



OUR REF F0595.5/TZS/AMK
YOUR REF

Special Instructions

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London
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Copy to:

The International Swaps and Derivatives Association
One Bishops Square
London
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Dear Sirs

IAS 32 – Scotland – CM – Formal Opinion - LCH Clearnet RepoClear (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 Limited (the "CCP"), in respect of its RepoClear Service (the "Service"), governed by the laws of England and Wales, 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 **"Banking Act"** means the Banking Act 2009.
- 3.1.5 **"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.
- 3.1.6 **"building society"** means a building society (within the meaning of section 119 of the Building Societies Act 1986).
- 3.1.7 **"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).
- 3.1.8 **"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.
- 3.1.9 **"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.
- 3.1.10 **"CI Regulations"** means Credit Institutions (Reorganisation and Winding Up) Regulations 2004.
- 3.1.11 **"Clearing House"** means a UK Clearing House or an Overseas Clearing House.
- 3.1.12 **"Collateral Regulations"** the Financial Collateral Arrangements (No. 2) Regulations 2003.
- 3.1.13 **"Companies Act"** means the Companies Act 2006.
- 3.1.14 **"Default Proceedings"** means default proceedings as defined in Party VII, being proceedings taken by the CCP pursuant to the Default Rules.
- 3.1.15 **"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.
- 3.1.16 **"designated system"** means a designated system for the purposes of the Settlement Finality Regulations.
- 3.1.17 **"EMIR"** means Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories.
- 3.1.18 **"FCA"** means the United Kingdom Financial Conduct Authority.
- 3.1.19 **"FSMA"** means the Financial Services and Markets Act 2000.
- 3.1.20 **"Insolvency Act"** means the Insolvency Act 1986.
- 3.1.21 **"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.
- 3.1.22 **"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.
- 3.1.23 **"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 Regulations"** means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

3.1.35 **"Transaction"** means a transaction between the Clearing Member and another clearing member of the CCP which is registered at (and cleared through or by) the CCP in respect of the Service.

3.1.36 **"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.

3.1.37 **"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 CCP 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 and 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 a UK Clearing House; and
 - 4.14.2 a designated system within the meaning of, and for the purposes of, the Settlement Finality Regulations.
- 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 arrestee 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 flow 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

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ANNEX A

Part 1

BAU Netting Provisions

RepoClear Contract Terms⁹

Where a RepoClear Contract arises between the Clearing House and a RepoClear Clearing Member pursuant to the Regulations and the terms of any agreement entered into between them, the terms of such RepoClear Contract shall include these RepoClear Contract Terms, which shall comprise:

- (1) Economic Terms;
- (2) Standard Terms; and
- (3) Interpretation section.

Interpretation Section

Save as otherwise specified herein, words and phrases defined elsewhere in the General Regulations, Procedures and Default Rules of the Clearing House (together, and as amended from time to time, the "Regulations") shall have the same meanings in these RepoClear Contract Terms.

In the event of any inconsistency between these RepoClear Contract Terms and the Regulations, the Regulations will prevail, unless expressly otherwise specified.

As used in these RepoClear Contract Terms:

"Equivalent Securities" means securities equivalent to Purchased Securities. If and to the extent that such Purchased Securities have been redeemed, the expression shall mean a sum of money equivalent to the proceeds of redemption.

Securities are **"equivalent to"** other securities for the purposes of these RepoClear Contract Terms if they are: (i) of the same issuer; (ii) part of the same issue; (iii) of an identical type, nominal value, description and (except where otherwise stated) amount as those other securities.

"Income" means, with respect to any Purchased Securities at any time, all interest, dividends or other distributions thereon ("**Distributions**").

"Income Payment Date" means, with respect to any Purchased Securities, the date on which Income is paid in respect of such Purchased Securities, or in the case of registered Purchased Securities, the date by reference to which particular registered holders are identified as being entitled to payment of Income.

"Price Differential" means, with regard to this RepoClear Contract if it has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55, or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, the aggregate amount obtained by daily application of the Pricing Rate to the Purchase Price (on a day basis in accordance with the RepoClear Procedures) for the actual number of days during the period commencing on (and including) the Purchase Date and ending on (but excluding) the date of calculation or, if earlier, the Repurchase Date.

"Pricing Rate" means the per annum percentage rate used in the calculation of the Price Differential, which in turn, is used to calculate the Repurchase Price.

"Purchase Date" means the date on which the Purchased Securities will be sold by Seller to Buyer.

"Purchased Securities" means the underlying securities to be sold by Seller to Buyer on the Purchase Date.

"Purchase Price" means the cash amount payable by Buyer to Seller for the Purchased Securities.

"RepoClear Contract" means a contract between Buyer and Seller on the basis of the Standard Terms and the Economic Terms, and references to "this RepoClear Contract" are to the particular RepoClear Contract in question.

⁹ Please note that only section 2.1(d) of the RepoClear Contract Terms is a BAU Netting Provision

"RepoClear Procedures" means the part of the Procedures of the Clearing House that contains provisions in respect of RepoClear Contracts.

"Repurchase Date" means, with regard to this RepoClear Contract if it has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, the date on which Equivalent Securities will be sold by Buyer to Seller.

"Repurchase Price" with regard to this RepoClear Contract if it has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55, or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, means, as of any date, the sum of the Purchase Price and the Price Differential as of such date.

"Term" means, with respect to this RepoClear Contract if it has arisen from a RepoClear Repo Transaction in accordance with Regulation 55, or from a Repo Trade in accordance with the provisions of Regulations 56 or Regulation 56A, the interval of time commencing with the Purchase Date and ending with the Repurchase Date.

1. Economic Terms

In relation to this RepoClear Contract, the terms in (a) to (g) below (the "Economic Terms") will: (i) where this RepoClear Contract is dealt with through an automated trade capture system, be derived from the information presented by the RepoClear Participants to the Clearing House for registration, and (ii) where this RepoClear Contract is dealt with through an Automated Trading System, be derived from the information input by the RepoClear Participants and matched by or in accordance with the rules and procedures of such Automated Trading System.

The Economic Terms comprise details of:

- (a) Buyer;
- (b) Seller;
- (c) Pricing Rate;
- (d) Purchase Date;
- (e) Purchase Price;
- (f) Purchased Securities; and
- (g) Repurchase Date.

PROVIDED, however, that, when such information presented or input (as the case may be) by any RepoClear Participant specifies such RepoClear Participant as: (i) Buyer under a contract, with the other party as Seller, the Clearing House will be Seller under the RepoClear Contract; and (ii) Seller under a contract, with the other party as Buyer, the Clearing House will be Buyer under the RepoClear Contract.

2. Standard Terms

2.1. General

- (a) On the Purchase Date, Seller shall transfer the Purchased Securities to Buyer against payment of the Purchase Price by Buyer.
- (b) If this RepoClear Contract has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, then on the Repurchase Date, Buyer shall transfer to Seller Equivalent Securities against the payment of the Repurchase Price by Seller.

- (c) Notwithstanding the use of expressions such as "margin", and, if this RepoClear Contract has arisen from a RepoClear Repo Transaction in accordance with Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulations 56A, the use of expressions such as "Repurchase date", "Repurchase Price" and "substitution", which are used to reflect terminology used in the market for transactions of the kinds provided for in these Standard Terms, all right, title and interest in and to Purchased Securities and money transferred or paid under these Standard Terms and, if this RepoClear Contract has arisen from a Repo Trade all right, title and interest in Equivalent Securities, shall pass to the transferee on transfer or payment, and the obligation of the party receiving Purchased Securities if this RepoClear Contract has arisen from a Repo Trade shall be an obligation to transfer Equivalent Securities.
- (d) Subject to the Default Rules, any Purchase Price, Repurchase Price and amounts in respect of Income Payment Dates (if applicable) in the same currency payable by either party to the other under this RepoClear Contract and any other RepoClear Contract on the same date shall be combined in a single calculation of a net sum payable by one party to the other and the obligation to pay that sum shall be the only obligation of either party in respect of those amounts.
- (e) Subject to the Default Rules, all securities of the same issue, denomination, currency and series, transferable by either party to the other under this RepoClear Contract and any other RepoClear Contract on the same date, whether this or any such other RepoClear Contract has arisen from a RepoClear Repo Transaction or from a RepoClear Bond Transaction in accordance with the provisions of Regulation 55, or from a Repo Trade or a Bond Trade in accordance with the provisions of Regulation 56 or Regulation 56A, shall be combined in a single calculation of a net quantity of securities transferable by one party to the other and the obligation to transfer the net quantity of securities shall be the only obligation of either party in respect of the securities so transferable and receivable.

2.2. Margin Maintenance

The provisions set out in the General Regulations and the Procedures in relation to margin and cover for margin shall be applicable to this RepoClear Contract. Any cover for variation margin liability will be in the form of cash only.

2.3. Income Payments

If this RepoClear Contract has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, where the Term of this RepoClear Contract extends over any Income Payment Date in respect of any Purchased Securities subject to this RepoClear Contract, Buyer shall make payment of such amounts in respect of such Income Payment Date in accordance with the RepoClear Procedures.

2.4. Payment and Transfer

- (a) Each of the following insofar as it is applicable to this RepoClear Contract shall be paid or transferred, as the case may be, in accordance with the provisions set out in the RepoClear Procedures: the Purchase Price, the Repurchase Price, the Purchased Securities, the Equivalent Securities.
- (b) In accordance with the RepoClear Procedures, either party may appoint another person to make any payments and/or to make any transfers of securities on its behalf.

Notwithstanding any such appointment, each of the parties agree that it shall remain liable under this RepoClear Contract as principal.

(c) The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Purchased Securities, and if this RepoClear Contract has arisen from a RepoClear Repo Transaction in accordance with the provisions of Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, in any Equivalent Securities, shall pass to the party to which transfer is being made upon transfer of the same in accordance with these Standard Terms, free from all liens, claims, charges and encumbrances.

2.5. **Withholding Tax Provisions**

(a) All money payable by the RepoClear Clearing Member to the Clearing House in respect of this RepoClear Contract shall be paid free and clear of any deduction. Where however, a RepoClear Clearing Member is required by any applicable law or any taxation authority properly acting within the scope of its authority or power, to withhold or deduct any tax or duty from any payment due in respect of this RepoClear Contract, the RepoClear Clearing Member shall be entitled to withhold or deduct such tax or duty, and shall pay to the Clearing House such additional amounts as will result in the net amounts receivable by the Clearing House (after taking account of such withholding or deduction) being equal to such amounts as would have been received by the Clearing House had no such taxes or duties been required to be withheld or deducted.

(b) All money payable by the Clearing House to the RepoClear Clearing Member in respect of this RepoClear Contract shall be paid free and clear of any deduction. Where however, the Clearing House is required by any applicable law or any taxation authority properly acting within the scope of its authority or power, to withhold or deduct any tax or duty from any payment due in respect of this RepoClear Contract, the Clearing House shall be entitled to withhold or deduct such tax or duty. In such event, the Clearing House shall pay such additional amounts as will result in the net amounts receivable by the RepoClear Clearing Member (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted, PROVIDED, however, that the Clearing House shall only be under an obligation to pay such additional amounts to the extent that the Clearing House determines, in its sole and absolute discretion, that it is entitled to recover and does recover the amount payable by it from another RepoClear Clearing Member in respect of any related RepoClear Contract.

2.6. **Substitution**

(a) This RepoClear Contract may be varied by the transfer by Buyer to Seller of securities equivalent to the Purchased Securities in exchange for the transfer by Seller to Buyer of other securities, in accordance with the provisions of the RepoClear Procedures.

(b) Notwithstanding the provisions of the RepoClear Procedures, where this RepoClear Contract has arisen from a RepoClear Repo Transaction in accordance with Regulation 55 or from a Repo Trade in accordance with the provisions of Regulation 56 or Regulation 56A, and the Repurchase Date is not the Business Day immediately following the Purchase Date, Seller shall have the right (subject to the proviso to this paragraph 2.6(b)) by notice to Buyer (such notice to be given in accordance with the RepoClear Procedures) to vary this RepoClear Contract in accordance with the provisions of the RepoClear Procedures; provided, however, that Buyer may elect by close of business on the Business Day on which

such notice is received (or by close of business on the next Business Day if notice is received after the time specified in the RepoClear Procedures for the giving of such notice) not to vary this RepoClear Contract. If Buyer elects not to vary this RepoClear Contract, Seller shall have the right, by notice to Buyer, to terminate this RepoClear Contract on the Business Day specified in that notice, such Business Day not to be later than two Business Days after the date of the notice.

- (c) Notwithstanding the provisions of the Default Rules, where the RepoClear Clearing Member is Seller and the Clearing House is Buyer in respect of this RepoClear Contract and the RepoClear Clearing Member exercises its right to vary this RepoClear Contract or to terminate this RepoClear Contract under paragraph 2.6(b), the RepoClear Clearing Member shall be required to pay to the Clearing House by close of business on the Business Day of such variation or termination an amount equal to such amount that the Clearing House determines, in its sole and absolute discretion, that is payable in respect of any related RepoClear Contract by the Clearing House (in its capacity as Seller in respect of such related RepoClear Contract) to a RepoClear Clearing Member in respect of such related RepoClear Contract (in its capacity as Buyer in respect of such related RepoClear Contract).
- (d) Notwithstanding the provisions of the Default Rules, where the Clearing House is Seller and the RepoClear Clearing Member is Buyer in respect of this RepoClear Contract and the Clearing House exercises its right to vary this RepoClear Contract or to terminate this RepoClear Contract under paragraph 2.6(b), the Clearing House shall be required to pay to the RepoClear Clearing Member by close of business on the Business Day of such variation or termination an amount equal to:
 - (i) the RepoClear Clearing Member's actual cost (including all fees, expenses and commissions) of (aa) entering into replacement transactions; (bb) entering into or terminating hedge transactions; and (cc) terminating or varying transactions with third parties in connection with or as a result of such variation or termination; and
 - (ii) to the extent that the RepoClear Clearing Member does not enter into replacement transactions, the loss incurred by the RepoClear Clearing Member directly arising or resulting from such variation or termination,

in each case as determined and calculated in good faith by the RepoClear Clearing Member; PROVIDED, however, that the Clearing House shall only be required to pay such amount to the extent that the Clearing House determines, in its sole and absolute discretion, that it is entitled to recover the amount payable by it from a RepoClear Clearing Member in respect of any related RepoClear Contract.

2.7. **Regulations**

This RepoClear Contract shall be subject to the Regulations, which shall form a part of its terms.

2.8. **“When Issued” Securities**

Where the subject matter of this RepoClear Contract is RepoClear Eligible Securities which have not yet been issued at the time this contract comes into being, in the event that such securities are not issued by the issuer this RepoClear Contract shall be null and void ab initio, and the only liability shall be that of the Clearing House to return to the RepoClear Clearing Member of any margin held by it, subject to compliance by the RepoClear Clearing Member with all the requirements of these Regulations and Procedures in respect of such RepoClear Contract.

2.9. **Governing Law**

This RepoClear Contract shall be governed by, and construed in accordance with, English law and the parties hereby submit to the jurisdiction of the English courts.

2.10. Third Party Rights

A person who is not a party to this RepoClear Contract shall have no rights under or in respect of it. Rights of third parties to enforce any terms of this RepoClear Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

RepoClear SGC Contract Terms¹⁰

Where a RepoClear SGC Contract arises between the Clearing House and a RepoClear Clearing Member pursuant to the Regulations and the terms of any agreement entered into between them, the terms of such RepoClear SGC Contract shall include these REPOCLEAR SGC CONTRACT TERMS, which shall comprise:

- (1) Interpretation section;
- (2) Economic Terms; and
- (3) Standard Terms.

Interpretation Section

Save as otherwise specified herein, words and phrases defined elsewhere in this Rulebook shall have the same meanings in these RepoClear SGC Contract Terms.

In the event of any inconsistency between these RepoClear SGC Contract Terms and the Rulebook, the Rulebook will prevail, unless expressly otherwise specified.

As used in these RepoClear SGC Contract Terms:

"Closing Cash Amount" means the cash amount identified in the Economic Terms as set out in paragraph 1 below.

"Daily Cash Amount" means, on any SGC Day, the net cash amount payable by either party to the other, calculated under paragraph 2.5(c).

"Daily Equivalent Securities" means, on any day, the net securities transferable by either party to the other, calculated under paragraph 2.5(b).

"Daily Purchased Securities" means, on any SGC Day, the net securities transferable by either party to the other, calculated under paragraph 2.5(a).

"Daily Return Amount" means, on any SGC Day, the net cash amount payable by either party to the other, calculated under paragraph 2.5(d).

"Eligible Securities" means securities of any issue of securities comprised in a SGC Basket.

"Eligible SGC Basket" means an SGC Basket which appears in the list containing details of all Eligible SGC Baskets published for this purpose from time to time by the Clearing House.

"Eligible SGC Trade" means a RepoClear SGC Transaction or SGC Trade, as applicable.

"End Date" means the last day upon which Equivalent Securities will be delivered by the Buyer to the Seller in accordance with these RepoClear SGC Contract Terms, as stated in the Economic Terms.

"Equivalent Securities" means, on any day, securities equivalent to the Purchased Securities that were transferred by Seller to Buyer on the immediate preceding SGC Day.

Securities are **"equivalent to"** other securities for the purposes of these RepoClear SGC Contract Terms if they are: (i) of the same issuer; (ii) part of the same issue; and (iii) of an identical type, nominal value, description and (except where otherwise stated) amount as those other securities.

"Interest" means with regard to this RepoClear SGC Contract, the amount obtained by deducting the Opening Cash Amount from the Closing Cash Amount.

"Last SGC Date" means, with regard to this RepoClear SGC Contract, the last date upon which Purchased Securities will be sold by Seller to Buyer in accordance with these RepoClear SGC Contract Terms.

"Opening Cash Amount" means the cash amount identified in the Economic Terms as set out paragraph 1 below.

"Purchased Securities" means, on any SGC Day, Eligible Securities transferable by Seller to Buyer on that SGC Day under these RepoClear SGC Contract Terms.

"RepoClear Procedures" means the part of the Rulebook of the Clearing House that contains provisions in respect of RepoClear SGC Contracts.

¹⁰ Please note that only Sections 2.5(c) and 2.5(d) of the RepoClear SGC Contract Terms are BAU Netting Provisions

"RepoClear SGC Contract" means a RepoClear SGC Contract between Buyer and Seller on the RepoClear SGC Contract Terms and references to "this RepoClear SGC Contract" are to the particular RepoClear SGC Contract in question.

"Return Amount" means a cash amount which is equivalent in value to, and in the same currency as, the Opening Cash Amount.

"SGC Basket" means the issues of securities published by the Clearing House from time to time in accordance with the RepoClear Procedures which, together, comprise a basket of securities.

"SGC Cut-Off Time" means such time on each SGC day as is set out in the RepoClear Procedures (as the time after which on that day no further Eligible SGC Trades will be accepted by the Clearing House for registration which are to be settled on the same SGC day).

"SGC Day" means any day of the Term on which the RepoClear SGC Service operates.

"Start Date" means the SGC Day being the first day upon which Purchased Securities will be sold by Seller to Buyer as stated in the Economic Terms and in accordance with these RepoClear SGC Contract Terms.

"Term" means the interval of time commencing on and including the Start Date and ending on and including the Last SGC Date.

"Underlying SGC Basket" means the SGC Basket identified in the Economic Terms of a RepoClear SGC Contract.

1. Economic Terms

In relation to this RepoClear SGC Contract, the terms in (a) to (h) below (the "Economic Terms") will (i) where this RepoClear SGC Contract is dealt with through an Approved Trade Matching System, be derived from the information presented by the RepoClear Participants to the Clearing House for registration, and (ii) where this RepoClear SGC Contract is dealt with through an Automated Trading System, be derived from the information input by the RepoClear Participants and matched by or in accordance with the rules and procedures of such Automated Trading System.

The Economic Terms comprise details of:

- (a) Buyer;
- (b) Seller;
- (c) Underlying SGC Basket (identified by ISIN);
- (d) Trade date and time;
- (e) Start Date;
- (f) End Date;
- (g) Opening Cash Amount;
- (h) Closing Cash Amount;

PROVIDED, however, that, when such information presented or input (as the case may be) by any RepoClear Participants specifies such RepoClear Participant as (i) Buyer under a contract, with the other party as Seller, the Clearing House will be Seller under the RepoClear SGC Contract; and (ii) Seller under a contract, with the other party as Buyer, the Clearing House will be Buyer under the RepoClear SGC Contract.

2. Standard Terms

- 2.1 RepoClear SGC Contracts shall arise in accordance with the Rulebook and shall be on these RepoClear SGC Contract Terms.

Allocation of Eligible Securities

2.2 On each SGC Day of this RepoClear SGC Contract, Seller agrees that Purchased Securities shall be allocated from the Underlying SGC Basket in accordance with the terms of this RepoClear SGC Contract and the RepoClear Procedures. Purchased Securities may be allocated from more than one issue of securities in the Underlying SGC Basket. Following the application of paragraph 2.5, the value of Daily Purchased Securities to be allocated on any SGC Day shall be equal to the Daily Cash Amount (subject to any minor discrepancies in value attributable to allocation methodologies as contemplated within the RepoClear Procedures from time to time).

2.3 [].

Transfer of Securities and Cash

2.4 Subject to paragraph 2.5 below:

- (a) on the Start Date and each subsequent SGC Day, Seller shall transfer Purchased Securities to Buyer against payment of the Opening Cash Amount by Buyer, in accordance with the RepoClear Procedures.
- (b) on the SGC Day immediately after the Start Date and on each subsequent SGC Day and also the End Date, Buyer shall transfer Equivalent Securities to Seller against payment of the Return Amount, in accordance with the RepoClear Procedures.

2.5 Subject to the Default Rules:

- (a) the value of Purchased Securities transferable by Seller to Buyer under this RepoClear SGC Contract on any SGC Day and the value of Purchased Securities transferable by either party to the other under any other open RepoClear SGC Contract relating to the same Underlying SGC Basket on the same day shall be combined into a single calculation of a net value of securities of that SGC Basket transferable by one party to the other and the obligation to transfer securities of that net value and of that SGC Basket (the "**Daily Purchased Securities**") through the CREST DBV System on that day shall be the only obligation of either party in respect of all Purchased Securities so transferable and receivable on that day;
- (b) the Equivalent Securities transferable by Buyer to Seller under this RepoClear SGC Contract on any day and the Equivalent Securities transferable by either party to the other under any other open RepoClear SGC Contract relating to the same Underlying SGC Basket on the same day shall be replaced by a single obligation by one party (the "**delivering party**") to transfer on that day to the other party (the "**receiving party**") through the CREST DBV System securities equivalent to the Daily Purchased Securities that were transferred on the previous SGC Day by the receiving party to the delivering party (the "**Daily Equivalent Securities**"), and that obligation to transfer the Daily Equivalent Securities shall be the only obligation of either party in respect of all Equivalent Securities so transferable and receivable on that day;
- (c) the Opening Cash Amount transferable by Buyer to Seller under this RepoClear SGC Contract on any SGC Day and any Opening Cash Amount transferable by either party to the other under any other open RepoClear SGC Contract on the same day shall be combined in a single calculation of a net cash amount ("**the Daily Cash Amount**") transferable by one party to the other and the obligation to transfer the Daily Cash Amount shall be the only obligation of either party in respect of all Opening Cash Amounts so transferable and receivable on that day;

(d) the Return Amount transferable by Seller to Buyer under this RepoClear SGC Contract on any day and any Return Amount transferable by either party to the other under any other open RepoClear SGC Contract on the same day shall be replaced by a single net obligation by one party (the "**paying party**") to transfer to the other party (the "**receiving party**") on that day cash equivalent in amount to, and of the same currency as, the Daily Cash Amount that was transferred on the previous SGC Day by the receiving party to the paying party ("**the Daily Return Amount**"), and that obligation to transfer the Daily Return Amount shall be the only obligation of either party in respect of all Return Amounts so transferable and receivable on that day;

PROVIDED ALWAYS THAT any obligation of a party to transfer any Daily Cash Amount shall not be combined with any obligation of a party to transfer any Daily Return Amount arising on the same day and payment of such Daily Cash Amount shall be made gross and separate from such Daily Return Amount in accordance with the RepoClear Procedures.

Terminology

2.6 Notwithstanding the use of expressions such as "margin", "Equivalent Securities", "Opening Cash Amount", "Purchased Securities", "Daily Cash Amount", "Daily Return Amount", "Daily Purchased Securities" and "Daily Equivalent Securities" which are used to reflect terminology used in the market for transactions of the kinds provided for in these RepoClear SGC Contract Terms, all right, title and interest in and to Daily Purchased Securities, Daily Cash Amount and Daily Return Amount transferred or paid under these RepoClear SGC Contract Terms and, all right, title and interest in Daily Equivalent Securities, shall pass to the transferee on transfer or payment, and the obligation of the party receiving Daily Purchased Securities on any SGC Day shall be an obligation to transfer Daily Equivalent Securities on the next following day, at such time as is set out in the RepoClear Procedures.

Interest

2.7 Seller shall pay the Interest to Buyer on the End Date in accordance with these RepoClear SGC Contract Terms and the RepoClear Procedures.

2.8 Subject to the Default Rules, Interest payable under this RepoClear SGC Contract and Interest payable by either party to the other under any other RepoClear SGC Contract with the same End Date shall be combined in a single calculation of a net cash amount payable by one party to the other and the obligation to pay that sum shall be the only obligation of either party in respect of those amounts.

Payment and Transfer

2.9 Each of the following insofar as it is applicable to this RepoClear SGC Contract, shall be paid or transferred in accordance with the provisions set out in the RepoClear Procedures: Daily Purchased Securities; Daily Equivalent Securities; Daily Cash Amount; Daily Return Amount; Interest.

2.10 In accordance with the RepoClear Procedures, either party may appoint another person to make any payments and to make any transfers of securities on its behalf. Notwithstanding any such appointment, each of the parties agrees that it shall remain liable under this RepoClear SGC Contract as principal.

2.11 The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Purchased Securities, and in any Equivalent Securities, shall pass to the party to which transfer is being made upon transfer of the same in accordance with these Standard Terms, free from all liens, claims, charges and encumbrances.

3. General

Margin Maintenance

3.1 The provisions set out in the General Regulations and the Procedures in relation to margin and cover for margin shall be applicable to this RepoClear SGC Contract. Any cover for variation margin liability will be in the form of cash only.

Withholding Tax Provisions

3.2 All money payable by a RepoClear Clearing Member to the Clearing House in respect of this RepoClear SGC Contract shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having the power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, the RepoClear Clearing Member shall pay such additional amounts as will result in the net amounts receivable by the Clearing House (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

3.3 All money payable by the Clearing House to a RepoClear Clearing Member in respect of this RepoClear SGC Contract shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having the power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, the Clearing House shall pay such additional amounts as will result in the net amounts receivable by the RepoClear Clearing Member (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted; PROVIDED, however, that the Clearing House shall only be under an obligation to pay such additional amounts to the extent that the Clearing House determines, in its sole and absolute discretion, that it is entitled to recover the amount payable by it from a RepoClear Clearing Member in respect of any related RepoClear SGC Contract.

Regulations

3.4 This RepoClear SGC Contract shall be subject to the Regulations, which shall form a part of its terms.

Governing Law

3.5 This RepoClear SGC Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

Third Party Rights

3.6 A person who is not a party to this RepoClear SGC Contract shall have no rights under or in respect of it. Rights of third parties to enforce any terms of his RepoClear SGC Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

RepoClear €GC Contract Terms¹¹

Where a RepoClear €GC Contract arises between the Clearing House and a RepoClear Clearing Member pursuant to the Regulations and the terms of any agreement entered into between them, the terms of such RepoClear €GC Contract shall include these REPOCLEAR €GC CONTRACT TERMS, which shall comprise:

- (1) Interpretation section;
- (2) Economic Terms; and
- (3) Standard Term.

Interpretation Section

Save as otherwise specified herein, words and phrases defined elsewhere in this Rulebook shall have the same meanings in these RepoClear €GC Contract Terms.

In the event of any inconsistency between these RepoClear €GC Contract Terms and the Rulebook, the Rulebook will prevail, unless expressly otherwise specified.

As used in these RepoClear €GC Contract Terms:

“AutoAssign Supplement” means the CBL arrangement outlining services facilitating selection of securities for €GC Contracts.

“AutoSelect” means the Euroclear electronic processing module facilitating the selection of securities for €GC Contracts.

“CBL” means Clearstream Banking Limited.

“Closing Cash Amount” means the cash amount identified in the Economic Terms as set out in paragraph 1 below.

“Daily Cash Amount” means, on any €GC Day, the net cash amount payable by either party to the other, calculated under paragraph 2.4(c).

“Daily Equivalent Securities” means, on any day, the net securities transferable by either party to the other, calculated under paragraph 2.4(b).

“Daily Purchased Securities” means, on any €GC Day, the net securities transferable by either party to the other, calculated under paragraph 2.4(a).

“Daily Return Amount” means, on any €GC Day, the net cash amount payable by either party to the other, calculated under paragraph 2.4(d).

“Eligible €GC Basket” means a €GC Basket which appears in the list containing details of all Eligible €GC Baskets published for this purpose from time to time by the Clearing House.

“Eligible €GC Trade” means a RepoClear €GC Transaction or €GC Trade, as applicable.

“Eligible Securities” means securities of any issue of securities comprised in a €GC Basket.

“End Date” means the last day upon which Equivalent Securities will be delivered by the Buyer to the Seller in accordance with these RepoClear €GC Contract Terms, as stated in the Economic Terms.

“Equivalent Securities” means, on any day, securities equivalent to the Purchased Securities that were transferred by Seller to Buyer on the immediate preceding €GC Day.

Securities are **“equivalent to”** other securities for the purposes of these RepoClear €GC Contract Terms if they are: (i) of the same issuer; (ii) part of the same issue; and (iii) of an identical type, nominal value, description and (except where otherwise stated) amount as those other securities.

“Euroclear” means Euroclear Bank.

“€GC Basket” means the issues of securities recognised by the Clearing House in accordance with the RepoClear Procedures which, together, comprise each basket of securities as set out in Part H of the Schedule to the RepoClear Regulations.

¹¹ Please note that only Sections 2.4(c) and 2.4(d) of the RepoClear €GC Contract Terms are BAU Netting Provisions

“€GC Cut-Off Time” means such time on each €GC day as is set out in the RepoClear Procedures (as the time after which on that day no further Eligible €GC Trades will be accepted by the Clearing House for registration which are to be settled on the same €GC day).

“€GC Day” means any day of the Term on which the RepoClear €GC service operates.

“Euro Zone Countries” means the countries which are member states of the European Union who have adopted the euro currency union.

“Interest” means with regard to this RepoClear €GC Contract, the amount obtained by deducting the Opening Cash Amount from the Closing Cash Amount.

“Last €GC Date” means, with regard to this RepoClear €GC Contract, the last date upon which Purchased Securities will be sold by Seller to Buyer in accordance with these RepoClear €GC Contract Terms.

“Opening Cash Amount” means the cash amount identified in the Economic Terms as set out in paragraph 1 below.

“Purchased Securities” means on any €GC Day, Eligible Securities transferable by Seller to Buyer on that €GC Day under these RepoClear €GC Contract Terms.

“RepoClear Procedures” means the part of the Rulebook of the Clearing House that contains provisions in respect of RepoClear €GC Contracts.

“RepoClear €GC Contract” means a RepoClear €GC Contract between Buyer and Seller on these RepoClear €GC Contract Terms and references to “this RepoClear €GC Contract” are to the particular RepoClear €GC Contract in question.

“Return Amount” means a cash amount which is equivalent in value to, and in the same currency as, the Opening Cash Amount.

“Start Date” means the €GC Day being the first day upon which Purchased Securities will be sold by Seller to Buyer as stated in the Economic Terms and in accordance with these RepoClear €GC Contract Terms.

“Triparty Agent” means CBL, Euroclear or any other agent as the Clearing House may appoint from time to time.

“Term” means the interval of time commencing on and including the Start Date and ending on and including the Last €GC Date.

“Underlying €GC Basket” means the €GC Basket identified in the Economic Terms of a RepoClear €GC Contract.

1. Economic Terms

In relation to this RepoClear €GC Contract, the terms in (a) to (g) below (the “Economic Terms”) will (i) where this RepoClear €GC Contract is dealt with through an Approved Trade Matching System, be derived from the information presented by the RepoClear Participants to the Clearing House for registration, and (ii) where this RepoClear €GC Contract is dealt with through an Automated Trading System, be derived from the information input by the RepoClear Participants and matched by or in accordance with the rules and procedures of such Automated Trading System.

The Economic Terms comprise details of:

- (a) Buyer;
- (b) Seller;
- (c) Underlying €GC Basket (identified by ISIN);
- (d) Trade date and time;
- (e) Start Date;
- (f) End Date;
- (g) Opening Cash Amount;

(h) Closing Cash Amount;

PROVIDED, however, that, when such information presented or input (as the case may be) by any RepoClear Participants specifies such RepoClear Participant as (i) Buyer under a contract, with the other party as Seller, the Clearing House will be Seller under the RepoClear €GC Contract; and (ii) Seller under a contract, with the other party as Buyer, the Clearing House will be Buyer under the RepoClear €GC Contract.

2. Standard Terms

2.1 RepoClear €GC Contracts shall arise in accordance with the Rulebook and shall be on these RepoClear €GC Contract Terms.

Allocation of Eligible Securities

2.2 On each €GC Day of this RepoClear €GC Contract, Seller agrees that Purchased Securities shall be allocated from the Underlying €GC Basket in accordance with the terms of this RepoClear €GC Contract and the RepoClear Procedures. Purchased Securities may be allocated from more than one issue of securities in the Underlying €GC Basket. Following the application of paragraph 2.4, the value of Daily Purchased Securities to be allocated on any €GC Day shall be equal to the Daily Cash Amount (subject to any discrepancies in value attributable to allocation methodologies as contemplated within the RepoClear Procedures from time to time).

Transfer of Securities and Cash

2.3 Subject to paragraph 2.4 below:

- (a) on the Start Date and each subsequent €GC Day, Seller shall transfer Purchased Securities to Buyer against payment of the Opening Cash Amount by Buyer, in accordance with the RepoClear Procedures;
- (b) on the €GC Day immediately after the Start Date and on each subsequent €GC Day and also the End Date, Buyer shall transfer Equivalent Securities to Seller against payment of the Return Amount, in accordance with the RepoClear Procedures.

2.4 Subject to the Default Rules:

- (a) the value of Purchased Securities transferable by Seller to Buyer under this RepoClear €GC Contract on any €GC Day and the value of Purchased Securities transferable by either party to the other under any other open RepoClear €GC Contract relating to the same Underlying €GC Basket on the same day shall be combined into a single calculation of a net value of securities of that €GC Basket transferable by one party to the other and the obligation to transfer securities of that net value and of that €GC Basket (the "**Daily Purchased Securities**") through either CBL's service under the AutoAssign Supplement, Euroclear's AutoSelect service or any other equivalent service provided by a Triparty Agent, as the case may be, on that day shall be the only obligation of either party in respect of all Purchased Securities in relation to that €GC Basket so transferable and receivable on that day;
- (b) the Equivalent Securities transferable by Buyer to Seller under this RepoClear €GC Contract on any day and the Equivalent Securities transferable by either party to the other under any other open RepoClear €GC Contract relating to the same Underlying €GC Basket on the same day shall be replaced by a single obligation by one party (the "**delivering party**") to transfer on that day to the other party (the "**receiving party**") in the same manner as set out above at 2.4(a) securities equivalent to the Daily Purchased Securities that were transferred on the previous €GC Day by the receiving party to the

delivering party (the "**Daily Equivalent Securities**"), and that obligation to transfer the Daily Equivalent Securities shall be the only obligation of either party in respect of all Equivalent Securities in relation to that €GC Basket so transferable and receivable on that day;

- (c) the Opening Cash Amount transferable by Buyer to Seller under this RepoClear €GC Contract on any €GC Day and any Opening Cash Amount transferable by either party to the other under any other open RepoClear €GC Contract in relation to the same Underlying €GC Basket on the same day shall be combined in a single calculation of a net cash amount ("**the Daily Cash Amount**") transferable by one party to the other and the obligation to transfer the Daily Cash Amount shall be the only obligation of either party in respect of all Opening Cash Amounts in relation to the same Underlying €GC Basket so transferable and receivable on that day;
- (d) the Return Amount transferable by Seller to Buyer under this RepoClear €GC Contract on any day and any Return Amount transferable by either party to the other under any other open RepoClear €GC Contract in relation to the same Underlying €GC Basket on the same day shall be replaced by a single net obligation by one party (the "**paying party**") to transfer to the other party (the "**receiving party**") on that day cash equivalent in amount to, and of the same currency as, the Daily Cash Amount that was transferred on the previous €GC Day by the receiving party to the paying party ("**the Daily Return Amount**"), and that obligation to transfer the Daily Return Amount shall be the only obligation of either party in respect of all Return Amounts in relation to the same Underlying €GC Basket so transferable and receivable on that day;

PROVIDED ALWAYS THAT any obligation of a party to transfer any Daily Cash Amount shall not be combined with any obligation of a party to transfer any Daily Return Amount arising on the same day and payment of such Daily Cash Amount shall be made gross and separate from such Daily Return Amount in accordance with the RepoClear Procedures.

Terminology

2.5 Notwithstanding the use of expressions such as "margin", "Equivalent Securities", "Opening Cash Amount", "Purchased Securities", "Daily Cash Amount", "Daily Return Amount", "Daily Purchased Securities" and "Daily Equivalent Securities" which are used to reflect terminology used in the market for transactions of the kinds provided for in these RepoClear €GC Contract Terms, all right, title and interest in and to Daily Purchased Securities, Daily Cash Amount and Daily Return Amount transferred or paid under these RepoClear €GC Contract Terms and, all right, title and interest in Daily Equivalent Securities, shall pass to the transferee on transfer or payment, and the obligation of the party receiving Daily Purchased Securities on any €GC Day shall be an obligation to transfer Daily Equivalent Securities on the next following day, at such time as is set out in the RepoClear Procedures.

Interest

2.6 Seller shall pay the Interest to Buyer on the End Date in accordance with these RepoClear €GC Contract Terms and the RepoClear Procedures.

2.7 Subject to the Default Rules, Interest payable under this RepoClear €GC Contract and Interest payable by either party to the other under any other RepoClear €GC Contract with the same End Date and settled through the same Triparty Agent shall be combined in a single calculation of a net cash amount payable by one party to the other and the obligation to pay that sum shall be the only obligation of either party in respect of those amounts.

Payment and Transfer

2.8 Each of the following, insofar as it is applicable to this RepoClear €GC Contract, shall be paid or transferred in accordance with the provisions set out in the RepoClear Procedures: Daily

Purchased Securities; Daily Equivalent Securities; Daily Cash Amount; Daily Return Amount; Interest.

2.9 In accordance with the RepoClear Procedures, either party may appoint another person to make any payments and to make any transfers of securities on its behalf. Notwithstanding any such appointment, each of the parties agrees that it shall remain liable under this RepoClear €GC Contract as principal.

2.10 The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any Purchased Securities and in any Equivalent Securities shall pass to the party to which transfer is being made upon transfer of the same in accordance with these Standard Terms, free from all liens, claims, charges and encumbrances.

3. General

Margin Maintenance

3.1 The provisions set out in the General Regulations and the Procedures in relation to margin and cover for margin shall be applicable to this RepoClear €GC Contract. Any cover for variation margin liability will be in the form of cash only denominated in Euro.

Withholding Tax Provisions

3.2 All money payable by a RepoClear Clearing Member to the Clearing House in respect of this RepoClear €GC Contract shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having the power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, the RepoClear Clearing Member shall pay such additional amounts as will result in the net amounts receivable by the Clearing House (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

3.3 All money payable by the Clearing House to a RepoClear Clearing Member in respect of this RepoClear €GC Contract shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having the power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, the Clearing House shall pay such additional amounts as will result in the net amounts receivable by the RepoClear Clearing Member (after taking account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted; PROVIDED, however, that the Clearing House shall only be under an obligation to pay such additional amounts to the extent that the Clearing House determines, in its sole and absolute discretion, that it is entitled to recover the amount payable by it from a RepoClear Clearing Member in respect of any related RepoClear €GC Contract.

Regulations

3.4 This RepoClear €GC Contract shall be subject to the Regulations, which shall form a part of its terms.

Governing Law

3.5 This RepoClear €GC Contract shall be governed by, and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

Third Party Rights

3.6 A person who is not a party to this RepoClear €GC Contract shall have no rights under or in respect of it. Rights of third parties to enforce any terms of his RepoClear €GC Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

Part 2**CCP Default Netting Provisions*****Regulation 5 Accounts***

(i) If a Member specifies a Termination Date under Regulation 39A, the Member shall be entitled to set off any or all amounts (whether present or future, liquidated or unliquidated, actual or contingent) due as between the Clearing House and the Member.

Regulation 39A Netting

(a) If at any time the Clearing House fails to make a payment to a Member, other than a defaulter, under a Contract for a period of 30 days from the date when the obligation to pay fell due then that Member may exercise its rights under paragraph (c) below.

(b) If at any time the Clearing House commences a voluntary case or other procedure seeking or proposing liquidation, administration, receivership, voluntary arrangement or a scheme of arrangement, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing cases or procedures is commenced in relation to the Clearing House by any other person which results in liquidation or winding up of the Clearing House, or if the Clearing House takes corporate action to authorise any of the foregoing, in any such case other than for the purposes of corporate restructuring (including any consolidation, amalgamation or merger), then a Member, other than a defaulter, may exercise the right given to it under paragraph (c) below.

(c) A Member entitled to exercise rights under this paragraph may, at any time whilst any of the circumstances referred to in paragraph Regulation 39A or (b) giving rise to such rights continue, by notice in writing to the Clearing House, specify a Termination Date for the termination and liquidation of all Contracts to which it is a party in accordance with paragraph (d) below.

(d) Upon the occurrence of a Termination Date:

(i) neither the Clearing House nor the Member shall be obliged to make any further payments or deliveries under any Contract between them which would, but for this Regulation 39A, have fallen due for performance on or after the Termination Date, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Termination Amount;

(ii) the Member shall (on, or as soon as reasonably practicable after, the Termination Date) determine (discounting if appropriate) in respect of each Contract its total loss or, as the case may be, gain, in each case expressed in the lawful currency of the United Kingdom (the "Base Currency"), (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, 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), as a result of the termination, pursuant to this agreement, of each payment or delivery which would otherwise have been required to be made under

such Contract (assuming satisfaction of each applicable condition precedent and having due regard to, if appropriate, such market quotations published on, or official settlement prices set by, a relevant exchange or clearing organisation, as may be available on, or immediately preceding, the date of calculation); and

(iii) the Member shall treat each loss to it, determined as above, as a positive amount and each gain by it, so determined, as a negative amount and, subject to paragraph (iv), shall aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency (the "Termination Amount").

(iv) Where a Member has a house and one or more client accounts:

(1) the Member shall determine two net amounts under paragraph (d)(iii); one net amount in respect of gains and losses arising on Contracts registered in the Member's client account (or client accounts as combined) and a second net amount in respect of gains and losses arising on all other Contracts; and

(2) the two net amounts determined under paragraph (iv)(1) shall constitute Termination Amounts.

(v) If a Termination Amount determined pursuant to paragraph (d) or (iv) above is a positive amount, the Clearing House shall pay it to the Member and if any such Termination Amount is a negative amount, the Member shall pay it to the Clearing House, in either case in accordance with paragraph (vi). The Member shall notify the Clearing House of each such Termination Amount, and by which party it is payable, immediately after the calculation thereof.

(vi) A Termination Amount shall, subject to Regulation 39B, be paid in the Base Currency by the close of business on the business day following notification pursuant to paragraph (v) 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, the Clearing House). Any Termination Amount which is not paid on such day shall bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11:00 hours (London time) (or, if no such rate is available, at such reasonable rate as the Member may select) plus 1% per annum, for each day for which any such sum remains unpaid.

(vii) For the purposes of any calculation required to be made under this Regulation, the Member may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

The Member's rights under this Regulation 39A shall be in addition to, and not in limitation or exclusion of, any other rights which the Member may have (whether by agreement, operation of law or otherwise, including its rights under Regulation 5(i)).

Part 3**Member Default Netting Provisions***Default Rule 6*

The steps which may be taken by the Clearing House under Rule 3 in respect of the defaulter or otherwise are:

- (a) to register an original contract or an FCM Transaction (as the case may be) in the name of the defaulter or to decline to register an original contract or an FCM Transaction (as the case may be) in the name of the defaulter or otherwise to exercise the Clearing House's discretion with regard to the defaulter under Regulation 9(c) or, in the case of an FCM Clearing Member, FCM Regulations 30(i) and 40(h);
- (b) to effect a closing-out in respect of an open contract of the defaulter (whether by the entering into of a closing-out contract or otherwise) and at the option of the Clearing House to settle such contracts or to effect the transfer or termination, close-out and cash-settlement of an open contract of the defaulter by applying a price determined by the Clearing House in its discretion;
- (c) to settle any open contract of which settlement might have been requested by the defaulter pursuant to Regulation 15(e) or 16;
- (d) to invoice a Contract, other than a SwapClear Contract, an FCM SwapClear Contract, a ForexClear Contract, an FCM ForexClear Contract, a RepoClear Contract or a RepoClear GC Contract (a RepoClear Contract or RepoClear GC Contract being a "Fixed Income Contract"), of the defaulter back by way of compulsory settlement in accordance with Regulation 28 at a price or premium determined under paragraph (d) of that Regulation;
- (e) to sell any security deposited by the defaulter pursuant to Regulation 12 or, in the case of a defaulter who is an FCM Clearing Member, FCM Regulation 9, or any agreement made between the defaulter and the Clearing House by public or private sale for account of the defaulter without being obliged to obtain the defaulter's consent or any order of a court of law, and to appoint any person to execute any document for such purpose in the name and on behalf of the defaulter;
- (f) subject to the Procedures, to exercise an option of the defaulter on its behalf notwithstanding that such exercise may take place on a day which is not a day prescribed for such exercise by any relevant Exchange Rules;
- (g) to transfer an open contract of the defaulter to the account of another Clearing Member or to close-out and terminate such open contract and re-establish it with another Clearing Member, being a Clearing Member entitled and willing to have such open contract registered in its name or to transfer an open contract from the account of another Clearing Member to the account of the defaulter for the purposes of closing out an open contract registered in an account of the defaulter or for any other reason which the Clearing House considers appropriate in the circumstances without requiring the consent of any relevant Exchange;

- (h) to take such steps as may be desirable, including crediting or debiting of accounts (including margin accounts), entry into new contracts, transfer of existing contracts, reversal of contracts, or termination, close-out and re-establishment of contracts, or any other step, to preserve as far as possible the position of any client of the Clearing Member. Where an open contract is transferred or closed-out, terminated, and re-established under paragraph (g), without requiring the consent of the relevant Exchange, to transfer (whether by way of transfer or by way of termination, close-out and re-establishment of positions) to the Clearing Member to whom the open contract is transferred (or with whom the replacement open contract is re-established) such cover held as security for the defaulter's obligations to the Clearing House on that account as the Clearing House may deem appropriate;
- (i) tender or receive a tender in the defaulter's name;
- (j) to perform an open contract subject to tender or a delivery contract by either delivery of or accepting delivery of the commodity the subject of such contract to or from, as the case may be, the defaulter, its agent or a third party in any manner permitted by the terms of the Contract and the Exchange Rules (if any);
- (k) where the defaulter is party to an open contract subject to tender, to declare the defaulter's rights and liabilities in respect of performance thereof discharged, whereupon the provisions of Rule 7 shall apply to the defaulter in respect of the open contract;
- (l) to make or procure the making of one or more contracts, including (without limitation) original contracts for the purpose of hedging market risk to which the defaulter is exposed, and to register the same in the defaulter's name under the Regulations or the FCM Regulations (as the case may be);
- (m) to make or procure the making of one or more contracts, whether or not in the terms of exchange contracts, for the sale, purchase or other disposition of a commodity, and to register the same in the defaulter's name under the Regulations;
- (n) to designate a currency as a currency of account, and at the defaulter's expense to convert any sum payable by or to the defaulter in another currency into the currency of account;
- (o) to take any step which in the circumstances is open to the Clearing House under any applicable Exchange Rules including, without limitation, to transfer (whether by way of transfer or by way of termination, close-out and re-establishment) an open contract of the defaulter to a Participating Exchange to be registered at the Participating Exchange in accordance with its rules;
- (p) without prejudice to any other right of the Clearing House under the Regulations, to take such action as the Clearing House may deem necessary for its protection in the name and at the expense of the defaulter with regard to any open contract standing in its name;
- (q) in respect of Contracts standing in the defaulter's name, to charge to its account the amount (or, if the amount is not finally known, the estimated amount) of any expenses incurred by the Clearing House with regard to or in consequence of the circumstances mentioned in Rule 3 or the steps which are or may be taken under this Rule, the Regulations or the FCM Regulations (as the case may be) and any expenses incurred with regard thereto under Rule 11 and the amount of any losses, costs or

expenses incurred or suffered by the Clearing House referred to in paragraph (g) of Regulation 42 and any other amounts referred to in such paragraph;

- (r) any other step calculated by the Clearing House to complete the process set out in Rule 8; and
- (s) to obtain such advice or assistance, whether legal advice or otherwise, as the Clearing House may deem necessary and at the expense of the defaulter for any matter arising out of or in connection with the default,

PROVIDED that:

- (i) in the case of SwapClear Contracts, certain steps which shall be taken by the Clearing House shall be set out in the SwapClear DMP Annex to these Default Rules,
- (ii) in the case of ForexClear Contracts, certain steps which shall be taken by the Clearing House shall be set out in the ForexClear DMP Annex to these Default Rules; and
- (iii) in the case of Fixed Income Contracts, the steps which shall be taken by the Clearing House shall be set out in the RepoClear DMP Annex to these Default Rules.

Default Rule 8

Upon the discharge of the defaulter's rights and liabilities under or in respect of all Contracts to which it is party the following process shall, subject to any contrary provision in Rule 16, be completed by the Clearing House:

- (a) there shall be brought into account all sums payable:

- (i) by or to a defaulter in respect of Contracts (other than FCM Contracts); any other sum due under the Regulations; any sum due in respect of any breach of the Regulations; (except, if the Clearing House so determines at its discretion, any sum payable under a Contract as the price for the commodity the subject of such Contract delivered or to be delivered to the Clearing House by or on behalf of the defaulter); and/or any amount due from the defaulter to the Clearing House in respect of any Treasury Contract;
 - (ii) by or to a defaulter in respect of FCM Contracts; any other sum due under the FCM Regulations; and/or any sum due in respect of any breach of the FCM Regulations;

- (b) the sums so payable shall be aggregated or set off so as to produce a net sum or as many net sums as required by Rule 10;

- (c) such net sum, or each such net sum:

- (i) if payable by the defaulter to the Clearing House, shall be set off against any cover standing to the credit of the defaulter's account so as to produce a further net sum, or shall be aggregated with any debit balance of the defaulter's account, or

- (ii) if payable by the Clearing House to the defaulter, shall be aggregated with any cover standing to the credit of the defaulter's account, or shall be set off against any debit balance of the defaulter's account so as to produce a further net sum;
- (d) where an amount is payable by the Clearing House to the defaulter in respect of a balance on its Proprietary Account(s), and there are amounts due to the Clearing House in respect of any client account with LCH, including any FCM Omnibus Clearing Product Client Account with LCH (and any FCM Client Segregated Sub-Accounts therein) operated by it, the balance on the Proprietary Account(s) may be applied to meet the shortfall on the client account(s) with LCH, including any FCM Omnibus Clearing Product Client Account with LCH (and any FCM Client Segregated Sub-Accounts therein) in any way in which the Clearing House may determine;
- (e) notwithstanding anything to the contrary in the foregoing, in the case where the defaulter is an FCM Clearing Member, a net sum shall be calculated in respect of each applicable FCM Client Segregated Sub-Account, and with regards to any amount due to the Clearing House from the defaulter in respect of net sums attributable to FCM Client Segregated Sub-Accounts where there is inadequate cover (on a sub-account by sub-account basis) to fully set off such amount payable, the Clearing House shall have sole discretion with respect to the allocation of any available FCM Buffer or the reallocation of any Applied FCM Buffer in setting off any such amounts payable to the Clearing House;
- (f) in the event that the Clearing House elects to close out and liquidate FCM SwapClear Contracts attributable to FCM Clients of the defaulter (in accordance with the SwapClear DMP Annex), the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus SwapClear Client Account with LCH, in the manner set out in Section 2A.15.6 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations;
- (g) in the event that the Clearing House elects to close out and liquidate FCM ForexClear Contracts attributable to FCM Clients of the defaulter (in accordance with the ForexClear DMP Annex), the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus ForexClear Client Account with LCH, in the manner set out in Section 2B.23.6 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations; and
- (h) in the event that the Clearing House elects to close out and liquidate FCM EnClear Contracts attributable to FCM Clients of the defaulter, the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus EnClear Client Account with LCH, in the

manner set out in Section 2C.1.20 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations.

For the purposes of paragraph (a) of this Rule the Clearing House may assess the sum payable by or to the defaulter in respect of any breach of the Regulations or the FCM Regulations (as the case may be) in such reasonable manner as it thinks fit; provided, that in the case of breaches of the FCM Regulations, the assessment by the Clearing House shall not be in violation of the CFTC Regulations (including Part 22 thereof).

With respect to any Unallocated Excess deposited in the Unallocated Excess Sub-Account of the defaulter, the Clearing House shall not be permitted to apply any such Unallocated Excess to the obligations of the defaulter to the Clearing House (on behalf of the defaulter's FCM Clients or otherwise) or take any such Unallocated Excess into account for purposes of determining net sums under this Rule 8, except to the extent required by applicable law or directed by the applicable bankruptcy trustee or Regulatory Body in accordance with applicable law.

Default Rule 10

(a) Where the defaulter has more than one account with the Clearing House, the defaulter's accounts shall be combined for the purpose of Rules 8 and 9 as follows:

- (i) no account which is an FCM Client Segregated Sub-Account of an FCM Client may be combined with any other account, including any FCM Client Segregated Sub-Account of another FCM Client, any FCM Omnibus Clearing Product Client Account with LCH or any Proprietary Account; provided, that in the event that an FCM Client were to have two FCM Client Segregated Sub-Accounts with the same defaulter, and both such accounts cleared the same Product, then such FCM Client Segregated Sub-Accounts may be combined;
- (ii) no account which is an FCM Omnibus Clearing Product Client Account with LCH of the defaulter may be combined with any other account, including any other FCM Omnibus Clearing Product Client Account with LCH or any Proprietary Account, except as provided in paragraph (iii) below;
- (iii) an account which is a Proprietary Account of the defaulter may be combined with any other Proprietary Accounts of the defaulter and (if the Clearing House so elects) Treasury Accounts of the defaulter (subject to Rule 8(d) and 10(d) of the Default Rules); and
- (iv) an account which is a Treasury Account of the defaulter may only be combined with other Treasury Accounts and (if the Clearing House so elects) Proprietary Accounts of the defaulter.

Notwithstanding the foregoing, in no circumstances may an account which is an Individual Segregated Account of the defaulter or an Omnibus Net Segregated Account of the defaulter be combined with any other account of the defaulter.

(b) For the purposes of this Rule 10, each Individual Segregated Account of the defaulter, each Omnibus Net Segregated Account of the defaulter and the FCM Client Segregated Sub-Account(s) of a particular FCM Client within a particular FCM Omnibus Clearing Product Client Account with LCH of the defaulter shall

constitute a separate "kind of account". Where the defaulter has more than one kind of account with the Clearing House, the process set out in Rule 8 shall be separately completed in respect of each kind of account. In the case of each kind of account of the defaulter which is not an Omnibus Net Segregated Account, the sum finally payable in respect of that kind of account following completion of the process set out in Rule 8 shall be separately certified under Rule 9. In the case of each kind of account of the defaulter which is an Omnibus Net Segregated Account, the sum finally payable in respect of that kind of account following completion of the process set out in Rule 8 will be allocated by the Clearing House (pro rata as it sees fit in its sole discretion) between the Omnibus Net Segregated Clearing Clients sharing in that Omnibus Net Segregated Account. Each sum so allocated to an Omnibus Net Segregated Clearing Client shall be separately certified under Rule 9.

(c) In Rule 8(c) the "defaulter's account" means:

- (i) with regard to a net sum produced by reference to Contracts registered in an Individual Segregated Account of the defaulter, that Individual Segregated Account;
- (ii) with regard to a net sum produced by reference to Contracts registered in an Omnibus Net Segregated Account of the defaulter, that Omnibus Net Segregated Account;
- (iii) with regard to a net sum produced by reference to FCM SwapClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM SwapClear Contracts) combined;
- (iv) with regard to a net sum produced by reference to FCM ForexClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM ForexClear Contracts) combined;
- (v) with regard to a net sum produced by reference to FCM EnClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM EnClear Contracts) combined;
- (vi) with regard to a net sum produced by reference to Contracts registered in one or more Proprietary Accounts of the defaulter, that Proprietary Account or those Proprietary Accounts combined and (if the Clearing House has elected in accordance with Rule 10(a)) any Treasury Accounts of the defaulter; and
- (vii) with regard to a net sum produced by reference to one or more Treasury Accounts of the defaulter, that Treasury Account or those Treasury Accounts combined, and (if the Clearing House has elected in accordance with Rule 10(a)) Proprietary Accounts.

(d) Notwithstanding any provision of the Rulebook to the contrary, any loss which relates to a Treasury Account may not be treated as a Default Loss (as defined in Rule 23(b)), whether or not cover has been applied in respect of such loss. Nothing in this Rule 10(d) requires the Clearing House to apply cover in

respect of any such loss instead of any other amount referred to in Rule 8(a), except that the Clearing House may not apply cover in respect of any such loss to the extent that doing so would give rise to an Excess Loss (as defined in Rule 15).

Annex B
Rules and CCP Documentation

Applicable Amounts	BAU Netting Provisions	Member Default Netting Provisions	CCP Default Netting Rules
Cash amounts of individual repos and reverse repos	Section 2.1(d) of the RepoClear Contract Terms Sections 2.4(c) and (d) of the RepoClear Contract Terms Sections 2.5(c) and (d) of the RepoClear SGC Contract Terms	Default Rule 6 Default Rule 8 Default Rule 10	Regulation 39A and Regulation 5(i)