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18 September 2013

Dear Sirs

CCP Opinion in relation to Zhengzhou Commodity Exchange

You have asked us to give an opinion in respect of the laws of the People's Republic of China (which shall include any sub-division thereof (but shall exclude the Hong Kong, Macau Special Administrative Regions and Taiwan)) ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to **Zhengzhou Commodity Exchange** (the "**Clearing House**") as between the Clearing House and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

1. **TERMS OF REFERENCE**

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the Clearing House have the same meaning in this opinion letter.
- 1.2 The opinions given in Section 3 are in respect of a Member's powers under the Rules of Clearing House as at the date of this opinion. We express no opinion as any

provisions of the Rules of the Clearing House other than those on which we expressly opine.

1.3 Where Contracts are governed by laws other than the laws of this jurisdiction, the opinions contained in Section 3 are given in respect of only those Contracts which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions contemplated under paragraph 3.4.

1.4 The opinions given in Section 3.8 are given only in relation to Non-cash Collateral comprising securities credited to an account.

1.5 **Definitions**

In this opinion, unless otherwise indicated:

- (a) "**Assessment Liability**" means a liability of a Member to pay an amount to the Clearing House (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:
 - (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;
 - (ii) membership fees, fines and charges;
 - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
 - (iv) indemnification for any taxation liabilities;
 - (v) payment or delivery obligations under Contracts; or
 - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty.

- (b) "**Client Account**" has the meaning ascribed to it in the CCP Rules, being a segregated account with the Clearing House opened in the name of a Member in which Contracts relating to contracts made by the Member with one or more segregated clients of such Member are registered and to which monies in respect of such Contracts are credited;

- (c) "**Composition Plan**" means an agreement made by the insolvent debtor with its creditors in which the creditors agree to accept partial payment of the total amount of their claims in full satisfaction of their claims; with such an agreement to be agreed by the creditors' committee and approved by the bankruptcy court pursuant to Chapter 9 of the Bankruptcy Law;
- (d) "**Contract**" means either a "Futures Contract" or an "Option Contract", where a "Futures Contract" refers to a standardized contract which is uniformly formulated by the Clearing House and provides for the future delivery of goods at a subscribed time and location; and an "Option Contract" refers to a standardized contract which is uniformly formulated by the Clearing House and provides for the purchaser's option to purchase or sell the goods (including a Futures Contract) in the future and at a subscribed price, or for the purchasers who are entitled to the future purchase or sale of stipulated subject matter (including the futures contracts) at specified price in a specified time, which is registered at the Clearing House;
- (e) "Event of Default" means any of the following events:
 - (i) failure by a party to make any payment or delivery, when due, under the Contract;
 - (ii) a party becomes bankrupt or subject to liquidation or administrative receivership or other analogous circumstances ("**Bankruptcy Default**"); and
 - (iii) any other event of default as agreed by the parties under the Contract.
- (f) "**House Account**" means an account with the Clearing House opened in the name of a Member that is not a Client Account;
- (g) "**Party**" means the Clearing House or the relevant Member;
- (h) "**Non-cash Collateral**" means the non-cash collateral provided to the Clearing House as margin pursuant to the Rules of the Clearing House;
- (i) references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in

accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;

- (j) **"Rehabilitation Plan"** means an arrangement as agreed between the insolvent debtor and its creditors, in connection with the remodeling of the financial and, if necessary, organizational structure of the debtor so as to permit the continuation of the economic activities of the debtor, with such arrangement to be agreed by each class of creditors and approved by the bankruptcy court pursuant to Chapter 8 of the Bankruptcy Law;
- (k) **"Rules"** means the rules of the Clearing House in force as at the date of this opinion;
- (l) references to a **"section"** or to a **"paragraph"** are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

2. ASSUMPTIONS

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Contracts; to perform its obligations under the Contracts; and that each Party has taken all necessary steps to execute and deliver and perform the Contracts.
- 2.3 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Contracts in this jurisdiction.
- 2.4 That each Party acts in accordance with the powers conferred by the Contracts; and that (save in relation to any non-performance leading to the taking of action by the Members as contemplated by Section 3.4.1 of this opinion), each Party performs its obligations under each Contract in accordance with their respective terms.
- 2.5 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Rules of the Clearing House, there are not any

other agreements, instruments or arrangements between the Parties which modify the provisions under the Rules of the Clearing House. That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.

- 2.6 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.7 That (save as discussed at paragraph 3.5.2) the obligations assumed under the Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.8 That no provision of the Rules that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect.
- 2.9 With respect to our opinions set out in each of Sections 3.4.1(b), 3.4.2(b) and (d), 3.4.3(b) and 3.4.4(b), that the Contracts contain an express provision for the mark-to-market valuation methodology (the “**Mark-to-Market Valuation Clause**”).
- 2.10 That the Clearing House is a central counterparty, with further explanations under Section 5 below.

3. **OPINION**

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinions.

3.1 **Insolvency Proceedings**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- a) rehabilitation as provided and regulated under Chapter 8 of the Bankruptcy Law, namely, an insolvency proceeding initiated by the insolvent Clearing House or creditors thereof and approved by the competent court of this jurisdiction, whereby:-
 - (i) a Rehabilitation Plan will be crafted either by the Clearing House or the administrator, and agreed by each class of

creditors of the insolvent Clearing House, and approved by the court;

- (ii) the Rehabilitation Plan will regulate and govern such matters as the operation of the Clearing House, rescheduling of the indebtedness of the Clearing House, and discharge of such indebtedness;
 - (iii) the Rehabilitation Plan will be implemented by the insolvent Clearing House under the supervision of the administrator; and
 - (iv) subject to the court approval, the insolvent Clearing House will manage its assets and operate its business by itself, but under the supervision of the administrator; or the administrator will take the responsibility of managing the Clearing House's assets and operating the Clearing House's business;
- b) composition as provided and regulated under Chapter 9 of the Bankruptcy Law, namely an insolvency proceeding initiated by the insolvent Clearing House and approved by the court, whereby:-
- (i) a Composition Plan will be crafted and proposed by the Clearing House; and agreed by the creditors committee, and approved by the court; and
 - (ii) the Clearing House should discharge debts owing to its creditors pursuant to the Composition Plan; and
- c) bankruptcy as provided and regulated under Chapter 10 of the Bankruptcy Law, namely, an insolvency proceeding initiated by the insolvent Clearing House or creditors thereof and approved by the competent court of this jurisdiction, whereby the assets of the Clearing House which are subject to the proceeding shall be distributed among the creditors pursuant to the Bankruptcy Law.

These procedures are together called "**Insolvency Proceedings**".

The legislation applicable to Insolvency Proceedings is:

- a) The Law of the People's Republic of China on Enterprise Bankruptcy (the "**Bankruptcy Law**");

- b) Provisions of the Supreme People's Court on Certain Issues Relating to the Application of the Enterprise Bankruptcy Law of the People's Republic of China (I);
- c) The Law of the People's Republic of China Civil Procedure and relevant Juridical Interpretations thereof (the "**Civil Procedure Law**");
- d) Provisions of the Supreme People's Court on Designating Insolvency Representative in the Trial of Enterprise Bankruptcy Cases;
- e) Provisions of the Supreme People's Court on Deciding the Remuneration of the Insolvency Representative in the Trial of Enterprise Bankruptcy Cases;
- f) Regulations on Futures Transaction;
- g) Administrative Measures for Futures Exchange; and
- h) Provisions on the Supreme People's Court on Issues Concerning the Hearing of Enterprise Bankruptcy Cases.

3.2 **Special provisions of law**

The following special provisions of law apply to Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products and are cleared through a central counterparty:

- a) Regulations on Futures Transaction;
- b) Tentative Measures on the Financial Futures Settlement Business of Futures Companies;
- c) Provisions of the Supreme People's Court on Some Issues Concerning the Hearing of Disputes and Cases involving Futures; and
- d) Provisions of the Supreme People's Court on Some Issues Concerning the Hearing of Disputes and Cases involving Futures (II).

3.3 **Recognition of choice of law**

There are no choice of law provisions under the Rules. The choice of law provisions under any Clearing House documentation entered into by and between the Clearing House and the Member would be recognised under the laws of this jurisdiction subject to mandatory regulatory requirements under the laws of this jurisdiction and consideration of public policy, even if the Member is not incorporated, domiciled or established in this jurisdiction. Notwithstanding the foregoing, we are not aware of

any law or regulation of this jurisdiction which contains mandatory requirement that the Contract should be subject to the law of this jurisdiction.

3.4 **Netting and Set-off: General**

3.4.1 **Bankruptcy Default – Automatic Termination Clause**

Upon the occurrence of a Bankruptcy Default in relation to the Clearing House, and provided that it is expressly stipulated in the Contracts that the Contracts shall be terminated automatically upon the occurrence of such Bankruptcy Default (the “**Automatic Termination Clause**”):

- (a) the Member would be entitled immediately to terminate and liquidate the outstanding transactions under the Contracts; and
- (b) the Member would be entitled to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual Contracts, together with other losses or gains referable to the Contracts.
- (c) To the extent that the Mark-to Market Valuation Clause is not expressly provided under the Contracts, then the valuation method for producing the net balance mentioned in Section 3.4.1(b) above would be decided by the court in its sole discretion.

We are of this opinion because:

- (a) Article 40 of the Bankruptcy Law states that, if a creditor (the Member in this case) is indebted to its debtor (the Clearing House in this case) before the petition for bankruptcy is accepted by the people's court with jurisdiction which is situated in the domicile of the debtor, it may assert its right to offset such debt against the bankruptcy administrator. However, under any of the following circumstances, the relevant debt shall not be set off:
 - (i) where the Member acquires claims against the Clearing House from a third party after the petition for the bankruptcy of the Clearing House has been accepted;
 - (ii) where the Member has become aware that a debtor is incapable of paying off its due debts, or is in the process of filing a petition for bankruptcy, but it still incurs debt to the Clearing

House; unless such debt was incurred according to the provisions of the law or for any reason as incurred one (1) year before the petition for bankruptcy is filed;

- (iii) where the Member has become aware that the Clearing House is incapable of paying off its debt, or is in the process of filing petition for bankruptcy, yet it still decides to become the creditor of the Clearing House, unless the Member became the creditor of the Clearing House according to the law or for any reason as incurred one(1) year before the application for bankruptcy.
- (b) Therefore, under any of the abovementioned circumstances, the Member would be unable to set off its claims under the Contracts against the Clearing House in respect of obligations arising out of the Contracts to the Clearing House.
- (c) In addition, pursuant to Article 40 of the Bankruptcy Law, the creditor (the Member in our case) is entitled to assert its right of set-off pursuant to Article 40 regardless the satisfaction of any of the following conditions:
 - (i) the Statutory Set-off Requirements (hereinafter defined); and
 - (ii) the Contracts expressly provide for a Contractual Set-off Provision (hereinafter defined).

3.4.2 **Bankruptcy Default – No Automatic Termination Clause**

Upon the occurrence of a Bankruptcy Default in relation to the Clearing House, and provided that the Contracts do not expressly provide for the Automatic Termination Clause:

- (a) the insolvency representative is entitled to decide whether to continue or terminate the Contracts and to notify the Member accordingly.
- (b) in the event that the insolvency representative fails to notify the Member of its decision within two (2) months, or fails to respond within thirty (30) days after receiving the Member's request, then the Contracts shall be deemed terminated; upon which, the Member would be entitled to receive or be obliged to pay only the net sum of the

positive and negative mark-to-market values of the included individual Contracts, together with other losses or gains referable to the Contracts.

- (c) in the event that the insolvency representative decides to continue with the Contracts, the Member shall continue with performing the Contracts accordingly; provided that the Member is entitled to require the insolvency representative to provide collateral to secure the performance of the Contracts by the Clearing House.
- (d) Should the insolvency representative fails to provide the collateral, the Contracts shall be deemed terminated; upon which, the Member would be entitled to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual Contracts, together with other losses or gains referable to the Contracts.
- (e) To the extent that the Mark-to Market Valuation Clause is not expressly provided under the Contracts, then the valuation method for producing the net balance mentioned in Sections 3.4.2(b) and (d) above would be decided by the court in its sole discretion.

We are of this opinion because:

- (a) Article 18 of the Bankruptcy Law states that the insolvency representative is entitled to decide whether to continue or terminate any executory contract (i.e. contract under which both parties have outstanding obligations to perform), and to notify the counterparty accordingly. In the event that the insolvency representative fails to notify the counterparty of its decision within two (2) months or fails to respond within thirty (30) days after receiving request from the counterparty, the contract shall be deemed terminated.
- (b) Article 18 the Bankruptcy Law further provides that in the event that the insolvency representative decides to continue with the contract, the counterparty shall continue with performing the contract accordingly; provided that the counterparty is entitled to require the insolvency representative to provide collateral to secure the performance of the contract by the insolvent party. Should the insolvency representative fails to provide the collateral, the contract shall be deemed terminated.
- (c) Article 40 of the Bankruptcy Law states that, if a creditor (the Member in this case) is indebted to its debtor (the Clearing House in this case)

before the petition for bankruptcy is accepted by the people's court with jurisdiction which is situated in the domicile of the debtor, it may assert its right to offset such debt against the bankruptcy administrator. However, under any of the following circumstances, the relevant debt shall not be set off:

- (i) where the Member acquires claims against the Clearing House from a third party after the petition for the bankruptcy of the Clearing House has been accepted;
 - (ii) where the Member has become aware that a debtor is incapable of paying off its due debts, or is in the process of filing a petition for bankruptcy, but it still incurs debt to the Clearing House; unless such debt was incurred according to the provisions of the law or for any reason as incurred one (1) year before the petition for bankruptcy is filed;
 - (iii) where the Member has become aware that the Clearing House is incapable of paying off its debt, or is in the process of filing petition for bankruptcy, yet it still decides to become the a creditor of the Clearing House, unless the Member became the creditor of the Clearing House according to the law or for any reason as incurred one(1) year before the application for bankruptcy.
- (d) In addition, pursuant to Article 40 of the Bankruptcy Law, the creditor (the Member in our case) is entitled to assert its right of set-off pursuant to Article 40 regardless the satisfaction of any of the following conditions:
- (i) the Statutory Set-off Requirements (hereinafter defined); and
 - (ii) the Contracts expressly provide for a Contractual Set-off Provision (hereinafter defined).

3.4.3 **Non-Bankruptcy Default – Contractual Set-off Clause**

Upon the occurrence of an Event of Default (other than a Bankruptcy Default) in relation to the Clearing House, and provided that it is expressly stipulated in the Contracts that the Member shall be entitled to set off its debt owed to the

Clearing House against the debt owed by the Clearing House to the Member (such provision under the Contracts, the “**Contractual Set-off Provision**”):

- (a) the Member would not be entitled immediately to terminate and liquidate the outstanding transactions under the Contracts unless:
 - (i) the Contracts expressly provide that the Member shall be entitled to terminate the Contracts upon the occurrence of such an Event of Default; or
 - (ii) any of the Statutory Termination Events (hereinafter defined) has occurred; and
- (b) the Member would be entitled to receive or be obliged to pay only the net sum only of the positive and negative mark-to-market values of the included terminated individual Contracts, together with other losses or gains referable to the Contracts.
- (c) To the extent that the Mark-to Market Valuation Clause is not expressly provided under the Contracts and there is a dispute to the amount of the net balance mentioned in Section 3.4.3(b) above, then a party may sue the other party and the valuation method for producing such net balance would be decided by the court adjudicating the case in its sole discretion.

We are of this opinion because:

- (a) In relation to the right to terminate the Contracts, Article 93 of the Contract Law of this jurisdiction (the “Contract Law”) permits a contract to expressly afford a party the right to terminate the contract upon the occurrence of certain event(s) provided under the contract.
- (b) Article 94 of the Contract Law further provides for a statutory right to terminate a contract, pursuant to which, a contract may be terminated upon the occurrence of any of the following events:
 - (i) the purpose of the contract has been frustrated due to the occurrence of a force majeure;
 - (ii) prior to the expiry of the deadline provided under the contract for performing the obligations, either party to the contract has

explicitly express (or by action) its intention not to fulfill its obligations under the contract;

- (iii) in the event of any delay by either party in performing its obligations under the contract, such party has failed to perform such obligations upon request by the other party and within a reasonable grace period;
 - (iv) the purpose of the contract has been frustrated as a result of any delay by either party in performing its obligations under the contract or otherwise as a result of a breach of contract of such party; and
 - (v) any other circumstances provided under the law (together with (i), (ii), (iii) and (iv) above, collectively, the “**Statutory Termination Events**”).
- (c) In relation to the right to netting, Article 100 of the Contract Law stipulates that the parties to a contract may, based on the mutual agreement between them, expressly provide under the contract that either party may set off its debt owed to the other party against the debt owed by the other party, regardless whether the Regulatory Set-off requirements have been satisfied.

3.4.4 **Non-Bankruptcy Default – No Contractual Set-off Clause**

Upon the occurrence of an Event of Default (other than a Bankruptcy Default) in relation to the Clearing House, and provided that the Contracts do not contain an express Contractual Set-off Provision:

- (a) the Member would not be entitled immediately to terminate and liquidate the outstanding transactions under the Contracts unless:
 - (i) the Contracts expressly provide that the Member shall be entitled to terminate the Contracts upon the occurrence of such an Event of Default; or
 - (ii) any of the Statutory Termination Events (hereinafter defined) has occurred; and
- (b) the Member would not be entitled to receive or be obliged to pay only the net sum only of the positive and negative mark-to-market values of

the included terminated individual Contracts, together with other losses or gains referable to the Contracts, unless the Statutory Set-off Requirements (hereinafter defined) are satisfied.

- (c) To the extent that the Mark-to Market Valuation Clause is not expressly provided under the Contracts and there is a dispute to the amount of the net balance mentioned in Section 3.4.4(b) above,, then a party may sue the other party and the valuation method for producing such net balance would be decided by the court adjudicating the case in its sole discretion.

We are of this opinion because:

- (a) In relation to the right to terminate the Contracts, Article 93 of the Contract law permits a contract to expressly afford a party the right to terminate the contract upon the occurrence of certain event(s) provided under the contract.
- (b) Article 94 of the Contract Law further provides for a statutory right to terminate a contract, pursuant to which, a contract may be terminated upon the occurrence of any of the following events:
 - (i) the purpose of the contract has been frustrated due to the occurrence of a force majeure;
 - (ii) prior to the expiry of the deadline provided under the contract for performing the obligations, either party to the contract has explicitly express (or by action) its intention not to fulfill its obligations under the contract;
 - (iii) in the event of any delay by either party in performing its obligations under the contract, such party has failed to perform such obligations upon request by the other party and within a reasonable grace period;
 - (iv) the purpose of the contract has been frustrated as a result of any delay by either party in performing its obligations under the contract or otherwise as a result of a breach of contract of such party; and

- (v) any other circumstances provided under the law (together with (i), (ii), (iii) and (iv) above, collectively, the “**Statutory Termination Events**”).
- (c) In relation to the right to netting, Article 99 of the Contract Law provides that, either party to a contract may set off its debt against that of the other party, provided that:
 - (i) each party to the contract have debts due to the other;
 - (ii) both debts have become due; and
 - (iii) the category and nature of both debts are the same (together with (i) and (ii) above, the “**Statutory Set-off Requirements**”),unless as otherwise prohibited by law or the contract.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member as discussed in this Section 3.4.

3.5 **Netting and Set-Off: House Accounts and Client Accounts**

Where a Member has exercised its rights under the provisions contemplated under paragraph 3.4, a Termination Amount payable on any Client Account of a Member would not be aggregated with or netted against a Termination Amount payable on any House Account of the Member.

This is because:

- (a) The Rules of the Clearing House expressly require that:-
 - (i) The Rules of the Clearing House expressly requires that the money credited to the Client Account shall be segregated from the money credited to the House Account, and that the Member shall manage the House Account and the Client Account separately.
 - (ii) the money credited to the Client Account shall be deemed as asset of the client of the Member and shall not be used by the Member except for the following purposes: (A) to be used for payment as per the client’s requirements; (B) to be used towards the payment of margin, fees, taxes or expenses due from the client; and (C) to be used for other purposes as

stipulated by the regulatory authority of this jurisdiction for futures trading.

- (b) The provisions set out in (a) above under the Rules of the Clearing House have the force of law and binding effect on the Member; we are not aware of any provisions under the applicable law of this jurisdiction whereby the enforceability of such provision would be challenged in the bankruptcy scenario of the Member.

3.6 Netting and Set-Off: Cross-Product Netting

The effect of the exercise of the rights and actions as contemplated by Section 3.4.1 of this opinion is to apply close-out netting to all Contracts cleared by the Member with the Clearing House.

This is because the Rules of the Clearing House do not require separate netting calculations to be done for different product lines.

3.7 Cash Collateral

Payments made by a Member to the Clearing House as cash margin do not constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would not be treated as the property of the Clearing House available to its creditors generally.

However, the amount of cash so provided would not constitute a debt owed by the Clearing House to the Member as principal.

This is because the Rules of the Clearing House expressly provide that, the margin (either as cash margin or Non-cash Collateral) collected from the Member shall be deemed as asset of the Member, and shall not be used by the Clearing House for purposes other than settlement of transactions in respect of the Client Accounts registered by the Member.

3.8 Non-cash Collateral

Any securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral would not be treated as the property of the Clearing House and would be returnable to the Member, in the event of Insolvency Proceedings relating to the Clearing House, subject to the Member satisfying its obligations to the Clearing House.

This is because the Rules of the Clearing House expressly provide that, the margin (either as cash margin or Non-cash Collateral) collected from the Member shall be deemed as property of the Member, and shall not be used by the Clearing House for purposes other than settlement of the Client Accounts registered by the Member.

3.9 **Members' Assessment Liabilities**

A Member's Assessment Liability is as follows:

- (a) According to the Rules of the Clearing House, the Member shall be obliged to make its own contribution to the default fund maintained by the Clearing House, by way of paying an subscribed amount of money to the Clearing House. In the event that the Member fails to pay its contribution to the default fund in full, the Clearing House may take any of the following actions:
 - (i) issuing an administrative remedial order against the Member;
 - (ii) public denouncement against the Member;
 - (iii) forcing the Member to close its positions;
 - (iv) prohibiting or restricting the Member from opening positions;
 - (v) suspending or restricting the Member from doing business with the Clearing House; and/or
 - (vi) revoking the membership of the Member.

- (b) According to the Rules of the Clearing House, in the event of a default of the Member, the Clearing House shall be entitled:
 - (i) to apply the default fund maintained by the Clearing House to the extent contributed by such defaulting Member, or
 - (ii) to apply the default fund maintained by the Clearing House as contributed by other Members,towards the discharge of the obligations owed by the defaulting Member. Following such discharge, the Clearing House shall be subrogated to the right against the defaulting Member.

- (c) According to the Rules of the Clearing House, the Clearing House shall have the right to determine the contribution to be made by the Member to the default fund maintained by the Clearing House, on a quarterly basis and based on the trading volume of the Member. In addition, the Clearing House shall also have the right to adjust the Member's contribution to the default fund based on the prevailing market condition. The Rules of the Clearing House expressly grants the Clearing House with the power to increase the Member's contribution to the default fund.

4. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications:

- 4.1 With respect to our opinions set out in paragraph 3.4 in relation to the (i) netting, set-off, and automatic termination provisions, and (ii) valuation, netting and set-off process and procedures, we note that these opinions have yet to be tested judicially in this jurisdiction; we are not aware of any judicial precedent where the enforceability of such opinions as described in paragraph 3.4 was upheld or challenged by the courts of this jurisdiction.
- 4.2 The list of special provisions at paragraph 3.2 is not an exhaustive list of all laws of this jurisdiction that may apply to Contracts, and their interpretation and enforcement shall be subject to, among other things, general principles of the Contract Law.
- 4.3 In the event the Clearing House is subject to an Insolvency Proceeding, the exercise by the Member of its rights under, and the realization of claims of the Member for payment or other performance by the Clearing House under, paragraph 3.4, would be subject to the limitations provided under the Bankruptcy Law as specifically discussed below.

4.3.1 Pursuant to Articles 2 and 13 of the Bankruptcy Law, in the event that a debtor fails to discharge its debt when due, and if its assets are not sufficient to pay off all the debts or if it is obviously incapable of discharging its debts, it may file a petition with the people's court with jurisdiction which is situated in the domicile of the debtor for initiating a procedure of reorganization, compromise or bankruptcy liquidation and the debtor's creditor(s) also may file a petition with the court for initiating a procedure of reorganization or bankruptcy liquidation against the debtor; if the people's court accepts such petition for bankruptcy, it will designate an insolvency representative.

4.3.2. In accordance with Articles 70, 71, 75, 79, 84 and 92 of the Bankruptcy Law, a debtor or creditor may apply to the people's court with jurisdiction which is situated in the domicile of the debtor for reorganization of the debtor. A debtor or insolvency representative may, within 6 months from the date when the people's court approves its reorganization, submit a draft of the reorganization plan to the people's court and the creditors' meeting. The people's court may hold a creditors' meeting so as to vote a draft of reorganization plan. A reorganization plan as approved by the people's court and as providing for a repayment plan of the creditor's right shall have binding force on both the debtor and all of its creditors. During the reorganization, the right to security on the particular assets of a debtor shall be suspended, except in the case of possible damage or significant depreciation of value, which may jeopardize the creditor's right and interest.

4.3.3. In accordance with Articles 95, 96, 100 and 102 of the Bankruptcy Law, a debtor may also apply for compromise with the people's court with jurisdiction which is situated in the domicile of the debtor. If the people's court deems upon examination that an application for compromise complies with the provisions of the law, it shall rule on a compromise, announce the same and hold a creditors' meeting so as to discuss the draft of a composition deed. A composition deed that has been confirmed by the people's court shall have binding force on the debtor and all of its creditors in the composition. The bankrupt debtor shall discharge its debts according to the conditions as prescribed in the relevant composition deed. A holder of right to security on the debtor's particular assets may exercise its right from the day when the people's court rules on a compromise.

4.3.4. Pursuant to Articles 107, 109 and 115 of the Bankruptcy Law, if the people's court with jurisdiction which is situated in the domicile of the debtor eventually announces a debtor to be bankrupt, it shall, within 5 days as of the day when the decision is made, serve it on the relevant debtor and Insolvency Representative, and shall, within 10 days as of the day when the decision is made, notify the already-known creditors and announce it as well. An Insolvency Representative shall formulate a distribution plan of the bankruptcy assets in a timely manner, and submit it to the creditors' meeting for discussion. A distribution plan of bankruptcy assets which provides for the order, proportion and amount of the bankruptcy assets subject to distribution shall, upon confirmation of the people's court, be executed by the relevant Insolvency Representative. The creditors' right against the debtor when the people's court accepts a petition for bankruptcy is the credit right against the bankrupt debtor. The exercise of credit right against the bankrupt debtor is largely subject to the distribution plan of the bankruptcy assets. A holder of right to security on the particular assets of the bankrupt debtor may enjoy priority right to be repaid by way of the particular assets.

4.3.5. Consequently, notwithstanding that the Member may exercise its right to immediately terminate and liquidate the outstanding transactions under

the Contract in the event of an Event of Default on the part of the Clearing House, the claims of the Member against the Clearing House for payment or other performance may be deferred pursuant to the limitations provided under the Bankruptcy Law as discussed above. Pursuant to such limitations, the enforcement of the claims of the Member under paragraph 3.4 (other than the claim for set-off which satisfies the requirements provided in Article 40 of the Bankruptcy Law) will be subject to the reorganization plan (reorganization), the composition deed (composition) or distribution plan of the bankruptcy assets (bankruptcy) adopted by resolution of the creditors' meeting of which the Member is a member. However, these limitations do not prevent the Member from setting off its claims against the Clearing House pursuant to paragraph 3.4, provided that the requirements listed in Article 40 of the Bankruptcy Law are satisfied.

- 4.4 According to the Rules of the Clearing House, the Member shall be a company or an organization established pursuant to the laws of this jurisdiction, thus precluding any foreign company or entity from being qualified to be a Member of the Clearing House.
- 4.5 Our opinion herein is based on the published laws, administrative regulations and rules, judicial interpretations of this jurisdiction known as of to date, the rules and instructions of the Clearing House that could be obtained through public channels and the administrative practices of the relevant agencies known to the legal practitioners of this jurisdiction as of the date hereof.
5. In relation to the assumption under Section 2.10, Rules of the Clearing House do not expressly define the role of the Clearing House as a central counterparty, or expressly provide that the Clearing House should impose itself as the legal counterparty to every trade. However, the Rules do require that (i) the Clearing House should act as the single institution to settle trading conducted by the Members; and (ii) the Clearing House should adopt a mark-to-market clearing and settlement system.

In addition, the State Council of this jurisdiction amended the Administrative Regulations on Futures Transactions as of October 24, 2012 (the “**Revised Futures Transactions Regulations**”). The revised regulations, among other things, emphasize the function of the Clearing House as a central counterparty. Article 10 of the Revised Futures Transactions Regulations expressly require that the Clearing House should, *inter alia*, perform the function of providing centralized financial guarantee for the performance of the Contracts. Under the old regulations prior to the revision, Article 10 did not use the wording “centralized”. The State Council of this jurisdiction issued an informal interpretation on the Revised Futures Transactions Regulations, where the legislator explained that the reason for inserting the wording “centralized” was to emphasise the role which the Clearing House performs in practice as a “central counterparty”. Therefore, we are of the view that although not

expressly defined or provided under the Rules or other publicized laws and regulations of this jurisdiction, the Clearing House essentially functions as a central counterparty.

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

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Yours faithfully

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