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18 November 2021

Opinion letter in respect of the LCH – Project Evolution III

You have asked us to provide advice in respect of the laws of Ireland in response to certain specific questions raised by LCH Ltd ("**LCH**") in relation to membership, insolvency, security, set-off and netting and client clearing. The questions were provided in a legal opinion questionnaire (the "**Instruction Letter**") sent to us by e-mail from Annie Cruickshank of LCH on 24 July 2018.

In giving this Opinion we note that, subsequent to the end of the Transition Period:

(i) LCH is, in accordance with the ESMA LCH Recognition Decision, recognised, until the expiry date specified at the end of the ESMA LCH Recognition Decision, as a third-country CCP in accordance with Article 25 EMIR; and

(ii) Part 9 has been commenced.

The relevant questions are set out in full in Section 3 of this opinion letter (the "**Opinion**") together with the corresponding responses. This Opinion supersedes any and each previous Opinion given by Arthur Cox LLP to LCH Limited in connection with the Rulebook (or any earlier version of the Rulebook).

1. TERMS OF REFERENCE

1.1 This Opinion is given in respect of the following types of Clearing Members (each such Clearing Member an "**Irish Clearing Member**" or a "**Relevant Clearing Member**"), namely Clearing Members which are:

(a) banks incorporated in Ireland which have permission under section 9 of the Central Bank Act 1971 to accept deposits ("**Irish Banks**"); and

(b) investment firms (within the meaning of MiFID II) incorporated in Ireland ("**Irish Investment Firms**"),

and which, in each case, are either Irish companies or Royal Charter Corporations. Notwithstanding the terms of the Instruction Letter, with your permission we have assumed that each Relevant Clearing Member is an Irish Bank or an Irish Investment Firm and our opinion is limited to these categories of Clearing Member.

1.2 For these purposes, an "Irish company" is a company which is formed and registered under the Companies Act 2014 (the "**CA 2014**") or the prior Companies Acts (as defined in section 2 of the CA 2014).

1.3 The opinions contained in this Opinion are not limited to any specific Services offered by LCH but do not apply to Services offered by FCM Clearing Members in respect of FCM Contracts.

1.4 This Opinion is given in the context of Irish Clearing Members acting as a "Clearing Member" and not in respect of any Irish Clearing Member acting as a "Backup Clearing Member" (as such terms are defined in regulation 1 of the General Regulations section of the Rulebook).

1.5 Except where otherwise defined herein, terms defined in the Rulebook (as defined below) shall have the same meaning in this Opinion.

1.6 In this Opinion, unless otherwise indicated:

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

(b) "**Brexit (Consequential Provisions) Act**" means the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 of Ireland;

(c) "**BRRD**" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms;

(d) "**BRRD Institution**" means an institution that is established in the European Union or entity referred to in points (b), (c) or (d) of Article 1(1) of BRRD (as implemented into Irish law) to whom the Irish BRRD Regulations apply;

(e) "**CA Act 1990**" means the Companies (Amendment) Act 1990;

(f) "**CCP**" has the meaning given to such term in EMIR;

(g) "**Central Bank**" means the Central Bank of Ireland;

(h) "**Charged Assets**" has the meaning ascribed to such term in the Security Deed;

(i) "**Charged Property**" has the meaning ascribed to such term in the Deed of Charge;

(j) "**Chargor**" has the meaning given to that term in the Security Deed and the Deed of Charge;

(k) "**CIWUD Regulations**" means the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011;

(l) "**Clearing Member**" has the meaning given to that term in the introductory section of the General Regulations section of the Rulebook;

(m) "**Clearing Membership Agreement**" means a clearing membership agreement which is substantially in the form of the Clearing Membership Agreement set out in Schedule 9;

(n) "**Client Contracts**" means the Contracts entered into by a Clearing Member in respect of its Client Clearing Business;

(o) "**Collateral**" has the meaning given to that term in regulation 1 of the General Regulations section of the Rulebook;

(p) "**Collateral Directive**" has the meaning given to it in sub-paragraph (vv) below;

(q) "**Contract**" has the meaning given to that term in regulation 1 of the General Regulations section of the Rulebook;

(r) "**Courts**" means the courts of Ireland;

(s) references to a "**designated system**" are to a designated system within the meaning of and for the purposes of the Irish Settlement Finality Regulations;

(t) "**Deed of Charge**" means a 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 7;

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

(v) "**ESMA**" means the European Securities and Markets Authority;

(w) "**ESMA LCH Recognition Decision**" means the Decision of the Board of Supervisors of ESMA of 25 September 2020 to recognise LCH Limited as a third-country CCP under Chapter 4 of Title III of EMIR;

(x) "**Exempting Client Clearing Rule**" means any law, regulation or statutory provision (having the force of law) of a governmental authority, the effect of which is to protect the operation of the Rulebook, including in particular the Client Clearing Annex of the Default Rules, from challenge under the insolvency laws applicable to the relevant Clearing Member;

(y) "**financial instruments**" has the meaning given to that term in regulation 2 (*Definitions*) of the Irish FCA Regulations (as set out in Schedule 4);

(z) "**Insolvency Proceedings**" has the meaning given to that term in Question 2 below;

(aa) "**Ireland**" means Ireland excluding Northern Ireland;

(bb) "**Irish BRRD Regulations**" means the European Union (Bank Recovery and Resolution) Regulations 2015 (as amended) and 2019 (which implement the BRRD into Irish law);

(cc) "**Irish FCA Regulations**" has the meaning given to it in sub-paragraph (vv) below;

(dd) "**Liabilities**" means the meaning ascribed to such term in the Security Deed;

(ee) "**MiFID II**" means Directive 2014/65/EU on Markets in Financial Instruments;

(ff) "**MiFID II Regulations**" means the European Union (Markets in Financial Instruments) Regulations 2017;

(gg) "**Minister for Finance**" means the Minister for Finance of Ireland;

(hh) "**Netting Act**" means the Netting of Financial Contracts Act 1995;

(ii) "**Part 9**" means Part 9 of the Brexit (Consequential Provisions) Act;

(jj) "**Party**" means LCH or a particular Clearing Member, and "**Parties**" means both of them;

(kk) "**relevant date**" means, for the purposes of Part 9, 11:00 p.m. on 31 December 2020, in accordance with the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Parts 8, 9, 10 and 11) Commencement Order 2020 (S.I. No. 723 of 2020);

(ll) "**Relevant Jurisdiction**" means Ireland;

(mm) "**Reorganisation Measures**" has the meaning given to that term in Question 2 below;

(nn) "**Rulebook**" means the version of the General Regulations, Procedures, Default Rules, Clearing House: Settlement Finality Regulations and the Product Specific Contract Terms and Eligibility Criteria Manual each as made available on the date of this Opinion at http://www.lchclearnet.com/rules-regulations/rulebooks/ltd;

(oo) "**Scheme of Arrangement**" has the meaning given to in it paragraph 3 of Schedule 1;

(pp) "**Security Deed**" means a deed of charge entered into by a Clearing Member which is substantially in the form of the Security Deed set out in Schedule 8;

(qq) "**Security Documents**" means the Deed of Charge and the Security Deed and "**Security Document**" shall be construed accordingly;

(rr) "**Security Property**" means the Charged Property and the Charged Assets;

(ss) "**Transition Period**" means the transition period under the Withdrawal Agreement ending on 31 December 2020; and

(tt) "**Withdrawal Agreement**" means the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;

the following principles of interpretation apply:

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

(vv) a reference to a "**financial collateral arrangement**" is to an arrangement defined as such in the European Communities (Financial Collateral Arrangements) Regulations 2010 (the "**Irish FCA Regulations**") which implement into Irish law Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Collateral Directive**");

(ww) a reference to the "**Irish Settlement Finality Regulations**" is to the European Communities (Settlement Finality) Regulations 2010 which transpose into Irish law Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (the "**Settlement Finality Directive**");

(xx) any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this Opinion. Without prejudice to the generality of the foregoing, any reference to the Irish Settlement Finality Regulations include such Regulations as amended by the Brexit (Consequential Provisions) Act;

(yy) unless the context otherwise requires, a reference to a "**paragraph**" is a reference to a paragraph of this Opinion, a reference to a "Section" is to a Section of this Opinion and a reference to a "**Schedule**" is a reference to a Schedule to this Opinion; and

(zz) headings are for ease of reference only and shall not affect the interpretation of this Opinion.

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

(a) the Rulebook;

(b) the Clearing Membership Agreement;

(c) the Security Deed; and

(d) the Deed of Charge.

1.8 This Opinion is given in respect of the specific questions raised by you as set out in Section 3.

1.9 In this Opinion, references to the word "**enforceable**" and cognate terms are used to refer to the legal character of the obligations assumed by the relevant party under the relevant instrument. It implies no more than the obligations are of a character which the laws of Ireland recognise and will, in certain circumstances, enforce. In particular, it does not mean or imply that the relevant instrument will be enforced in all circumstances in accordance with its terms or by or against third parties or that any particular remedy will be available.

1.10 This Opinion relates solely to matters of Irish law (as published and in force at the date hereof) and does not consider the impact of any laws (including insolvency laws) other than Irish law, even where, under Irish law, any foreign law falls to be applied. This Opinion and the opinions given in it are governed by Irish law and relate only to Irish law as applied by the Courts as at today's date. We express no opinion on the laws of any other jurisdiction.

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

1.12 We do not opine on the enforceability of any net obligation resulting from any netting or set-off, including any net obligation certified as payable to LCH and we do not express any view as to the effectiveness of the Default Arrangements in relation to any action which LCH may seek to take outside Ireland.

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

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

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

2. ASSUMPTIONS

We assume the following:

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

2.2 That each Party has taken all necessary steps and obtained and maintained all authorisations, approvals, licences and consents necessary to execute, deliver and perform the Opinion Documents and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Opinion Documents and the Contracts in Ireland and any other jurisdiction (in each case under all applicable laws including Irish law) and will act in accordance with any limits set out in those authorisations, approvals, licences and consents.

2.3 That each Relevant Clearing Member is authorised to act as an Irish Bank or an Irish Investment Firm and that the terms of such authorisation cover the provision of services pursuant to the Agreements.

2.4 That the Opinion Documents and all security interests created by the Opinion Documents are enforceable in all applicable jurisdictions (other than Ireland).

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 businesses.

2.6 That in carrying out its obligations under the Opinion Documents each Party acts in accordance with the terms of the Opinion Documents.

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

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

2.9 Save in relation to any non-performance leading to the taking of action by LCH under the Default Rules, that each Party performs its obligations under the Opinion Documents and each Contract in accordance with their respective terms.

2.10 That no Clearing Member is entitled to claim in relation to itself or its assets immunity from suit, attachment, execution or other legal process.

2.11 In entering into the Opinion Documents and each Contract, no Clearing Member is committing fraud or intends to prefer one creditor over another or to put assets beyond the reach of its creditors or is entering into any transaction otherwise than on arm's length terms.

2.12 That, as a matter of the laws of England (as the governing law of the Opinion Documents and, we assume, the location where the Charged Property is located) (i) the Deed of Charge creates an effective security interest in favour of LCH and the qualified ownership of the Charged Property remains with the Clearing Member and (ii) the Security Deed creates an effective security interest in favour of each relevant Clearing Member and the qualified ownership of the Charged Assets remains with the Clearing Member.

2.13 That the Clearing Member is not a "bridge institution" as defined in the Irish BRRD Regulations or the Central Bank and Credit Institutions (Resolution) Act 2011.

2.14 That LCH is not resident in Ireland or does not have a permanent establishment or other taxable presence in Ireland and does not act in respect of the Opinion Documents through a branch or agency in Ireland or other taxable presence in Ireland, and that it does not execute, perform or enforce the Opinion Documents while physically present in Ireland.

2.15 That each Contract results in the assumption or discharge of a payment obligation under the Rulebook or, subject to the assumption in paragraph 2.28, physical settlement.

2.16 That the conditions (as set out in Article 2(2) thereof) to the application of the ESMA LCH Recognition Decision have been satisfied.

2.17 That the Rulebook and related Opinion Documents comprise a "relevant arrangement" (for the purposes of Part 9 of the Brexit (Consequential Provisions) Act)[1] which

[1] For the purposes of Part 9 of the Brexit (Consequential Provisions) Act, a 'relevant arrangement' means "a formal arrangement—

(a) between 3 or more participants (other than the operator, any settlement agent, any central counterparty, any clearing house or any indirect participant), and

satisfies the requirements of section 81 of the Brexit (Consequential Provisions) Act, and that all conditions to the application of section 81 have been satisfied. In this regard, we note that as of 3 September 2021, LCH has been granted designation under section 81 of the Brexit (Consequential Provisions) Act by the Minister for Finance.

2.18 That, 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 which modify or supersede the terms of the Opinion Documents.

2.19 That all Collateral and all of the Security Property delivered pursuant to the Security Documents comprises cash or financial collateral (as defined in the Irish FCA Regulations) comprising book-entry securities.

2.20 That the Security Documents secure only obligations that give rise to a cash settlement or the delivery of financial instruments (or both).

2.21 That the Security Property and the Collateral are posted to and held in accounts outside of Ireland.

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

2.23 That the provision of Security Property and 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 Security Property (provided that, for this purpose, it is sufficient to prove that the Security Property taking the form of book-entry securities has been credited to, or forms a credit in, the relevant account).

2.24 That the Deed of Charge and the Security Deed constitute financial collateral arrangements under the Collateral Directive as it applies in the UK.

2.25 That the Agreements will be made in writing and signed by the relevant Parties thereto.

2.26 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 Security Property or Collateral.

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

2.28 That Collateral provided by a Relevant Clearing Member pursuant to regulation 20 of the Rulebook is (noting the definition of "relevant financial obligation" in the Irish FCA Regulations) provided in order to secure or otherwise cover the performance of obligations that give right to a cash settlement or the delivery of financial instruments, or both.

2.29 That each Relevant Clearing Member is an Irish Bank or an Irish Investment Firm.

(b) with common rules and standardised arrangements for the clearing (whether or not through a central counterparty) or execution of transfer orders between the participants."

2.30 That, in respect of the Clearing Member, no conditions, limits, restrictions or requirements have been or will be imposed, that no direction, order or proposed order has been or will be given or made by the Central Bank (other than pursuant to the Irish BRRD Regulations, which are considered below in Schedule 2).[2]

3. OPINION

On the basis of the foregoing terms of reference and assumptions and subject to the reservations and the qualifications set out in Section 4 below and the Schedules to this Opinion, we make the following statements of opinion. These statements of opinion are summary conclusions on specific questions which you have raised. The questions raised in the Instruction Letter are set out in below bold italicised text. We have omitted the introductory paragraphs 1.1 to 2.2 and other explanatory paragraphs from the Instruction Letter.

MEMBERSHIP

Question 1: ***Please opine on the ability of a Relevant Clearing Member to enter into the LCH Agreements and if there is anything which would prevent a Relevant Clearing Member from performing its obligations under the LCH Agreements. In particular please can you answer the following:***

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

3.1 There are no specific statutory limitations or regulatory requirements which would limit the ability of an Irish Investment Firm or an Irish Bank to enter into the Agreements. In this regard we refer you to our assumptions at paragraphs 2.2 and 2.3.

3.2 We have assumed at paragraph 2.2 that the Relevant Clearing Member has the appropriate corporate authorisations in place. This assumption includes that the Relevant Clearing Member has the relevant powers under its constitution. This is a factual matter and is a matter which could be verified by a representation from the Relevant Clearing Member or a review of its constitutional documents.

3.3 LCH would not be deemed to be domiciled or resident in Ireland by virtue of providing clearing services to a Clearing Member. However, as to whether LCH would, *prima facie*, be deemed to be carrying on business in Ireland by virtue of providing clearing services to a Clearing Member, we consider this below.

3.4 There are two possible ways in which LCH could arguably be viewed as carrying on business in Ireland:

(a) Firstly, under the Central Bank Act 1997 which imposes a licence requirement on "payment systems" being "*a system established in the State, or proposed to be established in the State, by any person, in which credit institutions or financial institutions participate and which provides for- (a) all or any of the following, namely, the processing, handling, clearance and settlement of any*

[2] We make this assumption because under financial services legislation in Ireland the Central Bank may give certain orders or directions and while these may affect the ability of a relevant Clearing Member to carry out its obligations under the Agreements, we do not consider that LCH should be restricted from taking actions under the Default Rules or the Security Documents.

means of payment or of any securities, or (b) the payment of any moneys by that means of payment, by or as between the members of the system or third parties, whether or not the processing, handling, clearance, settlement or payment of any of the moneys takes place in part or in whole within the State or outside the State". However, in our view LCH would not be viewed as "established in the State" for the purposes of the payment system licensing regime simply by providing clearing services to Irish members as, in our view, "established" should be given its natural meaning, requiring some form of physical presence. As such, in our view, LCH should not trigger the payment system licensing regime.

(b) Secondly, LCH could be arguably be viewed as carrying on business in Ireland by providing services to Clearing Members in Ireland which amounts to the business of "dealing on own account" for the purposes of MiFID II.

(c) However, if LCH is regarded as dealing on own account, the MiFID II Regulations contain a "safe harbour" for third country firms (i.e. non-EEA investment firms) which UK firms are, following the end of the Transition Period. Under the "safe harbour", a third country firm is not regarded as operating in Ireland and does not trigger a licensing requirement if each of the following are met:

(i) it provides investment services to eligible counterparties or to per se professional clients;[3]

(ii) it does not have a branch in Ireland and the third county firm's head or registered office is in a third country;

(iii) it is subject to authorisation and supervision in the third country where it is established and it is authorised so that the competent authority of the third country pays due regard to the recommendations of the Financial Action Task Force ("**FATF**") in the context of anti-money laundering and countering the financing of terrorism. The Irish Department of Finance explained in its Feedback Statement on MiFID II that this requirement is designed to cover third country firms who are regulated in their home jurisdiction and whose home jurisdiction is not on the list of non-co-operative jurisdictions maintained by FATF; and

(iv) co-operation arrangements that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors are in place between the Central Bank and the competent authorities where the third country firm is established. The Irish Department of Finance explained in its Feedback Statement on MiFID II that this requirement is designed to cover third country firms who are regulated in their home jurisdiction and whose home jurisdiction is a signatory to the IOSCO Multilateral Memorandum of Understanding concerning consultation and co-operation and the exchange of information.

As such, LCH should not be required to obtain a licence or be registered before providing clearing services to a Clearing Member in Ireland.

[3] Services to 'retail clients' (as defined in MiFID II) are excluded from the safe harbour.

Question 2: "***Please opine on insolvency proceedings (the "Insolvency Proceedings") and pre-insolvency reorganisation, restructuring and/or resolution measures (the "Reorganisation Measures") in respect of Relevant Clearing Members under the laws of the Relevant Jurisdiction and the effect of these on the security interests, and set-off and netting arrangements, provided for under the terms of the LCH Agreements.***"

3.5 In this regard, we refer you to our responses at paragraphs 3.6 to 3.9 below.

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

3.6 The only Insolvency Proceedings to which a Clearing Member could be subject under the laws of Ireland are liquidation (voluntary or by a Court), receivership, or a Scheme of Arrangement. The Reorganisation Measures to which a Clearing Member could be subject under the laws of Ireland are the exercise of resolution tools pursuant to the Irish BRRD Regulations, a solvent Scheme of Arrangement or examinership.

3.7 Please note that not all Clearing Members may be subject to all Insolvency Proceedings or Reorganisation Measures.

3.8 Please see Schedules 1 and 2 for a detailed description of the relevant Insolvency Proceedings and Reorganisation Measures and the effect of these on the security interests and set-off and netting arrangements provided for under the terms of the Agreements.

3.9 We confirm that the events specified in Rule 3 of the Default Rules adequately refer to all Insolvency Proceedings and Reorganisation Measures other than a Scheme of Arrangement conducted on a *solvent* basis.

Question 4: "***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?***"

3.10 Yes, the Deed of Charge should be effective in such context, on the basis of either one or both of the Irish FCA Regulations or the Irish Settlement Finality Regulations offering protection (in each case on the basis of and subject to the analysis set out further below).

3.11 If the Deed of Charge constitutes a financial collateral arrangement for the purposes of the Irish FCA Regulations (as to which we refer you to our analysis at Schedule 4), the security interests under the Deed of Charge would, assuming they are (as a matter of English law) validly created by a Clearing Member in favour of LCH as security for the payment or discharge of the Secured Obligations be effective in the context of:

(a) Insolvency Proceedings; or

(b) the Reorganisation Measures of examinership or a solvent Scheme of Arrangement,

in respect of a Clearing Member. In particular we note that that the Irish FCA Regulations provide:

(a) that (with limited exceptions), the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement, or the provision of financial collateral under such an arrangement, does not depend on the performance of a formal act such as registration or notice to the debtor;

(b) that a financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures[4] in relation to the collateral provider or collateral taker concerned (regulation 7 of the Irish FCA Regulations);

(c) That any question with respect to, amongst other things the legal nature and proprietary effects of the book entry securities collateral concerned and the steps required for the realisation of that collateral following the occurrence of an enforcement event are to be governed by the domestic law of the country in which the relevant account is maintained, irrespective of any law of that country that provides for the law of another country to be referred to in deciding the question.

However, these protections are subject to (i) the effects of the exercise of powers under BRRD and the Irish BRRD Regulations (including the possibility of a moratorium on the enforcement of the Deed of Charge) (in this regard see Schedule 2) and (ii) certain clawback risks under Irish law which are not disapplied by the Irish FCA Regulations (detailed in Schedule 3 below). As regards the Irish BRRD Regulations we describe out at Schedule 2 the mitigants for clearing houses and derivatives transactions and, as regards clawback risks, we consider in Schedule 3 the likelihood of such clawback risks and whether they are disapplied by the Irish FCA Regulations.

3.12 We point out the following provisions of the Irish Settlement Finality Regulations which are relevant to "collateral security":[5]

(a) regulation 11(1) thereof provides that, "[n]otwithstanding the provisions of any other enactment, the rights of…a system operator…to collateral security provided to it in connection with a system…to realise those rights are not affected by insolvency proceedings against…the participant."

(b) regulation 11(3) thereof provides that:

(i) "If

(A) securities are provided as collateral security to …a participant, a system operator or a central bank; and

(B) the right of the participant [or] system operator…with respect to the securities is legally recorded in a register, account or

[4] 'Reorganisation measures' within the meaning of the Irish FCA Regulations encompasses examinership and a solvent scheme of arrangement, but does not encompass actions under BRRD.

[5] "collateral security" is defined in the Irish Settlement Finality Regulations as "a realisable asset of any kind (including, without limitation, financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002) provided under a pledge, a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations that may arise in connection with a designated system, or provided to a central bank, and includes money provided under a pledge for that purpose".

centralised deposit system located in a Member State [or the UK],[6]

the law of that Member State [or, the UK, as the case may be,][7] governs the determination of the rights of the participant or central bank a holder of collateral security[8] in relation to those securities."

3.13 If the Deed of Charge is not a financial collateral arrangement for the purpose of the Irish FCA Regulations and if the Deed of Charge is not "collateral security" as referred to in paragraph 3.14 below, the effectiveness of the Deed of Charge will also be subject to (i) further clawback risks that may apply under Irish insolvency law in the context of Insolvency Proceedings (see Schedule 3 below) and (ii) certain clawback risks and moratorium risks arising from examinership (which is a Reorganisation Measure) (in this regard see Schedule 2 below).

3.14 The Irish Settlement Finality Regulations define "collateral security" as "a realisable asset of any kind (including, without limitation, financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002) provided under a pledge, a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations that may arise in connection with a designated system or in connection with an interoperable system, or provided to a central bank, and includes money provided under a pledge for that purpose." Accordingly, on the basis that the Deed of Charge constitutes a "pledge […] or similar agreement […] for the purpose of securing rights and obligations [of the applicable Irish Clearing Member]" that may arise in connection with the Rulebook then, as a matter of Irish law, the rights of LCH to enforce its rights under the Deed of Charge would not be affected by insolvency proceedings (within the meaning of the Irish Settlement Finality Regulations) in respect of such Irish Clearing Member.

Question 5: "***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?***"

3.15 If the Deed of Charge constitutes a security financial collateral arrangement within the meaning of the Irish FCA Regulations (as to which we refer you to our analysis at Schedule 4 *(Irish FCA Regulations)* below):

(a) any question relating to proprietary effects, requirements for perfecting such security arrangements and for rendering them effective against third parties, and the steps required for realisation of the Charged Property, would, on the basis of regulation 18 of the Irish FCA Regulations, be governed by the domestic law of the country in which the "relevant account" (as defined in the Irish FCA Regulations) is maintained;[9] and

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6 Applicable in the case of a "relevant arrangement" for the purposes of Part 9 of the Brexit (Consequential Provisions) Act.

7 See previous footnote.

8 "collateral security" is defined in the Irish Settlement Finality Regulations as "a realisable asset of any kind (including, without limitation, financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 20023) provided under a pledge, a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations that may arise in connection with a designated system, or provided to a central bank, and includes money provided under a pledge for that purpose".

9 We refer you to our assumption at paragraph 2.22 that the relevant account is located in England.

(b) regulation 4 of the Irish FCA Regulations disapplies any filing requirement where such charge constitutes a security financial collateral arrangement for the purpose of the Irish FCA Regulations.

3.16 If the Deed of Charge does not constitute a security financial collateral arrangement within the meaning of the Irish FCA Regulations, it will be subject to sections 409 and 410 of CA 2014 regarding security filings. Those sections provide that where an Irish company creates a charge,[10] it must register particulars of the property charged with the CRO using either:

(a) a prescribed one-stage procedure involving the registration of those particulars within 21 days of the creation of the charge; or

(b) a prescribed two-stage procedure whereby notice of the intention to create the charge is registered with the CRO before the charge is taken and confirmation of the charge having been created is then registered with the CRO within 21 days of the registration of intention to create the charge.

3.17 Failure to register particulars of the property charged results in that charge being void against any liquidator and any creditor of the Irish company and the amounts secured thereby become immediately payable.

3.18 A filing does not need to be made where the security interest is over any of the following property of an Irish company:

(a) cash,

(b) money credited to an account of a financial institution, or any other deposits,

(c) shares, including shares in a body corporate, bonds or debt instruments,

(d) units in collective investment undertakings or money market instruments, or

(e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of paragraphs (b) to (d); [11]

3.19 Where the charge covers a mix of registrable and non-registrable property, the filing must be made in respect of that part of the charge that is over registrable property.

Question 6: "***Would the Deed of Charge constitute a financial collateral arrangement (or equivalent) in your jurisdiction?***"

3.20 On the basis of our analysis in Schedule 4 and our assumption at paragraph 2.19 above we are of the view that the Deed of Charge should comprise a security financial collateral arrangement (within the meaning of the Irish FCA Regulations).

Question 7: "***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***

[10] The definition of 'charge' for this purpose is set out in Section 408 of CA 2014 and excludes any mortgage or charge over the property described in sub-paragraphs 3.18(a) to 3.18(d).

[11] It is not certain that an interest in book interest securities would be considered as "claims and rights" in respect of collateral specified in these categories as the holder of interests in book interest securities may have no proprietary interest in the book entry securities but rather a contractual claim.

Client Clearing Annex to the Default Rules) in the event that a Relevant Clearing Member was subject to Insolvency Proceedings or Reorganisation Measures?"

3.21 Rule 6 of the Default Rules sets out the steps which LCH may take in order to discharge a defaulting Relevant Clearing Member's rights and liabilities under or in respect of all Contracts to which it is a party or upon which it may be liable. Rule 8 sets out the processes to be completed by LCH to determine net amounts payable between the Relevant Clearing Member and LCH.

3.22 In the ordinary course, under Irish law, the operation of the Default Rules could be challenged by a liquidator on the basis of it being a post-insolvency disposition.

3.23 However, in our view if LCH takes action under Rules 6 and 8 of its Default Rules with respect to one or more Contracts to achieve a discharge of such Contracts, the laws of Ireland should give effect to such action to achieve a discharge of the Parties' rights and obligations under each such Contract and to calculate a net sum payable in respect of all such Contracts so discharged. We are of this view due to the operation of the Irish Settlement Finality Regulations.

3.24 In summary (and as set out in more detail below) our analysis is the following:

(a) but for the Irish Settlement Finality Regulations (or other safe harbours), the operation of the Default Rules could be exposed to a successful challenge under general principles of Irish insolvency law;

(b) regulation 9 of the Irish Settlement Finality Regulations (as amended by Part 9) provides the protections detailed below in paragraph 3.25; and

(c) in addition, protections may be available under the Irish FCA regulations (see Schedule 4) and the Netting Act (see Schedule 5), but we are of the view that the protections set out in the Irish Settlement Finality Regulations where applicable provide a stronger protection.

Irish Settlement Finality Regulations

3.25 Regulation 9 of the Irish Settlement Finality Regulations ("**Regulation 9 SFR**") provides as follows:

> "*(1) No law of the State relating to insolvency and no insolvency proceeding invalidates or otherwise affects -*
>
> > *(a) the rights and obligations of a participant arising from participation in a designated system before the commencement of insolvency proceedings against a participant (in the designated system concerned or in a system with which it constitutes an interoperable system) or the system operator of an interoperable system which is not a participant,*
> >
> > *(b) a transfer order or a disposition of property made under such an order,*

(c) the default arrangements[12] of a designated system, or an action taken under those arrangements,

(d) the rules of a designated system as to the settlement of transfer orders not dealt with under the system's default arrangements,

(e) the provision of collateral security,

(f) a contract, scheme or arrangement that provides for realising, or any action taken to realise, collateral security in connection with -

(i) participation in a designated system otherwise than under its default arrangements, or

(ii) the operations of a central bank,

(g) any disposition of property as a result of a contract, scheme or arrangement, or an action, referred to in subparagraph (f), or

(h) the rights of a system operator to collateral security, where that system operator has provided collateral security to another system operator in connection with an interoperable system and insolvency proceedings are instigated against the receiving system operator.

(2) The powers of a special liquidator appointed under section 7 of the Irish Bank Resolution Corporation Act 2013, a liquidator, provisional liquidator or examiner, the Official Assignee, or a trustee in bankruptcy or other insolvency official appointed under a law of the State, and the powers of a court under a law of the State relating to insolvency or insolvency proceedings, may not be exercised so as to prevent or interfere with -

(a) the settlement, in accordance with the rules of a designated system, of a transfer order not dealt with under the system's default arrangements,

(b) action taken under a designated system's default arrangements, or

(c) action taken to realise collateral security in connection with -

(i) participation in a designated system otherwise than under the system's default arrangements, or

(ii) the operations of a central bank."

3.26 For the purposes of Regulation 9 SFR, a "designated system" means:

"*a system that has been designated by the Minister [for Finance], and in respect of which the required notifications have been made, under Regulation*

[12] Under the Irish Settlement Finality Regulations 'default arrangement' means "the arrangements established by the system operator to limit systemic and other types of risks that may arise when a participant is apparently unable, or is apparently likely to become unable, to meet its obligations in respect of a transfer order, and includes:

(a) rules that enable action to be taken in respect of unperformed contracts to which the participant is party,

(b) arrangements for netting,

(c) arrangements for the closing-out of open positions, and

(d) arrangements for the application or transfer of collateral security."

4 [of the Irish Settlement Finality Regulations], and includes a system referred to in Regulation 16, but does not include a formal arrangement entered into between interoperable systems".

3.27 Where the Rulebook and related Opinion Documents are an arrangement to which section 81 of the Brexit (Consequential Provisions) Act applies (see our assumption at paragraph 2.17), section 82 of the Brexit (Consequential Provisions) Act applies the Irish Settlement Finality Regulations (subject to their amendment by Part 9) to such an arrangement as if the arrangement were a system designated by the Minister for Finance under regulation 4 of the Irish Settlement Finality Regulations.

3.28 Note that our analysis at paragraphs 3.29 through 3.35 below concerns protective regime which are additional to those protections under the Irish Settlement Finality Regulations.

3.29 To the extent that the action amounts to close-out netting, please see the analysis at Schedule 5 regarding netting and the protections available under the of the Irish FCA Regulations and the Netting Act (with respect to the nature of close-out netting as described in those legislative regimes).

3.30 To the extent that the relevant action involves enforcing a security interest, the analysis in response to question 4 above regarding enforcement of security (and the protections and/or stays or clawback risks which may be relevant) will apply.

3.31 To the extent that an action taken by LCH under the Default Rules amounts, in fact or in substance, to a payment from an account of the Relevant Clearing Member or the transfer of a contract position or asset of the Defaulter, if the protections under the Irish Settlement Finality Regulations were not available, there would be a risk that such action could be void by reason of being a disposition made after the commencement of winding up in breach of section 602 of CA 2014 (as described in Schedule 3) or could be limited by the rules regarding examinership as described in Schedule 2. In respect of porting/return of the Client Clearing Entitlement, we refer you to our responses to Questions 13 to 19 below.

3.32 We also draw your attention to the possible effect of the Irish BRRD Regulations (as detailed in Schedule 2).

CIWUD Regulations

3.33 We have also considered the Default Rules in the context of the CIWUD Regulations. To the extent that the Clearing Member is an Irish bank and the Default Rules constitute a netting agreement, regulation 30 of the CIWUD Regulations will be of relevance. Regulation 30 provides that a netting agreement is governed by the law of the contract that governs the agreement (being English law). However, there is no definition under the CIWUD Regulations of what constitutes a "netting agreement" for the purpose of the CIWUD Regulations so it is not possible to conclude whether the Default Rules will be deemed a netting agreement for this purpose and whether the applicable "law of the contract" displaces all other laws (including insolvency laws of the debtor's jurisdiction).

EMIR

3.34 We have also considered for completeness (in case other statutory protections discussed elsewhere in this Opinion are not available) the extent to which EMIR may provide protection to the Default Rules in the context of Insolvency Proceedings.

3.35 As a European Regulation, EMIR has direct effect in Ireland. We consider that, applying general principles of European law (as in effect in Ireland), nothing in Irish law should prejudice the effectiveness of Article 48 (*Default Procedures*) of EMIR. We consider that this (in particular when read with Recital 64 to EMIR) may be of some assistance if the Courts were asked to interpret the Irish FCA Regulations broadly in order to give effect to the Default Rules as a "close-out netting provision" (noting that, from the end of the Transition Period, LCH has, further to the ESMA LCH Recognition Decision, been recognised as a third-country CCP in accordance with Article 25 of EMIR). However, in the absence of specific domestic legislation on this point, in our view EMIR provides merely arguable grounds for a Court to uphold the Default Rules following Insolvency Proceedings, and accordingly, limited reliance should be placed on EMIR in this regard.

Question 8: "***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.***"

3.36 Under the laws of Ireland, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination of Contracts. Accordingly, it is not necessary to specify that certain Insolvency Proceedings and/or Reorganisation Measures constitute Automatic Early Termination Events. However, in certain cases it may be advantageous to take advantage of automatic early termination. In particular, where netting provisions do not have the statutory protections provided by the Netting Act or the Irish FCA Regulations it may be necessary to rely on Irish common law principles and case law regarding exercise of contractual rights following insolvency. In this regard we note it was held by the Supreme Court in the case of *Re Euro Travel Ltd; Dempsey v The Governor and Company of the Bank of Ireland*[13] that a liquidator "takes the assets [of a company] subject to any pre-existing enforceable right of a third party in or over them". However, it is arguable that the relevant right needs to be unconditionally exercisable prior to the time of insolvency, so automatic early termination may be an effective way to avoid this uncertainty. The disadvantage of specifying an Automatic Early Termination Event is that LCH would not have control over whether such event was triggered.

Question 9: "***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?***"

3.37 Yes:

(a) Section 604 (*Unfair preference: effect of winding up on antecedent and other transactions*) of CA 2014 ("**Section 604**") provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor of the company or any person on trust for any such creditor, with a view to giving such creditor (or any surety or guarantor of the debt due to such creditor) a preference over the company's

[13] Supreme Court, unreported 6 December 1985.

other creditors, shall be deemed to be an unfair preference of its creditors and be invalid accordingly if a winding up of the company commences within six months of the doing of the act and the company is, at the date of commencement of the winding up, unable to pay its debts (taking into account contingent and prospective liabilities). The suspect period may be extended to two years in some circumstances. Please see further analysis of Section 604 at paragraphs 2.1 to 2.7 of Schedule 3.

(b) Under section 597 (*Circumstances in which floating charge is invalid*) of the CA 2014 ("**Section 597**"), a floating charge is invalid if created in the period of twelve months (or two years if created in favour of a "connected person") ending with the date of commencement of the winding up of the company, and unless it can be proven that the company was solvent immediately after the creation of the charge. Please see further analysis of Section 597 at paragraphs 5.1 and 5.3 of Schedule 3 including discussion of protections available under the Irish FCA Regulations.

3.38 In addition there are other circumstances (which do not have suspect periods) in which transactions can be avoided following Insolvency Proceedings. However, as with Section 604 these involve an element of bad faith or preference and in this regard we refer to our assumption at paragraph 2.11 above. We also refer you to Schedule 3, which describes these circumstances.

3.39 Aside from protection for collateral arrangements contained in the Irish Settlement Finality Regulations and the Irish FCA Regulations, there are no special protections or exemptions for the relevant arrangements (in particular, Irish law does not provide equivalent protections for market contracts as those contained in Part VII of the (UK) Companies Act 1989).

Question 10: "***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?***"

3.40 The set-off of amounts representing terminated obligations may, subject to any contrary statutory rule, such as regulation 12(1) of the Irish FCA Regulations, be implemented, in a winding-up, under the CA 2014 (a "**Statutory Insolvency Set-off**"), rather than under the specific provisions of the Default Rules. However, unlike the position which we understand prevails in England, Statutory Set-Off is not mandatory.

3.41 Statutory Insolvency Set-off requires mutuality. The relevant provisions provide that "where there are mutual credits or debts as between bankrupt and any person claiming as a creditor, one debt may be set-off against the other and only the balance found owing shall be recoverable on one side or the other". Statutory Insolvency Set-off will only apply in the winding-up of a Relevant Clearing Member and then to the extent there are mutual debits and credits between them. If an account has already been taken of the relevant debits and credits through the application of Default Rules, it would not be possible to also apply Statutory Insolvency Set-off again in respect of the same amounts.

3.42 In addition:

(a) regulation 12(1) of the Irish FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms, notwithstanding that the collateral-provider

or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures; and

(b) to the extent the Contracts constitute bilateral contracts which are "financial contracts" for the purposes of the Netting Act, the Netting Act would be relevant to the extent the Default Rules could be considered a netting agreement for the purposes of the Netting Act.

Please see Schedule 5 regarding the applicability of the Irish FCA Regulations and Netting Act protections for netting arrangements.

3.43 To the extent the Contracts constitute bilateral contracts which are "financial contracts" for the purposes of the Netting Act, the Netting Act would be relevant to the extent the Default Rules could be considered a netting agreement for the purposes of the Netting Act. However, we do not believe that the Netting Act provides a stronger basis than the Irish Settlement Finality Regulations or the Irish FCA Regulations.

Question 11: "***Can a claim for a close-out amount be proved for in Insolvency Proceedings without conversion into the local currency?***"

3.44 No. The relevant rule of law provides that when a debtor is wound up after a sum expressed in a foreign currency has become due, such sum should be converted into euro at the rate of exchange prevailing on the date it became due. Where the sum became due after the debtor enters liquidation, it is possible that the sum will be paid in the euro equivalent of the amount due in the foreign currency, converted at the rate of exchange on the date of the commencement of such winding-up.

MEMBERSHIP

Exempting Client Clearing Rule

Question 12*:* "***Please opine on the availability and effectiveness of any law, regulation or statutory provision (having the force of law) in the Relevant Jurisdiction which (if so designated by LCH) would be expected to qualify as an Exempting Client Clearing Rule. Please clarify whether the relevant Exempting Client Clearing Rule would be expected to apply to Relevant Clearing Members of all entity types or to only certain entity types.***

If, and to the extent that, you consider such an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following questions that LCH will rely upon the existence of the relevant Exempting Client Clearing Rule and will not require those Relevant Clearing Members to which that Exempting Client Clearing Rule applies to enter into a Security Deed; and (ii) ignore Questions 20 to 22.

In cases where you do not consider an Exempting Client Clearing Rule to be available, please: (i) assume for the purposes of answering the following questions that LCH will require Relevant Clearing Members to enter into a Security Deed; (ii) assume that the Security Deed is legal, valid, binding and enforceable under English law (as its governing law) and complies with all relevant perfection requirements under the law of any jurisdiction(s) (other than the Relevant Jurisdiction) that you consider to be relevant to that matter; and (iii) provide a response to questions 20 to 22."

3.45 As detailed in our response to Questions 4 and 7 and 23, regulation 11 and regulation 9 of the Irish Settlement Finality Regulations provides the protections (including through insolvency) to the default rules and collateral arrangements of designated systems. Accordingly, we consider that the Irish Settlement Finality Regulations (as amended by Part 9 of the Brexit (Consequential Provisions) Act) should, on the basis

of our assumption at paragraph 2.17, be considered as an Exempting Client Clearing Rule.

3.46 Notwithstanding paragraph 3.45 and the terms of the question to which it relates, we, (for completeness in case either (i) the Irish Settlement Finality Regulations are not an Exempting Client Clearing Rule or (ii) a Relevant Clearing Member has entered into the Security Deed) have nonetheless provided below responses to Questions 20 to 22.

Default Outside Insolvency Proceedings or Reorganisation Measures

Question 13: "***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?***"

3.47 In the circumstances described in the above question:

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

(b) the terms of the Default Rules would be valid and effective under the laws of this jurisdiction; and

(c) accordingly, we do not believe that the Relevant Clearing Member or any other person could successfully challenge the actions of LCH and claim for the amount of the Account Balance.

3.48 In our view, there is no rule of the laws of Ireland which would apply to prohibit the Parties from entering into a contract upon the terms of the Clearing Membership Agreement or (through the Clearing Membership Agreement) agreeing to the terms of the Default Rules.

3.49 Moreover, in accordance with the provisions of the Rome I Regulation,[14] the effectiveness of the provisions in the Client Clearing Annex to the Default Rules related to porting in following Default will be a matter of the governing law of the relevant provisions, namely English law.

Question 14: "***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?***"

3.50 In these circumstances, for the same reasons set out in paragraphs 3.48 to 3.49 above, we are of the view that neither the Relevant Clearing Member nor any other person could successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement.

[14] Rome I Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

Insolvency-related Default

Question 15: "***If: (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could an insolvency officer appointed to the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?***"

3.51 Under general principles of Irish insolvency law, this could be challenged by a liquidator on the basis of it being a post-insolvency disposition.

However, the Irish Settlement Finality Regulations are of relevance in this case. As described above with respect to Question 7, Regulation 9 SFR provides that no Irish law relating to insolvency or insolvency proceedings invalidates, *inter alia*, the default arrangements of a designated system.

3.52 In respect of transfer of the Account Balance in reliance on the Security Deed we also refer you to our response to Question 20 regarding enforceability of the Security Deed at paragraphs 3.61 to 3.62 below.

Question 16: "***If: (i) following the commencement of Insolvency Proceedings, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could an insolvency officer appointed to the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?***"

3.53 Our replies to the previous question apply equally here.

Reorganisation Measures

Question 17: "***If: (i) following the implementation of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to port the Client Contracts and Account Balance of a Clearing Client to a Backup Clearing Member as a result, could the representative appointed to reorganise/manage the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Account Balance?***"

BRRD

3.54 The corresponding provisions of the Irish BRRD Regulations refer in each case to "systems or operators of systems designated for the purposes of [the Settlement Finality Directive]". It is unclear if a Court would consider a third country system designated by the Minister pursuant to the Brexit (Consequential Provisions) Act to be a "system designated for the purposes of [the Settlement Finality Directive]". As such, there is a risk that LCH would not be designated for the purposes of Directive 98/26/EC (the Settlement Finality Directive) but would be designated for the purposes of the Irish Settlement Finality Regulations. In that case, the Recital 7 extension of the Irish Settlement Finality Regulations might not protect LCH against BRRD resolution or recovery actions.

3.55 As further discussed in Schedule 2, we believe that it is unlikely that a person could successfully challenge these actions following the implementation of Reorganisation Measures under the Irish BRRD Regulations. Specifically, we believe that the powers under BRRD which could be relevant would be the power to bail-in derivatives (pursuant to regulation 88 of the Irish BRRD Regulations) and the power to suspend payment or delivery obligations of a BRRD Institution under a contract (pursuant to regulation 129 or regulation 63A of the Irish BRRD Regulations).

3.56 With regard to the power to bail-in, we note that:

(a) obligations under derivative contracts may only be bailed in following close-out of those contracts;

(b) there is protection for close-out netting under regulation 88 of the Irish BRRD Regulations; and

(c) secured liabilities are excluded from the scope of the bail-in tool.

Consequently, we believe that porting actions which consist of closing out of Contracts would be unlikely to be affected by the exercise of the Irish BRRD Regulations and the ability to port the Account Balance would be unlikely to be affected on the basis that it is a secured liability.

3.57 With regard to suspension powers under the Irish BRRD Regulations if the porting action could be construed as a payment or delivery obligation of the Relevant Clearing Member, it should nonetheless be unaffected on the basis that the BRRD moratorium does not apply to payment and delivery obligations owed to a CCP.

Examinership

3.58 For completeness, if the Irish Settlement Finality Regulations did not apply, then:

(a) In respect of transfer of the Account Balance in reliance on the Security Deed (and the ability of an examiner appointed to the Defaulter or any other person to successfully challenge the actions of LCH and claim for the amount of the Account Balance in such a circumstance) we refer you to our response to Question 20 regarding enforceability of the Security Deed at paragraphs 3.61 to 3.62 below.

(b) Regarding porting of Client Contracts, there is a risk that this porting could be limited by the rules regarding examinership (as described in Schedule 2 and in particular pursuant to section 524 of CA 2014).

Question 18: "***If: (i) following the commencement of Reorganisation Measures, a Relevant Clearing Member was designated a Defaulter (whether due to the delivery of a Default Notice or (if applicable) the occurrence of an Automatic Early Termination Event); and (ii) LCH were to seek to return the Client Clearing Entitlement to the relevant Clearing Client or to the Defaulter for the account of such client, could the representative appointed to reorganise/manage the Defaulter or any other person successfully challenge the actions of LCH and claim for the amount of the Client Clearing Entitlement?***"

We have considered this separately in the case of the Irish BRRD Regulations and examinership. In answering this question, we assume that in practice a return would always be made by LCH direct to the relevant Clearing Client, rather than via the Defaulter.

BRRD

3.59 In considering this issue under the Irish BRRD Regulations, we have in particular considered the potential bail in and moratorium measures under BRRD. In this regard we do not consider that, where a Relevant Clearing Member has agreed in the Rulebook that the Client Clearing Entitlement is to be for the account for the relevant Clearing Client, a resolution authority would treat the Client Clearing Entitlement as an asset of the Defaulter. In this regard we also note the terms of Article 39(11) of EMIR, which provides as follows: "Member States' national insolvency laws shall not prevent a CCP from acting in accordance with Article 48(5), (6) and (7) *[which address default procedures including return of client collateral]* with regard to the assets and positions recorded in accounts as referred to in paragraphs 2 to 5 of this Article."

Examinership

3.60 Under general principles of Irish insolvency law and not taking into account certain statutory protections, transfer of the Client Clearing Entitlement to the relevant Clearing Client or the Defaulter for the account of the relevant Clearing Clients could potentially be limited by the rules regarding examinership as described in Schedule 2 (*Reorganisation Proceedings)* in particular pursuant to section 524 of CA 2014. However, on the basis of the protections contained in section 9 of the Irish Settlement Finality Regulations (as amended by Part 9 and detailed above) we do not consider that examinership would affect the return of the Client Clearing Entitlement.

Question 19: "***Would the Security Deed provide an effective security interest under the laws of the Relevant Jurisdiction over the Account Balance or Client Clearing Entitlement in favour of the relevant Clearing Client?***"

3.61 If the Security Deed constitutes a financial collateral arrangement for the purposes of the Irish FCA Regulations (as to which we refer you to our analysis at Schedule 4 below), the security interests under the Security Deed would, assuming they are (as a matter of English law) validly created by a Clearing Member in favour of LCH as security for the payment or discharge of the Liabilities the financial collateral arrangement contained therein would be effective in accordance with its terms in the context of:

(a) Insolvency Proceedings; or

(b) the Reorganisation Measures of examinership or a solvent Scheme of Arrangement,

in respect of a Clearing Member. In particular we note that that the Irish FCA Regulations provide:

(a) that (with limited exceptions), the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement, or the provision of financial collateral under such an arrangement, does not depend on the performance of a formal act such as registration or notice to the debtor;

(b) that a financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures[15] in relation to the collateral provider or collateral taker concerned (regulation 7 of the Irish FCA Regulations);

[15] 'Reorganisation measures' for this purpose encompasses examinership and a solvent scheme of arrangement, but does not encompass actions under BRRD.

(c) That any question with respect to, amongst other things the legal nature and proprietary effects of the book entry securities collateral concerned and the steps required for the realisation of that collateral following the occurrence of an enforcement event are to be governed by the domestic law of the country in which the relevant account is maintained, irrespective of any law of that country that provides for the law of another country to be referred to in deciding the question.

However, these protections are subject to (i) the effects of the exercise of powers under BRRD and the Irish BRRD Regulations (including the possibility of a moratorium on the enforcement of the Security Deed) (in this regard see Schedule 2) and (ii) certain clawback risks under Irish law which are not disapplied by the Irish FCA Regulations (detailed in Schedule 3 below). As regards the Irish BRRD Regulations we describe out at Schedule 2 the mitigants for clearing houses and derivatives transactions and, as regards clawback risks, we consider in Schedule 3 the likelihood of such clawback risks and whether they are disapplied by the Irish FCA Regulations.

3.62 If the Security Deed is not a financial collateral arrangement for the purpose of the Irish FCA Regulations, the effectiveness of the Security Deed will also be subject to (i) further clawback risks that may apply under Irish insolvency law in the context of Insolvency Proceedings (see Schedule 3 below) and (ii) certain clawback risks and moratorium risks arising from examinership (in this regard see Schedule 2 below).

Question 20: "***Would the Security Deed constitute a financial collateral arrangement (or equivalent) in your jurisdiction?; and***
Are there any perfection steps which would need to be taken under the laws of the Relevant Jurisdiction in order for the Security Deed to be effective?"

3.63 On the basis of our analysis at Schedule 3 and our assumption at paragraph 2.19 above we are of the view that the Security Deed should comprise a security financial collateral arrangement (within the meaning of the Irish FCA Regulations).

3.64 To the extent that the Security Deed constitutes a security financial collateral arrangement within the meaning of the Irish FCA Regulations:

(a) any question relating to proprietary effects, requirements for perfecting such security arrangements and for rendering them effective against third parties, and the steps required for realisation of the Charged Property, would, on the basis of regulation 18 of the Irish FCA Regulations, be governed by the domestic law of the country in which the "relevant account" (as defined in the Irish FCA Regulations) is maintained;[16] and

(b) regulation 4 of the Irish FCA Regulations disapplies any filing requirement where such charge constitutes a security financial collateral arrangement for the purpose of the Irish FCA Regulations.

3.65 If the Security Deed does not constitute a security financial collateral arrangement within the meaning of the Irish FCA Regulations, it will be subject to sections 409 and 410 of CA 2014 regarding security filings. Those sections provide that where an Irish company creates a charge,[17] it must register particulars of the property charged with the CRO using either:

16 We refer you to our assumption at paragraph 2.22 that the relevant account is located in England.

17 The definition of 'charge' for this purpose is set out in Section 408 of CA 2014 and excludes any mortgage or charge over the property described in sub-paragraphs 3.67(a) to 3.67(d).

(a) a prescribed one-stage procedure involving the registration of those particulars within 21 days of the creation of the charge; or

(b) a prescribed two-stage procedure whereby notice of the intention to create the charge is registered with the CRO before the charge is taken and confirmation of the charge having been created is then registered with the CRO within 21 days of the registration of intention to create the charge.

3.66 Failure to register particulars of the property charged within the required time period results in that charge being void against any liquidator and any creditor of the Irish company and the amounts secured thereby become immediately payable.

3.67 A filing does not need to be made where the security interest is over any of the following property of an Irish company:

(a) cash,

(b) money credited to an account of a financial institution, or any other deposits,

(c) shares, including shares in a body corporate, bonds or debt instruments,

(d) units in collective investment undertakings or money market instruments, or

(e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of paragraphs (b) to (d);

3.68 Where the charge covers a mix of registrable and non-registrable property, the filing must be made in respect of that part of the charge that is over registrable property.

Question 21: "***Is there any risk of a stay on the enforcement of the Security Deed in the event of Insolvency Proceedings or Reorganisation Measures being commenced in respect of a Relevant Clearing Member?***"

3.69 We refer you to our responses at paragraphs 3.61 and 3.62 above and in particular the risk of stay arising from examinership or the Irish BRRD Regulations.

Question 22: "***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.***"

3.70 There are no other significant legal or regulatory issues that we are aware of which are not already identified elsewhere in this Opinion.

SETTLEMENT FINALITY

Background

Part 9 of the Brexit (Consequential Provisions) Act allows for a qualifying UK system to be treated, for the purpose of the Irish Settlement Finality Regulations, as if it was an Irish law governed system designated by the Minister for Finance as a system under the Irish Settlement Finality Regulations. This is dependent on LCH meeting the conditions for designation (under section 81 of the Brexit (Consequential Provisions) Act) ("**designation**") (as to which we refer to our assumption at paragraph 2.17).

Section 81 allows the Minister for Finance to issue a notice (a "designation notice") in respect of a relevant arrangement if the Central Bank has notified the Minister that it is satisfied that:

"(a) the rules of the arrangement would, if the arrangement were a system, comply with Regulation 7 of the [Irish Settlement Finality Regulations], and

(b) the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are equivalent to the laws of the State applicable to those matters."

A designation notice has effect until withdrawn.

In accordance with section 82(1) of the Brexit (Consequential Provisions) Act, a designation notice means that the Irish Settlement Finality Regulations (as modified by section 82(2)) will apply (as described below) to the relevant arrangement as if it were a system designated under regulation 4(1) of the Irish Settlement Finality Regulations. As such, a designated relevant system will be subject to the obligations on systems under the Irish Settlement Finality Regulations[18] and will also be allowed to benefit (as set out further below) from the protections of the Irish Settlement Finality Regulations.

Overview

3.71 This Section is concerned with the impact on the finality of settlement of a Payment Transfer Order or Securities Transfer Order (or both), including the corresponding transfer of funds or securities, respectively, from a Relevant Clearing Member to LCH through a Settlement Services Provider or PPS Bank (or both) in the event of that Relevant Clearing Member entering Insolvency Proceedings or becoming subject to Reorganisation Measures. In particular you asked us the following questions:

Question 23, sub-question 1 and 2:

(1) 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;

(2) 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 protections in respect of such settlement would be lost.

3.72 Assuming that our assumption at paragraph 2.17 above is correct, regulation 6 (*Transfer order and netting to be binding despite insolvency*) of the Irish Settlement Finality Regulations would protect the finality of settlement of (i) 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, and (ii) a Securities Transfer Order, including the corresponding transfer of securities, from the Relevant Clearing Member to LCH through a Securities System Operator, in each case assuming that the transfer order entered the system before the commencement of the

[18] For example, regulation 12 of the Irish Settlement Finality Regulations places an obligation on a system (on designation) to notify the Central Bank of the participants in the system (including any possible indirect participants). Thereafter, the system must immediately notify the Central Bank of any change of participants.

proceedings. Regulation 6(1) of the Irish Settlement Finality Regulations provides that "*A transfer order that has entered a designated system* [i.e. LCH] *is legally enforceable and binding on participants and third parties even if insolvency proceedings against a participant are commenced if (but only if) the transfer order entered the system before the commencement of the proceedings*." In this context "transfer order" means:

> "*(a) an instruction by a participant to place an amount of money at the disposal of a recipient by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent,*
>
> *(b) an instruction that results in the assumption or discharge of a payment obligation as defined by the rules of a designated system, or*
>
> *(c) an instruction by a participant to transfer the title to, or an interest in, a security or securities by means of a book entry on a register or by any other means.*"

Question 23, sub-question 3: 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.

3.73 The protections would not apply if, during the period which LCH benefits from designation under Part 9, the Minister for Finance issues a withdrawal notice, on the basis either that he or she is no longer satisfied that:

(i) the rules of LCH would, if the LCH were an Irish system, comply with regulation 7 of the Irish Settlement Finality Regulations; or

(ii) the laws of the UK applicable to the matters to which the Settlement Finality Directive applies are equivalent to the laws of the Ireland applicable to those matters.

In respect of 3.73(i), for the purposes of designation under section 81, we note that under section 81(5) of the Brexit (Consequential Provisions) Act, LCH would be under an obligation to inform the Central Bank in writing (within 14 days) of any changes to its rules. This obligation would also apply to the revocation of any LCH rules.

> "*(5) Where the rules of a relevant arrangement in relation to which a designation notice has effect are amended or revoked, the operator of that arrangement shall, not later than 14 days from the date of that amendment or revocation, as the case may be, notify the Bank in writing that those rules have been amended or revoked, as the case may be.*"

In respect of paragraph 3.73(ii) above, for the purposes of designation under section 81, we note that under section 81(6) of the Brexit (Consequential Provisions) Act, LCH would also be under an obligation to inform the Central Bank in writing (within 14 days) where it becomes aware that UK settlement finality law is not equivalent to Irish settlement finality law.

> "*(6) Where an operator of the relevant arrangement in relation to which a designation notice has effect becomes aware that the laws of the United Kingdom applicable to the matters to which the Settlement Finality Directive applies are not equivalent to the laws of the State applicable to those matters,*

the operator shall, not later than 14 days from the date on which it becomes so aware, notify the Bank in writing that it has become so aware."

3.74 The effect of BRRD on the Irish Settlement Finality Regulations, and in particular on UK systems that benefit from designation under the Irish Settlement Finality Regulations pursuant to Part 9, is unclear. The Irish BRRD Regulations refer in relevant places to "systems or operators of systems, designated according to Directive 98/26/EC". It is not clear that these protections in the Irish BRRD Regulations will extend to LCH as a system designated pursuant to Part 9. In the absence of clarity on this point, we refer you to the effects that BRRD may have in the absence on settlement finality protections.

3.75 In this regard, regulation 129 of the Irish BRRD Regulations provides the relevant resolution authority a power to suspend any payment or delivery obligations of a BRRD Institution before the commencement of Insolvency Proceedings. The exercise of these powers could have the effect of suspending a payment or delivery obligation of a BRRD Institution from the time publication of a notice of the suspension in accordance with regulation 145(4) of the Irish BRRD Regulations until midnight at the end of the business day following that publication. However:

(a) where payment or delivery would have fallen due during the suspension period, such payment or delivery will fall due immediately upon expiry of the suspension period;

(b) where the payment or delivery obligations of a BRRD Institution under a contract are suspended, the payment or delivery obligations of the counterparties of that institution under that contract also stand suspended for the suspension period; and

(c) any such suspension does not apply to payment and delivery obligations owed to a CCP authorised under EMIR or to a third-country CCP recognised by ESMA pursuant to Article 25 of EMIR.

3.76 In addition, regulation 63A of the Irish BRRD Regulations provides the relevant resolution authority a power to suspend any payment or delivery obligations of a BRRD Institution in certain circumstances where a determination that the BRRD Institution is failing or likely to fail has been made under Regulation 62(1)(a) of the Irish BRRD Regulations. The exercise of these powers could have the effect of suspending a payment or delivery obligation of a BRRD Institution from the time a notice is published in accordance with regulation 63A(11) of the Irish BRRD Regulations up to a maximum of midnight at the end of the business day next following that publication (and there is a requirement for the period of suspension to be as short as possible under regulation 63A(6) of the Irish BRRD Regulations). However:

(a) where payment or delivery would have fallen due during the suspension period, such payment or delivery will fall due immediately upon expiry of the suspension period;

(b) where the payment or delivery obligations of a BRRD Institution under a contract are suspended, the payment or delivery obligations of the counterparties of that institution under that contract also stand suspended for the suspension period; and

(c) any such suspension does not apply to payment and delivery obligations owed to a CCP authorised under EMIR or to a third-country CCP recognised by ESMA pursuant to Article 25 of EMIR.

3.77 For this reason, we consider it unlikely that the exercise of powers pursuant to the Irish BRRD Regulations would give rise to a loss of finality protections before the commencement of Insolvency Proceedings, even if the Irish Settlement Finality Regulations did not protect against the effects of the exercise of powers under BRRD.

3.78 We refer you to Schedule 2 for further information on the effects of the Irish BRRD Regulations in this regard.

4. QUALIFICATIONS

4.1 Enforceability of claims

The opinions contained in this Opinion are subject to:

(a) the power of a Court to order specific performance of an obligation or other equitable remedy is discretionary and, accordingly, a Court might make an award of damages where specific performance of an obligation or other equitable remedy is sought;

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

(c) enforcement may be limited by the provisions of English law applicable to agreements held to have been frustrated by events happening after its execution;

(d) proceedings to enforce a claim or arbitral award may become barred under the Statute of Limitations 1957 or may be or become subject to a defence of set-off or counterclaim;

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

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

(g) any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent, arbitrary or manifestly incorrect and a Court may regard any certification, determination or calculation as no more than *prima facie* evidence; and

(h) if a party to any Contract or Agreement (a "**Clearing Document**") or any transfer of, or payment in respect of, any Clearing Document is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Union or Irish sanctions or sanctions under the Treaty on the Functioning of the European Union, or is otherwise the target of any such

sanctions, then obligations to that party under the relevant Clearing Document or in respect of the relevant transfer or payment may be unenforceable or void.

4.2 **Effectiveness of Security Documents**

(a) We express no opinion as to:

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

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

(iii) whether any Security Document breaches any other agreement or instrument.

4.3 **Collateral**

(a) It is possible that fixed security interests expressed to be created by Security Documents could be recharacterised as floating charges. The risk of recharacterisation of a security interest as a floating charge depends on whether LCH has the requisite degree of control over the Security Property. To the extent that the Chargor is able to deal with the Security Property without LCH's substantive consent, the Court is likely to hold that the security interest created under the relevant Security Document constitutes a floating charge. If the security interest created under the relevant Security Document is characterised as a floating charge then the risks set out below might apply:

(i) the floating charge would, in certain circumstances, rank behind the preferential creditors and expenses of certain insolvency proceedings; and

(ii) the Chargor would be able to grant fixed charges and effect other dispositions of the relevant Security Property which would rank higher than LCH's security interest.

4.4 **Application of foreign law**

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

(b) 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.

(c) We express no opinion as to whether a Clearing Member has created a valid security interest over any asset or right which is situated outside Ireland or governed by a foreign law.

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

(e) The Courts having jurisdiction in relation to insolvency law in Ireland may give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in Ireland or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by Irish law. The Courts may accordingly apply foreign systems of law rather than Irish law where the Chargor is subject to insolvency proceedings in another jurisdiction.

4.5 **Other Qualifications**

(a) Under Irish law, interest imposed upon a Clearing Member under an arrangement, an Agreement or a Contract might be held to be irrecoverable to the extent that it accrues on an unsecured debt after the making of a winding-up order or the passing of a winding-up resolution for the appointment of a liquidator in respect of the Clearing Member, Directive No. 2011/7/EC of the European Parliament and of the Council of February 2011 on combating late payment in commercial transactions was implemented into Irish law by the European Communities (Late Payment on Commercial Transactions) Regulations 2012 (statutory Instrument No. 580/2012) (the "**Irish Late Payment Regulations**"). If the Opinion Documents do not provide a contractual remedy for the late payment of any amount payable thereunder, the Party entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed pursuant to Irish Late Payment Regulations.

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

(c) A Court may in its discretion decline to give effect to any provision for the payment of legal costs incurred by a litigant.

(d) The laws of Ireland may have effect so that any discretion or determination to be exercised or made by a party under the arrangements must be exercised or made reasonably. Any provision in the Opinion Documents providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent, incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party thereto. A Court may regard any calculation, determination or certification as no more than *prima facie* evidence of the matter calculated, determined or certified.

(e) The parties to the Agreements may be able to amend the Agreements or the arrangements by oral agreement or by conduct despite any provision to the contrary.

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

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

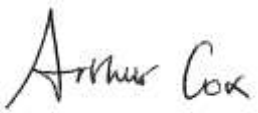
(h) Any provision of the Opinion Documents stating that a failure or delay, on the part of any party, in exercising any right or remedy under the Opinion Document shall not operate as a waiver of such right or remedy may not be effective.

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

(j) This Opinion is given for the exclusive benefit of the addressee. In this Opinion we do not assume any obligation to notify or inform you of any developments subsequent to its date that might render its content untrue or inaccurate in whole or in part at such time. It may not, without prior written consent, be relied on by any other person. We consent to a copy of this Opinion being made publically available on the website of the addressee and to it being shown to the relevant regulators and/or any counsel appointed by the addressee to advise on matters of the laws of other jurisdictions, for information purposes only and solely on the basis that we assume no responsibility to any such parties as a result or otherwise.

(k) We note that the ESMA LCH Recognition Decision ceases to be effective on 30 June 2022.

Yours faithfully



Arthur Cox LLP

SCHEDULE 1

Insolvency Proceedings

The only Insolvency Proceedings which Relevant Clearing Members could be subject to under the laws of Ireland are:

1. **Liquidation**

1.1 There are two main types of winding-up in Ireland:

(a) by the Courts: this usually results from the presentation of a petition to the High Court followed (if the Courts think fit) by a winding-up order. Such a winding-up may be either solvent or insolvent; and

(b) voluntary: this usually results from a resolution being passed by a company in general meeting for its voluntary winding-up. It can be either solvent or insolvent. It will take the form of a "**creditors' voluntary winding-up**" unless a statutory declaration of solvency is made by the directors in accordance with Irish companies legislation, in which case it will be a "**members' voluntary winding-up**". In certain circumstances, a members' voluntary winding-up can be converted into a creditors' voluntary winding-up. Similarly, a voluntary winding-up can become a winding-up by the Courts. Unregistered companies cannot be wound up voluntarily.

1.2 Liquidation/winding up proceedings cannot be taken against an Irish Bank without the consent of the Central Bank. Any liquidator appointed to an Irish Bank must be approved by the Central Bank.

2. **Receivership**

2.1 A receiver is a person duly appointed to take control of all or part of another's assets for the benefit of that other's creditor(s). Receivers may be appointed by the Courts in circumstances provided by statute or equity or (most commonly) by a secured creditor, without any resort to the Courts, where his security agreement provides for such appointment. Direct rights to appoint a receiver may also be afforded by statute.

2.2 The appointment of a receiver is not an insolvency procedure *per se*, it is an enforcement procedure employed for the benefit of a company's creditors. However it can often precede or lead to the opening of insolvency proceedings.

3. **Section 450 compromise between a company and its members/creditors ("Scheme of Arrangement")**

3.1 Under section 450 of CA 2014, the Court may sanction a Scheme of Arrangement if: (i) a special majority at the scheme meeting, or, where more than one scheme meeting is held, at each of the scheme meetings, votes in favour of a resolution agreeing to the compromise or arrangement; and (ii) notice of the passing of such resolution or resolutions at the scheme meeting or scheme meetings, and that an application will be made to the Court in relation to the compromise or arrangement, is advertised once in at least 2 daily newspapers circulating in the district where the registered office or principal place of business of the company is situated.

3.2 If so sanctioned, the Scheme of Arrangement will bind all of the creditors, or class of creditors, or members, or class of members, as the case may be, together with the company itself and the liquidator and contributories of the company, if in liquidation.

4. Bank of Ireland

4.1 The Governor and Company of the Bank of Ireland is an unregistered company for the purpose of section 1328 of CA 2014. Section 1328 of CA 2014 permits an "unregistered company" to be wound up in Ireland on the following grounds:

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purposes of winding-up its affairs;

(b) if the company is unable to pay its debts; or

(c) if the High Court is of the opinion that it is just and equitable that the company should be wound up.

Pursuant to section 1328(3) of CA 2014, unregistered companies cannot be wound up voluntarily. The provisions of the examinership regime set out in CA 2014 extend to The Governor and Company of the Bank of Ireland by virtue of section 1312 of CA 2014.

SCHEDULE 2

Reorganisation Measures

The only Reorganisation Measures which Relevant Clearing Members could be subject to under the laws of Ireland are:

1. **Court Protection/Examinership**

1.1 Examinership is a court moratorium/protection procedure which is available under Irish company law. It was originally introduced in Ireland, under the Companies (Amendment) Act 1990, to provide a remedy for a company with serious but not terminal financial difficulties to achieve with its creditors, shareholders, employees, tax and any applicable regulatory authorities some balanced and equitable solution that will return the company to a sound footing, and to achieve a more beneficial social and economic outcome than a winding-up.

1.2 Part 10 of CA 2014 provides that where a company is, or is likely to be, unable to pay its debts and has not been wound up an examiner may be appointed on a petition to the High Court[19] by the company, by the directors, by a creditor, by a contingent or prospective creditor or by members of the company holding, at the date of presentation of the petition, not less than one-tenth of the paid-up voting share capital of the company. However, in the case of certain companies (including Irish Banks and Irish Investment Firms) that are supervised by the Central Bank under any enactment, a petition may be presented only by the Central Bank or specified other parties subject to written notice of the petition being first served on the Central Bank.

1.3 The effect of the appointment of an examiner is to prevent the company being wound up or its assets being seized by creditors for the period that the company is under court protection. The examiner must, as soon as practicable after his appointment, formulate proposals for a compromise or scheme of arrangement in relation to the company and carry out such duties as the Court may direct him to carry out. The proposals may extend to the reconstruction of the company, the sale of its assets and changes in its management. Having done so, he must convene meetings of such classes of members and creditors as he deems appropriate to consider acceptance of his proposals, and report on those proposals to the Court.

1.4 Where a party is in examinership the creditors of that party have a right to be heard by the Court before any proposals are implemented. Once confirmed by the High Court or the Circuit Court (as applicable), the examiner's proposals will become binding on all creditors and their rights will be modified accordingly.

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[19] Note that where the relevant company treated as is treated as a "small company" by virtue of section 280A (*Qualification of company as small company: general*) or section 280B (*Qualification of company as small company: holding company*) of CA 2014 the petition for examinership may instead be presented to the Circuit Court.

A company will be deemed to be a small company for the purposes of section 280A of CA 2014 where it meets two of the following three conditions in respect of a financial year: (a) the amount of turnover of the company does not exceed €12 million; (b) the balance sheet total of the company does not exceed €6 million; and (c) its average number of employees does not exceed 50. A company that is a holding company (within the meaning of CA 2014) will be deemed to be a small company for the purposes of section 280B of CA 2014 only where its group qualifies as a "small group". A group will qualify as a small group where it meets two of the following three conditions in respect of a financial year: (a) the aggregate amount of turnover of the group does not exceed €12 million net (or €14.4 million gross); (b) the aggregate balance sheet total of the group does not exceed €6 million net (or €7.2 million gross); and (c) the aggregate average number of employees of the group does not exceed 50.

1.5 If an examiner were to be appointed to a Relevant Clearing Member, we consider the following to be the key risks and considerations:

(a) No action which amounts to realisation of security or payment by the company by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date of court protection would be permitted during the period of court protection. Novation of contracts by porting would not open to challenge by the examiner and would likely not be permitted;

(b) The period of court protection would ordinarily last 70 days, but may be extended to 100 days if required, or beyond that in exceptional circumstances;

(c) Debts (including secured liabilities) could be written down as a result of the examinership but it is unlikely in practice that secured liabilities would be written down below the value of the collateral securing them;

(d) Close-out netting (that is, closing out and arriving at net sum due) should not be restricted in examinership (on the basis that set-off is permitted during examinership, as is (generally speaking) close-out of contracts where that is permitted under the terms of the contract). However, as mentioned above, novation of contracts by porting would likely not be permitted.

(e) To the extent that the actions to be taken by LCH during a period of examinership amount to enforcement of a security financial collateral arrangement or actions under a qualifying close-out netting provision for the purpose of the Irish FCA Regulations, the protections at regulation 7 and regulation 12 of the Irish FCA Regulations would apply.

1.6 Please note that regulation 7 of the Irish FCA Regulations (that provides that a financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures in relation to the collateral provider or collateral taker concerned) and regulation 12 of the Irish FCA Regulations (which provides amongst other things, that a qualifying close-out netting provision has effect in accordance with its terms irrespective of whether winding-up proceedings or reorganisation measures have been commenced, or are continuing, in relation to the collateral provider or collateral taker concerned) and the protections described at paragraphs 2.1 to 2.4 of Schedule 4 provides certain protections against the effects of examinership.

Period of examinership

1.7 Where an examinership petition is presented in relation to a company, that company is deemed to be under the protection of the Court during the period beginning on the date of presentation of the petition and ending 70 days later (which period may be extended by a further 30 days where the Court is satisfied that the examiner would not be able to present his report within 70 days, or by such further period as the Court may allow where the Court needs more time to consider the proposals contained in the examiner's final report). In the event of an appeal of the Court's decision, the protection period is likely to be further extended in order to allow the determination of the appeal.

Effects of examinership

Section 520 – restriction on realisation of security

1.8 The effect of the appointment of an examiner is to suspend the rights of a secured creditor for the protection period but, save as detailed further below, the appointment

does not of itself affect the security or the rights of the secured creditor. Section 520 (*Effect of petition to appoint examiner on creditors and others*) of CA 2014 provides that for as long as a company is under the protection of the Court, no attachment, sequestration, distress or execution shall be put into force against the property or effects of the company except with the consent of the examiner. The section goes on to provide, amongst other things, that, except with the consent of the examiner:

(a) where any claim against the company is secured by a mortgage, charge, lien or other encumbrance of, or pledge of or affecting, the whole or any part of the property, effects or income of the company, no action may be taken to realise the whole or any part of such security;

(b) no receiver over any part of the property or undertaking of the company shall be appointed (and if a receiver was appointed before the petition was presented, that receiver will be unable to act); and

(c) no proceedings for the winding up of the company may be commenced and no resolution for winding up of the company may be passed (and no such resolution passed shall have any effect).

Section 521 - Restriction on payment of pre-petition debts

1.9 Pursuant to section 521 (*Restriction on payment of pre-petition debts*) of CA 2014, no payment may be made by a company during the period of Court protection by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date upon which the petition for the examiner's appointment was presented unless the independent expert's report under section 511 (*Independent expert's report*) of CA 2014 that accompanied the petition recommended that all or part of that liability be discharged or satisfied, or such payment is authorised by the Court (on application of the examiner or any interested party) where the Court is satisfied that a failure to discharge or satisfy in whole or in part that liability would considerably reduce the prospects of the company or the whole or any part of its undertaking surviving as a going concern.

1.10 Accordingly, in any examinership of a company, that company will be precluded from paying over monies to its creditors unless the Court would regard the failure to make the payments by the company as considerably reducing the company's prospects or the whole or part of its undertaking surviving as a going concern.

Section 530 - Security interests and examinership

1.11 Before the examiner can dispose of assets the subject of a security interest, the approval of the Court pursuant to section 530 (*Power to deal with charged property, etc.*) of CA 2014 ("**Section 530**") is required.

1.12 Section 530 empowers the Court to authorise an examiner of a company:

(a) in the case of property of a company subject to a security which, as created, was a floating charge, to exercise his powers in relation to it or to dispose of it as if it were not subject to the security; or

(b) in the case of property which is subject to a security other than a security described at (a) above, to dispose of it as if the property were not subject to the security,

in each case provided that the Court is satisfied that such disposal by the examiner (or in the case of property subject to a floating charge exercise by him of his powers) would be likely to facilitate the survival of the whole or any part of the company. Where property the subject of a security interest which was created as a floating charge is disposed of by the examiner, the holder of the security is to have the same priority in respect of any property directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security. In relation to property the subject of a fixed charge, Section 530(4) provides that the net proceeds of the disposal of such property (and, where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, the sum required to make up the deficiency) must be applied towards discharging the sums secured by that security.

Section 522 - Powers of examiner to halt, prevent or rectify the effects of an act, omission, course of conduct, decision or contract

1.13 Section 522 (*Effect on receiver or provisional liquidator of order appointing examiner*) of CA 2014 confers on the Court broad powers to prevent any receiver or provisional liquidator who has been appointed before the commencement of the examinership from continuing to act as such. Under sub-section (5) of section 524 (*Powers of an examiner*) of CA 2014 ("**Section 524**"), where an examiner becomes aware of any actual or proposed act, omission, course of conduct, decision or contract by or on behalf of the company or by any person in relation to the income, assets or liabilities of the company which, in his opinion, is or is likely to be to the detriment of the company or any interested party, he is given broad powers, subject to the right of parties acquiring an interest in good faith for value in such income, assets or liabilities,[20] to take whatever steps are necessary to halt, prevent or rectify the effects of such act, omission, course of conduct, decision or contract. The scope of section 7 (*Powers of an examiner*) of the CA Act 1990 ("**Section 7**") (which was replaced by Section 524 on 1 June 2015) was reviewed by the Supreme Court in the case of *Re Holidair Limited* [1994] ILRM 481. In *Re Holidair Limited* it was held that an attempt by a security trustee to direct a company under Court protection to lodge book debt proceeds to a designated account amounted to action taken to realise the security notwithstanding that the trustee had the power under the relevant security document to give such directions and that the lodgements were not to be applied during the protection period in reduction of the company's debt. The Supreme Court also determined that the examiner had power under Section 7 to disregard a clause included in a debenture issued by the companies under Court protection in favour of the banks requiring the consent of the banks before any new borrowings could be incurred, notwithstanding that the contract between the banks and the borrower had been negotiated for value, at arm's length and in good faith, many years before the enactment of the CA Act 1990.

Section 525 – Repudiation of prior contracts

Section 525 (*Repudiation by examiner of contracts made before period of protection and of negative pledge clauses whenever made: prohibitions and restrictions*) of CA 2014 states that nothing in Section 524 entitles an examiner to repudiate a contract entered into by the company prior to the company coming under Court protection. However, where an agreement entered into by the company (whether before or after it came under Court protection) provides that the company cannot (or may not, other than

[20] It is our view that the reference to "the rights of parties acquiring an interest in good faith and for value" refers to third parties who have purchased property for value and would not prevent an examiner from seeking to prevent secured creditors from taking action in relation to the property or debts of the company.

in specified cases) borrow money or otherwise obtain credit from any person other than the counterparty to the agreement, or create or permit to subsist any mortgage, charge, lien or other encumbrance or any pledge over the whole or any part of the company's property or undertaking (i.e. a negative pledge), and where the examiner's opinion is that the provision, if enforced, could prejudice the survival of the company or all or part of its undertaking as a going concern, and the examiner serves a notice on the counterparty or counterparties to the agreement informing them of his opinion, such restrictive provisions will not be binding on the company from the time that the notice is served until the time that the company exits Court protection.

Section 537 - Repudiation of contracts

1.14 Under section 537 (*Repudiation of certain contracts*) of CA 2014 ("**Section 537**"), where proposals for a compromise or scheme of arrangement are to be formulated in relation to a company, the company may, subject to the approval of the Court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the company and the other contracting party or parties. Any person who suffers loss or damage as a result of such repudiation stands as an unsecured creditor for the amount of such loss or damage and is entitled to be treated as such in any scheme of arrangement as if the loss or damage constituted a pre-petition claim. Where the Court approves the affirmation or repudiation of a contract under Section 537, it may in giving such approval make such orders as its thinks fit for the purposes of giving full effect to its approval including orders as to notice to, or declaring the rights of, any party affected by such affirmation or repudiation. Section 537 replaced section 20 (*Repudiation of certain contracts*) of the CA Act 1990 ("**Section 20**") with effect from 1 June 2015. Existing case law in relation to the scope of Section 20 was limited to the repudiation of leases. In the context of Agreements, the examiner could repudiate a contract or agreement to which the relevant company was party but this would not void the contract or prevent close-out in accordance with the terms of the contract.

Section 557 - Improperly Transferred Assets

1.15 In this regard please see paragraphs 3.1 to 3.6 of Schedule 3.

Examiner's proposals

1.16 Once appointed an examiner must, as soon as practical, formulate proposals for a compromise or scheme of arrangement in relation to the company to which he has been appointed. Typically, a scheme of arrangement will involve the writing down of creditors' claims (both secured and unsecured, contingent and actual) that are in existence at the date of the petition and the introduction into the company of new funds. Having formulated his proposals, he must convene meetings of such classes of members and creditors as he thinks proper to consider acceptance of his proposals. The examiner must report to the Court on the outcome of his meetings within 35 days of his appointment, although the 35 day period can be extended by the Court. There is acceptance by creditors or by a class of creditors when a majority in number representing a majority in value of the claims represented at the meeting vote in favour of the proposals. The proposals must be confirmed by the Court if they are to become effective and the Court can confirm the proposals only if, *inter alia*:

(a) at least one class of creditors whose interests or claims would be impaired by implementation of the proposals have accepted them;

(b) the Court is satisfied that the proposals are fair and equitable in relation to any class of members or creditors that has not accepted them and whose interests and claims would be impaired by implementation; and

(c) they are not unfairly prejudicial to the interests of any interested party.

Once confirmed by the Court, the proposals become binding on the company and all creditors (whether secured or unsecured) or the class or classes of creditors (whether secured or unsecured), as the case may be, affected by the proposals and their rights are accordingly modified.

2. Intervention and resolution powers pursuant to the Irish BRRD Regulations

Summary of impacts of BRRD

2.1 In summary, the recovery or resolution of a Clearing Member pursuant to the BRRD is unlikely to impact the obligations of such Clearing Member to LCH since the provisions which apply to recover or resolve entities that are failing or are likely to fail are generally disapplied in respect of derivatives cleared through a CCP which is authorised or recognised under EMIR.[21] This is not entirely surprising given the central role of CCPs in risk management and the fact that EMIR[22] ultimately addresses the same issues as the BRRD (e.g. loss absorption and risk mitigation). The protections offered by EMIR (initial margin, variation margin, default fund, porting) mean that the risks in respect of Clearing Member recovery or resolution under the BRRD only really arise where the net position between the clearing member and the CCP after close-out of the relevant positions and application of margin by the CCP constitutes a debt owing by the clearing member to the CCP. We understand that in such circumstances the LCH view has traditionally been to treat any such sum as irrecoverable, so the fact that a claim of this kind may be written down is unlikely to be material.

Summary of the BRRD

2.2 The BRRD introduces into EU law a common set of powers enabling resolution authorities to resolve banks that are failing or likely to fail without the need to place the bank into ordinary insolvency proceedings. It entrusts the resolution authority with a set of tools and powers to intervene swiftly and at a sufficiently early stage in a non-viable entity, in order to ensure the continuity of the entity's critical functions, while minimising the impact of its potential failure on the economy and the financial system.

2.3 The BRRD envisages that resolution authorities will have the power to apply certain resolution tools to banks and their holding companies when the bank is failing or likely to fail and there is no reasonable prospect of alternative private sector measures (including write down of capital instruments under the pre-resolution powers mentioned below) averting failure, and resolution action is in the public interest. In applying the tools, the resolution authorities are also instructed to observe certain resolution principles, including that the shareholders of the institution under resolution bear first losses.

2.4 The BRRD requires that member states give resolution authorities the following discretionary tools (which are enumerated in Article 37(3) of the BRRD):

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21 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

22 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

(a) **Sale of business tool**: the power to transfer the shares of the institution in resolution or all or part of its business to a purchaser.

(b) **Bridge institution tool**: the power to transfer the shares of the institution in resolution or all or part of its business to a bridge entity owned or controlled by public authorities.

(c) **Asset separation tool**: the power to transfer assets, rights or liabilities of an institution in resolution to one or more asset management vehicles. This tool can only be used in combination with one of the other tools.

(d) **Bail-in tool**: the power to deal with the liabilities of an institution in resolution by either writing them down or converting all or part of them into shares in the institution or its parent, in any combination.

2.5 The BRRD has largely been implemented into Irish law by the Irish BRRD Regulations on a "copy out" basis.

Bail-in

2.6 Under Articles 63(1)(e) and 63(1)(f) of the BRRD the resolution authorities can cancel a liability owed by a bank or modify it. The effect of this power is to "bail-in" the liabilities of a failing bank, by forcing its creditors to accept less in payment than they would otherwise be entitled to.

2.7 The scope of liabilities which may be the subject of the bail in power are broad and liabilities arising under derivative contracts are "bail-inable liabilities" potentially subject to a bail-in with the write down or conversion happening on close-out.

As regards derivative exposures, bail-in must follow close-out – that is, obligations arising under derivative instruments may not be bailed in until the relevant derivatives have been closed out.[23] In the context of derivatives cleared through a CCP, the expectation is that this calculation would be done by applying the default mechanism of the relevant CCP. This is provided for in Recital 17 of the EU Commission Delegated Regulation 2016/1401 on the valuation of derivatives in resolution (the "**Delegated Regulation**"), which provides that "In the event that a CCP clearing member is placed under resolution, and the resolution authority closed-out derivative contracts prior to a bail-in, that clearing member would qualify as a defaulting clearing member with regard to the CCP in relation to the particular netting set(s)".

The Regulation goes on to say that where the relevant CCP is authorised or recognised under EMIR, the default mechanism of that CCP should be treated by EU resolution authorities as reliable. No mention is made in the Delegated Regulation of the position as regards non-EU non-recognised CCPs. However, Article 49 BRRD is expressed to apply to all derivatives, not only those entered into with EU-authorised or recognised counterparties, and in our view Article 49 requires the application of CCP default rules for all CCPs in respect of the valuation of derivatives cleared on that CCP.

Regulation 88 of the Irish BRRD Regulations provides in this regard that:

(a) "*The write-down and conversion powers in relation to a liability arising from a derivative shall only be exercised upon or after closing-out that derivative*"; and

[23] Article 49(2) BRRD.

(b) "*Where derivative transactions are subject to a netting agreement, the independent party responsible for the valuation or the resolution authority shall determine as part of the valuation under Regulation 65 or 66* [of the Irish BRRD Regulations] *the liability arising from those transactions on a net basis in accordance with the terms of the agreement*".

For the purpose of Article 88 "derivative" means a derivative as defined in point (5) of Article 2 of EMIR.[24] To the extent that a product cleared by LCH is not a "derivative" within this definition, the relevant provisions of regulation 88 will not apply.

2.8 It is notable that the sequence of events envisaged in the Delegated Regulation assumes that the member will be placed in default at or after the moment of commencement of resolution. This raises an issue as regards Article 68 BRRD, which prohibits a counterparty (including a CCP) from bringing enforcement action under a contract by reason only of the commencement of resolution. Technically, therefore, where a member is placed in resolution but continues to perform all of its obligations, LCH cannot commence default proceedings. However, the resolution administrator may at any time cause default proceedings to be commenced, either by intentionally defaulting on obligations to the clearing house or through the exercise of the resolution power to close-out derivatives and other cleared products under Article 63(1)(k) BRRD. It does appear, however, that until such default proceedings have been completed, no exposure of the entity can be bailed in. This is because bail-in is required to be effected *pari passu* across all creditors of similar seniority, derivatives creditors rank *pari passu* with other senior creditors, and derivatives creditors can only be bailed in once the relevant positions have been closed out (Article 73 BRRD). Even where the result of the application of these netting provisions is to leave an amount due from the customer to the CCP, the extent to which such a claim can be written down as part of a bail-in is subject to a number of fixed "*ex ante* exclusions" under Article 44(2) and the "exceptional circumstances exclusions" under Article 44(3) of the BRRD which limit the application of the bail-in tool. Essentially the exclusions apply either because the liabilities would not ordinarily be exposed to losses in insolvency or because exposing them to losses would be likely to destabilise the bank or the wider financial system.

2.9 As far as cleared products are concerned, the relevant exemptions are as follows:

(a) Secured liabilities;[25] and

(b) Liabilities with remaining maturity of less than 7 days arising from participation in designated settlement systems and owed to the system or its participants or owed to CCPs authorised under EMIR or third-country CCPs recognised by ESMA pursuant to Article 25 of EMIR.[26]

Secured liabilities

2.10 Article 44(2)(b) of the BRRD excludes;

"*secured liabilities including covered bonds and liabilities in the form of financial instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to covered bonds*"

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[24] In this regard, we note that the Irish BRRD Regulations take a 'copy-out' approach and do not seek to extend the definition beyond that in the BRRD - in the BRRD "derivatives" are defined by reference to EMIR (and accordingly MiFID II).

[25] Article 44(2)(b) of the BRRD.

[26] Article 44(2)(f) of the BRRD.

and secured liabilities are defined as;

"*liabilities secured by a charge, pledge or lien, or collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements*".[27]

2.11 Thus, before the Clearing Member's default, gross exposures under any transaction cannot be bailed in to the extent that they are "secured liabilities". This term is defined in BRRD Article 2(1)(67) as meaning "a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements". It is therefore clear that bilateral contracts between members and a CCP are secured liabilities for this purpose. They are therefore protected by this provision as well as by Article 49. However, once exposures have been netted out in the default process, it is necessarily true that if the outcome is an amount owed by the member to the CCP, that that exposure will be uncollateralised, since all the available margin will have been used up before arriving at that negative number. Thus, a net balance owed by a member to the CCP after default will not be regarded as collateralised.

2.12 The EBA has stated that the provision relates to "*the exclusion of secured liabilities to the extent that the value of the liability does not exceed the value of the collateral*"[28] and the Article 55 RTS[29] provides that Article 55 clauses are not required where the liability is "*fully secured [and] governed by contractual terms that….oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements of EU law or of a third country achieving effects that can be deemed equivalent to EU law*".[30]

2.13 In Ireland, regulation 80 of the Irish BRRD Regulations provides that:

(c) "*A resolution order shall not exercise the write-down or conversion powers in relation to […] secured liabilities*", however,

(d) "*a resolution order may, where appropriate, exercise the write-down or conversion powers in relation to any part of a secured liability or a liability for which collateral has been pledged that exceeds the value of the assets, pledge, lien or collateral against which it is secured*".

"Secured liability" is defined as "*a liability where the right of the creditor to payment or other form of performance is secured by a charge, pledge or lien, or collateral arrangements including liabilities arising from repurchase transactions and other title transfer collateral arrangements*".

In the context of the Agreements, regulation 80 should be considered together with regulation 88 (as discussed above) and in particular the requirement that "write-down and conversion powers in relation to a liability arising from a derivative shall only be exercised upon or after closing-out that derivative". In our view, that a liability arising from a derivative transaction is a secured liability, the process which should be followed in respect of such liability is that (1) the liability should be ascertained upon or after closing-out that derivative and (2) the bail-in power may be exercised to the

27 Article 2(1)(67) BRRD.

28 EBA RTS 2015/11.

29 Commission Delegated Regulation (EU) 2016/1075.

30 Article 43(1) of Article 55 RTS.

extent that the collateral securing such liability exceeds the amount of the secured liability (following close-out).

Netting

2.14 In addition, the BRRD has the effect of protecting any netting arrangement that would be effective in insolvency. As regards partial transfers, these protections are provided by Article 77. As regards bail-in, the equivalent protection is provided by Article 34(g) (by Article 43(2) bail-in may only be effected in accordance with Article 34). Consequently, where obligations which may be bailed in are subject to a netting arrangement, netting takes place before the bail in operates with the result that only the net sum is capable of being bailed in. Both of these provisions apply to netting generally.

CCP specific exclusions

2.15 There are no specific protections for liabilities connected with clearing, payment or settlement systems other than the "participation in designated systems", CCPs authorised under EMIR and third-country CCPs recognised by ESMA pursuant to Article 25 of EMIR exemptions referred to above in respect of liabilities with remaining maturity of less than 7 days.

Exceptional circumstances exclusion

2.16 In exceptional circumstances a resolution authority may exclude liabilities arising under derivative contracts from a bail-in where;

(a) the bail-in would cause such a value destruction that the losses borne by other creditors would be higher than if those liabilities were excluded from bail-in; and

(b) where it is not possible to conduct a bail-in within a reasonable time.

BRRD Resolution powers

Stays and partial property transfer

2.17 If bail-in and other recovery planning do not rescue the failing bank, it may have to be put into resolution during which time there are several restrictions that apply to stave off the actions of third parties. These include:

(a) disapplication of default event provisions in consequence of the exercise of a crisis prevention or crisis management measure in relation to the bank such that neither will constitute a trigger for contractual termination, netting or set-off rights or enforcement of security in relation to the institution in resolution or a member of its group on a cross default basis; and

(b) short term moratoria which suspend the banks payment and delivery obligations, and the enforcement of security interests and the exercise of termination rights against the bank.[31]

[31] Pursuant to regulation 63A of the Irish BRRD Regulations, the relevant resolution authority also has the power to temporarily suspend certain payment or delivery obligations where a determination that the BRRD Institution is failing or likely to fail has been made under Regulation 62(1)(a) of the Irish BRRD Regulations.

2.18 The moratorium rules exist to facilitate the dismantling of the failed bank and the partial transfer of its business to a successor entity (in respect of the latter the risk for LCH is that parts which ought to be transferred together become detached for example, collateral is detached from its secured obligations).

2.19 During the period of a moratorium, the resolution authorities may suspend any obligation of the entity in resolution. Thus, if a clearing member were called for margin during such a period, it would be open to the resolution authority to suspend any such obligation for the duration of the moratorium period. It is arguable that LCH would be able to default the member in any event in such circumstances (on the basis that it would still be in breach of the LCH rules), but the safer view is that LCH would only be able to default the member on the expiry of the moratorium. This means that LCH would only be able to place the member in default on the expiry of the 2-day moratorium period.

2.20 There are a number of potentially relevant exceptions to the moratorium. Article 33a(2) and Article 69(4) provide that the relevant BRRD moratoria will not apply to exposures to CCPs authorised under EMIR or third-country CCPs recognised under EMIR. Article 70(2) prohibits member state resolution authorities from exercising their power to prevent secured creditors enforcing their security interest in respect of security interests granted to CCPs authorised under EMIR or third-country CCPs recognised under EMIR, and Article 71(3) provides that the power to suspend termination rights does not apply to the termination rights of a CCPs authorised under EMIR or third-country CCPs recognised under EMIR.

2.21 LCH is a third-country CCP recognised by ESMA for the purposes of EMIR. Thus it seems clear that the benefit of the protections set out in Articles 33a and 69-71 (inclusive) for clearing houses will apply to LCH post-Brexit while it is recognised by ESMA under Article 25 of EMIR. However, because BRRD is a directive, the specific application of these provisions will depend on the way in which BRRD has been implemented in the local jurisdiction of the member concerned.

2.22 In Ireland, the Irish BRRD Regulations (at regulations 63A, 124 and 129) implement these moratorium provisions to give the resolution authority the power to *inter alia* suspend certain payment or delivery obligations, restrict the enforcement of certain security interests and suspend certain termination rights for a specified amount of time (generally from the time of publication of the required notice of the suspension in accordance with the relevant regulation until midnight at the end of the business day following that publication). However, regulations 63A and 129 go on to provide that any suspension thereunder will not apply to payment and delivery obligations owed to CCPs authorised under EMIR or third-country CCPs recognised under Article 25 of EMIR.

2.23 A partial property transfer can in some circumstances have a negative impact on a creditor of a firm in resolution. In particular, where an obligation to a firm is separated from collateral given by that firm, the right to exercise or set off could in theory be lost. However, Articles 76, 77 and 78 provide that the partial property transfer power cannot be used in circumstances where it would interfere with security arrangements, title transfer collateral arrangements, set-off or netting arrangements. Consequently, a property transfer power under BRRD could not be used on a member in resolution in such a fashion as to disturb the existing positions of that member with LCH, or in a way which would negatively affect LCH's ability to retain collateral and apply it in respect the existing positions of that member. This is confirmed by Commission Delegated Regulation 2017/867, which makes clear than any arrangement between an institution and a central counterparty which is covered by a default fund should be

regarded as a protected "netting agreement" under Article 76(2)(d), and which provides in its recitals that "Resolution authorities should therefore be obliged to protect all types of arrangements referred to in Article 76(2) of BRRD which are linked to counterparty's activity as a CCP" (Rec 6). This appears to cover all forms of products which are subject to clearing, and not only derivatives.

2.24 Finally in this regard, Article 64(1)(f) BRRD confers a broad power on resolution authorities to vary contracts and to substitute parties, and you have asked whether this power could be used to vary the obligations of a member as regards LCH. In principle it could – the LCH rulebook consists of a series of bilateral contracts between LCH and each individual member. However, the power referred to is not an absolute power to vary contracts. It is an ancillary power and can only be exercised in order to facilitate the exercise of the powers conferred by Article 63. The Article 63 powers permit resolution authorities to vary the terms of debt and eligible instruments, but as regards derivatives the only power which is explicitly conferred by Article 63 is the power to close-out for the purposes of effecting the bail-in provisions in Article 49. Consequently, we do not believe that the Article 64(1)(f) power to vary contracts could be used to vary the position as between the member and LCH except pursuant to a closing out of the member's positions in resolution.

Application of the BRRD to other cleared products

2.25 Under the Irish BRRD Regulations, "derivatives" are defined by reference to EMIR (and accordingly MiFID II).

2.26 The protection in the Irish BRRD Regulations for secured liabilities is not limited to liabilities related to derivatives. Excess collateral may be bailed-in. There is no express requirement that collateralisation be calculated on the basis of a net exposure rather than a gross basis. However, we consider that the better view is that this should be calculated on a net basis (given the general protection given to netting in the BRRD). If the excess were calculated on a gross basis (i.e. per transaction) and bailed in accordingly, we consider that this would (assuming there were a legally enforceable netting agreement, enforceable on insolvency) breach the principle in BRRD that no creditor should suffer more than it would in an insolvency of the bailed-in institution.

2.27 The protection given to derivatives in Article 49 BRRD, (write-down and conversion powers only after bail-in) are reflected in regulation 88 of the Irish BRRD Regulations. However, this protection is limited to derivatives (and not to repos or spot transactions, such as cash bond/cash equities). To the extent that LCH has an enforceable netting arrangement in respect of non-derivatives products (where the netting arrangement is effective on insolvency), the principles in BRRD (Article 34(1)(g) (reflected in regulation 64 of the Irish BRRD Regulations (*General principles governing resolution*)) and Article 75 (reflected in regulation 132 (*Treatment of shareholders and creditors in case of partial transfers and application of the bail-in tool*))) should prevent bail-in tool from being used to bail in a gross exposure (or compensate LCH in the event a gross exposure were bailed in).

2.28 Regulation 138 of the Irish BRRD Regulations provides that certain arrangements are protected from partial property transfers. Reflecting Article 76(2) BRRD, regulation 138 protects title transfer financial collateral arrangements (as defined in the Collateral Directive) and netting arrangements. Subject to the terms of the applicable Commission Delegated Regulation, "netting agreements" means:

> "*an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever*

defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including "close-out netting provisions" as defined in point (n)(i) of Article 2(1) of Directive 2002/47/EC and "netting" as defined in point (k) of Article 2 of Directive 98/26/EC".

2.29 Under the applicable Commission Delegated Regulation (Commission Delegated Regulation (EU) of 7 February 2017 on classes of arrangement to be protected in a partial property transfer under Article 76 of Directive 2014/59/EU of the European Parliament and of the Council), "contractual netting agreements ….shall qualify as netting agreements [for the purposes of Article 76] where they relate to rights and liabilities arising under financial contracts or derivatives".

"financial contracts" are defined in BRRD to include:

securities contracts, including:

(i) contracts for the purchase, sale or loan of a security, a group or index of securities;

(ii) options on a security or group or index of securities;

(iii) repurchase or reverse repurchase transactions on any such security, group or index;

2.30 One must then analyse:

(a) whether the Clearing Membership Agreement comprises a "netting agreement" for this purpose; and

(b) whether such netting agreement relates only to "financial contracts or derivatives".

On the first question, we understand that the Default Rules contain an arrangement under which *a number of claims or obligations can be converted into a single net claim*,[32] including close-out netting arrangements under which, on the occurrence of an enforcement event (however or wherever defined) the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim.

On the second question, we understand that the universe of transactions, to which the Default Rules relate are limited to derivatives, repos and cash bonds/cash equities. Derivatives are clearly referred to in the applicable Commission Delegated Regulation, as are "securities contracts". "Securities contracts" includes "*repurchase or reverse repurchase transactions on any … security*" (so repos/reverse repos on securities).

[32] The BRRD does not expressly require that this be a netting arrangement which is enforceable on insolvency.

SCHEDULE 3

Avoidance provisions arising from Insolvency Proceedings

1. **Introduction**

1.1 We set out in this Schedule 3 the transaction clawback provisions which apply and consider the extent to which (i) they are disapplied in the case of a qualifying financial collateral arrangement and (ii) there may (in the event they are not disapplied) likely to be practical reasons for making them less likely to be a material concern.

1.2 In this regard, regulation 14 of the Irish FCA Regulations ("**Regulation 14**"), provides that the posting of financial collateral may not be invalidated or declared void or reversed only because the arrangement was created, or the financial collateral was provided during a period before, and defined by reference to, the commencement of winding-up proceedings or reorganisation measures, or by reference to the making of any court order or the taking of any action, or the occurrence of any other event, during those proceedings or measures.

1.3 Please also note that if a transfer of collateral pursuant to a financial collateral arrangement is made on the day on which winding-up of the transferee commences, specific protections are available under regulations 15 and 16 of the Irish FCA Regulations. In this regard please see paragraphs 2.1 to 2.4 of Schedule 4.

2. **Unfair Preference (Section 604)**

2.1 Section 604 (*Unfair preference: effect of winding up on antecedent and other transactions*) of CA 2014 ("**Section 604**") provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as they become due in favour of any creditor of the company or any person on trust for any such creditor, with a view to giving such creditor (or any surety or guarantor of the debt due to such creditor) a preference over the company's other creditors, shall be deemed to be an unfair preference of its creditors and be invalid accordingly if a winding up of the company commences within six months of the doing of the act and the company is, at the date of commencement of the winding up, unable to pay its debts (taking into account contingent and prospective liabilities). Case law relevant to section 286 (*Fraudulent preference*) of the 1963 Act ("**Section 286**") (which was replaced by Section 604 with effect from 1 June 2015) indicated that a dominant intent on the part of the company concerned to prefer a creditor over its other creditors was necessary in order for Section 286 to apply (***Corran Construction Co Ltd. v Bank of Ireland*** [1976-7] ILRM 175, ***Station Motors Ltd v Allied Irish Banks, p.l.c.*** [1985] IR 756).

2.2 Where the conveyance, mortgage, delivery of goods, payment, execution or other act is in favour of a "*connected person*", the six month period is extended to two years and the act in question shall be deemed, if the company is being wound up and is, at the time that the winding up commences, unable to pay its debts, to have been done with a view to giving the connected person a preference over the company's other creditors, to be an unfair preference, and to be invalid. Consequently, the burden of proof is on the connected person to show that any such act was not an unfair preference. A "*connected person*" means a person who was, at the time that the transaction took place, a director or shadow director of the company, a person connected with a director of the company within the meaning of section 220 (*Connected persons*) of CA 2014 (spouse, civil partner, parent, sibling, child, trustee or partner in a partnership), a related

company, or any trustee of or surety or guarantor for the debt due to any of the foregoing.

2.3 Case law relating to section 286 of the Companies Act 1963, which related to "fraudulent preference" and which has been replaced by the "unfair preference" provisions of section 604 of CA 2014, indicates that a dominant intent on the part of a company to prefer a creditor over the other creditors of such company is necessary in order for section 286 to apply.

2.4 The unfair preference provisions will only have application in relation to the posting of collateral by the collateral-provider if, *inter alia*,

(a) the secured party (e.g. LCH) is a creditor of the Relevant Clearing Member as collateral-provider;

(b) the collateral-provider enters into a secured transaction or posts financial collateral with a view to preferring the secured party as creditor (or a surety or guarantor of the collateral provider's obligations under an agreement) over another creditor of the collateral-provider; and

(c) the collateral-provider is wound up within six months or, if the secured party is a connected person of the collateral provider, two years of the relevant secured transaction/posting of financial collateral and cannot pay its debts at the commencement of that winding-up.

2.5 It would seem difficult, in circumstances where (we assume) the Relevant Clearing Member as collateral-provider entered into a contractual obligation pursuant to the Agreements to provide financial collateral in good faith and with reasonable grounds for believing that such provision would be for benefit of, and conducive to, the business of the Relevant Clearing Member to show that financial collateral provided pursuant to that contractual obligation was provided with the dominant intention to prefer the secured party. The intention of the collateral-provider is, however, a factual matter.

2.6 As regards any substitution of collateral, the fact that collateral is substituted by the collateral-provider during a preference period is not, of itself, sufficient to constitute the delivery of substitute collateral a preference. If, however, such a delivery - perhaps of collateral having a higher value than that for which it was substituted - is made with the dominant intention of preferring the secured party over another creditor of collateral-provider, or if it effects a fraud on creditors or constitutes a transfer of assets at an undervalue, it may be void. It is difficult to anticipate circumstances where the dominant intention of the collateral-provider in substituting collateral could, where it is contractually entitled to do so, be to prefer the secured party over, or perpetrate a fraud on, another creditor for the purposes of the above-mentioned statutory provisions.

2.7 Section 604 would not in our view be disapplied by Regulation 14.

3. **Improperly Transferred Assets - Sections 443 (receivership), 557 (examinership) and 608 (liquidation) of CA 2014**

3.1 If in a liquidation or receivership or examinership of any company it can be shown to the satisfaction of the Court that any property of that company was disposed of (including a disposal by way of charge, security assignment or mortgage) and the effect of such a disposal was to "*perpetrate a fraud*" on the company, its creditors or members, the High Court may, if it deems it just and equitable to do so, order any person who appears to have "*use, control or possession*" of the property concerned, or of the proceeds of the sale or development of that property, to deliver it or them, or to

pay a sum in respect of it to the relevant insolvency officer (or other applicant, which includes a creditor or contributory) under such terms or conditions as the Court sees fit. In deciding whether it is just and equitable to make an order under section 443, section 557 or section 608 of CA 2014, the Court must have regard to the rights of persons who have *bona fide* and for value acquired an interest in the property that is the subject of the application.

3.2 These powers have been the subject of very limited judicial consideration prior to the commencement of CA 2014. Most notably, in ***Le Chatelaine Thudichum (In Liq.) Ltd. v Conway*** [2010] 1 IR 529), the High Court held that it was not necessary under section 139 of CA 2014 ("**Section 139**") that an intention to defraud be present and that a disposal of company property would have the effect of perpetrating a fraud within the meaning of Section 139 if such disposal deprived the company, its creditors or members of some assets to which it is, or to which they are, lawfully entitled. In the subsequent case of ***Myles Kirby as Official Liquidator of MPS Global Limited (In Liquidation) v Paraic Muldowney*** (unreported judgment of Mr. Justice Barrett delivered on 30 May 2014), the Court held that the director of the company in liquidation had fraudulently used the company's monies to repay personal loans owing to the respondent and that the respondent was on constructive notice of the "tainted source" of those monies. Accordingly, the Court held that it was that it was just and equitable for it to order the respondent to restore those monies to the company's liquidator.

3.3 These provisions apply whether or not the relevant company was insolvent at the time of the disposal, whether or not there is any evidence of an actual fraudulent intent in making it, and irrespective of how long a period elapses between the date of the disposal and the date of the relevant insolvency proceedings, although these may be factors which a Court would take into account in deciding whether or not to grant such an order.

3.4 It is difficult to see how sections 443, 557 or 608 could be applied to a posting of collateral by a collateral provider assuming that the collateral to be maintained is determined by some a manner which is standard in the market. Provided that the parties act in good faith and a commercially reasonable manner (and thereby did not defraud any creditor of the collateral provider of any asset to which it was lawfully entitled) and, at the time collateral is posted, there were reasonable grounds for believing that the provision of the collateral would be for benefit of, and conducive to, the business of the collateral provider, there would not appear to be any grounds on which the Court could order a secured party to deliver up such collateral under sections 443, 557 or 608 of CA 2014. The fact that provision is made for the return of any excess collateral provided to the collateral provider after the satisfaction in full of the secured obligations should provide additional support for this.

3.5 It is also difficult to see, on the basis of the terms of an Agreement, that a substitution of collateral could comprise a transfer of assets at an undervalue, even if over-collateralisation was provided for, given that the secured party would presumably be obliged, after exercise of its security/set-off rights, to return any excess collateral then held over the value of the secured obligations.

3.6 In our view that although, Sections 443, 557 or 608 of CA 2014 would not be disapplied by Regulation 14, on the basis of the analysis and assumptions set out above in relation to sections 443, 557 or 608 of CA 2014, it is difficult to see how this could be invoked to require a return of collateral.

4. **Section 74 of the Land and Conveyancing Law Reform Act 2009 and Fraudulent Conveyances**

4.1 Pursuant to section 74 of the Land and Conveyancing Law Reform Act 2009 ("**Section 74**"), conveyances of property made with the intention of defrauding a creditor or other person are voidable by any person thereby prejudiced. This does not apply to any estate or interest in property conveyed for valuable consideration to any person in good faith not having, at the time of the conveyance, notice of the fraudulent intention or affect any other law relating to bankruptcy of an individual or corporate insolvency.

4.2 It should be noted that section 74 can apply whether or not an entity was insolvent at the time of entry into of the impugned transaction.

4.3 Section 74 would not in our view be disapplied by Regulation 14.

4.4 It is difficult to see how Section 74 could be applied to a posting of collateral by a collateral provider assuming that the collateral to be maintained is determined by some a manner which is standard in the market. Provided that the parties act in good faith and a commercially reasonable manner (and thereby did not defraud any creditor of the collateral provider of any asset to which it was lawfully entitled) and, at the time collateral is posted, there were reasonable grounds for believing that the provision of the collateral would be for benefit of, and conducive to, the business of the collateral provider, there would not appear to be any grounds on which Section 74 could be invoked to require a secured party to deliver up such collateral. The fact that provision is made for the return of any excess collateral provided to the collateral provider after the satisfaction in full of the secured obligations should provide additional support for this.

4.5 It is also difficult to see, on the basis of the terms of an Agreement, that a substitution of collateral could comprise a conveyance of property made with the intention of defrauding a creditor, even if over collateralisation was provided for, given that the secured party would presumably be obliged, after exercise of its security/set-off rights, to return any excess collateral then held over the value of the secured obligations.

5. **Section 597 of CA 2014 and floating charges**

5.1 Section 597 of CA 2014 ("**Section 597**") renders invalid (except to the extent of monies actually advanced or paid or the actual price or value of the goods or services sold or supplied to the relevant party at the time of or subsequently to the creation of the charge, together with interest on that amount at the appropriate rate, currently five per cent per annum) floating charges on the property of the relevant party created within 12 months (or two years, where the floating charge is created in favour of a "connected person" for the purposes of the provision) before the commencement of its winding-up unless it is proved that the relevant party was solvent immediately after the creation of the charge. Also, if indebtedness of a relevant party to an officer or connected person was discharged within 12 months before the commencement of its winding up (whether wholly or partly by the relevant party or any other person) then section 598 of CA 2014 renders invalid any floating charge on the property of the relevant party created in favour of that officer or connected person to the extent of that repayment, unless it is proved that the relevant party was solvent immediately after the creation of the charge.

5.2 Please note Section 597 will not apply if the company was solvent immediately after the creation of the relevant charge.

5.3 In our view, Sections 597 and 598 would be disapplied by Regulation 14.

6. **Section 602**

6.1 Section 602 (*Voidance of dispositions of property, etc. after commencement of winding up*) of CA 2014 ("**Section 602**") provides that, in any winding up of a company, *inter alia* any disposition of the property of the company made after the commencement of the winding up and done without the sanction of the company's liquidator or of a director of the company who has, under section 677(3) of CA 2014, retained the power to do such an act, is, unless the High Court orders otherwise, void. A person who does an act rendered void by Section 602 will not be liable for doing such an act at the company's request unless it is proved that, prior to doing such an act, that person had actual notice that the company was being wound up.

6.2 Please note that if the transfer is a transfer of collateral pursuant to a financial collateral arrangement and is made on the day on which winding up commences, specific protections are available under regulations 15 and 16 of the Irish FCA Regulations. In this regard please see paragraphs 2.1 to 2.4 of Schedule 4.

SCHEDULE 4

Irish FCA Regulations

1. 1.1 The Irish FCA Regulations implement the Collateral Directive in Ireland. The protections contained in the Irish FCA Regulations include:

(a) That (with limited exceptions), the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement, or the provision of financial collateral under such an arrangement, does not depend on the performance of a formal act such as registration or notice to the debtor.

(b) That a financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures in relation to the collateral provider or collateral taker concerned.

(c) That a title transfer financial collateral arrangement has effect in accordance with its terms.

(d) That any question with respect to any of the following matters arising in relation to book entry securities collateral is to be governed by the domestic law of the country in which the relevant account is maintained, irrespective of any law of that country that provides for the law of another country to be referred to in deciding the question:

(i) the legal nature and proprietary effects of the book entry securities collateral concerned;

(ii) the requirements for perfecting a financial collateral arrangement relating to that collateral;

(iii) the provision of that collateral under such an arrangement and, more generally, the completion of steps necessary to render such an arrangement and provision effective against third parties;

(iv) whether a person's title to, or interest in, that collateral is overridden by, or subordinated to, a competing title or interest;

(v) whether a person has in good faith acquired title to, or an interest in, that collateral; or

(vi) the steps required for the realisation of that collateral following the occurrence of an enforcement event.

(e) That on the occurrence of an enforcement event relating to a security financial collateral arrangement, the collateral taker under the arrangement has a right to realise financial collateral provided under the arrangement in accordance with Regulation 6 of the Irish FCA Regulations;

(f) With regard to close-out netting a close-out netting provision as defined in and within the scope of the Irish FCA Regulations has effect in accordance with regulation 12 of the Irish FCA Regulations (and in this regard please see Schedule 5 below).

1.2 For the Irish FCA Regulations to apply to a financial collateral arrangement:

(a) the arrangement must be either a "title transfer financial collateral arrangement" or a "security financial collateral arrangement", and must involve the provision of "financial collateral" (as described below) between the parties to secure relevant financial obligations;

(b) the financial collateral arrangement and the collateral must comply with the requirements of regulation 3 of the Irish FCA Regulations which includes that:

(i) the collateral taker and the collateral provider must both be one of the types of party specified in regulation 3(2) of the EUFCR and neither can be a natural person;

(ii) there must be evidence in writing of the financial collateral arrangement; and

(iii) there must be evidence in writing of the provision of the collateral forming financial collateral.

1.3 With regard to paragraph 1.2(b)(i) above, in the present context the most relevant category is that of a "*supervised financial institution*" as defined in the Irish FCA Regulations. If one of the parties is a supervised financial institution then the other party may be any person or group other than a natural person. On the basis of paragraph 1.1 of the Opinion which provides that the Relevant Clearing Member will be an Irish Investment Firm or an Irish Bank then the Clearing Member will be within the definition of "supervised financial institution" and this condition is met in respect of the Chargor as collateral provider.

We refer to a collateral arrangement which meets all of the requirements of a "financial collateral arrangement" under the Irish FCA Regulations as a "**Qualifying Financial Collateral Arrangement**".

1.4 With regard to paragraphs 1.2(b)(ii) and 1.2(b)(iii) above we refer you to our assumptions at paragraphs 2.21 to 2.24 of the Opinion.

1.5 With regard to paragraph 1.2(a) above, we have considered below whether a Deed of Charge or Security Deed should constitute a security financial collateral arrangement as a matter of Irish law.

Irish FCA Regulations - security financial collateral arrangement

1.6 Whether a particular arrangement constitutes a security financial collateral arrangement is a question of fact and cannot be opined on with certainty in any particular case.

1.7 A security financial collateral arrangement is defined as "an arrangement under which a collateral provider provides financial collateral by way of security to or in favour of a collateral taker, and where the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established".

1.8 Accordingly, three necessary characteristics of a security financial collateral arrangement under the Irish FCA Regulations are that:

(a) a collateral provider provides financial collateral by way of security to, or in favour of, a collateral taker;

(b) the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established; and

(c) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or a person acting on its behalf.

1.9 For the purposes of the Irish FCA Regulations, financial collateral is "provided" when financial collateral that is or is to be delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of a collateral taker or a person acting on a collateral taker's behalf is so delivered, transferred, held, registered or otherwise designated.

1.10 The wording of the Irish FCA Regulations seems to indicate that possession and control are separate tests and that satisfaction of either will bring an arrangement within the scope of the Irish FCA Regulations.

1.11 There is (unlike in England) no statutory definition of "possession" in respect of financial collateral for the purposes of the Irish FCA Regulations and nor is there, to our knowledge, any Irish case law on this issue. Similarly, the Irish FCA Regulations do not contain a definition "control" nor is there any Irish case law on the issue.

1.12 There is no recognised Irish case law regarding possession of intangible assets such as the Security Property which are held is cash or securities accounts. Consequently we consider that the possession test in of limited practical importance in the context of Security Documents.

1.13 As to whether the Security Property is under the control of the collateral taker after the security interest is created, we are not aware of any Irish case law which provides any clarification on the issue of control since the Irish FCA Regulations came into existence. However, English case law would have persuasive authority in the Courts on this point and we note the English case *Gray v G-T-P Group Ltd; Re: F2G Realisations Ltd, [2010] EWHC 1772 (Ch)* which considered whether a charge fell within the scope of the Collateral Directive as implemented in the UK and considered whether an account was in the secured creditor's control. We also note the judgment of the European Court of Justice ("**ECJ**") in the case of Private Equity Insurance Group SIA v Swedbank AS[33] ("**Swedbank**"). Our interpretation of the judgments in those cases is that for a creditor (i.e. collateral taker) to have control for the purposes of the Collateral Directive, the control must be more than administrative control but that secured creditor must have real legal control i.e. the collateral taker must have the legal right to prevent the collateral provider from using or dissipating the secured assets in the ordinary course of its business. We note in particular the following statements in those judgments:

> "*If the collateral taker cannot prevent the collateral provider from dealing with the charged assets, then he does not in any legal sense have control. He only has control in an administrative or practical sense which is insufficient for the application of the Regulations*" (per Vos J. Gray v G-T-P Group Ltd; Re: F2G Realisations Ltd, [2010] EWHC 1772 (Ch)).
>
> "*It follows that the taker of collateral, such as the collateral at issue in the main proceedings, in the form of monies lodged in an ordinary bank account may be regarded as having acquired 'possession or control' of the monies only*

[33] C-156/15: Private Equity Insurance Group SIA v Swedbank AS.

if the collateral provider is prevented from disposing of them." (per judgment of the ECJ in the Swedbank case, paragraph 41).

1.14 In our view it is not possible to take a conclusive view as to whether an arrangement is a security financial collateral arrangement on the basis of either possession or control, unless such arrangement would clearly be a fixed charge under the laws of this jurisdiction or unless such arrangement is structured so as to ensure that the rights of the collateral provider are confined to substitution and the right to withdraw excess collateral; and it is possible, that an even more restrictive standard would apply. Please note that whether or not a collateral arrangement constitutes a fixed or floating charge is a question of fact, and we express no opinion as to whether or not either Security Document constitutes a fixed or floating charge.

1.15 As regards paragraphs (a) and (b) of paragraph 1.8, we refer you to our assumption at paragraph 2.12 of the Opinion.

1.16 In respect of the requirement of paragraph (c) of paragraph 1.8, as discussed above neither of the terms "possession" or "control" are defined in the Irish FCA Regulations. With regard to the Deed of Charge, whilst there is no conclusive authority, for the purposes of this Opinion we are of the view that in light of the fact that (i) the Charged Property is held by LCH (either held by a Clearance System (as defined in the Deed of Charge) on behalf of, for the account of, to the order of or under the control or direction of LCH or under the control or direction of a Custodian Bank (as defined in the Deed of Charge) for the account of LCH) and (ii) the Clearing Member is prohibited from charging or assigning (by way of security or otherwise) or creating any other proprietary interest over the Charged Property, the relevant conditions that have to be met in order to establish "possession" or "control" for the purposes of the Irish FCA Regulations should be present.

With regard to the Security Deed, we note that the Chargor is not entitled to deal with the Charged Assets at any time while the Charge is in effect.[34] We also note that the collateral which is the subject of the Security Deed is the Relevant Client Clearing Return and the Relevant Account Property. In each case this collateral is as determined by LCH following an Enforcement Event. As the Default Rules prevent the Clearing Member from freely disposing of the Relevant Client Clearing Return and the Relevant Account Property from the time of their determination (i.e. from the time of an Enforcement Event) except in accordance with the Default Rules, we are of the view that this should constitute sufficient control over the Charged Assets to establish "possession" or "control" for the purposes of the Irish FCA Regulations to be present.

1.17 Notwithstanding that each Security Document is governed by English law and the exact nature of the rights created between the parties falls to be decided as a matter of English law, it is our view on the basis of the assumptions contained in the Opinion and the analysis in this Schedule 4 that if the matter came to be determined by a Court, the Deed of Charge and the Security Deed should each constitute a security financial collateral arrangement under the laws of Ireland.

Excess Collateral

1.18 There is no definition of excess collateral in the Irish FCA Regulations. We are aware that there is concern amongst commentators and practitioners in England that "excess" does not simply mean an excess over any level chosen by the parties. Regarding the Deed of Charge, we note that the secured obligations under the Deed of Charge are not

[34] Clause 6.1 (*No Enforcement Event*) of the Security Deed.

restricted to trade exposures, but instead are defined to include all amounts (including fees, unfunded default fund contributions, indemnities etc.) owing by a Clearing Member to LCH. Therefore the amount of Charged Property LCH may require the Clearing Member to maintain, and so any agreed level above which excess can be withdrawn, may be lower than the exposure of LCH to the Clearing Member under the Deed of Charge. On this construction it would be impossible to assess accurately the amount of such liabilities from time to time and therefore it would be impossible to determine the "excess amount" which would effectively (and somewhat surprisingly) prohibit any withdrawals. Accordingly, whilst we cannot, in the absence of jurisprudence on the point, give certainty, we believe that the better view is that this extension of the scope of secured obligations does not take the arrangements outside the protections afforded by the Irish FCA Regulations.

Irish FCA Regulations – title transfer financial collateral arrangement

1.19 Under the Irish FCA Regulations, a title transfer financial collateral arrangement is an arrangement under which:

(a) a collateral provider transfers full ownership of, or full entitlement to collateral to a collateral taker;

(b) where that collateral is of a type encompassed by the Irish FCA Regulations; and

(c) such collateral is provided in order to secure or otherwise cover the performance of obligations that give right to a cash settlement or the delivery of certain types of financial instruments, or both.

Title transfer financial collateral arrangement – Default rules

1.20 Regarding whether the requirements regarding transfer of Collateral set out in the Rulebook would constitute a title transfer financial collateral arrangement, we note that regulation 20(b) of the General Regulations section of the Rulebook provides for transfer of Collateral in the form of cash (by way of initial margin and variation margin). Regarding the requirements set out at paragraph 1.19(a) to 1.19(c) above:

(a) In respect of paragraph 1.19(a), we note that regulation 20(s)(i) of the Rulebook provides that (save as stated in sub-paragraphs (ii) and (iii) of that regulation), all transfers of Collateral by a Clearing Member to LCH or, as the case may be, by LCH to a Clearing Member are effected on an outright title-transfer basis;

(b) In respect of paragraph 1.19(b), we refer you to our assumption at paragraph 2.19; and

(c) In respect of paragraph 1.19(c), we refer you to our opinion at paragraph 2.28.

1.21 On this basis, we consider that these arrangements for the transfer of Collateral in the form of cash (by way of initial margin and variation margin in accordance with regulation 20(b) of the General Regulations section of the Rulebook) between a Relevant Clearing Member and LCH (the "**Collateral Title Transfer Provisions**") should qualify as a title transfer financial collateral arrangement under the laws of Ireland.

2. **Protection for transfers of financial collateral under the Irish FCA Regulations**

2.1 In addition to the provisions of regulation 7 of the Irish FCA Regulations which provides that a financial collateral arrangement has effect in accordance with its terms despite the commencement or continuation of winding-up proceedings or reorganisation measures in relation to the collateral provider or collateral taker concerned, Part 5 (*Disapplication of certain insolvency provisions*) of the Irish FCA Regulations provides further protections for financial collateral arrangements from the effects of Irish insolvency law.

2.2 Regulation 15 provides that:

> "*Any financial collateral arrangement or relevant financial obligation created, or any financial collateral provided, on the day on which, but after the moment at which, winding-up proceedings or reorganisation measures were commenced,*[35] *is binding on third parties if the collateral taker concerned is able to prove that that collateral taker was not aware, and had no reason to believe, that the proceedings or measures had commenced*."

2.3 Regulation 16 provides (amongst other things) that:

> "*If a financial collateral arrangement contains an obligation to provide financial collateral, or additional financial collateral, in order to take account of changes in the value of the financial collateral, or in the amount of the relevant financial obligations, the provision of financial collateral or additional, substituted or replacement financial collateral under such an obligation may not be invalidated or declared void or reversed only because -*
>
> > *(a) the provision was made on the day on which winding-up proceedings or reorganisation measures commenced, but before the commencement of those proceedings or measures, or during a period before, and defined by reference to -*
> >
> > > *(i) the commencement of winding-up proceedings or reorganisation measures, or*
> > >
> > > *(ii) the making of a court order, or the taking of any other action, or the occurrence of any other event, during the course of those proceedings or measures, or*
> >
> > *(b) the relevant financial obligations were incurred before the date on which the financial collateral, or the additional, substituted or replacement financial collateral, was provided*."

2.4 Accordingly, if a Relevant Clearing member transfers Collateral pursuant to the Rulebook as part of a financial collateral arrangement, the protections of regulation 15 and 16 will apply.

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[35] In this regard, Regulation 13 of the Irish FCA Regulations provides that (a) winding-up proceedings commence on the making of a winding-up order by the court; and (b) reorganisation measures commence on the day on which an intervention by an administrative authority or a judicial authority commences.

SCHEDULE 5

Netting and Set-Off

Irish FCA Regulations

1.

1.1 Under regulation 12 of the Irish FCA Regulations, a "close-out netting provision" has effect in accordance with its terms, irrespective of whether winding-up proceedings or reorganisation measures[36] have been commenced, or are continuing, in relation to the collateral provider.

1.2 A "close-out netting provision" for the purposes of the Irish FCA Regulations means (*inter alia*) an arrangement:

(a) of which a financial collateral arrangement forms part; and

(b) as a result of which:

(i) the obligations of the parties are:

(A) accelerated so as to be immediately due and are expressed as an amount representing the estimated current value of the obligations; and/or

(B) are terminated and replaced by an obligation to pay such amount; and

(ii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other a net amount equal to the balance of the account.

1.3 Based on paragraphs 1.20 and 1.21 of Schedule 4, we consider that the Default Rules should constitute a term of an arrangement of which a financial collateral arrangement forms part under regulation 12(1) of the Irish FCA Regulations, the relevant "financial collateral arrangement" for these purposes being a "title transfer financial collateral arrangement" in respect of "financial collateral" in the form of "cash" (as such term is defined in the Irish FCA Regulations). The arrangements for the transfer of Collateral in the form of cash (by way of initial margin and variation margin in accordance with regulation 20(b) of the General Regulations section of the Rulebook) between each Relevant Clearing Member and LCH constitute the relevant title transfer financial collateral arrangement.

1.4 To the extent that requirements set out at paragraph 1.2(b) above are met by the Default Rules, the Default Rules should constitute a "close-out netting provision" for the purposes of the Irish FCA Regulations and accordingly regulation 12 of the Irish FCA Regulations will apply to them.

1.5 On the basis of, and subject to, the analysis set out at paragraph 1.6 below and Schedule 4 above, we are of the view that certain aspects of Default Rules (provided that a related

[36] In this regard we note "reorganisation measures" does not include actions taken by a competent authority pursuant to the Irish BRRD Regulations.

qualifying financial collateral arrangement has been established (and in this regard we refer you to Schedule 4 above)) would likely comprise a close-out netting provision for the purposes of regulation 12 and thereby benefit from the post-insolvency protection of regulation 12.

1.6 For the purposes of the Irish FCA Regulations, a "close-out netting provision" is defined as follows:[37]

"*close-out netting provision*" *means—*

(a) a provision of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, or

(b) an enactment or a rule of law, as a result of which, on the occurrence of an enforcement event, either or both of the following apply (whether through the operation of netting or set-off or otherwise):

(i) the obligations of the parties—

(I) are accelerated so as to be immediately due and are expressed as an obligation to pay an amount representing the estimated current value of the obligations, or

(II) are terminated and replaced by an obligation to pay such an amount;

(ii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account;

1.7 The drafting (and, in particular, syntax) of this definition raises some difficulties.

(a) In the first case the words "as a result of which, on the occurrence…" relate, on the face of it, to paragraph (b) and subsequent paragraphs only. This would have the effect of rendering (without any further requirement) the text in (a) ["a provision of a financial collateral arrangement, or an arrangement of which a financial collateral forms part"], without more, a "close-out netting provision". This would be, in our view be a patently incorrect and obtuse interpretation (which would allow any provision forming part of a qualifying collateral arrangement to obtain the benefit of regulation 12 of the Irish FCA Regulations). To our mind, the text "as a result of which, on the occurrence…" must be read as qualifying also the text in paragraph (a) (beginning "a provision of a financial collateral arrangement…").

(b) A further difficulty lies in the interpretation of the words "either or both of the following apply". It is unclear whether this should be interpreted as a reference to:

(i) on the one hand, "either or both" of:

[37] The underlining in parts is for our emphasis and is not contained in the actual text of the legislation.

(A) paragraph (i) (the paragraph beginning with the words "the obligations of the parties");[38]

(B) paragraph (ii) (the paragraph beginning with the words beginning "an account is taken")

OR

(ii) on the other hand, either or both of

(A) paragraph (i) (the paragraph beginning with the words "the obligations of the parties are accelerated");

(B) paragraph (ii) (the paragraph beginning with the words "the obligations of the parties are terminated"),

with it being a further requirement in each case, that then, "an account is taken…".

To our mind, the first interpretation is the correction interpretation. If the second interpretation were taken, then it would have to describe a provision containing either or *both* of the following: (i) acceleration of obligations and (ii) termination of the same obligations (with the inherent conceptual difficulties that such an interpretation would bring).

In addition, it seems to us that the intention of the definition "close-out netting provision" is clearly to describe an arrangement which does actually arrive a netting of the value of underlying contracts/obligations on the basis of a close-out of the related contracts. The Irish FCA Regulations were implemented in response to the Collateral Directive and accordingly, we consider that a Court would construe them in accordance with the terms and purpose of that Directive.

The term close-out netting provision is defined in the Collateral Directive as follows:

"'close-out netting provision' means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise:

(i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount;

and/or

(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party."

[38] With this having two further options (being paragraph (i)(II) (the obligations of the parties are accelerated…) and paragraph (i)(II) (the obligations of the parties are terminated…)).

1.8 Accordingly, in our view the better view is a "close-out netting provision", for the purposes of the Irish FCA Regulations is:

(i) a provision of a financial collateral arrangement [being a qualifying collateral arrangement], or an arrangement of which a financial collateral arrangement forms part, or

(ii) an enactment or a rule of law

as a result of which, on the occurrence of an enforcement event, either or both of the following [being (A) or (B) below] apply (whether through the operation of netting or set-off or otherwise):

(A) the obligations of the parties:

(1) are accelerated so as to be immediately due and are expressed as an obligation to pay an amount representing the estimated current value of the obligations, or

(2) are terminated and replaced by an obligation to pay such an amount;

(B) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account.

1.9 Accordingly, we set out below our analysis of the satisfaction of the above requirements by the Default Rules, based on our understanding of, and assumptions as to, the interpretation of the Agreements pursuant to English law (and our interpretation, for the purposes of the regulation 12 of the Irish FCA Regulations, of the definition a "close-out netting provision"). We have assumed, without any investigation or verification, that each matter expressed below as understood by us reflects accurately the position pursuant to English law (where relevant):

(a) "**a provision of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part**": we understand that the Default Rules are intrinsic, related parts of a single contractual arrangement provided for in Rulebook and, to that extent, each forms part of the other. On that basis and provided that the Collateral Title Transfer Provisions constitute a Qualifying Financial Collateral Arrangement, this requirement is satisfied. On the basis of, and subject to, the analysis set out in Schedule 4 above, we are of the view that the Collateral Title Transfer Provisions should constitute a Qualifying Financial Collateral Arrangement;

(b) "**as a result of which, on the occurrence of an enforcement event**": We understand that, under the terms of the Rulebook, following various enforcement events, including the commencement of Irish insolvency proceedings in relation to a Clearing Member, LCH may exercise its rights under the Default Rules. On this basis, this requirement is satisfied;

(c) "**whether through the operation of netting or set-off or otherwise**": we understand that certain but not all of the provisions of the Default Rules operate

by means of set-off. However, the inclusion of the words "or otherwise" gives a very wide latitude as to how the matters described below are effected.

(d) "**the obligations of the parties ... are accelerated so as to be immediately due and are expressed…**" or "**are terminated and replaced…**" At the outset we would note that the Collateral Directive is clearly intended to protect a close-out of certain arrangements where such close-out comprises (i) a termination of transactions, (ii) the valuation of such transactions at the time of their termination and (iii) the reduction to a single net sum of the positive and negative valuations of the various terminated transactions. In the case of the Default Rules, we understand that the effect of their exercise is to annul, rescind, cancel or otherwise terminate Contracts and that this also involves, setting-off/reducing to a single net sum, the gains and losses incurred in respect of offsetting/replacement transactions. In particular, we understand that upon a default of a Clearing Member (i) LCH can declare a default in respect of the relevant Clearing Member by serving a notice of default, (ii) LCH then takes the step of moving the relevant Contracts from the relevant Clearing Members account to LCH's own account, which has the effect of terminating the Contracts vis-à-vis the relevant Clearing Member, (iii) LCH effectively determines the values of the relevant Contracts by going through the process of auctioning the Contracts or hedging the Contracts by entering into off-setting transactions in accordance with the Default Rules, which crystallises the gains or losses in respect of the Contracts of the defaulter and (iii) the crystallised gains and losses are applied against each other in order to arrive at a single net sum.

In substance, this, in our view, is equivalent to those elements of the "close-out netting provision" definition addressed in this paragraph (d) and in paragraph (e) below. We consider that an arrangement which does actually arrive a netting of the value of underlying contracts/obligations on the basis of a close-out of the related contracts, is intended to be covered by these limbs of the "close-out netting provision" definition. We consider that a Court would be slow to take an over-literal interpretation of the definition of a close-out netting provision for the purposes of regulation 12 of the Irish FCA Regulations, if the effect of the Default Rules were equivalent, in economic and practical terms, to a termination of Contracts, their valuation at the time of termination by reference to market/objective values and reduction to a single net sum of the positive and negative valuations. Nonetheless, it is open to a Court to conclude, and there remains a risk that a Court would conclude, that there is no valuation of terminated obligations as required by the definition of a close-out netting provision (rather a termination payment is calculated by reference to the net loss or gain resulting from mitigating actions taken by LCH with respect to terminated contracts). There is no relevant Irish case-law on this issue.

"**an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account**": we understand that, as described above, having closed out and effectively valued the Contracts, the remaining gains, losses and other amounts due from or to the Clearing Member are set-off to produce a single net aggregate amount due by LCH or the Clearing Member as the party from whom the larger gross aggregate amount was due. On this basis, this requirement is satisfied. .

Netting Act - Where the Netting Act applies

1.10 If the Default Rules constitutes a "**netting agreement**" as defined in the Netting Act, then the close-out of the Contracts in accordance the Default Rules in the event that the Relevant Clearing Member was subject to Insolvency Proceedings or Reorganisation Measures (including Examinership), together with the determination of the termination values of those Contracts and the set-off of the termination values so determined so as to arrive at a net amount due will, in the absence of fraud, misrepresentation or similar grounds, be enforceable against the Customer notwithstanding any rule of law relating to bankruptcy (under the Companies Act), insolvency or receivership. The Netting Act does not protect against the exercise of BRRD powers. We have considered at paragraphs 1.11 to 1.17 below whether the Default Rules constitute a netting agreement for the purposes of the Netting Act.

Disapplication of general insolvency law under the Netting Act

1.11 The Netting Act provides that notwithstanding, *inter alia*, any rule of law relating to bankruptcy, insolvency or receivership, the provisions of a netting agreement are legally enforceable. The relevant provisions of the Netting Act operate unless any enactment or rule of law would prevent the legal enforceability of the netting provisions of the netting agreement concerned on the grounds of fraud, misrepresentation or any similar ground and in particular by reason of the application of certain specified insolvency-related provisions referred to in section 4(2)(a) of the Netting Act relating to:

(a) fraudulent preference (section 604 of CA 2014); or

(b) the return of assets which have been improperly transferred (Sections 443, 507 and 608 of CA 2014),

which are each discussed in Schedule 3.

Definition of a "netting agreement"

1.12 A "netting agreement" is defined (in section1 of the Netting Act) as:

"*... an* ***agreement between two parties only****, in relation to* ***present or future financial contracts between them****-*

(a) ***providing, inter alia, for the termination of those contracts for the time being in existence, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due****, and*

(b) which may provide for a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the financial contracts concerned, and

(c) which may provide for the set off against the net amount due under paragraph (a) and that amount only of -

(i) any money provided solely to secure the obligation of either party in respect of the financial contracts concerned,

(ii) the ***proceeds of the enforcement and realisation of any collateral*** *in the form of -*

(I) securities or other property provided, or

(II) money, securities or other property provided solely to secure the obligation of the guarantor under paragraph (b),

***solely to secure the obligation of either party in respect of the financial contracts** concerned;*" (our emphasis)

We have highlighted above the particular aspects of the definition which we think are relevant to the Default Rules and consider these further below.

Application to the Agreement

1.13 "An agreement between two parties only"

The Netting Act covers *bilateral* netting arrangements only. Based on our understanding of the Clearing Membership Agreement (through which the Parties agree to the Rulebook including the Default Rules) as a matter of the governing law of the Opinion Documents (the "**Governing Law**"), the Clearing Membership Agreement and the Rulebook are between LCH and the Relevant Clearing Member, and relevant Contract is between the LCH and a Relevant Clearing Member. Accordingly, provided that, as a matter of the Governing Law, the Default Rules can properly be characterised as a bilateral agreement, we believe a Court would respect such characterisation.

1.14 "In relation to present or future financial contracts between them"

The Netting Act requires that the transactions between the relevant parties constitute "**Financial Contracts**". We have set out in full the definition of Financial Contracts at in Schedule 7.

As you will note, the definition includes:

> "*… agreements to buy or sell, clear or settle transactions in, or act as a depository for, any financial asset, including, without limitation, any security (including any equity), currency, obligation evidencing debt (including a loan or deposit) and any negotiable or transferable instrument and any intangible asset…*"

We have considered whether the Agreement constitutes an agreement to clear or settle transactions in financial assets. The Netting Act does not contain a definition of a "clearing agreement" and there is no authority available to assist in its interpretation. On a plain English interpretation, the Clearing Membership Agreement together with the Rulebook would appear to function as a clearing agreement. As the Clearing Membership Agreement and the Rulebook are governed by the laws of England, the exact nature of the rights created between LCH and the Relevant Clearing Member will be a matter of such laws. Provided therefore that, as a matter of the Governing Law, the Clearing Membership Agreement and the Rulebook constitutes an agreement to buy or sell, clear or settle transactions in, any financial asset, then in our view an Irish court would likely respect such characterisation such that the Default Rules would constitute a clearing agreement (and, accordingly, a Financial Contract) for the purposes of the Netting Act.

The netting agreement must provide, *inter alia*, for the termination of ***those contracts*** for the time being in existence (our emphasis). This requirement is straightforward in the case of an umbrella agreement (such as, for example, an ISDA Master Agreement), where it is envisaged that the underlying transactions (each of which must constitute a

Financial Contract in its own right) will be terminated and netted. In the context of a clearing agreement which itself constitutes the Financial Contract, it is unclear whether the underlying transactions must also constitute "Financial Contracts". That part of the definition of Financial Contracts which refers to clearing agreements refers to "… agreements to buy or sell, clear or settle transactions in, or act as a depository for, ***any financial asset*** …" (our emphasis).

1.15 "Providing, *inter alia*, for the termination of those contracts for the time being in existence, the determination of the termination values of those contracts and the set-off of the termination values so determined so as to arrive at a net amount due"

LCH is afforded broad rights to liquidate, close-out or terminate Contracts following the designation of a Relevant Clearing Member as a Defaulter. The Netting Act refers to the termination of contracts in order to determine a new sum due from one party to the other. It is unclear whether "termination" in this context is to be interpreted narrowly, such that all Contracts must be closed out and/or valued, or whether "termination" is capable of being interpreted broadly so that the value of a Contract the subject of close-out can be taken into account in determining the termination amount, provided that such Contract is no longer an obligation of the Relevant Clearing Member. The reference to "*inter alia*" in this context is potentially helpful in supporting the argument for a broad interpretation but this is by no means clear.

1.16 "Solely to secure the obligation of either party in respect of the financial contracts"

The Netting Act addresses collateral arrangements given in support of Financial Contracts and provides certain benefits to the secured party in respect of such collateral arrangements (although, importantly, not a disapplication of perfection requirements under CA 2014). It is a requirement of the Netting Act that the collateral provided is "***solely*** to secure the obligation of either party in respect of the financial contracts" (our emphasis). In the case of Regulation 20(b) of the General Regulations section of the Rulebook, we note that Collateral may be required in respect of "initial margin or variation margin in circumstances prescribed by the Regulations or Procedures". In our view, despite the uncertainty identified at paragraph 1.8 above (i.e. whether the contracts underlying a Financial Contract (such as a clearing agreement) must themselves constitute "financial contracts" for the purposes of the Netting Act), the provision of the Collateral is sufficiently restricted in order for the security arrangements to qualify (subject to the satisfaction of the other conditions) for the protections of the Netting Act.

Conclusions in relation to the application of the Netting Act

1.17 In our view, there are good arguments that, as a technical matter, an arrangement such as the Default Rules which provide for LCH to liquidate transactions in an orderly manner on behalf of an Defaulter in order to mitigate that Relevant Clearing Member's liability under the arrangements should comprise a Financial Contract and avail of the protections afforded by the Netting Act. However, in the absence of any guidance or case-law to this effect, it is not possible to definitive and we cannot rule out the risk that a Court would take a less-reasoned approach.

Set-Off

General

1.18 To the extent that the actions which may be taken by LCH amount to setting off, we have considered whether the laws of Ireland relating to set-off would allow LCH to set-off amounts owing by it to the Relevant Clearing Member against matured amounts owing to it under the Agreements.

Statutory set-off

1.19 Please see paragraphs 3.40 and 3.41 of the Opinion above.

Contractual Set-Off

1.20 Irish law also provides for "**Contractual Set-off**" whereby parties can agree to regulate monetary amounts owing as between them (note that there is a mutuality requirement). To this extent, it is worth noting as follows:

(a) Contractual set-off post winding up is not contrary to public policy.[39]

(b) The exercise of contractual set-off after the commencement of a winding up has been permitted by the Courts.[40] This was set down by the Supreme Court in *Re Eurotravel Ltd; Dempsey v The Governor and Company of the Bank of Ireland, Supreme Court, unreported 6 December 1985* ("**Dempsey**"). The rationale behind the Dempsey decision is that the liquidator takes no better title to the property of the company than the company itself had and that means that he takes the assets subject to any pre-existing enforceable right of a third party in or over them. In Dempsey a bond had been given by the company, which was guaranteed by a bank. The bank was in turn counter-indemnified by the company on the basis that the bank could debit any account with sums the bank was obliged to pay under the guarantee. The bond and the bank guarantee were demanded before the commencement of the liquidation of the company. The bank after the commencement of the liquidation paid the demand and decided not to claim in the liquidation but rather to exercise its contractual right of set-off. This was upheld by the court. The court expressly held that the timing of the payment and exercise of the right of set-off was irrelevant and pointed that the relevant matter was the fact that the bank account of the company had passed to the liquidator subject to the bank's enforceable right to set-off the amount it had paid out under the guarantee against the balance of the company's account. It followed that the bank's accrued right to debit took precedence over the liquidators title to the account.

(c) It is not necessary that the claims arise out of similar transactions. There is therefore no objection to setting-off monetary amounts that are not related. However, there is a requirement for mutuality, for the right to set-off to have become enforceable prior to the liquidation and for a specific contractual set-off provision to have been agreed.

1.21 The ***Dempsey*** case establishes (under the laws of Ireland) the principle that the Courts will give effect to enforceable contractual agreements for set-off in a winding up where it would be inequitable not to do so and where such agreements are not contrary to any public policy principle.[41] Once it is established that set-off is an ordinary transaction in

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39 *Costello J in Glow Heating Limited v Eastern Health Board [1988] I.R. 110 and Re Eurotravel Ltd; Dempsey v The Governor and Company of the Bank of Ireland, Supreme Court, unreported 6 December 1985*

40 *Re Eurotravel Ltd; Dempsey v The Governor and Company of the Bank of Ireland, Supreme Court, unreported 6 December 1985*

41 And in this regard we note the distinction to the position under English law arising from the decision of the House of Lords in **British Eagle** *(British Eagle International Airlines Ltd v Compagnie Nationale Air France* [1975] 2 All

the course of business, a "heavy burden" lies on any party seeking to set it aside.[42] The Court further urged caution on reviewing contractual arrangements with the benefit of hindsight where the agreement(s) were entered into for bona fide commercial reasons at arm's length for commercial benefit.

1.22 Based on the above decision and relevant principles it is our view that debts or other obligations (such as the obligations between LCH and the Relevant Clearing Member under the arrangements) enforceable and unconditionally exercisable prior to the commencement of a winding-up (i.e. do no become enforceable or unconditionally exercisable by reason of the occurrence of the commencement of a winding-up) should be capable of being set-off on or post winding-up pursuant to a contractual set-off agreement provided that the timing of the exercise of the set off right is in good faith and without unreasonable delay.

ER 390) which provides support for the view that contractual set-off is contrary to public policy and the *pari passu* treatment of creditors on an insolvency.

42 McCarthy J. in In the Matter of Citroen Sales (Ireland) Limited [1993] 2 IR 69 at 74.

SCHEDULE 6

FINANCIAL CONTRACTS; FINANCIAL INSTRUMENTS

1. Section 1 (*Interpretation*) of the Netting Act provides (amongst other things):

"'financial contracts' means one or more contracts consisting of one or more or a combination of the following:

(a) interest-rate contracts which are one or more of -

(i) single-currency interest rate swaps,

(ii) basis swaps,

(iii) forward-rate agreements,

(iv) interest-rate futures,

(v) interest-rate options,

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);

(b) foreign-exchange contracts which are one or more of -

(i) cross-currency interest-rate swaps,

(ii) spot foreign-exchange contracts,

(iii) forward foreign-exchange contracts,

(iv) currency futures,

(v) currency options,

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);

(c) contracts relating to, or which concern indices relating to, one or more of equities, bonds, gold, precious metals other than gold, and commodities other than precious metals, or a combination of them, which consist of one or more of -

(i) swaps,

(ii) spot contracts,

(iii) forward contracts,

(iv) futures,

(v) options,

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);

(d) securities lending and securities borrowing contracts;

(e) sale and repurchase agreements, including reverse repurchase agreements, in relation to securities;

(f) buy and sell back agreements in relation to either or both securities and equities;

(g) in relation to equities,

(i) equities lending and equities borrowing contracts, and

(ii) sale and repurchase agreements, including reverse repurchase agreements;

(h) in relation to commodities,

(i) commodity lending and commodity borrowing contracts, and

(ii) sale and repurchase agreements, including reverse repurchase agreements;

(i) contracts for either or both the assumption of and laying off of credit risk -

(i) on loans, debt securities or other assets, or

(ii) in relation to an entity,

or other contracts of a similar nature;

(j) any derivatives not otherwise encompassed by paragraphs (a) to (i) or paragraphs (k) to (o) concerning a reference item or index, whether cash-settled or physically settled, including -

(i) swaps,

(ii) spot contracts,

(iii) forwards,

(iv) futures,

(v) options, and

(vi) contracts for difference;

(k) title transfer collateral arrangements;

(l) any net amount due under a netting agreement or a master netting agreement;

(m) agreements to buy or sell, clear or settle transactions in, or act as a depository for, any -

(i) financial asset, including, without limitation, any security (including any equity), currency, obligation evidencing debt (including a loan or deposit) and any negotiable or transferable instrument and any intangible asset, or

(ii) commodity (including precious metal), energy or energy source;

(n) contracts contained in points 4 to 7, 9 and 10 of section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

(o) any contract included by virtue of section 2 [of the Netting Act];

(p) contracts designated by regulations made under section 3 [of the Netting Act];"

2. Regulation 2 (*Definitions*) of the Irish FCA Regulations provides (amongst other things) that:

"'financial instruments' means any of the following:

(a) shares in companies;

(b) securities equivalent to shares in companies;

(c) bonds and other forms of debt instruments if negotiable on the capital market;

(d) any securities (other than instruments referred to in subparagraphs (a) to (c)) that are normally dealt in and give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange;

(e) any securities (other than instruments referred to in subparagraphs (a) to (c) and instruments of payment) that give rise to a cash settlement;

(f) units in collective investment undertakings;

(g) money market instruments;

(h) claims relating to, or rights in or in respect of, shares, securities, bonds, and instruments of a kind referred to in subparagraphs (a) to (g);"

SCHEDULE 7

DEED OF CHARGE

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

CHARGE BY CLEARING MEMBER

CHARGE SECURING OWN OBLIGATIONS

Date of Execution:
(to be completed by LCH Limited) _____

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

Name and Address of Chargor: _____

_____

_____

Clearing Membership Agreement Date: _____

Chargor's Account:

_____

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

WITNESSES as follows :

1. **Interpretation**

(1) Any reference herein to:

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

(b) an agreement or instrument shall be to that agreement or instrument as amended from time to time.

(2) A reference herein to collateral or cash being "provided" includes the act of (i) transferring, (ii) delivering, or (iii) crediting to an account or effecting, directly or indirectly, any of the foregoing.

(3) The Clause headings shall not affect the construction hereof.

1A. **The Secured Obligations**

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

(2) In the event that the Chargor fails to comply with sub-paragraph (1) above, the Chargor shall pay interest accruing from the date of demand on the monies so demanded and on the amount of all other liabilities at the rate provided for in the Agreement or, in the event of no such rate having been agreed, at a rate determined by the Clearing House (the rate so agreed or determined to apply after as well as before any judgment), such interest to be paid upon demand of the Clearing House in accordance with its usual practices and to be compounded

with principal and accrued interest in the event of its not being duly and punctually paid.

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

1B. **Holding of Collateral**

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

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

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

(4) All Distributions in the form of cash received by the Clearing House on any Securities which are held by the Clearing House for the account of the Chargor in accordance with sub-paragraphs (1) or (2) above and any cash provided to the Clearing House in connection with transactions relating to Securities recorded in the Securities Account (excluding, for the avoidance of doubt, any cash provided directly by the Chargor to the Clearing House as collateral on a title transfer basis) shall be received by the Clearing House for its own account and paid into one or more accounts in the Clearing House's name, with a corresponding and equal

credit arising on and being recorded in the Cash Account (as defined below) whereupon such Distributions and other cash so provided to the Clearing House as recorded in the Cash Account shall be held by the Clearing House for the account of the Chargor and shall be subject to the security constituted by this Deed and designated as such in the Clearing House's books and records.

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

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

2. **Charge**

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

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

(3) In this Deed:

"**acting in due capacity**" in relation to the Chargor means that each of the dispositions of property hereby effected by the Chargor is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 except as expressly permitted or contemplated under this Deed;

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

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

(i) all Securities from time to time recorded in and represented by the Securities Account and held by the Clearing House for the account of the Chargor in accordance with Clause 1B;

(ii) all Distributions including without limitation Distributions in the form of cash;

(iii) all cash provided to the Clearing House in connection with transactions relating to Securities recorded in the Securities Account (excluding, for the avoidance of doubt, any cash provided directly by the Chargor to the Clearing House as collateral on a title transfer basis);

(iv) the Securities Account; and

(v) the Cash Account;

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

"**Clearance System**" shall be construed as a reference to any system from time to time used or constituted for the clearing, collective safe custody or central deposit of securities, and any depository for any of the foregoing;

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

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

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

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

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

"**Distributions**" means all rights, benefits and proceeds including, without limitation:

(a) any dividends or interest, annual payments or other distributions; and

(b) any proceeds of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,

in each case attaching to or arising from or in respect of any Securities forming part of the Charged Property;

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

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

"**Securities**" shall be construed as a reference to bonds, debentures, notes, stock, shares, bills, certificates of deposit and other securities and instruments, including Distributions in the form of Securities (and without limitation, shall include any of the foregoing not constituted, evidenced or represented by a certificate or other document but by any entry in the books or other records of the issuer, a trustee or other fiduciary thereof, or a Clearance System); and

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

3. **Release**

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

(2) The Chargor may, in the circumstances specified in sections 1.1.2 and 1.1.3 of the Procedures Section 4 (*Margin and Collateral*), request that part or all of the Charged Property, or the proceeds thereof, be returned or repaid to, or to the order of, the Chargor. Where, pursuant to such a request, the Clearing House returns or repays any of the Charged Property, or the proceeds thereof, pursuant to sections 1.1.2 or 1.1.3 of the Procedures Section 4 (*Margin and Collateral*), such Charged Property shall be released or discharged (as appropriate) from the security interest created over such Charged Property and the proceeds thereof pursuant to Clause 2(1) with effect from the time such Charged Property, or the proceeds thereof, are transferred by the Clearing House to, or to the order of, the Chargor in accordance with the Procedures.

4. **Income**

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

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

(1) The Chargor must pay all calls and other payments due and payable in respect of any Securities and must comply with all requests (including requests for information by any listing or other authority), obligations and conditions relating to the Securities. In any case of default by the Chargor in this respect the Clearing House may if it thinks fit make any such payments on behalf of the Chargor (but shall be under no obligation to do so) in which event any sums so paid shall be reimbursed by the Chargor on demand by the Clearing House and until reimbursed shall bear interest in accordance with Clause 1A(2) above.

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

6. **Reinstatement**

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

7. **Warranties and Undertakings**

The Chargor hereby represents and warrants to the Clearing House and undertakes on an ongoing basis that:

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

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

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

(iv) save as contemplated by Clause 3(2), the Chargor has not sold or agreed to sell or otherwise disposed of or agreed to dispose of, and will not at any time during the subsistence of the security hereby constituted sell or agree to sell or otherwise dispose of or agree to dispose of, the benefit of all or any rights, titles and interest in and to the Charged Property or any part thereof;

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

(vi) this Deed constitutes legal, valid, binding and enforceable obligations of the Chargor and is a security over, and confers a first security interest in, the Charged Property and every part thereof, effective in accordance with its terms (subject to applicable bankruptcy, resolution, reorganisation, insolvency, moratorium or

similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

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

(viii) the execution of this Deed does not violate any agreement to which the Chargor is a party or breach any obligation to which the Chargor is subject and does not conflict with any law or regulation applicable to it (if such conflict would adversely affect the Clearing House's rights under this Deed) or its constitutional documents;

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

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

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

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

8. **Negative Pledge**

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

(i) in favour of the Clearing House; or

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

create, grant, extend or, except in relation to any charge or lien in favour of any Clearance System or Custodian Bank, permit to subsist any mortgage or other fixed security or any floating charge or other security interest on, over or in the Charged Property or any part thereof. The foregoing prohibition shall apply not only to mortgages, other fixed securities, floating charges and security interests which rank or purport to rank in point of security in priority to the security hereby constituted but also to any mortgages, securities, floating charges or security interests which rank or purport to rank pari passu therewith or thereafter.

(2) Sub-paragraph (1) above does not, during the subsistence of the security hereby constituted, operate to prevent the Chargor from continuing to hold a security interest in the Charged Property previously created in favour of the Chargor, *provided always* that the interest in favour of the Chargor shall rank after the security created by this Deed.

9. **Preservation of Charged Property**

(1) Until the security hereby constituted shall have been discharged, the Chargor shall ensure, unless required by law or regulation to restrict any transfer (in which case the Chargor shall immediately notify the Clearing House of such restrictions), that all of the Charged Property is and at all times remains free from any restriction on transfer.

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

(3) The Clearing House shall not have any right of use or re-hypothecation right, in respect of the Charged Property, whether under Regulation 16 of the Financial

Collateral Arrangements (No.2) Regulations 2003, the New York Uniform Commercial Code or any applicable Federal law of the United States or otherwise, *provided that* this provision shall not affect the powers of the Clearing House under Clauses 12 (*Power of Sale*) and 13 (*Right of Appropriation*) or any other rights to enforce the security interest herein created against the Charged Property.

10. **Further Assurance**

(1) In the case of any part of the Charged Property situated in the United States of America, it is acknowledged and agreed by the Chargor that this Deed shall also constitute a security agreement for the purpose of creating a security interest in the Charged Property under applicable provisions of the Uniform Commercial Code or other applicable laws or regulations of the State of New York. For purposes hereof, "**Charged Property situated in the United States of America**" means: (i) in the case of any securities account and/or securities entitlements or other rights or assets or investment property credited to a securities account as financial assets, a securities account maintained with a securities intermediary whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC; (ii) in the case of any deposit account and/or any amounts credited to a deposit account, a deposit account maintained with a bank whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC; and (iii) in the case of any commodity account or any commodity contract credited to a commodity account such commodity account is maintained with a commodity intermediary whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC . In furtherance of the foregoing and without limiting the generality of Clause 2 (*Charge*) above, in order to secure the payment, performance and observance of the Secured Obligations, the Chargor hereby grants to the Clearing House a continuing security interest in, right of set-off against, and an assignment to the Clearing House of all of the Charged Property situated in the United States of America and all rights thereto, in each case whether now owned or existing or hereafter acquired or arising and which shall include, without limitation, all of the Chargor's interests in any deposit accounts, investment property and securities entitlements (as such terms are defined in the Uniform Commercial Code of the State of New York; the "**NY UCC**"), together with all proceeds (as defined in the NY UCC) and products of all or any of the property described above.

(2) The Chargor undertakes promptly to execute and do (at the cost and expense of the Chargor) all such deeds, documents, acts and things as may be necessary or desirable in order for the Clearing House to enjoy a fully perfected security interest in the whole of the Charged Property, including without limitation the deposit of the Charged Property with a Clearance System or Custodian Bank (as applicable) and the perfection of pledges or transfers under such laws, of whatever nation or territory, as may govern the pledging or transfer of the Charged Property or part thereof or other mode of perfection of this Deed and the

security interest expressed to be created hereby. Without limiting the foregoing, the Chargor agrees with and covenants to the Clearing House that with respect to all Charged Property situated in the United States of America consisting of investment property, money, instruments, securities, securities entitlements, other financial assets and commodity contracts (as defined in the NY UCC), such Charged Property shall be held, maintained or deposited, as applicable, in a securities account or commodity account (in the case of commodity contracts) (such that, in each case, the Clearing House shall become the entitlement holder thereof, as defined in the NY UCC) or a deposit account (as defined in the NY UCC), in the case of Charged Property that may be credited to a Deposit Account, in the name of the Clearing House, or, if permitted by the Procedures, may be maintained and held in the Chargor's name at a Chargor Custodian Bank (whose jurisdiction is New York or any other State of the United States for purposes of the NY UCC) which shall have executed and delivered to the Clearing House an agreement whereby such Chargor Custodian Bank agrees that it will comply with entitlement orders of the Clearing House without further consent by the Chargor. Notwithstanding anything to the contrary herein, in respect of any Charged Property situated in the United States of America, the Clearing House shall comply with all non-waivable requirements of the NY UCC with respect to how the secured party must deal with collateral under its control or in its possession.

11. **Enforcement of Security**

(1) On and at any time:

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

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

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

(a) enforce all or any part of the security created by this Deed (at the times, in the manner and on the terms it thinks fit) and take possession of (provided that the Clearing House will not be liable, by reason of entering into possession of any Charged Property, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession may be liable unless such loss, default or omission is caused by the Clearing House's gross negligence or wilful misconduct) and hold, sell, or otherwise dispose of all or any part of the Charged Property (at the time, in the manner and on the terms it thinks fit); and

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

(2) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed and shall be exercisable in accordance with Clause 11(1).

12. **Power of Sale**

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

(2) The restriction contained in section 103 of the Law of Property Act 1925 on the exercise of the statutory power of sale shall not apply to any exercise by the Clearing House of its power of sale or other disposal. In favour of a purchaser a certificate in writing by an officer or agent of the Clearing House that either or both of such powers has arisen and is exercisable shall be conclusive evidence of that fact.

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

13. **Right of Appropriation**

(1) To the extent that any of the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Chargor hereunder constitute a "security financial

collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**") the Clearing House shall have the right (at any time following the occurrence of a Default) to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be determined as follows:

(a) if the financial collateral is listed or traded on a recognised exchange or by reference to a public index, its value will be taken as the value at which it could have been sold on the exchange or which is given in the public index on the date of appropriation; and

(b) in any other case, the value of the financial collateral will be such amount as the Clearing House reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

(2) The parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

14. **Immediate Recourse**

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

15. **Consolidation of Securities**

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

16. **Effectiveness of Security**

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

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

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

thereunder.

17. **Avoidance of Payments**

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

18. **Power of Attorney**

The Chargor hereby irrevocably appoints the Clearing House to be the Chargor's attorney and in the Chargor's name and on the Chargor's behalf and as the act and deed of the Chargor to sign, seal, execute, deliver, perfect and do all deeds, instruments, mortgages, acts and things as may be, or as the Clearing House may consider to be, requisite for carrying out any obligation imposed on the Chargor under Clause 10 (*Further Assurance*) above, or for enabling the Clearing House to exercise its power of sale or other disposal referred to in Clause 12 (*Power of Sale*) above or for carrying out any such sale or other disposal made under such power into effect, or exercising any of the rights and powers referred to in Clause 9 (*Preservation of Charged Property*) above, including without limitation the appointment of any person as a proxy of the Chargor. The Chargor hereby undertakes to ratify and confirm all things done and documents executed by the Clearing House in the exercise of the power of attorney conferred by this Clause.

19. **Receivers and Administrators**

(1) At any time after having been requested to do so by the Chargor or after this Deed becomes enforceable in accordance with Clause 11 (*Enforcement of Security*) above the Clearing House may by deed or otherwise (acting through an authorised officer of the Clearing House), without prior notice to the Chargor:

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

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

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

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

(2) Each person appointed to be a Receiver pursuant to sub-paragraph (1) above will be:

(a) entitled to act individually or together with any other person appointed or

substituted as Receiver;

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

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

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

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

(a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;

(b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

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

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

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

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

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

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

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

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

(7) Any liberty or power which may be exercised or any determination which may be made under this Deed by the Clearing House or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

20. **No liability**

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

21. **Remedies, Time or Indulgence**

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

(2) The obligations of the Chargor under this Deed shall not be affected by any act, omission or circumstance which, but for this provision, might operate to release or otherwise exonerate the Chargor from its obligations under this Deed or affect

such obligations including (without limitation and whether or not known to the Chargor or the Clearing House):

(a) any unenforceability, illegality, invalidity or non-provability of any obligation of the Chargor or any other person; or

(b) any incapacity or lack of power, authority or legal personality or dissolution or change in the members or status of the Chargor or any other person.

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

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

22. **Costs, Charges and Expenses**

All costs, charges and expenses of the Clearing House incurred in the exercise of any of the Clearing House's Rights, or in connection with the execution of or otherwise in relation to this Deed or in connection with the perfection or enforcement of all security hereby constituted shall be reimbursed to the Clearing House by the Chargor on demand on a full indemnity basis together with interest from the date of the same having been incurred to the date of payment at the rate referred to in Clause 1A(2) above.

23. **Accounts**

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

24. **Currency**

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

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

25. **Notices**

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

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

26. **Provisions Severable**

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

27. **Clearing House's Discretions**

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

be under any obligation to give reasons thereof.

28. **Third Party Rights**

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

29. **Law and Jurisdiction**

This Deed, and any non-contractual obligations arising herefrom, shall be governed by and construed in accordance with English law, and the Chargor hereby irrevocably submits to the non-exclusive jurisdiction of the English courts; provided that with respect to issues arising as a result of the provisions of Clause 10(1) above or the use of this Deed as a security agreement as provided therein, this Deed shall be governed by and construed in accordance with applicable laws of the State of New York.

The Chargor
Executed as a **DEED** by

The Chargor
[CHARGOR NAME]

.....
Signature of Director

.....
Name of Director

.....
Date

.....
Signature of Director/Secretary

.....
Name of Director/Secretary

.....
Date

The Clearing House
LCH Limited

.....	.....
Signature of Authorised Signatory	Signature of Authorised Signatory
.....	.....
Name of Authorised Signatory	Name of Authorised Signatory
.....	.....
Title of Authorised Signatory	Title of Authorised Signatory
.....	.....
Date	Date

Dated

_____

and

LCH LIMITED

CHARGE BY CLEARING MEMBER SECURING OWN OBLIGATIONS

SCHEDULE 8

SECURITY DEED

LCH The Markets' Partner

SECURITY DEED

CONTENTS

Clause Page

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 2
CLIENTS

CLIENT NAME	RELEVANT SERVICE	LEI

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***]

ANNEX

CLIENTS

CLIENT NAME	RELEVANT SERVICE	LEI

SCHEDULE 9

CLEARING MEMBERSHIP AGREEMENT

LCH The Markets' Partner

CLEARING MEMBERSHIP AGREEMENT

DATED

LCH LIMITED

and

("the Firm")

Address of the Firm

THIS AGREEMENT is made on the date stated above

BETWEEN the Firm and LCH 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.

LCH The Markets' Partner

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 LIMITED**

(Signature)

(Print Name and Title)

for **LCH LIMITED**

LCH LIMITED

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