

## New Terminology in the Master Priority Deed

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On 11 March 2004, ASX introduced new Rules to support the new business framework for trading, clearing and settlement on ASX markets, and changes required under the Financial Services Reform Act. As a result, the Master Priority Deed which Leveraged Equities entered into, and which we have provided you a copy of, contains old terminology.

The following terminology replaces the relevant old terminology throughout the Master Priority Deed.

<b>New Terminology</b>	<b>Old Terminology</b>
Australian Clearing House	Options Clearing House
ACH	OCH
ACH Secured Obligation	OCH Secured Obligation
ACH Securities	OCH Securities
ACH Subposition	OCH Subposition
ASTC	SCH
ASTC Participant	Clearing Participant
ASTC Settlement Rules	SCH Rules
ASX Market Rules and Procedures	ASX Business Rules and Procedures
Participant	CHESS Participant

The following terminology has been introduced into the Master Priority Deed.

<b>New Terminology</b>	<b>Definition</b>
ACH Clearing Rules and Procedures	means the operating rules and procedures of ACH as amended or varied from time to time.
Approved Financial Product	has the meaning given to it in the ASTC Settlement Rules.
Options Market Contract	has the meaning given to it in the ACH Clearing Rules.
Financial Products	has the meaning given to it in the ASTC Settlement Rules.

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**MASTER PRIORITY DEED**

**Options Clearing House Pty Ltd**

**(ABN 48 001 314 503)**

**and**

**Leveraged Equities Limited**

**(ABN 26 051 629 282)**

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## MASTER PRIORITY DEED

**DATE 27 December 2000**

**Options Clearing House Pty Limited** ABN 48 001 314 503 (the "**OCH**")

**Leveraged Equities Limited** ABN 26 051 629 282 (the "**Margin Lender**")

### RECITALS

- A. The Margin Lender has provided finance to the Client under a margin lending facility on certain terms and conditions including enabling the Client to fund the purchase of CHESSE Approved Securities ("**Facility**").
- B. Each Client has granted the Margin Lender Securities over the Secured Property in favour of the Margin Lender as security for the repayment of funds advanced by the Margin Lender.
- C. Each Client has requested its Clearing Participant to register exchange traded option contracts ("**Option Contracts**") with the OCH and the Client may from time to time provide CHESSE Approved Securities which form part of the Secured Property to the OCH as security for, amongst other things, the performance by that Clearing Participant of the Option Contracts.
- D. The Margin Lender agrees that the OCH will have first priority under the OCH Securities over the Client's Secured Property.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this deed.

"**ASX**" means Australian Stock Exchange Limited ABN 98 008 624 691.

"**ASX Business Rules and Procedures**" means the business rules and procedures of ASX as amended or varied from time to time.

"**Chargee**" means each of the OCH and the Margin Lender.

"**CHESSE**" has the meaning given to it in the SCH Rules.

"**CHESSE Approved**" has the meaning given to it in the SCH Rules.

"**CHESSE Participant**" means, in relation to a Client, that Client's participant for the purposes of the SCH Rules which controls the Transfer of Secured Property held by that Client.

"**Client**" means any customer of the Margin Lender who has:

- (a) granted one or more Margin Lender Securities over any Secured Property;
  - (b) instructed its Clearing Participant to register an Option Contract with OCH; and
  - (c) Secured Property which is presently lodged as collateral with the OCH.
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**"Clearing Participant"** means, in relation to a Client, that Client's Clearing Participant for the purposes of the ASX Business Rules and Procedures who registers Option Contracts with OCH at the request of the Client.

**"Enforcement Costs"** means any of the following costs approved by OCH which are incurred in the enforcement of the OCH Securities or Margin Lender Securities over any Secured Property:

- (a) losses, liabilities and expenses incurred by a Chargee or Receiver in relation to enforcement of that Security Interest; and
- (b) any remuneration payable to a Receiver (including by way of commission) in connection with disposal of any Secured Property.

**"GST"** means:

- (a) the same as in the A New Tax System (Goods and Services Tax) Act, 1999 (C'th); and
- (b) any amount imposed as additional tax, penalty tax, fine, interest or other charge payable in respect of GST as defined in paragraph (a).

**"Margin Lender Secured Obligations"** means all present and future (including all contingent) indebtedness, liabilities and obligations secured under the Margin Lender Securities.

**"Margin Lender Securities"** means each Security Interest granted from time to time by the Client in favour of the Margin Lender over Secured Property of that Client.

**"OCH Secured Obligations"** means all present and future (including all contingent) indebtedness, liabilities and obligations secured under the OCH Securities.

**"OCH Securities"** means each Security Interest granted by a Client over that Client's Secured Property to the OCH as security for the performance of an Option Contract by that Client's Clearing Participant.

**"OCH Subposition"** means the facility in CHES established in accordance with the SCH Rules for the reservation of CHES Approved Securities in the subposition of OCH.

**"Receiver"** means a receiver or a receiver and manager appointed under an OCH Security or a Margin Lender Security.

**"SCH"** means the ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532 as approved by the relevant Minister as the Securities Clearing House under section 779B of the Corporations Law to operate CHES or its successors.

**"SCH Rules"** means, at any time, the business rules of SCH at that time.

**"Securities"** has the meaning given to it in the SCH Rules.

**"Secured Property"** means, in relation to a Client, CHES Approved Securities which from time to time are registered in the name of the Client or which are beneficially owned by the Client but held in the name of a nominee which is an associate of the Margin Lender and reserved in the OCH Subposition and any proceeds received or receivable from the sale of those CHES Approved Securities.

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"**Security Interest**" means any mortgage, charge, lien, pledge, trust or power over the Secured Property that secures the payment of money or the performance of an obligation.

"**Tax**" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a government agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income.

"**Trading Day**" has the meaning given to it in the ASX Business Rules and Procedures.

"**Transfer**" has the meaning given to it in the SCH Rules.

## 1.2 Rules for interpreting this deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, it has the same meaning throughout this deed.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the Corporations Law.

## 2. CONSENTS

- (a) OCH consents to the creation of each Margin Lender Security on condition that in so far as it attaches to any Secured Property the rights of the Margin Lender are subject to the prior

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rights of the OCH set out in this deed.

- (b) The Margin Lender consents to the creation of each OCH Security, and agrees that the execution or existence of each OCH Security does not constitute a breach by the relevant Client under its Margin Lending Security, any document or agreement collateral to its Margin Lender Security or any other document or agreement that relates to its Secured Obligations.
- (c) The Margin Lender agrees:
  - (i) that it will co-operate in the implementation of this deed; and
  - (ii) that it will not do anything, including give any instruction to a CHES Participant, a Clearing Participant or any other person in relation to any Secured Property which is inconsistent with its obligations under this deed or the order of priorities between the OCH Security and the Margin Lender Security.

### 3. **PRIORITIES**

#### 3.1 **Order of priorities**

The Chargees agree that as between any OCH Security and any Margin Lender Security over any Secured Property:

- (a) the OCH Security ranks in respect of the Secured Property in priority to the Margin Lender Security for the payment and performance of all OCH Secured Obligations; and
- (b) all money received by either Chargee or a Receiver in respect of any Secured Property on enforcement of any of the OCH Securities or Margin Lender Securities must be applied towards satisfaction of the OCH Secured Obligations and any Enforcement Costs prior to payment of any of the Margin Lender Secured Obligations.

#### 3.2 **Matters not affecting priority**

The order of priority set out in clause 3.1 applies despite anything that, would otherwise affect that order of priority, including without limitation:

- (a) the fact that a Chargee has notice of any Security Interest held by the other Chargee;
- (b) the respective dates on which any Secured Obligation is advanced or becomes owing or payable;
- (c) the respective dates of creation or registration of the OCH Security or the Margin Lender Security;
- (d) anything contained in any Security Interest or instrument creating, supplementing or amending a Security Interest;
- (e) any change in the amount of the OCH Secured Obligations or the Margin Lender Secured Obligations;
- (f) the grant by a Chargee or any other person of any time, waiver or other indulgence or concession;

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- (g) the discharge or release of any Clearing Participant or any other person, (whether in whole or in part) by OCH;
  - (h) the failure by a Chargee to give notice to the other Chargee or the Clearing Participant of any breach by any person;
  - (i) any laches, acquiescence, delay, act, omission or mistake on the part of or suffered by a Chargee or any other person in relation to this deed, any Security Interest held by the Chargee or any other document or agreement;
  - (j) any rule of law or equity;
  - (k) the fact that any of the Secured Obligations are not yet payable;
  - (l) the order in which accommodation is provided or liabilities (whether actual or contingent) incurred;
  - (m) any failure to enforce a Security Interest, chose in action or judgement; or
  - (n) a change in the underlying assets which constitute the Secured Property.

### **3.3 Disposal of Secured Property**

The priorities set out in this deed operate in respect of the disposal of, or other dealing with, the Secured Property whether or not the disposal or dealing occurs as a consequence of the enforcement of an OCH Security or a Margin Lender Security.

### **3.4 Priority applies to Secured Property only.**

The parties acknowledge that this deed does not affect the rights, powers and remedies under an OCH Security or a Margin Lender Security in connection with any property of the Client other than the Secured Property.

## **4. CONTINUANCE OF RIGHTS, POWERS AND REMEDIES**

This deed does not affect:

- (a) the rights, powers and remedies of the Chargees in connection with the Secured Property; or
- (b) the Client's obligations in connection with the OCH Secured Obligations or the Margin Lender Secured Obligations or any OCH Security or Margin Lender Security,

except to the extent specifically provided for in this deed.

## **5. ENFORCING THE SECURITIES**

### **5.1 Enforcing the Security**

- (a) The OCH may exercise, or not exercise, any power, right or remedy under or in respect of an OCH Security as it considers appropriate and without consulting with, notifying or considering the interests of, the Margin Lender, and is not liable to the Margin Lender for any loss that the Margin Lender suffers as a result of doing so.

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- (b) The Margin Lender may not exercise any power, right or remedy under or in respect of the Margin Lender's Security over any Secured Property unless the Secured Property has been released from the OCH Subposition or the Margin Lender has obtained the prior written consent of the OCH. The OCH is under no obligation to consent to any request made by the Margin Lender under this clause.

## 5.2 No marshalling

The OCH is not under any obligation to:

- (a) marshal or appropriate in favour of the Margin Lender; or
- (b) exercise, apply, perfect or recover,

any Security Interest that the OCH holds at any time or any funds or property that the OCH may be entitled to receive or have a claim on.

## 5.3 Release of Secured Property from Margin Lender Securities

- (a) Any transfer, sale or realisation of the Secured Property by the OCH under the ASX Business Rules and Procedures or pursuant to any OCH Security will automatically effect a release of that property from the Margin Lender Securities.
- (b) The Margin Lender must ensure that all documents setting out the terms of the Margin Lender Securities contain an automatic release provision in substantially the same terms as clause 5.3(a). The Margin Lender need not release any personal obligation of the Client or any other person.
- (c) If OCH decides to sell or dispose of any Secured Property off market, the Margin Lender must promptly on request by the OCH execute and deliver to OCH any document that OCH may require in order to release the Secured Property from the Margin Lender Securities to enable OCH to provide clear title in the Secured Property to the proposed transferee. OCH will only make such a request if the release is required by the proposed transferee.

## 6. DEALING WITH THE MARGIN LENDER SECURITIES

The Margin Lender may only assign, transfer or otherwise dispose of its rights under a Margin Lender Security or under this deed to a person approved by OCH prior to such disposal who has entered into a document with the OCH, in form and substance satisfactory to the OCH, agreeing to be bound by this deed as if the person were the Margin Lender.

## 7. NO LIABILITY TO MARGIN LENDER

The OCH is not liable to the Margin Lender, or to any person claiming through the Margin Lender, for any action that the OCH takes or does not take:

- (a) in relation to any document or property that is deposited or lodged with the OCH under this deed or any OCH Security;
- (b) under any right given to the OCH by this deed or by any OCH Security; or



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- (c) pursuant to this deed or any OCH Security including, without limitation, the release of any Secured Property from any OCH Security or the OCH Subposition.

## 8. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that:

- (a) **(status and power)** it is a company limited by shares under the Corporations Law with the full legal capacity and power to enter into this deed and to carry out the transactions that this deed contemplates; and
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that this deed contemplates.

## 9. COSTS AND TAXES

The Margin Lender indemnifies the OCH against, and must immediately pay the OCH on demand the amount of, all Taxes (including the GST), costs, charges and expenses incurred in connection with:

- (a) any exercise or non exercise of rights (including, without limitation, the contemplated enforcement or preservation of rights under this deed) waiver, variation, release or discharge in connection with this deed;
- (b) fines and penalties and associated costs, which may be payable in connection with this deed or a payment or receipt or any other transaction contemplated by this deed; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed,

including in each case, without limitation, legal costs and expenses on a full indemnity basis.

## 10. INDEMNITIES AND UNDERTAKING

### 10.1 Operation of indemnities

- (a) Each indemnity in this deed survives the expiry or termination of this deed.
- (b) The OCH may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.

### 10.2 Indemnity granted by the Margin Lender to the OCH

The Margin Lender indemnifies the OCH against, and must immediately pay the OCH on demand the amount of, any claim, loss, cost or damage suffered by the OCH under or in connection with:

- (a) the payment, omission to make payment or delay in making payment of an amount referred to in clause 9.1;
- (b) OCH acting in good faith on communications purporting to originate from the offices of the Client or its Clearing Participant or to be given by an authorised officer of the Client or its Clearing Participant in relation to any information in connection with the Secured

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Property which a Client or its Clearing Participant is required to provide to OCH under the ASX Business Rules and Procedures;

- (c) any action taken by OCH at the request of the Margin Lender or any omission by OCH to take any action at the request of the Margin Lender including, without limitation, claims made by a Client or its Clearing Participant or losses, costs or damages payable by the OCH to a Client or its Clearing Participant as a result of any action or failure by OCH to take action at the request of the Margin Lender;
- (d) any failure by the Margin Lender to give notice to the OCH in accordance with clause 10.3 and for the purposes of this indemnity the Margin Lender acknowledges that the OCH may suffer loss or damage if it is not granted a Security Interest over the Secured Property by the Client which is the beneficial owner of the Secured Property,

including in each case, without limitation, legal costs and expenses on a full indemnity basis and expenses incurred in engaging consultants.

### 10.3 Undertaking in relation to nominee

The Margin Lender must notify the OCH if any Secured Property is registered in the name of a nominee which is related to, or an associate of, the Margin Lender. Notification must be given by the Margin Lender to the OCH at or before the time that the Secured Property is provided to the OCH as collateral pursuant to an OCH Security.

## 11. NOTICES

### 11.1 How to give a notice

A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full.

### 11.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
  - (i) by 5.00 pm (local time in the place of receipt) on a Trading Day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Trading Day, or on a day that is not a Trading Day - on the next Trading Day; and

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- (b) if it is sent by mail - on actual receipt.

### 11.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

#### **OCH**

Address: Level 6, 20 Bridge Street, SYDNEY, NSW 2000  
Fax number: 02 9227 0033  
Attention: National Manager, Derivatives

#### **Margin Lender**

Address: Level 3, 24 York Street, SYDNEY NSW 2000  
Fax number: 02 8282 8383  
Attention: Product Manager - Options

### 12. RECORD OF CLIENT ACKNOWLEDGMENT

The Margin Lender must:

- (a) ensure that each Client and its Clearing Participant/CHESS Participant is aware of the agreement made between the OCH and the Margin Lender under this deed in relation to priority over the Secured Property and that each Client agrees that the arrangements made under this deed are only for the benefit of the Chargees;
- (b) before any Secured Property which is subject to a Margin Lender Security is provided to the OCH as collateral pursuant to an OCH Security, obtain from the Clearing Participant of the Client which holds the Secured Property and retain in its possession an acknowledgment duly signed by the Clearing Participant and addressed to the OCH in, or substantially in, the form set out in **Schedule 1**;
- (c) before it is granted any Margin Lender Security from a Client, obtain from that Client and retain in its possession an acknowledgment duly signed by the Client and addressed to OCH in, or substantially in, the form set out in **Schedule 2**;
- (d) before any Secured Property which is held in the name of a nominee which is related to, or an associate of, the Margin Lender is provided to the OCH as collateral pursuant to an OCH Security, obtain from the nominee and retain in its possession an acknowledgment duly signed by the nominee and addressed to OCH in, or substantially in, the form set out in **Schedule 3**; and
- (e) provide to the OCH within two Trading Days following request by the OCH, the originals or, if OCH does not require originals, copies of the acknowledgments referred to in paragraphs (b), (c) and (d) (above).

### 13. TERM

The rights and obligations of the parties under this deed begin on the date of this deed and end on any of:

- (a) the date agreed in writing by the parties; or

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- (b) the date no less than 30 calendar days after the date that the OCH gives a notice of termination to the Margin Lender.

#### 14. FEES

- (a) The Margin Lender agrees:
  - (i) to pay the OCH the fee (if any) specified in **Schedule 4** at the times specified in that schedule in consideration for the OCH consenting to the Margin Lender Securities;
  - (ii) that the OCH may vary the fee specified in **Schedule 4** or, if no fee is specified in Schedule 4, impose a fee which is payable by the Margin Lender by giving the Margin Lender not less than 30 calendar days notice (referred to in this clause as the "OCH Fee Notice") of the variation to or introduction of the fee and the Margin Lender must:
    - (A) from the date it receives the OCH Fee Notice pay the fee as varied or introduced by the OCH; or
    - (B) if the Margin Lender does not accept the variation in the amount of the fee or the introduction of a fee, notify the OCH within 10 calendar days of receiving the OCH Fee Notice that it does not accept the fee as varied or which has been introduced; and
  - (iii) the OCH may give an OCH Fee Notice under this clause on one or more occasions.
- (b) The Margin Lender will be taken to have accepted the variation to, or introduction of, the fee if it does not give notice to the OCH within the period prescribed in clause 14(a)(ii)(B).
- (c) If the Margin Lender does not pay a fee in accordance with this deed within 10 calendar days of the due date, or does not accept the introduction of or increase in the fee specified in an OCH Fee Notice, the Margin Lender must release all Secured Property from the Margin Lender Securities and execute any document reasonably required by the OCH to effect the release within 10 calendar days of receipt by the Margin Lender of a request from the OCH for such release.

#### 15. GENERAL

##### 15.1 Governing law

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

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## 15.2 Power of Attorney

In consideration of the OCH consenting to the creation and establishment of the Margin Lender Securities, the Margin Lender appoints each of the OCH and any director or secretary of the OCH severally as its attorney to do anything which, in the attorney's opinion, is contemplated by, necessary or incidental to give full effect to the Margin Lender's obligations under this Deed if the Margin Lender:

- (a) fails to do something that it is required to do under this Deed; or
- (b) fails to comply with any request or direction made or given by the OCH pursuant to this Deed.

The Margin Lender agrees to ratify and confirm whatever an attorney does under and in accordance with this power of attorney and to indemnify each attorney against, and to pay each attorney immediately on demand made by the attorney or OCH on its behalf, all liabilities incurred by the attorney as a result of such action.

## 15.3 Waiver and variation of rights

A right may only be waived or varied in writing, signed by the party giving the waiver or variation, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver or variation of the right or otherwise prevents the exercise of the right;
- (b) a waiver or variation of a right on one or more occasions does not operate as a waiver or variation of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 15.4 Operation of this deed

- (a) Any right that a party may have under this deed is in addition to, and does not replace or limit, any other right that the party may have.
- (b) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

## 15.5 Inconsistency

If there is an inconsistency between the ASX Business Rules and Procedures or the SCH Rules and:

- (a) this deed; or
- (b) the order of priorities between the OCH and the Margin Lender,

then, to the extent applicable, the ASX Business Rules and Procedures or the SCH Rules (as the case may be) will prevail.

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15.6 **Amendment**

This deed can only be amended, supplemented, replaced or novated by another document signed by the parties.

15.7 **Counterparts**

This deed may be executed in counterparts.

15.8 **Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as a deed.



THE COMMON SEAL of Leveraged Equities Ltd, the fixing of which was witnessed by:

*[Handwritten signature]*

Signature of director

BERGE DER SARKISSIAN

Name

*[Handwritten signature]*

Signature of ~~director~~/secretary

ANDREW KAMIYI

Name

OR;

SIGNED, SEALED and DELIVERED for the Margin Lender under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

THE COMMON SEAL of the OCH, the fixing of which was witnessed by:

*[Handwritten signature]*

Signature of director



*[Handwritten signature]*

Signature of director/secretary

ANGUS GEORGE RICHARDS

Name

HOCK PENG LEE

Name