

LCH.Clearnet Limited ("LCH")

"Ring Fencing" of US Accounts

Introduction

1. LCH is registered with the Commodity Futures Trading Commission (the "**CFTC**") in the United States as a derivatives clearing organization ("**DCO**"). LCH has submitted an application to the CFTC to extend the scope of the US clearing activities which it is permitted to undertake as a DCO. We understand that the CFTC has requested a reasoned memorandum as to the effectiveness, under English law, of the arrangements to be put in place by LCH to "ring fence" US client accounts (i.e. US customer segregated accounts) maintained for client business transacted by its members on US contract markets and US derivatives transaction execution facilities.
2. The system operated by LCH (the "**LCH system**") has been designated by the Financial Services Authority (the "**FSA**") as a designated system for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the "**Regulations**").¹
3. This memorandum has been prepared on the basis of the following assumptions:
 - (a) that any US contract market or US derivatives transaction execution facility with whom LCH enters into clearing arrangements (each a "**US Market**") will not be a recognised investment exchange under the Financial Services and Markets Act 2000 (the "**2000 Act**");²
 - (b) that any futures or options contracts traded on a US Market which are cleared by LCH as a DCO (i.e. contracts entered into by a member of LCH for its customers on a US Market) (each a "**financial futures or options contract**") will be based on financial instruments (including securities);
 - (c) that any futures or options contracts entered into by a member of LCH for its customers on a US Market which are cleared by LCH as a DCO are legal, valid, binding and enforceable;
 - (d) that LCH will operate a segregated US client account for each LCH member to which it provides clearing services for a US Market (each a "**US Member**") in which it will record any US Market clearing contracts concluded by that member for its customers (each a "**US Contract**") and any margin held by LCH in respect of any US Contracts concluded with that member ("**US Margin**");

¹ Pursuant to a designation order of the FSA (as the relevant designating authority under the Regulations) dated 23 April 2003. The Regulations implement the EU Settlement Finality Directive (Council Directive 98/26/EC) in the United Kingdom.

² The legal analysis below in respect of Part VII of the Companies Act 1989 would be different were any US Market to be a recognised investment exchange under the 2000 Act.

- (e) that any US Member will be an English incorporated company or a company incorporated in another jurisdiction (an "**overseas company**") which is subject to the insolvency jurisdiction of the English courts;³
 - (f) that any US Margin provided by a US Member to LCH will comprise either cash held in a pooled customer segregated bank account in the US or securities held in or via the Euroclear clearing system or (in the case of US treasury securities) Citibank N.A., New York ("**non-cash US Margin**");
 - (g) that appropriate amendments will be made to LCH's General Regulations and, in particular, its default rules (the "**Default Rules**")⁴ to provide for:
 - (i) a segregated US client account for each US Member for the purposes of recording any US Contracts concluded by such US Member and any US Margin provided by such US Member; and
 - (ii) discrete default action, including a segregated close-out netting process, to be undertaken with respect to any open US Contracts and any related US Margin recorded in the US client account of any US Member in the event of the insolvency of LCH or the relevant US Member;⁵
 - (h) that LCH's standard form charge documentation applicable to any US Member (including, in particular, its Charge Agreement and Client Consent Form) (the "**Charge Documentation**") has been duly executed by such US Member, secures any monies which are due or owing by such US Member on its US client account with LCH and is legal, valid, binding and enforceable; and
 - (i) that appropriate amendments will be made to LCH's Procedures⁶ to provide for the liquidation of any non-cash US Margin provided by a US Member into cash in the event of such US Member's insolvency.
4. This memorandum relates solely to matters of English law (as in force at the date hereof) and does not consider the impact of any laws (including insolvency laws) other than English law, even where, under English law, any foreign law falls to be applied. We do not undertake to update this memorandum in the event of a change in law or practice.

³ Some English insolvency procedures are potentially applicable to overseas companies incorporated in jurisdictions outside the UK. In particular, an English court may exercise jurisdiction to wind-up any such overseas company as an unregistered company under section 221 of the Insolvency Act 1986. In general, this is dependent upon the overseas company having a branch or other place of business in England, assets in England or some other identifiable connection with England. As a result, an English court is unlikely to assert jurisdiction to wind-up a US Member which is an overseas company where it has no presence in England or other connection with England. Special rules apply in the case of the insolvency of any overseas company incorporated in another jurisdiction in the UK (such as Scotland).

⁴ The Default Rules form part of LCH's General Regulations.

⁵ Draft amendments to the Default Rules (and various other provisions of LCH's General Regulations) have been provided to the CFTC by Katten Muchin Zavis Rosenman as Appendix B to LCH's supplemental application to the CFTC.

⁶ LCH's Procedures form part of its General Regulations.

Executive Summary

1. LCH's proposed US clearing arrangements will be subject to the provisions of Part III of the Regulations and otherwise to general English insolvency law, including, in particular, the provisions of Part VII of the Companies Act 1989 ("**Part VII**").⁷
2. As a consequence of the impact of Part III of the Regulations and Part VII, those provisions of the Default Rules providing for the "ring fencing" of any US client account operated by LCH for the purposes of recording the US Contracts of any US Member (and any related US Margin provided by such US Member) from any other account maintained by such US Member with LCH should:
 - (a) be effective under English law in the event of the insolvency of LCH or such US Member (a "**relevant insolvency**"); and
 - (b) result in default action being taken discretely under the Default Rules with respect to any such US client account without interference from any English insolvency officer appointed in respect of LCH or such US Member so that the balance on such account is not commingled or offset with the balance on any other account maintained by LCH.
3. Any non-cash US Margin provided by a US Member to LCH could be sold by LCH in accordance with the terms of the Charge Documentation in the event of that US Member's insolvency on the basis that it is likely to have defaulted in paying or discharging one or more of the obligations secured under the Charge Documentation. The cash amount derived from this sale could then be credited to the US client account of the insolvent US Member and applied by LCH, in accordance with the Default Rules, to offset any amounts owing to LCH on the US client account.
4. As a result of article 8 of the EU Settlement Finality Directive, the "ring fencing" and discrete default action described in paragraph 2 above should be upheld in the event of insolvency proceedings being opened in respect of LCH or any US Member in any EEA member state⁸ other than the UK. This is subject to article 8 of the EU Settlement Finality Directive having been correctly implemented in each such EEA member state.

Analysis

The Regulations

1. The effect of Part III of the Regulations is to modify general English insolvency law with respect to:
 - (a) transfer orders effected through a designated system;

⁷ The Default Rules are maintained by LCH pursuant to the provisions of Part VII.

⁸ The EEA member states currently comprise the fifteen EU member states and Iceland, Norway and Liechtenstein. The number of EU member states will increase to twenty five on 1 May 2004 when Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia accede to the EU. These acceding countries should have implemented the EU Settlement Finality Directive by 1 May 2004.

- (b) action taken under the rules of a designated system with respect to such orders; and
 - (c) any realisable assets provided under a collateral arrangement for the purpose of securing rights and obligations potentially arising in connection with a designated system (a "**collateral security**").⁹
2. In particular, regulation 14 of the Regulations provides that none of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up, sequestration or under a protected trust deed, or in the administration of an insolvent estate:
- (a) a transfer order;
 - (b) the default arrangements of a designated system;
 - (c) the rules of a designated system as to the settlement of transfer orders not dealt with under its default arrangements;
 - (d) a contract for the purpose of realising collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements; or
 - (e) a contract for the purpose of realising collateral security in connection with the functions of a central bank.

As can be seen, particular emphasis is placed by the Regulations on the default arrangements, namely the arrangements put in place by a designated system to limit systemic and other types of risk which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations in respect of a transfer order. The Default Rules would comprise default arrangements for these purposes.

3. Regulation 14 of the Regulations also provides that an insolvency officer shall not exercise his powers in such a way as to prevent or interfere with:
- (a) the settlement in accordance with the rules of a designated system of a transfer order not dealt with under its default arrangements;
 - (b) any action taken under the default arrangements of a designated system; or
 - (c) any action taken to realise collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements.
4. Any entity which carries out any combination of the functions of a central counterparty, a settlement agent or a clearing house with respect to a designated system will be regarded as a participant for the purposes of the Regulations. LCH would therefore

⁹ See regulation 13 of the Regulations. Part III of the Regulations comprises regulations 13 to 26 inclusive.

qualify as a participant in the LCH system. All members of LCH (including any US Members) will also qualify as participants in the LCH system.¹⁰

5. Transfer orders may comprise securities transfer orders or payment transfer orders. Both types of transfer order are relevant in the case of the LCH system. In this regard, it should be noted that:

- (a) A securities transfer order is defined in the Regulations as an instruction by a participant to transfer title to, or an interest in, securities by means of a book entry on a register or otherwise. Securities are themselves defined in the Regulations as any instruments referred to in section B of the Annex to the EU Investment Services Directive (Council Directive 93/22/EEC) (the "**ISD**").¹¹ Section B of the Annex to the ISD includes financial futures contracts (including equivalent cash-settled instruments) and any option to acquire or dispose of any instruments falling within Section B of the Annex to the ISD (including equivalent cash-settled instruments). Accordingly, any financial futures or options contract should comprise a securities transfer order for such purposes.
- (b) A payment transfer order is defined in the Regulations as an instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a bank or a settlement agent, or an instruction which results in the assumption or discharge of a payment obligation as defined by the rules of a designated system. It is possible to read this definition as encompassing the obligation to make a payment as well as the discharge of that obligation.¹² As a result, we believe that there is a strong argument that any financial futures or options contract which is cash-settled would amount to a payment transfer order for the purposes of the Regulations.¹³
- (c) The LCH system designated by the FSA includes the standardised arrangements and agreements involving LCH, its members and the banks participating in the LCH Protected Payments System (the "**PPS System**") for the effecting of transfer orders between participants. This means that any instruction by a US Member to transfer money to LCH which is given through the PPS System for the purposes of settling any US Contract should comprise a payment transfer order for the purposes of the Regulations.

¹⁰ Most members of LCH will automatically qualify as participants in the LCH system on the basis that they are regulated institutions. The FSA has exercised its discretion under regulation 8(1) of the Regulations (on the grounds of systemic risk) to ensure that any members of LCH which are not regulated institutions also qualify as participants in the LCH system.

¹¹ It should be noted that the ISD is currently subject to revision at EU level. A revised ISD is likely to be adopted in the first half of 2004.

¹² Further support for this view can be found in the FSA's Guidance to Applicants seeking designation under the Regulations, which states that the FSA considers that transfer orders may be entered into a system by a participant or generated by a system under its rules.

¹³ This argument is supported by the fact that the FSA is apparently willing to treat cash-settled instruments as payment transfer orders. If correct, this would mean that any cash-settled financial futures or options contract would be both a securities transfer order and a payment transfer order.

6. Accordingly, the clearing by LCH of any financial futures or options contract under any US clearing arrangements should involve one or more transfer orders being effected through the LCH system. The provisions of Part III of the Regulations (and, in particular, regulation 14) would therefore apply in the event of a relevant insolvency so as to allow the provisions of the Default Rules (including the close-out netting provisions) to be applied with respect to the related US Contracts and US Margin recorded in the US client account of a US Member without fear of challenge by any English insolvency officer or English court. This would mean that:
- (a) the desired "ring fencing" of the US client account from any other account maintained by the US Member with LCH should be effective under English law in the event of a relevant insolvency with respect to those US Contracts and related US Margin;
 - (b) default action can be taken discretely under the Default Rules with respect to those US Contracts and related US Margin without interference from an English insolvency officer appointed in respect of LCH or the US Member; and
 - (c) the balance on the US client account relating to those US Contracts and related US Margin would not be commingled or offset with the balance on any other account maintained by LCH.
7. The effect of regulation 25 of the Regulations is to prevent an English court from recognising or giving effect to:
- (a) any order of a court exercising insolvency law jurisdiction in relation to LCH or a US Member outside the UK; or
 - (b) any act of a person appointed in such a jurisdiction to discharge any functions under insolvency law,
- where the making of the order or the doing of the act would be prohibited under the provisions of Part III of the Regulations.¹⁴
8. The EU Settlement Finality Directive applies to, and should have been implemented in, all EEA member states. Article 8 of the EU Settlement Finality Directive states that, in the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system. Regulation 24 of the Regulations implements article 8 of the EU Settlement Finality Directive in the UK. Provided article 8 of the EU Settlement Finality Directive has been correctly implemented in other EEA member states, English law (and, in particular, Part III of the Regulations) should apply in the event of insolvency proceedings being opened in any such EEA member state in respect of LCH or any US Member in order to determine the rights and obligations arising from, or in connection with, its participation in the LCH

¹⁴ This does not affect the English court from recognising or giving effect to an overseas court order where it is required to do so under the Civil Jurisdiction and Judgments Act 1982 (the "**1982 Act**") or EU Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "**EU Jurisdiction Regulation**").

system. It follows that the "ring fencing" and discrete default action described in paragraph 6 above should be upheld, and given effect to, in all EEA member states.

Part VII

1. LCH is also afforded insolvency protections under Part VII with respect to the operation of the Default Rules. Part VII comprises sections 154 to 191 inclusive of the Companies Act 1989 (the "**1989 Act**"). One of the key provisions of Part VII is section 159 of the 1989 Act, which provides that:

- (a) a market contract;
- (b) the default rules of a recognised clearing house under the 2000 Act (an "**RCH**"); and
- (c) the rules of an RCH as to the settlement of market contracts not dealt with under its default rules,

shall not be held to be invalid at law if inconsistent with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration or in the administration of an insolvent estate. Section 159 of the 1989 Act also provides that an insolvency officer shall not exercise his powers in such a way as to prevent or interfere with the settlement of market contracts not dealt with under an RCH's default rules or any action taken under an RCH's default rules. Section 159 of the 1989 Act (and the other provisions of Part VII) will apply to LCH as an RCH.

2. The terms "market contract" and "market charge" are central to the insolvency protections afforded under the provisions of Part VII. A market contract is defined under section 155(3) of the 1989 Act as any contract entered into by a clearing house with a member for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.¹⁵ Any US Contract which is concluded between LCH and a US Member with respect to a financial futures or options contract will be a market contract for these purposes. A market charge is defined under section 173 of the 1989 Act as a charge, whether fixed or floating, granted in favour of a recognised clearing house for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts. In addition, under regulation 11 of the Financial Markets and Insolvency Regulations 1991, a charge granted in favour of a recognised UK clearing house (which would include LCH) will only be treated as a market charge to the extent that:

- (a) it is a charge over property provided as margin in respect of market contracts entered into by the recognised UK clearing house; and
- (b) it secures the obligation to pay to the recognised UK clearing house the net sum resulting from the aggregation or set-off of sums payable by or to a defaulter in

¹⁵ LCH is currently engaged in discussions with HM Treasury with a view to making various amendments to the provisions of Part VII, including an amendment to the definition of market contract. The objective of this amendment is to widen the scope of the market contract definition so that it is capable of accommodating any future changes in LCH's clearing business.

respect of unsettled market contracts as described in paragraph 9(2)(a) of Schedule 21 to the 1989 Act.

Where a charge is granted partly for the purposes specified in paragraph (a) and (b) above and partly for other purposes, it will be a market charge so far as it has effect for the specified purposes.¹⁶

3. The effect of section 159 of the 1989 Act is to allow LCH to apply the provisions of the Default Rules (including the close-out netting provisions) in the event of the insolvency of a US Member without fear of challenge by an English insolvency officer appointed in respect of that US Member or an English court. As a result, the desired "ring fencing" and discrete default action should be achieved under Part VII in the event of the insolvency of any US Member. In addition, the effect of section 183 of the 1989 Act is to prevent an English court from recognising or giving effect to:
 - (a) any order of a court exercising insolvency law jurisdiction in relation to a US Member outside the UK; or
 - (b) any act of a person appointed in such a jurisdiction to discharge any insolvency law functions,

where the making of the order or the doing of the act would itself be prohibited under the provisions of Part VII.¹⁷

4. By virtue of section 158 of the 1989 Act, the provisions of Part VII will apply in the event of the insolvency of LCH but only where the related insolvency proceedings are commenced after LCH has taken action under the Default Rules in relation to one of its members. In effect, this means that the provisions of Part VII will only apply in the event of the insolvency of LCH where its insolvency results from the earlier insolvency of one of its members. In practice, this is by far the most likely scenario. However, in the rather unlikely event of LCH becoming insolvent in the absence of a prior member insolvency, the provisions of Part VII would have no application on LCH's insolvency.
5. This theoretical gap in the coverage of Part VII as it would apply on the insolvency of LCH has been remedied in the case of the LCH system as a result of its designation as a designated system for the purposes of the Regulations with respect to any transfer order effected through the LCH system, which would include any US Contract relating to a financial futures or options contract to which LCH is party.¹⁸

¹⁶ Section 173(2) of the 1989 Act.

¹⁷ Section 183 of the 1989 Act is the equivalent provision to regulation 25 of the Regulations. This section does not prevent the English court from recognising or giving effect to an overseas court order where it is required to do so under the 1982 Act or the EU Jurisdiction Regulation. LCH intends to seek an amendment to section 183 in order to widen its scope. This amendment would ensure that the acts of any person whose functions do not arise under "insolvency law" (such as a person exercising regulatory powers of intervention) or any order or act which is not itself prohibited under Part VII (such as a moratorium affecting the exercise of set-off rights) would be covered by this section.

¹⁸ This theoretical gap in the coverage of Part VII would only be relevant to a market contract which is not also a transfer order. It is possible that this gap in coverage will be eliminated in the foreseeable future as a result of revisions made to the list of instruments covered by the ISD or amendments made to the provisions of Part VII. In

Interaction of Part III of the Regulations and Part VII

1. The interplay between Part III of the Regulations and Part VII with respect to transfer orders which are market contracts and collateral security charges which are market charges is addressed by regulations 15 and 21 of the Regulations. Regulation 15 ensures that the provisions of Part VII will prevail in relation to the treatment of any net sum determined as being owing under the Default Rules while regulation 21 expressly disapplies some unduly restrictive provisions of Part VII. In other respects, the provisions of Part III of the Regulations and Part VII will apply in parallel with respect to transfer orders which are market contracts and collateral security charges which are market charges.
2. In light of the interplay between Part III of the Regulations and Part VII, it seems to us that:
 - (a) any US Contract concluded by a US Member which comprises a market contract but not a transfer order effected through the LCH system should be subject to the provisions of Part VII on the insolvency of that US Member, and to the provisions of general English insolvency law (including Part VII to an extent¹⁹) on the insolvency of LCH;
 - (b) any US Contract concluded by a US Member which comprises both a market contract and a transfer order effected through the LCH system should be subject to the provisions of Part III of the Regulations on a relevant insolvency and otherwise to the provisions of general English insolvency law and, in particular, Part VII (to the extent not disappplied under regulation 21 of the Regulations); and
 - (c) any US Contract concluded by a US Member which comprises a transfer order effected through the LCH system but not a market contract should be subject to the provisions of Part III of the Regulations on a relevant insolvency and otherwise to the provisions of general English insolvency law (excluding Part VII, which would not be applicable).

We are of the view that paragraph 2(b) above would be relevant with respect to LCH's proposed US clearing arrangements, given that any US Contract in respect of a financial futures or options contract would be both a market contract for the purposes of Part VII and a transfer order effected through the LCH system.

Non-Cash US Margin

the case of the former, it is clear that the revisions will mean that an expanded list of instruments is covered by the ISD. However, the list has yet to be finalised and it is impossible to be certain at this stage that this gap in coverage will be completely eliminated as a result of the revisions to the ISD. Note that a consequential amendment will be required to the definition of securities in each of the EU Settlement Finality Directive and the Regulations in order to reflect the fact that the list of instruments will in future be set out in section C of the Annex to the ISD (and not in section B as is currently the case).

¹⁹ See paragraph 4 of our discussion of Part VII for clarification of the extent to which Part VII would apply on such insolvency.

1. We understand that the CFTC would expect any non-cash US Margin provided by a US Member to LCH to be liquidated into cash in the event of the insolvency of a US Member.
2. Under the terms of the Charge Documentation, each US Member will grant a security interest under English law in LCH's favour over any non-cash US Margin.²⁰ This security interest secures, *inter alia*, any monies which are due or owing by the relevant US Member to LCH on the account specified in the Charge Documentation (or, if no account is so specified, on all accounts of the relevant US Member with LCH) and any other liabilities of the relevant US Member to LCH on the relevant account or accounts under its clearing membership agreement with LCH and LCH's General Regulations.
3. LCH has an express power of sale under the terms of the Charge Documentation in respect of any non-cash US Margin. This power of sale is exercisable by LCH without prior notice to the relevant US Member in the event of any default on its part in paying or discharging any of the obligations secured thereunder.
4. We take the view that the Charge Documentation should comprise a collateral security, with the result that the provisions of Part III of the Regulations would apply. The effect of regulation 14 of the Regulations is to disapply English insolvency law to the extent inconsistent with the default arrangements of a designated system or any contract for the purpose of realising collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements. In effect, this should mean that LCH is able to exercise its power of sale under the Charge Documentation in relation to any non-cash US Margin in the event of the insolvency of the relevant US Member on the basis that:
 - (a) the Charge Documentation will comprise a contract for the purposes of realising collateral security to which the provisions of regulation 14 will apply; and
 - (b) the relevant US Member is likely to have defaulted in paying or discharging one or more of the obligations secured under the Charge Documentation so that LCH's power of sale becomes exercisable.

The cash amount derived from this sale would be credited to the US client account of the defaulting US Member and could then be applied by LCH (as US Margin), in accordance with the Default Rules, to offset any amounts owing to LCH on such US client account.²¹

Conclusions

²⁰ The Charge Documentation includes further security provisions which would apply to any non-cash US Margin situated in the US. The purpose of these provisions is to ensure that the Charge Documentation also constitutes a security agreement for the purposes of creating a security interest in relation to such non-cash US Margin under applicable provisions of the Uniform Commercial Code (or other applicable US laws or regulations). We have not considered and do not express any view on these provisions in this memorandum as they relate to, and issues arising in connection therewith are expressed to be governed by, applicable US laws and regulations.

²¹ Part VII also contains a number of insolvency protections applicable to market charges. However, there are various issues associated with the provisions of Part VII as they apply to market charges, particularly as regards the extent to which a charge is treated as a market charge. In view of the impact of the Regulations described above, we have not discussed these provisions in this memorandum.

1. We are of the view that the provisions of Part III of the Regulations and of general English insolvency law (including, in particular, the provisions of Part VII) would apply to LCH's proposed US clearing arrangements.
2. As a result of the application of the provisions of Part III of the Regulations and Part VII to LCH's proposed US clearing arrangements:
 - (a) the desired "ring fencing" of any US client account operated by LCH for the purposes of recording the US Contracts of any US Member (and any related US Margin provided by such US Member) from any other account should be effective under English law in the event of a relevant insolvency;
 - (b) default action can be taken discretely with respect to any such US client account under the Default Rules without interference from an English insolvency officer appointed in respect of LCH or the relevant US Member; and
 - (c) the balance on such account would not be commingled or offset with the balance on any other account maintained by LCH.
3. Any non-cash US Margin which is provided by a US Member to LCH could be sold by LCH in accordance with the terms of the Charge Documentation in the event of that US Member's insolvency on the basis that it is likely to have defaulted in paying or discharging one or more of the obligations secured under the Charge Documentation. The cash amount derived from this sale could then be credited to the US client account of the defaulting US Member and applied by LCH (as US Margin), in accordance with the Default Rules, to offset any amount owing to LCH on such US client account.
4. Any default action taken under the Default Rules in connection with the participation of LCH or any US Member in the LCH system should be upheld in the event of insolvency proceedings being opened in respect of that participant in any EEA member state other than the UK, with the result that the "ring fencing" and discrete default action described in paragraph 2 above should be upheld in any EEA member state other than the UK in which insolvency proceedings are opened in respect of LCH or any US Member. This is subject to article 8 of the EU Settlement Finality Directive having been correctly implemented in each such EEA member state.

This memorandum is given for the sole benefit of LCH and may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, except that we consent to a copy of this memorandum being shown to the CFTC and posted on the CFTC's internet website in connection with LCH's application to extend the scope of the US clearing activities which it is permitted to undertake as a DCO, and solely on the basis that we accept no responsibility or liability to any person other than LCH.

**Clifford Chance
Limited Liability Partnership**

10 February 2004