

Dated



DECEMBER 2012

LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

and



## CLAIMS DETERMINATION DEED

**Linklaters**

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Ref:



This Claims Determination Deed (this "Deed") is made on [REDACTED] **DECEMBER 2012** between:

(1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**, a company incorporated in England and Wales with registered number 2538254, whose registered address is Level 23, 25 Canada Square, Canary Wharf, London E14 5LQ, United Kingdom, acting by its joint administrators, Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs, each a partner of PwC, 7 More London Riverside, London SE1 2RT, United Kingdom (the "Company"); and

(2)

[REDACTED]  
(the "Creditor").

**Background:**

- (A) Anthony Victor Lomas and Steven Anthony Pearson, each a partner of PwC, were appointed to act as joint administrators of the Company on the Administration Date pursuant to the Administration Order. On 30 November 2009, Derek Anthony Howell, and on 2 November 2011, Paul David Copley and Russell Downs, each a partner of PwC, were also appointed to act as joint administrators of the Company.
- (B) The Creditor became a Signatory to the CRA on [REDACTED] January 2010.
- (C) Prior to the Administration Date, (i) the Creditor had given instructions for the purchase, sale or delivery of certain Securities and/or (ii) the Company had given instructions to rehypothecate certain Securities and/or (iii) the Company had given instructions for the return of certain Rehypothecated Securities, which transactions were to be settled with or through LBI. In relation to those transactions set out in Appendix 1 (*Pending Transactions*), (each such transaction referred to herein as a "Pending Transaction") the Company does not at the date of this Deed have Relevant Information definitively establishing whether or not such transactions have failed or settled.
- (D) The Company has been reconciling its Books and Records in respect of each Pending Transaction with any Relevant Information relating to each such Pending Transaction received from LBI and the Creditor. As at the date of this Deed, the Company has been unable to determine the total quantum, or nature, of the Creditor's Claims against the Company (and the Company's Claims against the Creditor) in respect of and in connection with such Pending Transactions.
- (E) Notwithstanding the uncertainties referred to in recitals (C) and (D) above, the Company and the Creditor now wish to agree the quantum of the Creditor's Minimum Net Financial Claim (determined on the basis of certain Settlement Assumptions made in respect of the Pending Transactions), and agree that the same qualifies for dividends from the estate of the Company available to its unsecured creditors.
- (F) The ultimate quantum of the Creditor's Net Financial Claim may exceed the Minimum Net Financial Claim Amount to the extent that (i) a Settlement Assumption made in respect of one or more Pending Transactions is determined to be incorrect in accordance with the terms of this Deed, and (ii) this results in a Remaining Net Financial Claim, which shall constitute an unsecured Claim separate from the Creditor's Minimum Net Financial Claim.

- (G) In consideration of having its Minimum Net Financial Claim quantified and admitted for dividend, the Creditor will waive, release and/or discharge certain Claims against the Company (including certain Pre-Administration Client Money Claims and Certain Excluded Claims).
- (H) For the avoidance of doubt, this Deed does not affect any Depot Break Claims.

It is agreed as follows:

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Deed, unless inconsistent with the subject or context, the following expressions bear the following meanings:

<b>"Administration"</b>	the administration of the Company under the Administration Order;
<b>"Administration Order"</b>	the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Dan Yoram Schwarzmann were appointed as joint administrators of the Company;
<b>"Administrators"</b>	the persons from time to time serving as administrators of the Company who, as at the date of this Deed, are Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs, each a partner of PwC, 7 More London Riverside, London SE1 2RT, United Kingdom;
<b>"Certain Excluded Claims"</b>	(a) Claims referred to in paragraphs (i), (ii), (iii) and (v) of the definition of <b>"Excluded Claims"</b> (as defined in the CRA); and (b) Claims referred to in paragraph (iv) of the definition of <b>"Excluded Claims"</b> (as defined in the CRA) to the extent that those Claims arise as a consequence of the Company and the Creditor entering into this Deed;
<b>"Change of Address"</b>	has the meaning given to it in Clause 24.2;
<b>"Claim"</b>	a claim in law, in equity or otherwise and of whatsoever nature: (i) including any and all claims, actions, Liabilities, rights and obligations for breach of contract, tort, statute, restitutionary claims and breach of trust; (ii) whether arising by reason of, amongst other things, insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform

any contractual, legal or regulatory obligation or otherwise; and/or

- (iii) for, amongst other things, the enforcement of any right to, or any Liability in respect of a right to:
- (a) seek or enforce judgment;
  - (b) exercise any remedy (for damages or otherwise), indemnity and contribution, whether for losses (including consequential loss, economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), costs and expenses of any nature; or
  - (c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or Liability whatsoever,

and "to Claim" and "Claimed" shall be construed accordingly;

<b>"CRA"</b>	the Claim Resolution Agreement between the Company and certain counterparties of the Company which became effective on 29 December 2009;
<b>"Creditor Agreements"</b>	each of (i) the ISDA Master Agreement , (ii) the Master Prime Brokerage Agreement and (iii) the Master Institutional Futures Customer Agreement ;
<b>"Current Process Agent"</b>	has the meaning given to it in Clause 24.3;
<b>"Depot Break Claims"</b>	Pre-Administration Client Money Claims in respect of Securities Covered By Client Money (if any);
<b>"Determination"</b>	has the meaning given to it in Clause 4.1;
<b>"Dispute"</b>	has the meaning given to it in Clause 4.8;
<b>"Dispute Notice"</b>	has the meaning given to it in Clause 4.8;
<b>"Dispute Resolution Period"</b>	has the meaning given to it in Clause 4.9;
<b>"ISDA Master Agreement"</b>	ISDA Master Agreement entered into between the Company and the Creditor dated [REDACTED]
<b>"LBHI"</b>	Lehman Brothers Holdings Inc.;
<b>"LBI"</b>	Lehman Brothers Inc.;
<b>"LBI Direct Claim"</b>	means the claim filed by the Creditor in the SIPA Proceedings docketed with customer claim number [REDACTED] as supplemented, modified or amended from time to time, with respect to the cash and/or securities attributed to the account numbers [REDACTED]

<b>"Master Institutional Futures Customer Agreement"</b>	<p>████████████████████;</p> <p>Master Institutional Futures Customer Agreement entered into between the Company and the Creditor dated ██████████</p> <p>████████████████████;</p>
<b>"Master Prime Brokerage Agreement"</b>	<p>Master Prime Brokerage Agreement entered into between the Company and the Creditor dated ██████████;</p>
<b>"Minimum Net Financial Claim"</b>	<p>the Creditor's Net Financial Claim determined on the basis of the Settlement Assumptions in respect of the Pending Transactions;</p>
<b>"Minimum Net Financial Claim Amount"</b>	<p>£22,634,579.00, being the value of the Minimum Net Financial Claim converted to pounds sterling at the "official exchange rate" set out in Rule 2.86(2) of the Insolvency Rules which for the purpose of converting U.S. dollars to pounds sterling shall mean the following exchange rate \$1.79370:£1;</p>
<b>"New Process Agent"</b>	<p>has the meaning given to it in Clause 24.3;</p>
<b>"Original Creditor"</b>	<p>means the Creditor at the date of this Deed, and shall not include any Transferees;</p>
<b>"Party"</b>	<p>the Company or the Creditor or both (as applicable);</p>
<b>"Pending Transactions"</b>	<p>the transactions set out in Appendix 1 (<i>Pending Transactions</i>);</p>
<b>"Proceeding"</b>	<p>any process, demand, action, legal or other proceeding or suit, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, expert determination, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution, enforcement of judgment or award or otherwise howsoever and/or any other step taken for the purpose of creating or enforcing a lien;</p>
<b>"PwC"</b>	<p>PricewaterhouseCoopers LLP, a limited liability partnership registered in England (number OC 303525), with its registered office at 1 Embankment Place, London, England, WC2N 6RH;</p>
<b>"Recalculable Pending Transaction"</b>	<p>means (i) to the extent that only part of any Pending Transaction did not settle (or did not fail) in accordance with the Settlement Assumption, that part of the Pending Transaction; and (ii) to the extent that the whole of any Pending Transaction did not settle (or did not fail) in accordance with the Settlement Assumption, the whole of such Pending Transaction;</p>
<b>"Recalculable Pending Transaction Claim"</b>	<p>has the meaning given to it in Clause 4.4;</p>

<b>"Recalculable Pending Transaction Statement"</b>	has the meaning given to it in Clause 4.2;
<b>"Redressable Creditor Liability"</b>	means any Claim of the Company against the Original Creditor arising out of or in connection with any breach of any provision of this Deed and/or the CRA (to the extent modified or supplemented by this Deed);
<b>"Relevant Persons"</b>	the Company, the Administrators and their firm, members, partners, directors, officers, employees, agents, advisers and representatives;
<b>"Remaining Net Financial Claim"</b>	has the meaning given to it in Clause 4.5;
<b>"Settlement Assumption"</b>	as specified in Appendix 1 ( <i>Pending Transactions</i> ), in respect of each Pending Transaction, an assumption that (i) it failed (in whole) (a <b>"Failed Pending Transaction"</b> ) or (ii) it settled (in whole) (including, where applicable, that any Rehypothecated Securities relating to such Pending Transaction ceased to be rehypothecated (in whole)) (a <b>"Settled Pending Transaction"</b> );
<b>"SIPA"</b>	the Securities Investor Protection Act of 1970 as in effect upon the commencement of the SIPA Proceeding;
<b>"SIPA Proceeding"</b>	that certain liquidation proceeding commenced pursuant to an order of the United States District Court for the Southern District of New York dated 19 September 2008 (Civil Action No. 08-CIV-8119) granting the application of SIPC for the issuance of a protective decree in accordance with SIPA in relation to LBI and currently pending before the Bankruptcy Court (Case No. 08-01420 (JMP) SIPA);
<b>"SIPC"</b>	the Securities Investor Protection Corporation;
<b>"Transfer Notice"</b>	has the meaning given to it in Clause 5.3;
<b>"Transferee"</b>	has the meaning given to it in Clause 5.2; and
<b>"Transferor"</b>	has the meaning given to it in Clause 5.2.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires or unless otherwise expressly provided:

- 1.2.1 terms used but not defined in this Deed shall have the meanings given to them in the CRA;
- 1.2.2 references to any specified provision of this Deed shall be construed as references to that provision subject to any modification, addition or condition approved or pursuant to Clause 15 (*Modification*);
- 1.2.3 references to a **"person"** include any company, unincorporated association or partnership, whether or not having separate legal personality, and references to a

company include any company, corporation or body corporate, wherever incorporated;

- 1.2.4 references to any person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.5 a reference to the Administrators shall be construed as being to the Administrators both jointly and severally and to any person who from time to time is appointed as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Administrators;
- 1.2.6 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.7 references to any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended, restated or replaced from time to time;
- 1.2.8 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 1.2.9 headings are for ease of reference only and shall not affect the interpretation of this Deed;
- 1.2.10 references to Clauses, sub-clauses and Appendices are to Clauses and sub-clauses of, and Appendices to, this Deed;
- 1.2.11 references to time are to London time;
- 1.2.12 In the event of a conflict or inconsistency between the provisions of this Deed, the CRA, the Companies Act, the Insolvency Act, the Insolvency Rules and/or the FSA Rules, for the purposes of this Deed, and to the extent such acts and/or rules permit, the provisions of this Deed shall prevail;
- 1.2.13 this Deed does not constitute and shall not be construed as a Net Contractual Position Statement, a Claim Amount Notice, a Closing Statement, an Intermediary Distribution Value Notice or a Distribution and Appropriation Notice;
- 1.2.14 nothing in this Deed shall be construed as an exercise by the Company of any of its powers under Clause 80 (*Modifications*) of the CRA;
- 1.2.15 the language which governs the interpretation of this Deed is the English language. All notices to be given by any parties and all other communications and documentation which are in any way relevant to this Deed or the performance of this Deed shall be in the English language;
- 1.2.16 references to (i) "£" and "pounds sterling" are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland; and (ii) "\$" and "U.S. dollars" are to the currency of the United States of America;
- 1.2.17 the words "include" and "including" mean include and including without limitation;
- 1.2.18 a reference to a "judgment" includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and
- 1.2.19 a reference to a "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other

legislative measure, in each case of any jurisdiction whatever (and "lawful" shall be construed accordingly).

## **2 Claims Agreement**

**2.1** The Company and the Creditor irrevocably and unconditionally agree that, notwithstanding the terms of any contract (including the CRA and/or the Creditor Agreements):

**2.1.1** the Minimum Net Financial Claim shall be limited to, and in an amount equal to, the Minimum Net Financial Claim Amount;

**2.1.2** the Minimum Net Financial Claim, in an amount equal to the Minimum Net Financial Claim Amount, shall constitute an Ascertained Claim and shall qualify for dividends from the estate of the Company available to its unsecured creditors pursuant to the Insolvency Rules and the Insolvency Act (or, if applicable, as amended or replaced pursuant to the terms of, *inter alia*, a scheme of arrangement or a company voluntary arrangement);

**2.1.3** any Ownership Claim of the Creditor or proprietary Claim by the Creditor to sale proceeds arising from or in connection with any Pending Transaction shall constitute an Asset Claim of the Creditor to Trust Assets for the purposes of the CRA;

**2.1.4** the Creditor hereby irrevocably and unconditionally:

(i) waives any and all rights to dispute the calculation of its Net Contractual Position and/or Net Financial Claim to the extent that it relates to the Minimum Net Financial Claim (whether under the CRA or otherwise) including any and all rights to dispute:

(a) the Value attributed to any Pending Transaction by the Company; or

(b) the Value attributed to any Position which the Company has included or excluded as a result of applying the Settlement Assumptions to any Pending Transaction,

when calculating the Minimum Net Financial Claim, irrespective of whether that Pending Transaction becomes (in whole or in part) a Recalculable Pending Transaction, and if a Pending Transaction does become a Recalculable Pending Transaction, the Creditor hereby irrevocably and unconditionally waives any and all rights to dispute the calculation of the Remaining Net Financial Claim (if any) insofar as this would involve disputing the Value attributed to the Pending Transaction by the Company when calculating the Minimum Net Financial Claim;

(ii) waives any right to require that the Company and/or the Administrators prepare and/or deliver to the Creditor a Net Contractual Position Statement;

(iii) waives any and all rights it may have to be provided with access to or to be provided with copies of the calculations of its Net Financial Claim;

(iv) to the extent that they do not comprise Depot Break Claims, irrevocably releases and discharges any and all Pre-Administration Client Money Claims and, to the extent that they do not comprise Assignable Post-



Administration Client Money Claims or Claims of the Creditor in respect of Pending Transactions, Post-Administration Client Money Claims; and

- (v) irrevocably releases and discharges the Certain Excluded Claims,

and in each case, howsoever those Claims or rights arise, including those which arise hereafter upon a change in the relevant law, whether known or unknown, whether arising in equity or under common law or statute or by reason of breach of contract or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether arising under the CRA and/or the Creditor Agreements or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of the Creditor and/or the Company and/or the Administrators on the date hereof; and

- 2.1.5 the Creditor will not take any steps to prove for, or to Claim for, any debt in the Administration (or other insolvency process) of the Company, or otherwise bring any Claim, action, demand or issue (or continue) any Proceedings against the Company and/or the Administrators (or any of them) in any jurisdiction in respect of any and all Claims and matters as are waived, released or discharged in Clause 2.1.4.

- 2.2 This Deed, and in particular the waivers, releases and discharges granted pursuant to Clause 2.1.4, are without prejudice to and shall not affect:

- 2.2.1 the Creditor's rights and obligations under the CRA in respect of any Modified Claims, Asset Shortfall Claims or the Company's right to Appropriate any Asset Allocation which has been determined in respect of any Stock Line in accordance with Clause 60.1 of the CRA and the Creditor's obligations in respect of its Parallel Debt; and

- 2.2.2 the existence, validity, quantum of, and any rights and remedies for or in respect of, any Assignable Post-Administration Client Money Claims which were, or should have been, assigned by the Creditor to AssignCo pursuant to Clause 4.8 (*Post-Administration Client Money comprising Derived Assets*) of the CRA and, to the extent necessary to preserve such Assignable Post-Administration Client Money Claims, the obligations giving rise to such Assignable Post-Administration Client Money Claims, provided that:

- (i) the Creditor will not take any steps to prove for, or to Claim for, any debt in the Administration (or other insolvency process) of the Company, or otherwise bring any Claim, action or demand or issue (or continue) any Proceedings against the Company, the Administrators (or any of them), any compensation scheme, any insurer or any other third party who may make or has made a distribution (whether of Client Money or otherwise), dividend and/or other payment in any jurisdiction in respect of such Assignable Post-Administration Client Money Claims and/or any such obligations;
- (ii) the Creditor will not be entitled to any amount and/or benefit pursuant to a distribution (whether of Client Money or otherwise), dividend and/or other payment (or be entitled to receive or recover any such amount and/or benefit by way of purported exercise of set off or otherwise) in connection

with any such Assignable Post-Administration Client Money Claims and/or any such obligations,

in each case, unless reasonably instructed in writing to do so by the Company and/or the Administrators, in which case the Creditor shall promptly do so in accordance with the terms of, and subject to the conditions of, such Instructions; and

2.2.3 the existence, validity, quantum of, and any rights and remedies for or in respect of, any Depot Break Claims.

2.3 The Creditor and the Company agree that the application of the Settlement Assumptions is solely for the purposes of calculating the Creditor's Minimum Net Financial Claim and is without prejudice to any Ownership Claim of the Creditor or Claim by the Creditor to sale proceeds arising from or in connection with any Pending Transaction (including any Asset Shortfall Claim).

2.4 For the avoidance of doubt, this Deed shall not prejudice, affect or restrict (and entry into this Deed is not intended to be, and shall not be construed as, an election of remedy or a waiver or limitation of) any rights or claims that the Creditor may have for or in respect of interest under Rules 2.88(7) to 2.88(9) (inclusive) of the Insolvency Rules or section 189 of the Insolvency Act.

### **3 Withholding Dividend**

3.1 Notwithstanding the terms of this Deed, if the Company determines that:

3.1.1 the Minimum Net Financial Claim; and/or

3.1.2 the Creditor's right to receive any dividend in respect of, or in connection with, the Minimum Net Financial Claim,

is or may be subject to any Security Interest, the Company may postpone making any payment (whether in respect of a dividend, distribution or otherwise) to the Creditor until such Security Interest is removed, discharged or otherwise dealt with to the Company's satisfaction.

3.2 If at any time the Company determines that a Redressable Creditor Liability arises, the Company and the Administrators will be entitled (in their absolute discretion and regardless of any other term of this Deed and/or the CRA) to deduct from any payment (whether in respect of a dividend, distribution or otherwise) otherwise to be made to the Creditor (or any Transferee) in respect of the Minimum Net Financial Claim, an amount up to that of the Redressable Creditor Liability. Any such deduction shall be in satisfaction and discharge, to the relevant extent, of the Redressable Creditor Liability.

3.3 For the avoidance of doubt, Clause 3.2 is an encumbrance on the right of the Original Creditor to enforce the Minimum Net Financial Claim, and is an equity to which any Transferee shall take subject and shall bind all Transferees.

### **4 Recalculable Pending Transactions**

The Company and the Original Creditor irrevocably and unconditionally agree that, notwithstanding the terms of any contract to which the Company and the Original Creditor are a party (including the CRA and/or the Creditor Agreements):

- 4.1 the Company shall, in good faith and on the basis of Relevant Information, determine whether each Pending Transaction or any part thereof is a Recalculable Pending Transaction (each a "**Determination**");
- 4.2 following a Determination, the Company shall provide a statement (the "**Recalculable Pending Transaction Statement**") to the Original Creditor showing its Determination with respect to each (or if applicable each part of a) Pending Transaction;
- 4.3 where none of the Pending Transactions is a Recalculable Pending Transaction, the Creditor's Net Financial Claim shall be limited to, and in an amount equal to, the Minimum Net Financial Claim Amount;
- 4.4 where a Pending Transaction or part thereof is a Recalculable Pending Transaction then the Original Creditor may have an unsecured Claim in respect of each such Recalculable Pending Transaction (each such Claim being a "**Recalculable Pending Transaction Claim**");
- 4.5 the aggregate of all Recalculable Pending Transaction Claims shall be the "**Remaining Net Financial Claim**" and shall be an Ascertained Claim;
- 4.6 the Remaining Net Financial Claim (if any) shall:
- 4.6.1 not include any amount payable to the Original Creditor that has been taken into account in the calculation of the Original Creditor's Asset Claim (as determined pursuant to the CRA or as otherwise agreed) or the Minimum Net Financial Claim; and
- 4.6.2 together with the Minimum Net Financial Claim comprise the Net Financial Claim but shall constitute a Claim of the Original Creditor separate from the Minimum Net Financial Claim; and
- 4.7 to the extent that a Pending Transaction or part thereof is not a Recalculable Pending Transaction, the Original Creditor shall have no Recalculable Pending Transaction Claim in respect of such Pending Transaction or part thereof;
- 4.8 in the event that the Original Creditor disputes any Determination (a "**Dispute**"), the Original Creditor shall, within 25 Business Days of receipt of the Recalculable Pending Transaction Statement, give notice in writing to the Company of such dispute and shall set out in such notice in reasonable detail the basis of the Dispute (each such notification being a "**Dispute Notice**");
- 4.9 following delivery of any such Dispute Notice, the Company and the Original Creditor agree that they shall consult with one another and use reasonable endeavours to resolve the Dispute by agreement within 20 Business Days of receipt by the Company of the Dispute Notice or such longer period as the Company and the Original Creditor may agree (the "**Dispute Resolution Period**"). Following a change to any original Determination by the Company, the Company shall provide a revised Recalculable Pending Transaction Statement to the Original Creditor and the matters to be determined pursuant to Clause 4.3 to Clause 4.6 in relation to such Recalculable Pending Transaction Statement shall be adjusted accordingly; and
- 4.10 the Company and the Original Creditor agree that, notwithstanding the terms of any contract (including the CRA and/or the Creditor Agreements) and if the matter is not otherwise resolved within the Dispute Resolution Period in accordance with the terms of

Clause 4.9, the Parties hereby reserve their respective rights to have the relevant dispute determined by the Court (which will have exclusive jurisdiction to settle such dispute).

## **5 Transfer**

**5.1** Save as set out in Clause 5.2, the Creditor may not Transfer its legal and/or beneficial interest in, or otherwise the whole or any part of:

**5.1.1** the Minimum Net Financial Claim; and/or

**5.1.2** its right to receive any dividend in respect of, or in connection with, the Minimum Net Financial Claim.

**5.2** Notwithstanding any provision to the contrary in the Creditor Agreements and/or the CRA, and subject always to the preservation of any Security Interest over, inter alia, all or any part of the items set out in Clause 5.2.1 and Clause 5.2.2, the Creditor (the "Transferor") may assign:

**5.2.1** subject always to Clauses 5.3 and 5.4, all of the items set out in Clause 5.2.1(i) and Clause 5.2.1(ii) below (all together and in whole (but not part)):

(i) its entire legal and beneficial interest in the Minimum Net Financial Claim; and

(ii) its entire right to receive, and its entire legal and beneficial interest in, any and all dividends in respect of, or in connection with, the Minimum Net Financial Claim; or

**5.2.2** all or part of its beneficial interest in the Minimum Net Financial Claim (provided that, notwithstanding the provisions of Clause 5.2.1, the Creditor retains the legal title in and to the Minimum Net Financial Claim),

to another person (the "Transferee").

**5.3** Any assignment in accordance with Clause 5.2.1 shall not be valid and the Administrators and the Company shall not be bound to recognise, nor to deal with, the Transferee (in respect of such assignment) in substitution for, and in place of, the Transferor unless and until the Transferor and Transferee sign and deliver to the Company (in accordance with Clause 20 (*Notices*)) the letter agreement substantially in the form set out in Appendix 2 (*Form of Transfer Notice*) (a "Transfer Notice") and the Company countersigns such Transfer Notice and serves the same on the Transferor (in accordance with Clause 20 (*Notices*)) and the Transferee (such service being deemed effective by sending the same to the Transferee's postal or email address specified in the Transfer Notice) provided that such countersignature and service shall not be unreasonably withheld or delayed.

**5.4** In respect of any assignment in accordance with Clause 5.2.1:

**5.4.1** if the Company serves any notices on, or the Company or the Administrators make any payment to, or to the order of, the Transferor before the Company has served a countersigned Transfer Notice on the Transferor and Transferee (in accordance with Clause 5.3), this shall constitute a valid discharge of the Company's and the Administrators' obligations notwithstanding any assignment; and

**5.4.2** where the countersigned Transfer Notice is served after any notice of declaration of a dividend to creditors with Claims admitted for such dividend but before the actual payment of that dividend, payment to, or to the order of, the Transferor shall

constitute a valid discharge of the Company's and the Administrators' obligation to pay the declared dividend.

**5.5** In respect of any assignment in accordance with Clause 5.2.2, then, notwithstanding the provisions of this Deed, if the Company and/or the Administrators have received notice of such assignment, neither the Company nor the Administrators shall be obliged to make any payment of a dividend distribution (or otherwise give any benefit) in respect of or in connection with the Minimum Net Financial Claim until the Transferee, the Creditor, the Company and the Administrators agree, in writing, to whom any such payment of a dividend, distribution or other benefit is to be made or given.

**5.6** The Creditor represents and warrants to the Company and the Administrators, on the date that it executes the Transfer Notice, and immediately before the Effective Date (as defined therein), that it has not Transferred or purported to Transfer its legal and/or beneficial interest in, or otherwise the whole or any part of, the Minimum Net Financial Claim and/or its right to receive, or legal or beneficial interest in, any dividend in respect of, or in connection with, the Minimum Net Financial Claim, to any person.

**5.7** For the avoidance of doubt:

**5.7.1** any assignment in accordance with this Clause 5 shall not include the assignment of any legal and/or beneficial interest in, or otherwise the whole or any part of:

- (i) the Remaining Net Financial Claim (if any); and
- (ii) any right to receive any dividend in respect of, or in connection with, the Remaining Net Financial Claim;

**5.7.2** following any assignment in accordance with this Clause 5.2.1, the Original Creditor shall remain a party to the CRA and, for the purpose of the CRA, but without prejudice to Clause 3 (*Withholding Dividend*), its Entire Position shall be interpreted as excluding:

- (i) its entire legal and beneficial interest in the Minimum Net Financial Claim; and
- (ii) its entire right to receive, and its entire legal and beneficial interest in, any and all dividends in respect of, or in connection with, the Minimum Net Financial Claim.

## **6 Representations and Warranties**

The Creditor makes the representations and warranties set out in this Clause 6 to the Company and the Administrators on the date of this Deed and the Creditor shall repeat the representations and warranties set out in Clauses 6.1, 6.2, 6.3, 6.4.2, 6.4.3, 6.4.4, 6.4.5, 6.5, 6.6, 6.7, 6.8.1, 6.9 and 6.11 immediately prior to the payment to the Creditor of each and every dividend and/or distribution by the Company and/or the Administrators.

### **6.1 Basic representations**

**6.1.1** It is duly organised and validly existing under the laws of its jurisdiction of incorporation or organisation, or (if not applicable) under the laws of which it is established, and, if relevant under such laws, in good standing.

**6.1.2** It has the power to execute, deliver and perform its obligations under this Deed (and any Transfer Notice to which it is party) and has taken all necessary action to

authorise such execution, delivery and performance and the signatory or signatories (as applicable) are properly authorised to execute this Deed (and any such Transfer Notice) on its behalf.

6.1.3 The execution, delivery and performance of its obligations under this Deed (and any Transfer Notice to which it is party) do not and will not violate or conflict with any law or regulation applicable to it, any order or judgement of any court or other agency of government applicable to it, or any of its assets, any provision of its constitutional documents, any agreement or instrument binding on or affecting it or any of its assets.

6.1.4 Its obligations under this Deed (and any Transfer Notice to which it is party) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms.

## 6.2 No insolvency proceedings

6.2.1 No petition for insolvency proceedings in respect of it or its assets has been filed or is threatened to be filed.

6.2.2 It is not unable to honour its obligations as they fall due and the value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).

## 6.3 No agency

It is acting as principal, and not as agent (whether as a Representative Signatory or otherwise), in entering into this Deed, the CRA, in respect of the Net Financial Claim, all Claims in respect of the Pending Transactions, the Creditor Agreements and all transactions and trades thereunder.

## 6.4 Claims

6.4.1 Immediately prior to this Deed becoming effective, it was the legal and beneficial owner of any and all Claims (including Pre-Administration Client Money Claims, Post-Administration Client Money Claims (to the extent that they have not been assigned to AssignCo pursuant to Clause 4.8 (*Post-Administration Client Money Comprising Derived Assets*) of the CRA), all Claims in respect of the Pending Transactions, Excluded Claims and Ownership Claims) to the extent arising under, in connection with or deriving from, the Creditor Agreements.

6.4.2 Save in respect of all or part of its beneficial interest in the Minimum Net Financial Claim which has been assigned in accordance with Clause 5.2.2 after the time that this Deed becomes effective, it is the legal and beneficial owner of the Minimum Net Financial Claim.

6.4.3 It is the legal and beneficial owner of all Claims in respect of the Pending Transactions.

6.4.4 It is the legal and beneficial owner of the Modified Claims.

6.4.5 Save for any payments (including any dividend and/or distribution) made directly by the Company and/or the Administrators to the Creditor, it has not received any amount or benefit in relation to any of the Claims set out in this Clause 6.4.

## 6.5 No previous Transfer

Save in respect of all or part of its beneficial interest in the Minimum Net Financial Claim which has been assigned in accordance with Clause 5.2.2 after the time that this Deed becomes effective, it has not Transferred, or purported to Transfer, the benefit of, and (save as set out in Clause 2.1.4 and/or pursuant to the terms of the CRA) it has not waived, compromised or otherwise disposed of, any direct or indirect right, Claim, title, interest, action or cause of action (if any) against the Company whether arising in equity, at common law or under statute, contract (including any right, title or interest (if any) which it may have, or had, or purport to have (or to have had), under, in connection with, or deriving from the CRA, the Creditor Agreements or any other contract (if any) to which the Company and the Creditor are parties) or otherwise.

**6.6 Accuracy of information**

To the best of its knowledge and belief, and having made reasonable enquiries, any proof of debt and any substantiating documents (including Valuation Statements) submitted by, or on behalf of, the Creditor (as referenced in rule 2.72 of the Insolvency Rules) are, as at the date of this Deed, true, accurate and complete in every material respect and are not misleading.

**6.7 No Claims against Affiliates**

Other than in respect of (i) any Claims of the Creditor against LBHI under any guarantee it may have given to the Creditor in respect of Liabilities of the Company and (ii) the LBI Direct Claim, the Creditor has not Claimed or submitted a proof of debt (or equivalent in any foreign jurisdiction) in respect of the whole or any part of the Original Creditor's New Claims and, to the extent arising under, in connection with, or deriving from, the Creditor Agreements, any and all Claims (including Pre-Administration Client Money Claims, Post-Administration Client Money Claims, all Claims in respect of the Pending Transactions, Excluded Claims and/or Ownership Claims) against any Affiliate of the Company.

**6.8 Company or Affiliate Liabilities**

**6.8.1** It owes no amount, asset or Liability to any Affiliate of the Company.

**6.8.2** Save for any amounts, assets or Liabilities owed to the Company in connection with the Pending Transactions immediately prior to this Deed becoming effective, it owes no amount, asset or Liability to the Company.

**6.9 No Third Party Security Interest**

Other than any Security Interest created pursuant to the Creditor Agreements, it has not created a Security Interest over all or any part of the assets or Claims (including any Pre-Administration Client Money Claim and/or Post-Administration Client Money Claim) of the Creditor which are subject to any Security Interest created pursuant to the Creditor Agreements.

**6.10 No other agreements**

Other than the Creditor Agreements, the CRA and this Deed, there are no other contracts entered into between the Creditor and the Company.

**6.11 No other Pending Transactions**

To the best of its knowledge and belief, the Creditor did not give instructions to LBIE for the execution or settlement of any transactions other than the Pending Transactions listed in

the first table in Appendix 1 (*Pending Transactions Instructed by the Creditor*) that were due to be settled with or through LBI and that had not settled at the Time of Administration.

## **7 Undertakings and Consent**

- 7.1** The Creditor undertakes to do all such acts and things as will be reasonably necessary and execute and deliver any further documents and give any further assurances as may be requested by the Company in order to give full effect to this Deed (and the terms of any further documents shall exclude any personal liability of the Administrators such exclusion to be substantially in the form contained in Clause 12 (*Exclusion of Administrators' Liability*)).
- 7.2** In the case of any Security Interest (whether existing over the Net Financial Claim or otherwise) to which the New York Uniform Commercial Code applies, the Creditor (as grantor of any such Security Interest) authorises the Company on the Creditor's behalf to request from time to time, from the person to whom such Security Interest was granted (a "**UCC Secured Party**"), an accounting under Section 9-210 of the New York Uniform Commercial Code to determine what obligations, if any, are owed to the UCC Secured Party and are secured by such Security Interest. The Creditor authorises the Company to submit a copy of an excerpt of this Deed to any such UCC Secured Party as proof of the Company's authorisation to make such demand for accounting on behalf of the Creditor.

## **8 Confidentiality**

### **8.1 Confidentiality of this Deed**

- 8.1.1** No announcement or circular in connection with the existence or the subject matter of this Deed shall be made or issued by or on behalf of the Creditor.
- 8.1.2** The Creditor shall treat as strictly confidential and not disclose (whether in writing, verbally or in electronic form or by any other means) to any party the negotiations relating to this Deed and/or this Deed (and/or any part thereof) save as provided in Clause 8.1.3 and Clause 8.1.4.
- 8.1.3** The Creditor may disclose this Deed (or any part thereof) to:
- (i) its directors, officers, employees and investors;
  - (ii) its advisers (on terms that such professional advisers undertake to comply with the provisions of Clause 8.1.1 and 8.1.2 in respect of such information as if they were a party to this Deed);
  - (iii) LBHI, solely for the purpose of the Creditor proving a Claim against LBHI in respect of the obligations of the Company owed to the Creditor which were guaranteed by LBHI;
  - (iv) any Transferee and/or any person whom the Creditor considers, acting in good faith, to be a potential Transferee (in each case, on terms that such Transferee and/or potential Transferee undertakes to comply with the provisions of Clause 8.1.1 and 8.1.2 in respect of such information as if they were a party to this Deed (where they are not otherwise bound by Clause 8.1.1 and 8.1.2)); and/or



- (v) CAPCO, to the extent that information is requested by CAPCO in connection with the Creditor's Claims against CAPCO arising in connection with the Creditor's Claim against the Company.

8.1.4 The provisions of Clause 8.1.2 shall not restrict:

- (i) any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange on which the Creditor's shares are listed or quoted;
- (ii) any disclosure or use for the purpose of any enquiry or investigation by any governmental, official or regulatory body which is lawfully entitled to require any such disclosure or use;
- (iii) any disclosure or use for the purpose of any Proceedings arising out of this Deed or any agreement entered into under or pursuant to this Deed or disclosure to a taxation authority in connection with the taxation affairs of a Party or in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of this Deed, and/or
- (iv) provided the Fund is the Creditor at the time of such disclosure, any disclosure by the Creditor to any partner in the Fund,

provided that, so far as it is lawful and practical to do so prior to such disclosure the Creditor shall promptly notify the Company of such requirement or event for the purpose of which such disclosure would be made, with a view to providing the opportunity for the Company to contest such disclosure or otherwise to agree the timing and content of such disclosure.

## **8.2 Waiver of confidentiality by Creditor**

The Creditor hereby waives, to the maximum extent permitted by law, any breach of confidentiality arising from the operation of this Deed and/or the CRA and authorises the Company and/or the Administrators to disclose to any other person any information which the Company and/or the Administrators are required to disclose or consider to be necessary or desirable to disclose to enable this Deed and/or the CRA to be administered effectively and/or for the purposes of disclosure as set out in Clause 8.3 (*Disclosure of information by Company and Administrators*).

## **8.3 Disclosure of information by Company and Administrators**

The Creditor consents to the disclosure or use of information by the Company and/or the Administrators in the following circumstances:

- 8.3.1 any disclosure or use permitted pursuant to Clause 7.2;
- 8.3.2 any disclosure or use required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange;
- 8.3.3 disclosure or use for the purpose of any enquiry or investigation by any governmental, official or regulatory body which is lawfully entitled to require such disclosure or use;
- 8.3.4 any disclosure to CAPCO of any information received or generated by the Company and/or the Administrators pursuant to the submission of a proof of debt,

information related thereto, the CRA and/or this Deed to the extent that such information is requested or required by CAPCO;

- 8.3.5 any disclosure by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;
- 8.3.6 any disclosure or use by the Company and/or the Administrators for the purpose of any Proceedings arising out of this Deed, the CRA and/or any agreement entered into under or pursuant to this Deed or disclosure to a taxation authority in connection with the taxation affairs of a Party or in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of this Deed and/or the CRA; and/or
- 8.3.7 any disclosure or use required in the exercise of the statutory duties of the Administrators or to the extent required by current insolvency practice or to enable the Administrators to properly carry out the duties of their office.

## **9 Survival of Deed upon a Liquidation Event**

- 9.1 If the Company shall become subject to a Liquidation Event, this Deed shall not terminate and shall continue in full force and effect, and, unless the context otherwise requires, all references to the Administrators shall be construed as references to the liquidators of the Company from time to time.
- 9.2 In the event of any inconsistency between the provisions of this Deed and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event in accordance with this Clause 9, for the purposes of this Deed, the provisions of this Deed shall prevail to the maximum extent that the law allows.

## **10 Non-reliance on Information Ancillary to this Deed**

- 10.1 So far as permitted by law and except in the case of fraud, the Relevant Persons shall not be liable in respect of anything done or suffered by a Creditor in reliance on any information provided or communications or announcements made to the Creditor in connection with this Deed.
- 10.2 The Creditor has made its own independent decision to enter into this Deed and as to whether this Deed is appropriate or proper for it based upon its own judgement and upon advice from its own independent advisers, as it has deemed necessary. The Creditor is not relying on any communication and/or announcement (written or oral) of or from any Relevant Person as a recommendation or an inducement to enter into this Deed, it being understood that information and explanations relating to this Deed in any communication and/or announcement will not be relied upon or treated as a recommendation or an inducement to enter into this Deed.
- 10.3 No person has been authorised in connection with transactions contemplated by this Deed to give any information or make any representations other than those contained in this Deed and any such information or representation shall not be relied upon as having been authorised by the Company and/or the Administrators.

## **11 No Expense Claim**

For the avoidance of doubt, no amount, Liability or obligation in relation to this Deed shall be payable out of or charged on the property of the Company under paragraph 99(3) or 99(4) of Schedule B1 to the Insolvency Act and, if the Company becomes subject to a Liquidation Event, any and all such amounts, Liabilities and obligations shall not rank as an expense of the Company's liquidation under Rule 4.218 of the Insolvency Rules.

## **12 Exclusion of Administrators' Liability**

**12.1** The Administrators have entered into and signed this Deed as agents for and on behalf of the Company and neither they, their firm, members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Deed. The exclusion of liability set out in this Clause 12 shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims.

**12.2** Notwithstanding the provisions of this Deed, each of the Administrators and each of the Administrators' and/or the Company's firms, members, agents, partners, employees and their representatives shall be entitled to enforce and rely on any limitation on, or exclusion of, their liability contained in the CRA.

## **13 Contracts (Rights of Third Parties) Act 1999**

**13.1** A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Deed, except to the extent set out in this Clause 13.

**13.2** A subsequent supervisor, liquidator or other officeholder of the Company may enforce and rely on any Clause of this Deed to the same extent as if it were a Party.

**13.3** The Administrators, their firm, members, partners, directors, officers, employees, agents, advisers and representatives may enforce and rely on Clause 2 (*Claims Agreement*), Clause 3 (*Withholding Dividend*), Clause 4 (*Recalculable Pending Transactions*), Clause 5 (*Transfer*), Clause 6 (*Representations and Warranties*), Clause 7 (*Undertakings and Consent*), Clause 8 (*Confidentiality*), Clause 10 (*Non-reliance on Information Ancillary to this Deed*), Clause 12 (*Exclusion of Administrators' Liability*), this Clause 13, Clause 23 (*Governing Law and Jurisdiction*) and Clause 24 (*Appointment of Process Agent*) to the same extent as if they were a Party.

**13.4** Any term of this Deed may be amended or waived without the consent of any person named or described in Clauses 13.2 and, other than in respect of the Administrators, 13.3.

## **14 Whole Agreement**

**14.1** This Deed and the CRA (to the extent supplemented or modified by this Deed) contain the whole agreement between the Company and the Creditor relating to the subject matter of this Deed at the date of this Deed to the exclusion of any terms implied by law which may be excluded by contract and supersede any previous written or oral agreement between

the Company and the Creditor in relation to the matters dealt with in this Deed and the CRA (to the extent supplemented or modified by this Deed).

- 14.2** The Creditor acknowledges that it has not been induced to enter this Deed by any representation, warranty or undertaking not expressly incorporated into it.

## **15 Modification**

No amendment, modification or waiver in respect of this Deed (or any agreement supplemental to it) shall be effective unless in writing and previously approved in writing by both the Company and the Creditor.

## **16 Costs**

- 16.1** Except as expressly provided in this Deed and subject always to Clause 16.2, the Parties shall bear their own costs in connection with the preparation, negotiation, entry into and performance of this Deed.

- 16.2** The Creditor shall bear the cost of all stamp duty, stamp duty reserve tax or stamp duty land tax, any notarial fees and all other taxes and duties or their equivalents in all jurisdictions where such fees, taxes and duties are payable as a result of the transactions contemplated by this Deed. The Creditor shall be responsible for arranging the payment of such stamp duty, stamp duty reserve tax or stamp duty land tax and all other such fees, taxes and duties, including fulfilling any administrative or reporting obligation imposed by the jurisdiction in question in connection with the payment of such taxes and duties.

## **17 Invalidity**

- 17.1** If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Deed under the law of that jurisdiction shall in any way be affected or impaired thereby.
- 17.2** Subject to Clause 17.1, if any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.
- 17.3** Subject to Clause 17.1, to the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 17.2, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Deed and the legality, validity and enforceability of the remainder of this Deed shall, subject to any deletion or modification made under Clause 15 (*Modification*), not be affected.

## **18 Modification of Foreign Law Contracts**

Where this Deed purports to modify any contract which is governed by a law other than English law, the modification will be effective to the maximum extent permitted under the proper law of the contract. The Creditor undertakes to the Company to take all actions that the Company requests (including executing such instruments or entering into such agreements, in each case governed by the relevant proper law) to perfect any

modifications to such contracts in order to ensure that such modifications are effective to the fullest extent possible under such governing law.

## **19 Waivers**

No waiver by or on behalf of the Company of any requirement of or any rights under this Deed shall release the Creditor from the full performance of its remaining obligations under this Deed. No single or partial exercise or failure or delay in exercising, on the part of the Company, any right, power or remedy under this Deed or the granting of time by the Company shall prejudice, affect or restrict the rights, powers and remedies of the Parties under this Deed, nor shall any waiver by the Company of any breach of this Deed operate as a waiver of or in relation to any subsequent or any continuing breach of this Deed.

## **20 Notices**

### **20.1 General**

Any notice, information, or other communication to be given, or document to be sent pursuant to or in connection with this Deed:

**20.1.1** by the Creditor to the Company and/or the Administrators shall be in writing in English and shall be delivered by both:

- (i) prepaid post or airmail to, or by courier using an internationally recognised courier company only to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom (for the attention of "Paul Copley / In House Legal Team"), (or to such other postal address as may be notified (in accordance with this Clause 20) to the Creditor from time to time) in accordance with Clause 20.2 (*Notices by post*); and
- (ii) electronic mail to [claimsdeed@lbia-eu.com](mailto:claimsdeed@lbia-eu.com) (or to such other electronic mail address as may be notified (in accordance with this Clause 20) to the Creditor from time to time) in accordance with Clause 20.3 (*Notices by electronic mail*); and

**20.1.2** by the Company and/or the Administrators to the Creditor, either by:

- (i) prepaid post or airmail to, or by courier to, [REDACTED] (or to such other postal address as may be notified (in accordance with this Clause 20) to the Company and/or the Administrators from time to time) in accordance with Clause 20.2 (*Notices by post*); or
- (ii) electronic mail to [REDACTED] (or to such other electronic mail address as may be notified (in accordance with this Clause 20) by the Creditor to the Company and/or the Administrators from time to time)) in accordance with Clause 20.3 (*Notices by electronic mail*).

### **20.2 Notices by post**

**20.2.1** Any notice, information or communication given or document sent by the Creditor by registered post or courier shall be effectively served on and received by the Company and/or the Administrators upon receipt by the Company and/or the Administrators (if sent in accordance with Clause 20.1.1(i)) and shall be deemed to

have been received by the Company at the time of delivery to the relevant address specified in Clause 20.1.1(i).

**20.2.2** Any notice, information or communication given or document sent by registered post or courier by the Company and/or the Administrators shall be sufficiently served by sending the same to the relevant address set out in Clause 20.1.2(i).

### **20.3 Notices by electronic mail**

**20.3.1** Any notice, information or communication given or document sent by electronic mail shall be sufficiently served by sending the same by electronic mail to the address specified in Clause 20.1.1(ii) or 20.1.2(ii) (as appropriate).

**20.3.2** Any notice, information or communication given or document sent by electronic mail shall be deemed to have been received, at the time recorded on the computer of the person to whom the electronic mail is addressed.

### **20.4 Accidental omission**

The accidental omission by the Company and/or the Administrators to send any notice, communication or document in accordance with this Clause 20, or the non-receipt of any such notice, communication or document by the Creditor, shall not affect the provisions of this Deed.

## **21 Authority to Sign Notices and Documents**

In the case of this Deed and any notice, communication or other document in connection with this Deed, which is signed on behalf of the Creditor, neither the Company nor the Administrators shall be required to make enquiry as to the authority of the signatory of that Deed, notice, communication or document to sign such Deed, notice, communication or document on behalf of such Creditor.

## **22 Counterparts**

This Deed may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.

## **23 Governing Law and Jurisdiction**

**23.1** This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

**23.2** The Creditor hereby agrees that the courts of England shall (save as otherwise provided in Clause 23.4) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with this Deed or the operation of this Deed, and that accordingly any Proceedings arising out of or in connection with this Deed (save as otherwise provided in Clause 23.4) shall be brought in such courts.

**23.3** The Creditor hereby submits to the exclusive jurisdiction of the courts of England for the purposes of Clause 23.2. The Creditor also waives any objections to Proceedings in the courts of England that may arise that are based on the grounds of the venue or that the Proceedings have been brought in an inconvenient forum.

**23.4** Notwithstanding Clauses 23.2 and 23.3, which are for the benefit of the Company and the Administrators, the Administrators and the Company retain the right to bring Proceedings, in the name of the Company or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

## **24 Appointment of Process Agent**

**24.1** The Creditor hereby irrevocably appoints as its agent to accept service of process in England in any legal action or Proceedings arising out of this Deed, service upon whom shall be deemed completed whether or not forwarded to or received by the Creditor, [REDACTED]

**24.2** The Creditor agrees to inform the Company in writing of any change of address of such process agent (a "**Change of Address**") within 14 days of such change (in accordance with the provisions of Clause 20 (*Notices*)).

**24.3** If such process agent (the "**Current Process Agent**") ceases to be able to act as such or to have an address in England, the Creditor irrevocably agrees to appoint a new process agent acceptable to the Company (a "**New Process Agent**") and to deliver to the Company within 14 days a copy of a written acceptance of appointment by the New Process Agent together with the address of the New Process Agent (in accordance with the provisions of Clause 20 (*Notices*)).

**24.4** In the event of a Change of Address or the appointment of a New Process Agent, the Creditor agrees that any service of process in England in any legal action or Proceedings arising out of this Deed shall be deemed valid service upon the Creditor if service is effected:

- (a) to the address specified in Clause 24.1 (or to any subsequent address notified to the Company in accordance with Clause 24.2); or
- (b) to the Current Process Agent,

prior to notification by the Creditor to the Company of such Change of Address or of the written acceptance of appointment by the New Process Agent and the address of the New Process Agent (in accordance with Clauses 24.2 and 24.3, respectively) (as appropriate) and notwithstanding any such Change of Address or appointment of a New Process Agent (as appropriate).

**24.5** Nothing in this Deed shall affect the right to serve process in any other manner permitted by law.

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

**SIGNED as a DEED for and on behalf of LEHMAN BROTHERS INTERNATIONAL (EUROPE) (In administration) by one of the Administrators acting as its agent and without personal liability**

.....

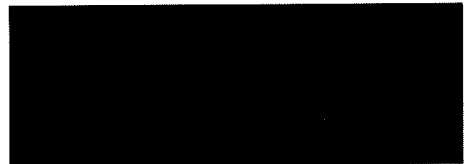
**In the presence of:  
Witness's signature:**

.....

**Name:**

**Address:**

**Occupation:**





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

**SIGNED** as a **DEED** for and on behalf of **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (in administration)** by one of the Administrators acting as its agent and without personal liability

*Paul Sykes* .....

In the presence of:  
Witness's signature:

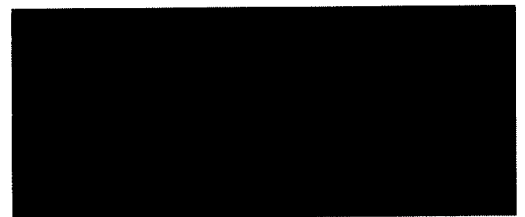
*Zainul Ahmad* .....

Name:

Zainul Ahmad  
7 More London  
Riverside  
London, SE1 2RT  
Associate

Address:

Occupation:







**APPENDIX 2  
FORM OF TRANSFER NOTICE**

To: Lehman Brothers International (Europe) (in administration) (the "Company")  
Level 23  
25 Canada Square  
London  
E14 5LQ  
United Kingdom

**And by email: [insert email address]**

Att: Paul Copley / In House Legal Team

From: [Name of Transferor] (the "Transferor")

[Address of Transferor]

From: [Name of Transferee] (the "Transferee")

[Address of Transferee]

[Email Address of Transferee]

[Telephone number of Transferee]

[GAC Code of Transferee if Transferee has a GAC Code]

[insert date]

Dear Sirs

**Transfer Notice in respect of Transfer of Minimum Net Financial Claim**

- 1 [Subject to paragraph 2 of this letter deed,] the terms of this letter deed shall be effective on the date upon which the Company serves a countersigned copy of this letter deed on the Transferor or Transferee (whichever is later) in accordance with paragraph 9 of this letter deed (the "Effective Date"), provided that paragraphs 2, 3, 4.1 and paragraphs 8 to 13 inclusive of this letter deed shall become effective on the date of this letter deed.
- 2 [If the Effective Date does not occur on or before **[Transferor & Transferee to insert date]** (or such later date as may be agreed in writing between the Company, the Transferor and the Transferee), this letter deed shall lapse and the terms of this letter deed shall cease to have any effect other than this paragraph 2 and paragraphs 3, 10, 11 and 13 which shall remain in full force and effect<sup>1</sup>.]
- 3 Unless otherwise defined herein, terms defined in the Claims Determination Deed between the Company and **[the Transferor / state name of original party to the deed if different to the Transferor]** dated [•] (the "Deed"), shall have the same meaning in this letter deed.
- 4 The Transferor and Transferee agree that:

---

<sup>1</sup> [Transferor and Transferee to note that if this paragraph 2 is not included, consequential amendments in respect of cross-referencing will need to be made.]

- 4.1** subject to paragraph 2 of this letter deed, the terms of this letter deed may not be revoked or amended without the prior written consent of the Company;
- 4.2** the Transfer of the rights and Claims set out in paragraph 4.3 below, the Deed and this Transfer Notice are without prejudice to, and shall not affect, any Security Interest created in favour of any person (including any of the Company's Affiliates), whether created under the Creditor Agreements or otherwise;
- 4.3** the whole of the Minimum Net Financial Claim and the whole of the Transferor's right to receive any and all dividends in respect of, or in connection with, the Minimum Net Financial Claim shall be unconditionally and immediately assigned to the Transferee;
- 4.4** the proof of debt and accompanying information lodged by or on behalf of the Transferor shall (to the extent relevant to the Minimum Net Financial Claim) stand as the Transferee's proof of debt;
- 4.5** dividends paid, and/or any other benefit given in lieu thereof, by the Company and/or Administrators to (or at the direction of) the Transferee shall constitute a good discharge by the Company and the Administrators of their obligations in respect of the Minimum Net Financial Claim;
- 4.6** subject to the provisions of the Deed, the Transferor confirms that the Transferee may agree, compromise, settle, waive, release, discharge, Transfer (by way of assignment, novation, sale or otherwise) or otherwise dispose of the whole or any part of the Minimum Net Financial Claim (and/or any direct or indirect benefit, right, title, interest, action or cause of action deriving from the Minimum Net Financial Claim, including any right to receive dividends in respect of, or in connection with, the Minimum Net Financial Claim) and to the extent that the Transferor's consent is required for the Transferee to take such action, the Transferor hereby consents to the Transferee taking any such action;
- 4.7** the Company and/or the Administrators may communicate solely with the Transferee in relation to the Minimum Net Financial Claim;
- 4.8** the terms of this letter deed shall not prevent the Company and/or the Administrators from making further requests for information from the Transferor and/or the Transferee in due course; and
- 4.9** if at any time the Company determines that a Redressable Creditor Liability arises, the Company and the Administrators will be entitled (in their absolute discretion and regardless of any other term of the Deed, the CRA or this letter deed) to deduct from any payment (whether in respect of a dividend, distribution or otherwise) otherwise to be made to the Transferee in respect of the Minimum Net Financial Claim, an amount up to that of the Redressable Creditor Liability. Any such deduction shall be in satisfaction and discharge, to the relevant extent, of the Redressable Creditor Liability.
- 5** The Transferor agrees that:
- 5.1** immediately prior to the payment of each and every dividend and/or distribution by the Company and/or the Administrators to the Transferee in respect of the Minimum Net Financial Claim, it represents that it owes no amount, asset or Liability to any Affiliate of the Company;
- 5.2** the Company and/or the Administrators shall be permitted to disclose to the Transferee and the Transferee's partners, directors, employees, officers, agents, advisers and

representatives (together the "Transferee's Representatives") any and all documentation and/or information submitted by the Transferor, or on its behalf, to the Company and/or the Administrators in connection with the Minimum Net Financial Claim and/or Creditor Agreements (including but not limited to any proof of debt and any substantiating documents (as referenced in rule 2.72 of the Insolvency Rules 1986)); and

- 5.3** the Transferee and the Transferee's Representatives shall be permitted to rely on and utilise all such information.
- 6** The Transferee:
- 6.1** agrees that, subject to paragraph 6.2 and paragraph 7 of this letter deed, it shall assume obligations which are equivalent to the obligations of the Transferor pursuant to the Deed and that for the purpose of Clause 20.1.2 of the Deed, the postal address and the email address of the Transferee set out in this letter deed shall replace the postal address and the email address set out at Clause 20.1.2(i) and 20.1.2(ii) (respectively) of the Deed; and
- 6.2** makes the representations set out in Clause 6 of the Deed to the Company and the Administrators on the Effective Date and on each date specified in Clause 6 of the Deed provided that the Transferee shall not be required to make the representations set out in Clause 6.4.1, Clause 6.4.3, Clause 6.4.4, Clause 6.5, Clause 6.8.2, Clause 6.9 and Clause 6.10 and Clause 6.11 of the Deed.
- 7** For the avoidance of doubt, following an assignment (pursuant to Clause 5 of the Deed), the release, discharge and waiver set out in Clause 2.1.4 of the Deed shall not apply to any Claims or other matters or causes of action (whether contractual, proprietary or otherwise arising) other than those Claims and other matters discharged, released or waived by the Transferor by operation of Clause 2.1.4 immediately before the assignment (pursuant to Clause 5 of the Deed).
- 8** Each person signing this letter deed on behalf of the Transferor and Transferee (as appropriate) represents that they are an authorised signatory executing this letter deed for and on behalf of, and with authority to bind, the Transferor or the Transferee (as applicable) to this letter deed and each such person acknowledges that the Company and/or the Administrators reserve the right to require evidence of power and authority and/or any supporting documentation or supplementary information from any person who purports to execute this letter deed on behalf of each of the Transferor and Transferee (as appropriate).
- 9** The acknowledgement of receipt shall be sent by the Company to the Transferor in accordance with Clause 20 (*Notices*) of the Deed (and Clause 20.2.2 of the Deed shall govern the effective service thereof) and to the Transferee by sending such communication to the postal address or the email address of the Transferee as set forth in this letter deed and such acknowledgement shall be deemed to be sufficiently served on the Transferee by sending the same to the Transferee's postal or email address.
- 10** The Transferor and Transferee agree that the Administrators have countersigned this letter deed and agree to be bound by the terms of this letter deed as agents for and on behalf of the Company and neither they, their firm, members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or

under any document or assurance made pursuant to this letter deed. The exclusion of liability hereunder shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).

- 11** Any person who is not a party to this letter deed shall have no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce or enjoy the benefit of any term of this letter deed provided that the Administrators shall be entitled to rely on paragraph 4, paragraph 5, paragraph 7, paragraph 8, paragraph 10 and this paragraph 11 of this letter deed and the Administrators' firm, members, partners, directors, officers, employees, agents, advisers and representatives shall be entitled to rely on paragraph 10 and this paragraph 11 of this letter deed, as if they were a party to it.
- 12** This letter deed may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this letter deed by executing any such counterpart.
- 13** This letter deed and any non-contractual obligation arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

This letter deed is executed by both the Transferor and the Transferee as a deed and is delivered on the date stated at the beginning of this letter deed.

**[Transferor/Transferee to delete/amend execution blocks as appropriate]**

**[If the Transferor is a company incorporated in England and Wales, use the following execution block.]**

**SIGNED as a DEED by [insert name of Transferor] by [insert name of director]**

.....  
**Director**

In the presence of:  
Witness's signature:  
Name:

.....

Address:

Occupation:

**[If the Transferor is a company not incorporated in England and Wales, the following execution block may suffice. [N.B. Liaise with foreign counsel to ensure that this broad execution block satisfies local law requirements.]**

**SIGNED as a DEED by [insert name of Transferor], a company incorporated in [territory], by [insert name of authorised signatory]**

.....  
**[Authorised Signatory]**

**and [name of authorised signatory]**

.....  
**[Authorised Signatory]**





***[If the Transferee is a company incorporated in England and Wales, use the following execution block.]***

**SIGNED as a DEED by *[insert name of Transferee]* by *[insert name of director]***

.....  
**Director**

In the presence of:  
Witness's signature:  
Name:

.....

Address:

Occupation:

***[If the Transferor/Transferee is a company not incorporated in England and Wales, use the following execution block]***

**SIGNED as a DEED by *[insert name of Transferee]*, a company incorporated in *[territory]*, by *[insert name of authorised signatory]***

.....  
**[Authorised Signatory]**

and *[name of authorised signatory]*

.....  
**[Authorised Signatory]**

***[N.B. Liaise with foreign counsel to ensure that this broad execution block satisfies local law requirements.]***

**Acknowledged and agreed without waiver of any Security Interest by**

Administrator

for and on behalf of **Lehman Brothers International (Europe) (In administration)** acting as its agent and without personal liability

Date:

