereof, a Client Clearing Agreement relating to the clearing of certain transactions with LCH.Clearnet on the terms of the Client Clearing Standard Terms, as modified, amended or supplemented by the Schedule hereto. The Client Clearing Standard Terms are incorporated into this Agreement. To the extent there is any inconsistency between the provisions of this Agreement and the Client Clearing Standard Terms, the provisions of this Agreement shall prevail.

3  Contracts (Rights of Third Parties) Act 1999

A person which is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement or any agreement constituted hereby, except to the extent (if any) expressly provided in this Agreement or, as the case may be, the agreements constituted thereby.

4  Governing Law, Jurisdiction and Service of Process

The governing law, jurisdiction and service of process provisions contained in the Client Clearing Standard Terms apply to this Agreement as if set out in full.
SwapClear Client Clearing
Template Client Clearing Agreement Version 3.2 dated 6 December 2013

In witness whereof the parties have executed this Agreement on the date stated at the beginning.

[CLEARING MEMBER]
[INSERT APPROPRIATE SIGNATURE BLOCK]

[CLIENT]
[INSERT APPROPRIATE SIGNATURE BLOCK]
Schedule
Amendments and Elections

The following amendments and elections in respect of the Client Clearing Standard Terms shall apply to the Client Clearing Agreement. References to Clauses, Schedules, or Paragraphs shall be references to the clauses, schedules or paragraphs of the Client Clearing Standard Terms.

General:
Deed of Assignment: [The Deed of Assignment entered into on or about the date of this Agreement amongst Party A, Party B and LCH.Clearnet.][The Deed of Assignment entered into on [●][entered into on or about the date of this Agreement] between Party A and LCH.Clearnet in its capacity as a clearing house and as security trustee for Party B.]


Additional Transfer Conditions: [●]

[Valuation Method: [●]]

Clause 10.7:
Confidentiality: [Applicable][Not applicable]

Account Type: The parties agree that:

(i) prior to the Authorisation Date, the Client Account in respect of Party B will be an [Individual Segregated Account][Omnibus Net Segregated Account]; and

(ii) on and following the Authorisation Date, the Client Account in respect of Party B will be [determined in accordance with Clause 1.4.2 of the Client Clearing Standard Terms][as otherwise agreed between the parties in writing prior to the Authorisation Date][insert specific account type or other methodology for determining the specific account type].

English law Credit Support Annex:
Base Currency: [●]

Eligible Currency: The Base Currency and [●][the lawful currency of any other jurisdiction whose currency is eligible to be posted by Party A under the LCH Rules as margin for one or more Associated LCH Transactions].
SwapClear Client Clearing  
Template Client Clearing Agreement Version 3.2 dated 6 December 2013  

Eligible Credit Support:  

<table>
<thead>
<tr>
<th>Eligible Credit Support</th>
<th>Party A</th>
<th>Party B</th>
<th>Valuation Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Cash in an Eligible Currency</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
<tr>
<td>(B) negotiable debt obligations issued by the Government of [•] having an original maturity at issuance of not more than one year</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
<tr>
<td>(C) negotiable debt obligations issued by the Government of [•] having an original maturity at issuance of more than one year but not more than 10 years</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
<tr>
<td>(D) negotiable debt obligations issued by the Government of [•] having an original maturity at issuance of more than 10 years</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
<tr>
<td>(E) any collateral (including, as applicable, any of the foregoing) eligible for posting to LCH.Clearnet in respect of Associated LCH Transactions in accordance with the LCH Rules (&quot;LCH Eligible Collateral&quot;)</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
<tr>
<td>(F) other (other than [•] that is/are LCH Eligible Collateral)</td>
<td>[•]</td>
<td>[•]</td>
<td>[•]%</td>
</tr>
</tbody>
</table>

Additional Collateral Amount:  
[Applicable]/[Not Applicable]  
["Additional Collateral Amount" means [•].]  

Type of Client:  
[Individual Segregated Account]/[Omnibus Net Segregated Account]  

[Valuation Date: [•]]  
[Valuation Time: [•]]  
[Notification Time: [•]]  
[Exchange Date: [•]]  
[Resolution Time: [•]]  
[Value: [•]]  
[Alternative: [•]]  
[Will apply only to Eligible Credit Support that is not LCH Eligible Collateral]/[Will not apply]  

1 If "VM Matching Methodology" is specified as being applicable, any Valuation Time specified will not be relevant in relation to calls made by LCH.Clearnet for variation margin (as one-for-one variation margin matching would apply in such cases, pursuant to the definition of Valuation Time).
SwapClear Client Clearing  
Template Client Clearing Agreement Version 3.2 dated 6 December 2013

<table>
<thead>
<tr>
<th>Eligible Currency</th>
<th>Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>[●]</td>
<td>[●]</td>
</tr>
<tr>
<td>[●]</td>
<td>[●]</td>
</tr>
<tr>
<td>[…]</td>
<td>[…]</td>
</tr>
</tbody>
</table>

[Transfer of the Interest Amount: [●]]

[Alternative to Interest Amount: [●]]

Alternative to Distributions:  
[Applicable]/[Not Applicable]

[Consideration: [●]]

Modified Blended Alternative:  
[Applicable]/[Not Applicable]

[Consideration: [●]]

Addresses for Transfers:  
Party A: [●]
Party B: [●]

Paragraph 11(h):  
(i) LCH Matching:  
[Applicable]/[Not applicable]

(ii) Flexible Calls:  
[Applicable]/[Not applicable]

(iii) VM Matching Methodology  
[Applicable]/[Not applicable]

(iv) Nth Local Business Day:  
[Third] Local Business Day

[Other Amendments:]  
[Insert any other amendments to the Client Clearing Standard Terms]
SCHEDULE 2– DEED OF CHARGE
A company whether incorporated in England and Wales or an overseas company.
CHARGE SECURING OWN OBLIGATIONS

Date of Execution: 

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

Name and Address of Chargor: 

Clearing Membership Agreement Date: 

Chargor's Account:  

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

WITNESSES as follows:

1. **Interpretation**

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

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

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

2. **The Secured Obligations**

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

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

   (3) The monies, other liabilities, interest and other charges referred to in paragraph (1) of this clause, the interest referred to in sub-paragraph (2) of this clause and all other monies and liabilities payable or to be discharged by the Chargor under
or pursuant to any other provision of this Deed are hereinafter collectively referred to as "the Secured Obligations".

2A. **Custody of Collateral**

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

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

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

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

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

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

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

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

(3) In this Deed:

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

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

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

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

(ii) all Securities held by the Clearing House as custodian for the Chargor pursuant to Clauses 2A(1) and (2) which are for the time being held by, or by any Clearance System on behalf of, for the account of or to the order of or under the control or direction of a Custodian Bank, for the account of the Clearing House.
"Clearance System" shall be construed as a reference to any system from time to time used or constituted for the clearing, collective safe custody or central deposit of securities, and any depository for any of the foregoing;

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

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

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

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

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

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

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

4. **Release**

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

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

5. **Income**

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

6. **Reinstatement**

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

7. **Warranties and Undertakings**

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

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

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

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

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

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

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

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

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

(ix) it has been and shall at all times remain expressly agreed between the Chargor
and each of the Chargor's clients or other persons who are for the time being
(or would be, but for the provisions of this Deed) entitled to the entire beneficial
interest in all or any parts of the Charged Property that, in relation to any assets
from time to time held by the Chargor or delivered to the Chargor for the
account of any such client or other person which at any time form part of the
Charged Property, the Chargor may, free of any interest of any such client or
other person therein which is adverse to the Clearing House, charge or
otherwise constitute security over such assets with the result that the Chargor
may charge or otherwise constitute security over such assets in favour of the
Clearing House on such terms as the Clearing House may from time to time
prescribe and, in particular but without limitation, on terms that the Clearing House may enforce and retain such charge or other security in satisfaction of or pending discharge of all or any obligations of the Chargor to the Clearing House;

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

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

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

8. **Negative Pledge**

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

(i) in favour of the Clearing House; or

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

create, grant, extend or, except in relation to any charge or lien in favour of any Clearance System or Custodian Bank, permit to subsist any mortgage or other fixed security or any floating charge or other security interest on, over or in the Charged Property or any part thereof. The foregoing prohibition shall apply not only to mortgages, other fixed securities, floating charges and security interests which rank or purport to rank in point of security in priority to the security hereby constituted but also to any mortgages, securities, floating charges or security interests which rank or purport to rank pari passu therewith or thereafter.
(2) Sub-paragraph (1) above does not, during the subsistence of the security hereby constituted, operate to prevent the Chargor from continuing to hold a security interest in the Charged Property previously created in favour of the Chargor, provided always that the interest in favour of the Chargor shall rank after the security created by this Deed.

9. **Preservation of Charged Property**

Until the security hereby constituted shall have been discharged:

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

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

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

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

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

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

11. **Further Assurance**

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

2. The Chargor undertakes promptly to execute and do (at the cost and expense of the Chargor) all such deeds, documents, acts and things as may be necessary or desirable in order for the Clearing House to enjoy a fully perfected security interest in the whole of the Charged Property, including without limitation the deposit of the Charged Property with a Custodian Bank and the perfection of pledges or transfers under such laws, of whatever nation or territory, as may govern the pledging or transfer of the Charged Property or part thereof or other mode of perfection of this Deed and the security interest expressed to be created hereby. Without limiting the foregoing, the Chargor agrees with and covenants to the Clearing House that with respect to all Charged Property situated in the United States of America consisting of investment property, money, instruments, securities, securities entitlements, other financial assets and commodity contracts (as defined in the NY UCC), such Charged Property shall be held, maintained or deposited, as applicable, in a securities account or commodity account (in the case of commodity contracts) (such that, in each case, the Clearing House shall become the entitlement holder thereof, as defined in the NY UCC) or a deposit account (as defined in the NY UCC), in the case of Charged Property that may be credited to a Deposit Account, in the name of the Clearing House, or, if permitted by the
Procedures, may be maintained and held in the Chargor’s name at a Custodian Bank (whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC) which shall have executed and delivered to the Clearing House an agreement whereby such Custodian Bank agrees that it will comply with entitlement orders of the Clearing House without further consent by the Chargor. Notwithstanding anything to the contrary herein, in respect of any Charged Property situated in the United States of America, the Clearing House shall comply with all non-waivable requirements of the NY UCC with respect to how the secured party must deal with Collateral under its control or in its possession.

12. **Enforcement of Security**

On and at any time:

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

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

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

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

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

13. **Power of Sale**

(1) If a Default has occurred, the Clearing House shall have and be entitled without prior notice to the Chargor to exercise the power to sell or otherwise dispose of, for any consideration (whether payable immediately or by instalments) as the Clearing House shall think fit, the whole or any part of the Charged Property and may (without prejudice to any right which it may have under any other provision hereof) treat such part of the Charged Property as consists of money as if it were the proceeds of such a sale or other disposal. The Clearing House shall be entitled to apply the proceeds of such sale or other disposal in paying the costs of such sale or other disposal and (subject to the rights or claims of
any person entitled in priority to the Clearing House) in or towards the discharge of the Secured Obligations, the balance (if any) to be paid to the Chargor or other persons entitled thereto. Such power of sale or other disposal shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925.

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

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

14. **Right of Appropriation**

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

15. **Immediate Recourse**

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

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

17. **Effectiveness of Security**

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

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

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

18. **Avoidance of Payments**

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

19. **Power of Attorney**

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

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

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

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

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

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

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

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

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

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

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

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

(a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
(b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

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

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

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

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

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

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

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

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

(7) Any liberty or power which may be exercised or any determination which may be made under this Deed by the Clearing House or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.
21. **No liability**

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

22. **Remedies, Time or Indulgence**

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

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

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

23. **Costs, Charges and Expenses**

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

24. **Accounts**

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

25. **Currency**

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

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

26. **Notices**

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

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

27. **Provisions Severable**

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

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

29. **Law and Jurisdiction**

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

The Chargor
[CHARGOR NAME]

Signature of Director

Name of Director

Date

Signature of Director/Secretary

Name of Director/Secretary

Date

The Clearing House
LCH. Clearnet Limited

Signature of Director

Name of Director

Title of Director

Date
Dated 2014

and

LCH.CLEARNET LIMITED

CHARGE BY CLEARING MEMBER SECURING OWN OBLIGATIONS