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** In cooperation with
Trench, Rossi e Watanabe
Abogados

12 February 2020

LCH Limited
Aldgate House
33 Aldgate High Street
London EC3N 1EA

Dear Sirs and Madams:

Responses to Instructions to Counsel - Membership, Client Clearing and Settlement Finality (Japan)

You have asked us to provide our advice in respect of the laws of Japan in response to certain specific questions raised by LCH Limited ("LCH") in relation to membership, client clearing and settlement finality. The relevant questions are set out in full in 3 below together with our corresponding views and opinions. Terms not otherwise defined in this letter shall have the meaning ascribed to such terms in LCH's Rulebook (as defined below).

1. Terms of reference

1.1 In this letter:

Bank is a reference to a "bank (*ginko*)" under the Banking Act;

Banking Act is a reference to the Banking Act of Japan (Act No. 59 of 1981, as amended);

Bankruptcy Act is a reference to the Bankruptcy Act of Japan (Act No. 75 of 2004, as amended);

Bankruptcy Proceedings is a reference to "bankruptcy (*hasan*)" proceedings under the Bankruptcy Act;

Companies Act is a reference to the Companies Act of Japan (Act No. 86 of 2005, as amended);

Civil Rehabilitation Act is a reference to the Civil Rehabilitation Act of Japan (Act No. 225 of 1999, as amended);

Civil Rehabilitation Proceedings is a reference to "civil rehabilitation (*minji saisei*)" proceedings under the Civil Rehabilitation Act;

Corporate Reorganisation Act is a reference to the Corporate Reorganisation Act of Japan (Act No. 154 of 2002, as amended);

Corporate Reorganisation Proceedings is a reference to "corporate reorganisation (*kaisha kosei*)" proceedings under the Corporate Reorganisation Act;

Deposit Insurance Act is a reference to the Deposit Insurance Act of Japan (Act No. 34 of 1971, as amended);

FIBO is a reference to the "financial instruments business operator (*kinyu shouhin torihiki gyousha*)" as defined in Article 2 (9) of the FIEA;

FIEA is a reference to the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended);

FIEA Enforcement Order is a reference to the Order for Enforcement of the Financial Instruments and Exchange Act of Japan (Cabinet Order No. 321 of 1965, as amended);

Insolvency Laws means the Companies Act, Bankruptcy Act, Corporate Reorganisation Act and Civil Rehabilitation Act;

Insolvency Proceedings means collectively the Special Liquidation Proceedings, the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings and Civil Rehabilitation Proceedings;

Insurance Business Act is a reference to the Insurance Business Act of Japan (Act No. 105 of 1995, as amended);

Insurance Company is a reference to an "insurance company (*hoken kaisha*)" under the Insurance Business Act;

JFSA is a reference to the Japanese Financial Services Agency;

Parties means LCH, Clearing Members, Clearing Clients and other parties that have any right or obligation under the Service, Contracts, Opinion Agreements or Rulebook, and reference to a "**Party**" is a reference to one of them;

Relevant Clearing Member means an entity incorporated in Japan that is a Clearing Member;

RFI is a reference to the "registered financial institution (*toroku kinyu kikan*)" as defined in Article 2 (11) of the FIEA; and

Special Liquidation Proceedings is a reference to "special liquidation (*tokubetsu seisan*)" proceedings under the Companies Act.

- 1.2 For the purposes of preparing our advice, we have only reviewed the following documents ("**Opinion Documents**"):
- (a) (i) the general regulations; (ii) the default rules; (iii) the settlement finality regulations; (iv) the procedures; and (v) the product specific contract terms and eligibility criteria manual, located at <http://www.lch.com/rules-regulations/rulebooks/ltc> (collectively, "**Rulebook**");

- (b) the clearing membership agreement in the form of Schedule 1 hereto ("**Clearing Membership Agreement**");
- (c) the deed of charge in the form of Schedule 2 hereto ("**Deed of Charge**");
- (d) the security deed in the form of Schedule 3 hereto ("**Security Deed**" and together with the Clearing Membership Agreement and the Deed of Charge, "**Opinion Agreements**");
- (e) the SwapClear Clearing Business Rules for Japanese Financial Services Agency (*swapclear seisan gyomu ni kansuru gyomu hoho sho*) as of the date of this letter ("**SwapClear GHS**"); and
- (f) the ForexClear Clearing Business Rules for Japanese Financial Services Agency (*forexclear seisan gyomu ni kansuru gyomu hoho sho*) as of the date of this letter ("**ForexClear GHS**").

2. Assumptions

We assume the following:

- 2.1 Except as discussed and advised by us in this letter, the obligations expressed to be assumed by any Party constitute its legal, valid, binding and enforceable obligations.
- 2.2 Each Party is duly incorporated or established and validly existing under the laws of its jurisdiction of incorporation or establishment and has the capacity, power and authority under all applicable law(s) to enter into the Opinion Agreements and Contracts and to exercise the rights and to perform its obligations under the Opinion Documents and Contracts.
- 2.3 Except as discussed and advised by us in this letter, each Party has taken all necessary steps (including, without limitation, the making of all necessary filings, lodgements, registrations and notifications and the payment of stamp duties and other documentary taxes) and obtained and maintained all authorisations, approvals, licences and consents necessary to execute and deliver, and exercise the rights, and perform the obligations under, the Opinion Documents and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Opinion Documents and the Contracts in Japan and any other jurisdiction, and that such steps, authorisations, approvals, licenses or consents have not been revoked or superseded and remains in full force and effect.
- 2.4 The Clearing Members and LCH have duly executed and delivered the Opinion Agreements.
- 2.5 The Opinion Documents and each of the Contracts accurately reflect the true intentions of the Parties and have been entered into and are carried out by the Parties in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective business.

- 2.6 There is no bad faith, fraud, undue influence, coercion or duress on the part of or in relation to any Party or their respective directors, employees or agents.
- 2.7 The Opinion Agreements are entered into between LCH and a Clearing Member prior to the commencement of any Insolvency Proceeding in respect of the Clearing Member.
- 2.8 LCH is, at all relevant times, not itself insolvent for the purpose of any insolvency law and not subject to any Insolvency Proceeding.
- 2.9 Save in relation to any non-performance leading to the taking of action by LCH under the Default Rules, each Party performs its obligations under the Opinion Documents and each Contract in accordance with their respective terms.
- 2.10 Apart from any circulars, notifications and equivalent measures published by LCH in accordance with the Rulebook, there are no other agreements, instruments or arrangements between the Parties that modify or supersede the terms of the Opinion Documents.
- 2.11 The arbitration agreement contained in Regulation 51 is a valid and effective agreement to submit to arbitration under all applicable laws (other than the laws of Japan).
- 2.12 The arbitration agreement contained in the Relevant Rules (as defined in Regulation 33) is a valid and effective agreement to submit to arbitration under all applicable laws.
- 2.13 The submission to the jurisdiction under the Rulebook is legal, valid and binding under all applicable laws (other than the laws of Japan).
- 2.14 Each Clearing Member has the capacity, power and authority to create the security constituted by the Opinion Documents and the Contracts.
- 2.15 All Collateral and the Charged Assets over which security interests are created under the Opinion Documents is freely transferable, all acts or things required by the laws of any jurisdiction (other than Japan) to be done to ensure the validity and perfection of each security interest created over the Collateral and the Charged Assets pursuant to the Opinion Documents have been effectively carried out and each security interest created over the Collateral and the Charged Assets pursuant to the Opinion Documents is legal, valid and enforceable under the laws of any jurisdiction (other than Japan).
- 2.16 Any cash provided as Collateral is in a currency that is freely transferable internationally under the laws of Japan.
- 2.17 No Clearing Member is entitled to claim, in relation to itself or its assets, immunity from suit, attachment, execution or other legal processes.
- 2.18 LCH is a Foreign Financial Instruments Clearing Organisation (as defined in Article 2 (29) of the FIEA) holding the license of the Financial Instruments

Obligation Assumption Service (as defined in Article 2 (28) of the FIEA) and filed the SwapClear GHS and the ForexClear GHS with the JFSA for such license.

- 2.19 Payment or transfer of securities or any other assets under or in accordance with the Opinion Documents is not restricted or prohibited by the Foreign Exchange and Foreign Trade Act of Japan (Act No. 228 of 1949, as amended).

3. Questions and advice

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

3.1 Membership - General

(a) Overview of the Japanese regulations

Under the FIEA, an entity engaging in the Financial Instruments Obligation Assumption Services to a Japanese entity must be licensed as a Financial Instruments Clearing Organisation under Article 156-2, 156-19(1) of the FIEA or Foreign Financial Instruments Clearing Organisation under Article 156-20-2 of the FIEA. The "Financial Instruments Obligation Assumption Services" is defined as taking over, novating, or in any other way bearing, on a regular basis, the obligations of an FIBO, RFI, or Securities Finance Company¹ ("**Business Counterparty to Financial Instruments Obligation Assumption Services**"), which arise from subject transactions (meaning the purchase and sale of securities, derivative transactions, or transactions specified by cabinet order of Japan, including repo transactions) effected by such FIBO, RFI or Securities Finance Company. Accordingly, all clearing services provided by LCH would fall within the definition of the Financial Instruments Obligation Assumption Services if the Relevant Clearing Member is an FIBO, RFI or Securities Finance Company. Theoretically, LCH could provide its clearing services to the Relevant Clearing Member that is not an FIBO, RFI or Securities Finance Company. However, under Japanese law, an entity engaging in derivative transactions as business in Japan is generally required to register as an FIBO or RFI. Accordingly, so long as LCH is targeting banks or other financial institutions engaging in derivative transactions as business, LCH must obtain the license as a Foreign Financial Instruments Clearing Organisation (or a domestic Financial Instruments Clearing Organisation). For the purposes of this letter, we assume that the Relevant Clearing Members are the FIBO or RFI and the clearing service of LCH constitutes the Financial Instruments Obligation Assumption Services under the FIEA.

¹ Securities Finance Company is an entity licensed under the FIEA for financing and lending securities to the members of exchanges in relation to margin transaction.

We understand that LCH is licensed as a Foreign Financial Instruments Clearing Organisation for the following businesses:

- (i) SwapClear Business for non-Japanese yen transactions only ("**Relevant SwapClear Business**"); and
- (ii) ForexClear Business for NDF only ("**Relevant ForexClear Business**").

Accordingly, our advice in this letter would discuss (i) and (ii) above.

Please note that there is an exemption from the license requirements discussed above. Under Article 2 (28) of the FIEA, Article 1-18-2 of the FIEA Enforcement Order and the Public Notice issued by the FSA No. 105, certain activities by foreign clearing houses are allowed to be conducted in Japan without a license of the Foreign Financial Instruments Clearing Organisation, including Repo Clear Business for certain securities only if an FIBO, RFI or Securities Finance Company is a Clearing Client of a Clearing Member outside Japan. Accordingly, even under this exemption, a Japanese entity is not able to be a Relevant Clearing Member for the RepoClear Business, and we do not consider RepoClear Business in this letter.

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

There are no specific statutory limitations or regulatory requirements that would limit the capacity of an appropriately authorised Relevant Clearing Member to enter into the LCH Agreements with respect to the Relevant SwapClear Business and/or Relevant ForexClear Business. However, as the conditions for LCH's license as a Foreign Financial Instruments Clearing Organisation, there are certain limitations under the SwapClear GHS and ForexClear GHS, as follows:

- (i) for the Relevant SwapClear Business - (A) the Relevant Clearing Member must be an International Standards Bank (as defined in the FSA Administrative Notice on the capital adequacy rules for banks pursuant to Article 14-2 of the Banking Act (FSA Administrative Notice No. 19 of 2006), The Norinchukin Bank, International Standards Shinkin Bank (as defined in the FSA Administrative Notice on the capital adequacy rules for the *shinkin* banks pursuant to Article 14-2 of the Banking Act and Article 89, Paragraph 1 of the Shinkin Bank Act (FSA Administrative Notice No. 21 of 2006)), Shoko Chukin Bank or a Special Financial Services Provider (as defined in the FIEA); and (B) the Relevant Clearing Member is not able to conduct the Client Clearing Service; and

(ii) for the Relevant ForexClear Business - the Relevant Clearing Member is not able to conduct the Client Clearing Service.

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

Although the issue of whether LCH should be deemed to be domiciled, a resident or carrying out business in Japan is not directly linked to the issue of whether LCH is required to obtain a licence or be registered in Japan, providing clearing service to Japanese banks or financial institutions requires a license as a Foreign Financial Instruments Clearing Organisation (or a domestic Financial Instruments Clearing Organisation), as discussed in 3.1(a) above.

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

FIBO and RFI is generally incorporated in the form of *kabushiki kaisha*, a joint stock company under the Companies Act ("KK") or *sougo kaisha*, a mutual company under the Insurance Business Act ("SK").

The legal capacity of a KK or SK is limited to the purposes of the company set out in the articles of incorporation (*teikan*) and its commercial registration. Thus, it is advisable to request a certified copy of the articles of incorporation (*teikan*) and a certificate of full registry records of the commercial registration (*rireki jikou zenbu shomeisho*), together with their English translation, from each Relevant Clearing Member to check whether execution of the LCH Agreements falls within the purposes of the company.

The authority to bind the company varies, depending on the organisation of the company. The organisation of the company can be checked through review of the articles of incorporation. For the purpose of this letter, we assume that a Relevant Clearing Member is:

(i) a KK or SK with a nominating committee, audit committee and compensation committee (*shimei iinkai tou secchi kaisha*) and the board of directors delegating its powers to the representative executive officer (*daihyo shikkoyaku*) in accordance with Article 416(4) of the Companies Act or Article 53-30(4) of the Insurance Business Act, as applicable ("**Company with Nominating Committee**");

- (ii) a KK or SK with an audit and supervisory committee (*kansa tou iinkai secchi kaisha*) but without any special director (*tokubetsu torishimariyaku*) under Article 373(1) of the Companies Act or Article 53-16 of the Insurance Business Act as applicable and not a Company with Nominating Committee ("**Company with an Audit and Supervisory Committees**"); or
- (iii) a KK or SK with an audit and supervisory board (*kansayaku kai secchi kaisha*) but without any special director (*tokubetsu torishimariyaku*) under Article 373(1) of the Companies Act or Article 53-16 of the Insurance Business Act as applicable and not a Company with Nominating Committee or Company with an Audit and Supervisory Committees ("**Company with an Audit and Supervisory Board** ").

In order to check if the director or officer of a Relevant Clearing Member has the capacity and authority to enter into the LCH Agreements, it is advisable to obtain the following documents, together with their English translation:

- a certificate of full registry records of the commercial registration (*rireki jikou zenbu shomeisho*);
- A certified copy of the articles of incorporation (*teikan*); and
- A certified copy of the board regulations (*torishimariyakukai kisoku*) (if any) or any other rules referred to in the articles of incorporation.

In addition, where a Relevant Clearing Member is a Company with Audit and Supervisory Committees or a Company with an Audit and Supervisory Board, it is advisable to obtain the following documents, together with their English translation:

- a certified copy of the minutes of a meeting of the board of directors approving, among others, the execution of the LCH Agreements;
- a specimen of signature of the authorised signatory certified by the representative director (*daihyo torishimariyaku*) with its registered seal affixed; and
- a certificate of the seal impression of the registered seal (*inkan shomeisho*) of the representative director (*daihyo torishimariyaku*).

Where a Relevant Clearing Member is a Company with Nominating Committee, it is advisable to check the following documents, together with their English translation:

- a certified copy of the minutes of a meeting of the board of directors approving, among others, delegation of the powers of the

board of directors to the representative executive officer (*daihyo shikkoyaku*) in accordance with Article 416 (4) of the Companies Act or Article 53-30(4) of the Insurance Business Act, as applicable;

- a specimen of signature of the authorised signatory certified by the representative executive officer (*daihyo shikkoyaku*) with its registered seal affixed; and
- a certificate of the seal impression of the registered seal (*inkan shomeisho*) of the representative executive officer (*daihyo shikkoyaku*).

As a practical matter, LCH will need to rely on the documents provided by the Relevant Clearing Member, LCH should therefore require each Relevant Clearing Member to submit a certificate of representative director or representative executive officer, as the case may be, to certify that the documents are true, complete and up to date copies, that there have been no amendments to the versions of the documents delivered to LCH, and that the English translation of each document is accurate.

- (e) ***Are there any formalities to be complied with upon entry into of any of the LCH Agreements and, if so, what is the effect of a failure to comply with these? Please consider in particular any formalities to be complied with to enter into the Deed of Charge and Security Deed.***

No such formalities would be required under Japanese law on the assumptions, in particular in paragraphs 2.15 and 2.17.

- (f) ***Would the courts of Japan uphold the contractual choice of law and jurisdiction set out in Regulation 51?***

Yes, the Japanese courts would recognise the choice of English law for any contractual obligations arising out of or in connection with the Regulations and the Procedures, an OTC Contract, an LSE Derivatives Markets Cleared Exchange Contract, an EquityClear Contract and a Designated Listed Interest Rates Contract in accordance with Article 7 of the Act on General Rules for Application of Laws of Japan (Act No. 78 of 2006, as amended) ("**General Rules for Conflict of Laws**").

With respect to non-contractual obligations, a Japanese court may apply other laws if it considers such other law more appropriate in accordance with the General Rules for Conflict of Laws (e.g., a tort claim may be governed by the law of the place where the result of the wrongful act occurred, in accordance with Article 17 of the General Rules for Conflict of Laws).

The agreement on the arbitration in Regulation 51 would be a valid and effective agreement to submit to arbitration.

The submission to the jurisdiction of the courts of England in Regulation 51 would be a valid and effective agreement.

(g) ***Will the courts of Japan uphold the judgment of the English courts or an English arbitration award?***

(i) Foreign judgment

A judgment of an English court would be enforced in a court in Japan without further consideration of the merits of the case, if all of the following conditions are satisfied:

- (A) such judgment is duly obtained and is final and conclusive;
- (B) the jurisdiction of the English court is recognised by the applicable law or treaty;
- (C) service of process has been duly effected on the party against which such judgment is to be enforced in Japan other than by public notice or some other similar method, or such party has appeared in the relevant proceedings in an English court without receiving service thereof;
- (D) such judgment and the court procedures leading to such judgment are not contrary to public policy or the good moral doctrine in Japan;
- (E) a similar judgment of a Japanese court would receive reciprocal treatment in an English court; and
- (F) the dispute resolved by such judgment has not been resolved by a judgment of a Japanese court and is not being litigated before a Japanese court.

(ii) Arbitration award

An arbitration award made in accordance with Regulation 51 would be recognised and enforced by Japanese courts; however, if any of the following exists, such arbitral award may not be enforced in Japan:

- (A) the arbitration agreement is not valid due to a limitation of a party's legal capacity;
- (B) the arbitration agreement is not valid for any reason (other than the reason set out in (A) above) under the law by which the parties have agreed to govern the arbitral award (or failing any indication thereon, the law of the country under which the place of arbitration falls);
- (C) a party did not receive the notice as required by the provisions of the law of the country to which the place of

the arbitration belongs (or where the parties have otherwise reached an agreement on matters concerning the provisions of such law that do not relate to public policy, by such agreement) in the proceedings to appoint arbitrators or in the arbitral proceedings;

- (D) a party was unable to mount a defence in the arbitration proceedings;
- (E) the arbitral award contains decisions on matters beyond the scope of the arbitration agreement or the claims in the arbitral proceedings;
- (F) the composition of the arbitral tribunal or the arbitral proceedings were in violation of the provisions of the law of the country to which the place of the arbitration belongs (or where the parties have otherwise reached an agreement on matters concerning the provisions of such law that do not relate to public policy, by such agreement);
- (G) according to the law of the country to which the place of the arbitration belongs (or where the law applied to the arbitration proceedings is different, the country of such law applied to the arbitration proceedings), the arbitral award is not final and binding, or the arbitral award has been set aside or its effect has been suspended by a judicial body of such country;
- (H) the claims in the arbitral proceedings is connected with a dispute that may not be subject to an arbitration agreement under the laws of Japan; or
- (I) the content of the arbitral award is contrary to the public policy or good moral doctrine of Japan.

- (h) ***Are there any "public policy" considerations that the courts of Japan may take into account in determining matters related to choice of law and/or the enforcement of foreign judgements?***

Yes, please refer to 3.1(g) and 4.2.

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

- (a) ***Please identify the different types of insolvency proceedings and pre-insolvency reorganisation, restructuring and/or resolution 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?***

Please refer to the definition of the "Insolvency Proceedings" in 1.1 for the types of insolvency proceedings in Japan.

The pre-insolvency reorganisation, restructuring or resolution measures in Japan ("**Reorganisation Measures**") are as follows:

- (i) with respect to a Bank, Insurance Company or FIBO, the special mediation (*tokutei chotei*) under the Special Mediation Act of Japan (Act No 158 of 1999, as amended);
- (ii) with respect to a Bank, Insurance Company or FIBO, the turnaround ADR proceedings (*jigyo saisei ADR*) under the Act on Promotion of Use of Alternative Dispute Resolution of Japan (Act No. 151 of 2004, as amended) and Act on Strengthening Industrial Competitiveness of Japan (Act No. 98 of 2013, as amended);
- (iii) with respect to a Bank, the measures as provided for in Chapter V (Administration by Financial Administrator) or Chapter VII (Measures of Financial Crisis) of the Deposit Insurance Act;
- (iv) with respect to an Insurance Company, the measures as provided for in Chapter X (Special Measures for Protection of Policyholders) of the Insurance Business Act; and
- (v) with respect to a Bank, Insurance Company or FIBO, the measures as provided for in Chapter VII-2 (Measures for Orderly Resolution of Assets and Liabilities of Financial Institutions for the Purpose of Ensuring Financial System Stability) of the Deposit Insurance Act.

The Reorganisation Measures set out in (iii) to (v) above and the Insolvency Procedures would be covered by Rule 5 of the Default Rules. The mere fact of the initiation of the Reorganisation Measures set out in (i) and (ii) above would not be covered by Rule 5 of the Default Rules, as the initiation of these measures does not have any legal binding effect to the creditors (unless a creditor voluntarily agrees on a particular offer of the debtor), but LCH may exercise its rights under Rule 3 of the Default Rules if the conditions under Rule 3 of the Default Rules are met.

- (b) ***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?***

Under Japanese law, assignment by way of security (*joto tanpo*) over the Charged Property should be validly created upon the Charged Property has been duly transferred to LCH from the Chargor as defined in the Deed of

Charge in accordance with the Deed of Charge. Such security would be perfected when LCH legally acquires ownership of the Charged Property subject to the security created under the Deed of Charge.

Under the Reorganisation Measures (i.e. prior to the initiation of an Insolvency Proceeding), the Deed of Charge would be recognised as a valid and enforceable agreement, and LCH would be able to exercise its rights under the Deed of Charge under the Reorganisation Measures.

Once an Insolvency Proceeding commences, enforcement of security interest would be subject to certain restriction under the applicable Insolvency Laws in Japan. However, Article 156-20-9 of the FIEA provides that, if a Foreign Financial Instruments Clearing Organisation has provisions in its business rules (*gyomu hoho sho*) for the method of netting off outstanding obligations (meaning a Clearing Member's obligations, which have arisen from the transactions that have cleared by the Foreign Financial Instruments Clearing Organisation and which the Foreign Financial Instruments Clearing Organisation has taken over from the other parties to those transactions or has novated or in any other way borne as Financial Instruments Obligation Assumption Services; claims (limited to claims with the same financial terms as such obligations) that the Foreign Financial Instruments Clearing Organisation has acquired against the Clearing Member as the consideration for the obligations that have arisen out of the transactions and which the Foreign Financial Instruments Clearing Organisation has borne for the Clearing Member; and collateral), the method of allocating collateral to cover outstanding obligations, or other means of settling outstanding obligations, and any of the Insolvency Proceedings have been commenced with respect to the Clearing Member, the calculation of the amount of the claim that the Foreign Financial Instruments Clearing Organization or the Clearing Member has in terms of the outstanding obligations and other means of settlement in relation to these proceedings, are to be in accordance with the provisions of the business rules ("**Special Exemption Provision in FIEA**").

Chapter 8 of the SwapClear GHS and ForexClear GHS provides that the Collateral would be appropriated for the losses suffered by LCH under the default management process in accordance with the Default Rules. Accordingly, so long as the security interest over the Collateral is enforced in accordance with the Default Rules, any restriction under the Insolvency Laws is exempted and does not apply to the enforcement of the Collateral.

Therefore, we are of the view that LCH should be able to exercise its rights under the Deed of Charge under the Insolvency Proceedings in accordance with the provisions in the Default Rules.

- (c) ***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.

Chapter 8 of the SwapClear GHS and ForexClear GHS refers to the Default Rules for the management of the Default of the Clearing Member and LCH's rights to take actions. Based on the Special Exemption Provision in the FIEA, such default management procedures would not be affected by the Insolvency Laws of Japan even under the Insolvency Proceedings.

The Reorganisation Measures would not affect the actions taken by the LCH in accordance with the Default Rules.

- (d) *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?*

In the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings and Civil Rehabilitation Proceedings, the applicable Insolvency Laws provide for the right of avoidance (*hininken*) of the insolvency trustee. The insolvency trustee may avoid or set aside certain acts of the defaulter under certain circumstances. Please see 4.4 for the details of the right of avoidance under the Insolvency Laws.

It is not clear whether the insolvency trustee is able to exercise such right of avoidance under the Special Exemption Provision in the FIEA. Given the important role of central counterparties to protect the stability of the market and the fact that the business rule (*gyomu hoho sho*) must be approved by the JFSA as a condition for the license of the Financial Instruments Obligation Assumption Service, the purpose of the Special Exemption Provision in the FIEA should be understood as prioritising the orderly management of the default in accordance with the pre-determined process under the business rules to avoid systemic risk of the financial market over the Insolvency Proceedings. Exercise of the right of avoidance by the insolvency trustee may hinder the default management process, and in that sense, there is no difference between the right of avoidance and other provisions in the Insolvency Laws.

Accordingly, we are of the view that it is more likely than not that the right of avoidance under the Insolvency Laws will not be exercisable if such act of the defaulter was performed in accordance with the SwapClear GHS or ForexClear GHS.

With respect to the Special Liquidation Proceedings and the Reorganisation Measures, there is no such right of avoidance.

- (e) ***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?***

As discussed in 3.2(c) above, the netting arrangement set out in the SwapClear GHS or ForexClear GHS and the Default Rules would be valid and enforceable under the Special Exemption Provision in the FIEA.

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

So long as the close-out amount is settled by Collateral or other financial resources under the default management process in accordance with the SwapClear GHS or ForexClear GHS and the Default Rules, no such conversion would be required under the Special Exemption Provision in the FIEA.

If, after the appropriation of all relevant financial resources in accordance with the Default Rules, LCH needs to make a claim of the outstanding loss to the Defaulter under the Insolvency Proceedings, such outstanding loss must be converted into Japanese yen.

3.3 Client Clearing - overview

As discussed in 3.1(a) above, the Relevant Clearing Member is prohibited from conducting the Client Clearing Service. Accordingly, the answers to your questions in respect of Client Clearing are "Not Applicable." We assume that the Opinion Documents need to be amended in order to allow the Relevant Clearing Member to conduct such service.

Our advice in 3.4 to 3.6 is a general explanation of the laws of Japan and is not based on the Opinion Documents. We do not opine on whether our general advice in 3.4 to 3.6 would actually apply to LCH or the Clearing Member when the Client Clearing Service will be available for the Relevant Clearing Member in the future.

We also assume that the Special Exemption Provision in the FIEA should work as the Exempting Client Clearing Rule, subject to the appropriate amendments to the Opinion Documents when it allows the Client Clearing Service for the Relevant Clearing Member. We therefore did not address your questions with respect to the Security Deed, per your instruction.

3.4 Client Clearing - Default Outside Insolvency Proceedings or Reorganisation Measures

- (a) ***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 actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3.

- (b) ***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?***

The actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3.

3.5 Client Clearing - Insolvency-related Default

- (a) ***If: (i) following the commencement of Insolvency Proceedings, a Relevant Clearing member was designated as 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?***

The actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3 in accordance with the Special Exemption Provision in the FIEA.

- (b) ***If: (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated as 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?

The actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3 in accordance with the Special Exemption Provision in the FIEA.

3.6 Client Clearing - Reorganisation Measures

- (a) *If: (i) following the implementation of Reorganisation Measures, a Relevant Clearing member was designated as 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?*

The actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3.

- (b) *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?*

The actions of LCH and claim for the amount of the Account Balance should not be successfully challenged by any person where the Opinion Documents are properly amended, as discussed in 3.3.

3.7 Client Clearing - General

- (a) *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.*

As discussed in 3.3 above, Relevant Clearing Members are not allowed to provide Client Clearing Services.

3.8 Settlement Finality

- (a) *Would the commencement of Insolvency Proceedings in respect of a Relevant Clearing member affect the finality of settlement of a Payment Transfer Order, including the corresponding transfer of funds, from the Relevant Clearing Member to LCH through a Settlement Services Provider or PPS Bank (or both)? If so, please clarify from which point in time and in which circumstances finality protections in respect of such settlement would be lost.*

The validity of the instruction given by LCH would not be affected by the Insolvency Proceedings. However, in principle, there is a possibility that the: (i) instruction given by the Relevant Clearing Member; (ii) the transfer of cash amount; or (iii) registration of contracts will be subject to the right of avoidance (*hininken*) under the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings or the Civil Rehabilitation Proceedings. Please see 4.4 for the details of the right of avoidance under the Insolvency Laws.

It is not clear whether the insolvency trustee is able to exercise such right of avoidance under the Special Exemption Provision in the FIEA, but we are of the view that it is more likely than not that the right of avoidance under the Insolvency Laws will not be exercisable if such act of the defaulter was performed in accordance with the SwapClear GHS or ForexClear GHS for the reasons discussed in 3.2(d) above.

- (b) *Would the commencement of Insolvency Proceedings in respect of a Relevant Clearing Member affect the finality of settlement of a Securities Transfer Order, including the corresponding transfer of securities, from the Relevant Clearing Member to LCH through a Securities System Operator? If so, please clarify from which point in time and in which circumstances finality protection in respect of such settlement would be lost.*

The validity of the instruction given by LCH would not be affected by the Insolvency Proceedings. However, in principle, there is a possibility that the: (i) instruction given by the Relevant Clearing Member; or (ii) the transfer of securities will be subject to the right of avoidance (*hininken*) under the Bankruptcy Proceedings, the Corporate Reorganisation Proceedings and Civil Rehabilitation Proceedings. Please see 4.4 for the details of the right of avoidance under the Insolvency Laws.

It is not clear whether the insolvency trustee is able to exercise such right of avoidance under the Special Exemption Provision in the FIEA, but we are of the view that it is more likely than not that the right of avoidance under the Insolvency Laws will not be exercisable if such act of the defaulter was performed in accordance with the SwapClear GHS or ForexClear GHS for the reasons discussed in 3.2(d) above.

- (c) *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.

We do not think there is any such circumstances that might give rise to a loss of finality protections before the commencement of Insolvency Proceedings.

4. Reservations and qualifications

Our advice in paragraph 3 is subject to the following reservations and qualifications.

4.1 Stay order under the Deposit Insurance Act

The Deposit Insurance Act provides for an orderly resolution regime for Japanese financial institutions. Under this regime, when the Prime Minister of Japan determines that there is a risk: (a) of extremely and seriously hindering the maintenance of an orderly credit system in Japan; or (b) of extreme disruption to the financial market or system in Japan, it may implement various measures to the failed financial institution, such as capital injection, special supervision by the Deposit Insurance Corporation (a special governmental entity established under the Deposit Insurance Act to protect bank deposits and orderly cash settlements in the market), transfer of business to successor banks, and temporary stay on early termination of derivatives. Such determination by the Prime Minister will be based on deliberations held by the Financial System Management Council, which is a standing committee and comprises, among others, the Prime Minister, the Minister in charge of Financial Affairs, the Commissioner of the JFSA and the Governor of the Bank of Japan.

Among the various measures available for the Prime Minister under the Deposit Insurance Act, a temporary stay order ("**Temporary Stay Order**") could be implemented when the Prime Minister finds that:

- (a) if the measures specified in Paragraph 1, Article 10 of the Deposit Insurance Act (i.e., capital injection or financial assistance) are not taken with respect to the relevant financial institution, it may extremely and seriously hinder the maintenance of an orderly credit system in Japan or in a certain region where such financial institution conducts its business (Article 102 of the Deposit Insurance Act); or
- (b) if the measures specified in Paragraph 1, Article 126-2 (i.e., special supervision by the Deposit Insurance Corporation or its agent, financial assistance, capital injection, resolution by transferring the business to another financial institution, special administration by the Deposit Insurance Corporation.) are not taken with respect to the relevant financial institution, it may cause severe disruption in Japan's financial market and any other financial systems (Article 126-2 of the Deposit Insurance Act).

If the Temporary Stay Order is decided by the Prime Minister, no early termination of the affected derivatives transactions can be effective during the period specified by the Prime Minister, in order to ensure the execution of the measures under the

Deposit Insurance Act for the orderly resolution of the failed financial institution. The period of such "stay" ("**Stay Period**") will be designated by the Prime Minister, and the length of the Stay Period is subject to the qualitative limitation where it should be a period that is required to take measures necessary for avoiding the risk of serious disorder in the Japanese financial system.

If the Temporary Stay Order is issued with respect to the Relevant Clearing Member, LCH's rights under the Default Rules may be restricted during the Stay Period.

4.2 Governing Law

If the competent Japanese court determines that the application of English law would be contrary to public policy or mandatory rules of Japanese law, it may not apply English law.

4.3 Jurisdiction

Japanese courts may accept jurisdiction if: (a) following the agreement of jurisdiction would be extremely unreasonable and against the public policy of Japan; or (b) the court agreed on by the relevant parties is not legally or practically able to accept the jurisdiction.

4.4 Right of avoidance (*hininken*)

- (a) Under the Bankruptcy Proceedings, Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings, certain acts of the defaulter may be avoided or set aside by the insolvency trustee under the Insolvency Laws. For the purpose of this paragraph,

Suspension Event means:

- a general suspension of its monetary obligation (*shiharai teishi*); or
- filing of a petition for commencement of:
 - with respect to the Bankruptcy Proceedings, the Bankruptcy Proceedings;
 - with respect to the Corporate Reorganisation Proceedings, the Bankruptcy Proceedings, Corporate Reorganisation Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings; or
 - with respect to the Civil Rehabilitation Proceedings, the Bankruptcy Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings, and

Insolvent Event means:

- a relevant person is unable to pay its debts as they fall due (*shiharai funou*); or
- filing of a petition for the commencement of:
 - with respect to the Bankruptcy Proceedings, the Bankruptcy Proceedings;
 - with respect to the Corporate Reorganisation Proceedings, the Bankruptcy Proceedings, Corporate Reorganisation Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings; or
 - with respect to the Civil Rehabilitation Proceedings, the Bankruptcy Proceedings, Civil Rehabilitation Proceedings or Special Liquidation Proceedings.

(b) Acts prejudicial to creditors

- (i) The following acts (other than creation of security interest or extinguishment of debt) may be avoided:
 - (A) an act of the defaulter, knowing that it would prejudice its creditors unless the person who has benefited from such act did not know, at the time of the act, the fact that it would prejudice the creditors; or
 - (B) the defaulter's act that would prejudice creditors after the occurrence of the Suspension Event, unless the person who has benefited from such act did not know, at the time of the act, the fact that the Suspension Event has occurred or that the act would prejudice the creditors.
- (ii) An act concerning the extinguishment of debt of the defaulter may be avoided if the value received by the creditor of such debt exceeds the amount of the debt extinguished and 4.4(b)(i)(A) or 4.4(b)(i)(B) is met (to the extent of the part of such excess);
- (iii) A gratuitous act (or an onerous act that would be virtually equal to a gratuitous act) of the defaulter after the Suspension Event or within six months prior to the Suspension Event may be avoided.

(c) Acts of property disposal

Where the defaulter disposes its property and receives a reasonable compensation from the counterparty, the disposition may be avoided if all of the following is met:

- (i) the disposition has the actual risk that the defaulter would conceal, gratuitously convey or otherwise dispose of the property in a manner prejudicial to the creditors ("**Concealment**") by realising real property or otherwise changing the nature or type of property;

- (ii) the defaulter, at the time of the disposition, had the intention of the Concealment of the money or any other property received as compensation; and
- (iii) the counterparty to the disposition, at the time of the disposition, knew that the defaulter had the intention of executing Concealment.

(d) Creation of security interest

An act concerning the creation of security interest for or extinguishment of outstanding debt may be avoided if such act falls within any of the following:

- (i) an act of defaulter after the occurrence of the Insolvency Event, if the counterparty of such act, at the time of the act, knew the occurrence of the relevant Insolvency Event;
- (ii) an act that the defaulter was not obliged to conduct at the time of such act and that the defaulter conducted within 30 days before the defaulter becomes unable to pay its debts as they fall due (*shiharai funou*), unless the creditor did not know, at the time of the act, the fact that it would prejudice other creditors.

4.5 Other reservations and qualifications

- (a) Our advice in this letter may, in some cases, be restricted by the application of statutes of limitations, prescription, limitation period for filing an action, any other court procedures, fraudulent conveyance, or the principle or doctrine of public policy, good moral, or abuse of rights.
- (b) A person who is vested with a discretion under an agreement may be required to exercise that discretion honestly and in good faith for the purposes for which it was conferred, and not capriciously, arbitrarily or unreasonably.
- (c) Any provision in any agreement providing that an opinion, calculation or certification is to be conclusive and binding may be subject to the requirement that such opinion, calculation or certification is made or given honestly, reasonably and in good faith, and a Japanese court may regard any opinion, calculation or certification as no more than *prima facie* evidence of such matter.
- (d) Any provision in any agreement that involves an indemnity or compensation for damages or losses suffered is subject to the discretion of the court, which will decide whether and to what extent a party should be indemnified or compensated.
- (e) We express no opinion on any provision requiring written amendments or waivers insofar as such provision suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon or granted by or between the parties or implied by the course of conduct of the parties.

- (f) Any provision that constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any person may be ineffective.
- (g) Any provision stating that a failure or delay, on the part of any person, in exercising any right or remedy under any agreement shall not operate as a waiver of such right or remedy, may not be effective.
- (h) Japanese legal concepts expressed in English language may not be identical to corresponding concepts described by the equivalent English terms as they exist under the laws of other jurisdictions.
- (i) Our advice is confined solely to the laws of Japan and does not extend to the laws of any other jurisdiction. For the purpose of this letter, we have made no investigation into the laws of any other jurisdiction. Accordingly, we express no opinion with regard to any system of law other than the laws of Japan. We have further assumed that any foreign law that may apply with respect to the transactions and matters contemplated by the Opinion Documents would not affect any of the conclusions stated in this opinion.
- (j) We express no opinion with respect to any property located outside Japan.
- (k) The proceeds from the execution of a judgment expressed in any currency other than Japanese currency may be obtained only in Japanese currency at the exchange rate prevailing at the time of enforcement of judgment.
- (l) Ultimately the question of whether or not any particular action satisfies any provision of law would be decided by the Japanese courts and our views are based on our interpretation of the relevant laws, having regard to appropriate precedents and other research and our view of a reasonable application of that interpretation of the law to the facts stated. It should of course be noted that a court may, for whatever reason, take a different view (whether reasonable or not).
- (m) In this letter, the term "enforceable" will not always be limited to compulsory execution as used in Article 1 of the Civil Execution Act of Japan (Act No. 4 of 1979; as amended) and will also include the fact that, if there is a breach, a claim for damages can be made on the grounds of such breach. We do not express any opinion regarding the possibility that a court will permit the compulsory execution of a certain obligation under the Civil Execution Act with regard to any provision of the Opinion Documents.
- (n) Enforcement of rights may be limited by statutes of limitations, prescription or may be subject to a defence of set-off or counterclaim.
- (o) Any document or agreement written in a language other than Japanese would require a Japanese translation for enforcement or admissibility in evidence before a Japanese court.
- (p) Our advice is given in respect of the specific questions raised by you as set out in paragraph 3. We express no opinion in this advice as to the validity

and enforceability of any provisions of the Opinion Agreements or other Contracts other than the matters on which we advise on in paragraph 3.

- (q) We are not expressing any opinion as to any matters of tax or fact.
- (r) We have not been responsible for advising any party to the Opinion Documents other than LCH for the purpose of this letter, and the delivery of this letter to any person other than LCH to whom a copy of this letter may be communicated does not provide evidence of the existence of any relationship of client and adviser between us and such person.
- (s) This advice is given on the basis that any limitation on the liability of any other advisor to LCH, whether or not we are aware of that limitation, will not adversely affect our position in any circumstances.
- (t) This letter is given on the basis of the laws of Japan in force and applied by Japanese courts at the date of this letter and on the basis that there is no amendment to, or termination or replacement of, any of the Opinion Documents and no change in any of the facts assumed by us for the purposes of giving this letter. It is also given on the basis that we have no obligation to notify any present addressee, future recipient of this opinion or any other person to whom a copy of this letter may be communicated, of any change in the laws of Japan or its application after the date of this letter.

This letter, which shall be construed in accordance with the laws of Japan, is given for the exclusive benefit of the addressee. It may not, without prior written consent, be relied on by any other person. We consent to a copy of this letter being made publicly available on LCH's website and to it being shown to the Bank of England, the U.S. Commodity and Futures Trading Commission, the Federal Reserve, the U.S. Securities and Exchange Commission and/or any counsel appointed by the addressee to advise on matters of the laws of other jurisdictions, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result or otherwise.

Yours faithfully



Baker & McKenzie

Schedule 1
Clearing Membership Agreement

CLEARING MEMBERSHIP AGREEMENT

DATED

LCH.CLEARNET LIMITED

and
("the Firm")

Address of the Firm

THIS AGREEMENT is made on the date stated above

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

WHEREAS:

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

NOW IT IS HEREBY AGREED as follows:-

1 Interpretation and Scope of Agreement

1.1. Unless otherwise expressly stated, in this Agreement:

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

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

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

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

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

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

2 Clearing Membership

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

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

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

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

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

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

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

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

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

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

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

- (h) the granting, withdrawal or refusal of an application for, or the revocation of, a license or authorisation by the Financial Conduct Authority, the Prudential Regulation Authority or membership of any self-regulating organisation, recognised or overseas investment exchange or clearing house (other than the Clearing House) under the Financial Services and Markets Act 2000 or any other body or authority which exercises a regulatory or supervisory function under the laws of the United Kingdom or any other state;
- (i) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the Firm (other than an inspection of a purely routine and regular nature);
- (j) the imposition of any disciplinary measures or sanctions (or similar measures) on the Firm in relation to its investment or other business by any Exchange, regulatory or supervisory authority;
- (k) the entering of any judgment against the Firm under Section 150 of the Financial Services and Markets Act 2000;
- (l) the conviction of the Firm for any offence under legislation relating to banking or other financial services, building societies, companies, credit unions, consumer credit, friendly societies, insolvency, insurance and industrial and provident societies or for any offence involving fraud or other dishonesty;
- (m) the conviction of the Firm, or any subsidiary or holding company of the Firm for any offence relating to money laundering, or the entering of judgment or the making of any order against the Firm in any civil action or matter relating to money laundering;
- (n) any enforcement proceedings taken or order made in connection with any judgement (other than an arbitration award or judgement in respect of the same) against the Firm; and
- (o) any arrangement entered into by the Firm with any other Clearing Member relating to the provision of central counterparty and associated services by the Clearing House of Contracts or transactions entered into by the Firm after the effective date of termination of this Agreement.

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

- (a) the occurrence of any event specified in clause 2.4 (insofar as it is capable of materially affecting him); or
- (b) any disqualification order under the Company Directors Disqualification Act 1986 or equivalent order in overseas jurisdictions.

2.6. The Firm shall give written notice forthwith to the Clearing House of any change in its name, the address of its principal place of business, registered office or UK office.

2.7. The Firm shall give written notice to the Clearing House forthwith upon its becoming aware that any person is to become or cease to be, or has become or ceased to be, a controller of the Firm, and shall in relation to any person becoming a controller of the Firm state:-

- (a) the controller's name, principal business and address;
- (b) the date of the change or proposed change.

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

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

3 Remuneration

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

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

4 Facilities Provided by the Clearing House

4.1. Provision of Central Counterparty Services

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

4.2. Maintenance of Records

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

4.3. Information

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

4.4. Accounts

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

5 Default

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

6 Disclosure of Information

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

7 Partnership

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

8 Term

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

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

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

9 Default Fund

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

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

10 Force Majeure

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

11 The Rulebook

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

12 Notices

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

13 Law

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

14 Service of Process

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

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

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

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for THE FIRM

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

(Signature)

(Print Name and Title)

for **LCH.CLEARNET LIMITED**

LCH.CLEARNET LIMITED

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Schedule 2
Deed of Charge

SECURITY DEED

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THIS SECURITY DEED is dated [*Insert Date of Execution*] and made by way of deed poll by [CLEARING MEMBER] in its capacity as chargor (the "**Chargor**").

WHEREAS:

- (A) In order to facilitate the clearing of certain transactions with LCH.Clearnet Limited (the "**Clearing House**"), the Chargor has entered into one or more agreements with one or more of its clients and may enter into further agreements with such clients and/or one or more agreements with further clients, in each case that govern the terms upon which the Chargor will act as Clearing Member in respect of Client Clearing Business of that client (each such agreement, together with any related collateral, security or margining agreement, a "**Clearing Agreement**").
- (B) The Chargor is executing this Security Deed in order to maximise the ability to move positions corresponding to transactions under the Clearing Agreements to Backup Clearing Members upon the occurrence of an Enforcement Event or to provide for certain receivables to be delivered from the Clearing House to the Clients directly.

It is agreed as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:**

Capitalised terms used but not defined in this Security Deed including in the Recitals shall have the meaning given to them in the LCH Rules. In addition, the following expressions shall have the following meanings:

"**Associated LCH Transactions**" means, in respect of a Client, the Contracts entered into by the Chargor with the Clearing House on behalf of such Client.

"**Authorisation Date**" means the date falling 6 months after 25 October 2013, unless the Clearing House notifies the Chargor that the Authorisation Date will be a date (the "**New Authorisation Date**") other than the then current Authorisation Date, in which case the Authorisation Date will be such New Authorisation Date. For the avoidance of doubt multiple notifications may be made and the New Authorisation Date specified in the last such notification will be the Authorisation Date.

"**Charge**" means the security interest created or expressed to be created by this Security Deed.

"**Charged Assets**" means the assets subject, or expressed to be subject, to the Charge or any part of those assets.

"**Clearing Agreement**" has the meaning ascribed to such term in Recital (A) to this Security Deed.

"**Clearing Default**" means the Chargor becoming a defaulter for the purposes of Rule 4 of the LCH Default Rules.

"Clearing House" has the meaning ascribed to such term in Recital (A) to this Security Deed.

"Client" means each of the clients listed in Schedule 2 to this Security Deed being, in each case, a Clearing Client who is party to a Clearing Agreement. For the avoidance of doubt, an individual Clearing Client may be party to more than one Clearing Agreement with the Chargor (due to such Clearing Client (i) receiving Client Clearing Services from the Chargor in respect or more than one Service and/or (ii) being a Clearing Client in respect of whom the Chargor has opened more than one Client Account relating to a Relevant Client Clearing Business), and in each such capacity the relevant Clearing Client will constitute a separate "Client" for the purposes of this Security Deed and will be separately identified (including with details of the relevant Service and details of the LCH identifier for the relevant Client Account) in Schedule 2 to this Security Deed.

"Effective Date" means the Authorisation Date or the date of this Security Deed, whichever is later.

"Enforcement Event" means the occurrence of a Clearing Default in relation to the Chargor in accordance with the LCH Rules.

"Insolvency Act" means the Insolvency Act 1986.

"LCH Rules" means the rules, regulations, procedures or agreements (including the LCH General Regulations and the LCH Default Rules), applicable to the Chargor and/or Associated LCH Transactions, in each case as published by the Clearing House and as the same may be amended from time to time.

"Liabilities" means all present and future obligations, moneys, debts and liabilities due, owing or incurred by the Chargor to a Client under or in connection with the Transaction Documents.

"LPA" means the Law of Property Act 1925.

"Relevant Account Property" means, in respect of a Client, the Account Balance relating to such Client, as determined by the Clearing House in accordance with the LCH Rules following an Enforcement Event.

"Relevant Clearing Agreement" means, in relation to a Client, the Clearing Agreement to which such Client is a party.

"Relevant Client Clearing Return" means, in respect of a Client, the Client Clearing Entitlement relating to such Client, as determined by the Clearing House in accordance with the LCH Rules following an Enforcement Event.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Transaction Documents" means this Security Deed and the Relevant Clearing Agreement.

1.2 **Construction:**

1.2.1 Unless a contrary indication appears, any reference in this Security Deed to:

- (a) **"assets"** includes present and future properties, revenues and rights of every description;
- (b) the **"Chargor"**, a **"Client"** or any **"party"** shall be construed so as to include its successors in title and permitted transferees;
- (c) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;
- (d) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (e) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (f) the singular includes the plural and vice versa; and
- (g) a provision of law is a reference to that provision as amended or re-enacted.

1.2.2 Clause and Schedule headings are for ease of reference only.

2. **UNDERTAKING TO PAY**

The Chargor undertakes to pay each of its Liabilities when due in accordance with its terms.

3. **SECURITY**

With effect from the Effective Date, the Chargor, with full title guarantee and as security for the payment of all Liabilities, charges absolutely in favour of each Client all its present and future right, title and interest in and to the Relevant Client Clearing Return and the Relevant Account Property.

4. MULTIPLE DEEDS

This Security Deed shall be treated as if it were a separate deed in favour of each of the Clients listed in Schedule 2 to this Security Deed, as if the Chargor had executed a separate deed in favour of each such Client so that this Security Deed confers rights severally in favour of each Client.

5. RESTRICTIONS AND FURTHER ASSURANCE

5.1 Security

The Chargor agrees that it shall not create or permit to subsist any Security over any Charged Assets except for the Charge.

5.2 Distribution of Charged Property

The Chargor hereby acknowledges and agrees that, following the occurrence of a Clearing Default, the Clearing House shall act in accordance with the LCH Rules and any other laws and regulations applicable to it in determining how the Charged Assets are to be distributed and that such action by the Clearing House shall be without prejudice to any protections afforded to it pursuant to the LCH Rules and any such other laws and regulations.

5.3 Margining

The Chargor agrees that, prior to the operation of Clause 13.1, it shall provide margin in respect of any Associated LCH Transactions to the Clearing House on an Individual Segregated Account basis or an Omnibus Segregated Account basis (as may be agreed between the Chargor and the relevant Client) in accordance with the LCH Rules.

6. PAYMENTS

6.1 No Enforcement Event

Subject as otherwise provided in this Security Deed, and for so long as no Enforcement Event has occurred, the Chargor shall be entitled to receive and retain all payments or transfers made to it in respect of the relevant Client Account in accordance with the LCH Rules. For the avoidance of doubt, the Chargor shall not be entitled to deal with the Charged Assets at any time while the Charge is in effect.

6.2 Post Enforcement Event

Following the occurrence of an Enforcement Event, the Client shall be entitled to receive directly from the Clearing House all Charged Assets and payments or transfers made in respect of a Charged Asset.

7. ENFORCEMENT AND REMEDIES

7.1 Enforcement Event

The Security created on the Effective Date shall only be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Security Deed shall only be exercisable, following the occurrence of an Enforcement Event.

7.2 Power of Sale

The statutory power of sale and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Security Deed shall arise on the Effective Date of this Security Deed.

7.3 Section 103 LPA

Section 103 of the LPA shall not apply to this Security Deed.

8. PROVISIONS RELATING TO CLIENT

8.1 Client's Rights

At any time after the occurrence of an Enforcement Event, the Client shall have the rights set out in the Schedule hereto.

8.2 Application of Proceeds

Subject to Clause 13.1, all amounts or assets received or recovered by the Client in the exercise of its rights under this Security Deed shall be applied in the following order: (i) in or towards the payment of the Liabilities in such order as the Client thinks fit, but in any case acting in good faith and in a commercially reasonable manner, and (ii) in payment of any surplus to the Chargor.

8.3 Power of Attorney

The Chargor by way of security irrevocably appoints the Client as its attorney (with full power of substitution), on its behalf and in its name or otherwise, in such manner as the attorney thinks fit, but in any case acting in good faith and in a commercially reasonable manner, to exercise (following the occurrence of an Enforcement Event only) any of the rights conferred on the Client in relation to the Charged Assets or under the LPA or the Insolvency Act. The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 8.3.

9. NOTIFICATION OF NEW AUTHORISATION DATE

- 9.1 The Chargor agrees that the Clearing House may notify the Chargor of a New Authorisation Date by publishing a notification on the Clearing House's website.
- 9.2 The Chargor agrees that notice of a New Authorisation Date will be deemed to have been delivered to the Chargor upon the publication of a notice of such New Authorisation Date on the Clearing House's website.

10. AMENDMENTS TO THE SECURITY DEED

The Chargor may from time to time amend or revoke the terms of this Security Deed without the Client's consent, provided, however, that the Chargor undertakes:

- 10.1 not to amend or revoke this Security Deed without the prior written consent of the Clearing House; and
- 10.2 to amend this Security Deed from time to time in order to reflect such changes as may be prescribed by the Clearing House to the "Security Deed" (as defined in the LCH Rules, and upon which this Security Deed is based) from time to time in accordance with the LCH Rules.

11. ADDITIONAL CLIENTS

The Chargor may, after the date of this Security Deed, grant a charge on the terms of this Security Deed to one or more additional clients. On each occasion when the Chargor wishes to exercise this right, it will execute a further security deed substantially in the form set out in Schedule 3 to this Security Deed (an "**Additional Security Deed**") and will deliver to the Clearing House a copy of such Additional Security Deed, including an annex which sets out the details of the relevant client(s). For the avoidance of doubt, an Additional Security Deed may be given in respect of one or more clients.

12. SAVING PROVISIONS

12.1 **Continuing Security**

Subject to Clause 13, the Charge is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

12.2 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is made by the Client in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Chargor and the Charge shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

12.3 Waiver of Defences

Neither the obligations of the Chargor under this Security Deed nor the Charge will be affected by an act, omission, matter or thing which, but for this Clause 12.3, would reduce, release or prejudice any of its obligations under any Transaction Document or the Charge (without limitation and whether or not known to the Chargor or the Client) including:

- 12.3.1 any time, waiver or consent granted to, or composition with, the Chargor or other person;
- 12.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any affiliate;
- 12.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 12.3.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Transaction Document or any other document or security; or
- 12.3.5 any insolvency or similar proceedings.

12.4 Immediate Recourse

The Chargor waives any right it may have of first requiring the Client (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Security Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

12.5 Additional Security

The Charge is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by the Client.

13. DISCHARGE OF SECURITY

13.1 Final Redemption

Immediately upon there no longer being any Liabilities remaining (or, if earlier, immediately upon it no longer being possible for an Enforcement Event to occur), the Client shall be deemed to have immediately released, reassigned or discharged (as appropriate) the Charged Assets from the Charge and therefore:

- 13.1.1 the Chargor may retain for its own account; and

13.1.2 the Client shall therefore promptly pay or transfer to the Chargor,

any amounts or other assets received by such party from the Clearing House in respect of the Charged Assets. For the avoidance of doubt, it is acknowledged that the Chargor's rights under this Clause 13 shall constitute an equity of redemption (and therefore a proprietary interest to the extent of such equity of redemption) in the Charged Assets and any amounts or other assets the subject of such rights shall be returned by the Client to the Chargor.

13.2 Consolidation

Section 93 of the LPA shall not apply to the Charge.

14. MISCELLANEOUS PROVISIONS

14.1 Payments

All payments by the Chargor under this Security Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as the Client may direct.

14.2 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Client any right or remedy under this Security Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Security Deed are cumulative and not exclusive of any rights or remedies provided by law.

14.3 Partial Invalidity

If, at any time, any provision of this Security Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.4 Governing Law

This Security Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

14.5 Jurisdiction

In relation to any proceedings, each party to this Security Deed irrevocably submits to the exclusive jurisdiction of the courts of England and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum. Each such submission is made for the benefit of the other party and shall not affect the right of any party to

take proceedings in any other court of competent jurisdiction nor shall the taking of proceedings in any court of competent jurisdiction preclude any party from taking proceedings in any other court of competent jurisdiction (whether concurrently or not) unless precluded by law.

14.6 **[Agent for Service of Process; Chargor**

The Chargor hereby irrevocably appoints [Name of Agent] of [Address in England] to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent ceases to be such agent for service of process, the Chargor shall forthwith appoint a new agent for service of process in England. Nothing in this Security Deed shall affect the right to serve process in any other matter permitted by law.]

This Security Deed has been delivered on the date stated at the beginning of this Security Deed.

[CHARGOR]

[INSERT APPROPRIATE SIGNATURE BLOCK]

SCHEDULE 1 RIGHTS OF CLIENT

Following the occurrence of an Enforcement Event, the Client shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Client thinks fit, but in any case, acting in good faith and in a commercially reasonable manner, and either alone or jointly with any other person:

1. **Take possession:** to take possession of, get in and collect the Charged Assets and to require payment to it of revenues deriving therefrom;
2. **Deal with Charged Assets:** to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);
3. **Borrow money:** to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charge or otherwise);
4. **Rights of ownership:** to manage and use the Charged Assets and to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Client would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Assets;
5. **Claims:** to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Assets;
6. **Legal actions:** to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets;
7. **Redemption of Security:** to redeem any Security (whether or not having priority to the Charge) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets; and
8. **Other powers:** to do anything else it may think fit for the realisation of the Charged Assets or incidental to the exercise of any of the rights conferred on the Client under or by virtue of any Transaction Document, the LPA or the Insolvency Act.

SCHEDULE 3 ADDITIONAL SECURITY DEED

THIS SECURITY DEED is dated [*Insert Date of Execution*] and made by way of deed poll by [CLEARING MEMBER] in its capacity as chargor (the "**Chargor**").

WHEREAS:

- (A) In order to facilitate the clearing of certain transactions with LCH.Clearnet Limited (the "**Clearing House**"), the Chargor has entered into one or more agreements with one or more clients (each such agreement, a "**Clearing Agreement**").
- (B) The Chargor has previously entered by deed poll into a security deed dated [.] in favour of certain of its clearing clients (such security deed as amended from time to time, after as well as before the date of this Security Deed, the "**Original Security Deed**").
- (C) The Chargor is executing this Security Deed in order to maximise the ability of one or more additional Client(s) to move positions corresponding to transactions under the Clearing Agreements to Backup Clearing Members upon the occurrence of an Enforcement Event or to provide for certain receivables to be delivered from the Clearing House to the Clients directly.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

- (a) For the purposes of this Security Deed, the following defined terms shall have the following meanings:

"**Client**" means each of the additional client(s) listed in the Annex to this Security Deed. For the avoidance of doubt, an individual Clearing Client may be party to more than one Clearing Agreement with the Chargor (due to such Clearing Client (i) receiving Client Clearing Services from the Chargor in respect or more than one Service and/or (ii) being a Clearing Client in respect of whom the Chargor has opened more than one Client Account relating to a Relevant Client Clearing Business), and in each such capacity the relevant Clearing Client will constitute a separate "Client" for the purposes of this Security Deed (save where the relevant Clearing Client in the relevant capacity is already a client for the purposes of the Original Security Deed or a another security deed entered into prior to the date of this Security Deed on substantially the same terms as this Security Deed) and will be separately identified (including with details of the relevant Service and details of the LCH identifier for the relevant Client Account) in the Annex to this Security Deed.

"**Effective Date**" means the Authorisation Date or the date of this Security Deed, whichever is later;

- (b) Capitalised terms used but not defined in this Security Deed including in the Recitals shall have the meaning given to them in the Original Security Deed.

1.2 Construction:

- (a) Unless a contrary indication appears, any reference in this Security Deed to:
 - (i) "**assets**" includes present and future properties, revenues and rights of every description;
 - (ii) the "**Chargor**", a "**Client**" or any "**party**" shall be construed so as to include its successors in title and permitted transferees;
 - (iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;
 - (iv) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (v) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vi) the singular includes the plural and vice versa; and
 - (vii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Clause and Schedule headings are for ease of reference only.

2. OPERATIVE PROVISIONS

With effect from the Effective Date, this Security Deed is entered into on the same terms as the Original Security Deed, and each Client listed in the Annex to this Security Deed shall have the same rights and protections (subject to the same conditions and qualifications) as a "Client" under the Original Security Deed.

3. MULTIPLE DEEDS

The Chargor agrees that, where there is more than one Client listed in the Annex to this Security Deed, this Security Deed shall be treated as if it were a separate deed in favour of each such Client, as if the Chargor had executed a separate deed in favour of each such Client.

This Security Deed has been delivered on the date stated at the beginning of this Security Deed.

[CHARGOR]

[INSERT APPROPRIATE SIGNATURE BLOCK]

Schedule 3
Security Deed

SCHEDULE 3

ADDITIONAL SECURITY DEED

THIS SECURITY DEED is dated [*Insert Date of Execution*] and made by way of deed poll by [CLEARING MEMBER] in its capacity as chargor (the "**Chargor**").

WHEREAS:

- (A) In order to facilitate the clearing of certain transactions with LCH Limited (the "**Clearing House**"), the Chargor has entered into one or more agreements with one or more clients (each such agreement, a "**Clearing Agreement**").
- (B) The Chargor has previously entered by deed poll into a security deed dated [-] in favour of certain of its clearing clients (such security deed as amended from time to time, after as well as before the date of this Security Deed, the "**Original Security Deed**").
- (C) The Chargor is executing this Security Deed in order to maximise the ability of one or more additional Client(s) to move positions corresponding to transactions under the Clearing Agreements to Backup Clearing Members upon the occurrence of an Enforcement Event or to provide for certain receivables to be delivered from the Clearing House to the Clients directly.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

- (a) For the purposes of this Security Deed, the following defined terms shall have the following meanings:

"**Client**" means each of the additional client(s) listed in the Annex to this Security Deed. For the avoidance of doubt, an individual Clearing Client may be party to more than one Clearing Agreement with the Chargor (due to such Clearing Client (i) receiving Client Clearing Services from the Chargor in respect or more than one Service and/or (ii) being a Clearing Client in respect of whom the Chargor has opened more than one Client Account relating to a Relevant Client Clearing Business), and in each such capacity the relevant Clearing Client will constitute a separate "Client" for the purposes of this Security Deed (save where the relevant Clearing Client in the relevant capacity is already a client for the purposes of the Original Security Deed or a another security deed entered into prior to the date of this Security Deed on substantially the same terms as this Security Deed) and will be separately identified (including with details of the relevant Service and details of the LCH identifier for the relevant Client Account) in the Annex to this Security Deed.

"**Effective Date**" means the Authorisation Date or the date of this Security Deed, whichever is later;

- (b) Capitalised terms used but not defined in this Security Deed including in the Recitals shall have the meaning given to them in the Original Security Deed.

1.2 **Construction:**

- (a) Unless a contrary indication appears, any reference in this Security Deed to:
 - (i) "**assets**" includes present and future properties, revenues and rights of every description;
 - (ii) the "**Chargor**", a "**Client**" or any "**party**" shall be construed so as to include its successors in title and permitted transferees;
 - (iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;
 - (iv) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (v) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vi) the singular includes the plural and vice versa; and
 - (vii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Clause and Schedule headings are for ease of reference only.

2. **OPERATIVE PROVISIONS**

With effect from the Effective Date, this Security Deed is entered into on the same terms as the Original Security Deed, and each Client listed in the Annex to this Security Deed shall have the same rights and protections (subject to the same conditions and qualifications) as a "Client" under the Original Security Deed.

3. **MULTIPLE DEEDS**

The Chargor agrees that, where there is more than one Client listed in the Annex to this Security Deed, this Security Deed shall be treated as if it were a separate deed in favour of each such Client, as if the Chargor had executed a separate deed in favour of each such Client.

This Security Deed has been delivered on the date stated at the beginning of this Security Deed.

[CHARGOR]

[INSERT APPROPRIATE SIGNATURE BLOCK]

