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The Futures & Options Association
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28 March 2013

Dear Sirs

CCP Opinion in relation to LCH.Clearnet S.A.

You have asked us to give an opinion in respect of the laws of France ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to the *Banque Centrale de Compensation*, whose commercial name is LCH.Clearnet S.A. (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 paragraph 3.

1. TERMS OF REFERENCE

- 1.1 Except where otherwise defined herein, terms defined in the Rules have the same meaning in this opinion letter.
- 1.2 The opinions given in paragraph 3 are in respect of a Member's powers under the Clearing House Documentation as at the date of this opinion. We express no opinion as to any provisions of the Rules other than those on which we expressly opine.
- 1.3 Where Transactions are governed by laws other than the laws of this jurisdiction, the opinions contained in paragraph 3 are given in respect of only those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Netting Provision.

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1.4 The opinions given in paragraph 3.8 (*Non-cash Collateral*) are given only in relation to Non-cash Collateral comprising securities credited to an account on a full title transfer basis or under the Pledge Agreement.

1.5 **Definitions**

In this opinion, unless otherwise indicated:

- 1.5.1 "ACP" means the *Autorité de contrôle prudentiel*;
- 1.5.2 "Additional Contribution Amount" has the meaning ascribed to it in the CDS Clearing Rule Book;
- 1.5.3 "Admission Agreement" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.4 "Admitted Person" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.5 "Allied Clearing House" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.6 "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:
 - (a) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Transactions open at that time;
 - (b) membership fees, fines and charges;
 - (c) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
 - (d) indemnification for any taxation liabilities;
 - (e) payment or delivery obligations under Transactions; or
 - (f) 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;

- 1.5.7 "**Cash Collateral**" means title transfer of cash by way of a wire transfer to the beneficiary's cash account. "Cash Collateral" does not include any collateral made otherwise and by title transfer of cash, such as transfers of securities or other negotiable instruments or pledges of any assets;
- 1.5.8 "**CDS**" means any credit default swap transaction;
- 1.5.9 "**CDS Admission Agreement**" has the meaning ascribed to it in the CDS Clearing Rule Book;
- 1.5.10 "**CDS Clearing Rule Book**" means the clearing rule book applicable to the clearing of the Member's CDS, in its final English version dated 15 February 2013 as published on the website of the Clearing House and in force as at the date of this opinion. The CDS Clearing Supplement does not form part of the CDS Clearing Rule Book and accordingly is not subject to this opinion letter;
- 1.5.11 "**CDS Clearing Rules**" means the CDS Clearing Rule Book and the Procedures;
- 1.5.12 "**CDS Clearing Services**" has the meaning ascribed to it in the CDS Clearing Rule Book;
- 1.5.13 "**CDS Default Fund**" means the default fund established and maintained in accordance with Title IV, Chapter IV of the CDS Clearing Rule Book;
- 1.5.14 "**CDS Default Fund Amount**" means the amount of CDS Default Fund as required pursuant to the CDS Clearing Rules;
- 1.5.15 "**Civil Code**" means the French *code civil*;
- 1.5.16 "**Clearing Agreement**" means a Model Form Clearing Agreement or an Equivalent Clearing Agreement;
- 1.5.17 "**Clearing House Documentation**" means the Clearing Agreement, Pledge Agreement and Rules;
- 1.5.18 "**Client**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.19 "**Client Account**" means an account with the Clearing House opened at the request and in the name of the Member in order to register all Trade Legs corresponding to Transactions in Derivatives executed for the Member's Client(s);

- 1.5.20 "**Collateral Directive**" means the directive No. 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as amended;
- 1.5.21 "**Commercial Code**" means the French *code de commerce*;
- 1.5.22 "**Credit Institution WUD**" means the directive No. 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions, as implemented into French law under articles L. 613-31-1 *et seq.* of the Financial Code;
- 1.5.23 "**Derivative(s)**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.24 "**Derivatives Clearing Rule Book**" means the clearing rule book applicable to the clearing of the Member's transactions in Derivatives, but excluding CDS, in its final English version dated 18 December 2012 as published on the website of the Clearing House and in force as at the date of this opinion;
- 1.5.25 "**Derivatives Clearing Rules**" means the Derivatives Clearing Rule Book, including all Instructions thereto;
- 1.5.26 "**Derivatives Clearing Services**" means services provided by the Clearing House pursuant to article 1.3.1.5 of the Derivatives Clearing Rule Book;
- 1.5.27 "**EMIR**" means the 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;
- 1.5.28 "**Equivalent Clearing Agreement**" means any agreement or other document entered into by or on behalf of a Member pursuant to which such Member agrees to be bound by the Rules as a Member but which contains no other provisions which may be relevant to the matters opined on in this opinion letter;
- 1.5.29 "**Event of Default**" means the opening of any Insolvency Proceeding or Failure to Pay;
- 1.5.30 "**Failure to Pay**" means the Member or, as the case may be, the Clearing House, failing at any time duly to comply with any of its obligations under the Rules or being likely to become unable to meet any of its obligations under such Rules;

- 1.5.31 "**Finality Directive**" means the directive No. 98/26/EC of the European Parliament and the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended;
- 1.5.32 "**Financial Code**" means the French *code monétaire et financier*;
- 1.5.33 "**House Account**" means an account with the Clearing House opened at the request and in the name of a Member in order to register all Trade Legs corresponding to Transactions in Derivatives executed for the Member's own account;
- 1.5.34 "**Insolvency Proceeding**" has the meaning ascribed to it in Paragraph 3.1 (*Insolvency Proceedings*) below;
- 1.5.35 "**Instruction**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.36 "**Model Form Clearing Agreement**" means the template Admission Agreement and the template CDS Admission Agreement, in their final English version as published on the website of the Clearing House, in the form attached hereto at Annex 1;
- 1.5.37 "**MTS Italy**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.38 "**Netting Provision**" means section 1.3.1 of the CDS Clearing Rule Book;
- 1.5.39 "**Non-cash Collateral**" means the non-cash collateral as margin provided to the Clearing House either: (i) on a full title transfer basis; or (ii) by way of a Belgian law security interest under the Pledge Agreement;
- 1.5.40 "**Party**" means any of the Clearing House and the relevant Member;
- 1.5.41 "**Pledge Agreement**" has the meaning ascribed to it in the CDS Clearing Rule Book;
- 1.5.42 "**Regulated Market**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.43 "**Risk Committee**" has the meaning ascribed to in the CDS Clearing Rule Book;

- 1.5.44 "**Rome I**" means the regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations;¹
- 1.5.45 "**Rules**" means the CDS Clearing Rules and the Derivatives Clearing Rules;
- 1.5.46 "**Set-off Provision**" means section 1.3.1 of the CDS Clearing Rule Book;
- 1.5.47 "**Termination Amount**" means the single, net positive or negative amount, denominated in Euro and determined in accordance with the CDS Clearing Rule Book;
- 1.5.48 "**Trade Leg(s)**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.49 "**Trading & Matching Platform**" has the meaning ascribed to it in the Derivatives Clearing Rule Book;
- 1.5.50 "**Transaction**" means any transaction in Derivatives or CDS which is registered at the Clearing House;
- 1.5.51 "**Unmargined Risk**" has the meaning ascribed to it in the CDS Clearing Rule Book;
- 1.5.52 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;
- 1.5.53 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).

¹ The Rome I Regulation applies to contracts concluded on or after 17 December 2009 (article 28 of the Rome I Regulation). A choice of law made in a contract prior to 17 December 2009 will be subject to the 1980 Rome Convention on law applicable to Contractual Obligations.

2. ASSUMPTIONS

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the Clearing House Documentation and Transactions 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 Clearing House Documentation and Transactions; to perform its obligations under the Clearing House Documentation and Transactions; and that each Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and Transactions.
- 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 Clearing House Documentation and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That both Parties have properly executed either: (a) the Model Form Clearing Agreement; or (b) an Equivalent Clearing Agreement.
- 2.5 That, in the case of the opinion given at Paragraph 3.8.2 (*Transfer of Non-cash Collateral under the Pledge Agreement*) and when Non-cash Collateral is provided to the Clearing House as margin under the Pledge Agreement only, both Parties have properly executed the Pledge Agreement.
- 2.6 That the Clearing House Documentation and, where applicable, each security document has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party. Neither Party at such time: (i) has ceased its payments (*cessation des paiements*) within the meaning of article L. 631-1 of the Commercial Code or article L. 613-26 of the Financial Code as applicable; or (ii) is or can be deemed to be, whether directly or indirectly, aware that the other party has ceased its payments (*cessation des paiements*) or, while it has not ceased its payments, faces difficulties that it is not able to overcome within the meaning of article L. 620-1 of the Commercial Code.
- 2.7 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and Transactions; and that (save in relation to any non-performance leading to the taking of action by the Members under the Netting Provision), each

- Party performs its obligations under the Clearing House Documentation and each Transaction in accordance with their respective terms.
- 2.8 That the Clearing House is at all material times a clearing house within the meaning of articles L. 440–1 *et seq.* of the Financial Code and a settlement system within the meaning of article L. 330–1 *et seq.* of the Financial Code.
- 2.9 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Clearing House Documentation, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Clearing Agreement or Pledge Agreement.
- 2.10 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.11 That the obligations assumed under the Clearing House Documentation and Transactions 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.
- 2.12 That the Pledge Agreement is valid, binding and enforceable in accordance with law chosen by the parties thereto to govern it, *i.e.* Belgian law, and qualifies as a financial collateral arrangement within the meaning of the Collateral Directive, as implemented by Belgian law.
- 2.13 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the creation and perfection of the security interests under the Rules pursuant to laws of any jurisdiction have been duly fulfilled, performed and effected.
- 2.14 That any cash comprising the Cash Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions. Such currency is not that of a country which is subject to United Nations' sanctions.
- 2.15 That the securities subject to a Non-cash Collateral are constituted solely of book entry securities within the meaning of article 2(1)(g) ('*book entry securities collateral*') of the Collateral Directive.
- 2.16 That the Member will have full legal title to any Non-cash Collateral immediately prior to posting to it, free and clear of any lien, claim, charge or encumbrance or any other interest of the Member or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system), without limitation, any restriction arising from any applicable client asset rules.
- 2.17 That the provision of Non-cash Collateral can be evidenced in writing or by electronic means and any other durable medium and such evidencing allows for the

identification of the Non-cash Collateral (provided that, for this purpose, it is sufficient to prove that the book entry securities collateral has been credit to, or forms a credit in, the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account).

2.18 That the relevant Client Account and the relevant House Account are located in France.

3. OPINION

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

3.1 Insolvency Proceedings

3.1.1 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 governed by Book VI of the Commercial Code, being the following:²

- (a) safeguard proceeding (*procédure de sauvegarde*) ("**Safeguard Proceeding**") governed by articles L. 620-1 *et seq.* of the Commercial Code;
- (b) accelerated financial safeguard proceeding (*procédure de sauvegarde financière accélérée*) ("**Accelerated Financial Safeguard Proceeding**") governed by articles L. 628-1 *et seq.* of the Commercial Code;
- (c) rehabilitation proceedings (*redressement judiciaire*) ("**Judicial Rehabilitation Proceeding**") governed by articles L. 631-1 *et seq.* of the Commercial Code; and

² Note that, in addition to Insolvency Proceedings, the Clearing House may become subject in France to the following pre-insolvency proceedings: (i) *Mandat ad hoc*, as provided for in article L. 611-3 of the Commercial Code; and (ii) conciliation proceeding (*procédure de conciliation*), as provided for in article L. 611-4 of the same code. The opening of a *mandat ad hoc* proceeding or a conciliation proceeding does not entail an automatic stay of payments or actions. Nevertheless, the competent court can order a stay of deferral of payments for a period of up to two years if a creditor has started legal action against the debtor (articles 1244-1 *et seq.* of the Civil Code). A conciliation proceeding only binds the parties to the conciliation agreement and remains confidential, save that where the conciliation agreement is acknowledged by the court (*homologué*) the terms thereof are no longer confidential.

- (d) judicial liquidation (*liquidation judiciaire*) ("**Judicial Liquidation Proceeding**") governed by articles L. 640–1 *et seq.* of the Commercial Code.

3.1.2 As a French credit institution, the Clearing House is subject to the supervision and control of the ACP. Under article L. 613–27 of the Financial Code, Insolvency Proceedings may only be opened against a credit institution by a French commercial court having jurisdiction following advice by the ACP. Under article L. 613–34 of the Financial Code, the ACP may, among other things, designate a provisional administrator (*administrateur provisoire*) either at the request of the directors of the credit institution or upon its own initiative when the management of such credit institution cannot be pursued under normal conditions or when it has been subject to disciplinary sanctions. Such provisional administrator shall manage the activities of the credit institution concerned. The ACP also designates a liquidator (*liquidateur*) for a credit institution, in case a Judicial Liquidation Proceeding is opened or pronounced. As the case may be, the liquidator may be entrusted with all powers of administration, management and representation of the relevant credit institution.

3.1.3 As a French credit institution, the Clearing House is also subject to the provisions of the Credit Institution WUD.

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

3.2 **Special provisions of law**

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

3.2.1 articles L. 440–1 *et seq.*, L. 330–1 *et seq.* and L. 211–36 *et seq.* of the Financial Code; and

3.2.2 EMIR.

3.3 **Recognition of choice of law**

3.3.1 The choice of law provisions of the CDS Clearing Rule Book, the Derivatives Clearing Rule Book and the Pledge Agreement would be recognised under the laws of this jurisdiction, even if the Member is not incorporated, domiciled or established in this jurisdiction.

- 3.3.2 The choice of Belgian law to govern the Pledge Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in Belgium.
- 3.3.3 In "situations involving a conflict of laws", within the meaning of article 1.1 of the Rome I, a French court would apply article 3 (*Freedom of choice*) thereof and give effect to the choice of Belgian law to govern the relevant Pledge Agreement.
- 3.3.4 Such recognition would in any event be subject to all limitation provided for under the Rome I Regulation, in particular article 3.3 (on internal mandatory provisions of the law of the country in which all elements of the situation are located), article 9 (*Overriding mandatory provisions*) and article 21 (*Public policy of the forum*).
- 3.3.5 In addition, it should be noted that the scope and effect of a choice of law made by the parties is likely to be limited or contained by special conflict of laws rules applicable to specific matters and/or to specific situations, in particular in the context of Insolvency Proceedings.
- 3.3.6 Please also see our observations regarding the Pledge Agreement in paragraph 3.8.2 (*Transfer of Non-cash Collateral under the Pledge Agreement*) below.

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

3.4.1 *With respect to the CDS Clearing Services*

(a) Netting Provision

- (i) The Netting Provision will be (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, upon the occurrence of an Event of Default in relation to the Clearing House:
- (A) the Member would be entitled to exercise its rights under the Netting Provision; 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

Transactions, together with other losses or gains referable to the Transactions.

- (ii) We are of this opinion because article L. 330-1 of the Financial Code provides for the validity of netting and set-off provisions (*opérations de compensation*)³ between the Clearing House (as a "system used for the settlement and delivery of financial instruments" within the meaning of such provision) and a Member (as a direct participant of such system). In accordance with article L. 330-2-III of the Financial Code, Insolvency Proceedings may not affect the aforementioned netting and set-off rights.
- (iii) In addition, pursuant to the provisions of articles L. 211-36 through L. 211-40 of the Financial Code, no moratorium or stay under an Insolvency Proceeding would prevent, delay or otherwise affect the exercise of such rights by the Member.
- (iv) Pursuant to article L. 613-31-6-I-4° of the Financial Code,⁴ the opening of an Insolvency Proceeding against the Clearing House would not affect the exercise of netting and set off rights by the Member. Indeed, the adoption of reorganisation measures or the opening of liquidation proceedings against a French credit institution shall not affect the right of creditors to demand the set-off of their claims against the claims of such credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. French law permits such set off, notably for the reasons explained above.
- (v) However, attention is drawn to the fact that the exercise of such rights of the Member may be subject to a cure period. Indeed, article 1.3.1.1 of the CDS Clearing Rule Book provides that the exercise of such rights may be affected by the fulfilment of the cure period, when applicable. According to such provision, "*constitute an LCH Default* [an Event of Default in relation to the Clearing House]: (i) *LCH.Clearnet*

³ French law does not really differentiate netting from set off and *vice versa*.

⁴ Implementing article 23 of the Credit Institution WUD.

SA has failed to make a payment, or to redeliver Eligible Collateral when such payment or redelivery is due and payable in accordance with the CDS Clearing Documentation, to a Clearing Member (other than to a Defaulting Clearing Member or in accordance with the first paragraph of Article 1.2.9.2) under any Cleared Transaction and such failure has not been cured by 17.00 on the third Business Day after the date on which notice of such failure is given by the Clearing Member to LCH.Clearnet SA ".

(b) Set-off Provision

(i) The Set-off Provision will be (and without fulfilment of any further conditions) enforceable in accordance with its terms so that upon the occurrence of an Event of Default in relation to the Clearing House :

(A) the Member would be entitled to exercise its rights under the Set-Off Provision; and

(B) any and all amounts owed by the Member to the Clearing House (including the Termination Amount (once calculated) and initial margin) would be set off against any such amounts owed by the Clearing House to the Member.

(ii) We are of this opinion for the same reasons as expressed in paragraph 3.4.1 (a) (*Netting Provision*) above.

3.4.2 *With respect to the Derivatives Clearing Services*

(a) The Derivatives Clearing Rule Book does not provide for any netting or set-off provision which would apply to Transactions upon the occurrence of an Event of Default in relation to the Clearing House. Therefore, article L. 211-36-1 of the Financial Code which derogates from generally applicable French insolvency and security laws, will not apply in the absence of netting and set-off provisions being set out in the Derivatives Clearing Rule Book.

(b) Upon the Clearing House being subject to Insolvency Proceedings, general rules relating to termination and set-off in France will therefore apply to the Transactions.

- (c) In accordance with the French general rules regarding termination, any contract capable of being terminated or accelerated following the occurrence of a close out event may validly be terminated provided that:
- (i) pursuant to article L. 622–21–I–2° of the Commercial Code and applicable French case law, a close out event (even based on a failure to pay on the part of the French party) will not constitute a valid ground for termination unless both such event has occurred and the termination of the relevant contract as a consequence thereof shall have taken effect (whether automatically (*de plein droit*), upon notice, by way of court decision or otherwise), prior to the start of insolvency proceedings; and
 - (ii) a close out event based on the French party's state of insolvency or on the start of insolvency proceedings against such party is not a valid ground for termination.⁵
- (d) Note that, pursuant to article L. 622–29 of the Commercial Code, the court decision opening Accelerated Financial Safeguard Proceedings, Safeguard Proceedings or Judicial Reorganisation Proceedings does not have the effect of accelerating claims which are then unmatured. Accordingly, the relevant insolvency officer will be vested with the authority to require performance of those contracts which remained executory contracts (*contrats en cours*) at the time of the aforementioned court decision and have not validly been terminated prior to such decision, notwithstanding the insolvent party's default prior to the decision.⁶ In the case of assumption of a contract, obligations under such contract have to be discharged, notwithstanding such prior default (and claims resulting from such default only entitle the creditors to file a proof of claim in respect thereof). Claims arising from the performance of the contract after the start of the above Insolvency Proceedings are paid as and when they fall due (but not indemnities and penalties payable upon termination of contracts assumed pursuant to the provisions of article L. 622–13–V of the

⁵ Article L. 622–13 of the Commercial Code.

⁶ Article L. 622–13 of the Commercial Code.

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Commercial Code which must be filed by the relevant creditor). If the insolvency officers elects for the termination of the contract, the creditor is then entitled to resort to the termination remedies contemplated under the contract and to file a proof of claim for damages, the amount of which would be subject to judicial review.

- (e) On the other hand, under article L. 643-1 of the Commercial Code, the court decision opening a Judicial Liquidation Proceeding has the effect of accelerating outstanding claims having arisen prior to such decision.
- (f) Regarding set-off, the following general rules will apply to the Transactions:
 - (i) in accordance with the general rules applicable to set-off, any payment of debts having arisen before the start of such proceedings is strictly prohibited.⁷ As it is viewed as a means of payment, set-off falls within the scope of such prohibition;
 - (ii) however, article L. 622-7 of the Commercial Code provides for an express exception to this prohibition with respect to set-off between related or connected debts (*dettes connexes*) being exercised after the start of Insolvency Proceedings, provided however that the claims of the non-insolvent party against the insolvent party have been duly filed with the relevant insolvency officer (*déclaration de créances*).⁸ French case law holds that obligations are connected when resulting from one contract or when carried out pursuant to one and the same contract which has defined the framework of the business relationship of the parties such as a master agreement,⁹ or when, in the absence of a master agreement, the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement.¹⁰ We believe that it is likely that: (i) the obligations in relation to the Transactions owed by the Clearing House to the Member and; (ii) the

⁷ Article L. 622-7 of the Commercial Code.

⁸ Article L. 622-24 of the Commercial Code.

⁹ Cass. Com. 12 December 1995.

¹⁰ Cass. Com. 5 April 1994; 9 May 1995; 1 April 1997 and 31 March 1998.

obligations in relation to the Transactions owed by the Member to the Clearing House, would be regarded as connected in accordance with the rules set out in article L. 622-7 of the Commercial Code, to the extent that they should have arisen from a single business relationship between the parties governed by the Derivatives Clearing Rules characterising a master agreement between the parties.¹¹ As a consequence, in the event that Insolvency Proceedings are commenced against the Clearing House and provided that the relevant Member duly files its claims on time with the creditors' representative in accordance with article L. 622-7 of the Commercial Code, we believe that it is likely that set-off would apply to the relevant Transactions.

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

- 3.5.1 Only House Accounts shall be opened in relation to CDS Clearing Services.
- 3.5.2 In relation to Derivatives Clearing Services, the Clearing House opens House Accounts and Clients Accounts in accordance with the provisions of Chapter 2 of the Title 3 of the Derivatives Clearing Rule Book.
- 3.5.3 Upon the Clearing House being subject to Insolvency Proceedings, French general rules governing insolvency as described in paragraph 3.4.2 above will apply to set-off.

3.6 Netting and Set-Off: Cross-Product Netting

- 3.6.1 With respect to the CDS Clearing services, the effect of the Netting Provision is to apply close-out netting to all Transactions in CDS cleared by the Member with the Clearing House.
- 3.6.2 With respect to the Derivatives Clearing Services, provided that the conditions under general French insolvency rules as described in paragraph 3.4.2 above were met, set-off would apply to all Transactions in Derivatives cleared by the Member with the Clearing House.

¹¹ Note that, according to article L. 440-1 of the Financial Code, the legal relationships between the Clearing House and the Member are of contractual nature.

3.7 Cash Collateral

- 3.7.1 Payments made by a Member to the Clearing House as cash margin (whether initial margin or variation margin) would constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would be treated as the property of the Clearing House without being available to its creditors generally.
- 3.7.2 We are of this opinion because article L. 440–7 of the Financial Code, provides that regardless of their nature, deposits made by clients with investment service providers or members (such as a Member) of a clearing house (the Clearing House), or made by such member with a clearing house so as to cover or secure positions taken on a market in financial instruments, are transferred by operation of law with full title ("*sont transférés en pleine propriété*") to the service provider or the member, or to the clearing house concerned, as soon as they are made, for the purpose of being settled, on the one hand, against the debit balance established upon automatic settlement of the positions and, on the other hand, against any other sum due to the service provider or the member, or to that clearing house. Accordingly, in such case, payments made by a Member to the Clearing House as cash margin would by operation of law and without further formalities be transferred from the Member to the Clearing House and constitute an absolute transfer of cash.
- 3.7.3 Article L. 440–7 of the Financial Code further provides that no creditor of a clearing house, may avail himself of any right whatsoever over such deposits, even on the basis of the Insolvency Proceedings.
- 3.7.4 Under the CDS Clearing Rule Book, Cash Collateral will be taken into account by each Member in the calculation of the Termination Amount in accordance with article 1.3.1.6 (ii) thereof, which indeed provides that the Member shall take into account the "*value of the repayment or redelivery of all Eligible Collateral and Cash Collateral representing the Margin Balance, Intraday Available Collateral or the Contribution Balance, in each case without applying any haircuts to the valuation of the Collateral*" in the calculation of the Termination Amount.

3.8 Non-cash Collateral

3.8.1 Transfer of Non-cash Collateral on a full title transfer basis

- (a) Any securities provided on a full title transfer basis to the Clearing House as cover for margin and constituting Non-cash Collateral would be treated as the property of the Clearing House and accordingly, the Member would only have a claim for the return of the same against the Clearing House, subject to the Member satisfying its obligations to the Clearing House.
- (b) This is because article L. 440-7 of the Financial Code referred to above provides that the title transfer of collateral arises by operation of law without any restriction to any type of goods or asset. However, the value of the Non-cash Collateral would constitute a debt owed by the Clearing House to the Member. The value of Non-cash Collateral shall be effectively taken into account by the Member in the calculation of any amount owed by the Clearing House to the Member in case of an Event of Default in relation to the Clearing House. In the event of Insolvency Proceedings relating to the Clearing House, concerning the enforceability of the Netting Provision and the Set-off Provision with respect to CDS Clearing Services and the applicable general French insolvency rules relating to the termination and set-off with respect to the Derivatives Clearing Services, please refer to paragraph 3.4 (*Netting and Set-off: General*) above.

3.8.2 Transfer of Non-cash Collateral under the Pledge Agreement

- (a) In respect of securities provided by way of a Belgian law security interest under the Pledge Agreement, we believe that the security interest created thereunder as cover for margin might be recharacterised as a title transfer collateral, because article L. 440-7 of the Financial Code compulsorily imposes such characterisation for any form of cash or securities deposits made by way of security so as to comply with the Clearing House's margin requirements (the statutory provision literally says "*regardless of their nature deposits made by [...] members with a clearing house so as to cover or secure positions taken on a financial instruments market, are transferred by operation of law with full title ("sont transférés en pleine propriété")*")

to [...] the clearing house ".¹² As a consequence, although the Non-cash Collateral would be granted in the form of a pledge, we believe that there is a risk that a French courts takes the view that article L. 440-7 of the Financial Code is a mandatory provision (*loi de police*) which would override the choice of a foreign law and, accordingly, title in the collateral assets would be transferred from the Member to the Clearing House by the operation of law and without further formalities, and this, notwithstanding those conflict of laws rules as provided for in the Finality Directive, the Collateral Directive and the Credit Institution WUD.¹³ The result of this would be that the Member would only be entitled to a claim for their return against the Clearing House. In any event, such transfer of Non-cash Collateral will benefit from the provisions of article L. 440-7 of the Financial Code which provide that no creditor of a clearing house, may avail himself of any right whatsoever over such deposits, even on the basis of the Insolvency Proceedings.

- (b) However, this situation is not consistent with article 39(8) of EMIR which provides that margins can be collected *via* security financial collateral arrangements within the meaning of the Collateral Directive, which include both title transfer and security collateral arrangements. However, pending the Clearing House being licensed as such under EMIR, it is uncertain whether article 39(8) of EMIR is in force at the date of this Opinion Letter.

¹² First paragraph of article L. 440-7 of the Financial Code provides that "*quelle que soit leur nature, les dépôts effectués par les donneurs d'ordre auprès des prestataires de service d'investissement, des adhérents d'une chambre de compensation, ou effectués par ces adhérents auprès d'une telle chambre en couverture ou garantie des positions prises sur un marché d'instruments financiers, sont transférés en pleine propriété soit au prestataire ou à l'adhérent, soit à la chambre concernée dès leur constitution aux fins de règlement, d'une part, du solde débiteur constaté lors de la liquidation d'office des positions et, d'autre part, de toute autre somme due soit au prestataire ou à l'adhérent, soit à cette chambre.*"

¹³ Article 9.2 of the Finality Directive, article 9.1 of the Collateral Directive and article 24 of the Credit Institution WUD.

- (c) In this respect, it is anticipated that this situation will no longer be an issue since article L. 440-7 of the Financial Code is currently in the process of being amended.¹⁴

3.9 Members' Assessment Liabilities

A Member's Assessment Liability is as follows.

3.9.1 With respect to the CDS Clearing Services

- (a) In accordance with section 6 of the Procedures, the CDS Default Fund shall be at least equal to Euro 100 million, but is not capped at a specific amount.
- (b) Under article 4.4.1.3 of the CDS Clearing Rule Book and in accordance with section 6 of the Procedures, a Member's contribution to fund the CDS Default Fund shall be equal to the greater of:
 - (i) such Member's proportionate share of the CDS Default Fund Amount, each Member's proportionate share being based on its Unmargined Risk; and
 - (ii) a minimum contribution of Euro 10,000,000.

For each Member, where the initial calculation of its contribution to the CDS Default Fund yields an amount greater than the minimum contribution amount set out in Paragraph (ii) above, the Clearing House shall recalculate the Contribution Requirement of such Member such that each Member's Contribution Requirement is a proportionate share of the CDS Default Fund Calculation Amount.

- (c) Pursuant to articles 4.4.1.4 and 4.4.3.4 of the CDS Clearing Rule Book, upon the occurrence of an Event of Default with respect to a Member participating in the CDS Clearing Service, each Member has an unconditional obligation during the CDS Post-Default Period to pay a

¹⁴ As provided for in the draft bill on separation and regulation of banking activities (*projet de loi de séparation et de régulation des activités bancaires*), registered with the Presidency of the French Parliament (*Assemblée nationale*) on 19 December 2012 and containing, amongst others, amendments to article L. 440-7 of the Financial Code which would include both title transfer and security collateral arrangements.

single Additional Contribution Amount to the CDS Default Fund if required to do so by the Clearing House.

- (d) Pursuant to article 4.4.1.8 of the CDS Clearing Rule Book, if a Member is subject to a material change in its business such that the Member's Margin Requirement is increased by 10% or more (other than as a result of Extraordinary Margin being called), the Clearing House may recalculate its Contribution Requirement.
- (e) In accordance with article 1.2.9.2 of the CDS Clearing Rule Book, if the Member fails to pay the contribution to the Clearing House, the Clearing House may withhold any payments it would otherwise be obliged to make under the CDS Clearing Rules to such Member up to the value of the contribution for so long this contribution remains unpaid. If the failure to pay the contribution is continuing, the Clearing House may determine that such failure constitutes an Event of Default in respect of such Member, in the conditions set forth in the CDS Clearing Rule Book and may take any of the measures in respect of such Member, including, among others, the termination of the Member's membership of the CDS Clearing Services.

3.9.2 With respect to the Derivatives Clearing Services

- (a) In accordance with article 4.3.0.1 of the Derivatives Clearing Rule Book, the Clearing House has established two separate default funds:
 - (i) the "**cash and derivatives Default Fund**" which covers defaults of Admitted Persons authorised to clear Transactions on Securities and/or Derivatives product groups (excluding MTS Italy) or on Bluenext; and
 - (ii) the "**fixed income Default Fund**" which covers defaults of Members authorised to clear Transactions executed on or reported by Trading & Matching Platforms and MTS Italy Regulated Market.

The below-described rules apply to both default funds.

- (b) Pursuant to article 4.3.1.1 of the Derivatives Clearing Rule Book, a Member (or an Admitted Person) shall contribute *pro rata* its uncovered risk calculated by the Clearing House in accordance with Instructions IV.3-1 or IV.3-2.

- (c) Pursuant to article 4.3.3.1 of the Derivatives Clearing Rule Book, upon the declaration of an Event of Default with respect to a Member/Admitted Person participating in the Derivatives Clearing Service, each Member/Admitted Person shall be required to restore its contribution in the same default fund to the required level in such time as notified by the Clearing House.
- (d) In accordance with article 4.5.2.2 of the Derivatives Clearing Rule Book, if the Member fails to make the contribution to the Clearing House may determine that such failure constitutes an Event of Default in respect of such Member, in the conditions set forth in the Derivatives Clearing Rule Book and may take any of the measures in respect of such Member, including, among others, the termination of the Member's membership of the Derivatives Clearing Service.
- (e) In respect of Allied Clearing Houses only, the above-mentioned rules regarding the default funds do not apply. In accordance with articles 2.1.1.6 and 2.1.1.7 of the Derivatives Clearing Rule Book, Instruction II.1-2 provides that the default fund contribution obligation, under article 4.3.0.1 *et seq.* of the Derivatives Clearing Rule Book, is replaced by an exchange between the Clearing House and the Allied Clearing House of a specific adequate additional Margin calculated in accordance with the terms of this Instruction.

4. QUALIFICATIONS

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

4.1 Clearing house collateral and margin requirements ("*règles de couvertures*")

- 4.1.1 The question of whether the provisions of articles L. 440-7 *et seq.* apply to over the counter (OTC) transactions (*opérations de gré-à-gré*) is an unclear area of law. Such provision was indeed formerly contained in the law of 2 July 1996 on the modernisation of financial activities (the "**MAF Law**") as article 49 and 51 under a section entitled "*provisions relating to clearing houses of a regulated market*". Article 49 was expressly referring to "positions taken on a regulated market in financial instruments (*marché réglementé d'instruments financiers*)."
- 4.1.2 This provision was subsequently amended by article 84 of the law of 25 June 1999 on financial security which deleted the word "regulated" contained in

article 49 and the words "regulated market" in article 51–1. Unfortunately, parliamentary debates and reports are silent on these modifications and, as a result, it is difficult to give a sound interpretation as to the intent underpinning them. According to certain legal commentators, the modification was designed to extend the scope to any "organized" market in financial instruments but excluding the "*gré-à-gré* markets", which are subject to a separate legal derogatory regime benefiting to transactions on financial instruments generally as laid down by articles L. 211–36 *et seq.* of the Financial Code (formerly article L. 431–7 of the same code and, originally, article 52 of the MAF Law). Following the implementation of the directive n° 2002/47/EC (MiFID), a market in financial instruments may be defined as either a regulated market (*marché réglementé*) or as a multilateral trading facility (*système multilatéral de négociation*) within the meaning of articles L. 421–1 and L. 424–1 of the Financial Code. As a result, it might be the case that the benefit of article L. 440–7 (and, consequentially, article L. 440–9) is actually limited to positions taken on either market, but not on *gré-à-gré* markets (*e.g.* even where transactions are entered into *via* matching platforms (*plateformes d'appariement*) which are currently not regulated as regulated markets or multilateral trading facilities).

- 4.1.3 Should article L. 440–7 of the Financial not apply to collateral posted in relation to positions taken in respect of OTC Transactions, in such case, there are strong arguments in support of the view that such collateral would benefit from the provisions of articles L. 211–38 *et seq.* of the same code relating to financial collateral arrangements. Note that in such case, the Pledge Agreement would no longer be exposed to recharacterisation risks as set out in paragraph 3.8.2 (*Transfer of Non-cash Collateral under the Pledge Agreement*) above. We also note that this view is consistent with the approach taken by EMIR, which provides (in its article 39(8)) that margins may be collected by way of financial collateral arrangements within the meaning of the Collateral Directive, which notably include both title transfer and security financial collateral. However, please see also our observations made in paragraph 3.8.2(b) above.

4.2 Re-use of collateral

Pursuant to article L. 211–38–III of the Financial Code, the right for the collateral taker to reuse collateral assets is subject to the following conditions:

- 4.2.1 the right of re-use must be expressly set out in the collateral agreement;

4.2.2 the collateral taker must return equivalent collateral assets, *i.e.*:

- (a) in respect of securities, the securities returned to the collateral provider has an obligation to return securities issued by the same issuer or debtor, forming part of the same issue or category and of the same nominal amount, currency and description or other assets, when the parties so provide, following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral; and
- (b) in respect of cash, the same amount in the same currency.

4.2.3 In accordance with article 39(8) of EMIR, the Clearing House shall have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of article 2(1)(c) of the Collateral Directive, provided that the use of such arrangements is provided for in the operating rules of the clearing house. In addition, EMIR further requires that the clearing member shall confirm its acceptance of the operating rules in writing. Finally, the clearing house shall publicly disclose that right of use, which shall be exercised in accordance with article 47 of EMIR.

4.2.4 Finally, attention is drawn to the fact that pursuant to article 53(2) of EMIR, if the Clearing House enters into an interoperability arrangement with another clearing house, and only provides initial margins to such clearing house under a financial collateral arrangement, the receiving clearing house shall have no right to use over the margins provided by the other clearing house.

4.3 **Enforcement**

Where the collateral benefits from the provisions of article L. 211–38 of the Financial Code relating to financial collateral arrangements, then no specific formalities are required for the sake enforcing the collateral, save however that article L. 211–38–II–3° of the Financial Code imposes that the enforcement is made at normal market conditions in accordance with valuation terms that shall have been agreed upon the parties in the collateral arrangement.

4.4 **Default interests and indemnities**

4.4.1 Pursuant to article L. 622–28 of the Commercial Code, interest ceases to accrue as of the date of the court decision ordering the commencement of the insolvency proceedings. This applies to contractual and statutory rates of

interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more. Accordingly, the inclusion in the calculation provided for in the Netting Provisions of interest accrued after the commencement of the insolvency proceedings might not be enforceable.

- 4.4.2 Under article 1152 of the Civil Code, French courts have discretion to decrease the amount of those agreed indemnities, damages and penalties which they regard as manifestly excessive.
- 4.4.3 A French court may in its discretion decline to give effect to any indemnity for legal costs incurred by an unsuccessful litigant.

4.5 Foreign law and jurisdiction

- 4.5.1 If the performance of the provisions of the Pledge Agreement is contrary to French public policy as applicable in international matters (*ordre public international*), then French courts would refuse to give effect to those provisions. French law does not provide for a definition of French public policy as applicable in international matters (*ordre public international*) or of French mandatory rules (*lois de police*). Whether a rule belongs to one of these categories would be determined ex-post and on a case by case basis, by the courts and such a determination reflects a very unpredictable vision of what French courts consider public policy in international matters should be in the absence a general theory that may sustain the analysis.
- 4.5.2 Despite the parties' submission to the jurisdiction of the courts of Brussels, the parties to the Pledge Agreement may apply to French courts for such provisional or protective measures as may be available (such as provisional attachments on assets located in France, or summary proceedings to obtain an order for payment).

4.6 Enforceability of claims

An enforceable obligation is an obligation of a type which the French courts enforce. This does not mean however that a French court would always order the defaulting party to comply with its obligations in accordance with the exact terms of the Clearing House Documentation and Transaction documents.

4.6.1 *Specific performance*

Depending on the circumstances and the characteristics of a non-monetary obligation, the remedy of specific performance (*exécution en nature*) of that obligation may not be available in a French court, which often will only give remedies culminating in a judgment for the payment of money.

4.6.2 *Good faith and abuse of rights*

The principles concerning inter alia good faith (*bonne foi*) and abuse of rights (*abus de droit*) in the performance of contracts may operate to limit the exercise of rights and powers under the Clearing House Documentation and Transactions or in certain cases may operate to impose liability on the party acting in breach of such principles.

4.6.3 *Debt rescheduling*

In respect of payment obligations, a French court has power under articles 1244-1 to 1244-3 of the Civil Code to grant time to a debtor or reschedule its debts (in either case for a maximum period of two years), taking into account the position of the debtor and the needs of the creditor.

4.6.4 *Judgment currency*

In the event of any proceedings being brought in a French court in respect of a monetary obligation expressed to be payable in a currency other than euro, a French court would probably render a judgment expressed as an order to pay, not such currency, but its euro equivalent at the exchange rate prevailing on the date of the judgment or, if the Court so decides at the request of the plaintiff, at the date of payment. French law requires that all debt claims in insolvency proceedings be converted into euro at an exchange rate determined by the court at the date of commencement of the proceedings.

4.6.5 *Force majeure, etc.*

Enforcement of non-monetary obligations may be restricted by certain general principles of French law including the rules relating to *force majeure* or *exception d'inexécution*.

4.6.6 *Judge's interpretation*

The judge in interpreting a contract is not limited to considering its express terms but may also take into account all relevant circumstances; his interpretation cannot, save in exceptional circumstances, be set aside by the *Cour de cassation*.

4.6.7 *Claims under French law*

Under French law, claims may become barred by effluxion of time (*prescription*) or may be or become subject to a defense of set-off (*compensation*) or counterclaim (*demande reconventionnelle*).

4.7 **Qualifications relating to special provisions of law**

The list of special provisions in paragraph 3.2 (*Special provisions of law*) above is not an exhaustive list of all French laws that may apply to the Clearing House Documentation and Transactions, their interpretation and enforcement (which, among other things, shall be subject to general principles of French contract law and laws particular to individual Members).

4.8 **Other qualifications**

4.8.1 In respect of the entering of any party into each Transaction, our opinion (including on the enforceability and effectiveness of the Netting Provisions and the Set-Off Provisions) relates only to the situation where at the time it entered into the Transaction or at the time it has delivered or transferred any collateral or made the payments thereunder and in each case before the formal commencement of any Insolvency Proceedings, neither Party: (i) has ceased its payments (*cessation des paiements*) within the meaning of article L. 631-1 of the Commercial Code or article L. 613-26 of the Financial Code as applicable; or (ii) was or could be deemed to be, whether directly or indirectly, aware that the other party has ceased its payments (*cessation des paiements*) or, while it had not ceased its payments, faced difficulties that it was not able to overcome within the meaning of article L. 620-1 of the Commercial Code.

4.8.2 The Clearing House Documentation as well as any Transactions documents, where not in the French language, may need to be translated into French by an official sworn translator (*traducteur juré*) if submitted as evidence in any proceedings before a French court.

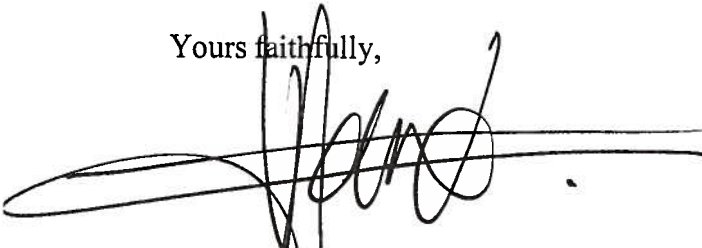
- 4.8.3 Pursuant to article 55 of decree n° 2005–1677 of 28 December 2005, the court decision opening an insolvency proceeding enters into effect on the date when such judgment is rendered in public hearing. This has the effect of implementing such judgment as of 00:00 a.m. of such date of entry.
- 4.8.4 We express no opinion as to the effect of the provisions of the Clearing House Documentation which entitle a party to determine facts unilaterally and conclusively, or entitle it to act on the basis of such determinations; a French court may, therefore, not consider as conclusive the certificates, calculations or determinations which the Clearing House Documentation provides are to be conclusive.
- 4.8.5 No opinion (other than where expressly opined upon herein) is expressed or implied in relation to the accuracy of any representation or warranty given by or concerning any of the parties to the Clearing House Documentation or whether such parties or any of them have complied with or will comply with any covenant or undertaking given by them or the terms and conditions of any obligations binding upon them.
- 4.8.6 We express no opinion as to whether any Party has complied with any applicable provisions of Title II of EMIR and any delegated or implementing acts adopted thereunder in respect of anything done by it in relation to or in connection with any of the Clearing House Documentation. However, article 12(3) of EMIR provides that any infringement of the rules under Title II of EMIR "*shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract*", consequently any failure by a party to so comply should not make the Clearing House Documentation invalid or unenforceable.
- 4.8.7 In a decision dated 26 September 2012, the French supreme court (Cour de cassation) held that a jurisdiction clause giving, for the sole benefit of one party, an unrestricted right to select the courts of its choice, was contrary to the purpose of article 23 of EC Regulation No. 44/2001, on the basis that such provision was "*potestative*". The supreme court confirmed the decision of the Paris court of appeal that considered the jurisdiction clause (even though inserted in a contract governed by foreign law) to be without effect. The scope of such decision is yet to be ascertained and therefore there is some doubt as to whether jurisdiction clauses of this kind will be found to be effective by French courts. Based on the French supreme court decision mentioned above, where a party to an agreement (even though governed by

foreign law) is vested with discretion as to the performance of its obligations and such discretion is not constrained by reference to objective factors or standards (e.g. an independent third party or commonly accepted market practice), such obligations may be nullified on the ground that they were assumed subject to a "*condition purement potestative*" or for lack of determination. The Supreme court casts also some doubts as to whether the enforceability of unbalanced clauses such as one-way netting clauses could be challenged on the ground of "*potestativité*", although, as already mentioned above, it is not possible to draw firm conclusions as the exact scope of such decision.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,



Clifford Chance Europe LLP
Frédéric Lacroix
Avocat à la Cour, associé

Annex 1: Model Form Clearing Agreement



ADMISSION AGREEMENT

BETWEEN

"**Banque Centrale de Compensation**", a clearing house for Financial Instruments, with capital of € 113, 066 860,26 with its registered office at 18, rue du Quatre Septembre 75002 Paris, France, registered in the Commercial Register of Paris under the number 692 032 485, for the purposes hereof duly represented by _____, acting in the capacity of _____, ("**LCH.Clearnet SA**")

ON ONE PART, and

_____, [with capital of _____], with its registered office at _____, recorded in _____, under the number _____, represented by M. _____, acting in the capacity of _____ and [by M. _____, acting in the capacity _____], ("**Clearing Member**")

ON THE OTHER PART

Collectively "**the Parties**"

WHEREAS:

Preamble

LCH.Clearnet SA, as a Credit Institution duly authorised by the French Competent Authority for the purpose, is a clearing house for Financial Instruments.

In this capacity, within the framework of its statutory and regulatory prerogatives, LCH.Clearnet SA has established rules relating to its clearing activities hereinafter the "Clearing Rules".

The Clearing Member has been admitted to membership of LCH.Clearnet SA.

The admission application submitted by the Clearing Member specifies the membership category¹ and the Product Group² applied for.

Now therefore, the Parties have concluded the present Agreement.

¹ Individual Clearing Member or General Clearing Member

² Securities and/or Derivatives and/or Trading and Matching Platforms

1. PURPOSE

1.1 This Agreement sets out the terms and conditions on which LCH.Clearnet SA shall make available to the Clearing Member the activities set out in the Clearing Rules, and those on which the Clearing Member shall carry on its clearing activities.

1.2 Signature of this Agreement supersedes and terminates any previous membership agreement which may have been in place between the Parties.

2. DEFINITIONS

Terms used in this Agreement shall, unless specifically provided otherwise, have the meanings stipulated in the Clearing Rules.

3. DECLARATION AND UNDERTAKING

3.1 The Parties consider themselves as clearing professionals and declare that they have the resources and expertise required to perform the terms of this Agreement.

3.2 The Clearing Member shall take all necessary steps regarding the technical access to LCH.Clearnet SA before starting activities under this Agreement.

4. MAIN OBLIGATIONS OF THE PARTIES

Parties undertake to comply at all times with the Clearing Rules currently in force and as amended from time to time and with this Agreement.

5. COLLABORATION AND COMMUNICATION BETWEEN PARTIES

5.1 LCH.Clearnet SA undertakes to consult the Clearing Members, through their representatives bodies, on any change to the Clearing Rules, the Admission Agreement, contracts with LCH.Clearnet SA for the provision of related services and to any other element, having a major impact on the Clearing Members clearing and settlement activities falling within LCH.Clearnet SA's scope, prior to the implementation of such a change.

5.2 This consultation shall not occur when it is impossible due to a case of extreme urgency requiring immediate action in order to preserve the interests of LCH.Clearnet SA and the Clearing Members. In this case, LCH.Clearnet SA shall send to the relevant representative body(ies) a notice giving the content of the change that has been implemented without them being consulted and describing the extreme urgency case as well as the interests at stake.

5.3 LCH.Clearnet SA shall conduct the dialogue through existing representative organisations or any other existing or to be established bodies, according to the applicable terms of reference, which shall have experts available to discuss the matter in hand.

5.4 As provided in Article 4, the Clearing Member shall be bound by any replacement, modification and amendment by LCH.Clearnet SA of the Clearing Rules, except in the event of timely and legally effective termination of this Agreement by the Clearing Member, with due observance of the termination procedure contained in the Clearing Rules.

5.5 LCH.Clearnet SA shall use its best efforts to structure its Clearing Rules and organise its operations in such a way that all Clearing Members receive equality of treatment, without discrimination and irrespective of their residency.

5.6 However, the Clearing Member acknowledges that regulatory issues, tax regimes, or applicable local or European law and other issues beyond the control of LCH.Clearnet SA may adversely affect the treatment that the Clearing Member does ultimately receive.

6. ACCOUNTS

6.1 The admission application shall detail the required Securities and cash accounts to be maintained by the Clearing Member.

6.2 For Securities accounts, LCH.Clearnet SA may require the accounts to be held with a (international) central Securities depository or a Securities settlement system specified by LCH.Clearnet SA and for cash accounts the Clearing Members can choose to open its account in one of the commercial or central banks on the terms defined by LCH.Clearnet SA.

6.3 The aforementioned accounts can be held either directly or through an agent holding an account in the relevant institution and who undertakes to fulfil the Clearing Member's obligation on the latter's behalf.

6.4 The Clearing Member shall provide LCH.Clearnet SA with advance written notice of any change to details regarding any information regarding this Article.

6.5 The Clearing Member or its agent, mandated to fulfil the Clearing Member's payment and/or delivery and/or Margin obligations towards LCH.Clearnet SA, shall provide a power of attorney granting LCH.Clearnet SA full power and authority to operate each such account. It shall maintain current such power and authority as long as this agreement remains in force.

7. FEES, COSTS AND PAYMENT TERMS

7.1 In consideration of the provision by LCH.Clearnet SA of central counterparty services, as described in the Clearing Rules, the Clearing Member shall pay LCH.Clearnet SA the fixed and variable commissions, costs, and fees.

7.2 LCH.Clearnet SA may index or adjust those fixed and variable commissions, costs, and fees from time to time, taking into account certain factors such as its international competitive position and market developments. LCH.Clearnet SA shall give the Clearing Member reasonable prior notice of each such change.

7.3 LCH.Clearnet SA directly debits the due and payable amounts from the relevant Clearing Member's accounts as described in Article 6. The Clearing Member receives an invoice describing those amounts.

If not, the Clearing Member shall pay within thirty (30) days upon receipt of the invoice or any other form of call from LCH.Clearnet SA.

7.4 These sums shall be invoiced by LCH.Clearnet SA in euros excluding taxes (VAT at the legal rate in force in France to be added, when applicable).

7.5 If the payment is not made in due time, the delay shall result in interest being charged at a rate equal to one and a half times the marginal lending rate fixed by the European Central Bank. The interest charge shall not imply any waiver of the right to damages due to late payment.

Furthermore, if the Clearing Member fails to pay the invoice in due time, LCH.Clearnet SA may suspend the fulfilment of their obligations as set out in this Agreement, however not until LCH.Clearnet SA has sent the Clearing Member a notice of failure and the period of payment

mentioned therein has lapsed without the full payment having been received.

LCH.Clearnet SA may assign its claim for payment to one or more third parties, in such a case and provided that the Clearing Member failed to pay in due time, in addition to the aggregate amount then due, it shall be liable for any reasonable legal or extra-legal collection costs incurred.

7.6 Payment shall be made without offset or postponement on any grounds whatsoever, except to the extent that an arbitration award or court decision has determined that the Clearing Member has a counterclaim eligible for offset or valid grounds for postponement.

8. WAIVER

No failure or delay by either Party in exercising any right or remedy provided by law under or pursuant to this Agreement shall prejudice such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of any other right or remedy.

9. LANGUAGE

9.1 The Clearing Rules shall be drawn up or issued in English and in French. Versions in other languages might also be issued.

The English and French versions shall be of equal value.

9.2 This Agreement is drawn up in English and in French and any version can be signed. In case of any discrepancy between these versions, the signed version shall prevail. For information purposes the Agreement might be translated in the language of the Clearing Member at its request.

9.3 General communications of LCH.Clearnet SA as well as all applications, filings, correspondence with, and submissions to LCH.Clearnet SA by a Clearing Member may be in English, French, Portuguese or Dutch unless agreed otherwise by LCH.Clearnet SA.

9.4 The Clearing Member shall designate English or French-speaking correspondents who may be required to respond to requests made by LCH.Clearnet SA for information and documents.

10. TERMINATION

10.1 The Clearing Member may terminate the present Agreement at any time by registered letter to LCH.Clearnet SA giving a notice of at least ten Clearing Days.

The Clearing Member is then responsible for the transfer or closing-out of all its Open Positions, if they are not expired, before the end of the notice period.

10.2 Under the circumstances defined in the Clearing Rule Book, LCH.Clearnet SA can terminate this Agreement with at least a ten Clearing Day notice.

LCH.Clearnet SA then ensures the occurrence of the orderly closing-out or transfer, before the end of the notice period, in the terms and conditions set out in the Clearing Rules.

10.3 The effective termination of this Agreement does not relieve the Clearing Member from any of its obligations arising from Transactions entered into prior to such termination and

renders all amounts due by the Clearing Member under this Agreement immediately payable.

Within a ten day delay following the effective termination, LCH.Clearnet SA shall refund Collateral concerning the Clearing Member, including its contribution to the Clearing Funds, after having deducted all amounts corresponding to the remaining obligations stated in the paragraph above if they are still due.

10.4 In any case the Party terminating the contract shall indicate to the other Party the reason for giving notice of termination.

10.5 Any termination of this Agreement shall be co-ordinated with termination of any agreement providing technical access to LCH.Clearnet SA.

10.6 The Clearing Member undertakes to inform its Clients and Trading Members or Associated Trading Member in case of any termination of its membership and any other relevant event referred to in the Clearing Rule Book.

11. AMENDMENTS

LCH.Clearnet SA can make any amendments to these terms necessary to conform this Agreement to changes in laws, regulations or the Clearing Rules, as soon as such regulatory changes take effect.

12. CONFIDENTIALITY

12.1 Each of the Parties shall both during and after the arrangements contemplated by this Agreement have terminated :

- (a) keep confidential all information, whether in written or any other form, which has been disclosed to it by or on behalf of the other Party in confidence or which by its nature ought to be regarded as confidential (including, without limitation, any business information in respect of the other Party which is not directly applicable or relevant to the transactions contemplated by this Agreement);

and

- (b) procure that its officers, employees, representatives, agents and subcontractors keep secret and treat as confidential all such documentation and information.

12.2 This clause does not apply to information:

- (a) to the extent that French law, including but not limited to Article L 632-1 of the French monetary and financial code, provides for such information to be disclosed to any exchange, clearing organisation, or regulatory authority and that a confidentiality agreement is signed between LCH.Clearnet SA and such clearing organisations and exchanges;
- (b) to the extent that the information is necessary for the third party that the Clearing Member has mandated to fulfil its payment and/or delivery and/or Margin obligations towards LCH.Clearnet SA.
- (c) to the extent made available to the recipient Party by a third party who is entitled to divulge such information and who is not under any obligation of confidentiality in respect of such information to the other Party or which has been disclosed under an express statement that it is not confidential;

- (d) to the extent required to be disclosed by any applicable law or by any governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules the Party making the disclosure is subject, whether or not having the force of law, provided that the Party disclosing the information shall notify the other Party of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) as early as reasonably possible and provided it is legally allowed to do so, before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure;
- (e) disclosed to any applicable tax authority to the extent reasonably required to assist the settlement of the disclosing Party's tax affairs; or
- (f) which shall after the date of this Agreement become published or otherwise generally available to the public, except in consequence of a wilful or negligent act or omission by the other Party to this Agreement in contravention of these obligations, or to information which the recipient Party can prove was already known to it before its receipt from the disclosing Party.

12.3 The provisions of this clause shall survive any termination of this Agreement for a period of 3 years.

12.4 Either Party may, in their commercial activities, publicly refer to the name of the Clearing Member and its membership to LCH.Clearnet SA, and LCH.Clearnet SA may (without identifying the Clearing Member) use figures as to the Clearing Member's activity in the compilation of statistics for publication, and for similar purposes provided that the identity of the Clearing Member is not attributable.

12.5 LCH.Clearnet SA shall not use or disclose information obtained in the course of its duties under the Clearing Rules for other purposes than those which are permitted under the Clearing Rules, unless LCH.Clearnet SA, or one or more of its employees, have a statutory obligation to do so.

13. DISPUTE RESOLUTION

13.1 Any dispute between the Parties that may arise out of or in connection with this Agreement which is not solved by an amicable settlement between the Parties, shall be dealt with by the French courts having jurisdiction. Notwithstanding the foregoing, and provided that annex 1 is filled in, the Parties may mutually agree, on a case by case basis, to refer the dispute to arbitration.

13.2 The Parties acknowledge that they have the capacity to enter into an arbitration agreement. In case the Parties shall refer to arbitration. They hereby agree with the rules of the arbitration centre mentioned in the Annex 1 except regarding the appointment of the arbitrators which shall occur as follows.

13.3 The language to be used in arbitration proceedings and in any relevant document shall be the English, except if the Parties agree otherwise in writing. All up-to-date relevant documentation shall be provided to LCH.Clearnet SA by the Clearing Member before the former decides whether or not resort to arbitration for the matter at stake as described in Article 13.1.

The dispute shall be submitted to binding arbitration before a panel of three arbitrators consisting of two party-nominated (non-impartial) arbitrators, one nominated by the LCH.Clearnet SA and one nominated by the Clearing Member, and a third (impartial) (hereinafter the "umpire"). After the Parties have agreed to use arbitration they shall notify the

each other, the name, address and occupation of the arbitrator they nominated. The two arbitrators so selected shall, within 30 calendar days of the appointment of the second arbitrator, select an umpire. If the arbitrators are unable to agree upon an umpire, each arbitrator shall submit to the other arbitrator a list of three proposed individuals from which list the other Arbitrator shall choose one individual. The names of the two individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.

14. APPLICABLE LAW

The present Agreement is governed by and construed according to French law.

15. ASSIGNMENT

The Clearing Member may not under any circumstances assign this Agreement in whole or in part.

16. SEVERABILITY

If one or more provisions of this Agreement are deemed to be invalid or ruled to be invalid in application of a statute or regulation or following a final decision of a competent court, the other provisions hereof shall remain in full force and effect.

17. ADDRESSES FOR SERVICES OF NOTICES AND OTHER COMMUNICATIONS

The Parties elect to be permanently resident:

- for the Clearing Member, at its registered office or branch in case the activity is located at the latter as specified in the admission application.
- for LCH.Clearnet SA, at its head office, 18, rue du Quatre Septembre, 75 002 Paris - FRANCE

18. EFFECT - TERM

This Agreement has been entered into for an indefinite period of time and takes effect on notification by LCH.Clearnet SA of its acceptance of the Clearing Member's membership application and the fulfilment of all conditions precedent imposed on the Applicant. It may be terminated in the conditions set out in Article 10.

It has been duly signed in duplicate in _____ (*place*)

On _____ (*date*),

LCH.Clearnet SA

Name :
Capacity :

The Clearing Member

Name :
Capacity

ANNEX 1
REGARDING DISPUTES REFERRED TO IN ARTICLE 13 THE ARBITRATION CENTRE
CHOSEN BY THE PARTIES IS :

Name :

Address :

Phone number :

CDS ADMISSION AGREEMENT

THIS AGREEMENT is made on Date.

BETWEEN

- (1) "Banque Centrale de Compensation", a clearing house for financial instruments, incorporated as a French law *société anonyme* with its registered office at 18, rue du Quatre Septembre 75002 Paris, France, registered in the Commerce and Companies Register of Paris under the number 692 032 485, for the purposes hereof duly represented by Valérie GUILLAUMIN-CARRÉ, acting in the capacity of Legal Director, ("LCH.Clearnet SA"); and
- (2) Member, with its registered office at Address (street) incorporated in Country, Zip Code, City, under the number [] RCS Paris, (the "Clearing Member"),

(each a "Party" and collectively, the "Parties").

WHEREAS

- (A) LCH.Clearnet SA is a clearing house within the meaning of Article L. 440-1 of the French Monetary and Financial Code and acts as a central counterparty for clearing Original Transactions entered into between the CDS Buyer and the CDS Seller in accordance with the CDS Clearing Documentation. LCH.Clearnet SA is under the supervision of its Competent Authorities within the scope of their respective remit as granted by their national law and has additionally been notified to the European Commission as a securities settlement system for the purposes of the Settlement Finality Directive.
- (B) In this capacity, within the framework of its statutory and regulatory prerogatives, LCH.Clearnet SA has established the CDS Clearing Documentation, in accordance with which it clears Original Transactions, supervises the Cleared Transactions registered in the name of the Clearing Members, calculates the associated risk, calls Margin to cover this risk, ensures the proper settlement of the Cleared Transactions as central counterparty, manages the CDS Default Management Process and performs all other functions specified in the CDS Clearing Documentation.
- (C) The Clearing Member desires to be admitted to membership of the CDS Clearing System for the purpose of clearing Original Transactions and LCH.Clearnet SA, having determined that the Clearing Member satisfies for the time being the relevant criteria for admission, agrees to admit the Clearing Member to membership of the CDS Clearing System, subject to the terms and conditions of this Agreement, as amended from time to time.

1 PURPOSE AND SCOPE

- 1.1 This Agreement sets out the terms and conditions on which LCH.Clearnet SA agrees to admit the Clearing Member to membership of the CDS Clearing Service pursuant to the CDS Clearing Documentation, and those on which the Clearing Member shall undertake its CDS clearing activities pursuant to and in accordance with the CDS Clearing Documentation.

- 1.2 Execution of this Agreement supersedes and terminates any previous membership agreement which may have been in place between the Parties with respect to the CDS Clearing Service.
- 1.3 Without prejudice to Section 18 below, this Agreement, together with:
- 1.3.1 the terms of any other agreement relating to the provision of the CDS Clearing Service by LCH.Clearnet SA to which the Parties are party;
 - 1.3.2 the terms of and applicable to each and every Cleared Transaction;
 - 1.3.3 the CDS Clearing Documentation; and
 - 1.3.4 all amendments duly made to any of the foregoing,
- shall together constitute a single agreement between the Parties, and both Parties acknowledge that all Cleared Transactions are entered into in reliance upon the fact that all such items constitute a single agreement between the Parties.

2 DEFINITIONS AND INTERPRETATION

- 2.1 Capitalised terms used in this Agreement shall, unless specifically provided otherwise, have the meanings stipulated in the document entitled "CDS Clearing Rule Book" published by LCH.Clearnet SA, as amended from time to time (the "CDS Clearing Rule Book").
- 2.2 References in this Agreement to a Section are to a Section of this Agreement unless otherwise indicated, and Section headings are for ease of reference only.
- 2.3 Unless the context otherwise requires, words (including defined terms) denoting the singular shall include the plural and vice versa.
- 2.4 References to writing include typing, printing, lithography, photography, facsimile transmission, and other modes of representing or reproducing words in a visual form.
- 2.5 References in this Agreement to statutes, statutory instruments, the CDS Clearing Documentation (or any document forming part of the CDS Clearing Documentation) or provisions thereof, are to those statutes, statutory instruments, the CDS Clearing Documentation (or any document forming part of the CDS Clearing Documentation) or provisions thereof as amended, modified or replaced from time to time.

3 CLEARING MEMBERSHIP

- 3.1 The Clearing Member is hereby admitted as a clearing member of the CDS Clearing Service on the terms set out in this Agreement. The Clearing Member shall be eligible to clear all categories of Original Transaction contemplated under the CDS Clearing Service from time to time, subject in each case to meeting any additional requirements specified in the Procedures from time to time.
- 3.2 The Clearing Member warrants that the information supplied to LCH.Clearnet SA for the purposes of determining whether it has satisfied the conditions for admission, as set out in Title II (*Membership*) of the CDS Clearing Rule Book and Section 1 of the Procedures

- (*Membership*), was when provided and is at the date of this Agreement true and accurate in all material respects.
- 3.3** The Parties undertake to comply at all times with this Agreement and the CDS Clearing Documentation, as amended from time to time.
- 3.4** LCH.Clearnet SA and the Clearing Member each represent to the other that, as at the date of this Agreement, and at all times prior to the termination of this Agreement:
- 3.4.1** it is duly incorporated or otherwise organised and validly existing under the laws of its jurisdiction of incorporation;
 - 3.4.2** it has the power and authority to enter into this Agreement and has taken all necessary corporate actions to authorise the execution of this Agreement;
 - 3.4.3** to the extent it is required under Applicable Law to be authorised, licensed or approved in relation to activities undertaken by it, that all required governmental and/or regulatory and other consents with respect to this Agreement, have been obtained and are in full force and effect and that any or all conditions of any such consents have been and are complied with;
 - 3.4.4** it has full knowledge and understanding of the provisions of the CDS Clearing Documentation and shall abide by its obligations under the CDS Clearing Documentation;
 - 3.4.5** execution, delivery and performance of this Agreement do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
 - 3.4.6** its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, 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));
 - 3.4.7** no Event of Default or LCH Default, as applicable, with respect to it has occurred and is continuing and no Event of Default or LCH Default, as applicable, would occur as a result of its entering into or performing its obligations under this Agreement; and
 - 3.4.8** there is not pending or, to its knowledge, threatened against it, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- 3.5** The Parties agree that the maximum amount of any fine that LCH.Clearnet SA can impose on the Clearing Member, pursuant to Paragraph 8.3 of Section 8 of the Procedures (*Disciplinary Proceedings*), is as set out in the fine grid at Schedule 3.

4 FEES, COSTS AND PAYMENT TERMS

- 4.1 In consideration of being granted membership of the CDS Clearing Service, the Clearing Member shall pay LCH.Clearnet SA fees in accordance with Section 1.2.6 (*Fees*) of the CDS Clearing Rule Book.
- 4.2 All fees shall be payable by the Clearing Member to LCH.Clearnet SA, in Euro, on a monthly basis in accordance with Section 4.5.
- 4.3 The Clearing Member shall issue a Power of Attorney in favour of LCH.Clearnet SA to allow the debiting or crediting of its TARGET2 Account (or the relevant cash account of its TARGET2 Payment Agent) for the purposes of fee payments pursuant to Section 4.1.
- 4.4 LCH.Clearnet SA may index or adjust the fees published on the Website from time to time at its discretion. LCH.Clearnet SA shall give the Clearing Member no less than thirty (30) calendar days' prior notice of any such change.
- 4.5 On the date falling ten (10) Business Days after the end of each calendar month, LCH.Clearnet SA shall debit any due and payable fees (the "**Fee Balance**") from the relevant Clearing Member's TARGET2 Account (or the relevant cash account of its TARGET2 Payment Agent) using its Power of Attorney. On or before the fifth Business Day after the end of each calendar month, LCH.Clearnet SA shall issue an invoice to the Clearing Member detailing the Fee Balance to be debited pursuant to this Section 4.5 (the "**Fee Notice**").
- 4.6 In circumstances where LCH.Clearnet SA is not able to debit the Fee Balance from the relevant Clearing Member's TARGET2 Account (or the relevant cash account of its TARGET2 Payment Agent) using its Power of Attorney, the Clearing Member shall pay the Fee Balance to LCH.Clearnet SA within thirty (30) calendar days of receiving the Fee Notice from LCH.Clearnet SA and in such manner as specified in the Fee Notice.
- 4.7 If payment of the Fee Balance is not made within thirty (30) calendar days of the Clearing Member receiving the Fee Notice from LCH.Clearnet SA, the Clearing Member shall pay interest on the Fee Balance, accruing daily from and including the date when such Fee Balance was to be paid pursuant to Section 4.5 at a rate equal to three times the most recent refinancing rate of the European Central Bank. The payment of interest by the Clearing Member shall not exclude the Clearing Member's liability for Damage where this is suffered by LCH.Clearnet SA as a direct consequence of the late payment (such Damage including, without limitation, any reasonable legal or extra-legal collection costs incurred by LCH.Clearnet SA).
- 4.8 If payment of the Fee Balance is not made within thirty (30) calendar days of the Clearing Member receiving the Fee Notice from LCH.Clearnet SA, and without prejudice to the rights of LCH.Clearnet SA pursuant to Title IV, Chapter 3 (*Events of Default*) of the CDS Clearing Rule Book, LCH.Clearnet SA shall be entitled, subject to Article 2.4.1.3 of the CDS Clearing Rule Book, to suspend the Clearing Member's ability to submit all new Original Transactions, or, alternatively, those Original Transactions which LCH.Clearnet SA does not consider as contributing to reducing the risks of the Clearing Member for clearing by LCH.Clearnet SA.

5 MARKET DATA AND END OF DAY CONTRIBUTED PRICES

- 5.1 Subject to Section 5.3, LCH.Clearnet SA may require the Clearing Member to provide it with daily prices in respect of its Open Positions ("**Market Data**"). The Clearing Member will satisfy its obligation to provide LCH.Clearnet SA with Market Data by acting in accordance with the procedure set out in Paragraph 5.8 of Section 5 (*CDS Clearing Operations*) of the Procedures.
- 5.2 The Clearing Member hereby warrants that it has put in place such arrangements as are necessary for it to provide LCH.Clearnet SA with Market Data in accordance with Paragraph 5.8 of Section 5 (*CDS Clearing Operations*) of the Procedures and will inform LCH.Clearnet SA of any termination or material change to such agreement that will impede its fulfilment of obligations with respect to the provision of Market Data.
- 5.3 LCH.Clearnet SA acknowledges that the Clearing Member shall not be obliged to provide Market Data which it is restricted from disclosing by law or regulation or as a result of agreements with third parties which predate the date of this Agreement. In the absence of any notification at the date of this Agreement by the Clearing Member, LCH.Clearnet SA shall be entitled to assume no such third party agreements exist.
- 5.4 In respect of any Market Data provided to LCH.Clearnet SA in accordance with this Agreement and the CDS Clearing Documentation:
- 5.4.1 the Clearing Member will retain all ownership and intellectual property rights or other rights in respect of that Market Data;
 - 5.4.2 LCH.Clearnet SA will keep that Market Data securely and properly protected against theft, damage, loss and unauthorised access;
 - 5.4.3 LCH.Clearnet SA will treat the Clearing Member's Market Data as strictly confidential and shall not display, disclose, distribute, identify or otherwise make it available to any person other than to:
 - (i) a third party data aggregator that is responsible for compiling the End of Day Contributed Prices in accordance with the CDS Clearing Documentation (a "**Third Party Data Aggregator**"); or
 - (ii) the Clearing Member that has provided it;
 - 5.4.4 LCH.Clearnet SA may only use the Market Data to aggregate it, or permit a Third Party Data Aggregator to aggregate it, with the Market Data received from all other Clearing Members for the purpose of creating the End of Day Contributed Prices for the CDS Clearing Service and LCH.Clearnet SA will not use the Market Data received from the Clearing Member for any other purpose.
- 5.5 LCH.Clearnet SA may only use any data aggregated from the Market Data, including the End of Day Contributed Prices (together "**Aggregated Data**"):
- 5.5.1 for the purpose of the CDS Clearing Service, for clearing and settlement, including:
 - (i) to calculate the Margin Requirement, Variation Margin Requirement or Contribution Requirement of each Clearing Member;
 - (ii) to calculate final settlement prices for Cleared Transactions;

- (iii) to value Cleared Transactions; and
 - (iv) to distribute End of Day Contributed Prices and provide valuation reporting to each Clearing Member; and
 - 5.5.2 for the following other purposes:
 - (i) answering ad hoc queries from Clearing Members and industry bodies (but not systematic, regular distribution) relating to the CDS Clearing Service; and
 - (ii) responding to surveys conducted by relevant international organisations (such as IOSCO) relating to the CDS Clearing Service.
 - 5.6 LCH.Clearnet SA shall not use or share any Aggregated Data with third parties other than a Third Party Data Aggregator (whether for fees or otherwise), save with the written prior consent or at the written proposal of at least 50% of Clearing Members by reference to the volume of Open Positions held in Clearing Members' Margin Accounts (excluding any Margin Accounts which are not proprietary accounts).
 - 5.7 LCH.Clearnet SA hereby undertakes that it has full rights and authority to provide End of Day Contributed Prices (and any other Aggregated Data) to the Clearing Member and to allow the Clearing Member to use the End of Day Contributed Prices (and any other Aggregated Data provided to it) for the purposes set out in Section 4.2.5 (*Valuation of Open Positions*) of the CDS Clearing Rule Book.
 - 5.8 The Clearing Member acknowledges and agrees that any Third Party Data Aggregator shall be an intended third party beneficiary of Section 4.2.5 (*Valuation of Open Positions*) of the CDS Clearing Rule Book.
 - 5.9 Nothing in Section 5.7 shall prevent the Clearing Member from using the End of Day Contributed Prices (and any other Aggregated Data provided to it) for any purpose where it is permitted to do so by the relevant Third Party Data Aggregator or any other third party with the requisite authority.
 - 5.10 Where LCH.Clearnet SA makes Market Data available to a Third Party Data Aggregator, LCH.Clearnet SA shall procure that the Third Party Data Aggregator:
 - 5.10.1 acknowledges, and agrees to, the Clearing Member rights as set out in Section 5.4.1;
 - 5.10.2 maintains protections in order to ensure that Market Data is securely and properly protected against theft, damage, loss and unauthorised access;
 - 5.10.3 does not display, disclose, distribute, identify or otherwise make the Market Data available, other than in connection with the Third Party Data Aggregator's permitted use of End of Day Contributed Prices; and
 - 5.10.4 provides a licence to the Clearing Member to enable it to use the End of Day Contributed Prices for the purposes set out in Section 5.7 above.
 - 5.11 Nothing in this Section 5 or Section 9 prevents LCH.Clearnet SA from:
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- 5.11.1 using or disclosing Market Data or End of Day Contributed Prices where it is required to do so by Applicable Law or where required or formally requested to do so pursuant to an order of a competent court or by a Regulatory Body; or
 - 5.11.2 using (but not displaying, disclosing or identifying) Market Data provided to it by Clearing Members or End of Day Contributed Prices upon the advice of the Risk Committee.
- 5.12** Nothing in this Section 5 or Section 9 prevents the Clearing Member from using or disclosing End of Day Contributed Prices, or other Aggregated Data provided to it, for whatsoever purpose where such End of Day Contributed Prices, or other Aggregated Data, as the case may be, are:
- 5.12.1 made available to the public by either LCH.Clearnet SA or a Third Party Data Aggregator by virtue of Applicable Law, the order of a Regulatory Body or otherwise; or
 - 5.12.2 received by the Clearing Member other than as a result of a breach of this Agreement.
- 5.13** Amendments to this Section 5 will become effective if LCH.Clearnet SA obtains the written prior consent of, or receives a written proposal from, at least 50% of Clearing Members by reference to the volume of Open Positions held in Clearing Members' Margin Accounts (excluding any Margin Accounts which are not proprietary accounts).

6 LANGUAGE

- 6.1** This Agreement and the CDS Clearing Documentation shall be drawn up and issued in English, provided that the CDS Clearing Rule Book shall be drawn up and issued in French for the purpose of its approval by the AMF. Different language versions or translations of this Agreement and/or the CDS Clearing Documentation may also be issued for information purposes.
- 6.2** Subject to Article 1.1.3.8 of the CDS Clearing Rule Book, in the event of inconsistency between different language versions or translations of this Agreement or the CDS Clearing Documentation, the English language version shall prevail.
- 6.3** General communications of LCH.Clearnet SA as well as all applications, filings, correspondence with, and submissions to LCH.Clearnet SA by the Clearing Member may be in either English or in French, unless expressly agreed otherwise by LCH.Clearnet SA. Upon the request of the Clearing Member, any communications issued by LCH.Clearnet SA in French will also be provided in English.
- 6.4** The Persons nominated and notified to LCH.Clearnet SA, pursuant to Article 2.2.1.1(xi) of the CDS Clearing Rule Book, as being responsible for the clearing operations of the Clearing Member and authorised to act on behalf of the Clearing Member in respect of all transactions with or involving LCH.Clearnet SA under the CDS Clearing Documentation, shall be either English or French-speaking, unless expressly agreed otherwise by LCH.Clearnet SA.

7 TERM AND TERMINATION

- 7.1 This Agreement has been entered into for an indefinite period of time and takes effect on notification by LCH.Clearnet SA of its acceptance of the Clearing Member's application for membership of the CDS Clearing Service and the fulfilment of all conditions precedent imposed by LCH.Clearnet SA on the Clearing Member.
- 7.2 This Agreement shall terminate on the date that termination of the Clearing Member's membership is deemed effective in accordance with the CDS Clearing Rule Book.
- 7.3 The termination of this Agreement is without prejudice to accrued rights and obligations of the Clearing Member under the CDS Clearing Documentation or arising from Cleared Transactions entered into prior to such termination and settlement of all amounts due and payable to, or by, the Clearing Member from, or to, LCH.Clearnet SA (as the case may be) shall be dealt with in accordance with the CDS Clearing Documentation.
- 7.4 Any termination of this Agreement shall be co-ordinated with termination of any agreement providing technical access to LCH.Clearnet SA for the purpose of the CDS Clearing Service provided by LCH.Clearnet SA in accordance with the CDS Clearing Documentation.

8 AMENDMENTS

- 8.1 Subject to Section 5.13, LCH.Clearnet SA shall be permitted to amend this Agreement, as necessary, to comply with a change in Applicable Law or the CDS Clearing Documentation, as soon as such change takes effect, or in accordance with the procedure described in Section 1.2.2 (*Modification*) of the CDS Clearing Rule Book.
- 8.2 LCH.Clearnet SA shall be permitted to amend Schedule 3 to this Agreement from time to time following consultation with the Risk Committee.
- 8.3 The terms of this Agreement (other than the tax representations set out in Schedule 1 to this Agreement and the tax forms set out in Schedule 2 to this Agreement) must at all times be materially equivalent to the terms included in the CDS Admission Agreement that LCH.Clearnet SA has entered into with each other Clearing Member in relation to the CDS Clearing Service.

9 CONFIDENTIALITY

- 9.1 Each Party ("**Recipient**") undertakes to the other Party (each, a "**Disclosing Party**") to treat as confidential all the information and/or documents, in any form whatsoever, obtained:
- 9.1.1 in performing this Agreement;
- 9.1.2 participating in any Clearing Member or LCH.Clearnet SA committees which may be established by LCH.Clearnet SA from time to time;
- 9.1.3 from the Disclosing Party either directly or from any other person which concerns the business, operations, customers or users of the Disclosing Party including any data and/or electronic data files,

- whether or not such items are associated with a notice of confidentiality (the "**Confidential Information**").
- 9.2** The Recipient may only use and disclose the Confidential Information for the purposes of, and in accordance with, this Agreement and the CDS Clearing Documentation (the "**Permitted Purpose**").
- 9.3** The Recipient may only provide its employees, directors, subcontractors and professional advisers (together with their respective employees, directors or any other representatives, subcontractors and professional advisers ("**Permitted Users**")) with access to the Confidential Information on a strict "need-to-know" basis. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Agreement. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall, prior to receiving the Confidential Information, enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this Agreement, a copy of which shall be provided to the Disclosing Party upon request.
- 9.4** In consideration of being given some information or having it made available, the Recipient agrees it shall treat as strictly confidential and shall not disclose or allow to be disclosed to any person:
- 9.4.1** the Confidential Information;
 - 9.4.2** the fact it has received any Confidential Information;
 - 9.4.3** the existence of any discussions or negotiations between the Parties in this matter;
or
 - 9.4.4** details of the Permitted Purpose and any of the proposals, terms, conditions, facts or other matters relating to any of the foregoing,
- unless and to the extent it is authorised to do so pursuant to this Section 9.
- 9.5** The Parties acknowledge that property in the Confidential Information shall not pass to the Recipient, and the property of the media on which it is conveyed shall not pass to the Recipient.
- 9.6** This Section 9 does not apply to any information which:
- 9.6.1** is in or subsequently enters the public domain other than as a result of a breach of this Section 9; or
 - 9.6.2** has been or is subsequently received by the Recipient from a third party and the Recipient is under no confidentiality obligation in respect of that information other than under this Agreement; or
 - 9.6.3** has been or is subsequently independently developed by the Recipient without use of the Disclosing Party's Confidential Information; or
 - 9.6.4** the Disclosing Party has agreed in writing may be disclosed.
- 9.7** The Clearing Member agrees to establish and adhere to adequate procedures (including, without limitation, the establishment of appropriate information barriers) and take all steps

- to ensure that any Permitted User to whom Confidential Information has been disclosed shall not use any part or all of that Confidential Information for any purpose outside the scope of the Permitted Purpose.
- 9.8** Each Permitted User may disclose Confidential Information (or, where the Permitted User is an individual, his or her employer) and give the Disclosing Party prompt advance written notice of the disclosure in accordance with Section 1.2.12 (*Confidentiality*) of the CDS Clearing Rule Book.
- 9.9** Notwithstanding the foregoing, either Party may, in their commercial activities, publicly refer to the name of the Clearing Member and its membership to LCH.Clearnet SA, and LCH.Clearnet SA may (without identifying the Clearing Member) use figures as to the Clearing Member's activity in the compilation of statistics for publication, and for similar purposes provided that the identity of the Clearing Member is not attributable.
- 9.10** The provisions of this Section 9 shall survive any termination of this Agreement but shall expire on the third anniversary of the date the Confidential Information was first provided to the Recipient, without prejudice to confidentiality obligations under any Applicable Law which would prevent the Recipient from disclosing or using the Confidential Material other than pursuant to and in accordance with this Section 9.
- 9.11** Upon request by the Disclosing Party, the Recipient shall, as far as practicably possible, promptly return to the Disclosing Party, or destroy (at its discretion), the Confidential Information and all copies thereof in the possession or control of the Recipient, and shall certify in writing that the Permitted User has not retained any of the Confidential Information, except to the extent that the Confidential Information forms part of:
- 9.11.1** the permanent records of the Recipient which it is bound by applicable legal or regulatory requirement or any compliance policy applicable to it to preserve; or
 - 9.11.2** any electronic records which are customarily backed up in the normal course of the Recipient's business,
- in which event the Recipient may retain the Confidential Information in strictest confidence in accordance with the provisions of this Section 9.
- 9.12** Where the Clearing Member ceases to participate in any Clearing Member or LCH.Clearnet SA committee as may be established by LCH.Clearnet SA from time to time, the Clearing Member shall, to the extent reasonably practicable to do so, promptly:
- 9.12.1** return to LCH.Clearnet SA by a secure method of transportation all or any part of the Confidential Information; or
 - 9.12.2** destroy such information and shall certify to LCH.Clearnet SA in writing that it has done so,
- (at its discretion), provided that the Clearing Member is permitted to retain a copy to the extent that the Confidential Information forms part of the Clearing Member's permanent records which it is bound by applicable legal or regulatory requirement or any compliance policy applicable to it to preserve.
- 9.13** Without affecting any other rights or remedies that each Party may have, each Party acknowledges that the other may be irrevocably harmed by any breach of the terms of this

Section 9 and that damages alone may not necessarily be an adequate remedy. Accordingly, each Party will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of the terms of this Section 9, and no proof of special damages will be necessary to enforce this Agreement.

- 9.14** The provisions of this Section 9 shall not restrict or otherwise affect the rights of LCH.Clearnet SA to disclose Confidential Information pursuant to and in accordance with Section 1.2.12 (*Confidentiality*) of the CDS Clearing Rule Book. By entering into this Agreement, the Clearing Member expressly consents to the disclosure of information by LCH.Clearnet SA pursuant to and in accordance with the CDS Clearing Rule Book.

10 TAX

- 10.1** All payments made under or in connection with this Agreement shall be subject to the tax provisions set out in Section 1.2.17 (*Tax*) of the CDS Clearing Rule Book .
- 10.2** LCH.Clearnet SA and the Clearing Member each make to the other, as at the date of this Agreement and at all times prior to termination of this Agreement, the tax representations specified as applicable to it in Schedule 1 to this Agreement.
- 10.3** The tax representations described in Articles 1.2.10.3(xii) and 1.2.17.2 of the CDS Clearing Rule Book are those tax representations set out in Schedule 1 to this Agreement and made pursuant to Section 10.2, as applicable to the relevant Party.
- 10.4** LCH.Clearnet SA and the Clearing Member will each deliver to the other party the relevant forms, documents or certificates specified as applicable to it in Schedule 2 to this Agreement in each case by the date so specified or, if none is specified, as soon as reasonably practicable following reasonable request from the other Party.
- 10.5** The forms, documents and certificates described at Articles 1.2.17.2, 1.2.17.5 and 1.2.17.6 of the CDS Clearing Rule Book are those forms, documents and certificates specified in Schedule 2 to this Agreement and that are to be delivered pursuant to Section 10.4 above, as applicable to the relevant Party.

11 HEDGING ISDA AGREEMENT

- 11.1** The Parties agree that:

- 11.1.1** all transactions entered into between them for the purpose of Hedging (each, a "Hedging Transaction") will be governed by; and
- 11.1.2** any document, exchange of telexes, exchange of electronic messages on an electronic messaging system or an exchange of emails confirming any such Hedging Transaction (each, a "Confirmation") will supplement, form a part of and be subject to,

an agreement in the form of the ISDA 2002 Master Agreement as published by ISDA (the "Hedging ISDA Agreement") as if they had executed an agreement in such form (but without any Schedule except for the elections and provisions set out in Section 11.2 below) on the Trade Date of the first such Hedging Transaction between them, notwithstanding anything to the contrary in a Confirmation.

11.2 The following elections and provisions will be incorporated into the Hedging ISDA Agreement:

11.2.1 English law will be the governing law;

11.2.2 the Automatic Early Termination provision of Section 6(a) of the Hedging ISDA Agreement will not apply to LCH.Clearnet SA;

11.2.3 the Automatic Early Termination provision of Section 6(a) of the Hedging ISDA Agreement will not apply to the Clearing Member;

11.2.4 for the purposes of Sections 3(e) and 3(f), as applicable, of the Hedging ISDA Agreement, LCH.Clearnet SA and the Clearing Member each make the representations specified as applicable to it in Schedule 1 to this Agreement; and

11.2.5 for the purposes of Sections 4(a)(i) and 4(a)(ii) of the Hedging ISDA Agreement, LCH.Clearnet SA and the Clearing Member each agree to deliver the tax forms, documents or certificates specified as applicable to it in Schedule 2 to this Agreement.

11.3 Each Party:

11.3.1 represents to the other Party, on the date of this Agreement and on each date on which it enters into a Hedging Transaction, that it has full knowledge and understanding of the provisions of the Hedging ISDA Agreement; and

11.3.2 agrees that it will perform its obligations under the Hedging ISDA Agreement in accordance with the terms of such Hedging ISDA Agreement.

12 SEVERABILITY

If one or more provisions of this Agreement are deemed to be invalid or ruled to be invalid in application of a statute or regulation or following a final decision of a competent court, the other provisions hereof shall remain in full force and effect.

13 GENERAL

13.1 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties, nor constitute either Party the agent of the other Party for any purpose.

13.2 The rights, powers, remedies and privileges of each Party under this Agreement:

13.2.1 may be exercised as often as necessary;

13.2.2 are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Applicable Law; and

13.2.3 may be waived in writing and specifically. Delay or failure in exercising any right is not a waiver of that right.

13.3 The CDS Clearing Documentation constitutes the entire agreement and understanding of LCH.Clearnet SA and the Clearing Member with respect to its subject matter. LCH.Clearnet SA and the Clearing Member acknowledge that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the CDS Clearing Documentation) and

waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in the CDS Clearing Documentation will limit or exclude any liability of a Party for fraud.

14 TRANSFER

Subject to the CDS Clearing Documentation, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by LCH.Clearnet SA or the Clearing Member without the prior written consent of the other Party.

15 NOTICES

15.1 Any notice or communication to be made under or in connection with this Agreement shall be made in writing to:

15.1.1 the Clearing Member at its registered office or branch (in case the activity is located at the latter), as specified in its application for membership of the CDS Clearing Service; and

15.1.2 LCH.Clearnet SA at its head office at 18, rue du Quatre Septembre, 75002 Paris, France.

15.2 LCH.Clearnet SA shall deliver any notice or communication which is required to be given to Clearing Member pursuant to the CDS Clearing Documentation by electronic transmission, email, facsimile or telephone to the email address, facsimile number or telephone number specified by the Clearing Member in its application for membership of the CDS Clearing Service. The Clearing Member may, by notice to LCH.Clearnet SA, change the details at which notices or communications are to be given to it.

15.3 The Clearing Member consents to LCH.Clearnet SA providing the address specified pursuant to Section 1.6(ii) of the CDS Dispute Resolution Protocol to any other clearing member of the CDS Clearing Service solely for the purposes of sections 1.6(ii) and 9.3 of the CDS Dispute Resolution Protocol.

16 DISPUTE RESOLUTION

For the avoidance of doubt, all Disputes shall be referred to and finally resolved by arbitration or by litigation, as applicable, in accordance with the CDS Dispute Resolution Protocol, subject to the provisions of Sections 8 (*Disciplinary Proceedings*) and 9 (*Complaint Resolution*) of the Procedures.

17 ELECTION OF DOMICILE / PROCESS AGENT

17.1 Without prejudice to the dispute resolution provisions set out in Section 16 above:

17.1.1 the Clearing Member irrevocably elects domicile with Member at Address, for the purposes of any litigation in accordance with Section 6 of the CDS Dispute Resolution Protocol;

17.1.2 if it is not incorporated in England and Wales, the Clearing Member either:

- (i) irrevocably appoints **NOT APPLICABLE** as its agent under the CDS Clearing Documentation (including this Agreement) for service of process; or
- (ii) consents to having service effected upon it **[ADDRESS IN ENGLAND OR WALES]** and agrees that valid service at such branch shall constitute effective service on it,

in any ancillary proceedings before the English courts in connection with any arbitration proceedings pursuant to the CDS Dispute Resolution Protocol; and

17.1.3 LCH.Clearnet SA irrevocably appoints LCH.Clearnet Group Limited at Aldgate House, 33 Aldgate High Street, London EC3N 1EA as its agent under the CDS Clearing Documentation (including this Agreement) for service of process in any ancillary proceedings before the English courts in connection with any arbitration proceedings pursuant to the CDS Dispute Resolution Protocol.

- 17.2 The Clearing Member may, at its discretion, change its elected domicile in Paris for the purposes of Section 17.1.1 above by giving notice of its new elected domicile in Paris to LCH.Clearnet SA in accordance with Section 15 above. Any document served on the Clearing Member at its former elected domicile (i) before such notification is received by the serving Party or (ii) 15 Business Days after such notification is received by the serving Party will be deemed validly served. For the avoidance of doubt, any document served on the Clearing Member at its new elected domicile in Paris will be deemed validly served as from the date of the relevant notification sent by the Clearing Member.
- 17.3 If any person appointed as process agent under this Section 17 is unable for any reason to so act, the appointing Party must immediately give notice of this to the other Party in accordance with Section 15 above, and must immediately (and in any event within 7 days of the event taking place) appoint a substitute process agent, in accordance with sub-section 17.1.2(i) or 17.1.3 as applicable, or, in the case of the Clearing Member, an applicable branch located in England and Wales at which it consents to have service effected upon it, in accordance with sub-section 17.1.2(ii).
- 17.4 If, where applicable, the branch specified under this Section 17 ceases to be able to act in such capacity or no longer has an address in England and Wales, the Clearing Member must immediately give notice of this to LCH.Clearnet SA in accordance with Section 15 above, and must immediately (and in any event within 2 days of the event taking place) select a substitute branch at which it consents to have service effected upon it, in accordance with sub-section 17.1.2(ii), or a process agent, in accordance with sub-section 17.1.2(i).
- 17.5 Each Party agrees that: (i) service shall be deemed completed on delivery to the relevant process agent appointed under this Section 17; and (ii) failure by such process agent to notify such Party of any process, or failure by such Party to receive such notification, will not invalidate the relevant proceedings.
- 17.6 The Clearing Member agrees that, where applicable: (i) service shall be deemed completed on delivery to the branch appointed under this Section 17; and (ii) failure by such branch to notify the Clearing Member of any process, or failure by the Clearing Member to receive such notification will not invalidate the relevant proceedings.

17.7 This Section 17 does not affect any other method of service allowed by law.

18 GOVERNING LAW

For the avoidance of doubt, the governing law applicable to this Agreement and any non-contractual obligations arising out of, relating to or having any connection with this Agreement shall be as set out in Section 1.2.14 (*Governing Law*) of the CDS Clearing Rule Book.

SCHEDULE 1

TAX REPRESENTATIONS

Part 1 – Representations made by LCH.Clearnet SA

For the purposes of Sections 10 and 11 of this Agreement, LCH.Clearnet SA makes the following representation(s): None.

Part 2 – Representations made by the Clearing Member

For the purposes of Sections 10 and 11 of this Agreement, the Clearing Member makes the following representation(s): None.

SCHEDULE 2

TAX FORMS TO BE DELIVERED

Part 1 – Tax forms to be provided by LCH.Clearnet SA

For the purposes of Sections 10 and 11 of this Agreement, LCH.Clearnet SA agrees to deliver the following document(s) in each case by the date specified:

| Form/Document/Certificate | Date by which to be delivered |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| Any form or document accurately completed and in a manner reasonably satisfactory to the Clearing Member that may be required or reasonably requested in order to allow the Clearing Member to make a payment without any deduction or withholding for or on account of any Tax or with deduction or withholding at a reduced rate, including, without limitation, an executed United States Internal Revenue Service Form W-9 or Form W-8BEN and/or W-8ECI (or any successor thereto). | Promptly upon reasonable demand by the Clearing Member. |

Part 2 – Tax forms to be provided by the Clearing Member

For the purposes of Sections 10 and 11 of this Agreement, the Clearing Member agrees to deliver the following document(s) in each case by the date specified:

| Form/Document/Certificate | Date by which to be delivered |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| Any form or document accurately completed and in a manner reasonably satisfactory to LCH.Clearnet SA that may be required or reasonably requested in order to allow LCH.Clearnet SA to make a payment without any deduction or withholding for or on account of any Tax or with deduction or withholding at a reduced rate, including, without limitation, an executed United States Internal Revenue Service Form W-9 or Form W-8BEN and/or W-8ECI (or any successor thereto). | Promptly upon reasonable demand by LCH.Clearnet SA. |

SCHEDULE 3

FINE GRID

| Breach | Fine (EUR) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Failure to provide a complete price submission file on a Clearing Day as part of the price submission procedure set out in Section 5 of the Procedures. | 10,000 |

• THIS AGREEMENT has been duly signed in duplicate in _____ (place) on

_____ (date),

By _____
LCH.Clearnet SA

Name:

Title:

By _____
Member

Name:

Title:
