

Briefing note on the LBIE Trust Property Scheme

Background

Lehman Brothers International (Europe) (in administration) ("**LBIE**") is promoting a Scheme of Arrangement under the Companies Act 2006 to provide the systematic procedures which will be used by LBIE for the purpose of returning certain property which LBIE holds or controls and which belongs to its customers (the "**Scheme**").

The need for the Scheme arises from the insolvency of LBIE. As part of LBIE's business, it held, directly or indirectly, significant quantities of assets in trust for its customers. Where assets are held in trust, they do not form part of LBIE's general estate but instead are held by LBIE as trustee for the benefit of those persons who have claims to those assets.

There are a number of issues which have given rise to complexities affecting LBIE's ability to return property belonging to its customers. The Scheme addresses each of these issues so far as they arise between LBIE and the affected creditors. The Scheme does this by compromising nearly all claims of affected creditors of LBIE and providing those creditors in return with new claims as provided for in the Scheme.

As the Scheme constitutes a compromise with the affected creditors, LBIE has worked closely with its creditors' committee with a view to establishing what LBIE considers to be a reasonable, balanced and fair basis of compromise between LBIE, the affected creditors and all of its other creditors.

The Scheme is not intended to be a comprehensive solution to all matters arising from the insolvency of LBIE. Other processes in the insolvency of LBIE (which may include distributions, further schemes of arrangement or court processes or determinations) will be taken forward to deal with other property and unsecured claims and these may not be fully resolved or developed at the time that the Scheme is approved or sanctioned. However, without the Scheme, creditors should understand that the issues currently affecting distribution of trust assets will need to be resolved in some other manner, almost certainly on a bilateral case by case basis, and this may result in significant delay in distributing these trust assets.

Not all creditors with claims to property held by LBIE in trust are affected by the Scheme. Not all property which LBIE holds in trust or in respect of which creditors may have proprietary claims is dealt with under the Scheme. This document explains which creditors are affected and what property is dealt with within the Scheme.

1 Purpose of the Scheme

The Scheme has a number of objectives:

- 1.1** to impose a bar date on all claims (other than defined excluded claims) of scheme creditors;
- 1.2** to establish mechanisms to determine proprietary claims to assets of scheme creditors;
- 1.3** to establish mechanisms to determine the close-out amounts under all financial contracts with scheme creditors;
- 1.4** to make provision for the costs of managing trust property;

- 1.5 to effect appropriations out of trust property to meet the liabilities of the scheme creditors and to make distributions of the balance of their trust property;
- 1.6 to identify the information that should be taken into account by LBIE in implementing the Scheme and to determine which information, if any, may properly be disregarded;
- 1.7 to establish a mechanism to resolve certain disputes relating to the Scheme; and
- 1.8 to determine, quantify and crystallise the value of the unsecured claims of scheme creditors.

2 Timing and Process

LBIE is today applying to court for directions to be heard on 29/30 July on a preliminary issue in order for the Scheme to proceed. In connection with that preliminary proceeding, LBIE has prepared a summary of the terms of the Scheme, which has been filed with the court and is also available on the PricewaterhouseCoopers LLP website (http://www.pwc.co.uk/eng/issues/lehman_updates.html). As soon as possible after this hearing, there will be a further hearing before the court for leave to convene the meetings of creditors required to approve the Scheme. This further hearing is likely to be in mid-September at the earliest. In advance of that hearing, LBIE will distribute a letter to all scheme creditors identifying the issues to be raised at that hearing. LBIE plans also to make available a detailed explanatory statement describing the Scheme with the actual terms of the Scheme itself attached.

Following that hearing, if leave is given, the creditors' meetings will be convened. It is currently anticipated that the creditors' meetings will be held in mid-October. If the Scheme is approved by the requisite majorities of creditors then LBIE will apply to the court for confirmation of the Scheme and, if given, the Scheme will become effective as soon as possible thereafter.

3 Scheme Creditors

- 3.1 A creditor of LBIE will generally be a scheme creditor and bound by the Scheme if it had a proprietary claim to segregated securities held by LBIE in trust when LBIE went into administration (7.56 a.m. (London time) on 15 September 2008).
- 3.2 Some creditors are not scheme creditors. These include persons:
 - 3.2.1 for whom LBIE held no assets or assets only in house accounts when LBIE went into administration;
 - 3.2.2 who delivered assets to LBIE under a title transfer arrangement;
 - 3.2.3 who do not have securities but only have money claims. The Scheme does not apply to client money held by LBIE at the time of Administration. Such money will be distributed outside of the Scheme in accordance with the applicable FSA Rules;
 - 3.2.4 whose relationships with LBIE are not primarily based on them being customers under prime brokerage agreements or custody agreements. These persons may be designated by LBIE as "**Excluded Creditors**" and their securities will be the subject of "**Excluded Claims**" and will be dealt with outside of the Scheme;
 - 3.2.5 who have already had their assets returned; and
 - 3.2.6 who do not have or who have renounced their proprietary claims against LBIE.

4 Property in the Scheme

The Scheme cover securities held in trust by LBIE or its custodians at the time of administration and any property derived from that property at a later time.

5 Asset Claims

As a general rule, the Scheme will treat claims to assets on a stock line by stock line basis. Each stock line will form an asset pool to be shared amongst scheme creditors proportionately to their proprietary claims. Assets held on a pure custody basis will form separate pools from other assets. Where the manner of the return of assets by a sub-custodian does not permit assets to be distributed on a stock line basis, the Scheme will provide for the creation of further separate asset pools. LBIE will be free to disregard claims to assets made after the bar date of which it is unaware. Securities which have been rehypothecated are not the subject of proprietary claims or within the Scheme. Generally, a scheme creditor's proprietary claims will be those he has under his contract with LBIE. The Scheme will contain a number of measures to limit the impact of the insolvency of LBIE on those claims. The Scheme will provide for valuation methodologies for assets claimed which will be by reference to the relevant market.

6 Contractual Positions

In addition to determining asset claims, the Scheme also provides a regime for ascertaining all claims under financial contracts. Where a financial contract has not previously been terminated then the Scheme will automatically terminate it prior to the bar date. This enables close-out amounts to be calculated under all contracts and a net contractual position as between LBIE and each scheme creditor to be ascertained. The Scheme will provide for valuation methodologies for contracts. Importantly, rehypothecated securities and short positions will be valued as at the time LBIE entered administration. Otherwise the contract valuation will, so far as possible, attempt to follow the provisions of the underlying contract. If the net position shows that the creditor owes LBIE money then LBIE may make appropriations out of that scheme creditor's assets sufficient to meet that liability. If the net position shows that LBIE owes the scheme creditor money then that will be an unsecured liability of LBIE to be dealt with in LBIE's general distributions to unsecured creditors in due course.

7 Allocations and shortfalls

As and when trust property becomes available to LBIE for distribution LBIE will allocate it to scheme creditors proportionately to their asset claims. LBIE may then appropriate property out of that allocation to meet the scheme creditors' liabilities. The surplus property after appropriation will then be distributed to the scheme creditors entitled to it. If the allocations are less than the asset claims of a scheme creditor then that scheme creditor will have an unsecured claim against LBIE for the shortfall to be dealt with in LBIE's general distributions to unsecured creditors in due course. Scheme creditors may elect to use their unsecured shortfall claims to reduce their liabilities to LBIE in order to minimise the appropriation of trust property made by LBIE and maximise the trust property returned to them.

The Scheme will provide a detailed mechanism for these arrangements including certain arrangements whereby the scheme creditors may at their election collateralize their liabilities.

8 Voting

Each scheme creditor will be entitled to vote upon the Scheme for the lesser of:

- 8.1 its asset claim; and
- 8.2 its net equity position.

valued in each case as at 30 June 2009. Net equity is the asset claim plus amount due from LBIE less amounts owed to LBIE.

9 The compromise by Scheme Creditors

- 9.1 Under the Scheme, all scheme creditors release all claims (save for defined Excluded Claims) against LBIE and each other but they do not release claims (if any) which they may have against Lehman Brothers Holdings Inc., as guarantors of LBIE or against or Lehman Brothers Inc., CAPCO or Lehman Brothers Bankhaus AG.
- 9.2 Under the Scheme all scheme creditors will receive in return the right to have their claims and entitlements determined on the basis set out in the Scheme and to an unsecured claim against LBIE (to be dealt with in LBIE's general distributions to unsecured creditors in due course) for the value of any shortfall in assets allocated to them or if the net contractual position shows that LBIE is a net debtor to them.
- 9.3 No Scheme Creditor shall be entitled to recover more than once in respect of the same asset or claim, whether under the Scheme or otherwise.

10 Key Dates

- 10.1 The bar date will be the last date for submission of claims under the Scheme. Any claim submitted after the bar date can be disregarded by LBIE. The bar date shall be:
 - 10.1.1 31 December 2009, if the Scheme becomes effective on or before 31 October 2009; and
 - 10.1.2 Otherwise, the last business day of the second full calendar month following the Scheme becoming effective.

The bar date will be advertised on LBIE's page on the PricewaterhouseCoopers LLP website, in the *Financial Times* (United Kingdom and international editions); and in *The Wall Street Journal* (European and US editions).

- 10.2 All untermiated financial contracts will be automatically terminated on the last business day of the month in which the Scheme becomes effective.
- 10.3 The Scheme will terminate after five years after the Effective Date or sooner if the purposes of the Scheme have been fulfilled.

11 Currency

The Scheme will operate in US dollars. All calculations and valuations between the Scheme Creditor and LBIE under it in any other currency will be converted into US dollars.

12 Costs

LBIE will appropriate from allocated trust property an amount in respect of the costs associated with the conduct and operation of the Scheme and the management of customer property. This will be taken at a maximum of 0.75% of the value of the assets claimed by scheme creditors who only have custody assets and 1% of the value of assets claimed by other scheme creditors. The

amount appropriated will never exceed US\$2.5 million for any scheme creditor. If the value of the assets claimed is less than US\$5 million, no appropriation will be made for costs. LBIE will ultimately give a rebate of part of the costs if the assets allocated to a creditor are less than the assets claimed.

13 Dispute Resolution Mechanism

The Scheme will contain a dispute resolution mechanism which will allow disputes to be referred to a suitably qualified valuation expert or an independent adjudicator or the court.

14 Scheme Committee

There will be a scheme committee made up of LBIE creditors to review the operation of the Scheme

15 No assignment

Scheme creditors are free to purchase other claims or liabilities but no netting or set off of claims and obligations under the Scheme will take account of any claims and liabilities so acquired after the time LBIE entered into administration.