Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
1155 René-Lévesque Blvd. W.
41st Floor
Montréal, QC Canada H3B 3V2

Main: 514 397 3000
Fax: 514 397 3222
www.stikeman.com

Sterling Dietze
Direct: 514-397-3076
E-mail: sdietze@stikeman.com

BY MAIL AND ELECTRONIC DELIVERY

July 31, 2018

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

Dear Sirs/Mesdames:

Re: Membership, Insolvency, Security, Set-off & Netting and Client Clearing - Quebec Law

You have asked us to provide advice in respect of the laws of Quebec and the federal laws of Canada in response to certain specific questions raised by LCH Limited ("**LCH**") in relation to membership, insolvency, security, set-off and netting, and client clearing. The relevant questions are set out in full in Sections 3 and 4 of this letter, together with the corresponding responses. In order to avoid duplication of analysis, we will refer to sections of the correlative LCH opinion of our Toronto office (the "**LCH Federal/Ontario Law Opinion**") as applicable to our analysis and responses here. Canadian federal laws addressed in the LCH Federal/Ontario Law Opinion apply in Quebec with respect to proceedings brought in Quebec. Terms not otherwise defined in this letter shall have the meaning given to them in the Instructions, Rulebook (as defined below) or the LCH Federal/Ontario Law Opinion. This letter updates and supersedes our opinion letter dated June 12, 2014.

1. TERMS OF REFERENCE

1.1 Our advice is given in respect of Clearing Members which are Canadian banks and all references to a "Canadian Clearing Member" in this letter should be construed accordingly. For these purposes a reference to a "Canadian bank" is a bank incorporated under the *Bank Act* (Canada). See Schedule I and Schedule II

of the Bank Act for the list of banks (including subsidiaries of foreign banks) incorporated in Canada[1].

1.2 We confirm that our advice is applicable to the Services (as defined in the Instructions).

1.3 The Quebec *Autorité des marchés financiers* has recognized LCH as a clearing house under section 12 of the *Derivatives Act* (Quebec) ("QDA") (decision N° 2014-PDG-0082 dated July 28, 2014)[2].

1.4 SwapClear has been designated as a designated derivatives clearing and settlement system by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act* (Canada) ("PCSA"). The Other Services (defined below) are not so designated. LCH is not designated as a securities and derivatives clearing house under section 13.1 of the PCSA.

1.5 In this advice:

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

(b) "**AMF**" means the Quebec Autorité des marchés financiers;

(c) "**Arrangements**" means the Collateral Arrangements and the Default Arrangements;

(d) "**Clearing Membership Agreement**" means an agreement entered into between LCH and the Canadian Clearing Member which is substantially in the form set out in Schedule 1;

(e) "**Client Contracts**" has the meaning given to such term in the Instructions (defined in paragraph 1.8);

(f) "**Client Transactions**" has the meaning given to such term in the Instructions (defined in paragraph 1.8);

(g) "**Collateral**" means Securities (as such term is defined in the Deed of Charge) lodged by the Canadian Clearing Member with LCH pursuant to the Deed of Charge and includes the Charged Property (as defined in the Deed of Charge);

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

---

[1] We understand that currently, only Canadian banks are Clearing Members and, consequently, our advice is restricted to those entities.

[2] See footnote 4 below.

(i) "**Deed of Charge**" means the deed of charge entered into between a Clearing Member and LCH which is substantially in the form of the Deed of Charge set out in Schedule 2, except that we are assuming that it will be amended to add the underlined words to section 3 – "charges and assigns absolutely..." or words to like effect;

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

(k) "**Other Services**" means the Services other than SwapClear;

(l) "**Parties**" means LCH and a single Canadian Clearing Member to which this advice applies, and "**Party**" means either of them;

(m) "**Rulebook**" means the General Regulations, Procedures, Default Rules, Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual published on the LCH website as of April 26, 2016;

(n) "**Security Deed**" means the security deed entered into by a Clearing Member which is substantially in the form of the Security Deed set out in Schedule 3;

(o) "**Settlement Finality Regulations**" means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

(p) "**this jurisdiction**" means the province of Quebec, Canada when referring to a geographical location and Quebec provincial law and Canadian federal law applicable in the Province of Quebec when referring to the laws of this jurisdiction; and

(q) unless the context otherwise requires, a reference to a "paragraph" is a reference to a paragraph in this advice.

1.6 For the liquidation and receivership insolvency proceedings ("Insolvency Proceedings") that could apply to a Canadian bank, see the LCH Federal/Ontario Law Opinion.

1.7 For the purposes of preparing our advice we have only reviewed the following documents (the "Opinion Documents"):

1.7.1 the Rulebook;

1.7.2 the Clearing Membership Agreement;

1.7.3 the Deed of Charge; and

1.7.4 the Security Deed.

1.8 We have reviewed the Opinion Documents in connection with the instructions to counsel provided to us by e-mail on April 11, 2016 (the "Instructions") and the Services Description (as defined in the original Instructions) which we received on December 9, 2013.

1.9 Our advice is given in respect of the specific questions raised by you as set out in Sections 3 and 4. We have assumed that any matters which are or could be material in the context of the delivery of this opinion letter have been disclosed to us.

1.10 Our advice is given in respect of obligations (a) arising under contracts to which LCH is a party, which have been duly registered by LCH; (b) which are legal, valid, binding and enforceable; and (c) which are mutual between the Parties in the sense that each Party is personally and solely liable as regards obligations owing by it and is the sole and beneficial owner of obligations owed to it. Accordingly and without limitation, no opinion is expressed where a Canadian Clearing Member is acting as agent for another person, or is a trustee, or in respect of which a Canadian Clearing Member has a joint interest (including partnership) or in respect of which a Canadian Clearing Member's rights or obligations or any interest therein have been assigned, charged, attached, garnished or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law.

1.11 This advice is given on the basis that LCH is not itself insolvent for the purposes of any insolvency law and is not subject to any insolvency proceeding in any jurisdiction.

1.12 This advice relates solely to matters of Quebec law and Canadian federal law applicable in the Province of Quebec (as in force at the date of this opinion) and does not consider the impact of any laws (including insolvency laws) other than the laws of this jurisdiction, even where, under the laws of this jurisdiction, any foreign law falls to be applied. This advice and the opinions given in it are governed by Quebec law and relate only to Quebec and Canadian federal law as applied by the Quebec courts or, where expressly stated, a duly constituted arbitral tribunal with its seat in Quebec as at today's date. We assume no duty to update this opinion letter or inform LCH or any other person to whom a copy of this opinion letter may be communicated of any change in the law of this jurisdiction (including, in particular, applicable case law), or the legal status of any party to the Services, or any other circumstance that occurs, or is disclosed to us, after the date on which this opinion letter is given, which might have an impact on the opinions given in this opinion letter. Ontario provincial law issues are dealt with in a separate memorandum provided by our Toronto office dated June *, 2018.

1.13 We are not expressing any opinion as to any matters of fact.

1.14 We do not opine on the enforceability of any final sum certified as payable to LCH (as described at the end of our response in paragraph 3.2.6) and we do not express any view as to the enforceability of the Default Arrangements in relation to any action which LCH may seek to take outside this jurisdiction.

1.15 We have not been responsible for advising any party to the Opinion Documents other than LCH for the purposes of this opinion letter and the delivery of this opinion letter to any person other than LCH to whom a copy of this opinion letter may be communicated does not evidence the existence of any relationship of client and adviser between us and such person.

1.16 For the purpose of issuing this opinion letter, we have made no investigation or verification, and we express no opinion, express or implied, with respect to:

1.16.1 any liability to tax as a result of or in connection with the Services, or the tax treatment of any Contract, the tax position of any party to the Opinion Documents or whether LCH is carrying on business in Canada in connection with the Services for tax purposes;

1.16.2 any matters of fact or the reasonableness of any statements of opinion or intention expressed in relation to any Service, including any facts, events or circumstances arising as a result of the execution of any related documents by the Parties or the performance of the Parties' obligations deriving therefrom; and

1.16.3 any prudential treatment of any Canadian Clearing Member's exposure to LCH (or any part thereof).

1.17 Although Quebec law does not always use the same terms as does the common law in its rules governing security over "movable property" (similar to common law "personal property"), in the interests of simplicity, we will generally use the term "security interest" to refer to a security interest over personal property that would be considered to be a "movable security" for the purposes of Quebec conflicts of laws rules, and "perfection" to mean rendering a security interest opposable to third parties (generally termed "publication" in Quebec). We shall refer to "intangible" property under Quebec law as incorporeal movable property since "intangible" is defined in the *Personal Property Security Act* (Ontario) in a specific manner (which excludes securities, security entitlements and futures contracts) and there is no equivalent definition or similar concept in the analogous Quebec legislation.

2. ASSUMPTIONS

We assume the following:

2.1 That each Party is duly incorporated and has the capacity, power and authority under all applicable laws to enter into the Opinion Documents and each Contract and to perform its obligations under the Opinion Documents and each Contract.

2.2 That each Party has taken all necessary steps to enter into, execute, deliver, be bound by and perform the Opinion Documents and each Contract, and that such steps have not been revoked or superseded.

2.3 That each Opinion Document and each Contract are legal, valid, binding and enforceable in accordance with its terms under the expressly chosen governing law.

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

2.5 That the Agreements are entered into by the Canadian Clearing Member prior to the formal commencement of any Insolvency Proceeding in respect of that Canadian Clearing Member or any analogous proceeding commenced outside of this jurisdiction.

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

2.7 That the Canadian Clearing Member is not a "bridge institution" as defined in the CDIC Act.

2.8 That the contractual arrangements and obligations established pursuant to and by the Arrangements and each Contract are not capable of being avoided for any reason other than as mentioned in paragraphs 3.2.4 and below.

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

2.10 The Opinion Documents have been entered into, and each of the Contracts referred to in them are carried out, by each of the parties to them in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.11 That none of the balances held in a Client Account opened by a Canadian Clearing Member with LCH in respect of one or more of its Clearing Clients will have the benefit of any client money protections provided for by any applicable law.

2.12 That the Canadian Clearing Members and LCH have properly executed the Agreements and that each Agreement is executed by the relevant parties to it in substantially the same form as the Agreements reviewed by us as described in paragraph 1.7 above and LCH's Rulebook (which is incorporated as part of the Clearing Membership Agreement).

2.13 All acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreements under the laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

2.14 Securities that LCH receives as Collateral and holds are recorded in fungible book-entry form in an account maintained by a financial intermediary (which could be a central securities depositary ("CSD") or a custodian, nominee or other form of financial intermediary, in each case an "Intermediary") in the name of LCH. LCH's Intermediary may itself hold its interest in the relevant securities indirectly with another Intermediary or directly in certificated or uncertificated form, and that account with LCH's Intermediary is not located in Canada (the "relevant account").[3] LCH maintains accounts for each Clearing Member and such accounts are located in England on the basis that English law is the governing law of the Clearing Membership Agreement.

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

2.16 Until such time as the security interest created by the Deed of Charge has been released, the Securities will be held by LCH in accordance with the terms of the Opinion Documents.

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

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

2.19 That the Security Deed would be interpreted under English law as creating an assignment of the Account Balance and Clearing Entitlement by the Canadian Clearing Member to the Client.

3. OPINIONS

On the basis of the foregoing terms of reference and assumptions and subject to the reservations set out in Section 5 and the qualifications set out in Section 6 below, we make the following statements of opinion.

3.1 Membership

3.1.1 Are there any statutory limitations on the capacity of, or specific regulatory requirements associated with, any Canadian Clearing Member entering into the LCH Agreements

[3] For Quebec law purposes, an account would be located in England or Wales or the US if the expressly stated "securities intermediary's jurisdiction", as we have defined such term for Quebec, was England or Wales or the US, as the case may be, or, in the absence of such designation, if the governing law of the account agreement was England or Wales or the US, as the case may be. See the body of this opinion for further detail on determining the "securities intermediary's jurisdiction".

(including for the purpose of granting of security under the Deed of Charge)?

See the analysis and response in the LCH Federal/Ontario Law Opinion.

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

There are a number of contexts in which it is relevant to know whether an entity is domiciled, resident or carrying on business in Canada. These include tax, extra-provincial registration statutes, various licensing statutes and, to the extent applicable, the carrying on business prohibition in the *Bank Act*. While each of these must be approached individually, it is generally not the case that the mere fact that a person, not otherwise resident in Canada or carrying on business here, enters into a contract with a resident of Canada constitutes the conduct of a business here, provided that the contract is entered into outside of Canada and the contract is performed by such person outside of Canada.

The QDA prohibits any regulated entity from carrying on derivatives activities in Quebec unless recognized by the AMF as, among other things, a clearing agency (s.12). The AMF has granted recognition as a clearing house to LCH and has permitted it to offer SwapClear, RepoClear, Nodal and ForexClear services in Quebec.[4]

Designations under the *Payment Clearing and Settlement Act* (Canada) are considered in paragraph 3.1.2 of the LCH Federal/Ontario Law Opinion.

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

See the analysis and response in the LCH Federal/Ontario Law Opinion.

3.1.4 Are there any formalities to be complied with upon entry into of any of the LCH Agreements and, if so, what is the effect of a failure to comply with these?

No. (Pursuant to Quebec law, contract law formalities are governed by the law of the place where the contract was made but the form of a contract will also be valid if it is made in the form prescribed by the law governing the content of the contract, among other things.) There are no registration or stamp taxes that apply to the execution of documents.

---

[4] http://www.lautorite.qc.ca/files/pdf/bourses-oar-chambres/decision_2014-pdg-0082_lch.pdf.

3.1.5 Would the courts of this jurisdiction uphold the contractual choice of law and jurisdiction set out in Regulation 51?

Choice of Law

Generally, a contractual choice of law will be recognized and applied by a Quebec court to contract law issues, such as contract formation, interpretation and remedies. A choice of law is only ever relevant to issues that, under the laws of a province, are to be determined in accordance with the chosen law of the contract, meaning essentially foundational contract law. By foundational contract law, we mean the contractual matters that would be governed by the law of the contract such as what contract law principles are necessary to form a contract (*e.g.* capacity (although the governing law for capacity may in fact be the law of the domicile or incorporating jurisdiction of the party), offer, acceptance, cause (similar to common law consideration), principles under which consent to a contract may be held to be vitiated such as duress, error (mistake), etc. as well as principles of interpretation and remedies for breach of contract damage principles.

Consequently, with respect to matters of foundational contract law, in any proceeding in a Quebec Court for the enforcement of the Agreements, the Quebec Court would apply the chosen law, subject to the exceptions set out below.

There are certain situations in which a Quebec Court might not apply the parties' choice of law to contract law issues, which are set out in Section 5 of this opinion.

Submission to Jurisdiction

The submission to the jurisdiction of the English courts in Regulation 51 would be sufficient to confer jurisdiction on the English courts for purposes of recognizing and enforcing a judgment of the English courts and in that sense a Quebec Court would recognize and give effect to the submission. A Quebec Court will not have jurisdiction to hear a dispute relating to a specified legal relation if the parties have agreed to submit, exclusively, this specified legal relation to the courts of another jurisdiction unless the defendant submits to the jurisdiction of the Quebec Court. However, even though a Quebec Court has no jurisdiction to hear a dispute, it may hear it, if the dispute has a sufficient connection with Quebec and (i) where proceedings cannot possibly be instituted outside Quebec or (ii) the institution of such proceedings outside Quebec cannot reasonably be required.

3.1.6 Will the courts of this jurisdiction uphold the judgment of the English courts or an English arbitration award?

Judgments

In Quebec, an action can be commenced in a court of competent jurisdiction to recognize and enforce a judgment of a court in another jurisdiction. In addition, Quebec has enacted legislation to establish a more streamlined process to recognize and enforce judgments from the courts of certain other jurisdictions, including the U.K. This legislation provides for very similar requirements and defences to the common law which applies to enforcement by action. This opinion explains the requirements for enforcement by action in Quebec.

A Quebec Court would recognize a judgment based upon a final and conclusive *in personam* judgment of a court exercising jurisdiction obtained against the party with respect to a claim arising out of the Agreements without reconsideration of the merits, provided that certain requirements were met and subject to certain defences that may be available.

The requirements are the following:

- The judgment must be for a sum certain in money. If it is not, it may nevertheless be enforceable without a reconsideration of the merits. However, the law on this issue is in an early stage of development, so no certain opinion can be expressed with respect to non-money judgments. Non-money judgments must be considered on a case by case basis.
- The foreign court rendering such judgment must have had jurisdiction over the parties and the cause of action, as determined by the *Civil Code of Québec* ("**Civil Code**" or "**CCQ**"). The contractual election of the party to the jurisdiction of the court is sufficient to confer jurisdiction for this purpose.
- The motion for recognition and declaration for enforcement of such judgment, if still enforceable pursuant to the laws of the jurisdiction where rendered, is commenced in the Province of Quebec within the applicable prescription (limitation) period.
- The Quebec Court will not recognize a judgment if it is under appeal or is not final or enforceable at the place where it was rendered and in general if the decision is subject to ordinary remedy in that jurisdiction.
- The *Currency Act* (Canada) requires judgments to be rendered only in Canadian dollars. The legislation governing the courts in Quebec contains mechanisms for the conversion of foreign currency amounts at the date of payment under the judgment. Pursuant to the CCQ, where a foreign decision orders a debtor to pay a sum of money expressed in foreign currency, a Quebec Court converts the sum into Canadian currency at the rate of exchange prevailing on the day the decision became enforceable at the place where it was rendered. The determination of interest payable under a foreign decision is governed by the law of the authority that rendered the decision until its conversion.
- An action in the Quebec Court on the judgment may be affected by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

A judgment debtor can also raise certain defences, which are the following:

- Such judgment was rendered in contravention of the fundamental principles of procedure or any order made under the *Competition Act* (Canada) or the *Foreign Extraterritorial Measures Act* (Canada). These statutes are unlikely to apply to a judgment enforcing the Opinion Documents.
- There were proceedings pending in the Province of Quebec between the same parties, based on the same facts and having the same object but no judgment had yet been rendered in the Province of Quebec.

- Such judgment enforces obligations arising from the taxation laws of a foreign jurisdiction, unless there is reciprocity.
- Such judgment enforces obligations arising from a non-Canadian expropriatory, penal or other public law.
- The judgment has already been satisfied or is void or voidable under the law of the jurisdiction granting the judgment.
- The outcome of such judgment is manifestly inconsistent with public order as understood in international relations ("**international public order**").
- The judgment has already been satisfied or is void or voidable under the law of the jurisdiction granting the judgment.
- If the judgment was rendered by default, the plaintiff must prove that the act of procedure initiating the proceedings was duly served on the defendant, and a Quebec Court may refuse recognition or enforcement of the judgment if the defendant proves that, owing to the circumstances, it was unable to learn of the act of procedure or was not given sufficient time to offer it defence.

Arbitration Awards

Canadian law is very receptive to arbitration, including the enforcement of arbitral awards. The CCQ and the *Code of Civil Procedure* (Quebec) provide the rules with respect to the recognition of a foreign arbitral award, such rules being based upon the UNCITRAL Model law. A Quebec court would recognize a binding commercial arbitral award granted by an arbitrator or panel of arbitrators pursuant to an arbitration conducted in another jurisdiction if:

(a) the party applying for enforcement of the award supplies the court which would have had competence in Quebec to decide the matter in the dispute submitted to the arbitrators with the original or a copy of (1) the arbitration award and (2) the arbitration agreement. These originals or copies must be accompanied by a translation certified in Quebec of these documents if they are drawn up in a language other than English or French; and

(b) the Canadian Clearing Member against whom it is sought to enforce the award did not furnish proof to the court that:

(1) one of the parties did not have the capacity to enter into the arbitration agreement;

(2) the arbitration agreement is invalid under the law chosen by the parties or, failing any indication in that regard, under the law of the place where the award was made or the measure decided;

(3) the procedure for the appointment of an arbitrator or the arbitration procedure was not in accordance with the arbitration agreement or, failing such an agreement, with the law of the place where the arbitration proceedings were held;

(4) the party against which the award or the measure is invoked was not given proper notice of the appointment of an arbitrator or of

the arbitration proceedings, or it was for another reason impossible for that party to present its case;

(5) the award pertains to a dispute not referred to in or covered by the arbitration agreement, or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not recognized and declared enforceable if it can be dissociated from the rest; or

(6) the award or measure has not yet become binding on the parties or has been annulled or stayed by a competent authority of the place where or under whose law the arbitration award was made or the measure decided.

(c) the court did not find that:

(i) the matter in dispute cannot be settled by arbitration in Quebec, or

(ii) the award is contrary to the public order of Quebec.

The *Code of Civil Procedure* allows the enforcing court to postpone its decision in respect of recognition and execution of an arbitration award (with power to grant security against the party requesting the adjournment) if there is an application pending in the country in which the award was made or pursuant to which law the award was made to set aside or suspend the award.

3.1.7 Are there any "public policy" considerations that that the courts of this jurisdiction may take into account in determining matters related to choice of law and/or the enforcement of foreign judgments?

International public order (similar to public policy in common law) is a quite narrow concept in terms of the exception to the application of governing law or enforcement of a foreign judgment. It must at least violate some fundamental principle of justice, some prevalent conception of good morals or some deep-rooted tradition rooted in international law.

In bankruptcy proceedings, there may be policy considerations that prevent the enforcement of certain types of contracts. A contract that provides for the appropriation of assets of an insolvent entity for less than fair value may offend this bankruptcy policy.

A Quebec Court will not enforce a judgment of a foreign court that is contrary to international public order. Again this is a narrow concept.

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

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

See the analysis and response in the LCH Federal/Ontario Opinion.

3.2.2 *Would the Deed of Charge be effective in the context of Insolvency Proceedings or Reorganization Measures in respect of a Canadian 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 Canadian Clearing Member under the Deed of Charge?*

Effectiveness of Deed of Charge in Context of Insolvency Proceedings or Reorganization Measures

Pursuant to the Deed of Charge, the Canadian Clearing Member agrees to grant, with full title guarantee, in favour of LCH a first fixed security over certain specified Securities. The Securities are rendered subject to the charge by submission of the appropriate details, as provided at Section 4 of the LCH Procedures, by the Canadian Clearing Member to LCH, and by the delivery of securities matching the description to a designated securities account maintained in the name of LCH.

In order to be effective, in the context of an Insolvency Proceeding, Reorganization Measure or otherwise, LCH must have a valid and properly perfected first priority security interest in the Collateral.

The Deed of Charge would be characterized as a "movable security" for Quebec movable security (personal property security) conflict of law purposes. However, Quebec's internal law is much more formalistic in its approach to security interest agreements than are the common law jurisdictions with personal property security statutes.

Conflict of Laws Issues

In considering the steps necessary to create and protect the security interest, the first inquiry is to what extent Quebec law would govern these issues. As we understand it, the collateral subject to the Deed of Charge would be Securities delivered to LCH by or on behalf of the Canadian Clearing Member and held in an LCH account at a securities depository.

The CCQ sets out specific conflict of laws rules for validity, perfection (publication) and priority of security interests in securities[5] and security entitlements. Although the term "security entitlements" is not defined in *An Act respecting the transfer of securities and the establishment of security entitlements* (Quebec) (the "**Quebec STA**" or "**QSTA**"), the QSTA specifies at section 13 that a security entitlement is established when a security or other financial asset is, or is to be, credited to a securities account maintained by a securities intermediary. Security entitlements are basically rights with respect to securities and other financial assets (including credit balances) held by securities intermediaries in securities accounts (where the parties have not agreed that

[5] Securities are defined as shares or similar participations in an issuer and obligations of an issuer.

such assets will not be considered to be financial assets). Thus, LCH will have a security entitlement to securities and other financial assets that it holds in accounts with an Intermediary. Consequently, under the CCQ, the validity, perfection and priority of the security interest in such securities and other financial assets are governed by the law of the "securities intermediary's jurisdiction"[6] at the time of creation (in the case of validity) of the security interest or at the time the issue is being determined (in the case of perfection and priority) (Arts. 3108.7, 3108.8 CCQ).

The securities intermediary's jurisdiction is determined in accordance with the rules set out in the QSTA. Those rules specify a number of alternatives for determining the securities intermediary's jurisdiction applied in the following order:

(i) the jurisdiction specified as the law applicable to the matters set out at Art. 3108.7 of the CCQ including the acquisition of a security entitlement from a securities intermediary for the purpose of Quebec law in the securities account agreement between the intermediary and its entitlement holder (*e.g.* the agreement between LCH and its depository with respect to the account in which LCH holds the securities);

(ii) the expressly stated governing law of the securities account agreement;

(iii) if the securities account agreement expressly provides that the securities account is maintained at an office in a particular jurisdiction, then that jurisdiction;

(iv) the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located; or

(v) the jurisdiction where the decision-making centre of the securities intermediary is located.[7]

For security entitlements held by an intermediary outside of Quebec (whether securities or cash that may be credited to a securities account), Quebec law would not govern the validity, perfection or priority of the security interest in such property.

LCH is itself a "securities intermediary" since it is designated by the Bank of Canada under section 4 of the PCSA and it is a securities intermediary under the QSTA both because its activities bring it within the definition of "securities intermediary" in section 8 of the QSTA[8] and because it has been recognized as a

---

[6] The term "securities intermediary's jurisdiction" is not defined in the Quebec STA or the Quebec Civil Code, as it is in the Ontario *Securities Transfer Act* ("**Ontario STA**"). The Quebec rules do, however, specify a jurisdiction in substantively the same manner as the Ontario STA, and therefore, given the similarity of the rules, we will use the term " securities intermediary's jurisdiction" for Quebec as well.

[7] Article 3108.7, CCQ.

[8] The definition of "securities intermediary" includes not only a designated clearing house but also "other persons that in the ordinary course of their business maintain securities accounts for others and are acting in that capacity" and a "clearing agency" (s. 8, QSTA). LCH would also be a "clearing agency" pursuant to

"clearing agency" by the AMF and the Ontario Securities Commission and carries on clearing activities. We believe the intention of designating recognized clearing agencies to be securities intermediaries is to ensure that any clearing accounts benefit from the provisions even though the clearing agency is not acting in the capacity of a securities intermediary as that term would normally be understood. Credit balances in a securities account are treated as financial assets for purposes of the QSTA. This issue is explained in more detail in answer to question 3.2.3 with respect to rights of set-off against cash cover.

Under Quebec law, it is not totally clear what law governs substantive contract law matters relating to enforcement of security interest agreements as there is no specific conflict of laws rule in this respect. Such issues may be determined by the governing law of the security interest agreement, by the place where the security interest is being enforced or by the place where the debtor is domiciled. Consequently, under Quebec law, English law may govern the interpretation of the Deed of Charge and its enforcement (particularly where the enforcement is taking place in England) but this is not totally clear.

Procedural issues involved in the enforcement of the rights of a secured party are governed by the law of the jurisdiction in which the rights are exercised, *e.g.* the law of the jurisdiction of the court before whom the action is being taken.[9] For Collateral held directly by LCH or in depository accounts outside of Quebec subject to the Deed of Charge, it is unlikely that enforcement rights would be exercised in Canada.

Validity and Perfection if Quebec Law Governs

If LCH does hold Securities in accounts with Intermediaries in Quebec, then the security interest created by the Deed of Charge would be valid under Quebec law. No particular form of agreement or wording is required for securities collateral as long as the intention to create a security interest is clear and the Canadian Clearing Member has rights in the Collateral. LCH's security interest would be perfected under the CCQ by "control" by virtue of the security entitlements being credited to its account. (Quebec law is modelled on and is very similar to Uniform Commercial Code Revised Article 8 and Article 9 in terms of security interests in indirectly held securities). Further, by virtue of LCH's being the securities intermediary it would have control on that basis with respect to any financial assets maintained in accounts of the Canadian Clearing Member at LCH.[10]

---

section 4 of the QSTA because it has been recognized as a clearing house by the AMF and the Ontario Securities Commission, carries on the activities of a clearing agency or clearing house within the meaning of the QDA and has been recognized under Part I of the PCSA.

[9] Art. 3132, CCQ.

[10] As additional comfort, the first paragraph of Section 4 of the QSTA states "The provisions of **[the QSTA]** are applicable to a clearing agency only to the extent that they do not conflict with the rules adopted by the clearing agency governing legal relationships between the clearing agency and its participants or between participants in the clearing agency. Those rules are effective even if they affect the rights and obligations of a person who does not consent to them." This section applies to LCH since it has been recognized by the AMF as a clearing house under the QDA.

Stays on Enforcing Rights under Deed of Charge

See the analysis and response in the LCH Federal/Ontario Opinion.

Procedures in Enforcing Rights against Collateral

As noted above, unless enforcement action is being taken in Quebec, any procedural requirements of the CCQ in respect of enforcing rights under a security interest will likely not apply as procedural matters will be governed by the law of the place where such actions are taken. Under Quebec law, substantive matters with respect to such enforcement might be determined by English law as the governing law of the Deed of Charge but might also be determined by the law of the place where the enforcement was taking place or the law of the place where the debtor was domiciled.

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

Rule 6 of the Default Rules allows LCH to take various actions including transferring open Contracts, closing out open Contracts by transferring open contracts of another Clearing Member to the Defaulting Clearing Member's account, terminating open Contracts, selling any security deposited by the Clearing Member, and entering into hedging contracts for the account of the Defaulting Clearing Member. Pursuant to Rule 8 LCH has the right to determine any net amounts payable between the Defaulting Clearing Member and LCH in respect of each kind of account and included in the netting calculation is any cash Collateral balance of the Defaulting Clearing Member in its relevant kind of house/proprietary accounts.

Is it Necessary to Apply the Automatic Early Termination Event?

See the analysis and response in the LCH Federal/Ontario Law Opinion.

Set-off and Stays

See the analysis and response in the LCH Federal/Ontario Law Opinion.

Protecting Rights with respect to Cash Cover

In our view, the right to set-off Cash Cover (as defined in the Clearing Member Agreement), would not be subject to the application of Quebec movable property

security laws. Firstly, Quebec courts are generally more reluctant to recharacterize an agreement which does not purport to create a security interest as a security interest than are common law courts. Secondly, the Quebec legislator had amended the QDA to add two sections in respect of rights of set-off which will assist in respect of the enforceability of such set-off rights for agreements entered into prior to January 2016 if, as we assume, all of the relevant transactions would be derivatives or financial contracts deemed to be derivatives as set out in section 11.2 of the QDA (below). The relevant sections of the QDA were repealed effective January 1, 2016, however, transitional rules maintain the effectiveness of arrangements entered into prior to January 1, 2016. The relevant sections provided as follows:

> MARGIN OR SETTLEMENT DEPOSIT
>
> 11.**1.** An instrument under which a person is required to pay an amount of money to a party to a derivative, including as a margin or settlement deposit, and which allows that party, in all circumstances described in the instrument, to extinguish or reduce, by means of a set-off, its obligation to repay that amount to the person is enforceable against third persons without further formality.
>
> Such an instrument is governed by the law expressly designated in it or the designation of which may be inferred with certainty from the terms of the instrument.
>
> 11.2. For the purpose of section 11.1, the following are considered to be derivatives:
>
> (1) an exchange, securities lending or securities redemption contract, including any contract governing such a contract; and
>
> (2) a contract between a clearing house and one of its members, and the rules governing their relationship.[emphasis added]

Thus, to the extent that the set-off is pursuant to an agreement entered into prior to January 1, 2016 in respect of a derivative (as such term was extended pursuant to section 11.2), LCH may set up any of its set-off rights and any of the other terms and conditions of the LCH Rulebook or Clearing Member Agreement relating to the cash margin against any third party to whom the account debt has been assigned (whether a competing secured creditor or not).[11] Section 11.1 of the QDA also provided that it is the law governing the right of set-off in pre-January 2016 agreements (which would not be Quebec law) that applies to determine the effectiveness of the right of set-off (in general and as against a

[11] We say "should" because the relationship between set-off rights and the priority rules in the CCQ has not been judicially considered so there is some uncertainty as to these matters. The most certain position for LCH is to rely on the PCSA designation and, in addition to its rights of set-off and flawed asset analysis, rely on its position as a clearing agency as described above.

person with a security interest in the receivable) and that, under Quebec law, no further formality was required in order for such set-off to be enforceable against third parties.

We believe that the better view of the current law is that is to the same effect for agreements entered into on and after January 1, 2016 providing for a right of set-off.

As discussed below, Quebec law has provided for a pledge of a monetary claim, including the credit balance of a financial account and money transferred to secure an obligation.[12] There are helpful conflicts of laws rules also.[13] To the extent that the set-off arrangement is recharacterized as creating a security, these provisions will acknowledge the effectiveness of such an arrangement.

PCSA Protections – Part I Designation of SwapClear as Systemically Important Clearing System

See the analysis and response in the LCH Federal/Ontario Law Opinion.

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

There are statutory preference laws that could apply to preferential transactions or collateral transfers. See the analysis and response in the LCH Federal/Ontario Law Opinion for discussion of the applicable federal legislation.

Provincial Legislation

There is Quebec provincial preferences legislation, the Paulian action provisions of the CCQ, that is similar to the federal preferences provisions. The legislation permits payment or transfers of property made with intent to prefer a creditor to be declared unenforceable against other creditors. For various procedural reasons it is not generally relied on by insolvency representatives or other creditors. It would be unlikely, again for practical reasons, to be relied on with respect to a Canadian Clearing Member. Also, because SwapClear is designated under section 4 of the PCSA, the provisions with respect to finality of transfers should apply to override these provisions in the case of SwapClear.

3.2.5 Is there relevant netting legislation in this jurisdiction that, in the context of Insolvency Proceedings or Reorganization Measures in respect of a Canadian Clearing Member, might

[12] Art. 2713.1 *et seq.* CCQ.
[13] Art. 3106.1 CCQ.

apply as an alternative to the relevant arrangements set out in the Default Rules?

No there is not. Protections for netting must be founded in the contractual relationship between the parties or the rules of the clearing agency as described in the responses to the previous questions.

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

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

3.3 **Client Clearing**

3.3.1 Is there any law, regulation or statutory provision (having the force of law) in this jurisdiction which (if so designated by LCH) would be expected to qualify as an Exempting Client Clearing Rule? Would the relevant Rule would be expected to apply to Canadian Clearing Members of all entity types or to only certain entity types?

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

3.3.2 If LCH were to: (i) declare a Canadian Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganization 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 Canadian Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?

SwapClear

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

Other Services

The Other Services are not designated systems under section 4 of the PCSA.

Assuming no Insolvency Proceedings or Reorganization Measures have commenced and assuming that no other person has an assignment of or security interest in the Account Balance that has priority over the Client's interest under the Security Deed, the Canadian Clearing Member or other person could not challenge the actions of LCH and claim for the amount of the Account Balance from LCH.

See our response in paragraphs 3.3.8 and 3.3.9 with respect to the validity and perfection of the security interest in the Account Balance under the Security Deed. We refer to the analysis below with respect to validity and perfection of a security assignment of the Client Contracts.

3.3.3 If LCH were to: (i) declare a Canadian Clearing Member to be in Default in circumstances other than the commencement of Insolvency Proceedings or Reorganization 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 Canadian Clearing Member or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?

SwapClear

Please see our response in paragraph 3.3.2 above with respect to SwapClear. The analysis would apply equally to the actions taken by LCH with respect to declaring a Default, terminating the Client Transactions, realizing on Collateral and determining the Client Clearing Entitlement.

If the Client has amended the Agreement to create a first priority Quebec movable security interest in the Client Clearing Entitlement, has registered such security interest as required to perfect it, and the Client has exercised its right to terminate the Client Transactions and realize on the Client Clearing Entitlement as security for any amount owing, then LCH could return the Client Clearing Entitlement to the relevant Clearing Client.

See our response in paragraphs 3.3.8 and 3.3.9 with respect to the validity and perfection of the security interest in the Client Clearing Entitlement under the Security Deed.

3.3.4 If (i) following the commencement of Insolvency Proceedings, a Canadian 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 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?

SwapClear

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

Other Services

Whether a CDIC receivership or liquidation order under the WURA could prevent LCH from porting and transferring the Account Balance depends on (1) the absence of statutory rules or court orders in the context of the proceedings that could interfere with the transfer of open positions under the Client Contracts pursuant to the rules of the LCH, and (2) LCH's ability to transfer the Account Balance to the Backup Clearing Member (which in turn depends on the Client's ability to terminate the Client Transactions subject to the Client Clearing Agreement and realize on its security interest over the Account Balance under

the Security Deed to the extent that it has taken the appropriate steps to create and perfect the security interest as discussed in paragraph 3.3.8 if the governing law is Quebec).

Stays in Insolvency Proceedings

See the analysis and response in the LCH Federal/Ontario Law Opinion, subject to the discussion in our response to question 3.3.8 below with respect to the modifications and registrations that would be required in order to create a valid enforceable Quebec movable security interest.

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

See the analysis and response in the LCH Federal/Ontario Law Opinion.

3.3.6 If (i) following the implementation of Reorganization Measures, a Canadian 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 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?

See the analysis and response in the LCH Federal/Ontario Law Opinion.

3.3.7 If (i) following the commencement of Reorganization Measures, a Canadian 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?

See the analysis and response in the LCH Federal/Ontario Law Opinion.

3.3.8 Would the Security Deed provide an effective security interest under the laws of this jurisdiction over the Account Balance

or Client Clearing Entitlement in favour of the relevant Clearing Client?

The Account Balance would be characterized as a monetary claim under the Quebec CCQ. This claim may be the credit balance of a financial account or money transferred to secure an obligation. Under Quebec law, if the secured creditor is the debtor of the monetary claim, the grantor of the security need only consent to such monetary claim securing an obligation to the secured creditor in order to constitute a pledge over such monetary claim.[14] If the credit balance is with a financial account at a third party or the money has been transferred to a third party as security for obligations to the secured creditor, it will be necessary to enter into a control agreement amongst the grantor (Chargor), the relevant Client and the third-party.[15]

The Client Clearing Entitlement may be characterized as a monetary claim but may more likely be characterized as "incorporeal movable property" that is not a monetary claim under the Quebec CCQ (as would any Client Contracts charged in favour of the Client). Consequently, the validity of a security interest in such incorporeal would most likely be a matter for the law of the Canadian Clearing Member's domicile, that is, its head office (registered office) at the time the security interest was created. Perfection will be determined according to the law of the Member's domicile when the security interest is perfected. Under the CCQ, a corporate debtor is domiciled at its "head office" (registered office)[16] and the registered offices of certain of the Canadian Clearing Members are in Quebec.[17]

The charging language in the Security Deed is as follows:

> 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.

For those Canadian Clearing Members with their registered offices in Quebec, this language will not be sufficient to create a valid Quebec movable security interest in favour of each Client. The only mainstream consensual movable security interest recognized by the CCQ is the movable hypothec with or without delivery (that is, possessory or non-possessory). The Security Deed would have to be modified to include the obligatory language required by the CCQ to constitute a valid Quebec movable hypothec without delivery, including a sufficient description of the collateral and a charging amount in Canadian funds.

---

[14] Art. 2713.3 CCQ.

[15] Art. 2713.4 CCQ.

[16] CCQ, Article 307. While the CCQ uses the term "head office" in our view, this would be equivalent to "registered office" or other equivalent term in the governing corporate statute.

[17] For example, the registered office of Royal Bank of Canada is in Quebec although a number of banks, including the Royal Bank of Canada, have their chief executive offices in Ontario. If proceedings were commenced in Quebec dealing with movable property security issues, then Quebec law could be the relevant law for determining validity and perfection (publication in Quebec) of the security interest in certain types of property (eg cash) as the location of the registered office, that is its domicile, determines the location of the debtor for purposes of Quebec civil law. It is, however, more likely that proceedings would be commenced in Ontario where it has its chief executive office. Please refer to the LCH-Federal/Ontario Law Opinion in respect of recent changes to their conflict of laws rules.

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

Because the Account Balance would be characterized as a monetary claim that is the credit balance of a financial account or money transferred to secure an obligation, the validity of a security on such Account Balance will, in the absence of a clause specifically designating the law applicable to such validity, be determined under the internal law of the agreement governing such Account Balance, if characterized as the credit balance of a financial account, or if characterized as money transferred to secure an obligation, the internal law of the jurisdiction of the decision-making centre of the person to whom the money was transferred.[18]

The publication (perfection) and effects of publication (priority) of the security are governed by the laws of the same jurisdiction as for validity but determined at the relevant time.

To the extent that the creditor has control over the monetary claim, it would not be necessary to effect any registration.

As the Client Clearing Entitlement would be characterized as an "incorporeal" under the Quebec CCQ, perfection of the security interest and the effects of perfection will be governed by the laws of the debtor's domicile, that is, its registered office. If Quebec law governed the perfection of the security interest in such incorporeal (*e.g.* because the debtor is domiciled in Quebec at the time of perfection), in order to be opposable to third parties, that security interest would have to be perfected by registration of a Form RH in the Quebec Register of personal and movable real rights (the "**RDPRM**").

Priority of registered security interests vis-à-vis other consensual secured creditors is generally governed by the order of registration in the RDPRM of the security interest.

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

See the analysis and response in the LCH Federal/Ontario Law Opinion.

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

There are no other significant legal issues for LCH in our view.

Assuming that the Security Deed was modified to create a valid Quebec movable hypothec without delivery and was registered in the RDPRM, client rights would

[18] Art. 3106.1 CCQ. There is a further cascade of rule for security on the credit balance of a financial account if there is no governing law of such agreement.

still be subject to establishing priority of the charge under Quebec law with respect to the Client Contracts and Client Clearing Entitlements over other competing consensual secured creditors, if any, and potential statutory non-consensual liens, charges and deemed trusts. Other Quebec rules also apply to priority of security interests on claims.

4. SETTLEMENT FINALITY

4.1 Overview

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

4.2 Question

4.2.1 Would the commencement of Insolvency Proceedings in respect of a Canadian Clearing Member affect finality of settlement of transfers of funds or securities (or both) from the Canadian Clearing Member to LCH? If so, please clarify from which point in time and in which circumstances finality protections in respect of such transfers would be lost.

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

The Paulian action referred to above may also apply.

4.2.2 Are there any circumstances (such as the commencement of Reorganization 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.

See the analysis and responses in the LCH Federal/Ontario Law Opinion.

The Paulian action referred to above may also apply.

5. RESERVATIONS

5.1 Effectiveness of Security

5.1.1 We express no opinion as to whether a Canadian Clearing Member has good legal or other title to the assets or rights which are expressed to be subject to a security interest under the Deed of Charge, or as to the existence or value of any such assets or rights;

5.1.2 Our opinions are subject to the creation of such security interest not requiring any authorisation, consent or fulfilment of any other pre-condition or formality which has not been satisfied, obtained or done.

5.1.3 Except to the limited extent expressly addressed in this opinion in paragraph 3.3.9, we express no opinion as to the priority of any security

interest created by the Security Deed or Deed of Charge, including with respect to any consensual secured creditors or statutory, Crown or other deemed trust or lien claims.

5.2 **Application of foreign law**

5.2.1 The parties' choice must be bona fide and legal and there must be no reason for avoiding the choice of law on the grounds of public policy or public order under the laws of the Quebec.

5.2.2 If an obligation requires performance in a jurisdiction other than Quebec, then the Quebec Court would not enforce that provision if performance was illegal in the place of performance.

5.2.3 If the foreign law invalidates the Agreements, a Quebec Court will apply the law of the country with which the relevant agreement is most closely connected, in view of its nature and the attendant circumstances.

5.2.4 The Quebec Court will not take judicial notice of a law of another jurisdiction, but will require it to be pleaded and proved to its satisfaction by expert testimony. If neither party proves the chosen law, the Quebec Court may apply Quebec law.

5.2.5 If the chosen law is a procedural law (as characterized by the Quebec Court under Quebec law), the Quebec Court will not apply it. The Quebec Court only applies procedural laws of Quebec.

5.2.6 A Quebec Court will not apply a chosen law if its application would be characterized under Quebec law as a direct or indirect enforcement of a foreign revenue, expropriatory, penal or other public law except that a Quebec Court will recognize and enforce the obligations resulting from the fiscal laws of foreign countries in which the obligations resulting from the fiscal laws of Quebec are recognized and enforced.

5.2.7 A Quebec Court will apply laws of immediate application which could include laws imposing licensing or other regulatory requirements or governmental approvals that apply to certain types of agreements, the breach of which could affect enforceability of an agreement. Insolvency laws, as discussed in this opinion, would also fall within this category.

5.2.8 A Quebec Court will not apply a chosen law if its application would be manifestly inconsistent with public order as understood in international relations;

5.2.9 In cases of emergency or serious inconvenience, a Quebec court may take such measures as it considers necessary for the protection of the person in Quebec or property in Quebec.

5.2.10 We express no opinion on the binding effect of the choice of law provisions in the Opinion Documents insofar as they relate to non-

contractual obligations arising from or connected with the Opinion Documents. Non-contractual issues (even if related to a contract), such as claims in extra-contractual responsibility, property law issues (such as laws governing movable property and security interests), claims for breach of securities laws, or insolvency laws (such as stays) are subject to their own conflict of law rules and therefore may be governed by a law different from the law governing the contract.

5.3 **Post Insolvency Agency Transactions**

5.3.1 LCH may enter into hedging transactions after the commencement of an Insolvency Proceeding for the account of the Canadian Clearing Member. With respect to the Other Services, where PCSA section 8 cannot be relied on, it may be necessary to demonstrate that the agency authority of LCH is irrevocable, meaning contractually irrevocable, if the transactions are to be booked to the Canadian Clearing Member account, under its governing law. The agency relationship may be revocable by the insolvency representative if under its governing law it is not irrevocable.

6. QUALIFICATIONS

6.0.1 The courts having jurisdiction in relation to insolvency law in this jurisdiction may give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by Canadian law. The courts of this jurisdiction may accordingly apply foreign systems of law rather than Canadian law where the Canadian Clearing Member is subject to insolvency proceedings in another jurisdiction.

This advice is given for the exclusive benefit of the addressee. In this opinion we do not assume any obligation to notify or inform you of any developments subsequent to its date that might render its content untrue or inaccurate in whole or in part at such time. It may not, without prior written consent, be relied on by any other person. We consent to a copy of this advice being made publically available on the addressee's website and to it being shown to the Bank of England, the U.S. Commodities and Futures Trading Commission, the Federal Reserve, the U.S. Securities and Exchange Commission, the Quebec AMF 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

Stikeman Elliott LLP

APPENDIX A

DEFINITION OF ELIGIBLE FINANCIAL CONTRACT

An "eligible financial contract" is:

(a) a derivatives agreement, whether settled by payment or delivery, that

  (i) trades on a futures or options exchange or board, or other regulated market, or

  (ii) is the subject of recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets;

(b) an agreement to

  (i) borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents,

  (ii) clear or settle securities, futures, options or derivatives transactions, or

  (iii) act as a depository for securities;

(c) a repurchase, reverse repurchase or buy-sellback agreement with respect to securities or commodities;

...

(e) any combination of agreements referred to in any of paragraphs (a) to (d);

(f) a master agreement in so far as it is in respect of an agreement referred to in any of paragraphs (a) to (e);

(g) a master agreement in so far as it is in respect of a master agreement referred to in paragraph (f);

(h) a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of paragraphs (a) to (g); and

(i) an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of paragraphs (a) to (h).

...

A "derivatives agreement" is:

... a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes

(a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap;

(b) a futures agreement;

(c) a cap, collar, floor or spread;

(d) an option; and

(e) a spot or forward.

SCHEDULE 1

CLEARING MEMBERSHIP AGREEMENT

Stikeman Elliott

SCHEDULE 2

DEED OF CHARGE

SCHEDULE 3

SECURITY DEED