

**Special Instructions**

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

Copy to:

The International Swaps and Derivatives Association
One Bishops Square
London
E1 6AD

Dear Sirs

IAS 32 – Scotland – CM – Formal Opinion – LCH Clearnet SA (repos)**1. Background**

- 1.1 You have asked us to give an opinion as to the laws of Scotland ("this jurisdiction") in relation to certain netting and set-off provisions in the Rules of LCH Clearnet SA (the "CCP"), in respect of its service for clearing repos (the "Service"), governed by the laws of France, as such provisions apply between the CCP and clearing members of the CCP ("Clearing Members") which are Scottish Banks (as defined below).
- 1.2 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 for the purposes of demonstrating compliance with International Accounting Standard 32 ("IAS 32") and the clarification amendments made to IAS 32 in December 2011 and effective on 1 January 2014.
- 1.3 References in this letter to "this Opinion" are to this opinion letter.

2. Terms of Reference

- 2.1 This Opinion is given in respect of the Netting Provisions of the CCP and the laws of this jurisdiction in force as at 30 September 2013 (the "Opinion Date"). We express no opinion as to any provisions of the Rules of the CCP other than those on which we expressly opine.
- 2.2 This Opinion is given only in respect of Clearing Members which are Scottish Banks.
- 2.3 The insolvency proceedings ("Insolvency Proceedings") which may apply to a Clearing Member under the laws of this jurisdiction are:
 - 2.3.1 the approval of a voluntary arrangement in respect of it under Part 1 of the Insolvency Act;
 - 2.3.2 the obtaining of an initial moratorium by the directors of it where they propose a voluntary arrangement under Part 1 of the Insolvency Act;
 - 2.3.3 the appointment of an administrator to it under Schedule B1;
 - 2.3.4 the appointment of an administrative receiver over the whole (or substantially the whole) of its property by or on behalf of the holder of a floating charge granted either prior to 15

September 2003 or in connection with one of the excepted arrangements detailed in sections 72B to 72GA of the Insolvency Act;

- 2.3.5 its voluntary winding up under the Insolvency Act;
- 2.3.6 its compulsory winding up under the Insolvency Act;
- 2.3.7 a scheme of arrangement under Part 26 of the Companies Act; and
- 2.3.8 the entry by it into bank insolvency or bank administration under the Banking Act.

2.4 The opinions are given in respect of only such of those CCP Contracts which, under their governing laws (and all other applicable law), are legal, valid, binding, enforceable and capable of being terminated and liquidated in accordance with the relevant Netting Provisions.

2.5 No opinions are given in this Opinion on (or in relation to):

- 2.5.1 the availability of any judicial remedy;
- 2.5.2 any matters of fact;
- 2.5.3 the enforceability of any net obligation resulting from the operation of the Netting Provisions;
- 2.5.4 any provisions of the CCP Documentation or the Rules other than the Netting Provisions;
- 2.5.5 the enforceability or effectiveness of any purported declaration of trust (or any provision which requires any asset to be held on trust) by any party under the CCP Documentation;
- 2.5.6 any person found or alleged to be a trustee of a constructive, implied, resulting or other trust constituted by operation of law or who is a trustee in sequestration, or an executor acting in that capacity;
- 2.5.7 any tax that may arise or be suffered as a result of the entry into or performance of the CCP Documentation, any Transaction or any CCP Contract; or
- 2.5.8 any accounting policies.

2.6 For the purposes of this Opinion we have reviewed the documents listed in Schedule 1 and no other documents.

2.7 This Opinion relates solely to matters of Scots law as applied by the Scottish courts as at the Opinion Date and we express no opinions on the laws of any jurisdiction other than Scotland. In particular, this Opinion does not consider the impact of the law of any other jurisdiction, even where, under Scots law, the law of that jurisdiction falls to be applied.

2.8 This Opinion and all non-contractual matters which arise out of it are governed by Scots law.

2.9 This opinion does not apply to any clearing services or transactions other than in respect of the Services.

3. Definitions

3.1 In this Opinion:

- 3.1.1 "**1989 Act**" means the Companies Act 1989.
- 3.1.2 "**Applicable Amount**" means, in respect of the Service, each amount identified as such in Annex B which is payable by the Clearing Member or the CCP in respect of each CCP Contract.
- 3.1.3 "**Applicable Netting Provisions**" means the BAU Netting Provisions, CCP Default Netting Provisions or Member Default Netting Provisions, as appropriate.

- 3.1.4 **"BAU Netting Provisions"** means, in respect of the Service, the rules identified as such in Annex B (which are contained in the Rules), in the form set out in Annex A.
- 3.1.5 **"CCP Default Netting Rules"** means, in respect of the Service, the rules identified as such in Annex B (which are contained in the Rules), in the form set out in Annex A.
- 3.1.6 **"Default Rules"** means, in respect of the Service, those parts of the CCP Documentation for that Service which constitute "default rules" for the purposes of Part 7, being the rules of the CCP which provide for the taking of action in the event of a Clearing Member appearing to be unable, or likely to become unable, to meet its obligations in respect of one or more market Contracts connected with the CCP.
- 3.1.7 **"Member Default Netting Provisions"** means, in respect of the Service, the rules identified as such Annex B (which are contained in the Rules), in the form set out in Annex A.
- 3.1.8 **"Banking Act"** means the Banking Act 2009.
- 3.1.9 **"building society"** means a building society (within the meaning of section 119 of the Building Societies Act 1986).
- 3.1.10 **"CCP Contract"** means a contract between the CCP and the Clearing Member which arises as a result of the clearance of a Transaction at or by the CCP (and which is on the same terms as that Transaction).
- 3.1.11 **"CCP Documentation"** means, in respect of the Service, the documents, agreements, acts and other things pursuant to which the Rules are made contractually binding between the Parties.
- 3.1.12 **"CI Regulations"** means Credit Institutions (Reorganisation and Winding Up) Regulations 2004.
- 3.1.13 **"Clearing House"** means a UK Clearing House or an Overseas Clearing House.
- 3.1.14 **"Collateral Regulations"** the Financial Collateral Arrangements (No. 2) Regulations 2003.
- 3.1.15 **"Companies Act"** means the Companies Act 2006.
- 3.1.16 **"Default Proceedings"** means default proceedings as defined in Party VII, being proceedings taken by the CCP pursuant to the Default Rules.
- 3.1.17 **"designated system"** means a designated system for the purposes of the Settlement Finality Regulations.
- 3.1.18 **"EMIR"** means Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories.
- 3.1.19 **"FCA"** means the United Kingdom Financial Conduct Authority.
- 3.1.20 **"FSMA"** means the Financial Services and Markets Act 2000.
- 3.1.21 **"Insolvency Act"** means the Insolvency Act 1986.
- 3.1.22 **"Insolvency Representative"** means a provisional liquidator, interim liquidator, liquidator, administrator, receiver or other insolvency practitioner or representative appointed to or in respect of a Clearing Member in relation to any Insolvency Proceedings.
- 3.1.23 **"Netting Provisions"** means, in relation to the Service, the CCP Default Netting Rules, Member Default Netting Provisions, and BAU Netting Provisions of the relevant CCP in relation to that Service.

3.1.24 **"Overseas Clearing House"** means a recognised clearing house which is not a recognised central counterparty and which is incorporated in a jurisdiction other than a jurisdiction of the United Kingdom.

3.1.25 **"Part 7"** means Part 7 of the Companies Act 1989.

3.1.26 **"Party"** means the CCP or the relevant Clearing Member and a reference to **"Parties"** is a reference to the CCP and a particular Clearing Member.

3.1.27 **"PRA"** means the United Kingdom Prudential Regulation Authority.

3.1.28 **"recognised clearing house"** means a recognised clearing house within the meaning of section 285 of FSMA and for the purposes of Part 7.

3.1.29 **"recognised central counterparty"** means a recognised central counterparty within the meaning of section 285 of FSMA and for the purposes of Part 7.

3.1.30 **"recognised investment exchange"** means a recognised investment exchange within the meaning of section 285 of FSMA and for the purposes of Part 7.

3.1.31 **"Recognition Requirements Regulations"** means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001.

3.1.32 **"Rules"** means the rules and procedures of the CCP.

3.1.33 **"Scottish Bank"** means a company which is formed and registered in Scotland under the Companies Act or the former Companies Acts (as defined in section 1171 of the Companies Act) and which:

- (i) has permission to accept deposits under Part 4A of FSMA; and
- (ii) does not also have permission under Part 4A of FSMA to effect or carry out contracts of insurance.

3.1.34 **"Settlement Finality Directive"** means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998;

3.1.35 **"Settlement Finality Regulations"** means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

3.1.36 **"Transaction"** means a transaction between the Clearing Member and another clearing member of the CCP which is cleared through or by the CCP.

3.1.37 **"UK bank"** means an undertaking incorporated in or formed under the law of any part of the United Kingdom and having its head office in the United Kingdom, which has permission under Part IV of FSMA to accept deposits; but for the purposes of this Opinion does not include insurance companies or credit unions within the meaning of section 31 of the Credit Unions Act 1979.

3.1.38 **"UK Clearing House"** means a recognised clearing house which is not a recognised central counterparty and which is incorporated in the United Kingdom.

3.2 In this Opinion:

3.2.1 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;

3.2.2 references to **"the opinions"** or to an **"opinion"** are to the opinions or an opinion given in this Opinion; and

3.2.3 references to a "paragraph" are (except where the context otherwise requires) to a paragraph of this Opinion.

3.3 Except where otherwise defined herein, terms defined in the Rules of the CCP have the same meaning in this Opinion.

4. Assumptions

We assume the following:

- 4.1 Each Party has the capacity, power and authority under all applicable law(s) to enter into the CCP Documentation, each Transaction, each CCP Contract and to be bound by and perform its obligations thereunder (including its obligations under the Rules).
- 4.2 Each Party has taken all necessary steps and obtained and maintained all authorisations, approvals, licences and consents necessary to execute, deliver and perform the CCP Documentation, each Transaction, each CCP Contract, and to ensure the legality, validity, enforceability or admissibility in evidence of the CCP Documentation, each Transaction, and each CCP Contract in this jurisdiction.
- 4.3 The CCP Documentation and each Transaction and CC Contract accurately reflect the true intentions of the Parties and have been entered into and are carried out by the Parties in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purposes of carrying on, and by way of, their respective businesses.
- 4.4 The CCP Documentation and the Rules (including the obligations to pay Applicable Amounts) are legal and valid and are binding and enforceable on or against (as the case may be) each Party, in each case under the law by which they are expressed to be governed and all other applicable law (other than, in respect of the Netting Provisions, the law of this jurisdiction).
- 4.5 The Netting Provisions were Rules which were in force on the Opinion Date.
- 4.6 The law chosen by the Parties to govern the CCP Documentation and the Rules is not Scots law.
- 4.7 The opinions given in paragraphs 5.2 to 5.4, are a correct statement of the effect of the relevant Netting Provisions under the governing law of the CCP Documentation and the Rules.
- 4.8 The CCP Documentation and each Transaction and CCP Contract has been entered into by the Parties prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 4.9 Each payment which is to be netted under the BAU Netting Provisions is due and payable on the date on which the rights under the Netting Provisions are to be exercised.
- 4.10 Each Party performs its obligations under the CCP Documentation and Rules in accordance with their terms.
- 4.11 There are no:
 - 4.11.1 provisions of the CCP Documentation and the Rules which modifies, amends, supersedes or may otherwise affect the operation or enforceability of any Netting Provision (other than, for the avoidance of doubt, another Netting Provision); or
 - 4.11.2 other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the CCP Documentation or Rules in a way which would be material for the purposes of this Opinion,

and, in particular, in relation to the settlement of payments due in respect of Applicable Amounts, there are no provisions or rules of any relevant designated system (other than the CCP itself) which purport to override or are inconsistent with the Netting Provisions.

4.12 In relation to the opinions at paragraph 5.5 as regards the CCP Default Netting Rules and the Member Default Netting Provisions only, an applicable event of default has occurred in respect of the CCP or the Client Member (as appropriate) and, accordingly, that such Netting Provisions apply.

4.13 None of the Rules have been disallowed pursuant to section 300A of FSMA.

4.14 The CCP is at all material times:

- 4.14.1 an Overseas Clearing House; and
- 4.14.2 a system designated for the purpose of the Settlement Finality Directive in an EEA State (other than the United Kingdom) or Gibraltar.

4.15 Neither Party is a recognised investment exchange and the Clearing Member is not a Clearing House, recognised central counterparty, EEA central counterparty (as defined in section 285 of the 1989 Act) or third country central counterparty (as defined in section 285 of the 1989 Act).

4.16 Neither Party is:

- 4.16.1 a "*group undertaking*" in relation to the other Party as that phrase is defined in Section 1161(5) of the Companies Act; or
- 4.16.2 a "*bridge bank*" as defined in section 12 of the Banking Act.

5. Opinion

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out below, we are of the opinion that, under the laws of this jurisdiction:

5.1 Recognition of Choice of Law

The choice of law provisions of the CCP Documentation and the Rules would be recognised under the law of this jurisdiction notwithstanding that the CCP is not incorporated in this jurisdiction.

5.2 Set-off prior to Clearing Member default

5.2.1 Prior to the commencement of either Default Proceedings or Insolvency Proceedings in respect of the Clearing Member:

- (i) the BAU Netting Provisions confer a legally enforceable right to set off all Applicable Amounts payable by the Clearing Member and the CCP, effective at the election of either Party, and in each case in accordance with their terms; and
- (ii) if a default of the CCP has occurred, the CCP Default Netting Rules confer a legally enforceable right to set off all Applicable Amounts payable by the Clearing Member and the CCP together with amounts representing Applicable Amounts which are due but not yet payable between the Clearing Member and the CCP, effective at the election of the Clearing Member in each case in accordance with their terms.

5.2.2 We are of this opinion because under the laws of this jurisdiction a Scottish court would apply the law chosen by the Parties to govern the CCP Documentation and the Rules in determining the enforceability of the BAU Netting Provisions or CCP Default Netting Rules.

5.2.3 In Scotland, the general rules which govern set-off in an insolvency are common law rules (the "**Scottish Insolvency Set Off Rules**"). There is some case law which suggests that the Scottish Insolvency Set Off Rules may be applied when a person is insolvent (on a balance sheet or, possibly, cash flow basis) but in respect of which formal insolvency proceedings have not commenced. The relevant cases were decided in the context of a counterparty of the insolvent party attempting to rely on the Scottish Insolvency Set Off Rules to effect a set

off in circumstances where the general set-off rules outside of insolvency did not provide a right of set off but the Scottish Insolvency Set Off Rules would have. While we consider that a Scottish court would be unlikely to seek to apply the Scottish Insolvency Set Off Rules when determining the enforceability of a contractual set-off or netting provision in these circumstances, this risk cannot be discounted.

5.2.4 If a Scottish court did apply the Scottish Insolvency Set Off Rules in these circumstances, it may consider whether the BAU Netting Provisions or CCP Default Netting Rules are consistent with the Scottish Insolvency Set Off Rules. This is because a Scottish court may regard the Scottish Insolvency Set Off Rules as mandatory and, accordingly, may decide that any contractual netting or set-off provisions which are inconsistent with them are not enforceable to the extent of the inconsistency.

5.2.5 However, we consider that the BAU Netting Provisions and the CCP Default Netting Rules are generally consistent with the Scottish Insolvency Set Off Rules. Furthermore, the protections described in paragraph 6 (in relation to market contracts and Part 7) should apply and the additional protections provided under the Collateral Regulations and/or the Settlement Finality Regulations (on which see paragraph 7) may apply depending on the circumstances.

5.3 Clearing Member Insolvency – Prior to Default Proceedings

5.3.1 Following the commencement of Insolvency Proceedings in respect of the Clearing Member, but prior to the commencement of Default Proceedings:

- (i) the BAU Netting Provisions confer a legally enforceable right to set off all Applicable Amounts payable by the Clearing Member and the CCP, effective at the election of either Party in each case in accordance with their terms; and
- (ii) if a default of the CCP has also occurred, the CCP Default Netting Rules confer a legally enforceable right to set off all Applicable Amounts payable by the Clearing Member and the CCP together with amounts representing Applicable Amounts which are due but not yet payable between the Clearing Member and the CCP, effective at the election of the Clearing Member in each case in accordance with their terms.

5.3.2 We are of this opinion for the following reasons:

- (i) Prior to the commencement of Insolvency Proceedings, under the laws of this jurisdiction a Scottish court would apply the law chosen by the Parties to govern the CCP Documentation and the Rules in determining the enforceability of the BAU Netting Provisions or CCP Default Netting Rules.
- (ii) Following the commencement of Insolvency Proceedings, under the laws of this jurisdiction where:
 - (a) the Insolvency Proceedings are a "relevant reorganisation" or "relevant winding up" for the purposes of the CI Regulations¹; and
 - (b) the BAU Netting Provisions or CCP Default Netting Rules constitute "set off rights" or a "netting agreement" for the purposes of Regulation 28 or Regulation 34 respectively of the CI Regulations (on which please see paragraph 7.2 below),

¹ "Relevant reorganisation" and "relevant winding up" are defined for these purposes in Regulation 21 of the CI Regulations.

a Scottish court would apply the law chosen by the Parties to govern the CCP Documentation and the Rules in determining the enforceability of the BAU Netting Provisions or CCP Default Netting Rules.

- (iii) Following the commencement of Insolvency Proceedings which are not a "relevant reorganisation" or "relevant winding up" for the purposes of the CI Regulations and/or where Regulation 28 or Regulation 34 of the CI Regulations do not apply:
 - (a) a Scottish court would apply the law chosen by the Parties to govern the CCP Documentation and the Rules in determining the enforceability of the BAU Netting Provisions or CCP Default Netting Rules;
 - (b) a Scottish court may also consider whether the BAU Netting Provisions or CCP Default Netting Rules are consistent with the Scottish Insolvency Set Off Rules. This is because, as mentioned above, a Scottish court may regard the Scottish Insolvency Set Off Rules as mandatory and, accordingly, may decide that any contractual netting or set-off provisions which are inconsistent with them are not enforceable to the extent of the inconsistency;
 - (c) however, as mentioned above, we consider that the BAU Netting Provisions and the CCP Default Netting Rules are generally consistent with the Scottish Insolvency Set Off Rules; and
 - (d) furthermore the protections described in paragraph 6 (in relation to market contracts and Part 7) should apply and the additional protections provided under the Collateral Regulations, and/or the Settlement Finality Regulations (on which see paragraph 7) may apply depending on the circumstances.

5.4 Clearing Member Insolvency – Default Proceedings

- 5.4.1 If Default Proceedings are commenced against the Clearing Member, the Member Default Netting Provisions will confer a legally enforceable right to set off all Applicable Amounts payable by the Clearing Member and the CCP together with amounts representing Applicable Amounts which are due but not yet payable between the Clearing Member and the CCP, effective at the election of the CCP.
- 5.4.2 We are of this opinion for the reasons set out in paragraph 6.

5.5 Conditions

There are no rules of law of this jurisdiction which would require the fulfilment of any conditions before the exercise of rights of set-off under the Netting Provisions. It is not the case, as far as the laws of this jurisdiction are concerned, that such rights are enforceable only on the occurrence of some future event.

6. Market contracts and Part 7

6.1 Background

Where netting of market contracts made between a Clearing House and a third party under the default rules of the Clearing House, Part 7 will apply. Part 7 provides a number of protections the purpose of which is to prevent insolvency laws in this jurisdiction from applying to prevent or disrupt the netting.

6.2 Application of Part 7 to the Netting Provisions

Market contracts

6.2.1 For the purposes of this Opinion, in relation to Transactions which are cleared through a Clearing House, the following are market contracts for the purposes of Part 7:

- (i) contracts entered into by the Clearing House in its capacity as a clearing house, with one of its members for the purposes of enabling the rights and liabilities of that member under a transaction to be settled; and
- (ii) contracts entered into by the Clearing House in its capacity as a clearing house, with one of its members for the purposes of providing central counterparty services to that member.

6.2.2 For these purposes, "central counterparty services" include services provided by the Clearing House to the parties to a transaction in connection with contacts between each of the parties and the Clearing House (in place of, or as an alternative to, a contract directly between the parties).

6.2.3 On this basis, we consider that CCP Contracts will be market contracts for the purposes of Part 7.

Default rules

6.2.4 Under Part 7 the "default rules" of a Clearing House are the rules of it which provide for the taking of action in the event of a person appearing to be unable or becoming unable to meet its obligations in respect of one or more market contracts connected with the Clearing House.

6.2.5 On this basis, we consider that the Member Default Netting Provisions are default rules for the purposes of Part 7.

6.2.6 However, we consider that the BAU Netting Provisions and the CCP Default Netting Rules will not be default rules for the purposes of Part 7.

6.2.7 The CCP Default Netting Rules should however be rules of the CCP "as to the settlement of market contracts not dealt with under its default rules" ("**Non-Default Settlement Rules**") for the purpose of Part 7.

6.2.8 The BAU Netting Provisions should, in principle, also be Non-Default Settlement Rules. However, they will not be Non-Default Settlement Rules (and so the protections in Part 7 will not apply) to the extent that the set-off of Applicable Amounts pursuant to the BAU Netting Provisions does not constitute "settlement" of the relevant CCP Contracts.

6.3 Part 7 protections

6.3.1 Part 7 provides, among other things, that:

- (i) neither:
 - (a) a market contract;
 - (b) the default rules of a Clearing House; nor
 - (c) the Non-Default Settlement Rules of a Clearing House,

can be held to be invalid at law on the ground of any inconsistency with the law relating to the distribution of assets of a person on winding-up or administration;

- (ii) the powers of a relevant office-holder and of a court under the Insolvency Act shall not be exercised in such a way as to prevent or interfere with:
 - (a) the settlement in accordance with the Non-Default Settlement Rules of a Clearing House of a market contract;
 - (b) any action taken under the default rules of a Clearing House
- (iii) no order can be made under sections 242 or 243 of the Insolvency Act (relating to the avoidance of gratuitous alienations and unfair preferences) or the equivalent common law rules in relation to, among other things, a market contract or the provision of margin under a market contract;
- (iv) sections 178 and 186 of the Insolvency Act (relating to the power to disclaim onerous property and the court's power to order rescission of contracts), any equivalent common law rules and any common law rule in relation to the ability of a liquidator to disclaim contracts do not apply to a market contract;
- (v) section 127 of the Insolvency Act (relating to the avoidance of property disposition effected after the presentation of a winding-up petition) does not apply to a market contract or a disposition of property or provision of margin under a market contract.

6.3.2 Subject to the qualifications set out below, we consider that, where Part 7 applies to the BAU Netting Provisions, the CCP Default Netting Rules and the Member Default Netting Provisions (on which see paragraph 6.2 above) it will ensure that those provisions will be enforceable in the terms described in paragraphs 5.3.1 and 5.4.1 above in any Insolvency Proceedings in relation to a Clearing Member.

7. Other statutory protections

7.1 Collateral Regulations

7.1.1 Under the Collateral Regulations:

- (i) a "**Financial Collateral Arrangement**" is either a "title transfer financial collateral arrangements" or a "security collateral arrangements"; and
- (ii) a "**Close Out Netting Provision**" is a term of a Financial Collateral Arrangement or of an arrangement of which a Financial Collateral Arrangement forms part under which on the occurrence of an enforcement event, whether through the operation or netting or set-off or otherwise:
 - (a) the obligations of the parties are accelerated or become immediately due and expressed as an obligation to pay an amount representing the original obligations estimated current value or replacement cost or are terminated and replaced by an obligation to pay such an amount; or
 - (b) an account is taken of what is due from each party to the other in respect of such obligations and a net sum equal to the balance if the account payable by the party from whom the larger amount is due to the other party.

7.1.2 Where a Netting Provision is a Close Out Netting Provision:

- (i) Regulation 12 provides that that Netting Provision will remain effective on the taking or winding up or reorganisation measures (as defined in the Collateral

Regulations) in relation to any party in accordance with its terms. However, Regulation 12 will not apply where Regulation 12(1) of the Collateral Regulations does not apply if at the time the relevant financial obligations came into existence:

- (a) the CCP was aware, or should have been aware, that winding up proceedings or reorganisation measures (as defined in the Collateral Regulations) had commenced in relation to the insolvent Clearing Member;
- (b) the CCP had notice that a meeting of creditors of the insolvent Clearing Member had been summoned under section 98 of the Insolvency Act 1986 or that a petition for the winding-up of the insolvent Clearing Member or for it to be placed in bank insolvency under the Banking Act was pending; or
- (c) the CCP had notice that an application for an administration order was pending, or that a person had given notice of intention to appoint an administrator, in respect of the insolvent Clearing Member.

(ii) Regulation 10 provides that section 127 of the Insolvency Act (relating to property dispositions after the commencement of a winding up) does not apply to:

- (a) avoid any transfers of property under the relevant Financial Collateral Arrangement; or
- (b) prevent the Close Out Netting Provision from taking effect in accordance with its terms.

7.2 CI Regulations

- 7.2.1 Scottish Banks will be UK Credit Institutions for the purposes of the Credit Institution Regulations.
- 7.2.2 Regulation 28 of the CI Regulations provides that a relevant reorganisation or winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected UK Credit Institution where such set-off is permitted by the law applicable to the affected UK Credit Institution's claim. Accordingly, to the extent the Netting Provisions constitute set-off rights, the enforceability of those set-off rights should not be affected by the commencement of Insolvency Proceedings in this jurisdiction.
- 7.2.3 Regulation 34 of the CI Regulations provides that the effects of a relevant reorganisation or a relevant winding up on a netting agreement shall be determined in accordance with the law applicable to the relevant agreement. Accordingly, to the extent the Netting Provisions are a netting agreement for the purposes of regulation 34, the enforceability of those Netting Provisions should not be affected by the commencement of Insolvency Proceedings in this jurisdiction.

7.3 Settlement Finality Regulations

- 7.3.1 To the extent that the Member Default Netting Provisions or the CCP Default Netting Provisions would qualify as "default arrangements" of a designated system as defined in regulation 2(1) of the Settlement Finality Regulations (as to which we refer you to the CCP Opinion), pursuant to regulation 14 of the Settlement Finality Regulations:

- (i) the default arrangements of a designated system shall not be regarded as invalid at law on the grounds of inconsistency with the laws of this jurisdiction relating to the distribution of assets of a person subject to winding-up or administration; and
- (ii) the powers of an insolvency official and of the courts of this jurisdiction under the Insolvency Act 1986 shall not be exercised in such a way as to interfere with any action taken under the default arrangements of a designated system.

7.3.2 Accordingly, to this extent, the enforceability or effectiveness of the Member Default Netting Provisions or CCP Default Netting Provisions will not be affected by the commencement of Insolvency Proceedings in respect of the Clearing Member.

7.3.3 The protection of the Netting Provisions which is provided by regulation 14 applies notwithstanding that the Clearing Member may be subject to Insolvency Proceedings in another jurisdiction. This is because the courts in this jurisdiction are prohibited by regulation 25 of the Settlement Finality Regulations from recognising or giving effect to the order of any court outside the United Kingdom or any act by a foreign insolvency official where such order or act would be prohibited by a court or insolvency official in the United Kingdom by regulation 14.

8. Qualifications

8.1 Insolvency proceedings in relation to the CCP

The opinions are subject to all laws relating to the bankruptcy, insolvency, liquidation, administration, receivership, moratorium, reconstruction or reorganisation of the CCP (whether in the jurisdiction of the CCP, this jurisdiction or any other jurisdiction).

8.2 Choice of Law

8.2.1 The Scottish courts' application of the choice of law to govern a contract entered into prior to 17 December 2009 could be modified to the extent provided by and in the circumstances set out in Regulation (EC) No 593/2008 on the law applicable to contractual obligations (the "**Rome I Regulation**"), including in the following circumstances:

- (i) where all other elements relevant to the situation at the time of the choice of law are located in a country ("**Country X**"), other than the country whose law has been chosen, any provisions of the law of Country X which cannot be derogated from by agreement will apply; or
- (ii) where the obligations arising out of the contract have to be or have been performed in another country ("**Country Y**"), any overriding mandatory provisions of the law of Country Y rendering the performance of the contract unlawful may apply; or
- (iii) where the application of a provision of law of the governing law of the contract (as determined by the Rome I Regulation) is manifestly incompatible with the Scottish public policy, the provision may not be applied.

8.2.2 The Scottish courts' application of the choice of law to govern a contract entered into on or following 17 December 2009 could be modified to the extent provided by and in the circumstances set out in the Contracts (Applicable Law) Act 1990 (the "**1990 Act**"), including in the following circumstances:

- (i) effect may be given to the rules of law of a jurisdiction which cannot be derogated from by contract ("**Mandatory Rules**") where the contract has a close

connection with that jurisdiction and, under the laws of that jurisdiction, those Mandatory Rules must be applied whatever the governing law of the contract;

- (ii) effect will be given by the Scottish courts of Mandatory Rules of this jurisdiction notwithstanding that the governing law of the contract is not Scots law; and
- (iii) where the application of a provision of law of the governing law of the contract is manifestly incompatible with the Scottish public policy, the provision may not be applied.

8.2.3 The Scottish courts will only uphold the choice of a law other than Scots law to govern all or any part of the CCP Documentation where that choice has been expressly made in the CCP Documentation and is clear and unambiguous.

8.2.4 We express no opinion as to an choice of law to govern:

- (i) contractual obligations falling outside the scope of the Rome I Regulation or the 1990 Act; or
- (ii) non-contractual obligations.

8.3 Qualifications in relation to market contracts

8.3.1 Market contracts may be affected by action taken by a recognised investment exchange under its default rules and/or EMIR. Part 7 does not cater for the unlikely event of a conflict between action which a Clearing House wishes to take and operation of default rules of a recognised investment exchange in respect of a market contract, though we would expect the outcome to be either a transfer of the market contract (or a combination of market contracts and/or margin) to a person other than the defaulter under the procedures of the Clearing House or a close-out and netting.

8.3.2 If a creditor of a defaulter who has attached an amount owed by the other party to a market contract is itself subject to set-off, the ability to include that amount in a netting under default rules is not assured by Part 7.

8.3.3 Under section 164(4) of the Companies Act 1989, the value of any profit arising to the solvent party from any market contract entered into by it or, as the case may be, the amount or value of the margin or default fund contribution can be recovered by the relevant office-holder if the solvent party had notice (within the meaning of section 190(5) of that Act), at the time the relevant market contract was entered into, that a petition had been presented for the winding-up or bankruptcy or sequestration of the estate of the insolvent party.

8.3.4 A Clearing House is not obliged to take action following the default of a member unless required to do so pursuant to directions given by the appropriate regulator (the FCA or PRA, as applicable) under section 166 of the Companies Act 1989. The appropriate regulator may direct a Clearing House not to take action (or certain types of action) under its default rules in certain circumstances permitted by section 166.

8.3.5 Netting under the default rules of a Clearing House may not be effective against the attaching creditor if that creditor is in liquidation, since there may not be the requisite mutuality of obligations for effective set-off in such creditor's insolvency proceedings.

8.4 **Valuation of future, contingent or unascertained obligations under the general law of insolvency set off in Scotland**

Date of valuation

8.4.1 There is almost no authority as to the date on which a set off (or "balancing of accounts in bankruptcy") under the general insolvency set-off rules in Scotland is effected, and no modern authority on the subject at all. However, we consider that it is more likely than not that that date would be the date of commencement of any Insolvency Proceedings of a Clearing Member (the "**Commencement Date**").

8.4.2 If the date that CCP Contracts are terminated, valued and set off for the purposes of the Netting Provisions occurs after the Commencement Date. The question therefore arises as to whether, if any valuation of future, contingent or unascertained obligations of either Party which fall to be included in the relevant Netting Provisions is required, that value is required to be calculated as at the Commencement Date notwithstanding that, under the CCP Documentation and Rules, it would be calculated as at a later date. We would make the following points in relation to this:

8.4.3 If we are correct that the valuation date would be the Commencement Date, then there is a risk that, in any Insolvency Proceedings in respect of a Clearing Member, a Scottish court would require valuation of the underlying obligations which are the subject of the netting or set-off to be made as at that date, at least for the purposes of calculating the CCP's (net) claim in those Insolvency Proceedings. This is because a Scottish court may regard the Scottish Insolvency Set Off Rules as mandatory and the designation of any other valuation date as an attempt to contract out of those rules.

Valuation methodology

8.4.4 There is very little authority in Scots law on the specific methodology to be applied to value future, contingent or unascertained obligations (both in the context of calculating the claims of a creditor in insolvency proceedings and in calculating the amount to be included in respect of such obligations in any insolvency set off calculation). It is accordingly not certain what approach a Scottish court would take if it was asked to consider the valuation of obligations in the context of the Netting Provisions.

8.4.5 However, we consider that, provided that the valuations of future, contingent or unascertained obligations for the purposes of the Netting Provisions is commercially reasonable, Scottish court would not seek to interfere with those calculations.

The Collateral Regulations, the CI Regulations and Part 7

8.4.6 It should be noted that, where the Applicable Netting Provisions is a Close Out Netting Provision for the purposes of the Collateral Regulations (on which please see paragraph 7.1 below) or the Clearing Member subject to winding-up proceedings or reorganisation measures for the purposes of the CI Regulations (on which please see paragraph 7.2 above), we consider that a Scottish court would not interfere with the valuation provisions in the Netting Provisions. The reason for this is that, as discussed below, the Collateral Regulations require that a close out netting should take effect in accordance with its terms. Similarly, under the CI Regulations, the effect of a relevant reorganisation or winding-up on a netting agreement is to be determined in accordance with the law applicable to the relevant agreement (in this case English law).

8.4.7 Under Part 7 where a Clearing House calculates and certifies a net sum due to or by a defaulter under its default rules, that debt (among other things):

(i) may be claimed in the winding up or administration of the defaulter; and

(ii) shall be taken into account for the purposes of any set-off under the general insolvency set-off rules in Scotland.

8.4.8 Accordingly, where a net sum is calculated and certified by the CCP under the Member Default Provisions, we consider that the Scottish courts would not seek to interfere with the calculation of the net sum by reason of that calculation being inconsistent with the date of valuation of claims and valuation methodology required under the general Scots insolvency set-off rules.

8.4.9 In addition there is a reasonable argument that general insolvency set-off rules in Scotland are part of the law relating to the distribution of assets. If this argument is correct the effect of the provisions of the Netting Provisions in relation to the date of valuation and/or the valuation methodology would be protected under Part 7 (on which please see paragraph 6 above), whether or not the Netting Provisions were Member Default Provisions.

8.5 **Mutuality**

8.5.1 As noted in paragraphs 5.2.3 and 5.3.2 above, a Scottish court may consider whether any Netting Provisions are consistent with the Scottish Insolvency Set Off Rules in determining their enforceability where Insolvency Proceedings in respect of the Clearing Member have commenced or (possibly) the Clearing Member is insolvent but Insolvency Proceedings in relation to it have not commenced.

8.5.2 Where a Scottish court does this, it is unlikely to allow any Applicable Amounts which are the subject of a netting or set off under the Netting Provisions to be netted or set off against each other if they are not "mutual" between the Parties. This is because the Scottish Insolvency Set Off Rules only allows liabilities or obligations which are "mutual" to be set off against each other. For these purposes:

- (i) where Applicable Amounts have arisen under CCP Contracts or CCP Documentation which a Party has entered into in one capacity (eg as agent, trustee of a trust or principal) may not be mutual with other Applicable Amounts that have arisen under CCP Contracts or CCP Documentation which that Party has entered into in another capacity²; and
- (ii) an Applicable Amount which is subject to a mortgage, charge, pledge, lien, encumbrance, right in security or security interest or which has been arrested may not be mutual with any other Applicable Amount.

8.6 **Additional set off under the Scottish Insolvency Set Off Rules**

In the case of any Insolvency Proceedings in respect of a Clearing Member, where any sums are owed (or non-monetary obligations are required to be performed) by the Parties to each other under or in connection with the Netting Provisions or any CCP Contract³, a Scottish court would be likely to allow those sums (or non-monetary obligations) to be set off against each other under the Scots insolvency set off rules in such Insolvency Proceedings, at least for the purpose of calculating the overall (net) claim of the CCP in the insolvency of the Clearing Member⁴. This would be the case

² For the avoidance of doubt a contract entered into by a Clearing Member as agent for one third party would not be mutual with a contract entered into by that Clearing Member as agent for another third party. In addition, a contract entered into by a Clearing Member as trustee of a trust would not be mutual with a contract entered into by that Clearing Member as trustee of another trust.

³ The relevant sums might include net sums under the Netting Provisions (including separate net sums arising from the separate netting of Client Transaction Sets under a Clearing Netting Provisions) and sums which are due by one party to the other following the operation of any Set Off Provisions.

⁴ Where a contingent, future, unascertained or non-monetary obligation that has not been converted to a monetary obligation that is due and payable under the Netting Provisions is to be included in such a set off, the court will be required to value that obligation if it.

even if such a set off is not expressly provided for (or is prohibited) in the Applicable Netting Provisions.

8.7 Banking Act

8.7.1 The Banking Act contains various provisions which might affect the effectiveness of the Applicable Netting Provisions. In particular Part I of the Banking Act provides for various remedies for a failing UK bank, which include the ability of the Treasury or the Bank of England to cause the transfer of securities issued by a UK bank or property of a UK bank to another person, by means of a "*share transfer order*", a "*share transfer instrument*", or a "*property transfer instrument*".

8.7.2 Section 75 of the Banking Act gives power to the Treasury to change the law (except the Banking Act itself) for the purpose of enabling the powers granted to the Financial Conduct Authority, the Prudential Regulation Authority, the Treasury and the Bank of England under Part I of the Banking Act to be used effectively. Such changes might affect private law rights and might be used with retrospective effect. Furthermore, under sections 23 and 40, a share transfer instrument or order, or a property transfer instrument, may include incidental, consequential or transitional provisions which might have impact on private law rights.

8.7.3 Insofar as any CCP Contract relates to securities issued by a UK bank or building society or a UK incorporated holding company of a UK bank:

- (i) under section 22 of the Banking Act a share transfer instrument or order may disapply a right to terminate the CCP Contract which is exercisable by virtue of the existence or making of the share transfer instrument or order; and
- (ii) a share transfer instrument or order may affect the ability to perform an obligation to deliver the securities, and may replace the provisions of the Applicable Netting Provisions or the CCP Contract which relate to the amount payable between the Parties in respect of non-delivery so that a different amount(s), or no amount at all, may be payable, and at a different time from that agreed between the Parties.

8.7.4 A property transfer instrument may apply to only part of a UK bank's assets and liabilities (such a transfer being referred to as a "*partial property transfer*"). This may be the case because the property transfer instrument concerned expressly applies to only part of the UK bank's business or because it is ineffective in relation to foreign property, which may include CCP Contracts or obligations arising under CCP Contracts which are governed by the laws of a non-UK jurisdiction. A partial property transfer could apply so as to cause the transfer of some, but not all, of the CCP Contracts (or obligations arising under CCP Contracts), with the result that the ability to set-off or net the amounts due in respect of different CCP Contracts against the amounts due in respect of others is impaired.

8.7.5 However, in this regard, Article 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (the "**Safeguards Order**") prohibits a partial property transfer which applies to some, but not all, of the "protected rights and liabilities" between a particular person and a UK bank. "Protected rights and liabilities" means rights and liabilities which a party is entitled to set off or net under a set-off arrangement, netting arrangement or title transfer Financial Collateral Arrangement, so long as they are not "excluded rights" or "excluded liabilities".

8.7.6 Accordingly, Article 3 of the Safeguards Order protects the Party which is not the affected UK bank against the adverse consequences of a partial property transfer affecting the Applicable Netting Provisions or CCP Contracts except if any CCP Contract is not a

"relevant financial instrument" as defined in the Safeguards Order, Article 3 may not apply in relation to that CCP Contract. For these purposes "relevant financial instrument" means: (a) an instrument listed in section C of Annex I to the Markets in Financial Instruments Directive (2004/39/EC), read with Chapter VI of the Commission Regulation 1287/2006/EC; (b) any option, future, swap, forward, contract for differences or other derivative contract not falling within (a); and (c) any combination of the foregoing, a deposit, a loan, an instrument falling within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (disregarding the exclusions in article 77(2)(b) to (d)) or any contract for the sale, purchase or delivery of transferable securities, currency of any country, territory or monetary union, any precious metal or any other commodity.

8.7.7 Furthermore, under Article 6 of the Safeguards Order a property transfer order to which the Safeguards Order applies may not transfer property, rights or liabilities or include provision under the continuity powers to the extent that to do so would have the effect of modifying, modifying the operation of or rendering unenforceable:

- (i) a market contract;
- (ii) the default rules of a Clearing House; or
- (iii) the rules of a Clearing House as to the settlement of market contracts not dealt with under its default rules.

8.8 Recognition of foreign insolvency proceedings

8.8.1 Under section 426 of the Insolvency Act ("Section 426"), the Scottish courts may apply the law of one of a list of specified jurisdictions to the insolvency of an entity if so requested by the competent court of that other jurisdiction in giving assistance to those courts. Those specified jurisdictions are currently: other parts of the United Kingdom (ie, in respect of Scotland, England and Wales and Northern Ireland), the Channel Islands, the Isle of Man, Anguilla, Australia, The Bahamas, Bermuda, Botswana, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Eire, Montserrat, New Zealand, St Helena, Turks and Caicos Islands, Tuvalu, Virgin Islands, Malaysia, South Africa and Brunei Darussalam. Accordingly, the effectiveness of an Netting Provisions may be determined by reference to the laws of one of these jurisdictions (as to which we express no opinion) and the Scottish courts could take some other action which impacts on the effectiveness of the Netting Provisions.

8.8.2 At common law, a Scottish court may seek to assist the courts or insolvency representatives in a foreign jurisdiction in respect of insolvency proceedings in that jurisdiction and may accordingly exercise its discretion to (a) apply the law of the foreign jurisdiction rather than Scots law to determine the effectiveness of an Netting Provisions or (b) take some other action which impacts on the effectiveness of an Netting Provisions.

8.8.3 However, a court may not in pursuance of Section 426 (or any common law power of recognition) recognise or give effect to an order of a foreign court or an act of a foreign insolvency official insofar as this would be prohibited by Part 3 of the Collateral Regulations if made by a court in the United Kingdom or an office holder in any insolvency proceedings in the United Kingdom. Part 3 of the Collateral Regulations disapplies certain provisions of United Kingdom insolvency law in relation to Financial Collateral Arrangements (on which see paragraph 7.1 above). Regulation 10 and regulation 12 are in Part 3.

8.8.4 In addition, by virtue of section 183 of the 1989 Act, the Scottish courts are not, pursuant to section 426 of the Insolvency Act 1986 or any other enactment or rule of law, permitted to recognise or give effect to any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom or any act of a person appointed in any such country or territory to discharge any functions under insolvency law, if the Scottish

courts would be prevented from making such an order or a relevant office-holder would be prevented from doing such an act by virtue of a provision made by or under Part 7.

8.8.5 However, Section 183 may afford no protection against:

- (i) the acts of a person whose functions do not arise under insolvency law (as defined in section 190(6) of the 1989 Act), such as a person exercising regulatory powers of intervention; or
- (ii) acts or orders which are not prohibited by virtue of Part 7, such as the imposition of a moratorium on exercise of rights of set-off pending certain events; and
- (iii) requests for assistance in exercising insolvency jurisdiction made by courts in other jurisdictions of the United Kingdom.

8.8.6 In addition, as described in paragraph 7.3 above, the Scottish courts will not recognise or give effect to the order of any court outside the United Kingdom or any act by a foreign insolvency official where such order or act would be prohibited by a court or insolvency official in the United Kingdom by regulation 14 of the Settlement Finality Regulations.

8.8.7 Unless it is otherwise required to recognise insolvency proceedings conducted in a foreign jurisdiction, a Scottish court may refuse to recognise proceedings (even in the jurisdiction of incorporation or organisation of the party subject to the proceedings) where it is of the opinion that:

- (i) the insolvency proceedings offend against some fundamental principle of public policy;
- (ii) there has been a breach of natural justice;
- (iii) the insolvency proceedings are tainted by fraud or have been invoked to avoid Scottish proceedings;
- (iv) the insolvency proceedings are to enforce the penal laws of another country; or
- (v) the insolvency proceedings are solely to enforce the revenue laws of another country.

8.9 **Gratuitous alienations and unfair preferences**

8.9.1 Under section 242 of the Insolvency Act a transaction entered into at any time within certain specified periods ending with the commencement of certain Insolvency Proceedings whereby assets of the relevant party are "alienated" may be reduced and an order for restoration of the property made on application to the court. The court will not grant such an order if it is shown that after the date of the alienation the assets of the relevant party were greater than its liabilities or the alienation was made for adequate consideration or it was a birthday, Christmas or other conventional gift or was a charitable gift to a non-associate which in all the circumstances it was reasonable to make⁵.

8.9.2 Under section 243 of the Insolvency Act anything done within specified periods ending with the commencement of certain Insolvency Proceedings which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors may be challenged and reduced. However certain transactions cannot be challenged, namely:

⁵ It is also possible under common law to challenge a transaction giving rise to an alienation where the Clearing Member did not receive adequate consideration. There is no time limit beyond which such a challenge becomes unavailable. However, for a challenge to succeed, the Clearing Member would need to be insolvent (on a balance sheet or cash flow basis) for the whole of the period from the transaction giving rise to the alienation until the date of formal insolvency proceedings.

- (i) a transaction in the ordinary course of business;
- (ii) a payment in cash for a due debt, unless such payment was collusive with the purpose of prejudicing the general body of creditors;
- (iii) a transaction whereby the parties to it undertake reciprocal obligations, unless the transaction is collusive as aforementioned; and
- (iv) the granting of a mandate authorising payment of arrested funds to the arrester where decree for payment or a warrant for summary diligence has been given and this was preceded by arrestment on the dependence of the action or followed by arrestment in execution⁶.

8.9.3 However, as noted in paragraph 6.3.1 above, no order can be made under sections 242 or 243 or the equivalent common law rules in relation to, among other things, a market contract or the provision of margin under a market contract

8.10 General

- 8.10.1 Failure by the CCP to exercise its rights under the Netting Provisions prior to the approval of a scheme of arrangement under Part 26 of the Companies Act or a voluntary arrangement under Part I of the Insolvency Act (if applicable) by the Clearing Member's creditors may prejudice the CCP's rights to enforce the Netting Provisions or any CCP Contracts.
- 8.10.2 Any provision to the effect that any calculation, determination or certification will be conclusive and binding will not be effective if such calculation, determination or certification is fraudulent, and a Scottish court may regard any calculation, determination or certification as no more than *prima facie* evidence of the matter calculated, determined or certified. Furthermore, notwithstanding the terms of the Netting Provisions, the certification, determination, notification or opinion of any party as to any matter therein provided might be held by a Scottish court not to be conclusive if it could be shown to the satisfaction of the court to have any unreasonable or arbitrary basis. However, where a Clearing Member is in liquidation or administration and the net sum due under the Member Default Netting Provisions is calculated under the Default Rules of a Clearing House and certified by the clearing house as due by the Clearing Member, that net sum is the amount which the clearing house may claim in the relevant Insolvency Proceedings⁷.
- 8.10.3 Where the obligations owed to a Clearing Member under an Netting Provisions or a CCP Contract have been arrested by a third party creditor of that Clearing Member, it may not be possible for those rights to be the subject of any included in any netting pursuant to the Netting Provisions.
- 8.10.4 An exchange contract⁸ is unenforceable in the United Kingdom if (i) it involves the currency of any member of the International Monetary Fund and (ii) it is contrary to the exchange

⁶ It is also possible under common law to challenge a preference in favour of a creditor. There is no time limit beyond which such a challenge becomes unavailable. However, for a challenge to succeed, the Clearing Member would need to be insolvent (on a balance sheet or cash from basis) for the whole of the period from the transaction giving rise to the preference until the date of formal insolvency proceedings.

⁷ However where a sum is taken into account in relation to a contract entered into at a time when the clearing house had notice of the application or petition for the relevant Insolvency Proceedings, the value of any profit arising as a result of it being taken into account can be claimed by the Insolvency Representative from the Clearing House.

⁸ "Exchange contract" here has the meaning used in the International Monetary Fund Netting Provisions and related legislation, and is not a reference specifically to on-exchange derivative contracts. There is inconsistent authority on what amounts to an "exchange contract" for these purposes. It is not clear whether the term encompasses any contract which in any way affects a country's exchange resources or only a contract for the exchange of one currency for another, although the better view is probably that the latter (narrow) interpretation is correct.

- control regulations of any member of the International Monetary Fund which are maintained or imposed consistently with the International Monetary Fund Agreement.
- 8.10.5 The opinions expressed in this Opinion are subject to the effects of any United Nations, European Union or UK sanctions or other similar measures implemented or effective in the United Kingdom with respect to any Party which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

9. Other issues

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

10. Reliance

- 10.1 This Opinion is given for the sole benefit of the Futures and Options Association (the "FOA"). This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to any of the following (each a "Permitted Person"):
 - 10.1.1 the International Swaps and Derivatives Association, Inc. ("ISDA");
 - 10.1.2 such of the FOA's members (excluding associate members) or ISDA's members (excluding associate members) as subscribe to the FOA's opinions library and whose terms of subscription give them access to this opinion (each a "subscribing member") and the officers, employees, and professional advisors of such subscribing member;
 - 10.1.3 any affiliate of a subscribing member (being a member of the subscribing member's group, as defined in FSMA) and the officers, employees, and professional advisors of such affiliate;
 - 10.1.4 any auditor of a subscribing member or of an affiliate of a subscribing member for statutory accounting purposes; and
 - 10.1.5 the officers, employees and professional advisors of the FOA,
- on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made.
- 10.2 We accept responsibility to the FOA in relation to the matters opined on in this Opinion. However, the provision of this Opinion is not to be taken as implying that we assume any other duty or liability to any Permitted Person. The provision of this Opinion does not create or give rise to any client relationship between this firm and any Permitted Person.

Yours faithfully



Andrew Kinnes
For and on behalf of Shepherd and Wedderburn LLP
andrew.kinnes@shepwedd.co.uk
0131 473 5212

ANNEX A**Part 1****BAU Netting Provisions**

Instruction IV.4-2

Article 3

The term "Cash Payment" shall amount to the aggregated sums due by a Clearing Member to LCH.Clearnet SA, or to be received by a Clearing Member from LCH.Clearnet SA, resulting from:

- as far as Derivatives Markets are concerned: completion of cash settlement with regards to option products, Variation Margin, premium, financial corrections (e.g. additional Margin, fee completion), any fees due to LCH.Clearnet SA (trading and Clearing Fees, exercise and assignment fees) and any other cash amounts (other than collateral contributions), to be paid in EURO or any other currency;
- as far as Securities Markets are concerned: penalties on Net Fails, any fees due to LCH.Clearnet SA (Clearing Fees, delivery fees), IPU dividends, and any other cash amounts (other than collateral contributions), to be paid in EURO or any other currency;
- as far as Trading and Matching Platforms Markets are concerned: penalties on Net Fails, any fees due to LCH.Clearnet SA (Clearing Fees, delivery fees), financial corrections, coupons payment, interest and any other cash amounts (other than collateral contributions), to be paid in EURO or any other currency.

The "Cash Payment" is daily calculated and sent by LCH.Clearnet SA to the Clearing Members.

Article 7

Cash Payments to be made at the same time on the same Clearing Day shall be netted.

Part 2**CCP Default Netting Provisions**

LCH Clearing Rule Book (Title I, Chapter 4)

Article 1.4.1.1

An LCH.Clearnet SA default shall occur if at any time:

- (i) except where such failure to pay is permitted or where LCH.Clearnet SA is acting in accordance with TITLE IV Chapter 5, LCH.Clearnet SA fails to make a payment due by LCH.Clearnet SA to a Clearing Member (other than to a Defaulting Clearing Member) under any novated Transaction, referred to in Article 1.4.1.0, and such failure has not been cured within 30 days from the date when the obligation to pay falls due; or
- (ii) LCH.Clearnet SA becomes subject to LCH Insolvency Proceedings duly notified by the French prudential control authority (Autorité de contrôle prudentiel) pursuant to article R.613-18 of the Financial and Monetary Code

Article 1.4.1.2

In the event of an LCH.Clearnet SA default occurring pursuant to Article 1.4.1.1 (i) the relevant Clearing Member may notify LCH.Clearnet SA in writing specifying a Termination Date for the termination and liquidation of all Trade Legs or Open Position, as relevant, registered in its Account Structure.

Article 1.4.1.3

In the event of an LCH.Clearnet SA default in respect of Article 1.4.1.1 (ii), LCH.Clearnet SA posts a notice on its Website specifying the Termination Date. Upon the occurrence of a Termination Date, a Clearing Member other than a Defaulting Clearing Member may exercise the right given to it under Article 1.4.1.4 et seq.

Where LCH.Clearnet SA fails to post such notice on its Website:

- (i) by 19:00 on the Clearing Day following the Clearing Day on which LCH.Clearnet SA becomes subject to LCH Insolvency Proceedings pursuant to Article 1.4.1.1 (ii); or
- (ii) where LCH.Clearnet SA becomes subject to an LCH Insolvency Proceeding pursuant to Article 1.4.1.1 (ii) after 19:00 on a Clearing Day or otherwise than on a Clearing Day, by 19:00 on the second Clearing Day following that day,

then each individual Clearing Member shall be entitled, by notice in writing to LCH.Clearnet SA, to specify a Termination Date.

Article 1.4.1.4

As from the Termination Date, neither LCH.Clearnet SA nor any Clearing Member other than a Defaulting Clearing Member having exercised its rights pursuant to Articles 1.4.1.2 or 1.4.1.3 shall be obliged to make any further payment or delivery under any Trade Leg or Open Position, as the case may be, between them which would, but for this TITLE I Chapter 4, have fallen due for performance on or after the Termination Date.

Such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Termination Amount.

Article 1.4.1.5

Following an LCH.Clearnet SA default pursuant to the conditions of Article 1.4.1.1, the Clearing Member other than a Defaulting Clearing Member, having exercised its rights pursuant to Article 1.4.1.2 or 1.4.1.3, determines on the Termination Date or as soon as possible after such date (discounting, if appropriate):

- (i) its total loss or its total gain, as the case may be, in respect of each Trade Leg or Open Position, as relevant, (in each case expressed in Euro); and
- (ii) the value of all other amounts which it owes to LCH.Clearnet SA and which LCH.Clearnet SA owes to it, in each case whether future, liquidated or unliquidated, actual or contingent,

The relevant Clearing Member shall inform LCH.Clearnet SA of such amounts.

Article 1.4.1.6

For the purpose of Article 1.4.1.5 (i), the Clearing Member calculates (in a commercially reasonably manner) its total loss or its total gain, as the case may be, in respect of each Trade Leg or Open Position, as relevant, as a result of the termination of each payment or delivery which would otherwise have been required to be made under the relevant Trade Leg or Open Position, as relevant and including, if appropriate any loss of bargain, any cost of funding, and/or without duplication, any loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position.

Article 1.4.1.7

For the purpose of the calculation to be made pursuant to Article 1.4.1.5 (ii), the Clearing Member will determine the value of all Collateral related to the Transactions referred to in Article 1.4.1.0 that, as of the Termination Date, LCH.Clearnet SA is due to return to it in accordance with the Clearing Rules without applying any haircuts to such valuation. In making such determination, the Clearing Member will not separately value and will not take into account, as an amount due to it, any Collateral:

- (i) in respect of which the value has been accounted for in the determination of any profit or loss on any Trade Leg or Open Position, as relevant;
- (ii) which the Clearing Member has transferred to LCH.Clearnet SA other than on a full title transfer basis and which the Clearing Member will receive back in accordance with the Clearing Rules; or
- (iii) which, if the Clearing Member is a Defaulting Clearing Member, has been deposited by a Defaulting Clearing Member to meet its Margin requirement (other than Variation Margin) or as a contribution to the Default Fund(s) and which LCH.Clearnet SA has been applied or will be required to apply in order to reduce its loss in accordance with Article 4.5.2.7

Article 1.4.1.8

Pursuant to the determination made under Article 1.4.1.5:

- (i) each gain by the Clearing Member and each amount which LCH.Clearnet SA owes to it, shall be treated as a positive amount; and

(ii) each loss suffered by the Clearing Member and amounts which it owes to LCH.Clearnet SA shall be treated as a negative amount.

Article 1.4.1.9

The Clearing Member shall aggregate all positive amounts and all negative amounts that it has determined and shall produce one net Termination Amount. If the Termination Amount is a positive amount, LCH.Clearnet SA shall pay it to the Clearing Member and, if the Termination Amount is a negative amount, the Clearing Member shall pay it to LCH.Clearnet SA, in accordance with Article 1.4.1.10 below. The Clearing Member shall notify LCH.Clearnet SA of the Termination Amount, by which party it is payable, and showing in reasonable detail how such Termination Amount has been calculated, immediately after the calculation thereof.

Article 1.4.1.10

A Termination Amount shall be paid by either LCH.Clearnet SA or the Clearing Member, as the case may be, in Euro by 17:00 on the Clearing Day following notification pursuant to Article 1.4.1.9 above (converted as required by Applicable Law into any other currency, any costs of such conversion to be borne by, and (if applicable) deducted from any payment to, LCH.Clearnet SA).

Article 1.4.1.11

For the purposes of any calculation required to be made under this Chapter 4, the Clearing Member may convert amounts denominated in any other currency into Euro at such rate prevailing at the time of the calculation as it shall reasonably select.

Article 1.4.1.12

The Clearing Member's rights under this Chapter 4 shall be in addition to, and not in limitation or exclusion of, any other rights which the Clearing Member may have.

Article 1.4.1.13

This Chapter 4 shall be without prejudice to the rights that LCH.Clearnet SA may have pursuant to the Clearing Rules against any Clearing Member prior to the occurrence of the LCH.Clearnet SA default.

Part 3

Member Default Netting Provisions

LCH Clearing Rule Book

Section 4.5.1 Notification of an Event of Default

Article 4.5.1.1

The occurrence of an Event of Default shall be notified by any means by LCH.Clearnet SA to the Defaulting Clearing Member.

Article 4.5.1.2

If an event or circumstance which would otherwise constitute or give rise to a Contractual Event of Default also constitutes an Insolvency Event of Default, it will be treated as an Insolvency Event of Default.

Section 4.5.2 Measures in case of an Event of Default

Article 4.5.2.1

Upon the occurrence of an Event of Default, LCH.Clearnet SA may, in co-ordination with the relevant Competent Authority as the case may be, take any measure it deems necessary in order to contain its exposure and to mitigate overall market effects, whether or not these measures are set out in the Clearing Rules.

Article 4.5.2.2

Upon the occurrence of an Event of Default, LCH.Clearnet SA may discretionary take any of the following measures or any other measures that it deems necessary or useful taking into account the need to act promptly in the manner LCH.Clearnet SA thinks best to contain its exposure and to mitigate resulting effects over market participants:

- (i) to request the relevant Market Undertaking to suspend any trading activity of the Defaulting Clearing Member,
- (ii) to terminate or suspend the Admission Agreement entered into between LCH.Clearnet SA and the Defaulting Clearing Member,
- (iii) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party, as LCH.Clearnet SA may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member,
- (iv) to impose further Margins requirements and corresponding Collateral deposits to secure the performance by the Defaulting Clearing Member of its obligations under the Clearing Rules
- (v) to sell off the Collateral posted by the Defaulting Clearing Member or to call on the central bank guarantee, if applicable, to ensure the performance by the Defaulting Clearing Member of its obligations under the Clearing Rules,

- (vi) to act in lieu of the Defaulting Clearing Member for performing its payment and/or delivery obligations
- (vii) to impose upon the Defaulting Clearing Member a penalty for late delivery or payment, in the circumstances and at a rate set out in an Instruction,
- (viii) to claim from the Defaulting Clearing Member damages and costs incurred in relation to the occurrence of an Event of Default or the processing of the Event of Default.

For the avoidance of doubt, termination or suspension of the Admission Agreement entered into between LCH.Clearnet SA and the Defaulting Clearing Member shall not release the Defaulting Clearing Member from any of its obligations under the Clearing Rules.

Article 4.5.2.3

The Defaulting Clearing Member shall answer any requests as LCH.Clearnet SA may deem necessary for any matter arising out of or in connection with an Event of Default, and shall cooperate with LCH.Clearnet SA in order to process the Event of Default.

Article 4.5.2.4

1. If the Clearing Member appears to LCH.Clearnet SA to be unable, or to be likely to become unable, to meet its obligations in respect of one or more Transactions or otherwise under the Clearing Rules, LCH.Clearnet SA may, within its reasonable judgement, declare such event as a Contractual Event of Default.

2. LCH.Clearnet SA may take the view that a Contractual Event of Default has happened in the light of the occurrence of *inter alia* any of the following events:

- Failure to pay or deliver any or all balances, Financial Instruments, or assets owed to LCH.Clearnet SA in respect of Open Positions registered in the name of the Defaulting Clearing Member with LCH.Clearnet SA, within the stipulated deadlines,
- Failure to pay Initial Margin, Variation Margin, Intra-day Margins or any additional Margin as indicated in Article 4.2.0.4, imposed by LCH.Clearnet SA or failure to make a required contribution to the Default Fund, within the stipulated time limits,
- Non successful setting of Net Fails via a buy in or a sell-out procedure.

3. Upon the occurrence of a Contractual Event of Default, and without prejudice to the provisions of Article 4.5.2.2, LCH.Clearnet SA and the Defaulting Clearing Member shall cooperate to try to reach a mutually satisfactory agreement in order to resolve the Contractual Event of Default.

4. If such an agreement is not reached within a reasonable period of time, LCH.Clearnet SA may discretionary take any of the following measures or any other measures that it deems necessary or useful for the performance of the obligations of the Defaulting Clearing Member:

- i. to register only new Transactions in the name of the Defaulting Clearing Member which are considered by LCH.Clearnet SA as contributing to reduce the risks of the Defaulting Clearing Member,
- ii. to buy, borrow or sell Securities for the account of the Defaulting Clearing Member so as to ensure the performance of the Transactions registered in the name of the Defaulting Clearing Member,

- iii. to settle any Open Positions registered in the name of the Defaulting Clearing Member through a payment in cash,
- iv. to declare one or more of the obligations of the Defaulting Clearing Member to be due and payable immediately, convert the delivery obligations of the Defaulting Clearing Member or LCH.Clearnet SA into payment obligations on the basis of the Settlement Price on the valuation date, and set off all the reciprocal payment obligations of the Defaulting Clearing Member and LCH.Clearnet SA, so that these payment obligations will be deemed satisfied in whole or in part, to the extent of the set-off,
- v. if LCH.Clearnet SA estimates that such measures are necessary as regards the need to act promptly, LCH.Clearnet SA will have the right, but not the obligation, to decide in accordance with French law:
 - to transfer to another Clearing Member the Non-House Positions registered in the name of the Defaulting Clearing Member, and/or
 - to liquidate the Open Positions registered in the name of the Defaulting Clearing Member.

Article 4.5.2.5

Upon the occurrence of an Insolvency Event of Default, and without prejudice to the provisions of Article 4.5.2.2, LCH.Clearnet SA will have the right, but not the obligation, to decide in accordance with French law:

- (i) to transfer to another Clearing Member the Non-House Positions registered in the name of the Defaulting Clearing Member, and/or
- (ii) to liquidate the Open Positions registered in the name of the Defaulting Clearing Member.

Upon the occurrence of an Insolvency Event of Default, the rights and obligations of the Defaulting Clearing Member arising from or in connection with its participation to the clearing system operated by LCH.Clearnet SA shall be governed exclusively by French law, and the law of the State where insolvency proceedings are initiated against the Defaulting Clearing Member will not interfere in this respect.

Article 4.5.2.6

The default management process applicable to Transactions executed on or reported by Trading & Matching Platforms and the MTS Italy Regulated Market shall be set out in an Instruction.

Transfer and liquidation of Open Positions, as the case may be, shall be performed under conditions set out in an Instruction, taking into account on one hand the need to act promptly in the manner LCH.Clearnet SA thinks best to contain its exposure and to mitigate overall market effects and on the other hand the Account Structure of the Defaulting Clearing Member.

Clearing Members are required to provide their Clients and (Associated) Trading Members, at the beginning of their relationship, with information regarding (i) their Account Structure and (ii) the consequences of such Account Structure in case of an Event of Default as described in an Instruction.

Article 4.5.2.7

In order to perform its obligations pursuant to the Clearing Rules, LCH.Clearnet SA will make use of the resources available to it in the following order:

(1). any Collateral deposited by the Defaulting Clearing Member to meet its Margin requirements, including any additional Margin requirement, whatever the market on which the Transactions were executed provided that any such Collateral relating to Transactions executed on or reported by Trading & Matching Platforms and the MTS Italy Regulated Market on the one hand or to Securities and/or Derivatives Product Groups (excluding MTS Italy) on the other hand is to be applied first to any losses attributable to such business respectively, until such losses are absorbed,

(2). if applicable any other Collateral or any surplus assets deposited by the Defaulting Clearing Member or Letter of Credit issued by, or with regard to, the Defaulting Clearing Member in favour of LCH.Clearnet SA. Such surplus assets will be allocated to cover the losses on Transactions executed on or reported by Trading & Matching Platforms and the MTS Italy Regulated Market on the one hand and Transactions relating to Securities and/or Derivatives Product Groups (excluding MTS Italy) on the other hand, on a pro rata basis, based on the excess losses (losses not covered by 1 and 2) incurred respectively in these Clearing Services,

(3) the individual contribution to the relevant Default Fund of the Defaulting Clearing Member,

(4) in relation to losses attributable to Transactions executed on or reported by Trading & Matching Platforms and the MTS Italy Regulated Market only, payment from LCH.Clearnet SA's dedicated own resources in accordance with article 45.4 of 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 as determined from time to time in a Notice,

(5) (a) the available Collateral deposited by the other Clearing Members to contribute to the relevant Default Fund as per Article 4.3.1.1 including any replenishment contributions deposited as per Article 4.3.3.1 and any Refill Contributions deposited as per Article 4.3.3.2., prorata to such other Clearing Member's share in the contributions of non-defaulting Clearing Members to the relevant Default Fund ;

(b) the Service Continuity Contributions made by non-defaulting Clearing Members pursuant to Article 4.3.3.3 ;

(6). LCH.Clearnet SA's own capital.

If some Collateral deposited by other Clearing Members to contribute to the relevant Default Fund is used, or if a payment is made pursuant to item 4 above, the amount of this Collateral will represent a claim of LCH.Clearnet SA against the Defaulting Clearing Member.

Article 4.5.2.8

All costs and expenses incurred by LCH.Clearnet SA and which arise out of or in connection with an Event of Default shall be deducted from the Margins of the Defaulting Clearing Member or where relevant any other funds made available by such Defaulting Clearing Member to LCH.Clearnet SA. Subject to full discharge by the Defaulting Clearing Member of its obligations pursuant to the Clearing Rules and the Admission Agreement, and completion of the default management process and subject to any monies remaining owed to LCH.Clearnet SA by the Defaulting Clearing Member being paid, any remaining positive balance shall be remitted to the Defaulting Clearing Member.

Article 4.5.2.9

If the Open Positions of the buying Defaulting Clearing Member are liquidated, any excess Collateral is refunded to the buying Defaulting Clearing Member only once the following conditions are met:

- LCH.Clearnet SA has paid the selling non-defaulting Clearing Member(s),

- LCH.Clearnet SA has closed out the Open Positions of the buying Defaulting Clearing Member and has calculated all costs incurred in connection with the processing of the Event of Default, including *inter alia* the Transaction costs.

Any profits arising from the sale by LCH.Clearnet SA of the Securities received from the selling non-defaulting Clearing Member(s) are set off against the amounts owed by the Defaulting Clearing Member to LCH.Clearnet SA.

Article 4.5.2.10

The balance of the Margin and additional Margin called – after allocation of the results of the Securities buy-in and any costs incurred in processing the Event of Default – is refunded to the selling Defaulting Clearing Member only once the following conditions are met:

- the buying non-defaulting Clearing Member(s) has (have) either taken delivery or has (have) received the cash settlement amount in lieu of delivery,
- LCH.Clearnet SA has calculated all costs, in particular, LCH.Clearnet SA has no outstanding borrowings related to the processing of the Event of Default.

Any profits arising from the buy-in and delivery of Securities to the buying non-defaulting Clearing Member(s) are set off against the amounts owed by the Defaulting Clearing Member to LCH.Clearnet SA.

Article 4.5.2.11

In case of an Event of Default, LCH.Clearnet SA is not bound by the buy-in procedure timeframe as set out in an Instruction.

Article 4.5.2.12

When the Defaulting Clearing Member is a seller in a Forward Repo transaction, the non-defaulting Clearing Member does not receive the Securities, does not pay the related cash amount and only receives the payment of the interests amount related to the Forward Repo for which the intended Settlement Date of the Return Transaction does not exceed four (4) Clearing Days after the declaration of the default. However, LCH.Clearnet SA can extend this timeframe as it deems necessary until the liquidation process is settled.

Article 4.5.2.13

Measures taken by LCH.Clearnet SA upon the occurrence of an Event of Default shall be notified by LCH.Clearnet SA to the Defaulting Clearing Member and to any appropriate third parties as LCH.Clearnet SA may deem necessary.

Instruction IV.5-4⁹

Article 1 - Scope and interpretation

1.1 LCH.Clearnet SA has established a default management process (the "**Fixed Income DMP**") for Clearing Members authorised to clear Transactions on Trading and Matching Platforms and the MTS Italy Regulated Market ("**Fixed Income Clearing Members**") which will apply following issuing of an Event of Default notice by LCH.Clearnet SA regarding a Fixed Income Clearing Member. The fundamental principles of the Fixed

⁹ Please note that only Articles 2.4 and 2.5 of Instruction IV.5-4 are Member Default Netting Provisions

Income DMP are elaborated to the fullest extent possible in this Instruction. Where exhaustive detail cannot be laid out in the provisions of this Instruction, the Fixed Income DMP will be undertaken on the basis of the principles contained herein.

1.2 LCH.Clearnet SA has an obligation to ensure the on-going integrity of the Fixed Income Clearing System and of Transactions executed on Trading and Matching Platforms and the MTS Italy Regulated Market ("Fixed income Transactions") in the interests of the Non-Defaulting Fixed Income Clearing Members. When the occurrence of an Event of Default is notified in respect of a Fixed Income Clearing Member, Non-Defaulting Fixed Income Clearing Members are required to supply impartial expertise through the Fixed Income DMG and may be invited to bid for the Auction Portfolios of a Defaulting Fixed Income Clearing Member, as laid out in this Instruction. Each Fixed Income Clearing Member shall take all steps and execute all documents necessary or required by LCH.Clearnet SA to comply with its obligations as a Fixed Income Clearing Member arising out of this Instruction.

1.3 In this Instruction:

"Auction" means the process of bidding by Fixed Income Clearing Members for an Auction Portfolio prescribed by LCH.Clearnet SA following consultation with the Fixed Income DMG from time to time in accordance with Article 2.3 of this Instruction;

"Auction Currency" means in relation to an Auction, the currency of an Auction Portfolio which is the subject of that Auction as determined in accordance with Article 2.3.2 of this Instruction;

"Auction Losses" has the meaning given in Article 2.5.2 of this Instruction;

"Auction Portfolio" means (i) a Portfolio; or (ii) a group of Fixed Income Transactions resulting from the splitting of a Portfolio pursuant to Article 2.1 of this Instruction including any connected hedging trades concluded by LCH.Clearnet SA through Risk Mitigation;

"Equal Bid" means a bid of the same value submitted by two or more Invited Bidders in a given Auction;

"Fixed Income Default Management Group" or **"Fixed Income DMG"** means the advisory Default Management Group established by LCH.Clearnet SA pursuant to the terms of this Instruction;

"Fixed Income Default Management Process Completion Date" means the date when the Fixed Income Default Management Process in relation to a Default has been completed as determined by LCH.Clearnet SA in consultation with the Fixed Income DMG and notified to all Fixed Income Clearing Members;

"Fixed Income DMP or Fixed Income Default Management Process" means the processes of LCH.Clearnet SA outlined in this Instruction, as the same may be supplemented and/or amended from time to time in accordance with this Instruction;

"Guidance" means guidance, in the form of one or more written notices, issued from time to time pursuant to Article 1.2 of this Instruction by or on behalf of LCH.Clearnet SA to Fixed Income Clearing Members, supplementing the detail or conduct of any aspect of the Fixed Income DMP;

"Initial Resources" has the meaning given in Article 2.5.2 of this Instruction;

"Invited Bidder" means a Non-Defaulting Fixed Income Clearing Member invited to participate in an Auction in accordance with Article 2.3.1 of this Instruction.

"Market Participant" means, in respect of a specific fixed income market, a Non-Defaulting Fixed Income Clearing Member who at the time LCH.Clearnet SA declares a Default has been authorised by LCH.Clearnet SA in respect of that fixed income market;

"Portfolios" means, in respect of each fixed income market, the Fixed Income Transactions in such market registered in the name of a Defaulting Fixed Income Clearing Member, and, where relevant, includes any connected hedging trades concluded by LCH.Clearnet SA through Risk Mitigation; and

"Risk Mitigation" means the process of reducing the market risk associated with a Defaulting Fixed Income Clearing Member's obligations to LCH.Clearnet SA under Fixed Income Transactions by hedging the exposure prior to the auction process as described in Article 2.2 of this Instruction;

1.4 Terms used in this Instruction which are not defined herein shall have the meanings given to them in the Clearing Rules.

2. FIXED INCOME TRANSACTIONS

The Fixed Income Default Management Process in respect of Fixed Income Transactions shall involve the stages described in this Article 2.

2.1 Portfolio Combination and Splitting

LCH.Clearnet SA, in consultation with and with the assistance of the Fixed Income DMG, shall determine the composition of each Auction Portfolio and shall have the discretion to divide a Portfolio into two or more individual Auction Portfolios or to combine two or more Portfolios into a single Auction Portfolio with the aim of facilitating the efficiency of, and reducing the risk associated with, the auction process provided for in Article 2.3 of this Instruction. The overriding principle is that LCH.Clearnet SA will structure Auction Portfolios with the intention of ensuring a Fixed Income DMP which best protects the resources of LCH.Clearnet SA. Therefore, nothing in this Article 2.1 shall be deemed to imply that LCH.Clearnet SA is under any obligation to split a particular Portfolio of a Defaulting Fixed Income Clearing Member (regardless of the number of Fixed Income Transactions that such Portfolio contains).

2.2 Risk Mitigation

LCH.Clearnet SA may, in consultation with and with the assistance of the Fixed Income DMG, reduce the market risk associated with a Defaulting Fixed Income Clearing Member's obligations to LCH.Clearnet SA by hedging LCH.Clearnet SA's exposure in open Fixed Income Transactions to which the Defaulting Fixed Income Clearing Member is party. In determining whether or not to engage in any hedging activities, LCH.Clearnet SA shall take into account the associated costs of such hedging and the possibility that such hedging could result in LCH.Clearnet SA's resources being put at risk. All such hedging shall be undertaken by LCH.Clearnet SA with Fixed Income Clearing Members, on the basis of separate agreements between LCH.Clearnet SA and each such Fixed Income Clearing Member. For the avoidance of doubt, Risk Mitigation may happen prior to, concurrently with and/or subsequently to the splitting of a Portfolio pursuant to Article 2.1 above. Any costs incurred from Risk Mitigation shall be considered costs of the relevant Auction and may therefore give rise to Auction Losses.

2.3 Auction

2.3.1 LCH.Clearnet SA shall, in its discretion, but after consultation with the Fixed Income DMG, identify up to 15 Non-Defaulting Fixed Income Clearing Members who will be invited to bid in each Auction and shall invite such Invited Bidders to submit bids for such Auction Portfolio.

2.3.2 LCH.Clearnet SA, in consultation with the Fixed Income DMG, shall prescribe such procedures (in addition to those set out herein) for the conduct of the auction process, including selection of

Invited Bidders, as it considers reasonably appropriate from time to time. LCH.Clearnet SA and the Fixed Income DMG shall determine the Auction Currency in respect of the relevant Auction.

2.3.3 LCH.Clearnet SA shall notify each Invited Bidder of all details that may be reasonably required in relation to an Auction Portfolio prior to the relevant Auction.

2.3.4 The auction process may take place over a number of days and Auctions of different Auction Portfolios may take place at different times.

2.3.5 Invited Bidders who decide to participate in an Auction will submit bids to LCH.Clearnet SA representatives on the Fixed Income DMG, who will ensure that the identities of the bidders are not revealed to the Fixed Income Clearing Member representatives on the Fixed Income DMG. Bids may be submitted for the entire Auction Portfolio or for a percentage of the Auction Portfolio. Bids shall be submitted as a price at which the relevant Invited Bidder is willing to take on a specified percentage of the Auction Portfolio, and all bids will be ranked in accordance with the price per percentage represented by that bid. The Fixed Income DMG will oversee the bidding process in a manner which it considers best protects the resources of LCH.Clearnet SA and ensures an orderly process. LCH.Clearnet SA shall be entitled to round up or round down nominal amounts received by successful Invited Bidders in order to ensure that successful bids comply with LCH.Clearnet SA's requirements on minimum transaction sizes and this may impact the price paid by successful Invited Bidders.

2.3.6 LCH.Clearnet SA in consultation with the Fixed Income DMG will have full discretion in deciding whether or not to accept one or more bids in an Auction for part or all of the Auction Portfolio and, in so deciding, will take into account the range of bids received relative to initial margin, variation margin, additional margin and Fixed Income Default Fund contributions of the Defaulting Fixed Income Clearing Member held and, subject to their availability, LCH.Clearnet SA resources as set out in Article 4.5.2.7 of the Clearing Rule Book. If LCH.Clearnet SA does accept one or more bids, the price paid by the relevant winning bidders will be the same. Therefore, if LCH.Clearnet SA decides to accept more than one bid, the price payable by all such winning bidders will be the price of the lowest bid which is accepted by LCH.Clearnet SA. In the event that two or more Invited Bidder submit an Equal Bid, LCH.Clearnet SA may, subject to its discretion to reject one or more such Equal Bids, split the relevant Auction Portfolio between the relevant Invited Bidders who submitted Equal Bids on an individual trade-by-trade basis. LCH.Clearnet SA, in consultation with the Fixed Income DMG, may choose to accept a bid in respect of a smaller proportion of an Auction Portfolio than that which an Invited Bidder specified in its bid.

2.3.7 In the case of an Auction in which no bid is accepted or received (as the case may be), or in which the bids accepted by LCH.Clearnet SA are for less than the whole Auction Portfolio, subject to Article 2.3.9, one or more further Auctions may, at the discretion of LCH.Clearnet SA, be held in relation to the relevant Auction Portfolio or that part of the Auction Portfolio which remains.

As soon as practicable following an Auction:

(a) in the event that one or more bids were accepted, LCH.Clearnet SA will notify all the Invited Bidders who participated in the Auction that one or more bids were accepted and shall notify the Invited Bidders who submitted the accepted bids that their bids were accepted; and

(b) in the event that no bid was accepted, or the accepted bids were for less than the whole Auction Portfolio, LCH.Clearnet SA will notify such Fixed Income Clearing Members as determined by LCH.Clearnet SA in consultation with the Fixed Income DMG of the details of any further Auction.

2.3.8 All Invited Bidders agree to use all reasonable efforts to make a bid in an Auction for an Auction Portfolio in respect of which such Fixed Income Clearing Member is a market participant.

2.3.9 LCH.Clearnet SA may directly sell assets or Auction Portfolios outside of Auctions if an Auction fails or, in the opinion of LCH.Clearnet SA in consultation with the Fixed Income DMG, is likely to fail or if LCH.Clearnet SA determines (in consultation with the Fixed Income DMG) that it will not be possible to complete any relevant Auction in a timely and efficient manner and without putting the resources available to LCH.Clearnet SA pursuant to Article 4.5.2.7 (4) to 4.5.2.7 (5)(b) of the Clearing Rule Book at risk.

2.4 Auction Resources and Reserve Price

2.4.1 Before commencing the auction process, LCH.Clearnet SA will calculate a base price for each individual Auction Portfolio based on an initial allocation of the resources potentially available to it from the Defaulting Fixed Income Clearing Member to satisfy any loss incurred in the Auction of each such Auction Portfolio pursuant to Articles 4.5.2.7 (1) to 4.5.2.7 (4) of the Clearing Rule Book and, consequently, taking into account market prices, a reserve price for such Auction. Notwithstanding such initial allocation, any resources utilised by LCH.Clearnet SA will be allocated in accordance with Article 2.5 below.

2.4.2 For each Auction Portfolio, the resources shall be allocated as follows:

- (a) the resources of the Defaulting Fixed Income Clearing Member (in the form of: (i) the Collateral of the Defaulting Fixed Income Clearing Member pursuant to Article 4.5.2.7 (1) of the Clearing Rule Book (ii) any other Collateral the contributions made by the Defaulting Fixed Income Clearing Member to the Fixed Income Default Fund available pursuant to Article 4.5.2.7 (2) of the Clearing Rule Book, and (iii) the contributions made by the Defaulting Fixed Income Clearing Member to the Fixed Income Default Fund available pursuant to Article 4.5.2.7 (3) of the Clearing Rule Book at the time of the auction process) will be allocated to the Auction Portfolios based on the proportion that (a) the risk of the relevant Auction Portfolio bears to (b) the aggregate of the risks (on an absolute basis) for all Auction Portfolios; and
- (b) the portion of the dedicated own resources applied to the Fixed Income business of the Defaulting Fixed Income Clearing Member pursuant to Article 4.5.2.7 (4) of the Clearing Rule Book will be allocated to the Auction Portfolios based on the proportion that (a) the risk of the relevant Auction Portfolio bears to (b) the aggregate of the risks (on an absolute basis) for all Auction Portfolios.

2.5 Loss Attribution

2.5.1 Following the completion of all Auctions of all Auction Portfolios of the Defaulting Fixed Income Clearing Member, LCH.Clearnet SA will determine whether losses incurred by it following such Auctions are such that the Non- Defaulting Fixed Income Clearing Members' contributions to the Fixed Income Default Fund must be utilised. Where applicable, such losses will be allocated to Non-Defaulting Fixed Income Clearing Members' contributions to the Fixed Income Default Fund in accordance with the loss attribution process described in Articles 2.5.2 to 2.5.4 of this Instruction.

2.5.2 For each Auction Portfolio, losses to LCH.Clearnet SA will be met using the resources as set out in Article 4.5.2.7 of the Clearing Rule Book. In applying those resources, LCH.Clearnet SA will allocate the losses in respect of each Auction Portfolio (the "Auction Losses") by reference to the resources allocated to such Auction Portfolios in accordance with Article 2.3.9 of this Instruction. Where there are no Auction Losses in respect of an Auction Portfolio or the Auction Losses in respect of an Auction Portfolio do not require the full amount of the resources referred to in sub-paragraphs (a) and (b) of Article 2.4.2 of this Instruction allocated to the relevant Auction Portfolio (the "Initial Resources") to be fully utilised, the relevant surplus Initial Resources will be allocated pro rata between those Auction Portfolios in respect of which there are Auction Losses requiring the utilisation of resources beyond the Initial Resources available in the relevant Auction Portfolio in accordance

with Articles 4.5.2.7 (1) to 4.5.2.7 (4) of the Clearing Rule Book until such time as all Initial Resources have been fully utilised.

2.5.3 In the case of each Auction for which there are Auction Losses in excess of the resources in 2.4.2, those Auction Losses will be allocated to each Non-Defaulting Clearing Member's contributions (i.e. being the fixed income Default Fund contribution made by it prior to the occurrence of the relevant Event of Default) to the fixed income Default Fund (as determined in accordance with Instruction IV.3-2) based upon the proportion that (a) the value of each such contribution bears to (b) the aggregate of the amounts calculated in (a) for each Non-Defaulting Clearing Member.

2.5.4 If and to the extent that there are Auction Losses outstanding following the attribution process referred to in Article 2.5.3 above, those Auction Losses will be allocated to the fixed income Refill Contributions based upon the proportion that (a) the value of each such fixed income Refill Contribution bears to (b) the aggregate of the amounts calculated in (a) for each such Non-Defaulting Clearing Member until the first to occur of (i) the Auction Losses being fully met; and (ii) the fixed income Refill Contributions being fully attributed.

3. TRANSFER OF CASH FLOWS AND REGISTRATION OF POSITIONS

3.1 Following the disposal of part or all of an Auction Portfolio by way of Auction (and notwithstanding that other Auction Portfolios of the Defaulting Fixed Income Clearing Member may not yet have been auctioned) LCH.Clearnet SA, will, with the co-operation of the Fixed Income Clearing Members, transfer to the Fixed Income Clearing Members whose bids were accepted in respect of that Auction Portfolio the positions for which that Fixed Income Clearing Member has successfully bid under the Fixed Income Default Management Process. Such transfer may take place by way of registration of new positions with LCH.Clearnet SA in the name of the relevant Fixed Income Clearing Member, or novation of rights and obligations to the relevant Fixed Income Clearing Member.

3.2 In order to effect the transfer of positions, LCH.Clearnet SA shall prescribe such procedures and timetable as it considers reasonably appropriate in the circumstances. Fixed Income Clearing Members will be required to exercise best endeavours to comply with such requirements as may be established by LCH.Clearnet SA, after consultation with the Fixed Income DMG, to effect the transfer of positions, including but not limited to the payment of any sums due as a result of the winning bid and the provision of cover in an amount required by LCH.Clearnet SA for initial margin, variation margin and additional margin in respect of positions which are to be registered in their names. LCH.Clearnet SA agrees that in such procedures it shall make provision for set-off by LCH.Clearnet SA of amounts owed by LCH.Clearnet SA to the Fixed Income Clearing Member as a result of the operation of the Fixed Income DMP against sums owed by the Fixed Income Clearing Member to LCH.Clearnet SA in respect thereof.

3.3 Where, as a result of an Auction, LCH.Clearnet SA is required to make a payment to a Fixed Income Clearing Member in respect of a winning bid, LCH.Clearnet SA shall not be permitted to register any position, whether as a new position or as a novation of existing rights and obligations, to any such Fixed Income Clearing Member if LCH.Clearnet SA does not simultaneously credit that Fixed Income Clearing Member with the requisite amount. If any position is so registered without such payment, such registration shall be deemed void *ab initio* and unenforceable against the relevant Fixed Income Clearing Member. For the avoidance of doubt, LCH.Clearnet SA will utilise the resources available to it pursuant to Article 4.5.2.7 of the Clearing Rule Book for the purposes of making such a payment notwithstanding that other Auction Portfolios of the Defaulting Fixed Income Clearing Member may not yet have been auctioned and that the loss attribution process provided for by Article 2.5 of this Instruction has not yet occurred.

4. INFORMATION REGARDING THE FIXED INCOME DMP

Whenever the Fixed Income DMP is implemented by LCH.Clearnet SA in respect of a Defaulting Fixed Income Clearing Member, LCH.Clearnet SA will, with the assistance of the Fixed Income DMG, provide such

ongoing information to Fixed Income Clearing Members as LCH.Clearnet SA deems reasonably appropriate in respect of the progress of the Fixed Income DMP.

Nothing in this Article 4 shall require LCH.Clearnet SA to disclose information in respect of the Fixed Income DMP which, in the reasonable opinion of LCH.Clearnet SA, may be subject to obligations of confidentiality, may constitute market sensitive data or is, in LCH.Clearnet SA's reasonable opinion, inappropriate for disclosure to Fixed Income Clearing Members.

5. MISCELLANEOUS

5.1 Subject to Articles 2.3.9 and 2.5 of this Instruction, the resources available to LCH.Clearnet SA and their order of use are defined in Article 4.5.2.7 of the Clearing Rule Book.

5.2 LCH.Clearnet SA may from time to time supplement the details of any of the stages set out in Article 2 of this Instruction or any other aspects of the Fixed Income DMP, in consultation with the Fixed Income DMG, either by way of further Guidance or immediately on notice to Fixed Income Clearing Members on a case-by-case basis where LCH.Clearnet SA deems it appropriate to do so in the circumstances of the Default, provided that LCH.Clearnet SA may not take any such action that effects a material change to the terms of this Instruction without the written consent of 50% of all Fixed Income Clearing Members unless such change is invoked unilaterally against all Fixed Income Clearing Members and is necessary to manage LCH.Clearnet SA's risk or otherwise to meet LCH.Clearnet SA's continuing regulatory obligations. LCH.Clearnet SA agrees that, in the ordinary course, it shall discuss any such Guidance with the Fixed Income DMG prior to bringing the Guidance into effect except that it shall not be required to do so where (i) the Guidance is not material to the rights and obligations of the Fixed Income Clearing Members or (ii) LCH.Clearnet SA deems it inappropriate to do so in the circumstances of the Default and it is not possible to convene the Fixed Income DMG in timely fashion.

5.3 The timetable for implementation of the stages of the Fixed Income Default Management Process following the notification of an Event of Default by LCH.Clearnet SA shall be either (1) as prescribed by LCH.Clearnet SA from time to time in consultation with the Fixed Income DMG and set out in a Guidance; or (2) imposed by LCH.Clearnet SA without prior notice to the Fixed Income Clearing Members on a case-by-case basis where LCH.Clearnet SA, in consultation with the Fixed Income DMG, deems it appropriate to do so in the circumstances of the Default.

5.4 LCH.Clearnet SA shall not have any liability whatsoever to any Clearing Member or to any other person (including, without limitation, any Client or (Associated) Trading Member) in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by a Clearing Member or any other person, as the case may be, as a result of the occurrence and management of an Event of Default, including pursuant to this Instruction.

6. ROLE AND CONSTITUTION OF FIXED INCOME DMG

6.1 The Fixed Income DMG shall meet at regular intervals in order to:

- 6.1.1 keep under review the Fixed Income DMP, together with any Guidance issued in respect thereof;
- 6.1.2 keep under review the terms of reference of the Fixed Income DMG to ensure they remain appropriate;
- 6.1.3 consider appropriate supplements or amendments to the Fixed Income DMP and/or Guidance in order to improve the procedures in place; and

6.1.4 consider any other business relevant to the Fixed Income DMP which any member of the Fixed Income DMG from time to time sees fit to raise at such meetings.

6.2 The members of the Fixed Income DMG shall also meet within one hour, or as soon as reasonably practical, following notification by LCH.Clearnet SA that an Event of Default has been declared in relation to a Fixed Income Clearing Member, and at sufficiently frequent intervals thereafter for so long as may be necessary to assist LCH.Clearnet SA in the implementation of the Fixed Income DMP as contemplated under this Instruction. Such implementation shall include, without limitation, the provision of general default management advice with regard to: (1) the ongoing obligations of LCH.Clearnet SA to its non-defaulting members; (2) the hedging and closing-out of the individual obligations of the Defaulting Fixed Income Clearing Member; and (3) the splitting of Portfolios and the disposal of Auction Portfolios in accordance with the Fixed Income DMP. Where it is not possible or practicable for the Fixed Income Clearing Member to provide its nominated representative within an appropriate timeframe, it shall provide an alternate of suitable experience and expertise to participate on the Fixed Income DMG.

6.3 The Fixed Income DMG shall be made up of the following individuals who, unless stated otherwise, shall be appointed by LCH.Clearnet SA which shall ensure that the composition is such as to provide effective review of the Fixed Income DMP and suitable expertise and representation of market-making capacity in the event of a Default:

6.3.1 the Head of Fixed Income at LCH.Clearnet SA (or his or her deputy), who shall act as chairman;

6.3.2 representatives of at least four Fixed Income Clearing Members, being senior executives with appropriate skills and expertise, at least two of which shall be from organisations with membership of both LCH.Clearnet Ltd and LCH.Clearnet S.A.;

6.3.3 the head of Fixed Income Risk at LCH.Clearnet SA (or his or her deputy);

6.3.4 a member of the CaLM group at LCH.Clearnet SA or other employee of LCH.Clearnet SA authorised to represent the CaLM group;

6.3.5 in the event of the issuance of a Default Notice, a representative of the Defaulting Fixed Income Clearing Member may be invited to join the Fixed Income DMG to assist its work; and

6.3.6 such other individuals as the Fixed Income DMG considers appropriate from time to time in relation to individual meetings.

Where LCH.Clearnet SA has appointed any representative of any Fixed Income Clearing Member to be a member of the Fixed Income DMG, such Fixed Income Clearing Member shall be obliged to make an appropriate representative of that Fixed Income Clearing Member available for that purpose. It is expected that representation on the Fixed Income DMG will be preceded by participation in a DMP fire drill.

6.4 For the purpose of Fixed Income DMG meetings convened to deal with a specific Defaulting Fixed Income Clearing Member, LCH.Clearnet SA may, after consultation with the Fixed Income DMG, invite the Defaulting Fixed Income Clearing Member to nominate one or more representatives to join the Fixed Income DMG to assist it in carrying out its functions in the Fixed Income DMP for that Defaulting Fixed Income Clearing Member, and also request representatives from any other Fixed Income Clearing Members. In the event of receiving such request, the Fixed Income Clearing Member shall be obliged to provide its nominated representative, or an alternate with appropriate skills, experience and expertise, as if the Fixed Income Clearing Member were a member of the Fixed Income DMG.

6.5 In establishing the Fixed Income DMG, LCH.Clearnet SA agrees that in the normal course of events (not including LCH.Clearnet SA's declaration of a Default and the invocation of the processes as outlined in

Articles 2 and 3 of this Instruction) it will, as far as practicable, and in accordance with the terms of reference of the Fixed Income DMG, rotate the membership of the Fixed Income DMG on a regular basis and amongst all Fixed Income Clearing Members. The Fixed Income Clearing Member agrees that, when requested to do so by LCH.Clearnet SA, it will make available a representative to participate in the Fixed Income DMG. LCH.Clearnet SA shall agree with the Fixed Income Clearing Member the identity of such representative and shall be able to request a substitute where it believes the Fixed Income Clearing Member's nominated representative does not have the requisite skills or expertise.

6.6 Each Fixed Income Clearing Member who makes available a representative to serve on the Fixed Income DMG agrees, and shall procure that its representative agrees:

6.6.1 to ensure that such representative will be fully available, at any time and for such periods of time as LCH.Clearnet SA may require during the course of a Default, to perform his function as a member of the Fixed Income DMG including attending meetings, considering and advising LCH.Clearnet SA upon aspects of the Fixed Income DMP. The Fixed Income Clearing Member shall ensure that a representative's other work commitments do not affect his availability for this purpose;

6.6.2 to take all steps to respect the confidential capacity in which such a representative receives information through the Fixed Income DMG and to establish adequate procedures to prevent the disclosure or use for any commercial purpose outside the scope of the Fixed Income DMP of any such confidential information by the Fixed Income Clearing Member, its representative or any third party. Such procedures shall normally include, without limitation, the establishment of Chinese walls within the Fixed Income Clearing Member; and

6.6.3 to be bound by and to ensure that it and any of its executives or directors serving on the Fixed Income DMG complies with the requirements contained in the Clearing Rules.

6.7 Each Fixed Income Clearing Member shall accept that:

6.7.1 representatives of Fixed Income Clearing Members serving on the Fixed Income DMG are doing so in order to assist LCH.Clearnet SA in ensuring the on-going integrity of the Fixed Income service in the interests of Non-Defaulting Fixed Income Clearing Members; and

6.7.2 representatives of Fixed Income Clearing Members serving on the Fixed Income DMG and their employers shall have no liability for any disinterested advice or actions, mandated or otherwise, that are undertaken as part of the Fixed Income Default Management Process, provided, however, that nothing in this Article 6.7.2 shall exclude the liability of such representatives and employers for any personal injury or death caused by their negligence or for any fraud or wilful default on the part of such representatives and employers.

6.8 LCH.Clearnet SA agrees that, in exercising its rights and obligations in consulting with the Fixed Income DMG pursuant to this Instruction, it will use all reasonable commercial endeavours to agree a common position with the Fixed Income DMG, provided that nothing in this Article shall prevent LCH.Clearnet SA acting in a way which it reasonably determines necessary to manage its risk or otherwise meet its regulatory obligations.

6.9 LCH.Clearnet SA may run Fixed Income DMP "fire-drills" from time to time. Fixed Income Clearing Members will be required to actively participate in a DMP fire-drill when requested to do so by LCH.Clearnet SA. Those required to participate in a fire-drill will be limited to the top 90% of Fixed Income Clearing Members based on total Initial Margin of the previous three months. The fire-drill list of potential participant Fixed Income Clearing Members will be refreshed on a semi-annual basis by LCH.Clearnet SA.

Annex B
Rules and CCP Documentation

Applicable Amounts	BAU Netting Provisions	Member Default Netting Provisions	CCP Default Netting Rules
Payments in respect of repurchase price Income payments falling due on the repurchase date	Articles 3 and 7 of Instruction IV-2, "Cash Payments", dated 19 April 2013	Articles 4.5.1.1 to 4.5.2.13 of the LCH Clearing Rule Book and Articles 2.4 and 2.5 of Instruction IV-5.4, "The Fixed Income Default Management Process for Transactions executed on Trading & Matching Platforms and the MTS Italy Regulated Market", dated 26 July 2013	Title I (General Provisions & Legal Framework), Chapter 4 (LCH.Clearnet SA Default) of the LCH Clearing Rule Book