

# SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) LCH

Date: 16 August, 2012

**IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.**

**ORGANIZATION** LCH.Clearnet Limited

**FILING AS A:**  DCM  SEF  DCO  SDR   
ECM/SPDC

## TYPE OF FILING

### • Rules and Rule Amendments

- Certification under § 40.6 (a) or § 41.24 (a)
- “Non-Material Agricultural Rule Change” under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

### • Products

- Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

## RULE NUMBERS

General Regulations - Definitions, Rule 50 and Rule 52B  
Clearing House Procedures – Appendices 2C.I and 2C.J, typographical corrections throughout

## DESCRIPTION

Amendments to LCH.Clearnet Limited’s Rules and Regulations to clarify Netting Procedures at General Regulation 50, to reflect updated versions of Deed of Assignments and to clarify fees with respect to LCH.Clearnet Limited’s SwapClear service.

**SUBMISSION OF AMENDMENTS TO THE CLEARINGHOUSE RULES**

TO THE

**COMMODITY FUTURES TRADING COMMISSION**

SUBMITTED BY

**LCH.Clearnet Limited**

an English limited company

**FILING AS A REGISTERED DERIVATIVES CLEARING ORGANIZATION**

Pursuant to Commission Regulation § 40.6

**Submission of Amendments to the Clearing House Rules and  
Regulations:**

- **Clearing House General Regulations**
  - **Clearing House Procedures**

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Submitted: 16 August, 2012

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## **LCH.CLEARNET LIMITED SELF-CERTIFICATION OF AMENDMENTS TO RULES AND REGULATIONS**

LCH.Clearnet Limited (“LCH.Clearnet”), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the “CFTC”), is submitting for self-certification, pursuant to CFTC Regulation §40.6, several amendments to LCH.Clearnet’s Rulebook. The proposed rule amendments will become effective 31 August, 2012.

### **Part I: Explanation and Analysis**

#### **Introduction**

The following changes to the SwapClear service will take effect on 31 August, 2012:

- Clarification of the LCH.Clearnet’s Rules in relation to netting procedures;
- Changes to Clearing House General Regulation Definitions, 52B and Appendices 2C.I and 2C.J; and
- Clarification of fees within the LCH.Clearnet SwapClear service

#### **Clarification of LCH.Clearnet’s General Regulation 50 in relation to Settlement and Daily Revaluation of SwapClear Contracts (Netting Procedures)**

LCH.Clearnet’s Rule and Regulations will be amended at Regulation 50, attached at Exhibit A-1, to clarify that the netting procedures with regards to SwapClear Clearing Member Proprietary accounts (house) and SwapClear Clearing Member Client accounts (client) will be performed on a net basis for each, house and client account, separately.

#### **Changes to the Clearing House General Regulations Definitions, 52B and Clearing House Procedures Appendices 2C.I and 2C.J (Deed of Assignments)**

##### **Clearing House General Regulation Definitions**

LCH.Clearnet will amend the definitions of Omnibus Net Segregated Account Balance and Individual Segregated Account Balance, at Exhibit A-2, such that the calculations for establishing the Omnibus Net Segregated Account Balance and Individual Segregated Account Balance will include a subtraction of any amounts owing to the Security Trustee (to the extent there is a Security Trustee).

##### **Amended Clearing House General Regulation 52B(f)(i) (Exhibit A-3)**

LCH.Clearnet is proposing to amend the way in which the SwapClear Clearing Client Entitlement is calculated by including a subtraction of any amounts owing to the Security Trustee (to the extent there is a Security Trustee) in the calculation of the SwapClear Clearing Client Entitlement. This provision previously formed part of the Security Trustee Deed of Assignment waterfall.

##### **New Clearing House General Regulation 52B(h) (Exhibit A-3)**

The addition of General Regulation 52B(h) reflects provisions relating to the default management of SwapClear contracts related to client clearing that were previously included within the Default Management Process Agreement Amendment Agreement (“DMPAAA”).

The addition of General Regulation 52B(h) is intended to restrict LCH.Clearnet's powers of unilateral amendment in respect of General Regulation 52B, so that SwapClear Clearing Members ("SCMs") have, by way of a vote with a 50% threshold for success, some control over amendments to such provision.

#### **Clearing House Procedures Appendix 2C.I (Non-Security Trustee Deed of Assignment) (Exhibit A-4)**

LCH.Clearnet is proposing to amend Clause 4.5 to reflect that the default management process that was set out in the DMPAAA is now contained in Clearing House General Regulation 52B (in respect of SwapClear Client Business) and the SwapClear DMP Annex to the Default Rules (in respect of SwapClear House Business). Under the proposed changes, a SCM undertakes in favour of its client not to make any changes to General Regulation 52B which would change the terms of the assigned assets or the terms on which they could be dealt with following a default of the SCM, without the consent of the client. This provision in turn, limits the SCMs' voting rights under General Regulation 52B(h).

LCH.Clearnet is proposing to amend the Schedule to Appendix 2C.I, by inserting wording that already appears in the Security Trustee Deed of Assignment, which will outline the rights of an assignee following the occurrence of an Enforcement Event.

#### **Clearing House Procedures Appendix 2C.J (Security Trustee Deed of Assignment)(Exhibit A-4)**

The definition of DMPAAA will be deleted as this agreement no longer exists.

LCH.Clearnet is proposing to remove Security Trustee from the definition of Secured Parties, as it is no longer necessary for a Security Trustee to be a Secured Part under the Security Trustee Deed of Assignment. This is due to the proposed change to remove Security Trustee from the waterfall in the deed of assignment.

LCH.Clearnet is proposing to amend Schedule 1, Section 1 (Trust). Clause (a) will be deleted in light of the Security Trustee being taken out of the waterfall and no longer being a Secured Party. The previous clause (b) will become clause (a) (and is amended in light of the fact that it is now the top stage of the entitlement waterfall).

#### **Fee Clarification within the LCH.Clearnet SwapClear service**

LCH.Clearnet's SwapClear service is proposing to clarify its member clearing fee charges, with effect from 31<sup>st</sup> August, 2012.

It is proposed that a non-affiliated Clearing Member who only intends to offer client clearing services will be charged a reduced annual clearing fee of \$795,000 or £500,000, collected in equal monthly instalments of \$66,250 or £41,667. SwapClear Client Clearing Service client clearing fees will apply, and if house clearing is subsequently introduced, the Clearing Member will be moved to different tariffs as appropriate and in line with the SwapClear fee structure as outlined on LCH.Clearnet's website.

#### **Part II: Certification by LCH.Clearnet**

LCH.Clearnet certifies to the CFTC, in accordance with CFTC Regulation §40.6, that the amendments to its rules comply with the Commodity Exchange Act and the CFTC Regulations promulgated

thereunder. In addition, LCH.Clearnet certifies that LCH.Clearnet has posted a notice of pending certification with the CFTC and a copy of the submission on LCH.Clearnet's website at [http://www.lchclearnet.com/rules\\_and\\_regulations/ltd/proposed\\_rules.asp](http://www.lchclearnet.com/rules_and_regulations/ltd/proposed_rules.asp)  
A signed certification is attached to this submission as Exhibit B.

### **Part III: Compliance with Core Principles**

LCH.Clearnet complies, and will continue to comply, with all of the Core Principles.

### **Part IV: Opposing Views**

There were no opposing views expressed to LCH.Clearnet by governing board or committee members, members of LCH.Clearnet or market participants that were not incorporated into the rule.

**Exhibit A-1**  
**Clearing House General Regulation 50**  
See Attached

**Regulation 50 Settlement and Daily Revaluation of SwapClear Contracts**

- (a) The net present value of each SwapClear Contract shall be calculated by the Clearing House in such manner and at such times as may be provided in the Procedures. Except as prescribed in the Procedures, the net present value calculated by the Clearing House may in no circumstances be called in question. The Clearing House shall, at least daily, receive payment from, or pay to, the SwapClear Clearing Member cash cover for variation margin, representing the change in the net present value of the SwapClear Clearing Member's portfolio of SwapClear Contracts: (i) registered in a SwapClear Clearing Member's client account (or client accounts as combined); and (ii) registered in a SwapClear Clearing Member's Proprietary Account (each the a "SwapClear Portfolio") from the preceding business day, in accordance with the Procedures.
- (b) In respect of a SwapClear Portfolio and each Coupon Payment Date, the Clearing House shall aggregate:
- (i) the sums which would otherwise have been payable by the SwapClear Clearing Member to the Clearing House as cash cover (in respect of variation margin) on such date and the Coupon Payments due on that date; and
  - (ii) the sums which would otherwise have been payable by the Clearing House to the SwapClear Clearing Member as cash cover (in respect of variation margin) on such date and the Coupon Payments due on that date,

and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party then the obligations of each party under this Regulation 50 shall be automatically satisfied and discharged on payment by the party by whom the larger aggregate amount would have been payable to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

**Exhibit A-2**  
**Clearing House General Regulation Definitions**  
See Attached



## Segregated Account Business.

*Individual Segregated Account Balance*

- Means, in respect of an Individual Segregated Account Clearing Client, the sum of ~~-(1)~~(i) the Required Collateral attributed by the Clearing House in accordance with its rules and procedures to that client; (ii) the Excess Collateral attributed by the Clearing House in accordance with its rules and procedures to that client; and (iii) the Additional Collateral held in the Additional Collateral Account in respect of that client minus (2) in respect of any Individual Segregated Account Clearing Client in respect of whom the Clearing House acts as security trustee under a Deed of Assignment, that client's share (if any) of amounts required to discharge fees incurred by the security trustee (acting in that capacity) allocated between that SwapClear Clearing Client and the other SwapClear Clearing Clients in respect of whom the Clearing House acts as security trustee under such Deed of Assignment, by the Clearing House pro rata as it sees fit in its sole discretion.

~~with its rules and procedures to that client; and (iii) the Additional Collateral held in the Additional Collateral Account in respect of that client.~~

*Individual Segregated Account Business*

- Has the meaning ascribed to such term in sub-paragraph (i) of paragraph (c) of Regulation 52A.

*Individual Segregated Account Clearing Client*

- Means, in relation to SwapClear Clearing Client Business, a client in respect of whom a SwapClear Clearing Member engages in Individual Segregated Account Business.

*initial margin*

- An amount determined and published from time to time by the Clearing House with regard to each category of contract, in respect of which Members may be required to provide to the Clearing House cover in accordance with these Regulations and the Procedures as a condition of registration of a contract by the Clearing House and otherwise in respect of all Contracts registered with the Clearing House, as prescribed by these Regulations and the Procedures.

*LCH Approved Outsourcing Party*

- Means a party approved for these purposes by the Clearing House, as set out in the FCM Procedures.

*LCH.Clearnet Group*

- The group of undertakings consisting of LCH.Clearnet Limited, LCH.Clearnet Group Limited and Banque Centrale de Compensation S.A. trading as LCH.Clearnet SA. (Reference to a "member" of LCH.Clearnet Group within these Regulations is to be construed accordingly).

*LCH EnClear OTC Clearing Member*

- A Member who is designated by the Clearing House as an LCH EnClear OTC Clearing Member eligible to clear LCH EnClear OTC Contracts.

*LCH EnClear OTC Contract*

- A Contract entered into by the Clearing House with an LCH EnClear OTC Clearing Member on any applicable set of Contract Terms prescribed in the LCH EnClear OTC

- the LIFFE Rules.
- NYSE Liffe Clearing Membership Agreement* - The tripartite clearing membership agreement relating to the NYSE Liffe Clearing Service between LIFFE, the Clearing House and each NYSE Liffe Clearing Member, as in force from time to time.
- official quotation* - A price determined by the Clearing House under Regulation 14.
- Omnibus Net Segregated Account* - Means, in relation to SwapClear Clearing Client Business, a sub-account opened within the Clearing House by a SwapClear Clearing Member in respect of Omnibus Net Segregated Business.
- Omnibus Net Segregated Account Balance* - Means, in respect of an individual Omnibus Net Segregated Clearing Client, the sum of: (1) (i) the Required Collateral attributed by the Clearing House in accordance with its rules and procedures to that client; (ii) the Excess Collateral attributed by the Clearing House in accordance with its rules and procedures to that client; and (iii) the Additional Collateral held in the Additional Collateral Account in respect of that client; minus (2) in respect of any Omnibus Net Segregated Clearing Client in respect of whom the Clearing House acts as security trustee under a Deed of Assignment, that client's share (if any) of amounts required to discharge fees incurred by the security trustee (acting in that capacity) allocated between that SwapClear Clearing Client and the other SwapClear Clearing Clients in respect of whom the Clearing House acts as security trustee under such Deed of Assignment by the Clearing House pro rata as it sees fit in its sole discretion.
- Omnibus Net Segregated Business* - Has the meaning ascribed to such term in sub-paragraph (ii) of paragraph (c) of Regulation 52A
- Omnibus Net Segregated Clearing Client* - Means, in relation to SwapClear Clearing Client Business, a client in respect of whom a SwapClear Clearing Member engages in Omnibus Net Segregated Business.
- Open Contract or open contract* - A Contract made with a Member on the terms (subject to variation of such terms as provided in the Regulations) of an original contract or a Contract made with a Member on the terms set out in the Regulations and/or any agreement entered into with the Member, which, in either case, has not been closed-out, settled or invoiced back in accordance with the Regulations and the Procedures. The term "open contract" shall include, where relevant, an option contract a delivery contract and an Event Protection Contract, but shall not include a settlement contract, a re-opening contract or a closing-out contract.
- open contract subject to tender* - A Cleared Exchange Contract made with a Member on the terms (unless otherwise provided in the Regulations) of an original exchange contract in respect of which a tender has been given, which has not been closed out, settled or invoiced back in accordance with the Regulations and the Procedures, and shall include, except where the context

**Exhibit A-3**  
**Clearing House General Regulation 52B**  
See Attached

**Regulation 52B Default Management in respect of SwapClear Clearing Client Business**

- (a) The SwapClear DMP in respect of any contract which is a SwapClear Contract entered into in respect of SwapClear Clearing Client Business shall involve the stages set out in this Regulation 52B. For the purposes of this Regulation 52B, a SwapClear Contract relating to SwapClear Clearing Client Business of an SCM (each a “**Relevant Contract**”) will be included in the Auction Portfolio from such time as the Clearing House determines that such Relevant Contract will not be ported. For the avoidance of doubt, any such Auction Portfolio will only contain Relevant Contracts. The Clearing House shall not be entitled to include client and house positions in an Auction Portfolio for the purposes of this Regulation 52B.
- (b) If an SwapClear Clearing Member becomes a Defaulting SCM the Clearing House shall:
- (i) calculate the Account Balances;
  - (ii) take any action under Rule 6 of the Default Rules as it shall deem necessary in respect of the SwapClear Clearing Client Business of the Defaulting SCM;
  - (iii) ascertain whether each SwapClear Clearing Client of the Defaulting SCM has appointed a Backup SwapClear Clearing Member; and
  - (iv) send details of the open Relevant Contracts and Account Balances to the nominated Backup SwapClear Clearing Member for each Individual Segregated Account and Omnibus Net Segregated Account of the Defaulting SCM, if any.
- (c) In circumstances where (a) an Individual Segregated Account Clearing Client of a Defaulting SCM has appointed a Backup SwapClear Clearing Member; and (b) within such period as the Clearing House may determine of the service of a Default Notice on the relevant SCM pursuant to Rule 3 of the Default Rules or the Clearing House becoming aware of the occurrence of an Automatic Early Termination Event in respect of that SCM (as the case may be), the Clearing House has received confirmation from the Backup SwapClear Clearing Member of its agreement to act as Backup SwapClear Clearing Member in relation to the arrangements described in sub-paragraph (i) below and from the relevant client (in such form as the Clearing House may require at the relevant time):
- (i) the Clearing House shall (a) transfer all of the open Relevant Contracts entered into by the Defaulting SCM in respect of the relevant Individual Segregated Account Clearing Client to the appointed Backup SwapClear Clearing Member; or (b) terminate and close out such contracts at their market value (as determined by the Clearing House in its discretion) and enter into new contracts on equivalent terms to such contracts with the appointed Backup SwapClear Clearing Member in respect of the relevant Individual Segregated Account Clearing Client;
  - (ii) where the relevant Individual Segregated Account Clearing Client (in an exercise of its rights under the relevant Deed of Assignment) instructs a transfer of its Individual Segregated Account Balance to the appointed Backup SwapClear Clearing Member, the Clearing House shall give effect to such instruction; and
  - (iii) the amount due to be returned to the Defaulting SCM shall be reduced by an amount equivalent to the amount of the Account Balance transferred to the

Backup SwapClear Clearing Member, as referred to in sub-paragraph (ii) of this Regulation 52B (c).

- (d) In circumstances where (a) all of the Omnibus Net Segregated Clearing Clients of a Defaulting SCM identified as composing an Omnibus Net Segregated Account have appointed a single Backup SwapClear Clearing Member; and (b) within such period as the Clearing House may determine of the service of a Default Notice on the relevant SCM pursuant to Rule 3 of the Default Rules or the Clearing House becoming aware of the occurrence of an Automatic Early Termination Event in respect of that SCM (as the case may be), the Clearing House has received confirmation from the Backup SwapClear Clearing Member of its agreement to act as Backup SwapClear Clearing Member in relation to the arrangements described in sub-paragraph (i) below and from the relevant clients (in such form as the Clearing House may require at the relevant time):
- (i) the Clearing House shall (a) transfer all of the open Relevant Contracts entered into by the Defaulting SCM in respect of the relevant Omnibus Net Segregated Clearing Clients to the appointed Backup SwapClear Clearing Member; or (b) terminate and close out such contracts at their market value (as determined by the Clearing House in its discretion) and enter into new contracts on equivalent terms to such contracts with the appointed Backup SwapClear Clearing Member in respect of the relevant Omnibus Net Segregated Clearing Clients;
  - (ii) where all of the relevant Omnibus Net Segregated Clearing Client(s) (in an exercise of their respective rights under the relevant Deeds of Assignment) instruct a transfer of their Omnibus Net Segregated Account Balances to the appointed Backup SwapClear Clearing Member, the Clearing House shall give effect to such instructions; and
  - (iii) the amount due to be returned to the Defaulting SCM in respect of such Omnibus Net Segregated Account shall be reduced by an amount equivalent to the aggregate amount of the Account Balances referred to in sub-paragraph (ii) above.
- (e) For the purposes of Regulations 52B(c) and (d) above, the relevant Individual Segregated Account Clearing Client or Omnibus Net Segregated Clearing Clients (as applicable) may provide consent to the Clearing House orally or in writing (including by facsimile and email) and shall not be entitled to withdraw such consent once received by the Clearing House.
- (f) In relation to those SwapClear Clearing Clients of a Defaulting SCM whose open Relevant Contracts are not dealt with pursuant to sub-paragraphs (i) and (ii) of Regulation 52B (c) or (d) above, the following shall occur:
- (i) the Clearing House shall calculate the entitlement to collateral (the "**SwapClear Clearing Client Entitlement**") of the Defaulting SCM in respect of each such SwapClear Clearing Client following the deduction of (a) the costs of any hedging undertaken; (b) amounts required to discharge all obligations owed to the Clearing House relating to Relevant Contracts entered into by the Defaulting SCM in respect of the relevant SwapClear Clearing Client; (c) any amounts to be deducted to reflect the operation of the set-off provision contained in Clause 3.1 of the SwapClear Clearing Agreement and confirmed in writing to the Clearing House by or on behalf of both the Defaulting SCM and the relevant SwapClear Clearing Client; ~~and~~ (d) in respect of Omnibus Net Segregated Clearing Clients, amounts required to discharge all obligations owed to the

Clearing House relating to Relevant Contracts entered into by the Defaulting SCM in respect of other Omnibus Net Segregated Clearing Clients relating to the Omnibus Net Segregated Account in question, in each case allocated pro rata as it sees fit in its sole discretion; and (e) in respect of any SwapClear Clearing Client in respect of whom the Clearing House acts as security trustee under a Deed of Assignment, that SwapClear Clearing Client's share (if any) of amounts required to discharge fees incurred by the security trustee (acting in that capacity) allocated between that SwapClear Clearing Client and the other SwapClear Clearing Clients in respect of whom the Clearing House acts as security trustee under such Deed of Assignment by the Clearing House pro rata as it sees fit in its sole discretion.

- (ii) where the relevant SwapClear Clearing Client (in an exercise of its rights under the relevant Deed of Assignment) instructs the Clearing House to pay an amount to it equal to the SwapClear Clearing Client Entitlement due to be returned in respect of it to the Defaulting SCM, the Clearing House shall give effect to such instructions, subject to:
- (a) the execution of appropriate documentation (which may, without limitation, include an indemnity (secured or otherwise)) between the Clearing House and the relevant SwapClear Clearing Client; and
  - (b) in the case of any deduction made pursuant to (c) of Regulation 52B (f), the provision of appropriate documentation by or on behalf of the Defaulting SCM.
- (iii) Risk Neutralisation and the auction process relating to the Relevant Contracts shall be conducted in accordance with the provisions of the SwapClear DMP Annex, save that no hedging shall be undertaken in respect of a SwapClear Contract entered into in respect of SwapClear Clearing Client Business until such time as the Clearing House has determined that the SwapClear Contract in question will not be ported, from which time such contract shall be a Relevant Contract and included in an Auction Portfolio.
- (g) ~~calculation~~Calculation of the Account Balances and the SwapClear Clearing Client Entitlements will be undertaken by the Clearing House in accordance with its own records based on information provided to it by the Defaulting SCM. The Clearing House shall be under no obligation to verify or conduct any independent enquiry in respect of any such information and shall be entitled for all purposes to treat it as definitive. However, the Clearing House may, in its absolute discretion, adjust its records to reflect any matter which it believes should be taken into account in calculating the Account Balances and/or the SwapClear Clearing Client Entitlements.
- (h) Notwithstanding the provisions of Regulation 34, the Clearing House may not make any material change to the terms of this Regulation 52B without the written consent of 50% or more of all SwapClear Clearing Members unless such change is invoked unilaterally against all SCMs and is necessary to manage the Clearing House's risk or otherwise to meet the Clearing House's continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization.

**Exhibit A-4**  
**Clearing House Procedures Appendices 2C.I and 2C.J**  
See Attached

**APPENDIX 2C.1  
CLEARING DEED OF ASSIGNMENT**

[Insert Date]

**[CLEARING MEMBER]**

and

**[CLIENT]**

and

**LCH.CLEARNET LIMITED**

**DEED OF ASSIGNMENT**



**THIS DEED** is dated [*Insert Date*] and made between:

- (1) **[CLEARING MEMBER]** in its capacity as assignor (the “**Assignor**”);
- (2) **[CLIENT]** in its capacity as assignee (the “**Assignee**”); and
- (3) **LCH.CLEARNET LIMITED** in its capacity as recipient of the notice of assignment pursuant to Clause 4.2 (“**LCH.Clearnet**”).

**WHEREAS:**

- (A) In order to facilitate the clearing of certain transactions with LCH.Clearnet, the Assignor and Assignee have entered into the Client Clearing Agreement ~~Relating to LCH Clearing~~ dated [*Insert Date*] (the “**Client Clearing Agreement**”) pursuant to which they will have entered into as of such date the Clearing ISDA Master Agreement (as defined in the Client Clearing Agreement). In addition, the parties have, pursuant to the Client Clearing Agreement, entered into a Credit Support Annex in respect of, and which forms part of, the Clearing ISDA Master Agreement (the Clearing ISDA Master Agreement together with such Credit Support Annex and the Client Clearing Agreement, the “**Swap Agreement**”).
- (B) The Assignor and Assignee, for commercial and economic reasons, desire to maximise the ability to move positions represented by Transactions under the Swap Agreement to a replacementBackup SwapClear Clearing Member upon an Enforcement Event (defined below) and to deliver certain receivables from LCH.Clearnet to the Assignee directly.
- (C) LCH.Clearnet has agreed to be a party to this Deed solely for the purpose of Clause 4.2 [and Clause 4.4].

~~IT IS AGREED~~ It is agreed as follows:

**1. Definitions and Interpretation**

~~4.1~~ **Definitions**

~~4.21.1~~ : Capitalised terms used but not defined in this Deed shall have the meaning given to them in the Swap Agreement. In addition, the following expressions shall have the following meanings:

“**Assigned Assets**” means the assets subject, or expressed to be subject, to the Assignment or any part of those assets.

“**Assignment**” means the assignment created or expressed to be created by this Deed.

“**Client Clearing Agreement**” has the meaning given to it in Recital (A) to this Deed.

“**Enforcement Event**” means the occurrence of an Early Termination Date under the Swap Agreement as a result of a Clearing Default.

“**Insolvency Act**” means the Insolvency Act 1986.

“**Liabilities**” means all present and future obligations, moneys, debts and liabilities due, owing or incurred by the Assignor to the Assignee under or in connection with the Swap Agreement.

“**LPA**” means the Law of Property Act 1925.

“**Relevant Account Balance**” means the Account Balance (as defined in the LCH Rules) relating to the Assignee and the Associated LCH Transactions determined by LCH.Clearent following a Clearing Default in accordance with the LCH Rules.

“**Relevant SwapClear Clearing Client Entitlement**” means the SwapClear Clearing Client Entitlement (as defined in the LCH Rules) relating to the Assignee and the Associated LCH Transactions determined by LCH.Clearent following a Clearing Default in accordance with the LCH Rules.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Swap Agreement**” has the meaning given to it in Recital (A) to this Deed.

“**Transaction Documents**” means this Deed and the Swap Agreement.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

#### 4.31.2 Construction:

4.3.11.2.1 Unless a contrary indication appears, any reference in this Deed to:

- (i) “**assets**” includes present and future properties, revenues and rights of every description;
- (ii) the “**Assignor**”, the “**Assignee**” or any “**party**” shall be construed so as to include its successors in title and permitted transferees;
- (iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;
- (iv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (v) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (vi) a provision of law is a reference to that provision as amended or re-enacted.

4.3.21.2.2 Clause and Schedule headings are for ease of reference only.

## 2. Undertaking to **Paypay**

The Assignor undertakes to pay each of its Liabilities when due in accordance with its terms.

### 3. Security

The Assignor, with full title guarantee [and as security for the payment of all Liabilities]<sup>1</sup>, assigns absolutely to the Assignee all its present and future right, title and interest in and to the Relevant SwapClear Clearing Client Entitlement and the Relevant Account Balance.

### 4. Restrictions and Further Assurance

4.1 **Security:** The Assignor agrees that it shall not create or permit to subsist any Security over any Assigned Assets except for the Assignment.

4.2 **Notice of Assignment and Undertaking:** The Assignor hereby gives notice of the Assignment to LCH.Cleernet. LCH.Cleernet hereby acknowledges receipt of such notice and undertakes to the other parties hereto that it shall, following the occurrence of a Clearing Default, act in accordance with the LCH Rules and any other laws and regulations applicable to it in determining how the Assigned Assets are to be distributed.

The parties hereto acknowledge and agree that LCH.Cleernet has agreed to be a party to this Deed solely for the purposes of this Clause 4.2 [and to receive the written evidence referred to in Clause 4.4] and shall have no other obligation or liability save as expressly provided in Clause 4.2 [and Clause 4.4]. In particular, the parties agree that the undertaking given by LCH.Cleernet in this Clause 4.2 shall be without prejudice to any protections afforded to it pursuant to the LCH Rules or any other laws and regulations applicable to it.

4.3 **Margining:** The Assignor agrees that, prior to the operation of Clause 9.1, it shall provide margin in respect of any Associated LCH Transactions to LCH.Cleernet on [an Individual Segregated Account basis]/[an Omnibus Net Segregated Account basis]<sup>2</sup> in accordance with (and as defined in) the LCH Rules.

4.4 **[UCC Financing Statement:** The Assignor hereby authorises the filing of a financing statement describing the Assigned Assets in the filing office of Assignor's location as determined by Section 9-307 of the UCC and the Assignee hereby agrees to (a) file such financing statement within [10 Business Days] of the date hereof and (b) provide the Assignor and LCH.Cleernet with a copy of the relevant filed Form UCC-1.]<sup>3</sup>

4.5 **Assignor's Undertaking:** The Assignor undertakes to the Assignee that it shall not, without the prior written consent of the Assignee to such amendment, make vote in favour of any amendment to Regulation 52B of the LCH Rules or the SwapClear DMP Annex to the Default Management Process Agreement Rules of LCH.Cleernet (to which the Assignor extent any such vote is a party required) in either case the effect of which amendment would be to (a) amend the terms of the Assigned Assets hereunder or thereunder or (b) amend the terms on which the Assigned Assets may be dealt with following the occurrence of a Clearing Default.

<sup>1</sup> The language in brackets should not be included where the relevant Clearing Member is organised under the laws of Germany.

<sup>2</sup> Delete as applicable.

<sup>3</sup> This covenant must be included if the Assignor is organised under the laws of the United States of America or any state thereof or located in any such jurisdiction for purposes of Section 9-307 of the UCC.

## 5. Payments

- 5.1 **No Enforcement Event:** Subject as otherwise provided in this Deed, and for so long as no Enforcement Event has occurred, the Assignor shall be entitled to receive and retain all payments or transfers made to it in respect of the relevant [Individual Segregated Account]/[Omnibus Net Segregated Account]<sup>4</sup> in accordance with the LCH Rules. For the avoidance of doubt the Assignor shall not be entitled to deal with the Assigned Assets at any time while the Assignment is in effect.
- 5.2 **Post Enforcement Event:** Following the occurrence of an Enforcement Event, the Assignee shall be entitled to receive directly from LCH.Clearnet all Assigned Assets and payments or transfers made in respect of an Assigned Asset.

## 6. Enforcement and Remedies

- 6.1 **Enforcement Event:** As between the Assignor and the Assignee, the Security created on the date hereof shall only be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Deed shall only be exercisable, following the occurrence of an Enforcement Event.
- 6.2 **Power of Sale:** The statutory power of sale and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.
- 6.3 **Section 103 LPA:** Section 103 of the LPA shall not apply to this Deed.

## 7. Provisions Relating to Assignee

- 7.1 **Assignee's Rights:** At any time after the occurrence of an Enforcement Event, the Assignee shall have the rights set out in the Schedule hereto.
- 7.2 **Application of Proceeds:** Subject to Clause 9.1, all amounts or assets received or recovered by the Assignee in the exercise of its rights under this Deed shall be applied in the following order: (i) in or towards the payment of the Liabilities in such order as the Assignee thinks fit, but in any case acting in good faith and in a commercially reasonable manner, and (ii) in payment of any surplus to the Assignor.
- 7.3 **Power of Attorney:** The Assignor by way of security irrevocably appoints the Assignee as its attorney (with full power of substitution), on its behalf and in its name or otherwise, in such manner as the attorney thinks fit, but in any case acting in good faith and in a commercially reasonable manner, to exercise (following the occurrence of an Enforcement Event only) any of the rights conferred on the Assignee in relation to the Assigned Assets or under the LPA or the Insolvency Act. The Assignor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 7.3.

## 8. Saving Provisions

- 8.1 **Continuing Security:** Subject to Clause 9, the Assignment is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

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<sup>4</sup> Delete as applicable.

- 8.2 **Reinstatement:** If any discharge, release or arrangement (whether in respect of the obligations of the Assignor or any security for those obligations or otherwise) is made by the Assignee in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Assignor and the Assignment shall continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 8.3 **Waiver of Defences:** Neither the obligations of the Assignor under this Deed nor the Assignment will be affected by an act, omission, matter or thing which, but for this Clause 8, would reduce, release or prejudice any of its obligations under any Transaction Document or the Assignment (without limitation and whether or not known to it or the Assignee) including:
- 8.3.1 any time, waiver or consent granted to, or composition with, the Assignor or other person;
  - 8.3.2 the release of the Assignor or any other person under the terms of any composition or arrangement with any creditor of any affiliate;
  - 8.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Assignor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - 8.3.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Transaction Document or any other document or security; or
  - 8.3.5 any insolvency or similar proceedings.
- 8.4 **Immediate Recourse:** The Assignor waives any right it may have of first requiring the Assignee (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.
- 8.5 **Additional Security:** The Assignment is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by the Assignee.
9. **Discharge of Security**
- 9.1 **Final Redemption:** Immediately upon there no longer being any Liabilities remaining (or, if earlier, immediately upon it no longer being possible for an Enforcement Event to occur), the Assignee shall be deemed to have immediately released, reassigned or discharged (as appropriate) the Assigned Assets from the Assignment and therefore:
- 9.1.1 the Assignor may retain for its own account; and
  - 9.1.2 the Assignee shall therefore promptly pay or transfer to the Assignor,  
any amounts or other assets received by such party from LCH.Clearnet in respect of the Assigned Assets. For the avoidance of doubt, it is acknowledged that the

Assignor's rights under this Clause 9 shall constitute an equity of redemption (and therefore a proprietary interest to the extent of such equity of redemption) in the Assigned Assets and any amounts or other assets the subject of such rights shall be returned by the Assignee to the Assignor.

9.2 **Consolidation:** Section 93 of the LPA shall not apply to the Assignment.

## 10. Miscellaneous Provisions

10.1 **Payments:** All payments by the Assignor under this Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as the Assignee may direct.

10.2 **Remedies and Waivers:** No failure to exercise, nor any delay in exercising, on the part of the Assignee any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

10.3 **Amendments and Waivers:** Any term of this Deed may be amended or waived only with the consent of the Assignee and the Assignor.

10.4 **Assignment:** Subject to the extent permitted by applicable law, neither this Deed nor any interest or obligation in or under it may be assigned or otherwise transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party.

10.5 **Partial Invalidity:** If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

10.6 **Third Party Rights:** A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

10.7 **Counterparts:** This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

10.8 **Governing Law:** This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

10.9 **Jurisdiction:** In relation to any proceedings, each party to this Deed irrevocably submits to the exclusive jurisdiction of the courts of England and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum. Each such submission is made for the benefit of the other party and shall not affect the right of any party to take proceedings in any other court of competent jurisdiction nor shall the taking of proceedings in any court of competent jurisdiction preclude any party from taking proceedings in any other court of competent jurisdiction (whether concurrently or not) unless precluded by law.

- 10.10 **[Agent for Service of Process; Assignor:** The Assignor hereby irrevocably appoints [*Name of Agent*] of [*Address in England*] to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent ceases to be such agent for service of process, the Assignor shall forthwith appoint a new agent for service of process in England and deliver to the Assignee a copy of the new agent's acceptance of appointment within 30 days. Nothing in this Deed shall affect the right to serve process in any other matter permitted by law.]
- 10.11 **[Agent for Service of Process; Assignee:** The Assignee hereby irrevocably appoints [*Name of Agent*] of [*Address in England*] to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent ceases to be such agent for service of process, the Assignee shall forthwith appoint a new agent for service of process in England and deliver to the Assignor a copy of the new agent's acceptance of appointment within 30 days. Nothing in this Deed shall affect the right to serve process in any other matter permitted by law.]

**SCHEDULE****RIGHTS OF ASSIGNEE****Schedule****Rights of Assignee**

Following the occurrence of an Enforcement Event, the Assignee shall have the right, either in its own name or in the name of the Assignor or otherwise and in such manner and upon such terms and conditions as the Assignee thinks fit, but in any case, acting in good faith and in a commercially reasonable manner, and either alone or jointly with any other person:

1. **Take possession:** to take possession of, get in and collect the Assigned Assets and to require payment to it of revenues deriving therefrom~~;~~;
2. **Deal with Assigned Assets:** to sell, transfer, assign, exchange or otherwise dispose of or realise the Assigned Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred)~~);~~;
3. **Borrow money:** to borrow or raise money either unsecured or on the security of the Assigned Assets (either in priority to the Assignment or otherwise)~~);~~;
4. **Rights of ownership:** to manage and use the Assigned Assets and to exercise and do (or permit the Assignor or any nominee of it to exercise and do) all such rights and things as the Assignee would be capable of exercising or doing if it were the absolute beneficial owner of the Assigned Assets~~;~~;
5. **Claims:** to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Assigned Assets~~;~~;
6. **Legal actions:** to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Assigned Assets~~;~~;
7. **Redemption of Security:** to redeem any Security (whether or not having priority to the Assignment) over the Assigned Assets and to settle the accounts of any person with an interest in the Assigned Assets~~;~~ and
8. **Other powers:** to do anything else it may think fit for the realisation of the Assigned Assets or incidental to the exercise of any of the rights conferred on the Assignee under or by virtue of any Transaction Document, the LPA or the Insolvency Act,

**THIS****DEED**



**This Deed** has been delivered on the date stated at the beginning of this Deed.

[ASSIGNOR]

[INSERT APPROPRIATE SIGNATURE BLOCK]<sup>4</sup>

[ASSIGNEE]

[INSERT APPROPRIATE SIGNATURE BLOCK]<sup>5,5</sup>

~~[EXECUTED as a Deed by  
LCH.CLEARNET LIMITED~~

By: ~~[Director]~~

By: ~~[Director/Company Secretary]~~<sup>6</sup>

[Signed as a deed by

**LCH.CLEARNET LIMITED**

acting by its attorney

[signature of attorney]

**[NAME OF ASSIGNOR (ATTORNEY)]**

in the presence of:

[signature of witness]

[name and address of witness]<sup>7</sup>

[Executed as a deed by

**LCH.CLEARNET LIMITED**

By: ~~[Director]~~

By: ~~[Director/Company Secretary]~~<sup>8</sup>

<sup>4</sup> — Parties should ensure that suitable signature blocks are inserted, which will depend on the legal identity, jurisdiction of incorporation and constitutional documents relating to the parties.

<sup>5</sup> Parties should ensure that suitable signature blocks are inserted, which will depend on the legal identity, jurisdiction of incorporation and constitutional documents relating to the parties.

<sup>6</sup> — Use if LCH.Clearnet intend to execute the Deed themselves.

<sup>7</sup> Use if the Assignor has a power of attorney to sign on behalf of LCH.Clearnet.

<sup>8</sup> Use if LCH.Clearnet intend to execute the Deed themselves.

**APPENDIX 2C.J**  
**CLEARING DEED OF ASSIGNMENT**

[Insert Date]

**[CLEARING MEMBER]**  
and  
**LCH.CLEARNET LIMITED**  
**DEED OF ASSIGNMENT**

**THIS DEED** is dated [*Insert Date*] and made between:

- (1) **[CLEARING MEMBER]** in its capacity as assignor (the “**Assignor**”); and
- (2) **LCH.CLEARNET LIMITED** in its capacity as the clearing house (in such capacity, the “**Clearing House**”) and in its capacity as the assignee and security trustee under this Deed (in such capacity, the “**Security Trustee**”).

**WHEREAS:**

- (A) In order to facilitate the clearing of certain transactions with the Clearing House, the Assignor has entered into agreements with one or more of its clients (each a “**Client**” and each such agreement a “**Client Clearing Agreement**”) pursuant to which the Assignor and the relevant Client will have entered into as of the date of such Client Clearing Agreement a Clearing ISDA Master Agreement (as defined in the relevant Client Clearing Agreement). In addition, the Assignor and the relevant Client have, pursuant to the relevant Client Clearing Agreement, entered into a Credit Support Annex in respect of, and which forms part of, the relevant Clearing ISDA Master Agreement (each such Clearing ISDA Master Agreement together with the related Credit Support Annex and the related Client Clearing Agreement, a “**Swap Agreement**”).
- (B) The Assignor and each Client, for commercial and economic reasons, desire to maximise the ability to move cleared positions representing Transactions under the relevant Swap Agreement to a Backup SwapClear Clearing Member upon the occurrence of an Enforcement Event (as defined below) or to deliver certain receivables from the Clearing House to the relevant Client directly.
- (C) The Security Trustee has agreed to act as the security trustee in accordance with the provisions of this Deed.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

**1.1 Definitions**

Capitalised terms used but not defined in this Deed shall have the meaning given to them in the LCH Rules. In addition, the following expressions shall have the following meanings:

“**Assigned Assets**” means the assets subject, or expressed to be subject, to the Assignment or any part of those assets.

“**Assignment**” means the assignment created or expressed to be created by this Deed.

“**Associated LCH Transaction**” means the SwapClear Contract, as defined in the LCH Rules, entered into between the Assignor and the Clearing House.

“**Clearing Default**” means the Assignor becoming a defaulter ~~for~~ for the purposes of Rule 4 of the LCH Default Rules.

“**Client**” has the meaning given to it in Recital (A) to this Deed, save that a person shall not be a “Client” for the purposes of this Deed unless the notification provided for in Clause 7.2 has been made and has not been withdrawn.

“**Client Clearing Agreement**” has the meaning given to it in Recital (A) to this Deed.

~~“**DMPAAA**” means the Default Management Process Agreement Amendment Agreement entered into between the Assignor and the Clearing House in relation to the provision by the Assignor of SwapClear client clearing services.~~

“**Enforcement Event**” means the occurrence of a Clearing Default in relation to the Assignor in accordance with the LCH Rules.

“**Insolvency Act**” means the Insolvency Act 1986.

“**Liabilities**” means all present and future obligations, moneys, debts and liabilities due, owing or incurred by the Assignor to the Secured Parties under or in connection with the Transaction Documents.

“**LCH Rules**” means the rules, regulations, procedures or agreements (including the LCH General Regulations and the LCH Default Rules), applicable to the Assignor and/or an Associated LCH Transaction, in each case as published by the Clearing House and as the same may be amended from time to time.

“**LPA**” means the Law of Property Act 1925.

“**Relevant Account Balance**” means the Account Balance relating to a Client and the relevant Associated LCH Transactions as calculated by the Clearing House in accordance with the ~~terms of the DMPAAA~~LCH Rules following an Enforcement Event.

“**Relevant SwapClear Clearing Client Entitlement**” means the SwapClear Clearing Client Entitlement relating to a Client and the relevant Associated LCH Transactions as calculated by the Clearing House in accordance with the ~~terms of the DMPAAA~~LCH Rules following an Enforcement Event.

“**Secured Parties**” means ~~the Security Trustee and~~ each Client from time to time.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Swap Agreement**” has the meaning given to it in Recital (A) to this Deed.

“**Transaction Documents**” means this Deed and each Swap Agreement outstanding from time to time.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Deed to:

- (i) “**assets**” includes present and future properties, revenues and rights of every description;

- (ii) the “**Assignor**”, the “**Security Trustee**” or any “**party**” shall be construed so as to include its successors in title and permitted transferees;
- (iii) an agreement, confirmation or instrument is to a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced;
- (iv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (v) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (vi) a provision of law is a reference to that provision as amended or re-enacted.

1.2.2 Clause and Schedule headings are for ease of reference only.

## 2. **Undertaking to Pay**

The Assignor undertakes to pay each of its Liabilities when due in accordance with its terms.

## 3. **Security**

The Assignor, with full title guarantee [and as security for the payment of all Liabilities<sup>9</sup>, assigns absolutely to the Security Trustee all its present and future right, title and interest in and to each Relevant SwapClear Clearing Client Entitlement and each Relevant Account Balance. The Security Trustee shall hold the benefit of the Assignment on trust for the Secured Parties on the terms of this Deed.

## 4. **Restrictions and Further Assurance**

Security

- 4.1 The Assignor agrees that it shall not create or permit to subsist any Security over any Assigned Assets except for the Assignment.
- 4.2 Notice of Assignment and Undertaking: The Assignor hereby gives notice of the Assignment to the Clearing House. The Clearing House hereby acknowledges receipt of such notice and undertakes to the Security Trustee (on behalf of the Secured Parties) that it shall, following the occurrence of a Clearing Default, act in accordance with the LCH Rules and any other laws and regulations applicable to it in determining how the Assigned Assets are to be distributed. The parties hereto acknowledge and agree that the Clearing House (acting in such capacity and not in

<sup>9</sup> The language in brackets should not be included where the relevant Clearing Member is organised under the laws of Germany.

its capacity as Security Trustee) has agreed to be a party to this Deed solely for the purposes of this Clause 4.3 [and to receive the written evidence referred to in Clause 4.4] and shall have no other obligation or liability save as expressly provided in this Clause 4.3 [and Clause 4.4]. In particular, the parties agree that the undertaking given by the Clearing House in this Clause 4.3 shall be without prejudice to any protections afforded to it pursuant to the LCH Rules or any other laws and regulations applicable to it.

- 4.3 **Margining:** The Assignor agrees that, prior to the operation of Clause 9.1, it shall provide margin in respect of any Associated LCH Transactions to the Clearing House on an Individual Segregated Account basis or, as may be agreed between the Assignor and the relevant Client, an Omnibus Net Segregated Account basis in accordance with the LCH Rules.
- 4.4 **[UCC Financing Statement:** The Assignor hereby authorises the filing of a financing statement describing the Assigned Assets in the filing office of the Assignor's location as determined by Section 9-307 of the UCC and hereby agrees to (a) file such financing statement within [10 Business Days] of the date hereof and (b) provide the Security Trustee and the Clearing House with a copy of the relevant filed Form UCC-1]<sup>10</sup>.
- 4.5 **Assignor's Undertaking:** The Assignor undertakes to the Security Trustee that it shall not, without the prior written consent of the Security Trustee (acting upon the instructions of the relevant Client) to such amendment, make any amendment to the SwapClear Default Management Process Agreement to which the Assignor is a party the effect of which amendment would be to (a) amend the terms of the Assigned Assets hereunder or thereunder or (b) amend the terms on which the Assigned Assets may be dealt with following the occurrence of a Clearing Default, unless such amendment is of a formal, minor or technical nature or, in the reasonable opinion of the Security Trustee, is not materially prejudicial to the interests of any Secured Party.

## 5. **Payments**

- 5.1 **No Enforcement Event:** Subject as otherwise provided in this Deed, and for so long as no Enforcement Event has occurred, the Assignor shall be entitled to receive and retain all payments or transfers made to it in respect of each Individual Segregated Account and each Omnibus Net Segregated Account relating to each Client from time to time in accordance with the LCH Rules. For the avoidance of doubt the Assignor shall not be entitled to deal with the Assigned Assets at any time while the Assignment is in effect.
- 5.2 **Post Enforcement Event:** Following the occurrence of an Enforcement Event, the Security Trustee shall be entitled to receive directly from the Clearing House all Assigned Assets and payments or transfers made in respect of such Assigned Assets.

## 6. **Enforcement and Remedies**

- 6.1 **Enforcement Event:** The Security created on the date hereof shall only be enforceable, and the powers conferred by Section 101 of the LPA as varied and

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<sup>10</sup> This covenant must be included if the Assignor is organised under the laws of the United States of America or any state thereof or located in any such jurisdiction for purposes of Section 9-307 of the UCC.

extended by this Deed shall only be exercisable, following the occurrence of an Enforcement Event.

6.2 Power of Sale: The statutory power of sale and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.

6.3 Section 103 LPA: Section 103 of the LPA shall not apply to this Deed.

## 7. Declaration of Trust

7.1 The Security Trustee declares that it shall hold the benefit of this Deed and the Assignment on trust for the Secured Parties on the terms set out herein. The parties agree that the provisions set out in Schedule 1 hereto shall apply to the appointment of the Security Trustee.

7.2 The Assignor shall notify the Security Trustee of the identity of each person with whom it has entered into a Client Clearing Agreement, and whom it is intended shall take the benefit of this Deed ( which includes, without limitation, the declaration of trust at Clause 7) and the Security Trustee shall, on request, confirm to such person or to the Assignor that it has received such notification. Such notification, once given, may be withdrawn at any time, but any such withdrawal shall take effect only when notification of withdrawal is received by the Security Trustee.

## 8. Saving Provisions

8.1 Continuing Security: Subject to Clause 9, the Assignment is continuing security and will extend to the ultimate balance of the Liabilities, regardless of any intermediate payment or discharge in whole or in part.

8.2 Reinstatement: If any discharge, release or arrangement (whether in respect of the obligations of the Assignor or any security for those obligations or otherwise) is made by any Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Assignor and the Assignment shall continue or be reinstated as if the discharge, release or arrangement had not occurred.

8.3 Waiver of Defences: Neither the obligations of the Assignor under this Deed nor the Assignment will be affected by an act, omission, matter or thing which, but for this Clause 8, would reduce, release or prejudice any of its obligations under any Transaction Document or the Assignment (without limitation and whether or not known to it or any Secured Party) including:

8.3.1 any time, waiver or consent granted to, or composition with, the Assignor or other person;

8.3.2 the release of the Assignor or any other person under the terms of any composition or arrangement with any creditor of any affiliate;

8.3.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Assignor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- 8.3.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Transaction Document or any other document or security; or
- 8.3.5 any insolvency or similar proceedings.
- 8.4 Immediate Recourse: The Assignor waives any right it may have of first requiring a Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Assignor under this Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.
- 8.5 Additional Security: The Assignment is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by any Secured Party.
- 9. Discharge of Security**
- 9.1 Final Redemption: Immediately upon there no longer being any Liabilities remaining in relation to a Client (or, if earlier, immediately upon it no longer being possible for an Enforcement Event to occur), the Security Trustee shall be deemed to have immediately released, reassigned or discharged (as appropriate) the Assigned Assets relating to such Client from the Assignment and therefore:
- 9.1.1 the Assignor may retain for its own account; and
- 9.1.2 the Security Trustee shall therefore promptly pay or transfer to the Assignor, any amounts or other assets received by such party from the Clearing House in respect of the relevant Assigned Assets. For the avoidance of doubt, it is acknowledged that the Assignor's rights under this Clause 9 shall constitute an equity of redemption (and therefore a proprietary interest to the extent of such equity of redemption) in the Assigned Assets and any amounts or other assets the subject of such rights shall be returned by the Security Trustee to the Assignor.
- 9.2 Consolidation: Section 93 of the LPA shall not apply to the Assignment.
- 10. Miscellaneous Provisions**
- 10.1 Payments: All payments by the Assignor under this Deed (including damages for its breach) shall be made to such account, with such financial institution and in such other manner as the Security Trustee may direct.
- 10.2 Remedies and Waivers: No failure to exercise, nor any delay in exercising, on the part of the Security Trustee any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.
- 10.3 Amendments and Waivers: Any term of this Deed may be amended or waived only with the consent of the Security Trustee and the Assignor.
- 10.4 Assignment: Subject to the extent permitted by applicable law, neither this Deed nor any interest or obligation in or under it may be assigned or otherwise transferred



- (whether by way of security or otherwise) by either party without the prior written consent of the other party.
- 10.5 Disclosure to Clients: The Clearing House agrees that the Assignor may provide a copy of this Deed to any Client or prospective Client.
- 10.6 Partial Invalidity: If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 10.7 Third Party Rights: A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- 10.8 Counterparts: This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
- 10.9 Governing Law: This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 10.10 Jurisdiction: In relation to any proceedings, each party to this Deed irrevocably submits to the exclusive jurisdiction of the courts of England and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum. Each such submission is made for the benefit of the other party and shall not affect the right of any party to take proceedings in any other court of competent jurisdiction nor shall the taking of proceedings in any court of competent jurisdiction preclude any party from taking proceedings in any other court of competent jurisdiction (whether concurrently or not) unless precluded by law.
- 10.11 [Agent for Service of Process: The Assignor hereby irrevocably appoints [Name of Agent] of [Address in England] to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent ceases to be such agent for service of process, the Assignor shall forthwith appoint a new agent for service of process in England and deliver to the Security Trustee a copy of the new agent's acceptance of appointment within 30 days. Nothing in this Deed shall affect the right to serve process in any other matter permitted by law.]

## SCHEDULE 1

## PROVISIONS RELATING TO THE APPOINTMENT OF THE SECURITY TRUSTEE

## 1. Trust

The Security Trustee declares that it shall hold the benefit of this Deed and the Assignment on trust for the Secured Parties on the terms contained in this Deed. All moneys from time to time received or recovered by the Security Trustee in connection with the realisation or enforcement of all or any part of the Assignment in respect of the Assigned Assets relating to any Client shall be held by the Security Trustee on trust to apply them as soon as reasonably practicable, to the extent permitted by applicable law and subject to the provisions of this Deed in the following order of priority:

~~(a) in discharging any sums owing to the Security Trustee (in its capacity as trustee) pursuant to this Deed;~~

~~(b) in payment to each Client of all sums due and payable by the Assignor to such Client in respect of Liabilities, provided that where the moneys available to the Security Trustee for distribution among all Clients under this paragraph 1.2 are less than the aggregate of all Liabilities then due and payable by the Assignor to all Clients, each Client shall be paid a pro rata proportion of such moneys available to the Security Trustee determined as being equal to (a) the Relevant SwapClear Clearing Client Entitlement or, as the case may be, the Relevant Account Balance relating to such Client divided by (b) the aggregate of all Relevant SwapClear Clearing Client Entitlement or, as the case may be, Relevant Account Balances relating to all Clients, but subject always to a maximum amount payable to any Client equal to the Relevant SwapClear Clearing Client Entitlement or, as the case may be, the Relevant Account Balance; and~~

(a) in payment to such Client of all sums due and payable by the Assignor to such Client in respect of Liabilities; and

~~(c)~~(b) the balance, if any, in payment to the Assignor.

The Security Trustee shall not apply any moneys realised by it under this Deed in respect of the Assigned Assets relating to one Client in discharge of any sums due and payable by the Assignor to another Client.

## 2. No Independent Power

The Secured Parties ~~other than the Security Trustee~~ shall not have any independent power to enforce, or have recourse to, any of the Assigned Assets or to exercise any rights or powers arising under this Deed.

## 3. Security Trustee's Actions

3.1 The Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Deed (and no others shall be implied). Subject to the other provisions of this Deed, the Security Trustee may take such action in the exercise of any of its powers and duties under this Deed which in its absolute discretion it considers to be for the protection and benefit of all the Secured Parties.

- 3.2 The duties, obligations and responsibilities of the Security Trustee specified in this Deed shall be subject to the duties, obligations and responsibilities, imposed from time to time by or pursuant to any law or instrument made thereunder, to which the Security Trustee is subject when it acts in its capacity as clearing house ("**RCH Duty**").
- 3.3 The Security Trustee may exercise any right, power or discretion in the discharge of any RCH Duty, whether under its default rules or otherwise, independently of its obligations as Security Trustee under this Deed ("**RCH Power**"). The exercise of any RCH Power shall take precedence over any duty, obligation or responsibility of the Security Trustee specified in this Deed. The Security Trustee shall not be liable to any person as a result of its proper exercise of (or proper omission to exercise) any RCH Power, including where the exercise of such power has the effect of varying the amount to which any beneficiary would otherwise be entitled under this Deed.
- 3.4 The Assignor shall, notwithstanding any release or discharge of all or any part of the Assignment, indemnify the Security Trustee against all charges and expenses, and any action, proceeding, claims, losses, liabilities and costs ("**Loss**") properly incurred by it, or which it may sustain as a consequence of any breach by the Assignor of the provisions of this Deed, or in the proper exercise or purported exercise of any of the rights and powers conferred on the Security Trustee by, or in respect of any matter or thing properly done or omitted in any respect in connection with, this Deed or otherwise relating to the Assigned Assets, but only to the extent that such Loss has not been incurred by any fraud, wilful default or gross negligence of the Security Trustee or, in the case of the exercise of an RCH Power, any act or omission in respect of which it would not be subject to the exemption from liability in section 291 of the Financial Services and Markets Act 2000 or any other statutory exclusion of liability enacted from time to time.

#### 4. **Security Trustee's Discretions**

- 4.1 The Security Trustee may assume (unless it has actual knowledge to the contrary or has received express notice to the contrary from any ~~other~~ Secured Party) that:
- (a) the Assignor is not in breach of its obligations under Clause 2 of this Deed; and
  - (b) any right, power, authority or discretion vested in any person has not been exercised.
- 4.2 The Security Trustee may engage, pay for and rely in good faith on the advice or services of any lawyers, accountants, or other experts (whether obtained by the Security Trustee or by any ~~other~~ Secured Party) in connection with the performance of its obligations under this Deed.
- 4.3 The Security Trustee may rely upon any communication or document reasonably believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or the Assignor, upon a certificate signed by or on behalf of that person.

#### 5. **Security Trustee's Rights and Obligations**

- 5.1 At any time after the occurrence of an Enforcement Event, the Security Trustee shall have the rights set out in Schedule 2 to this Deed.

- 5.2 The Security Trustee shall promptly inform the ~~other~~ Secured Parties of (a) the contents of any notice or document received by it in its capacity as Security Trustee from the Assignor; and (b) the occurrence of any breach of any term of this Deed of which the Security Trustee has received notice from any ~~other~~ Secured Party.

## 6. Excluded Obligations

The Security Trustee shall not:

- (a) be bound to enquire as to the occurrence or otherwise of any breach by the Assignor of any of its obligations under this Deed;
- (b) be bound to account to any ~~other~~ Secured Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including any Secured Party):
  - (i) any confidential information, or
  - (ii) any other information if disclosure would constitute a breach of any law or be a breach of fiduciary duty;
- (d) be under any obligation, the discharge of which would constitute a breach of any RCH Duty;
- (e) be under any obligation other than those which are specifically provided for in this Deed; or
- (f) have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, the Assignor.

## 7. Exclusion of Liability

- 7.1 Unless caused directly by its own fraud, wilful default or gross negligence, the Security Trustee shall not accept responsibility or be liable for:
- (a) the proper exercise of (or proper omission to exercise) any RCH Power;
  - (b) the adequacy, accuracy and/or completeness of any information supplied by the Security Trustee or any other person in connection with this Deed, or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with this Deed;
  - (c) the legality, validity, effectiveness, adequacy or enforceability of this Deed or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with this Deed;
  - (d) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to this Deed or otherwise;
  - (e) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with this Deed or any other agreement, arrangement or document entered into, made or executed in anticipation of, pursuant to or in connection with this Deed; or
  - (f) any shortfall which arises on the enforcement of the Assignment.

## 8. No Proceedings

No Secured Party or party to this Deed ~~(other than the Security Trustee)~~ may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim it might have against the Security Trustee or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Deed and any officer, employee or agent of the Security Trustee may rely on this clause.

## 9. No Responsibility to Perfect Assignment

9.1 The Security Trustee shall have no obligation to, and shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Assignor to any of the Assigned Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of this Deed or the Assignment;
- (c) register, file or record or otherwise protect the Assignment (or the priority of the Assignment) under any applicable laws in any jurisdiction or to give notice to any person of the execution of this Deed or of the Assignment;
- (d) take, or to require the Assignor to take, any steps to perfect its title to any of the Assigned Assets or to render the Assignment effective or to secure the creation of any ancillary security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to this Deed.

## 10. Insurance by Security Trustee

The Security Trustee shall be under no obligation to insure any of the Assigned Assets or to require any other person to maintain any insurance. The Security Trustee shall not be responsible for any loss which may be suffered by any person solely as a result of the lack of or inadequacy of any such insurance.

## 11. Acceptance of Title

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, such right and title as the Assignor may have to any of the Assigned Assets and shall not be liable for or bound to require the Assignor to remedy any defect in its right or title.

## 12. Refrain from Illegality

The Security Trustee may refrain from doing anything which in its reasonable opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any person, and may do anything which is, in its reasonable opinion, necessary to comply with any law, directive or regulation.

## 13. Business with the Assignor

13.1 The Security Trustee may

- (a) provide clearing services to the Assignor both for itself and on account of any other person and do all things incidental to the provision of clearing services as they involve the Assignor in whatever capacity; and
- (b) deal with, accept deposits from, lend money to, and generally engage in any kind of treasury or other business with the Assignor.

#### 14. **Authorisation of Release**

Upon a disposal of any of the Assigned Assets pursuant to the enforcement of the Assignment by the Security Trustee, the Security Trustee is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Assignment or other claim over that part of the Assigned Assets.

#### 15. **Winding up of Trust**

After the Security Trustee, with the approval of the Secured Parties, has determined that all of the Liabilities and all other obligations secured by this Deed have been fully and finally discharged, and all relevant certifications and other documents have been transferred to the Assignor, the trusts set out in this Deed shall be wound up.

#### 16. **Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Deed, shall be the period of eighty years from the date of this Deed.

#### 17. **Powers Supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Deed shall be supplemental to the Trustee Acts 1925 and 2000 and in addition to any which may be vested in the Security Trustee by general law or otherwise.

#### 18. **Dis-application**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Acts 1925 and 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

#### 19. **Resignation of Security Trustee**

##### 19.1 Where:

- (a) the Security Trustee so agrees with the ~~other~~ Secured Parties or
- (b) without prejudice to the generality of Clause 12 of this Schedule One, the Security Trustee is required to resign as a result of a change in its exempt status, its regulatory status or it otherwise becoming unable to exercise its duties and functions as Security Trustee because of a change in any law, regulation, rule or other regulatory measure,

the Security Trustee may resign by giving such notice to the Assignor as is reasonable in the circumstances giving rise to the resignation.

- 19.2 Where the Security Trustee gives notice of its resignation, it may together with the ~~other~~ Secured Parties, appoint a successor Security Trustee, unless any change in its exempt status, its regulatory status, law, regulation rule, or other regulatory measure prevents the Security Trustee from taking any step to appoint a successor Security Trustee, in which case the Secured Parties may themselves appoint such successor Security Trustee, subject to any regulatory requirement to do so in consultation or after consultation with any relevant regulatory, governmental or similar authority.
- 19.3 The retiring Security Trustee shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request and any regulation rule, or other regulatory measure permits for the purposes of performing its functions as Security Trustee under this Deed.
- 19.4 The Security Trustee's resignation notice shall only take effect upon the appointment of a successor. Upon the appointment of a successor, the retiring Security Trustee shall be discharged from any further obligation in respect of this Deed but shall remain entitled to the benefit of this Schedule. Its successor and each of the other parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party.

## 20. **Power of Attorney**

The Assignor by way of security irrevocably appoints the Security Trustee as its attorney (with full power of substitution), on its behalf and in its name or otherwise, in such manner as the attorney thinks fit, but in any case acting in good faith and in a commercially reasonable manner, to exercise (following the occurrence of an enforcement event only) any of the rights conferred on the Security Trustee in relation to the Assigned Assets or under the LPA or the Insolvency Act. The Assignor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of this power of attorney.



**SCHEDULE 2****RIGHTS OF THE SECURITY TRUSTEE**

Following the occurrence of an Enforcement Event, the Security Trustee shall have the right, either in its own name or in the name of the Assignor or otherwise and in such manner and upon such terms and conditions as the Security Trustee thinks fit, but in any case, acting in good faith and in a commercially reasonable manner, and either alone or jointly with any other person:

1. Take possession: to take possession of, get in and collect the Assigned Assets and to require payment to it of revenues deriving therefrom;
2. Deal with Assigned Assets: to sell, transfer, assign, exchange or otherwise dispose of or realise the Assigned Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);
3. Borrow money: to borrow or raise money either unsecured or on the security of the Assigned Assets (either in priority to the Assignment or otherwise);
4. Rights of ownership: to manage and use the Assigned Assets and to exercise and do (or permit the Assignor or any nominee of it to exercise and do) all such rights and things as the Security Trustee would be capable of exercising or doing if it were the absolute beneficial owner of the Assigned Assets;
5. Claims: to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Assigned Assets;
6. Legal actions: to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Assigned Assets;
7. Redemption of Security: to redeem any Security (whether or not having priority to the Assignment) over the Assigned Assets and to settle the accounts of any person with an interest in the Assigned Assets; and
8. Other powers: to do anything else it may think fit for the realisation of the Assigned Assets or incidental to the exercise of any of the rights conferred on the Assignee under or by virtue of any Transaction Document, the LPA or the Insolvency Act.

**THIS DEED** has been delivered on the date stated at the beginning of this Deed.

**[ASSIGNOR]**

*[INSERT APPROPRIATE SIGNATURE BLOCK]*

**[EXECUTED** as a Deed by  
**LCH.CLEARNET LIMITED**

By: *[Director]*

By: *[Director/Company Secretary]*



**Exhibit B-1**  
**Certification**  
See Attached



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AMENDED RULES SELF CERTIFICATION

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LCH.Clearnet Limited ("LCH.Clearnet") hereby certifies to the Commodity Futures Trading Commission ("CFTC"), pursuant to the procedures set forth in the Commission Regulations 40.6, that the following:

- Amendments to LCH.Clearnet's Rules and Regulations to clarify netting procedures, clarify clearing fees and update Deeds of Assignments, comply with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

Signed as of 16 August, 2012

By:  \_\_\_\_\_

Name: Jay Iyer

Title: Chief Compliance Officer

LCH.Clearnet Limited