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DANISH LAW LEGAL OPINION GIVEN IN CONNECTION WITH THE CLEARING AND CLIENT CLEARING SERVICES - UPDATE 1 JANUARY 2021

Dear Sirs,

We refer to your instruction memo received by e-mail on 24 July 2018 with subsequent e-mails re. Brexit preparations (together the "**Instructions**") where you instructed us to give a legal opinion in respect of the laws of Denmark as to certain questions relating to the clearing and client clearing services of LCH Ltd. ("**LCH**") in the event of a default or the insolvency of a clearing member in a post Brexit scenario.

1. BACKGROUND, DOCUMENTS AND DEFINED TERMS

1.1 Background

In light of the UK's exit from the EU, LCH has carried out an analysis regarding the legal position of its EU clearing members. LCH has completed an initial analysis with counsel in each relevant EU jurisdiction, including Denmark, setting out the initial view of the legal position at such time post Brexit ("Evolution Phase 1").

A Danish law opinion was issued in November 2018 to address the issues. The opinion was given based on Danish law as in effect of the date stated on such opinion (22 November 2018), but with various assumptions reflecting a situation as if LCH as of the date of the opinion was no longer located in an EU Member State with no relevant transitional measures or other special arrangements regarding the UK's withdrawal from the EU being applicable ("Evolution Phase 2").

As of the date of this opinion, UK has ceased to be a Member State of the EU, and we have been instructed by LCH to update this opinion ("Evolution Phase 3").

Pursuant to Commission Implementing Decision (EU) 2020/1308 of 21 September 2020 made in accordance with Article 25(6) of EMIR, and the ESMA Decisions (as defined below) LCH is as of the date of this opinion considered recognised as a Tier 2 third country CCP under Chapter 4 of Title III of EMIR. We note that the ESMA Decisions expire on the date established pursuant to Article 2 of the Commission Implementing Decision mentioned above (i.e. 30 June 2022).

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As part of its Brexit preparations, LCH has applied for and obtained approval from the FSA (as defined below) as a third country system pursuant to Danish law on settlement finality, as further described in Section 3.4.

Our opinion is limited to clearing members which are Danish banks, other Danish credit institutions or Danish investment firms (each a "**Relevant Clearing Member**"). Accordingly, our opinion does not cover other entities, e.g. insurance companies and pension funds as clearing members.

We understand that we are to opine on Relevant Clearing Members which are clearing members of LCH and which have entered into the following agreements (together, the "**LCH Agreements**"):

1. The Clearing Membership Agreement (as defined below);
2. The Deed of Charge (as defined below); and
3. The LCH Rulebook (as defined below) (which becomes contractually binding on a clearing member upon its execution of the Clearing Membership Agreement).

Danish law does not provide for specific statutory rules relating to, and there is no specific case law or guidance available on, some of the issues covered by this opinion, for example the interaction between different sets of rules. Therefore, parts of this opinion represent our view based on Danish general legal principles and on our interpretation of the available preparatory works or other sources.

As legal background information for our opinions, we have included a description of relevant Danish law in Section 3. The specific questions which our opinion pertains to are set out under Section 4 below (*in italics*) together with our opinions thereon. The opinions are given on the basis of the general assumptions in Section 2 and subject to the qualifications in Sections 4 and 5.

1.2 Documents

For the purpose of preparing our advice and giving our legal opinion, we have reviewed the following documents received by e-mails from LCH on 24 July 2018 (documents listed in nos. 1-3) and on 29 October 2020 (documents listed in nos. 4-9, 12-15 and 19, 21-22), by e-mails from Clifford Chance on behalf of LCH on 9 October 2019 (document listed in no. 10) and on 10 September 2020 (documents listed in no. 20), and as available on LCH's website on 17 September 2018 (documents listed in nos. 11, and 16-18),:

1. Clearing Membership Agreement, version "©2013 LCH.Clearnet Limited" (the "**Clearing Membership Agreement**")
2. LCH Charge by Clearing Member, version "0080743-0000044 BK:37108670.6" (the "**Deed of Charge**")
3. Security Deed, version "110416-3-221-v0.26" (the "**Security Deed**")
4. General Regulations of LCH Ltd, version October 2020 (the "**General Regulations**")
5. Default Rules, version October 2020 (the "**Default Rules**")
6. Procedures Section 1 - Clearing Member, Non-Member Market Participant and Dealer Status, version March 2020
7. Procedures Section 2B - RepoClear Clearing Service, version September 2020
8. Procedures Section 2C - SwapClear Clearing Service, version July 2020

9. Procedures Section 2D - EquityClear Clearing Service, version September 2020
10. Procedures Section 2F - LSE Derivatives Markets Clearing Service, version April 2019
11. Procedures Section 2G - Nodal Service, version June 2014 (last updated 07/04/16)
12. Procedures Section 2I - ForexClear Clearing Service, version October 2020
13. Procedures Section 2J - Listed Interest Rates Clearing Service, version May 2020
14. Procedures Section 3 - Financial Transactions, version September 2020
15. Procedures Section 4 - Margin and Collateral, version April 2020
16. Procedures Section 5 - Disciplinary Proceedings, version April 2016 (last updated 07/04/16)
17. Procedures Section 6 - Business Continuity, version April 2016 (last updated 07/04/16)
18. Procedures Section 7 - Appeal Procedures, version June 2014 (last updated 07/04/16)
19. Procedures Section 8 - Complaints, version May 2020
20. Settlement Finality Regulations, version December 2019 (the "**Settlement Finality Regulations**")
21. Decisions of ESMA's Board of Supervisors of 25 September 2020 to recognise LCH Limited as a Tier 2 third country CCP (the "**ESMA Decisions**")
22. Decision of the FSA of 18 March 2019 to approve LCH for the purposes of the Capital Markets Act (in relation to settlement finality as a third country system)

(the documents in nos. 6 to 19 collectively referred to as the "**Procedures**"),

(the documents in nos. 1 to 20 collectively referred to as the "**Documents**"), and

(the documents in nos. 21 and 22 collectively referred to as the "**Decisions**").

We have reviewed the Documents in connection with the Instructions. We have not reviewed any English or other law referenced in the Documents.

1.3 Defined Terms

Terms defined in the LCH Rulebook have the same meaning when used in this opinion, unless otherwise stated herein. In addition thereto, and to terms defined elsewhere in this legal opinion, the following definitions are used in this opinion (words denoting the singular include the plural and vice versa):

"**Bankruptcy Act**" means the Danish Bankruptcy Act (*konkursloven),* Consolidated Act no. 11 of 6 January 2014, as amended;

"**BRRD**" means Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended;

"BRRD Act" means the Danish Consolidated Act no. 24 of 4 January 2019 on restructuring and resolution of certain financial institutions (*lov om restrukturering og afvikling af visse finansielle virksomheder*) (implementing certain parts of the BRRD), as amended;

"**Capital Markets Act**" means the Danish Act on Capital Markets (*lov om kapitalmarkeder*), Consolidated Act no. 1767 of 27 November 2020, as amended;

"**Client**" has the meaning given to it in the Security Deed;

"**Client Clearing Documentation**" means the documentation entered into between a Relevant Clearing Member and its Clients in order for the Relevant Clearing Member to provide Client Clearing Services to those Clients;

"**Client Collateral**" means Collateral provided by a Client as collateral in accordance with the terms of a Client Clearing Documentation;

"**Client Contract**" has the meaning set forth in Section 4.3.1;

"**Client Transaction**" has the meaning set forth in Section 4.3.1;

"**Collateral**" has the meaning set forth in Regulation 1 (*Definitions*) of the General Regulations;

"**Collateral Directive**" means Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements, as amended;

"**CSDR**" means Regulation (EU) no 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, as amended;

"**Default**" has the meaning set forth in Regulation 1 (*Definitions*) of the General Regulations;

"**Decisions**" has the meaning set forth in Section 1.2;

"**Documents**" has the meaning set forth in Section 1.2;

"**Early Intervention Measure**" has the meaning set out in Section 3.3;

"**EMIR**" means Regulation (EU) no. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended;

"**Financial Business Act**" means the Danish Financial Business Act (*lov om finansiel virksomhed*), Consolidated Act no. 1447 of 11 September 2020, as amended;

"**Financial Collateral**" means financial collateral under Section 197, cf. Section 4, Subsection 1, nos. 1-3 of the Capital Markets Act, being:

a) Cash standing to the credit of an account;

b) Transferable securities (with the exception of instruments of payment (*betalingsinstrumenter*) which are negotiable on the capital market, including:

1. Shares in companies and other securities equivalent to shares in companies, partnerships and other entities, and depositary receipts in respect of shares;
2. bonds and other forms of securitised debt, including depositary receipts in respect of such securities; and
3. any other securities giving the right to acquire or sell such securities as listed under items 1) or 2) hereof or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

c) Money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment;

d) Units in collective investment undertakings; and

e) Credit claims (*gældsfordringer*), as defined in no. 4 of Section 5 of the Capital Markets Act, provided both parties are covered by Section 196, Subsection 1, no. 1-5 of the Capital Markets Act;

except cash deposits which cannot be made subject to legal proceedings, for example client accounts and certain pensions, cf. Section 197, Subsection 3 of the Capital Markets Act;

"**Financial Entity**" means an entity comprised by Section 196, nos. 1-5 of the Capital Markets Act, being:

a) a public authority (excluding publicly guaranteed undertakings unless they, inter alia, fall under b) to e) below) including:
   1. public bodies in EU Member States and countries that the EU has entered into a financial agreement with, which are responsible for, or assist, in public debt management, and
   2. public bodies in EU Member States and countries that the EU has entered into a financial agreement with, which are authorised to keep accounts for clients;

b) central banks, the European Central Bank, the Bank for International Settlements, any multilateral development bank, the International Monetary Fund, and the European Investment Bank;

c) financial institutions (*finansielle institutioner*) subject to supervision, including:
   1. credit institutions as defined in Article 3(1)(1) of Directive 2013/36/EU,
   2. investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU,
   3. finance institutions (*finansieringsinstitutter*) as defined in Article 3(1)(22) of Directive 2013/36/EC,
   4. insurance undertakings as defined in Article 1(a) of Council Directive 92/49/EEC, as amended, and life assurance undertakings as defined in Article 1(a) of Directive 2002/83/EC,
   5. undertakings for collective investment in transferable securities (UCITS) with an authorisation under Article 5 of Directive 2009/65/EC,
   6. management companies, and
   7. alternative investment fund managers,

d) central counterparties, settlement agents and clearing houses, as defined respectively in Article 2(c)-(e) of the Settlement Finality Directive, or similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by such Directive; and

e) legal persons, who act in a trust or representative capacity on behalf of any one or more persons, including bondholders or holders of other forms of securitised debt or any authority or entity as defined in a) to d) above;

"**Financial Obligations**" means financial obligations as defined in Section 5, no. 2, 1st sentence[1] of the Capital Markets Act, being (i) obligations giving a party a right to cash settlement or delivery of Relevant Financial Instruments, and (ii) claims originating from agreements on energy products[2];

"**FSA**" means the Danish Financial Supervisory Authority (*Finanstilsynet*);

"**Insolvency Proceedings**" means bankruptcy (*konkurs*) and formal restructuring proceedings (*rekonstruktion*) regulated by the Bankruptcy Act and as described in Section 3.2;

"**Insolvency Representative**" means a trustee (*kurator*) or restructuring administrator (*rekonstruktør*) regulated by the Bankruptcy Act and as described in Section 3.2;

"**LCH Agreements**" has the meaning set out in Section 1.1;

"**LCH Rulebook**" means the General Regulations, the Default Rules, the Procedures, and the Settlement Finality Regulations collectively;

"**Limitation Day**" means the limitation day (*fristdagen*) as set forth in Section 1 of the Bankruptcy Act, which for the purpose of this opinion is the date of filing a petition for bankruptcy or formal restructuring proceedings with a bankruptcy court *(skifteretten*) or, in respect of credit institutions or certain investment firms that has been subject to Resolution Measures (*afviklingsforanstaltninger*) under the BRRD Act, the date of initiation of such measures by the Danish Financial Stability Company (*Finansiel Stabilitet*) pursuant to the BRRD Act, provided that the bankruptcy or formal restructuring proceedings have been initiated within 3 months[3];

"**MiFID II**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended;

"**Relevant Clearing Member**" has the meaning set out in Section 1.1;

"**Relevant Financial Instruments**" means instruments comprised by Section 4 of the Capital Markets Act[4];

"**Reorganisation Measure**" has the meaning set out in Section 3.3;

"**Resolution Measure**" has the meaning set out in Section 3.3; and

[1] The definition in Section 5, no. 2, 1st sentence of "financial obligations" applies where one or both parties are a Financial Entity.

[2] The inclusion of "claims originating from agreements on energy products" in the scope of financial obligations was made in the new Capital Markets Act and created thereby an expanded scope of claims which may be subject to close-out netting under Danish law. This expansion is primarily relevant for energy traders and is not of any particular relevance for this opinion.

[3] Section 14, Subsection 3 of the BRRD Act.

[4] The list of financial instruments in Section 4 of the Capital Markets Act corresponds to the list of financial instruments in Annex I, Section C of MiFID II.

"Settlement Finality Directive" means Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended.

2. ASSUMPTIONS

This opinion is based on the following assumptions and those additional assumptions set out in Sections 3 and 4 below:

a) all copies of Documents and Decisions (e-mailed to us or printed from LCH's website) reviewed by us are accurate, complete, and up-to-date versions of those Documents and Decisions;

b) the relevant parties have entered into the Documents and the Client Clearing Documentation (where there is a Client) and on the basis of the terms and conditions thereof and other relevant factors, and acting in a manner consistent with the intentions stated therein, the Relevant Clearing Member enters into transactions cleared through LCH and in addition, the Client, where there is a Client, submits certain transactions for clearing with the Relevant Clearing Member (and for the purpose of this opinion "entered into" (or any variations thereof) shall include incorporation by reference);

c) any perfection requirement under the laws of any relevant jurisdiction in respect of any Collateral has been complied with[5];

d) the relevant parties have executed the Deed of Charge and/or the Security Deed, as applicable (see Section 4.3.2.5) substantially in the form reviewed by us for the purposes of this opinion, and any perfection requirement under English law in respect of the Deed of Charge and/or the Security Deed, as applicable, have been complied with;

e) the Documents, including the Clearing Membership Agreement and the Deed of Charge, and other security arrangement, and any other relevant agreement entered into by LCH and the Relevant Clearing Member in order to offer any Service are legal, valid, binding and enforceable under the laws of the country which they are subject to;

f) the Client Clearing Documentation is legal, valid, binding, and enforceable under the laws that it is governed by and the Client Collateral is duly perfected under applicable law[6];

g) all Collateral actually posted by the parties, including by a Client, constitutes Financial Collateral;

h) each party when transferring Collateral pursuant to the security arrangements, has full legal title to such Collateral at the time of transfer, and any Collateral provided by a Relevant Clearing Member on its own behalf or on behalf of its Clients is held with LCH or a third party in the name of LCH (outside Denmark)[7] and LCH's interest in such Collateral is established, duly perfected and enforceable in accordance with the LCH Rulebook, the Deed of Charge or other security arrangement and applicable law, and each such security arrangement (other than the Deed of Charge, for the Deed of Charge see Section 4.2.3.2) constitutes a financial collateral arrangement under Danish law;

i) no Collateral provided by a Relevant Clearing Member on behalf of its Clients is encumbered or otherwise affected by the Client Clearing Documentation in a manner that would negatively affect the conclusions reached in this opinion;

[5] See further Section 3.5.4 for Financial Collateral Arrangements.

[6] See further Section 3.5.4 for Financial Collateral Arrangements.

[7] See further Section 3.5.4 for Financial Collateral Arrangements.

j) no agreements or transactions entered into by LCH, the Relevant Clearing Member and/or the Client materially amend the Documents or affect the validity thereof;

k) the Contracts and/or Client Contracts and Client Transactions (as relevant) are transactions in Relevant Financial Instruments in respect of which LCH provides clearing services to a Relevant Clearing Member;

l) to the extent that any obligation arising under the Documents or the Client Clearing Documentation (where there is a Client) will be performed in a jurisdiction outside Denmark, that its performance will not be illegal or ineffective under the laws of such jurisdiction;

m) the Client is a Financial Entity or a corporate entity and not a natural person acting as a private individual nor a retail client as defined in MiFID II, Article 4(1)(11)[8];

n) based on the records and accounts of LCH it is possible to identify and distinguish the positions and assets held with LCH for the account of the Relevant Clearing Member from the positions and assets held for the account of the Relevant Clearing Member's Clients at LCH;

o) each of LCH, the Relevant Clearing Member and the Client is duly incorporated or organised and validly existing under the laws of its jurisdiction of incorporation and its place of business;

p) the Documents and the Client Clearing Documentation (where there is a Client), are duly authorised, executed and delivered by or on behalf of each of LCH, the Relevant Clearing Member and the Client (where there is a Client) (as applicable) under its constitutional documents and the laws of its jurisdiction of incorporation and its place of business;

q) each of LCH, the Relevant Clearing Member and the Client (as applicable) has the capacity, power and authority and has obtained and maintains all applicable authorisations and licences to enter into the Documents and the Client Clearing Documentation (where there is a Client), and to enter into and to exercise and perform its obligations under the Documents, the Client Clearing Documentation, and each Contract and/or Client Contract and Client Transaction (as relevant) there under;

r) no agreement, including the Documents and the Client Clearing Documentation (where there is a Client), when entered into between the relevant parties thereto will avoid, rescind, render unenforceable or make contrary to public policy any provision of any (other) document;

s) none of LCH, the Relevant Clearing Member and the Client (where there is a Client) is or, as at the date of entering into or the effective date of the Documents and the Client Clearing Documentation (where there is a Client), will be, or, as a result of the transactions effected pursuant to such documents, will become, or will be deemed to be, insolvent or unable to pay its debts under any applicable law, statue, decree, rule or regulation, and is not subject to any Reorganisation Measures;

t) each of LCH, the Relevant Clearing Member and the Client (where there is a Client) is acting as principal and not as agent in relation to its rights and obligations under the Documents or the Client Clearing Documentation (where there is a Client) and no third party has any right to, or interest in, or claim on any party's rights or obligations under the Documents or the Client Clearing Documentation (where there is a Client) other than as set out in the Security Deed, Deed of Charge or the LCH Rulebook, and we note in particular that we have not reviewed and express no opinion in respect of a Collateral Management Agreement and a Client Charge providing for the Custodial Segregated Account set-up;

u) the terms of the Documents and the Client Clearing Documentation (where there is a Client) have been entered into for *bona fide* commercial reasons and on arms' length terms and in good faith by each of the

[8] Pursuant to Section 196, Subsection 2 of the Capital Markets Act, a retail client (as defined in MiFID II, Article 4(1)(11)) cannot be part in a title transfer financial collateral arrangement.

parties thereto, and involve no element of gift or undervalue from the Relevant Clearing Member and the Client;

v) the Contracts and/or Client Transactions and Client Contracts (where there is a Client) are entered into on or after 1 January 2004;

w) the Documents and Client Clearing Documentation (where there is a Client) do not provide for liquidated damages which are not a genuine estimate of the loss likely to be suffered;

x) the Client Clearing Documentation (where there is a Client) provides for a legal, valid, binding and enforceable (i) close-out netting agreement under Danish law, and (ii) collateral arrangement which constitutes a financial collateral arrangement under Danish law, as further described in Section 3.5;

y) no law (other than Danish law) and no special terms or deviations from the standard terms of the Documents agreed between the parties affect the conclusions in this opinion;

z) the Decisions are legal and valid and still in force and have not been amended in any way;

aa) LCH is authorised as a CCP in the UK under local law;

bb) the UK has incorporated a regime which is exactly equivalent to the current regime which implements the Collateral Directive, the Settlement Finality Directive and EMIR; and

cc) the Deed of Charge and Security Deed constitute financial collateral arrangements under English law.

3. DANISH LAW - BANKRUPTCY, REORGANISATION MEASURES, SETTLEMENT FINALITY AND CLOSE-OUT NETTING

3.1 Introduction

Before discussing your specific questions in Section 4 below, we discuss the general Danish bankruptcy law which will apply to a Relevant Clearing Member which is subject to Insolvency Proceedings. Because Danish bankruptcy law (as further discussed below) contains mandatory creditor protection provisions which serve to protect the creditors of a Relevant Clearing Member that becomes subject to Insolvency Proceedings, we also discuss below the Danish rules on close-out netting which deviates from general Danish bankruptcy law in material respects in order to enable close-out netting in respect of Financial Obligations to be effective under Danish law, including with effect for a bankruptcy estate (as further discussed below), as well as the Danish rules on settlement finality which also contains special protection rules of the payment and securities settlement systems in case of a Danish participant being subject to Insolvency Proceedings. We also describe the relevant Danish regulation on Reorganisation Measures.

3.2 Danish Bankruptcy Law

Under the Bankruptcy Act, a Relevant Clearing Member may be subject to the following Insolvency Proceedings in Denmark:

a) Bankruptcy proceedings (*konkurs*). Bankruptcy proceedings are initiated by the debtor or a creditor (or for financial institutions, by the FSA) filing a petition with a bankruptcy court. Upon receipt of the petition, the court sets a hearing date and notifies the debtor and any petitioning creditor. If the court is satisfied that the petitioning creditor has a valid claim against the debtor (applies only if a creditor has filed the petition) and the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature) the court will issue a bankruptcy order (*konkursdekret)* against the debtor. The bankruptcy order will be made public by an announcement in the Danish Official

Gazette (*Statstidende*). The court will then appoint a bankruptcy trustee (*kurator*) to manage the estate. The bankruptcy estate will consist of the assets that belong to the debtor at the time the bankruptcy order is issued, together with any assets that accrue during the bankruptcy proceedings. The assets are realised, and the proceeds are distributed among the creditors according to an order of priority set out in the Bankruptcy Act. Secured creditors are not part of this order of priority. Bankruptcy proceedings under Danish law are designed to ensure a high degree of equality of treatment of all creditors, enabling the estate to set aside / avoid (*omstøde*) certain pre bankruptcy transactions, see Section 4.2 below.

b) Formal restructuring proceedings (*rekonstruktion*). Formal restructuring proceedings are initiated by the debtor or a creditor (or for financial institutions, by the FSA) filing for restructuring with a bankruptcy court and are regulated by the Bankruptcy Act. It is a condition of the initiation of a restructuring process that the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature). The main purpose of the restructuring proceedings is to secure an otherwise healthy debtor's survival through a period of insolvency by way of:

1. a transfer of the debtor's business,
2. a compulsory composition[9] (*tvangsakkord*), or
3. a combination of 1 and 2.

Once initiated, the restructuring proceedings cannot be recalled or otherwise annulled. If the restructuring proceedings do not result in an outcome as described in 1-3 above, adopted by the creditors, the bankruptcy court will immediately commence bankruptcy proceedings over the assets of the debtor. This is the case if a restructuring plan or proposition is voted against by the creditors, and also if the bankruptcy court decides to stop the restructuring proceedings, e.g. due to the debtor's failure to cooperate in good faith or if the restructuring proceedings for some reason prove to be pointless. The restructuring proceedings, however, will stop if the debtor becomes solvent during the proceedings.

When restructuring proceedings are initiated the bankruptcy court immediately appoints a restructuring administrator (*rekonstruktør*) and an accountant (*regnskabskyndig tillidsmand*) to oversee and administrate the restructuring proceedings, to work out the restructuring plan and final restructuring proposal and to present these to the creditors.

The bankruptcy court will then announce the restructuring of the debtor in the Danish Official Gazette (*Statstidende*) making the restructuring official. The restructuring administrator encourages all creditors to file their claims in order to build a foundation for the potential restructuring of the debtor. The claims will then be ranked in the same way as in the case of a bankruptcy.

The Bankruptcy Act applies to all types of Danish legal entities, including Relevant Clearing Members. Financial institutions regulated by the Financial Business Act are subject to certain supplementary provisions and measures, which ensure that the FSA will be involved during insolvency proceedings related to financial institutions. The FSA is entitled to file a petition for bankruptcy or formal restructuring proceedings in respect of an insolvent financial institution.

Under Danish law, bankruptcy proceedings may be initiated in Denmark in respect of the assets in Denmark of a legal entity incorporated in Denmark. Under Danish law, assets outside Denmark of such Danish entity may

[9] A compulsory composition entails that all claims are either reduced pro rata or annulled. A compulsory composition may furthermore include a suspension of payments.

also be included, although, in practice whether it is possible to collect such assets will depend on whether the Danish bankruptcy proceedings are recognised in the relevant jurisdiction.

A legal entity incorporated outside Denmark, which does not conduct business from a place in Denmark, cannot be subject to insolvency proceedings in Denmark. If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity, and cannot (as the main rule) be declared bankrupt in Denmark.

The EU Insolvency Regulation no. 2015/848, as amended, does not apply in Denmark[10]. Under Danish law the only cross-border regulation relevant to consider on a general level is the Nordic Bankruptcy Convention[11].

Under general Danish choice of law rules the application of the law of a foreign jurisdiction to a contractual relationship depends on whether Danish choice of law rules point to such law or whether the application of such law has been validly agreed. Accordingly, the choice of English law to govern the Documents is a valid choice of law for a Relevant Clearing Member, subject to Danish public policy and the mandatory rules of the laws of any country with which a transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law[12].

A contractual choice of law will also generally be binding in respect of a bankrupt Danish party to a contract, however, it is generally recognised that Danish law aimed at protecting the creditors and/or preserving the debtor's assets, including the mandatory provisions in the Bankruptcy Act concerning cherry picking and voidability, will prevail over the parties' choice of law.

Accordingly, if a Danish party[13] (which becomes subject to Insolvency Proceedings in Denmark), has entered into an agreement governed by the laws of another jurisdiction, the choice of law will in our opinion most likely not be binding for the Danish party's bankruptcy estate in respect of set-off and early termination rights (unless special exemptions apply, see below in respect of the Danish close-out netting rules), and in such case the Danish party's bankruptcy estate may modify the laws of the relevant jurisdiction with mandatory creditor protection rules in the Bankruptcy Act or other relevant law.

As a modification to the contractual choice of law described above, for payments and/or securities settlement systems a special choice of law rule applies in order to protect the functioning of such systems as described in Section 3.4 below, and therefore a bankruptcy estate of a Danish participant to such system may potentially be prevented from invoking Danish bankruptcy law in respect of certain rights and obligations of the system or the operator of the system etc., if this would be contrary to the law governing that system.

[10] See preamble 33 of the EU Insolvency Regulation.

[11] Order (*anordning*) no. 251 of 1 September 1934 as amended.

[12] See Article 3(3), Article 7 and Article 16 of the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980 (the Rome Convention) as implemented in Denmark by Consolidated Act No. 139 of 17 February 2014.

[13] For banks and other credit institutions subject to the Banks Winding-up Directive (as defined below) see also separate paragraph in respect of how a contractual choice of law in respect of close-out netting in our view shall be interpreted in the context of this Directive and the Danish implementing Executive Order.

As mentioned, the general rule is that the bankruptcy estate of a Danish party may apply the mandatory creditor protection rules in the Bankruptcy Act to the assets and liabilities of that party unless exemptions are specifically provided for by Danish law.

According to Section 55, Subsection 1 of the Bankruptcy Act, a Danish bankruptcy estate has the right to step into (cherry pick) agreements of the bankrupt party (on the terms thereof) provided the agreement has not been materially breached by such Danish party prior to the commencement of the bankruptcy proceedings for reasons other than the bankruptcy proceedings. Pursuant to Section 58 of the Bankruptcy Act, bankruptcy cannot *per se* constitute a material breach.

Both Sections 55 and 58 of the Bankruptcy Act are mandatory law unless other statutory acts (such as the close-out netting rules in the Capital Markets Act, see Section 3.5) stipulate otherwise.

If it were not for certain exemptions that apply under Danish law (as further discussed in Section 3.5 below and in our answers to the specific questions in Section 4 below), there would, in our view, be a material risk that a Relevant Clearing Member's bankruptcy estate would have the right to step into any Contract of a bankrupt Relevant Clearing Member, regardless of the fact that LCH has an agreed right to port transactions or terminate transactions for certain insolvency related reasons.

Denmark has implemented the Banks Winding-up Directive[14] by Executive Order (*bekendtgørelse*) no. 721 of 30 May 2017 (the "**Winding-up Order**"), which applies to winding-up of an EU based bank or other credit institution. Section 17 of the Winding-up Order provides that as the general rule netting agreements will be governed by the agreed choice of law. We are not aware of any Danish authority concerning the scope of this provision in the Winding-up Order. In our view it is not certain that an Insolvency Representative would be bound by this choice of law provision in Section 17 of the Winding-up Order to be overruling and conclusive in a situation where applying mandatory Danish bankruptcy provisions would lead to a result which is different from the law of the agreement concerning close-out netting (*slutafregning*)[15][16], and therefore we include below our analysis of the Danish close-out netting provisions. As set out in the description and the opinions below, we are of the view that the close-out netting provisions applicable to the Contracts and LCH benefit from the close-out netting regime under Danish law.

3.3 Danish law on Reorganisation Measures

Resolution action. The BRRD Act implements those parts of the BRRD which relates to dealing with failing credit institutions and investment firms[17] or which are likely to fail.

[14] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions, as amended.

[15] I.e. In our view, it is not certain whether the law of the contract displaces mandatory Danish bankruptcy law, or whether it is limited to interpretation of contractual matters.

[16] In respect of Articles 21 and 24 of the Banks Winding-up Directive relating to "rights in rem", we refer to footnote 44 below.

[17] The BRRD Act also applies to certain financial holding companies and finance institutions (cf. Section 1 of the BRRD Act), which, however, fall outside the definition of Relevant Clearing Member for the purpose of this opinion and will therefore not be further mentioned herein.

According to the BRRD Act, failing banks and other credit institutions and certain investment firms[18] placed under resolution may be subject to the following resolution tools[19]:

- sale of business to the Danish Financial Stability Company (*Finansiel Stabilitet*) or a subsidiary of the Danish Financial Stability Company,
- use of a bridge institution,
- use of asset separation, and/or
- bail-in[20].

Each of these resolution tools may as the general rule be used individually or in a combination, but certain limitations apply.

The Danish Financial Stability Company is under the BRRD Act also granted various additional powers and measures such as (i) the power to write down or convert capital instruments and eligible liabilities (*nedskrivningsegnede forpligtelser*)[21], and (ii) various other powers to ensure that the resolution tools may be applied where necessary[22], which includes the rights to terminate or amend terms in contracts of the institution subject to resolution tools if necessary to ensure such measures, and the right to suspend payment and delivery obligations, suspend enforcement in respect of collateral granted, and suspend termination rights under contracts, all valid from the time of publication of such suspension until the end of the following business day.

In this opinion, we define a "**Resolution Measure**" as the decision to place a Relevant Clearing Member under resolution pursuant to the BRRD Act, the application of a resolution tool and/or the exercise of other resolution powers and measures, including early suspension powers[23], under the BRRD Act, and/or the write down/conversion powers of the FSA in the Financial Business Act.

Below we have addressed certain aspects of the BRRD Act, in particular where special rules may apply for a "central counterparty" or "CCP".

Bail-in of derivatives. Pursuant to Section 27 of the BRRD Act[24] certain rules apply in respect of how bail-in may be carried out in respect of derivatives[25], i.e. only upon or after closing out the derivative and where subject to a netting agreement only on a net basis. Section 27 does not distinguish between derivatives entered

[18] The BRRD Act applies to so-called "Fondsmæglerselskaber I", which according to the Financial Business Act, Section 5, Subsection 1, no. 35 is an investment firm which is licensed to carry out one or more activities mentioned in the Financial Business Act, Appendix 4, Section A, nos. 3, and 6-10 (which includes dealing on own account, underwriting and/or placing on a firm commitment basis, placing of funds without a firm commitment basis, and/or operation of an MTF or an OTF, in all cases in respect of financial instruments), or which holds client money or securities.

[19] Generally incorporating Title IV, Chapter IV of the BRRD.

[20] This resolution tool does not apply to mortgage credit institutions, cf. Section 24, subsection 4 of the BRRD Act.

[21] Generally incorporating Title IV, Chapter V of the BRRD. Write down/conversion powers are also given to the FSA in certain cases, and is set out in the Financial Business Act, Chapter 17a.

[22] Generally incorporating Title IV, Chapter VI of the BRRD.

[23] Section 4a of the BRRD Act, implementing Article 33a of the BRRD.

[24] Implementing parts of Article 49 of the BRRD.

[25] The term "derivative" is not defined in the BRRD Act, but it is defined in the BRRD Article 2(1') point (65) by referring to EMIR Article 2 point (5), which refers to points (4)-(10) of Section C of Annex I of MiFID, which will now instead be the similar annex of MiFID II. In our view, repo transactions will not be covered thereby.

into with an EU/EEA counterparty and a third country counterparty. RTS 2016/1401[26] relating to valuation of liabilities arising from derivatives in a bail-in scenario has direct effect in Denmark, and, as set out in the definition of "central counterparty" or "CCP" in Article 1 point 3), it does not distinguish between derivatives cleared on an EMIR authorised EU/EEA CCP and an EMIR recognised third country CCP, and accordingly, in our view Articles 7 and 8 thereof (relating to valuation of cleared derivatives) will apply to a Relevant Clearing Member's cleared derivatives transactions with LCH as a third country CCP recognised pursuant to Article 25 of EMIR.

No basis for termination *per se*. As a matter of law (Section 31 of the BRRD Act[27]), in relation to contractual relationships the taking of Resolution Measures pursuant to the BRRD Act does not qualify as insolvency proceedings and may not qualify as an enforcement event in respect of the close-out netting rules in Section 206 of the Capital Markets Act, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. Also outside this regime, provided a Relevant Clearing Member subject to Resolution Measures continues to perform substantive obligations under the contract, including payment and delivery obligations, such measures or any event directly linked to application thereof shall not, per se, make it possible for a counterparty to (i) exercise any termination, suspension, modification, netting or set-off rights in the contract, (ii) obtain possession, exercise control or enforce any security over any security, or (iii) affect any other contractual right.

Accordingly, if a Relevant Clearing Member (i.e. a Danish bank or other credit institution, or certain investment firms) becomes subject to Resolution Measures under the BRRD Act, this may influence on the counterparty's contractual rights to terminate and close-out, irrespective of whether it is an EU/EEA counterparty or a third country counterparty. Similarly, it may also influence on any termination rights a Client may have vis-à-vis the Relevant Clearing Member under the Client Clearing Documentation.

Variation of contracts. Pursuant to Section 30 of the BRRD Act[28], the Danish resolution authority (*Finansiel Stabilitet*) is empowered to cancel or modify the terms of a contract to which a Relevant Clearing Member subject to Resolution Measures pursuant to the BRRD Act is a party, but only if it is considered appropriate to help to ensure that a resolution measure is effective and with certain protections. So even though the scope is described very broad, it is an ancillary power to be used, but it may in principle be used both in the Relevant Clearing Member's relationship with LCH and with the Clients.

Short term moratorium. In addition (Sections 4a, 32, 33, and 34 of the BRRD Act[29]), the Danish resolution authority (*Finansiel Stabilitet*) may also in some cases suspend certain obligations of a Relevant Clearing Member subject to Resolution Measures pursuant to the BRRD Act and certain rights of its counterparties.

However, in order to protect certain central counterparties, if a Relevant Clearing Member becomes subject to Resolution Measures pursuant to the BRRD Act, the Danish resolution authority (*Finansiel Stabilitet*) may not

[26] Commission Delegated Regulation (EU) 2016/1401 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives.

[27] Implementing Article 68 of the BRRD in respect of Resolution Measures. A similar provision is inserted in the Capital Markets Act Section 1, Subsection 11.

[28] Implementing Article 64(1)(f).

[29] Implementing Articles 69, 70 and 71 of the BRRD.

i) suspend any payment or delivery obligations of a Relevant Clearing Member owed to such covered central counterparty[30],

ii) restrict the enforcement of any security interest of such covered central counterparty over assets pledged or provided by way of margin or collateral by a Relevant Clearing Member[31], nor

iii) temporarily suspend any termination rights of such central counterparty pursuant to the agreement with the Relevant Clearing Member[32].

The exemptions apply to "central counterparties (CCPs)" "(*centrale modparter (CCP'er)*)" and third-country central counterparties recognised by ESMA pursuant to Article 25 of EMIR. Accordingly, LCH will as recognised under Article 25 of EMIR be covered by the exemptions described above in relation to the rights and obligations which relate to LCH's provision of Services to the Relevant Clearing Member.

The exemptions to the Danish resolution authority's suspension powers described above apply for obligations pursuant to contracts "with" the central counterparty, security interest "of" the central counterparty, and the termination rights of the central counterparty, respectively. Based on the wording, in our view any obligations towards the Client and rights of the Clients are not exempted, and therefore, they may in principle be capable of being subject to suspension pursuant to the provisions in Sections 4a, 32, 33, and 34 of the BRRD Act. However, in practice if for example LCH has terminated against a Relevant Clearing Member subject to Resolution Measures in a situation where LCH is entitled to do so, it will mean that the default process in the LCH Rulebook also in respect of Client Contracts will be started, so it may potentially not have any material consequences for the Client, even if such suspension power was used in respect of the Client Documentation.

Other protections. The BRRD contains certain protections/safeguards in respect of partial property transfers and in some cases also in respect of other powers granted to the resolution authorities. One of the safeguards relate to the protection of trading, clearing and settlement systems in Article 80(1) of the BRRD (implemented in the BRRD Act Section 40, Subsection 1), but the Danish provision relates specifically only to the "systems" designated in accordance with Article 10(1) of the Settlement Finality Directive, applicable to EU/EEA systems and their operators, and this protection is therefore not available for LCH.

Other protections to secure that a partial property transfer will not take place apply to financial collateral, set-off and netting rights as set out in BRRD Article 77 (implemented in Section 36 of the BRRD Act) and BRRD Article 78 (implemented in Section 37 of the BRRD Act) relating to protection of security arrangements. In our view, the relationship between LCH and the Relevant Clearing Member pursuant to the LCH Agreements will in respect of these rights be protected thereunder, and the same will be the case in respect of the Client's contractual relationship with the Relevant Clearing Member, if the Client Clearing Documentation contains relevant provisions on these matters. Furthermore, in respect of protection of a CCP, we refer to the overall counterparty safeguard in BRRD Article 76 and RTS 2017/867[33], where certain safeguards apply to "central counterparties" as defined in BRRD (referring to EMIR Article 2 point 1) which in our interpretation also should cover LCH as a third-country central counterparty. Finally, the safeguard in BRRD Article 73 (implemented in

[30] The BRRD Act, Section 32, Subsection 4, no. 2 (implementing Article 69(4)(b) of the BRRD), and the BRRD Act, Section 4a, Subsection 2, no. 2 (implementing Article 33a(2)(b) of the BRRD).

[31] The BRRD Act, Section 33, Subsection 2, no. 2 (implementing Article 70(2)(b) of the BRRD).

[32] The BRRD Act, Section 34, Subsection 3, no. 2 (implementing Article 71(3)(b) of the BRRD).

[33] Commission Delegated Regulation (EU) 2017/867 of 7 February 2017 on classes of arrangements to be protected in a partial property transfer under Article 76 of Directive 2014/59/EU of the European Parliament and of the Council.

Section 49 of the BRRD Act) shall prevent that a counterparty shall suffer greater loss where the bail-in or partial transfer tool had been used instead of usual insolvency proceedings had commenced against the Relevant Clearing Member.

Early intervention. The Financial Business Act, Chapter 15a implements those parts of the BRRD[34] which relates to early intervention by the competent authority; in Denmark the FSA. The measures include *inter alia* the issuing of various type of orders (*påbud*) to the company and its management, the right to remove senior management, and the appointment of a temporary administrator (the "**Early Intervention Measures**"). These types of measures apply to the same type of institutions as those which are subject to the BRRD Act, i.e. banks and other credit institutions and certain investment firms, see above.

As a matter of law (Section 243d of the Financial Business Act[35]), in relation to contractual relationships the FSA applying one or more Early Intervention Measures pursuant to the Financial Business Act does not qualify as insolvency proceedings and may not qualify as an enforcement event in respect of the close-out netting rules in Section 206 of the Capital Markets Act, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. Accordingly, the taking of such measures will not per se entitle a counterparty to terminate, carry out close-out netting, enforce collateral etc. in close-out netting and financial collateral arrangements. Also outside this regime, provided a Relevant Clearing Member subject to Early Intervention Measures continues to perform substantive obligations under the contract, including payment and delivery obligations, such measures or any event directly linked to application thereof shall not, per se, make it possible for any counterparty to (i) exercise any termination, suspension, modification, netting or set-off rights in the contract, (ii) obtain possession, exercise control or enforce any security over any security, or (iii) affect any other contractual right. This applies in respect of both EU/EEA counterparties and third country counterparties. Similarly, it will also apply to any termination rights etc. a Client may have vis-à-vis the Relevant Clearing Member under the Client Clearing Documentation.

Contractual recognition. According to BRRD Articles 55 and 71a (implemented in Denmark in Sections 274-276 of the Financial Business Act) a Relevant Clearing Member shall as the general rule ensure a contractual recognition of bail-in and resolution stay powers with counterparties where the contract is governed by the law of a third country, which means that contracts with a Relevant Clearing Member will need to be amended unless an exemption applies.

Outside the scope of the rules implementing the BRRD and the rules regulating Insolvency Proceedings, Danish law does not have other by law regulated reorganisation measures applicable to corporates, where special protections during the process and/or when initiated are offered[36]. We will therefore define "**Reorganisation Measures**" for purposes of this opinion to cover any Resolution Measure and/or any Early Intervention Measure, and we note that such measures may be applied to Relevant Clearing Members which are banks and

[34] Generally incorporating Title III of the BRRD.

[35] Implementing Article 68 of the BRRD in respect of Early Intervention Measures.

[36] For example, Danish law does not yet regulate measures such as those set out in (and to be implemented from) the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive 2017/1132 (Directive on Restructuring and Insolvency).

other credit institutions and certain investment firms. For a Relevant Clearing Member which is not such type, no special Danish reorganisation measures apply.

3.4 Danish Law on Settlement Finality

The Settlement Finality Directive is implemented in Danish law in the Capital Markets Act, Chapter 31.

An EU/EEA "system" notified to ESMA in accordance with Article 10(1) of the Settlement Finality Directive will benefit from a direct recognition as a matter of law and be granted the same protections under the Capital Markets Act as are the case with a Danish "system".

Under Danish law it is possible for a third country payment and/or securities settlement system to obtain the same protections as an EU/EEA notified "system" if the FSA has approved the agreement which such system has entered into with its participants.

Pursuant to Section 3, no. 26, of the Capital Markets Act, a "participant" ("*deltager*") is an institution, a central counterparty (CCP), as settlement agent, a clearing house, a system operator, or a clearing member of a CCP authorised pursuant to Article 17 of EMIR.

This applies *inter alia* in respect of the following protections as implemented in Danish law:

a) The netting and transfer orders' protection in Article 3 of the Settlement Finality Directive (Sections 163 and 164 of the Capital Markets Act):

   According to Section 163, Subsection 1 of the Capital Markets Act an agreement entered into between system participants and a Danish payment and/or securities settlement system on netting pertaining to all transfer orders, may with effect towards the estate and creditors of such participant, also include a provision to the effect that such transfer orders shall be netted, cleared and settled or reversed in full if one of the parties is declared bankrupt (*konkurs*) or formal restructuring proceedings (*rekonstruktion*) have commenced, and provided that the transfer orders were included in the system before the bankruptcy order or the formal restructuring proceedings have commenced. According to Section 164, Subsection 1 of the Capital Markets Act this protection also applies to a Danish participant's agreement with an EU/EEA payment and/or securities settlement system, which has been notified to ESMA, and according to Section 164, Subsection 2 of the Capital Markets Act, the same applies for a third country payment and/or securities settlement system if the FSA has approved the agreement between the system and its participants.

   Pursuant to the Decision mentioned in no. 22 of Section 1.2, LCH has obtained approval from the FSA of its participant agreement as a third country system in respect of Section 164, Subsection 2 of the Capital Markets Act.

   According to Section 165 of the Capital Markets Act, it is a requirement for the protection, both in respect of a Danish and a non-Danish system, that the agreement between the system and its participants contains objective conditions pertaining to the cases in which transfer orders, which have been entered into but not settled, are either fulfilled in accordance with the netting agreement or revoked. This is a Danish rule with limited guidance available and we have not made any assessment in this opinion whether this requirement is fulfilled.

We note that that the protection is available for "transfer orders". Danish law[37] incorporates the definition of "transfer order" from the Settlement Finality Directive (including as amended in 2009). It is our view, that under Danish law the delivery of cash and securities by a Relevant Clearing Member to LCH may be considered a "transfer order". Accordingly, since LCH has obtained an approval from the FSA under Section 164, Subsection 2 of the Capital Markets Act, the payment and securities settlement systems operated by LCH may complete netting and transfer orders in accordance with its objective applicable conditions and applicable law (see below) in case of a Relevant Clearing Member's bankruptcy or formal restructuring proceedings without the estate having the right to step into (cherry pick) transactions/orders of the bankrupt Relevant Clearing Member.

An agreement on netting subject to the protection mentioned above, may under Danish law include transfer orders which are not included in an eligible system until after the bankruptcy order or a formal restructuring proceedings (*rekonstruktion*) have commenced, but on the business day of the bankruptcy order or commencement of the formal restructuring proceedings, if the eligible system, at the time when the claim became irrevocable in the system, neither was nor should have had knowledge of the bankruptcy or the commencement of formal restructuring proceeding. In cases where a transfer order has been entered into the system on the business day of the bankruptcy order or commencement of formal restructuring proceeding but after expiry of the day when the bankruptcy or formal restructuring proceeding has been published in the Danish Official Gazette (*Statstidende*), it shall rest on the system to prove that the system neither was nor should have had knowledge about the bankruptcy or formal restructuring proceeding[38].

b) The collateral holders' protection against insolvency effects in Article 9 of the Settlement Finality Directive (Sections 167-169 of the Capital Markets Act):

According to Section 167 of the Capital Markets Act, transactions involving collateral provided to a Danish payment and/or securities settlement system, or participants in such system, cannot be rendered void pursuant to Section 70, Subsection 1 or Section 72, Subsection 2 of the Bankruptcy Act. However, avoidance may take place if the collateral has not been provided without undue delay after it should have been provided, or the collateral has been provided under such circumstances that it does not appear bona fide (*ordinær*). Furthermore, according to Section 168 of the Capital Markets Act where collateral as mentioned just above has been provided in the form of securities or cash deposits, this collateral may be realised immediately if a previous agreement to this effect has been concluded and the participant has not already fulfilled its obligations towards such system or participants in such system.

According to Section 169, Subsection 1 these provisions also apply correspondingly to collateral provided in connection with an EU/EEA payment and/or securities settlement system, which has been notified to ESMA, where said collateral is provided in accordance with the rulebook of the payment and/or securities settlement system, and according to Section 169, Subsection 2 of the Capital Markets Act, the same applies in respect of a third country payment and/or securities settlement system if the FSA has approved the collateral agreement between the system and its participants.

Pursuant to the Decision mentioned in no. 22 of Section 1.2, LCH has obtained approval from the FSA of its participant agreement as a third country system in respect of Section 169, Subsection 2 of the Capital Markets Act.

[37] The Capital Markets Act, Section 3, no. 29.

[38] The Capital Markets Act, Section 163, Subsections 2 and 3.

Since LCH has obtained an approval from the FSA under Section 169, Subsection 2 of the Capital Markets Act, collateral provided by a Relevant Clearing Member to LCH will be subject to these special protections in respect of voidability and enforcement in case of a Relevant Clearing Member being bankrupt or subject to formal restructuring proceedings.

c) The governing law of the system protection in Article 8 of the Settlement Finality Directive (Section 174 of the Capital Markets Act):

According to Section 174 of the Capital Markets Act, if a Danish participant in an EU/EEA payment and/or securities settlement systems notified to ESMA pursuant to Article 10(1) of Settlement Finality Directive, is declared bankrupt or formal restructuring proceedings have commenced against it (or any other type of insolvency proceedings as defined in Article 2(j) of the Settlement Finality Directive), the rights and obligations arising from or in connection with participation in such system shall be determined by the law governing that system. According to Section 174, Subsection 3 of the Capital Markets Act, the same applies in respect of a third country payment and/or securities settlement system if the FSA has approved the agreement between the system and its participants (for matters other than those already comprised by an approval pursuant to Section 164, Subsection 2 and Section 169, Subsection 2 mentioned in items a) and b) above).

Pursuant to the Decision mentioned in no. 22 of Section 1.2, LCH has obtained approval from the FSA of its participant agreement as a third country system in respect of Section 174, Subsection 3 of the Capital Markets Act.

Since LCH has obtained an approval from the FSA under Section 174, Subsection 3 of the Capital Markets Act, a bankruptcy estate of a Relevant Clearing Member may not prevent the payments and settlement of transactions in the payment and/or securities settlement systems operated by LCH by reference to Danish bankruptcy law if this would be contrary to English law on settlement finality as the governing law of the system.

There is limited guidance under Danish law in respect of the governing law provision in Section 174 as to what constitutes "rights and obligations arising from or in connection with participation" in a system. In the relationship between LCH and the Relevant Clearing Member we assume that in general the rights and obligations of the Relevant Clearing Member, also in case of an insolvency related Default, set out in the LCH Rulebook can be said to "arise from or in connection" with the participation as clearing member, and therefore it could potentially be relevant to look to English law as the governing law of LCH if Danish law would lead to a result contrary to English law in respect of such rights and obligations.

However, in respect of the questions raised in this opinion, Danish law also contains close-out netting rules, and these rules may already provide sufficient legal basis for deviating from Danish bankruptcy law in case of termination following Insolvency Proceedings of a Relevant Clearing Member, we also describe and apply these rules below. Furthermore, in the relationship between the Relevant Clearing Member and its Clients, it is our interpretation that the Danish close-out netting and financial collateral arrangements rules will be the relevant provisions since it is a contractual relationship and that a Client's right is most likely not protected by the governing law clause in Section 174 of the Capital Markets Act.

3.5 Danish Law on Close-out Netting and Financial Collateral Arrangements

3.5.1 Close-out Netting of Financial Obligations

The Collateral Directive was implemented into Danish law by the Danish Securities Trading Act (*værdipapirhandelsloven*) for agreements entered into on or after 1 January 2004. This Act was replaced by the Capital Markets Act as of 3 January 2018. The rules on bilateral netting in the Capital Markets Act are contained in Chapter 36 (Sections 196 to 209).

The main close–out netting provision (Section 206, Subsection 1 of the Capital Markets Act) provides that a Relevant Clearing Member and its counterparty can agree, with legal effect for third parties (including a bankruptcy estate of a Relevant Clearing Member) that Financial Obligations[39] under an agreement may be closed-out and netted upon the occurrence of an enforcement event[40]. An enforcement event (*fyldestgørelsesgrund*) is an event of default or other event agreed by the parties, which gives a party the right to close-out net (Section 5, no. 6 of the Capital Markets Act). Such event can be the commencement of insolvency proceedings (*insolvensbehandling*)[41] of a party (irrespective of the jurisdiction in which such insolvency proceedings take place).

The Danish rules on close-out netting and financial collateral arrangements apply both to entities which qualify as a Financial Entity or not, but the scope of what constitutes financial obligations depend on the types of parties. When at least one party qualifies as a "Financial Entity" the broadest scope of this definition will apply, and since in this opinion a Relevant Clearing Member will qualify as a Financial Entity, both in the relationship vis-à-vis LCH and vis-à-vis the Clients it is possible to apply this broad scope (and this is also how we have defined "Financial Obligations" in this opinion). Accordingly, the Danish close-out netting and financial collateral arrangement provisions apply to the relationship with a Relevant Clearing Member irrespective of whether LCH is located in the EU/EEA or in a third country, and in the relationship between the Relevant Clearing Member and its Client, irrespective of whether the Client is located in the EU/EEA or in a third country.

Chapter 36 of the Capital Markets Act also contains the Danish rules on financial collateral arrangements implementing the Collateral Directive. These rules are described in Section 3.5.4 below.

It is a requirement that the close-out netting agreement and financial collateral arrangement be in writing or be capable of being documented in another manner legally similar thereto (see Section 198, Subsection 1 of the Capital Markets Act).

According to Section 201 of the Capital Markets Act, the realisation and valuation of the Financial Collateral or Financial Obligations, which are being close-out netted, must be conducted in a commercially reasonable manner.

[39] As set out in the definition in this opinion, this term includes *inter alia* obligations giving a party a right to cash settlement or delivery of Relevant Financial Instruments, and in our view this will generally cover obligations arising from Contracts, Client Contracts and Client Transactions under the different Services covered by this opinion.

[40] As a matter of law, close-out netting and realisation of collateral of financial collateral arrangements will not be triggered *per se* in case of the application of certain resolution measures relating to contractual rights and obligations pursuant to Chapters 5, 6 and 10 of the BRRD Act, see Section 1, Subsection 11 of the Capital Markets Act, and Section 3.3 above.

[41] As set forth in Section 5, no. 7 of the Capital Markets Act, "insolvency proceedings" include *inter alia* bankruptcy, formal restructuring proceedings as well as other Danish or foreign types of liquidation, winding-up or reorganisation measures caused by a debtor's insolvency.

3.5.2 Notice of Termination

Section 206, Subsection 2 of the Capital Markets Act provides that it can be agreed with legal effect for a bankruptcy estate and creditors that upon the occurrence of an event of default or other enforcement event, close-out netting of Financial Obligations shall occur when the non-defaulting party gives notice to this effect to the defaulting party. The said Section further provides, that, if insolvency proceedings are commenced against the defaulting party, such party may require that close-out netting of Financial Obligations be effected so that the parties are placed in a position as if close-out netting had occurred without undue delay after such time when the non-defaulting party became, or should have become, aware that Insolvency Proceedings were commenced against the defaulting party.

3.5.3 Restrictions on Close-out Netting

Sections 207 and 208 of the Capital Markets Act set out certain restrictions as to the Financial Obligations, which may be included in close-out netting.

According to the Capital Markets Act, Section 207:

- Subsection 1: Close-out netting, which is carried out after the defaulting Danish party has commenced formal restructuring proceedings, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day.
- Subsection 2: Close-out netting, which is carried out after the defaulting Danish party has been declared bankrupt, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day. A close-out netting balance may not include financial obligations which came into existence after the day the bankruptcy of the Danish party was announced in the Danish Official Gazette (*Statstidende*).

According to the Capital Markets Act, Section 208:

- Subsection 1: A financial obligation covered by Section 42, Subsections 3 and 4 of the Bankruptcy Act may be included in a close-out netting unless the non-defaulting party knew, or ought to have known, that the defaulting Danish party was insolvent when the claim against such defaulting Danish party was acquired or came into existence.
- Subsection 2: A close-out netting may only be voidable pursuant to Section 69 of the Bankruptcy Act, if the close-out netting covered claims, which could not have been included in an agreed close-out netting in case of the Danish party's bankruptcy, see Section 208, Subsection 1, and Section 207, Subsection 2.

3.5.4 Financial Collateral Arrangements

As mentioned in Section 3.5.1 above the Collateral Directive, including the provisions relating to financial collateral arrangements, was implemented into Danish law as of 1 January 2004.

Section 1, Subsection 10 of the Capital Markets Act states that the provisions of Chapter 36 of the Capital Markets Act apply to financial collateral arrangements and to financial collateral after such financial collateral

has been provided. Financial collateral shall be regarded as having been provided when the relevant act of perfection has been carried out.

A financial collateral arrangement is an agreement between parties covered by Section 196 of the Capital Markets Act (which includes a Relevant Clearing Member) on the posting of collateral for financial obligations (as defined in Section 5, no. 2 of the Capital Markets Act) in the form of Financial Collateral (which includes the asset types set out in the definition thereof, see Section 1.3 above).

In order for LCH to benefit from the rights relating to financial collateral arrangements described in this opinion, the Collateral actually posted by a Relevant Clearing Member must qualify as Financial Collateral. We note that the definition of Collateral in the General Regulations provides for the ability of LCH to accept Collateral which would not qualify as Financial Collateral, e.g. cash not credited to an account. Our analysis and opinions related to Danish close-out netting regulation, including financial collateral arrangements, will only cover Collateral qualifying as Financial Collateral.

According to Section 198, Subsection 2 of the Capital Markets Act, it must appear from the financial collateral agreement which of the parties' Financial Obligations are covered by the agreement.

A financial collateral arrangement can be an agreement on provision of Financial Collateral in the form of transfer of title (*overdragelse af ejendomsret*) or in the form of charges/pledges (*pant*), cf. Section 5, no. 1 of the Capital Markets Act. We understand that collateralisation is made by transfer of title in respect of Collateral and Client Collateral in the form of cash Collateral provided to LCH by a Relevant Clearing Member and by way of a charge in respect of securities Collateral provided to LCH by a Relevant Clearing Member.

In respect of financial collateral arrangements, Section 205 of the Capital Markets Act recognises that such arrangements may include transfer of title as a valid form of posting financial collateral in relation to act of perfection and realisation of the collateral. Accordingly, pursuant to this Section of the Capital Markets Act a financial collateral arrangement in respect of Financial Collateral, e.g. cash credited to an account, under the control of LCH in the form of title transfer is effective in accordance with the terms of the arrangement in relation to the act of perfection and realisation of the collateral.

According to the preparatory works to Section 205 of the Capital Markets Act, if a financial collateral arrangement in the form of title transfer is in its substance creating a security interest, it will be characterised as a security interest in respect of the voidability rules of the Bankruptcy Act.

Pursuant to Section 202, Subsection 2, of the Capital Markets Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the claims secured by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72 of the Bankruptcy Act unless such provision of financial collateral does not appear bona fide (*ordinær*). In respect of collateral provided to the payment and/or securities settlement system operated by LCH by a Relevant Clearing Member, since LCH has obtained the approval of the collateral agreement by the FSA, such collateral will in our view also be protected against voidability by Section 167, re. Section 169,

Subsection 2 of the Capital Markets Act when provision of collateral is set out in the LCH Rulebook, appears bona fide and is provided without undue delay after it should have been provided[42].

Pursuant to Section 202, Subsection 1 of the Capital Markets Act, it is possible for a transferor, upon agreement with the transferee, to substitute financial collateral with other financial collateral, and according to the preparatory works it is a requirement that the substitution collateral is of substantially the same value as the substituted collateral. If such substitution collateral is provided no later than at the same time as the transferor gains possession of the substituted collateral, the substitution collateral may only be avoided if the substituted collateral was voidable due to circumstances existing at the time when the substituted collateral was posted.

Pursuant to Section 203, Subsections 2 and 3 of the Capital Markets Act, realisation of transfer of title financial collateral may be effected through setting off the value of such financial collateral against the collateralised liabilities.

In addition, Section 201 of the Capital Markets Act requires that realisation or valuation of financial collateral by a non-defaulting party in a close-out netting scenario to cover financial obligations must be on commercially reasonable terms.

We also note that pursuant to Section 205, Subsection 2, it is possible to agree that in case of an enforcement event, an obligation to deliver equivalent collateral, which has not been performed by the defaulting party prior to the enforcement event, can be included in a close-out netting balance.

In respect of applicable law in Denmark questions regarding choice of law in contractual relationships are governed by the Rome Convention of 19 June 1980 incorporated into Danish law by Consolidated Act no. 139 of 17 February 2014. Consequently, the parties are in general free to decide on the choice of law in their *inter-partes* contractual relationship (subject to Danish public policy).

However, the Rome Convention does not apply vis-à-vis third parties. Thus, it is necessary to apply principles of private international law when deciding on the applicable law governing, inter alia, the required act of perfection when posting collateral.

Under Danish private international law, the general rule is the principle of lex rei sitae, i.e. that the law of the country where the subject matter is situated at the time of the establishment of a proprietary interest (including security interests and ownership rights) applies. This means that proprietary interest in Financial Collateral located in Denmark[43] will, as the general rule, be governed by substantive Danish law. We have assumed that Client Collateral is held in accounts in the name of the Relevant Clearing Member to the extent held in Denmark or is duly perfected under applicable law to the extent held outside Denmark; and that Collateral provided to LCH by a Relevant Clearing Member is held outside Denmark and is duly perfected under applicable law.

We note that in respect of certain proprietary issues regarding dematerialised securities, Section 210 of the Capital Markets Act, implementing Article 9 of the Collateral Directive, provides that such issues shall be

[42] See Section 3.4 above.

[43] For dematerialised securities, Section 210 of the Capital Markets Act, implementing Article 9 of the Collateral Directive, provides that certain issues, including proprietary issues, regarding the dematerialised security shall be governed by the legislation in the country where the account is maintained, see below.

governed by the legislation in the country where the account is maintained, i.e. the account with a "CSD (*værdipapircentral*)" or with the account intermediary (*kontoførende institut*) of a "CSD". Accordingly, under Danish law the "PRIMA-principle" (place of relevant intermediary) applies in respect of the relevant law to be considered in respect of proprietary issues regarding dematerialised securities. After the Capital Markets Act was implemented, the term "CSD" was inserted in the provision which is now in Section 210, and the term "CSD" is in the Capital Markets Act (Section 3, no. 10) defined with reference to Article 2(1) point 1 of the CSDR. We read the definition so, that it is not only limited to EU/EEA CSDs authorised pursuant to the CSDR but would also cover third country CSDs if they meet the definition therein. We also note, that in our view it has not been the intention to limit the scope of Section 210 to EU/EEA CSDs and their account intermediaries as the preparatory works clearly refer to Section 210 being applicable in respect of third countries, and this was also the scope in the former provision (Section 58o of the Danish Securities Trading Act) which the new provision in the Capital Markets Act is simply a replacement of in the replacing Act. Accordingly, in our view Section 210 (or the principle therein) applies at least both to CSDs authorised under CSDR and third-country CSDs which meet the definition in Article 2(1) point 1 of CSDR, and their account intermediaries. Accordingly, if the LCH dematerialised securities are registered to an account in the UK, Danish law will generally refer questions relating to proprietary rights to English law[44].

3.6 Conclusions on general Danish rules on bankruptcy, reorganisation measures, settlement finality and close-out netting

As it transpires from the above, if the close-out netting provisions of Section 206 of the Capital Markets Act and/or Section 170 of the Capital Markets Act (see 4.3.2.3 below) did not apply to the Contracts, the Client Contracts and the Client Transactions, as applicable, and the related Collateral/Client Collateral, there is in our view a material risk as a matter of Danish law that an Insolvency Representative of a bankrupt Relevant Clearing Member would be able to step into (cherry pick) any favourable Contracts/Client Contracts/Client Transactions and leave the unfavourable Contracts/Client Contracts/Client Transactions as claims against the bankruptcy estate. We discuss below how Section 206 and for Client Transactions, in combination with 170 of the Capital Markets Act, deal with these potential problems. As it appears, we are of the view, that Danish law generally provides sufficient protection in case of an insolvent Relevant Clearing Member, but if Danish law would not lead to this result and the issue relates to "rights and obligations arising from or in connections with participation in" the payment and/or securities settlement system operated by LCH, it would as described above be possible instead to claim any protection under English law as the governing law of LCH pursuant to Section 174 of the Capital Markets Act, since LCH has obtained the FSA's approval of its participant agreement.

4. SPECIFIC QUESTIONS AND OPINION

As set out in the Instructions, LCH requires local law advice on whether the current form of the LCH Agreements would be valid, binding and enforceable against Relevant Clearing Members, including in the context of a Default where LCH would need to: (i) enforce against any collateral it is holding; and (ii) conduct its default management processes in accordance with the provisions of the LCH Rulebook.

[44] The interaction with Articles 21 and 24 of the Banks Winding-up Directive relating to "rights in rem" is in our view not clear. The provisions are incorporated in the Winding-up Order mentioned in Section 3.2 (Sections 13, 16 and 21) which all refer to the assets etc. being located in a Member State. In our view, however, this does not necessarily mean that the opposite result as to what is stated in the relevant Sections will apply to the extent assets are not located in a Member State. Rather, it would be in our view be relevant to consider the general applicable principles and provisions of Danish private international law, such as Section 210 mentioned above and the settlement finality governing law provisions mentioned in Section 3.3 of this opinion.

Sections 4.1 and 4.2 are concerned with legal issues that may arise in relation to a Relevant Clearing Member in respect of the clearing services offered by LCH.

Section 4.3 is concerned with legal issues that may arise in respect of LCH's client clearing services when offered to a client by a Relevant Clearing Member.

Section 4.4 is concerned with the impact on finality of settlement of transfers of funds or securities (or both) from a Relevant Clearing Member to LCH in the event of that clearing member entering insolvency proceedings or becoming subject to reorganisation measures.

Our opinions and answers to the specific questions you have asked us to address in this Section 4 are based on the assumptions and analysis set out in Sections 2, 3 and 4 (respectively) and subject to the general qualifications set out below and in Section 5.

We have been asked to address the following questions (in *italics*), which is each followed by our opinion in relation thereto.

We express no opinion on matters of fact or tax.

We have not conducted any due diligence or similar investigation into factual matters in connection with this opinion.

We express no opinion on the rights or obligations of any "indirect client" howsoever described.

We express no opinion in respect of the FCM Regulations or any contracts/transactions thereunder.

We express no opinion on the relationship between LCH and any Co-operating Clearing House and/or any Exchange.

We express no opinion in respect of any Collateral Management Agreement and any Client Charge, including any Custodial Segregated Account set up pursuant thereto.

We express no opinion on the compliance of the Documents with the provisions of EMIR.

We express no opinion on capital and other prudential requirements of a Relevant Clearing Member's exposure to LCH.

4.1 General

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

4.1.2 *Would LCH be deemed to be domiciled, resident or carrying on business in the Relevant Jurisdiction by virtue of providing clearing services to a Relevant Clearing Member? If so, would LCH be required to obtain any additional licences or additional registrations before providing clearing services to a Relevant Clearing Member*

or are there any special local arrangements for the recognition of overseas clearing houses in these circumstances?

No, LCH would not be deemed domiciled, resident or carrying on business in Denmark by virtue of providing clearing services to a Relevant Clearing Member. We also note, that pursuant to Article 25(1) of EMIR, a third-country CCP recognised by ESMA such as LCH may provide clearing services to clearing members in the Union, which includes Denmark.

4.2 Insolvency, Security, Set-off and Netting

4.2.1 *Please opine on insolvency proceedings and pre-insolvency reorganisation, restructuring and/or resolution measures in respect of Relevant Clearing Members under the laws of the Relevant Jurisdiction and the effect of these on the security interests and set-off and netting arrangements provided for under the terms of the LCH Agreements. If your responses to the Evolution Phase 1 questionnaire confirmed that local law in your jurisdiction afforded protections to LCH as contemplated in Recital 7 of the Settlement Finality Directive (or if there is uncertainty on which protections may apply, counsel should advise on the points of certainty and respond to the remainder of this question accordingly), will the analysis in the existing Opinion which is based on your jurisdiction's implementation of the Settlement Finality Directive be the same in relation to security interests, and set-off and netting arrangements? Would the protections afforded to a third country system be equivalent to those LCH currently benefits from under the EU Settlement Finality Directive?*

4.2.2 *[RESERVED]*

4.2.3 *Please do not address issues specifically related to Contracts entered into, and collateral delivered, in respect of client clearing in your answer since these are examined separately in section 4.3. In addition, please assume:*

that the LCH Agreements are legal, valid, binding and enforceable under English law (as the law which governs them); and

the compliance with all relevant perfection requirements relating to, and the effectiveness of, the collateral arrangements under the Deed of Charge under the law of any jurisdiction(s) (other than the Relevant Jurisdiction) that you consider to be relevant to those matters.

In particular, please can you answer the following:

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

The relevant Insolvency Proceedings are (1) bankruptcy, and (2) formal restructuring proceeding, see Section 3.2 above.

The relevant Reorganisation Measures are, in relation to banks and other credit institutions and certain investment firms, the Resolution Measures applied primarily pursuant to the BRRD Act, and the Early Intervention Measures applied pursuant to the Financial Business Act, each as defined and further described in Section 3.3 above.

We are of the opinion that all of the relevant Insolvency Proceedings listed above are covered by the events listed in Rule 5 of the Default Rules if this was to be determined by Danish law.

We also note that in our view any Reorganisation Measures taken by the Danish resolution authority (*Finansiel Stabilitet*) or the FSA will in principle also be covered by the events listed in Rule 5 of the Default Rules, but for a Relevant Clearing Member which may be subject to Reorganisation Measures, e.g. a Danish bank, it is already as a matter of law, not possible for a counterparty, including LCH, to refer to such measures or any event directly linked to application thereof as basis for exercising contractual termination, netting or set-off rights as well as contractual right to enforce security, re. above Section 3.3 in respect of Section 31 of the BRRD Act in respect of Resolution Measures, and Section 243d of the Financial Business Act in respect of Early Intervention Measures, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed by the Relevant Clearing Member.

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

As mentioned above in Section 3.2, the choice of English law to govern the Documents, which includes the Deed of Charge, is a valid choice of law subject to Danish public policy and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law.

In our understanding, the security interest established pursuant to the Deed of Charge is a security interest over securities. In addition, the security interest covers cash provided in connection with the transactions relating to the charged securities, re. the Deed of Charge. Provided the securities charged under the Deed of Charge constitute Financial Collateral, and to the extent the charged cash is credited to an account, the collateral qualifies under Danish law to be subject to a financial collateral arrangement. In addition, the type of security interest created thereby will in our view be a type which can be used for a financial collateral arrangement, and we also find that other requirements are fulfilled, so in our view the Deed of Charge will constitute a financial collateral arrangement under the Capital Markets Act and thus benefit from the special rules described in Section 3.5.4 above.

With respect to a security interest in dematerialised securities held in an account with an account intermediary or CSD in the UK, according to Section 210 of the Capital Markets Act, Danish private international law will apply the PRIMA-principle (place of relevant intermediary) meaning that English substantive law will govern the security interest in such assets, including the act of perfection. As described in Section 3.5.4 above, it is our interpretation, that the PRIMA-principle will apply irrespective of whether the CSD is an EU/EEA CSD under CSDR or a third-country CSD under CSDR.

Based on the above assumption, we are of the opinion that Danish law will not govern the effectiveness of the security interest created under the Deed of Charge and accordingly we express no opinion thereon.

Pursuant to Section 202, Subsection 2, of the Capital Markets Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the financial obligation

secured by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72 of the Bankruptcy Act unless such provision of financial collateral does not appear ordinary. In respect of collateral provided to the payment and/or securities settlement system operated by LCH by a Relevant Clearing Member, since LCH has obtained the approval of the collateral agreement by the FSA, such collateral will in our view also be protected against voidability by Section 167, re. Section 169, Subsection 2 of the Capital Markets Act when provision of collateral is set out in the LCH Rulebook, appears bona fide and is provided without undue delay after it should have been provided[45].

Under Section 86 of the Bankruptcy Act, the bankruptcy trustee of a Danish bankruptcy estate has a 6 months' deadline to sell (for the account of a secured creditor) assets which are in the possession of the bankruptcy estate and over which such secured creditor has a valid security right. After the expiry of the 6 months' deadline, the relevant secured creditor can demand that the bankruptcy administrator sells the assets in question without undue delay.

Based on the assumption that any Collateral provided under the Deed of Charge is in the possession of LCH (and not the Relevant Clearing Member or (in due course) its Insolvency Representative), Danish law does not grant the Insolvency Representative of a Relevant Clearing Member any rights to stay the enforcement of the Deed of Charge in the event of Insolvency Proceedings being commenced in respect of a Relevant Clearing Member. Further, Section 203 of the Capital Markets Act provides that Financial Collateral may be sold without further formalities and the value set-off provided that this has been agreed between the parties, which in our view prevents a stay on enforcement.

We are of the opinion that the Deed of Charge is generally effective also in the context of Reorganisation Measures in a similar way as in the context of Insolvency Proceedings, re. above, but certain limitations may apply as a consequence of the BRRD Act.

First, in respect of Reorganisation Measures we note, that as set out above in Section 4.2.3.1 and in Section 4.2.3.3 below, if the Relevant Clearing Member subject to Reorganisation Measures continues to perform its obligations, LCH will not be able to enforce security or otherwise take actions solely as a result of such Reorganisation Measures being applied, re. Section 31 of the BRRD Act, and therefore this may operate as a prevention for LCH's ability to enforce its rights under the Deed of Charge.

Further, pursuant to Section 33 of the BRRD Act, the Danish Financial Stability Company has the right to restrict the enforcement of any security interest over asset pledged or provided by way of margin/collateral by a Relevant Clearing Member subject to Resolution Measures, but as described in Section 3.3, in our view LCH will as an EMIR recognised third-country CCP be able to rely on the exemption in Subsection 2 of Section 33 of the BRRD Act so it should not be subject to any suspension of its enforcement rights pursuant thereto in a situation where LCH was otherwise entitled to enforce.

Finally, Section 30 of the BRRD Act relating to the possibility of the Danish Financial Stability Company to cancel or modify contractual terms if it is considered appropriate to help to ensure that a resolution measure is effective may in principle be used also towards the Deed of Charge and LCH as secured party, but due to the

[45] See Section 3.4 above.

other protections/safeguards available in the BRRD (see Section 3.3) Section 30 is in our view less likely to be used towards LCH as an EMIR recognised third-country CCP.

We note, that the tools, powers, measures etc. under the BRRD are rather broad in order to ensure that the purpose thereof can be fulfilled, and we cannot exclude that there may potentially be other actions taken or rights carried out by the relevant authority which may have the effect that LCH is in a specific situation prevented or limited in its enforcement rights.

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

Insolvency Proceedings

Referring to our discussion of the Danish close-out netting regime in Section 3.5 above, we are of the opinion that LCH will under Danish law have the right to take the actions provided for in the Default Rules (including exercising rights to deal with Contracts under Rule 6 and rights of set-off under Rule 8, but excluding the actions specifically provided for in the Client Clearing Annex to the Default Rules in relation to which we refer to Section 4.3 below) in the event that a Relevant Clearing Member was subject to Insolvency Proceedings, except that the possibility to act on behalf of the Relevant Clearing Member may be limited in particular in case of bankruptcy of the Relevant Clearing Member, see Sections 5.7 and 5.8 below.

It is possible with binding effect on a bankruptcy estate governed by Danish law to agree that upon the occurrence of an event of default or other enforcement event a close-out netting agreement in respect of Financial Obligations shall not be given effect until the non-insolvent party gives notice to this effect. If insolvency proceedings are commenced against the defaulting party, such party may require that the close-out netting be effected as if close-out netting had occurred without undue delay after the time the non-defaulting party became aware or should have become aware that insolvency proceedings were commenced against the defaulting party. Accordingly, termination does not have to occur before the relevant insolvency proceeding commences in order for the close-out netting provisions of the Capital Markets Act to be enforceable under Danish law and, therefore, it is not necessary from a legal perspective to specify that Automatic Early Termination Events should apply in respect of Insolvency Proceedings. Whether to agree to Automatic Early Termination Events for commercial reasons should be decided on a case-to-case basis.

We also note that should Danish law not lead to this result, in our view the Default Rules relate to an insolvent Relevant Clearing Member's "rights and obligations arising from or in connections with participation in" the payment and/or securities settlement system operated by LCH, and it would therefore be possible instead to claim any protection under English law as the governing law of LCH pursuant to Section 174 of the Capital Markets Act, since LCH has obtained an approval from the FSA of its participant agreement.

Reorganisation Measures

For a Relevant Clearing Member which may be subject to Reorganisation Measures, e.g. a Danish bank, as described in Section 3.3 above, it is already as a matter of law, not possible for a counterparty, including LCH, to refer to such measures or any event directly linked to application thereof as basis for exercising contractual termination, netting or set-off rights as well as contractual right to enforce security, re. above Section 3.3 in respect of Section 31 of the BRRD Act in respect of Resolution Measures, and Section 243d of the Danish Financial Business Act in respect of Early Intervention Measures, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed by the Relevant Clearing Member.

Accordingly, a Relevant Clearing Member cannot be in default solely for being subject to Reorganisation Measures, and therefore there will not be a Default triggering the Default Rules, unless there are other reasons for LCH to designate a Default under the Rulebook. Similarly, such events cannot be Automatic Early Termination Events.

If the substantive obligations were not performed or there are other reasons for LCH to designate a Default, the close-out netting provisions are applicable, as described above for Insolvency Proceedings, but certain limitations may apply under the BRRD.

First, pursuant to Section 34 of the BRRD Act, the Danish Financial Stability Company has the right to temporarily suspend termination rights in an agreement with a Relevant Clearing Member subject to Resolution Measures, but as described in Section 3.3, in our view LCH will as an EMIR recognised third-country CCP be able to rely on the exemption in Subsection 3 of Section 34 of the BRRD Act so it should not be subject to any suspension of its termination rights pursuant thereto in a situation where LCH was otherwise entitled to terminate.

In addition, Section 30 of the BRRD Act relating to the possibility of the Danish Financial Stability Company to cancel or modify contractual terms if it is considered appropriate to help to ensure that a resolution measure is effective may in principle be used also towards the Default Rules and LCH as non-defaulting party, but due to the other protections/safeguards available in the BRRD (see Section 3.3) Section 30 is in our view less likely to be used towards LCH as an EMIR recognised third-country CCP.

We note, that the tools, powers, measures etc. under the BRRD are rather broad in order to ensure that the purpose thereof can be fulfilled, and we cannot exclude that there may potentially be other actions taken or rights carried out by the relevant authority which may have the effect that LCH is in a specific situation prevented or limited in its termination rights or other rights related thereto.

In respect of any other measures than those subject to the BRRD Act, the Relevant Clearing Member will generally be bound by the choice of law of the Documents. Danish law does not provide for mandatory law which would derogate from the Documents prior to Insolvency Proceedings and any Reorganisation Measures.

4.2.3.4 *Is there a "suspect period" prior to Insolvency Proceedings and/or Reorganisation Measures where Contracts with a Relevant Clearing Member could be avoided or challenged and, if so, what are the grounds? What are the risks for LCH in entering into Contracts and in taking collateral in respect of those Contracts during such a*

period? Are any special protections or exemptions for the relevant arrangements, from avoidance or challenge available under the law of the Relevant Jurisdiction in respect of contracts in financial markets?

There are several rules on avoidance under the Bankruptcy Act which are intended to render certain transactions carried out during a particular time (the "suspect period") leading up to Insolvency Proceedings voidable. Below, we have listed the provisions that are in our view most relevant to the Contracts to the extent Danish bankruptcy law applies. However, as mentioned above in Sections 3.4 and 3.5, general Danish bankruptcy law may be modified by the Danish close-out netting rules and settlement finality rules, and may even be overruled by any English law provision relating to an insolvent Relevant Clearing Member's "rights and obligations arising from or in connections with participation in" the payment and/or securities settlement system operated by LCH, since LCH has obtained an approval from the FSA of its participant agreement.

There is no "suspect period" relevant to Reorganisation Measures, but it may influence on when the relevant Limitation Day is if there has been Reorganisation Measures prior to Insolvency Proceedings, see the definition of Limitation Date in this opinion.

Section 74 of the Bankruptcy Act: A contract may be voidable if such contract unduly favours one creditor (e.g. LCH) at the expense of the other creditors of the Relevant Clearing Member provided the debtor was insolvent at the time where the relevant contract was entered into and the favoured creditor knew or could not have been unaware of the insolvency. It is for the Insolvency Representative to prove such knowledge or constructive knowledge of insolvency. No specific time limit ("suspect period") applies to voidability under Section 74 of the Bankruptcy Act.

The consequence of voidability under Section 74 of the Bankruptcy Act is that the favoured creditor is obliged to compensate the estate for any loss suffered by the estate as a result of the void transaction.

Section 70 of the Bankruptcy Act: Collateral posted and not perfected without undue delay following the incurrence of the secured debt and collateral in respect of pre-existing debt, in each case if it is perfected within a three-month period[46] preceding the Limitation Day is voidable regardless of fraudulent intent or knowledge of insolvency. Pursuant to Section 202, Subsection 2, of the Capital Markets Act a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the claims secured by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions. Financial collateral provided in compliance with these requirements will not be voidable under Sections 70 or 72 of the Bankruptcy Act, unless such provision of financial collateral does not appear bona fide (*ordinær*), please also see Section 3.5.4 above.

In respect of collateral provided to the payment and/or securities settlement system operated by LCH by a Relevant Clearing Member, such collateral will in our view also be protected against voidability by Section 167, re. Section 169, Subsection 2 of the Capital Markets Act when provision of collateral is set out in the LCH Agreements, appears bona fide (*ordinær*) and is provided without undue delay after it should have been provided, since LCH has obtained an approval from the FSA of its participant agreement.

[46] This time limit and the time limits in Sections 64 are extended in respect of persons closely related (typically by having the same controlling shareholders or being in the same group of companies) to the bankrupt person unless it is proven that the debtor neither was nor became insolvent when making the voidable transaction. For gifts, there may in some circumstances not be a time limit applicable.

Section 64 of the Bankruptcy Act: Gifts given by the debtor within six months of the Limitation Day may be voidable. Further, gifts made between six months and one year[47] before the Limitation Day may be voidable unless it is proven that the debtor neither was nor by giving the gift became insolvent. Payments for goods or services made at an undervalue during the suspect period are often equalised as a gift and ruled voidable by the Danish courts.

The consequence of voidability under Sections 70 and 64 of the Bankruptcy Act is that the favoured creditor is obliged to return the benefit gained by that creditor to the bankruptcy estate.

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

No, both the Danish close-out netting rules and the settlement finality rules in the Capital Markets Act assume that the parties will have agreed which events of default or termination events trigger close-out netting or system netting, please also see our general description of these rules in Sections 3.4 and 3.5 above.

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

No, Section 40, Subsection 2 of the Bankruptcy Act provides that any money claims in foreign currency filed in Danish bankruptcy or under formal restructuring proceedings must be converted into Danish Kroner at the exchange rate on the date of the order of such Insolvency Proceedings. There is no public authority on how Section 40, Subsection 2 of the Bankruptcy Act shall be applied in respect of claims under close-out netting agreements. In our view the requirement for conversion will only relate to the net amount to be filed with the bankruptcy estate or under a formal restructuring proceeding (i.e. after close-out netting has been effected and any security set off).

4.3 Client Clearing

4.3.1 Overview

This Section 4.3 addresses any legal issues that may arise in relation to a Relevant Clearing Member providing Client Clearing Services to Clients (whether incorporated in the Relevant Jurisdiction or in any other jurisdiction).

*Under the principal-to-principal model of clearing, the bilateral contract originally entered into by a client and put up for clearing is replaced by a contract between the client's clearing member and LCH (a "**Client Contract**") and a back-to-back transaction between that clearing member and the relevant client (a "**Client Transaction**"). Each Client Transaction will be on the same terms as the relevant original bilateral contract and will be governed by the relevant Client Clearing Documentation. The Client Contract is governed by the LCH Rulebook and is on terms mirroring those of the relevant Client Transaction.*

The following has been included in the Instructions:

[47] See note 46.

It is contemplated that Relevant Clearing Members offer or are entitled to offer Client Clearing Services to their Clearing Clients in accordance with the provisions of the LCH Rulebook (including, in particular, Regulation 11 and the Client Clearing Annex to the Default Rules). LCH requires legal advice in the Relevant Jurisdiction as to whether the default arrangements providing for

> *(i) the porting of the Contracts entered into on behalf of a Client (the Client Contracts) and the associated Account Balance to a Backup Clearing Member; or*
>
> *(ii) the liquidation of Client Contracts and the return of the relevant Client Clearing Entitlement directly to the relevant Client or (failing that) to the relevant Defaulter for the account of such client,*

would be effective in the event of a Default of a Relevant Clearing Member.

The porting of Client Contracts may be effected by either

- *a close-out of the relevant Client Contracts between LCH and the Defaulter followed by the replication of such Contracts (by the opening of new Client Contracts on the same terms) between LCH and the Backup Clearing Member; or*
- *a transfer of the relevant Client Contracts (in the form of open positions and without close-out) from the Defaulter to the Backup Clearing Member.*

Please consider both alternative porting mechanisms when providing your answers below and (if applicable) highlight any differences in the analysis of one compared with the other.

Please note that it cannot be assumed in all cases where LCH returns a Client Clearing Entitlement to a Defaulter for the account of a Clearing Client, that the relevant Clearing Client will

- *have taken enforcement action under the Security Deed;*
- *have instructed LCH to take that course of action; and/or*
- *necessarily even be known to LCH.*

In these circumstances, LCH will return the Client Clearing Entitlement to the Defaulter on the basis that the relevant assets are assets of the Clearing Client and should be treated as such. Please indicate any concerns associated with this approach. If your responses to the Evolution Phase 1 questionnaire confirmed that local law in your jurisdiction afforded protections to LCH as contemplated in Recital 7 of the Settlement Finality Directive (or if there is uncertainty on which protections may apply, counsel should advise on the points of certainty and respond to the remainder of this question accordingly), will the analysis in the existing Opinion which is based on your jurisdiction's implementation of the Settlement Finality Directive be the same in relation to porting and return of the relevant Client Clearing Entitlement (where such terms are as contemplated in the above Overview)? Would the protections afforded to a third country system be equivalent to those LCH currently benefits from under the EU Settlement Finality Directive?

4.3.2 Questions

4.3.2.1 Exempting Client Clearing Rule

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

If, and to the extent that, you consider such an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following questions that LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will not require those Relevant Clearing Members to which that Exempting Client Clearing Rule applies to enter into a Security Deed; and (ii) ignore questions 3.12 to 3.14 of the Instructions[48]*.*

In cases where you do not consider an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following questions that LCH will require Relevant Clearing Members to enter into a Security Deed; (ii) assume that the Security Deed is legal, valid, binding and enforceable under English law (as its governing law) and complies with all relevant perfection requirements under the law of any jurisdiction(s) (other than the Relevant Jurisdiction) that you consider to be relevant to that matter; and (iii) provide a response to the questions 3.12 to 3.14 of the Instructions (the questions are set out in Section 4.3.2.5 of this opinion).

As further discussed under Section 4.3.2.5, in order for the Client to avail itself of the protection under Section 170 of the Capital Markets Act (see Section 4.3.2.3), Danish law in our view requires that the Client has a right against the Relevant Clearing Member which follows, for example, from an agreement between the Relevant Clearing Member and the Client. Such right could be either a right of ownership or a security interest. As discussed below, we understand and assume that the Client's rights under the Security Deed are a security interest in the form of an assignment of a receivable. The secured obligations under the Security Deed are all liabilities incurred by the Relevant Clearing Member to the Client under the Client Clearing Documentation. Accordingly, while Danish law contains regulation (Section 170 of the Capital Markets Act) aimed at supporting client clearing, we do not believe that the regulation can be characterised as an Exempting Client Clearing Rule, because in our view it requires the existence of a right for the Client against the Relevant Clearing Member as set out in the Security Deed (or a similar agreement).

4.3.2.2 Default Outside Insolvency Proceedings or Reorganisation Measures

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

The Relevant Clearing Member would prior to Insolvency Proceedings and Reorganisation Measures be bound by the choice of law of the Documents and the Client Clearing Documentation in the same manner and to the same extent as discussed in our answer under 4.2.3.2 above. Danish law does not provide for

[48] These questions have been answered in this opinion as we do not consider Danish law to provide for an Exempting Client Clearing Rule.

mandatory law which would derogate from the LCH Agreements prior to Insolvency Proceedings and Reorganisation Measures. We have not reviewed the Client Clearing Documentation, but we note that Section 170, Subsection 1 (see Section 4.3.2.3) and Section 206 of the Capital Markets Act both apply in case of insolvency and non-insolvency events of default by the Relevant Clearing Member, and both apply in respect of an EMIR authorised EU/EEA CCP and an EMIR recognised third country CCP such as LCH (in respect of Section 170, see Section 4.3.2.3 below, and in respect of Section 206 see Section 3.5.1 above).

Accordingly, if LCH were to: (i) declare a Relevant Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganisation Measures in respect of that clearing member and (ii) seek to port the Client Contracts and Account Balance of a Client to a Backup Clearing Member as a result, neither the Relevant Clearing Member nor any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

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

We refer to our answer to the question immediately above which applies equally to this question.

4.3.2.3 Insolvency-related Default

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

In our response to this question we refer to Section 3.2 above concerning general Danish bankruptcy law. We discuss below other relevant Danish law in respect of the possibility of porting assets and positions in order to provide the opinion at the end of this section.

In our view, Section 55, Subsection 1 of the Bankruptcy Act (on a Danish bankruptcy estate's right to step into agreements of the bankrupt entity) could constitute a risk that the bankruptcy estate in case of a Relevant Clearing Member's bankruptcy could, where porting was effected by a transfer of the relevant Client Contracts (in the form of open positions and without close-out) from the Defaulter to the Backup Clearing Member, have a mandatory right to step into Contracts and related Collateral between LCH and a Relevant Clearing Member with the effect that LCH could not port the Contracts and related Collateral to a Backup Clearing Member. However, as set out below, we are of the view that relevant Danish law exemptions apply.

Section 170, Subsection 1 of the Capital Markets Act provides that positions which a clearing member takes on behalf of its clients with a CCP as counterparty and assets belonging to the clearing member which the clearing member has posted as collateral to a CCP as security for its clients' positions are protected from execution by the creditors of the clearing member.

Section 170, Subsection 2 of the Capital Markets Act further provides that a client's rights to the positions and assets mentioned in Section 170, Subsection 1 of the Capital Markets Act are exempt from voidability under the Bankruptcy Act, provided that the position or collateralisation (as the case may be) appears bona fide (*ordinær*).

It follows from the preparatory works[49] to Section 170 that the provision was introduced in Danish law in order to, *inter alia*, ensure portability of positions and related collateral with a CCP entered into and collateralised by a clearing member on behalf of its clients and the right to liquidate the positions and assets held with the CCP by the clearing member for the account of the client.

It further follows from the preparatory works that in the context of Section 170 of the Capital Markets Act:

- "positions" means a binding obligation to purchase or sell e.g. a financial instrument, and
- "assets" means collateral posted as security for positions, including the right to receive assets with a value corresponding to the collateral provided and/or the revenues from a liquidation of the collateral under the CCP's default management procedure, but not contributions to the default fund of the CCP.

The terms "positions" and "assets" are used in EMIR, for example in Articles 39 and 48. Accordingly, in our view, the term "position" in Section 170 of the Capital Markets Act will cover a Client's position in an interest rate swap.

In our view, which is supported by the preparatory works of the provision, Section 170, Subsection 1 of the Capital Markets Act ensures that the Insolvency Representative of an estate of a Relevant Clearing Member has no claims against (including no right to step into) positions and assets posted as Collateral with LCH by the Relevant Clearing Member for Client Contracts entered into as part of its Client Clearing Service towards its Clients.

It is in our view a condition for this position under Danish law that assets posted as Collateral by the Relevant Clearing Member for the positions of its Clients can be identified and separated from assets posted as Collateral for the positions of the Relevant Clearing Member itself.

In relation to whether the taking of a position or collateralisation (as the case may be) appears bona fide (*ordinær*) under Section 170, Subsection 2, under the preparatory works to the provision, the posting of collateral in accordance with the Client Clearing Documentation and the LCH Rulebook (even if this results in over-collateralisation by posting initial margin or additional Collateral) will be considered bona fide if the Collateral is called and posted in accordance with the Client Clearing Documentation and the LCH Rulebook. A transfer of value which is not in accordance with the LCH Rulebook and benefits the Client over the other creditors of the Relevant Clearing Member is likely not to be bona fide and consequently be at risk of being voidable under the rules of the Bankruptcy Act, e.g. Section 64 of the Bankruptcy Act relating to gifts, see Section 4.2.3.4 above.

Section 170 of the Capital Markets Act applies and protects in respect of the Relevant Clearing Member's Clients' assets and positions held with a "central counterparty (CCP)" ("*central modpart (CCP)*"). The term is defined in Section 3 no. 11 of the Capital Markets Act with a reference to the definition in EMIR Article 2 point 1). In our interpretation, the EMIR CCP definition simply describes the role of a clearing house, and it does not

[49] See the comments to the provision set out in the preparatory works to the Capital Markets Act.

refer to any jurisdictional or authorisation/recognition requirements, so it could in principle be interpreted to cover both EU/EEA and third country CCPs. The preparatory works of Section 170 describes the background for the provision and in many places describes the CCPs' role and obligations with specific references to Articles of EMIR, so in our view it is clear that an EU/EEA CCP authorised pursuant to EMIR is covered by Section 170's reference to "central counterparty". CCPs recognised pursuant to Article 25 of EMIR will be subject to a review and consultation process, and if recognised, in our view it can be strongly argued that it is then indeed also a "CCP" for purposes of EMIR. Since a similar need for client protection may be relevant for such EMIR recognised third country CCP in our view such CCP should also fall within the reference to "central counterparties" in Section 170. Accordingly, we find it most likely that LCH since recognised under Article 25 of EMIR constitutes a "central counterparty" and in such capacity the protection in Section 170 will apply with respect to assets and positions held with LCH by a Relevant Clearing Member for the account of Clients.

Further, in order for the Client to avail itself of the protection under Section 170 of the Capital Markets Act, in our view the law requires that the Client (by some other means than Section 170 of the Capital Markets Act) has a right against the Relevant Clearing Member and a related right to the assets and positions to be ported to a Back-up Clearing Member and/or paid to the Client in the form of the Client Clearing Entitlement. Such right could in our view be either a right of ownership or a security interest (established by agreement or law). As discussed in Section 4.3.2.5 below, in our understanding the security right under the Security Deed will as a matter of Danish law be a security right over a receivable. The secured obligations under the Security Deed are all liabilities incurred by the Relevant Clearing Member to the Client under the Client Clearing Documentation.

In addition to the above, whether porting (or in respect of the question below, liquidation and payment of the Client Clearing Entitlement to the Client) can be carried through will as a matter of Danish law also depend on:

a) That the Documents and the Client Clearing Documentation provide for porting (or in respect of the question below, liquidation and payment of the Client Clearing Entitlement to the Client),
b) That the Security Deed is effective, and
c) That the enforceability of the close-out netting provisions agreed between the Relevant Clearing Member and LCH (to the extent that Client Contracts will need to be closed-out and netted as a part of porting) and between the Client and the Relevant Clearing Member.

Re. a):

We assume that the Documents and Client Clearing Documentation as a matter of applicable law provide for porting as described in Section 4.3.1 in case of a Relevant Clearing Member becoming subject to Insolvency Proceedings.

Re. b):

In respect of effectiveness of the Security Deed, see Section 4.3.2.5 below.

Re. c):

With respect to the general efficacy of close–out netting under Danish law we refer to Section 3.5 above. In respect of the efficacy of the close-out netting provisions between LCH and the Relevant Clearing Member, we further refer to Section 4.2.3.3 above.

Accordingly, assuming that the close-out and netting of the relevant Client Contracts and Client Transactions are carried out in accordance with the close-out netting regime of the Capital Markets Act as discussed in 3.5 above and Section 4.2.3.3, in our opinion an Insolvency Representative of a Relevant Clearing Member could not successfully challenge the close-out and netting of such Client Contracts and Client Transactions.

Based on the above, we are of the opinion that if (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Client to a Backup Clearing Member as a result, neither an insolvency officer appointed to the Defaulter nor any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

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

With respect to Section 170 of the Capital Markets Act and the protections it affords the Client of a Relevant Clearing Member subject to Insolvency Proceedings, we refer to our discussion thereof immediately above. We further refer to our discussion of the Danish close-out netting regulation in Section 3.5 and Section 4.2.3.3 above.

Based on the above, we are of the opinion that if (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Client or to the Defaulter for the account of such Client, an insolvency officer appointed to the Defaulter could not and no other person could successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement.

We do however refer to our discussion in Section 4.3.2.6 below in respect of certain risks materialising if LCH were to seek to return the Client Clearing Entitlement to the Defaulter for the account of one or more Clients.

4.3.2.4 Reorganisation Measures

If (i) following the implementation of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could the representative appointed to

reorganise/manage the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?

With respect to applicable Reorganisation Measures, we refer to our discussion thereof in Section 3.3 above.

For a Relevant Clearing Member which may be subject to Reorganisation Measures, e.g. a Danish bank, as described in Section 3.3 above, it is already as a matter of law, not possible for a counterparty, including LCH, to refer to such measures or any event directly linked to application thereof as basis for exercising contractual termination, netting or set-off rights as well as contractual right to enforce security, re. above Section 3.3 in respect of Section 31 of the BRRD Act in respect of Resolution Measures, and Section 243d of the Danish Financial Business Act in respect of Early Intervention Measures, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed by the Relevant Clearing Member.

Accordingly, a Relevant Clearing Member cannot be in default solely for being subject to Reorganisation Measures, and therefore there will not be a Default triggering the Default Rules, unless there are other reasons for LCH to designate a Default under the Rulebook. Similarly, such events cannot be Automatic Early Termination Events.

If the substantive obligations were not performed by the Relevant Clearing Member or there are other reasons for LCH to designate a Default, the close-out netting provisions and the special client protection provision in Section 170 are applicable, as described above for Insolvency Proceedings, also in the event of Reorganisation Measures, but certain limitations on LCH's possibility to take actions may apply under the BRRD Act as described in Section 4.2.3.3.

In case of any other reorganisation measures than those covered by the definition of Reorganisation Measures in this opinion, the Relevant Clearing Member would be bound by the choice of law of the Documents and Client Clearing Documentation in the same manner and to the same extent as discussed in our answer under Section 4.3.2.2. Danish law does not provide for mandatory law which would derogate from the LCH Agreements prior to Insolvency Proceedings and Reorganisation Measures. We have not reviewed the Client Clearing Documentation, but we note that Section 170 and Section 206 of the Capital Markets Act both apply in case of insolvency and non-insolvency events of default by the Relevant Clearing Member.

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

We refer to our answer to the question immediately above which applies equally to this question.

4.3.2.5 Security Deed

Would the Security Deed provide an effective security interest under the laws of the Relevant Jurisdiction over the Account Balance or Client Clearing Entitlement in favour of the relevant Client? Would the Security Deed constitute a financial collateral arrangement (or equivalent) in Relevant Jurisdiction?

Under the Security Deed, a Relevant Clearing Member as assignor assigns by way of security to a Client as assignee, its right to receive the Account Balance or the Client Clearing Entitlement from LCH, as the case may be.

The claim of the Client against the Relevant Clearing Member will in our understanding not be a charge of a cash or securities deposit account located in Denmark.

In respect of the Client Clearing Entitlement, the Client's right is a right for the Client to have transferred to it an amount of cash after close-out of the relevant Client Contracts and Client Transactions. In respect of the Account Balance, the Client's right is a right for the Client to have Collateral and positions transferred to a Backup Clearing Member. Consequently, in our understanding the security right under the Security Deed will as a matter of Danish law be a security right over a receivable.

The fact that in some instances (such as those regulated in Clauses 6.2 and 8.2 of Schedule 1 to the Default Rules), certain Clients are entitled to instruct LCH to transfer its/theirs Account Balance to a Backup Clearing Member, does in our interpretation under Danish law not mean that the Client will be treated as having a security interest over the securities posted as Collateral. We are of this view because to our understanding, the Client does not have a right to such specific securities, including to have them transferred to itself but could be obliged to only receive the monetary value thereof less certain costs (as further set out in Clauses 9.1 - 9.3 of Schedule 1 to the Default Rules).

The Danish rules on financial collateral arrangements (implementing the Collateral Directive in Danish law) allow only Financial Collateral to be posted as collateral in a financial collateral arrangement. Because receivables not standing to the credit of an account do not in our view qualify as Financial Collateral, the security provided under the Security Deed is in our view not a financial collateral arrangement under the Capital Markets Act.

The choice of English law to govern the Security Deed is a valid choice of law subject to Danish public policy and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law (see above Section 3.2). Under Danish law, the choice of law to govern the contractual obligations (subject to public policy) does not depend upon whether the chosen law is the law of an EU/EEA country or a third country.

Accordingly, the choice of English law to govern the Security Deed is binding on the Relevant Clearing Member, and to the extent English law provides for a legal, valid, binding and enforceable right under the Security Deed for the Client, such Security Deed creates a security interest, which is effective in the bilateral relationship between the Client and the Relevant Clearing Member, in the event of default of a Relevant Clearing Member prior to Insolvency Proceedings and Reorganisation Measures.

It is however not clear under Danish private international law whether the Danish courts would apply the substantive law of the assignor or that of the debtor to the perfection requirements applicable to the assignment of a receivable. In the Client Clearing Services arrangement, the laws of the debtor (LCH) would be English law whereas the laws of the assignor (the Relevant Clearing Member) would be Danish law. Accordingly, we would advise that both English and Danish perfection requirements be complied with under the Security Deed.

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Provided that LCH receives evidence of the entry into a Security Deed in relation to each Client, the perfection requirement in the form of notification will in our opinion be met under Danish law. We have assumed that any perfection requirement under English law has been complied with.

Perfection of a security assignment of receivables under Danish law, as mentioned, requires notification to the debtor. To maintain perfection of a receivables security assignment under Danish law, it is further required that the assignor is deprived of control over the pledged cash flow on an on-going basis. This requirement can be fulfilled by requiring that payment of said cash flow is to be made to the assignee.

The Security Deed provides for the security interest contained therein to be perfected by notification to LCH by delivering to LCH a copy of the original and each additional Security Deed granted by the Relevant Clearing Member. However, as discussed immediately above, Danish law also requires that the assignor (the Relevant Clearing Member) is deprived of control over the assigned cash flow, which normally means that the assigned receivable cannot be paid to the assignor (the Relevant Clearing Member) without the express prior consent of the assignee (the Client). We understand that under the LCH Rulebook the Client is neither operationally able nor legally entitled to control or consent to the release of Collateral from LCH to the Relevant Clearing Member on an on-going basis. Accordingly, it could be argued that the Client does not exercise the prerequisite deprivation of the Relevant Clearing Member's control over the pledged cash flow to have maintained the perfection of the Client's security interest under the Security Deed under substantive Danish law.

However, under Section 170 of the Capital Markets Act and the preparatory works thereto, deprivation of control over the pledged cash flow between LCH and the Relevant Clearing Member in relation to the Client's positions and assets will have been properly exercised provided that such collateral is administered in accordance with the LCH Rulebook. Accordingly, Danish law should not be able to lead to the result that the act of perfection under the Security Deed has, for lack of deprivation of control, not been performed on an on-going basis.

Accordingly, we are of the opinion that the Client will as a matter of Danish law have an effective security interest under the Security Deed to the extent it relates to a receivable provided that the procedures set out in the Security Deed and the LCH Rulebook are complied with. As mentioned above in Section 4.3.2.3, Section 170 applies both in respect of an EMIR authorised EU/EEA CCP and an EMIR recognised third country CCP such as LCH.

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

Under Danish law LCH would be required to be put on notice of the security interest created under the Security Deed, see our further discussion of Danish perfection requirements immediately above. Provided that LCH receives evidence of the entry into a Security Deed in relation to each Client, this perfection requirement will in our opinion be met. However, as also described immediately above, Danish private international law may require that also any act of perfection under English law be complied with.

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

Based on our understanding that the security interest given under the Security Deed under Danish law will be a security right over a receivable, it follows from Section 91 of the Bankruptcy Act that the Insolvency Representative of a Relevant Clearing Member does not have any rights to stay the enforcement of the Security Deed in the event of Insolvency Proceedings being commenced in respect of a Relevant Clearing Member (but please see Section 4.3.2.6 below).

In respect to Reorganisation Measures, we refer to Section 4.3.2.4. In addition, we note, that in our view the rights of the Client under the Client Clearing Documentation may be less protected than the rights of LCH under the LCH Agreements in case of Reorganisation Measures, for example in respect to the short term moratorium power as described in Section 3.3. In relation to the Security Deed, we note that even though the Security Deed is creating a security interest for the benefit of the Client, we find that it will most likely be seen as an integrated part of the set-up with the system/CCP and therefore will be subject to the same protections as the rights granted to LCH pursuant to the LCH Agreements, see above Section 4.2.3.3.

4.3.2.6 General

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

We note one important point. Where a Relevant Clearing Member becomes subject to Insolvency Proceedings in the form of bankruptcy and where LCH (in accordance with the LCH Rulebook, see Schedule 1 (Client Clearing Annex), Clauses 9.1 - 9.3 to the Default Rules) pays the Client Clearing Entitlement (or Aggregate Omnibus Client Clearing Entitlement) in cash to the Insolvency Representative of the bankrupt Relevant Clearing Member for the account of Clients, such Clients' claim against the bankruptcy estate of the Relevant Clearing Member for their respective share of the Client Clearing Entitlement will in our view risk being a preferred claim (*massekrav*) under Section 93 of the Bankruptcy Act instead of being considered a third party claim (*tredjemandskrav*) which according to Section 82 of the Bankruptcy Act will not form part of the bankruptcy estate and shall be delivered outright to the relevant third party.

We assume that this issue will less likely arise where the Client Account is an Individual Segregated Account (or other accounts subject to Clause 9.2 of the Client clearing Annex) where the starting point is that the Client receives the Client Clearing Entitlement directly.

If a right to receive Client Clearing Entitlement is being seen as a preferred claim, this means that:

1. Such Clients will have to share the amount with other preferred creditors under Section 93 of the Bankruptcy Act and if there are insufficient funds to cover all preferred creditors, will not be fully paid, and
2. If there is (ultimately) sufficient funds to cover the preferred creditors of the Relevant Clearing Member, such Clients may not be able to get paid immediately upon making their claim if at such time the bankruptcy estate is short on cash.

Accordingly, if LCH were to pay the Client Clearing Entitlement to the bankruptcy estate of the Relevant Clearing Member that entails both a potential credit risk and a liquidity risk for the relevant Clients.

Preferred creditors under Section 93 of the Bankruptcy Act are the first unsecured creditors which are paid out of the assets of a Danish bankruptcy estate and are constituted by the following claims:

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1. Costs associated with the institution of bankruptcy proceedings,
2. Costs associated with the administration of the estate, and
3. Debts taken on by the estate during the estate's administration, except for revenue taxes falling due in respect of the debtor.

Preferred claims are paid as soon as possible and will not have to await the payment of dividends to senior unsecured (simple) creditors.

We also refer to our qualification in respect of receivers and powers of attorneys in Sections 5.7 and 5.8.

4.4 Settlement Finality

4.4.1 Overview

This section is concerned with the impact on finality of settlement of transfers of funds or securities (or both) from a Relevant Clearing Member to LCH in the event of that Relevant Clearing Member entering Insolvency Proceedings or becoming subject to Reorganisation Measures.

4.4.2 Questions

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

As described in Section 3.4 above, the Capital Markets Act has implemented rules which provides the basis for protections under the Settlement Finality Directive in respect of netting and transfer orders (Article 3), holding of collateral (Article 9) and governing law of the system (Article 8) in relation an EU/EEA payment and/or securities settlement system being equally available to a Relevant Clearing Member of a third country payment and/or securities settlement system, provided that the FSA has approved the relevant agreement(s) between the third country system and its participants.

Since approval has been obtained by LCH pursuant to the Decision mentioned in no. 22 of Section 1.2, it means, that in case of a Relevant Clearing Member becoming subject to Insolvency Proceedings, the payment and securities settlement systems operated by LCH will be subject to the same protections as would apply to EU/EEA payment and securities settlement systems pursuant to the Capital Markets Act.

In respect of a Relevant Clearing Member being subject to Reorganisation Measures we note that the exemptions applicable to CCPs in respect of the short term moratorium powers in the BRRD Act Sections 4a, and 32-34, see Section 3.3 above, will apply to an EMIR third country recognised CCP such as LCH, and therefore LCH will be protected.

4.4.2.2 *For jurisdictions where a change in law is contemplated to implement Recital 7 (e.g. France), please provide a status update on the change in law and advise if this is likely to cover a third country CCP, such as LCH.*

Not applicable, as Danish law already contains rules for providing protections for third country systems in respect of a Relevant Clearing Member becoming subject to Insolvency Proceedings as contemplated by Recital 7 of the Settlement Finality Directive.

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

Not applicable, as Danish law already contains rules for providing protections for third country systems in respect of a Relevant Clearing Member becoming subject to Insolvency Proceedings as contemplated by Recital 7 of the Settlement Finality Directive.

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

Since LCH has obtained an approval as described in Section 3.4 pursuant to the Decision mentioned in no. 22 of Section 1.2, the settlement finality protection set out in the Capital Markets Act will apply. As regards Reorganisation Measures, we note that in respect of short term moratorium powers, we refer to Section 4.4.2.1 where we conclude that LCH will be protected in its capacity as an EMIR recognised third country CCP, and other protections may also be available as described in Section 3.3 (*Other protections*).

5. QUALIFICATIONS

This opinion is subject to the following additional qualifications:

5.1 This opinion is limited to the issues addressed herein and speaks only as of its date. In particular, it is noted that no opinion is expressed as to the validity and enforceability of any provisions of the Documents other than those to which express reference is made herein.

5.2 This opinion is limited to matters of the laws of Denmark as in effect as of the date stated on this opinion and we express no opinion with respect to the laws of any other jurisdiction (including provisions that refer to such laws), nor have we made any investigation as to any laws other than the laws of Denmark. This opinion is limited to the law applicable in Denmark, excluding Greenland and the Faroe Islands.

5.3 This opinion does not result in any obligation on our part to inform you of any changes in law or other developments after the date of this opinion, which would result in an amendment to this opinion.

5.4 The term "enforceable", "effective" or "enforceable in accordance with its terms" as used in this opinion means that the obligations referred to are of a type normally recognised and enforced by the courts of Denmark. It

does not mean that the obligations will be enforced in all circumstances or that any particular remedy will be available.

5.5 Claims may become barred under Danish statutes of limitation or principles of passivity or may be or become subject to set-off or counterclaim.

5.6 Subject to as discussed elsewhere in this opinion, enforcement may be limited by (i) insolvency, bankruptcy, formal restructuring proceedings (*rekonstruktion*) or other laws affecting creditors' rights in general pursuant to the Bankruptcy Act, which includes claw back provisions (*omstødelige dispositioner*) which may be used if a creditor has received an otherwise preferential position in the period up to the insolvency proceeding, or (ii) the Danish rules implementing the BRRD, unless exemptions apply.

5.7 Referring to Section 5.6 above, it is in particular (without prejudice to the generality of the foregoing) unlikely that the provision on receivers and administrators in Clause 19 of the Deed of Charge will be fully effective in relation to a Relevant Clearing Member which is subject to Insolvency Proceedings, and we are of the view that Clauses 18 and 20(2)(b) of the Deed of Charge which purports to create a power of attorney by the Chargor in favour of the Clearing House and Receiver, respectively (as defined in the Deed of Charge) and similar provisions in the Default Rules will not be effective against a Relevant Clearing Member which is subject to bankruptcy proceedings, because Section 29 of the Bankruptcy Act provides that a power of attorney granted by the Relevant Clearing Member prior to its bankruptcy will lapse upon the bankruptcy decree of the Danish bankruptcy court.

5.8 In addition to Section 5.7, the validity of powers of attorney in security documents in favour of a secured party by a provider of security enabling the secured party to act in the name, for and on behalf of the provider of security in connection with and/or following enforcement of the security document has not been tested in Danish courts.

5.9 An express choice of English law to govern non-contractual obligations arising out of or in connection with the Documents may not be upheld by the courts of Denmark as (i) where applicable, Regulation (EC) No. 864/2007 of 11 July 2007 (the "Rome II-Regulation") does not apply to Denmark (on account of the general Danish opt-out, (cf. The European Council's Edinburgh Decision of 12 December 1992 and the Protocol to the Treaty of Amsterdam on the position of Denmark)) and (ii) according to Danish principles of private international law, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable.

5.10 A Danish court may deliver judgment in a currency other than Danish Kroner, but such judgment can generally only be enforced in Denmark by a Danish enforcement court in Danish Kroner calculated at the rate of exchange as at the date of enforcement.

5.11 The enforceability of claims and court decisions ordering the payment of money in a currency other than Danish Kroner is subject to the Bankruptcy Act which provides for the conversion of such foreign currency debt into Danish Kroner on the date of the commencement of such bankruptcy proceedings (*dekretdag*).

5.12 Any claim against a Relevant Clearing Member on interest accrued after the insolvency order in respect of Insolvency Proceedings regarding the Relevant Clearing Member will be a deferred claim in the Insolvency Proceedings.

5.13 Provisions providing that certain calculations or certificates will be conclusive and binding (or prima facie evidence) may not be effective, if such calculations or certificates are incorrect and such provisions will not necessarily prevent juridical inquiry into the merits of such calculations or certificates.

5.14 There may be circumstances where Danish law will not give effect to provisions (i) according to which a party is vested with discretion or may determine a matter in its opinion or (ii) which may be considered to be unreasonable or contrary to principles of fair dealing (e.g. where a party has waived its rights to put forward any and all defences whatsoever against a claim under an agreement).

5.15 A Danish court may refuse to give effect to undertakings pursuant to which a party is obligated to pay another party's legal expenses and costs in respect of any action before the Danish courts.

5.16 Any provision providing that terms of an agreement may be amended or varied only by an instrument in writing may be held by a Danish court not to be effective.

5.17 This opinion expresses and describes Danish legal concepts in the English language and not in their original Danish terms; consequently this opinion may only be relied upon on the express condition that the opinion shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with Danish law and be subject to the exclusive jurisdiction of the Danish courts, and we express no opinion as to the exact interpretation which would be placed upon any particular wording in an agreement by a court.

This opinion is addressed exclusively to LCH Ltd. and (i) is for the sole benefit of LCH Ltd.; (ii) may not be relied upon by, or disclosed to, any other person or legal entity without our prior written consent; but (iii) may be made available by LCH Ltd. on its website and to the appropriate regulatory authorities, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result thereof or otherwise.

We are qualified to practise law in the Kingdom of Denmark.

Yours faithfully,
Kromann Reumert

Susanne Schjølin Larsen
Partner