

The Futures and Options Association
2nd Floor
36-38 Botolph Lane
London EC3R 8DE

30 October 2013

Dear Sirs

Side-Letter relating to the Clifford Chance opinion letter dated 26 April 2013, a copy of which is attached hereto as an Annex, (the "Opinion Letter") issued in relation to LCH.Clearnet Limited (the "Clearing House")

You have asked us to give an opinion in respect of the laws of England and Wales ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to the Clearing House as between the Clearing House and its clearing members (each a "**Member**").

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 In this side-letter:

- 1.1.1 terms defined or given a particular construction in the Opinion Letter have the same meaning in this opinion letter unless otherwise defined herein or a contrary indication appears;
- 1.1.2 any reference to any legislation (whether primary legislation or regulations or other subordinate legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.1.3 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

- 1.2 This opinion letter relates solely to matters of English law and does not consider the impact of any laws (including insolvency laws) other than English law, even where, under English law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by English law and relate only to English law as applied by the English courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by English law. We express no opinion in this opinion letter on the laws of any other jurisdiction.
- 1.3 We do not express any opinion as to any matters of fact.

2. **ASSUMPTIONS AND RESERVATIONS**

The opinions given in this letter are given on the basis of our understanding of the terms of the Security Documentation and the terms of reference set out in paragraph 1 (*Terms of reference*), the assumptions set out in paragraph 2 (*Assumptions*) and are subject to the reservations set out in paragraph 4 (*Reservations*) to the Opinion Letter. The opinions given in this Opinion Letter are strictly limited to the matters stated in paragraph 3 (*Non-Cash Collateral*) and do not extend to any other matters.

3. **NON-CASH COLLATERAL**

Paragraph 3.8.3 of the Opinion Letter should be deleted and replaced by the following:

"There is no general doctrine of English law which would have the effect of converting a grant of security in property subject to a formal security arrangement into an absolute transfer so as to extinguish the chargor's right to recover the charged property on the extinction of the Secured Obligation in accordance with the Collateral Arrangements other than through the execution of the right of the chargee to enforce against the charged asset.

In relation to the Security Documentation in any of the forms attached hereto at Annexes 3 to 5:

Consequently, we do not believe that the provisions of clause 9.2 of the Security Documentation (in any of the three forms attached hereto at Annexes 3 to 5) have the effect of conferring on the Clearing House the power to rehypothecate the Non-Cash Collateral or to dispose of it free of the rights of the Member (acting as chargor) during the life of the charge prior to enforcement.

In relation to the Security Documentation in the form attached hereto at Annex 2:

However, insofar as the collateral arrangements constituted by the Security Documentation (in the form attached hereto at Annex 2) constitute a financial collateral arrangement, the right of use conferred by Clause 9.2 of the form of Security Documentation attached at Annex 2 will have effect in accordance with Regulation 16 of the FCA Regulations insofar as it is conferred upon the Clearing House (but not other persons). The effect of the exercise of the right of use by the Clearing House would be to discharge the chargor's proprietary rights in relation to the Non-cash Collateral and instead oblige the Clearing House (as a personal, rather than proprietary obligation) to replace the Non-cash Collateral by transferring equivalent financial collateral in accordance with the FCA Regulations.

Furthermore, if the Member were to default in paying or discharging any of the Secured Obligations (as defined in the Security Documentation), the Clearing House would have the right to sell or otherwise dispose of the Non-cash Collateral."

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

This opinion is given for the sole benefit of the Futures and Options Association and its members (excluding associate members) and 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 Associations members' affiliates (being members of such persons' groups, as defined by FSMA) 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 LLP

ANNEX
COPY OF THE OPINION LETTER