

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-11470 (SCC)

**NOTICE OF FILING AND HEARING ON PETITION SEEKING RECOGNITION OF  
FOREIGN PROCEEDING AND RELATED RELIEF PURSUANT TO  
CHAPTER 15 OF THE UNITED STATES BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that on May 14, 2018, Russell Downs, in his capacity as the duly authorized foreign representative (the “Foreign Representative”) of Lehman Brothers International (Europe) (in administration) (the “Debtor”),<sup>2</sup> filed the *Chapter 15 Petition for Recognition of a Foreign Proceeding* [Dkt. No. 1] and the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* [Dkt. No. 2] (together, the “Petition”) pursuant to chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”), with the United States Bankruptcy Court for the Southern District of New York (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that the Foreign Representative seeks the entry of an order (a) finding that (i) the Debtor is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code, (ii) the English Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code; (b) granting recognition of the English Proceeding as a foreign main proceeding under sections 1517 and 1520 of the Bankruptcy Code; (c) granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code; (d) recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the English Proceeding, the Scheme and the Sanction Order, including giving effect to the releases set forth in the Scheme; (e) permanently enjoining all parties from commencing or continuing any action or proceeding in the United States against the Debtor or its assets located within the territorial jurisdiction of the

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<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom.

<sup>2</sup> The Debtor entered administration in the UK on September 15, 2008 (the “Administration”). The Debtor is now the subject of proceedings (the “English Proceeding”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “High Court”) concerning a scheme of arrangement (the “Scheme”)<sup>2</sup> under part 26 of the Companies Act 2006 of England and Wales (as modified, amended or re-enacted from time to time, the “Companies Act”).

United States that is inconsistent with the Scheme; (f) waiving the 14-day stay of effectiveness of the proposed order granting the relief requested in the Petition and (g) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that the Court has scheduled a hearing (the “Hearing”) to consider the relief requested in the Petition for **10:00 a.m. (Eastern Time) on June 19, 2018** in Room 623 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004.

**PLEASE TAKE FURTHER NOTICE** that copies of the Petition and all documents filed in the chapter 15 case are available to parties in interest on the Court’s Electronic Case Filing System, which can be accessed from the Court’s website at <http://www.nysb.uscourts.gov> (a PACER login and password are required to retrieve a document) or upon written request to the Foreign Representative’s counsel (including by facsimile or e-mail) addressed to:

LINKLATERS LLP  
1345 Avenue of the Americas  
New York, NY 10105  
Telephone: (212) 903-9000  
Facsimile: (212) 903-9100

Attn:  
Amy Edgy, Esq.  
[amy.edgy@linklaters.com](mailto:amy.edgy@linklaters.com)  
Robert H. Trust, Esq.  
[robert.trust@linklaters.com](mailto:robert.trust@linklaters.com)  
Christopher J. Hunker, Esq.  
[christopher.hunker@linklaters.com](mailto:christopher.hunker@linklaters.com)

**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to submit a response or objection to the Petition must do so in writing and in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, setting forth the basis for such response or objection with specificity and the nature and extent of the respondent’s claims against the Debtor. Such responses or objections must be filed electronically with the Court by registered users of the Court’s electronic case filing system in accordance with General Order M-399 and the Court’s Procedures for the Filing, Signing and Verification of Documents by Electronic Means (copies of each of which may be viewed on the Court’s website at <http://www.nysb.uscourts.gov>) and by all other parties in interest, on a compact disc in Portable Document Format (PDF), Microsoft Word, or any other Windows-based word processing format, which disc shall be sent to the Office of the Clerk of the Court, One Bowling Green, New York, New York 10004-1408. A hard copy of any response or objection shall be sent to the Chambers of the Honorable Shelley C. Chapman, United States Bankruptcy Judge, One Bowling Green, New York, New York 10004-1408 and served upon counsel for the Foreign Representative, Linklaters LLP, 1345 Avenue of the Americas, New York, New York 10105 (Attention: Amy Edgy, Esq., Robert H. Trust, Esq. and Christopher J. Hunker, Esq.), so as to be actually **received on or before June 12, 2018 at 4:00 p.m. (Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed to the Petition must appear at the Hearing at the time and place set forth above.

**PLEASE TAKE FURTHER NOTICE** that, at the Hearing, the Court may order the scheduling of a case management conference to consider the efficient administration of the case.

**PLEASE TAKE FURTHER NOTICE** that if no response or objection is timely filed and served as provided above, the Court may grant the relief requested in the Petition without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be adjourned from time to time without further notice other than an announcement in open court, or a notice of adjournment filed with the Court, of the adjourned date or dates at the hearing or any other further adjourned hearing.

Dated: May 16, 2018  
New York, New York

LINKLATERS LLP

By: /s/ Robert H. Trust

Amy Edgy

Robert H. Trust

Christopher J. Hunker

**LINKLATERS LLP**

1345 Avenue of the Americas

New York, NY 10105

Telephone: (212) 903-9000

Facsimile: (212) 903-9100

*Counsel to the Foreign Representative*

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

\_\_\_\_\_ District of \_\_\_\_\_

Case number (if known): \_\_\_\_\_ Chapter 15

Check if this is an amended filing

**Official Form 401**

**Chapter 15 Petition for Recognition of a Foreign Proceeding**

**12/15**

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

1. Debtor's name \_\_\_\_\_

2. Debtor's unique identifier

**For non-individual debtors:**

Federal Employer Identification Number (EIN) \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Other \_\_\_\_\_. Describe identifier \_\_\_\_\_.

**For individual debtors:**

Social Security number: xxx - xx- \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Individual Taxpayer Identification number (ITIN): 9 xx - xx - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Other \_\_\_\_\_. Describe identifier \_\_\_\_\_.

3. Name of foreign representative(s) \_\_\_\_\_

4. Foreign proceeding in which appointment of the foreign representative(s) occurred \_\_\_\_\_

5. Nature of the foreign proceeding

Check one:

Foreign main proceeding

Foreign nonmain proceeding

Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding

A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.

A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.

Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.

\_\_\_\_\_  
\_\_\_\_\_

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?

No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.)

Yes

Debtor \_\_\_\_\_  
Name

Case number (if known) \_\_\_\_\_

**8. Others entitled to notice**

Attach a list containing the names and addresses of:

- (i) all persons or bodies authorized to administer foreign proceedings of the debtor,
- (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and
- (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

**9. Addresses**

**Country where the debtor has the center of its main interests:**

\_\_\_\_\_

**Debtor's registered office:**

Number Street \_\_\_\_\_

P.O. Box \_\_\_\_\_

City State/Province/Region ZIP/Postal Code \_\_\_\_\_

Country \_\_\_\_\_

**Individual debtor's habitual residence:**

Number Street \_\_\_\_\_

P.O. Box \_\_\_\_\_

City State/Province/Region ZIP/Postal Code \_\_\_\_\_

Country \_\_\_\_\_

**Address of foreign representative(s):**

Number Street \_\_\_\_\_

P.O. Box \_\_\_\_\_

City State/Province/Region ZIP/Postal Code \_\_\_\_\_

Country \_\_\_\_\_

**10. Debtor's website (URL)**

\_\_\_\_\_

**11. Type of debtor**

Check one:

- Non-individual (check one):
  - Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.
  - Partnership
  - Other. Specify: \_\_\_\_\_
- Individual

Debtor \_\_\_\_\_  
Name

Case number (if known) \_\_\_\_\_

**12. Why is venue proper in this district?**

Check one:

- Debtor's principal place of business or principal assets in the United States are in this district.
- Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:  
\_\_\_\_\_
- If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:  
\_\_\_\_\_

**13. Signature of foreign representative(s)**

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct,

**X**

\_\_\_\_\_  
Signature of foreign representative

\_\_\_\_\_  
Printed name

Executed on \_\_\_\_\_

MM / DD / YYYY

**X**

\_\_\_\_\_  
Signature of foreign representative

\_\_\_\_\_  
Printed name

Executed on \_\_\_\_\_

MM / DD / YYYY

**14. Signature of attorney**

**X**

\_\_\_\_\_  
Signature of Attorney for foreign representative

Date

\_\_\_\_\_  
MM / DD / YYYY

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Firm name

\_\_\_\_\_  
Number Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP Code

\_\_\_\_\_  
Contact phone

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Bar number

\_\_\_\_\_  
State

**Attachment 1**

**Item 6: Certified Copy of Convening Order**



**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND AND WALES**  
**COMPANIES COURT (ChD)**

**No. 7492 of 2008 / CR-2008-000012**

**CR-2018-003713**  
**CR-2018-003713**

**THE HONOURABLE MR JUSTICE HILDYARD**

**11 MAY 2018**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)**

**AND IN THE MATTER OF THE COMPANIES ACT 2006**

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**ORDER**

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UPON THE APPLICATION by Part 8 claim form dated 2 May 2018 (the "**Claim Form**") by the joint administrators of Lehman Brothers International (Europe) (In Administration) (the "**Company**") (the "**Administrators**")

AND UPON HEARING William Trower QC for the Administrators, David Allison QC for Wentworth Sons Sub-Debt S.à r.l., Peter Arden QC for LB Holdings Intermediate 2 Limited (in administration), Robin Dicker QC for the SCG, Hilary Stonefrost for Marble Ridge Special Situations GP LLC, Andrew Twigger QC for Deutsche Bank AG and Andrew de Mestre for CRC Credit Fund Limited

AND UPON READING the Claim Form and the First Witness Statement of Russell Downs dated 2 May 2018

AND UPON the Court adopting in this order, save where terms are otherwise expressly defined, the definitions contained in the proposed scheme of arrangement promulgated by the Administrators on behalf of the Company pursuant to Part 26 of the Companies Act 2006 (the "**Scheme**") and the draft explanatory statement to be made in relation to the Scheme pursuant to section 897 of the Companies Act 2006 (the "**Explanatory Statement**"). References to the "SCG" in this order incorporate that term as it is defined in the Explanatory Statement.

AND UPON the Company having appointed Russell Downs to act as the foreign representative ("**Foreign Representative**") in respect of the Scheme in any case under Chapter 15 of the U.S. Bankruptcy Code ("**Chapter 15 Case**") to obtain recognition of the Scheme as a foreign main proceeding

IT IS ORDERED AND DIRECTED THAT:

1. The Company is at liberty to convene four meetings of its Scheme Creditors (the "**Scheme Meetings**") for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme proposed to be made between the Company and the Scheme Creditors. Of these Scheme Meetings:



- (a) the first Scheme Meeting shall be for 8% Creditors and Specified Interest Creditors (who are not members of the SCG) in relation to their 8% Claims and Specified Interest Claims respectively ("**Scheme Meeting 1**");
  - (b) the second Scheme Meeting shall be for those Higher Rate Creditors (who are not members of the SCG) in relation to their Higher Rate Claims ("**Scheme Meeting 2**");
  - (c) the third Scheme Meeting shall be for those Scheme Creditors who are members of the SCG ("**Scheme Meeting 3**"); and
  - (d) the fourth Scheme Meeting shall be for the Subordinated Creditor in relation to the Subordinated Debt ("**Scheme Meeting 4**").
2. Scheme Meeting 1 shall commence at 4.00 p.m. on 5 June 2018 (or such later time or date as the Administrators may decide).
3. Scheme Meeting 2 shall commence immediately after Scheme Meeting 1 concludes.
4. Scheme Meeting 3 shall commence immediately after Scheme Meeting 2 concludes.
5. Scheme Meeting 4 shall commence immediately after Scheme Meeting 3 concludes.
6. The Scheme Meetings shall be held at the offices of Linklaters LLP, One Silk Street, London, EC2Y 8HQ (or if such venue is not available, such other suitable venue in London as the Administrators may select).
7. By 14 May 2018:
  - (a) a notice convening the Scheme Meetings and enclosing copies of the Scheme and the Explanatory Statement, each substantially in the form filed (subject to completion of blanks and minor modifications as advised by solicitors and counsel to the Company), shall be provided to all persons whom the Administrators believe are or may be Scheme Creditors by:
    - (i) sending such documentation to such parties by email or post (to the extent that the Administrators hold such contact details);
    - (ii) making such documentation available to Scheme Creditors with Admitted Claims via a secure internet portal operated by PricewaterhouseCoopers LLP (the "**Portal**"); and
    - (iii) publishing copies of such documentation on the Company's website;
  - (b) certificates showing the allocation of voting rights, together with electronic forms of proxy, shall be provided to Scheme Creditors with Admitted Claims via the Portal; and
  - (c) letters showing the voting rights they have been allocated by the Administrators, together with hard copy forms of proxy, shall be provided to Scheme Creditors with Undetermined Provable Claims.
8. The Scheme and the Explanatory Statement shall:
  - (a) be available for inspection at the offices of Linklaters LLP, One Silk Street, London EC2Y 8HQ during usual business hours on business days; and
  - (b) be provided in hardcopy free of charge to any Scheme Creditor upon request,

until the date of the Scheme Meetings, in the form or substantially in the form of the drafts of the same contained in the exhibits to the First Witness Statement of Russell Downs and initialled by the Court for the purposes of identification.

9. The accidental omission to serve any Scheme Creditor with notice of the Scheme Meetings, or the non-receipt of such notice by any Scheme Creditor, shall not invalidate the outcome of the Scheme Meetings.
10. In the case of claims in respect of which a proof of debt has not been submitted by 14 May 2018, provided that the Scheme Creditor concerned submits a proof of debt by 5.00 pm on 24 May 2018, the Company shall provide the documentation referred to at paragraph 7(c) above as soon as reasonably practicable.
11. The chairman of the Scheme Meetings shall be responsible for, and have discretion to determine, in accordance with the relevant provisions in the Explanatory Statement, the entitlement of and value for which any Scheme Creditor is permitted to vote at the Scheme Meetings.
12. By 5.00 pm on 24 May 2018, in accordance with the relevant provisions in the Explanatory Statement (and especially Part III, paragraph 7), Scheme Creditors who hold more than one Admitted Claim but do not control all such claims may request that the Company split their voting rights so that their votes may be cast in accordance with the instructions of those persons that do control the claims.
13. By 5.00 pm on 31 May 2018, in accordance with the relevant provisions in the Explanatory Statement (and especially Part III, paragraph 3.4), Higher Rate Creditors who consider that they are entitled to statutory interest at a rate greater than 8% simple may request voting rights greater than those set out in the documentation provided to them pursuant to paragraphs 7(b) and 7(c) of this Order by notifying the Company of the rate(s) of interest that they consider to apply to their claims and the amount of interest they claim is payable to them based on such rate(s).
14. In order to vote on the Scheme, a Scheme Creditor must:
  - (a) attend the Scheme Meeting(s) at which it is entitled to vote (with the appropriate documentation as provided in the Explanatory Statement), and vote in person;
  - (b) by 5.00 pm on 4 June 2018, submit a completed form of proxy:
    - (i) in respect of electronic forms of proxy, via the Portal; and
    - (ii) in respect of hard copy forms of proxy:
      - a. by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com); or
      - b. by first-class post or air mail, addressed to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, for the attention of Rebecca Browne (with proof of receipt); or
  - (c) arrange for a hard copy form of proxy to be delivered by hand to the chairman at the Scheme Meeting(s) at which such Scheme Creditor is entitled to vote.
15. Russell Downs, or failing him another Administrator, shall act as chairman of the Scheme Meetings, and shall:

- (a) oversee voting;
  - (b) have discretion (without prejudice to the generality of paragraph 15(d) below):
    - (i) to accept the value of the claim in respect of which a Scheme Creditor seeks to vote, in whole or in part, notwithstanding failure by such Scheme Creditor to comply with the requirements contained in the form of proxy; and
    - (ii) to accept otherwise incomplete or late forms of proxy (but, for the avoidance of doubt, provided that the form of proxy is received before he closes the relevant Scheme Meeting);
  - (c) be at liberty to rely on the electronic confirmations (in respect of electronic forms of proxy) or signatures (in respect of hard copy forms of proxy) as a warranty that the signatory (or person submitting such confirmation) has been duly authorised by the relevant Scheme Creditor;
  - (d) be responsible for, and have discretion to determine, in accordance with the relevant provisions in the Explanatory Statement, the entitlement of and value for which any Scheme Creditor is permitted to vote at the Scheme Meetings;
  - (e) be at liberty to permit the attendance of persons who are not otherwise entitled to attend and vote at the Scheme Meetings provided that such a person shall not be entitled to speak at the Scheme Meetings without the permission of the chairman and provided that no objection is received from a person entitled to attend the relevant Scheme Meeting;
  - (f) be at liberty to adjourn the Scheme Meetings provided that, if adjourned, the Scheme Meeting in question recommences as soon as reasonably practicable thereafter; and
  - (g) have permission to apply for such further directions as he may consider necessary or appropriate.
16. Prior to the hearing for any application for sanction of the Scheme, the chairman shall file with this Court a copy of a report on the Scheme Meetings and the voting at the Scheme Meetings.
17. If the Scheme is approved at each of the Scheme Meetings by the required statutory majorities, the Claim Form shall be restored and a further hearing at which the Administrators shall seek the Court's sanction of the Scheme shall be listed on or about 13 June 2018.
18. The Part 8 Claim Form be adjourned for further hearing.

**AND IT IS DECLARED** that:

1. Russell Downs has been validly appointed by the Administrators (on behalf of the Company) to act as the Company's Foreign Representative on any petition brought by the Company before the United States Bankruptcy Court for an order recognising the Scheme as a "foreign main proceeding" under Chapter 15 of the U.S. Bankruptcy Code and granting related relief.
2. The Foreign Representative has been authorised by the Company to take any and all actions to execute, deliver, certify, file and/or record and perform any and all documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of

governmental or regulatory authorities, or certificates, and to take any and all steps deemed by the Foreign Representative to be necessary or desirable to carry out the purpose and intent of the Scheme including, for the avoidance of doubt, filing any petition for recognition of the Scheme, the enforcement of this order and the sanction order (if approved) and any other related relief under Chapter 15 of the U.S. Bankruptcy Code, to the extent required.

**Service of the order**

The Court has provided a sealed copy of this order to the serving party:  
Linklaters LLP, One Silk Street, London EC2Y 8HQ

**DATED** this 11th day of May 2018

**Attachment 2**

**Item 7: Statement Identifying Foreign Proceedings**

Amy Edgy  
Robert H. Trust  
Christopher J. Hunker  
**LINKLATERS LLP**  
1345 Avenue of the Americas  
New York, NY 10105  
Telephone: (212) 903-9000  
Facsimile: (212) 903-9100

*Counsel to the Foreign Representative*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-\_\_\_\_\_ (\_\_\_)

**DECLARATION OF FOREIGN REPRESENTATIVE PURSUANT TO  
SECTION 1515(c) OF THE BANKRUPTCY CODE**

I, Russell Downs, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America, as follows:

1. I am the duly authorized foreign representative (the “Foreign Representative”) of Lehman Brothers International (Europe) (in administration) (the “Debtor”). The Debtor entered administration in the UK on September 15, 2008 (the “Administration”). The Debtor is now the subject of proceedings (the “English Proceeding”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “English Court”) concerning a scheme of arrangement (the “Scheme”) under part 26

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<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom.

of the Companies Act 2006 of England and Wales (as modified, amended or re-enacted from time to time, the “Companies Act”).

2. I respectfully submit this statement, as required by section 1515(c) of title 11 of the United States Code (the “Bankruptcy Code”), in support of the verified petition filed herewith seeking recognition by this Court of the English Proceeding as a foreign main proceeding.

3. Pursuant to the requirements of section 1515(c) of the Bankruptcy Code, to the best of my knowledge, the Administration and the English Proceeding are the only known pending “foreign proceedings” with respect to the Debtor as that term is defined in section 101(23) of the Bankruptcy Code.<sup>2</sup> The Debtor is seeking recognition only of the English Proceeding and not the Administration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 14, 2018

*/s/ Russell Downs* \_\_\_\_\_

Russell Downs  
Joint Administrator

Authorized Foreign Representative of the Debtor

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<sup>2</sup> The Debtor commenced ancillary proceedings in Switzerland and South Korea to liquidate the Debtor’s branches in those countries. Upon information and belief, those proceedings are no longer pending.

**Attachment 3**

**Item 8: Disclosure Pursuant to Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure**



Amy Edgy  
Robert H. Trust  
Christopher J. Hunker  
**LINKLATERS LLP**  
1345 Avenue of the Americas  
New York, NY 10105  
Telephone: (212) 903-9000  
Facsimile: (212) 903-9100

*Counsel to the Foreign Representative*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-\_\_\_\_\_ ( )

**DISCLOSURE PURSUANT TO RULE 1007(a)(4) OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE**

Russell Downs, in his capacity as the duly authorized foreign representative (the “Foreign Representative”) of Lehman Brothers International (Europe) (in administration) (the “Debtor”),<sup>2</sup> hereby files this disclosure pursuant to Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure and respectfully sets forth as follows:

<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom.

<sup>2</sup> The Debtor entered administration in the UK on September 15, 2008 (the “Administration”). The Debtor is now the subject of proceedings (the “English Proceeding”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “English Court”) concerning a scheme of arrangement (the “Scheme”) under part 26 of the Companies Act 2006 of England and Wales (as modified, amended or re-enacted from time to time, the “Companies Act”).

**I. Administrators in Foreign Proceeding Concerning the Debtor**

Russell Downs is an authorized joint administrator of the Debtor and the duly authorized foreign representative of the Debtor in the English Proceeding. The Foreign Representative's address is: PricewaterhouseCoopers, 7 More London Riverside, SE1 2RT, London, United Kingdom.

Anthony Victor Lomas is an authorized joint administrator of the Debtor. Mr. Lomas's address is PricewaterhouseCoopers, 7 More London Riverside, SE1 2RT, London, United Kingdom.

Steven Anthony Pearson is an authorized joint administrator of the Debtor. Mr. Pearson's address is PricewaterhouseCoopers, 7 More London Riverside, SE1 2RT, London, United Kingdom.

Julian Guy Parr is an authorized joint administrator of the Debtor. Mr. Parr's address is PricewaterhouseCoopers, 7 More London Riverside, SE1 2RT, London, United Kingdom.

**II. Entities Against Whom Provisional Relief is Sought Pursuant to 11 U.S.C. § 1519**

The Foreign Representative is not seeking provisional relief at this time because he is not aware of any imminent threat to the Debtor's assets located within the territorial jurisdiction of the United States or to the English Proceeding by virtue of actions in the United States. If circumstances change or the Foreign Representative becomes aware of additional facts, the Foreign Representative reserves all rights to seek provisional relief pursuant to section 1519 of the Bankruptcy Code to protect the Debtor and its assets.

**III. All Parties to Litigation Pending in the United States in which the Debtor is a Party at the Time of Filing of the Petition**

Case	Parties
Lehman Brothers International (Europe) (in administration) v. AG Financial Products, Inc., Supreme Court of the State of New York Index number 653284/2011	AG Financial Products, Inc. 31 W. 52 <sup>nd</sup> St. New York, NY 10019 Attn: Michael DiRende  Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, NY 10006 Attn: Rishi Zutshi

The Foreign Representative is not aware of any other currently pending litigation in the United States to which the Debtor is a party.

Dated: New York, New York  
May 14, 2018

Respectfully submitted,

*/s/ Robert H. Trust*

\_\_\_\_\_  
Amy Edgy  
Robert H. Trust  
Christopher J. Hunker  
**LINKLATERS LLP**  
1345 Avenue of the Americas  
New York, NY 10105  
Telephone: (212) 903-9000  
Facsimile: (212) 903-9100

*Counsel to the Foreign Representative*

**Attachment 4**

**Item 11: Corporate Ownership Statement**

Amy Edgy  
Robert H. Trust  
Christopher J. Hunker  
**LINKLATERS LLP**  
1345 Avenue of the Americas  
New York, NY 10105  
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*Counsel to the Foreign Representative*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-\_\_\_\_\_ ( )

**CORPORATE OWNERSHIP STATEMENT OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE) (IN ADMINISTRATION) PURSUANT TO  
BANKRUPTCY RULES 1007(a)(4) AND 7007.1 AND LOCAL RULE 1007-3**

Russell Downs, in his capacity as the duly authorized foreign representative (the “Foreign Representative”) of Lehman Brothers International (Europe) (in administration) (the “Debtor”),<sup>2</sup> hereby files the corporate ownership information required by Rules 1007(a)(4) and 7007.1 of the Federal Rules of Bankruptcy Procedure and Rule 1007-3 of the Local Bankruptcy Rules for the Southern District of New York.

<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom.

<sup>2</sup> The Debtor entered administration in the UK on September 15, 2008 (the “Administration”). The Debtor is now the subject of proceedings (the “English Proceeding”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “English Court”) concerning a scheme of arrangement (the “Scheme”) under part 26 of the Companies Act 2006 of England and Wales (as modified, amended or re-enacted from time to time, the “Companies Act”).

As of May 14, 2018, 100% of the outstanding equity interests in the Debtor are owned by LB Holdings Intermediate 2 Limited (in administration) (“LBHI 2”), a company incorporated in England and Wales with registered number 05957878 and a registered address of 7 More London Riverside, London SE1 2RT, United Kingdom. LBHI2 is an indirect wholly-owned subsidiary of Lehman Brothers Holdings Inc.

Dated: New York, New York  
May 14, 2018

Respectfully submitted,

*/s/ Robert H. Trust*

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

*In re*

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-11470 (SCC)

**VERIFIED PETITION UNDER CHAPTER 15 FOR  
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

Russell Downs, in his capacity as the duly authorized foreign representative (the “Foreign Representative”) of Lehman Brothers International (Europe) (in administration) (the “Debtor”), which entered administration in the UK on September 15, 2008 (the “Administration”) and which is the subject of proceedings (the “English Proceeding”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “High Court”) concerning a scheme of arrangement (the “Scheme”)<sup>2</sup> under part 26 of the Companies Act 2006 of England and Wales (as modified, amended or re-enacted from time to time, the “Companies Act”), respectfully submits this verified petition (the “Verified Petition”

<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, United Kingdom E14 5LQ.

<sup>2</sup> A copy of the Scheme is annexed hereto as **Exhibit B**.

and together with the Form of Voluntary Petition [Dkt. No. 1], the “Petition”) seeking entry of an order pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), substantially in the form annexed hereto as **Exhibit A** (the “Proposed Order”):

- (a) finding that (i) the Debtor is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code, (ii) the English Proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code;
- (b) granting recognition of the English Proceeding as a “foreign main proceeding” under sections 1517 and 1520 of the Bankruptcy Code;
- (c) granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code;
- (d) recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the English Proceeding, the Scheme and the order of the High Court sanctioning the Scheme (the “Sanction Order”), including giving effect to the releases set forth in the Scheme (the “Releases”);
- (e) permanently enjoining all parties from commencing or continuing any action or proceeding in the United States against the Debtor or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme (the “Injunction”);
- (f) waiving the 14-day stay of effectiveness of the Proposed Order; and
- (g) granting related relief.

In support of the Petition, the Foreign Representative respectfully submits the (a) *Declaration of Russell Downs in Support of Verified Petition for Recognition of Foreign Main Proceeding and Related Relief* (the “Downs Declaration”) and (b) the *Declaration of Richard David Hodgson in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “Hodgson Declaration”), each of which has been filed contemporaneously herewith and is incorporated herein by reference as if fully set forth herein.



In further support of the relief requested, the Foreign Representative respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. Prior to the 2008 financial crisis, the Debtor was the principal trading company in Europe within the Lehman Brothers' group of entities (the "Lehman Group"), of which Lehman Brothers Holdings Inc. ("LBHI") was the ultimate parent. The Lehman Group provided a full range of investment banking services to clients from its global headquarters in New York and its regional headquarters in London and Tokyo and operated its businesses in markets that depended heavily on investor and market confidence.

2. In September 2008, an unprecedented series of events unfolded in which investor and market confidence evaporated and LBHI's share price plummeted nearly 80% in the span of just ten days. Suffering from a liquidity crisis and worsening market conditions, in the early morning hours of September 15, 2008, LBHI – which centrally managed substantially all of the Lehman Group's cash – informed the Debtor that LBHI would no longer make payments to or for the Debtor or on behalf of any other Lehman Group entity and that LBHI was preparing to file a petition for relief under chapter 11 of the Bankruptcy Code. Without access to cash to satisfy its debts as they became due, hours later on the morning of September 15, 2008, the Debtor's directors filed an application to place the Debtor into Administration. Since the commencement of the Administration, the Debtor has been, and continues to be, managed and controlled by the Administrators and supervised by the High Court.<sup>3</sup>

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<sup>3</sup> The current Administrators are the Foreign Representative, Anthony Victor Lomas, Steven Anthony Pearson and Julian Guy Parr. Most recently, the Foreign Representative and Lomas are the Administrators typically with the greatest involvement in the key decisions made with respect to the Debtor, while Pearson and Parr have more limited day-to-day responsibilities.

3. For the past ten years, the Administrators have worked diligently to marshal and liquidate the Debtor's assets, reconcile and allow claims asserted against the Debtor and make distributions to creditors. As a result of the Administrators' remarkable efforts, the Debtor made distributions totaling approximately £12.6 billion to holders of admitted claims (the "Admitted Claims"), resulting in full satisfaction of the principal amount of those claims – an extraordinary result.

4. Having reserved for or satisfied in full the principal amount of all Admitted Claims, the Debtor now has a surplus sufficient to enable a payment to creditors in respect of their statutory interest entitlements (the "Surplus").<sup>4</sup> The Administrators estimate that the currently available Surplus is approximately £6.070 billion (after establishing adequate reserves for higher ranking claims). In recognition of the Surplus, the Administrators commenced legal proceedings to determine certain issues relating to creditors' entitlements to the Surplus. Further proceedings related to the Surplus have been commenced by Wentworth Sons Sub-Debt S.a.r.l. (the "Subordinated Creditor") which holds approximately £1.24 billion of subordinated debt (excluding interest) (the "Subordinated Debt"). These ongoing legal proceedings are at various stages of litigation and have been pending for several years. If continued, these proceedings would likely take several more years to complete and would result in significant additional costs and further delays in distributing the Surplus to creditors.

5. In an effort to reach a consensual resolution regarding creditors' entitlement to the Surplus, in late 2017, the Administrators engaged in negotiations with the Debtor's largest

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<sup>4</sup> The Surplus is the amount of cash and other assets in excess of the amount required to repay in full the principal amount of the Admitted Claims, expenses of the Administration and all preferential debts.

creditors, including the “Senior Creditors Group” (the “SCG”)<sup>5</sup> and the “Wentworth Group,”<sup>6</sup> which are the principal participants (along with York Global Finance BDH LLC and Goldman Sachs International) in the pending litigation described more fully below. Following extensive arm’s-length negotiations, the Administrators successfully reached an agreement with the SCG and the Wentworth Group on the terms of a consensual settlement of the issues related to creditors’ entitlements to the Surplus. That settlement was memorialized in a term sheet that was attached to the Lock-Up Agreement dated December 22, 2017 (the “Lock-Up Agreement”) by and among the Debtor, the SCG and the Wentworth Group, which together hold approximately 78% of all Admitted Claims. Under the Lock-Up Agreement, the parties agreed to support the implementation of the settlement through the Scheme, the primary purpose of which is to bring an end to the ongoing litigation and facilitate expedited distributions of the Surplus to creditors.

6. To implement the settlement embodied in the Scheme, the Debtor commenced the English Proceeding to obtain the approval of the High Court to convene meetings (the “Scheme Meetings”) of the Debtor’s creditors (the “Scheme Creditors”)<sup>7</sup> to vote on the Scheme and ultimately to sanction the Scheme. The Debtor also commenced this chapter 15 case (the “Chapter 15 Case”) to obtain recognition of the English Proceeding as a foreign main proceeding

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<sup>5</sup> The SCG consists of a number of creditors holding Admitted Claims ranking *pari passu* with the other ordinary unsecured claims.

<sup>6</sup> The Wentworth Group consists of (i) holders of Admitted Claims that rank *pari passu* with all other ordinary unsecured claims and (ii) the Subordinated Creditor.

<sup>7</sup> The Scheme Creditors include any creditor that could prove its claims in the Administration (the “Provable Claims”), regardless of whether such claim is (i) an Admitted Claim, (ii) awaiting adjudication by the Administrators, (iii) rejected by the Administrators but is subject to appeal or within the time limit to be appealed or (iv) yet to be proven in the Administration.

and related relief.<sup>8</sup> For the reasons set forth below, the Foreign Representative respectfully requests that this Court grant the relief requested herein.

### **BACKGROUND**

7. The following is an overview of the Debtor and the Administration, the events leading up to the Scheme, the origins and development of the Scheme and the filing of the English Proceeding as of the date of the filing of the Petition (the "Petition Date"). The Foreign Representative respectfully refers the Court to the Downs Declaration for additional information.

#### **I. Introduction to the Debtor and the Administration**

##### **A. The Debtor**

8. Prior to the commencement of the Administration on September 15, 2008, the Lehman Group was one of the largest investment banks in the United States, providing worldwide services to corporate customers, institutions, governments, hedge funds and private clients. In the period immediately prior to its collapse, there was an escalating loss of confidence in the Lehman Group, as evidenced by a significant deterioration in LBHI's share price on the New York Stock Exchange of almost 80% during the week from September 5, 2008 to September 12, 2008. On September 9, 2008 alone, LBHI's share price fell 45% following reports that negotiations with the Korean Development Bank regarding a potential major investment in the Lehman Group had been suspended. The following day, the Lehman Group announced a third quarter loss of \$3.9 billion. Simultaneously, the Lehman Group announced plans to sell a majority stake in its investment management business and to spin off the majority of its commercial real estate assets into a new, separate public company. These measures failed

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<sup>8</sup> The Foreign Representative is not seeking provisional relief at this time because he is not aware of any imminent threat to the Debtor's assets located within the territorial jurisdiction of the United States or to the English Proceeding by virtue of actions in the United States. If circumstances change or the Foreign Representative becomes aware of additional facts, the Foreign Representative reserves all rights to seek provisional relief pursuant to section 1519 of the Bankruptcy Code to protect the Debtor and its assets.

to restore investor confidence, and LBHI's share price fell a further 7% on September 10, 2008. Following the close of business that day, Moody's Investor Service announced that it intended to downgrade the Lehman Group's credit rating in the absence of a purchase of the Lehman Group.

9. The Lehman Group took various steps in an attempt to resolve the Lehman Group's dire situation, including holding discussions in New York with potential investors in, and purchasers of, the Lehman Group's businesses (or parts thereof). At the same time, the Administrators' firm, PwC, met with the Debtor's directors to consider steps that should be taken if the Lehman Group's efforts to save itself were unsuccessful. Because LBHI centrally managed substantially all of the Lehman Group's cash, a failure of LBHI to settle obligations on behalf of the Debtor would cause the Debtor to be unable to meet its obligations as they became due. Accordingly, on September 14, 2008, the Debtor's directors sought LBHI's assurances that payments to be made by LBHI on behalf of the Debtor would be made. At approximately 12:30 a.m. (London time) on September 15, 2008, LBHI informed the Debtor that LBHI would no longer make payments to or for the Debtor or on behalf of any other Lehman Group entity and that LBHI was preparing to file a petition for relief under chapter 11 of the Bankruptcy Code. As a result, the Debtor immediately made preparations for those companies to seek the protection of an administration order on the basis that those Lehman Group companies would be unable to meet their debts as they became due.

**B. The Administration and Interim Distributions**

10. At 7:56 a.m. (London time) on September 15, 2008, upon an application filed by the Debtor's directors, the Debtor was placed into the Administration under the supervision of the High Court. The original administrators (Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael Andrew Jervis) were appointed pursuant to an order of

the High Court (the “Administration Order”).<sup>9</sup> Those original administrators immediately assumed responsibility for the Debtor’s affairs and began the process of liquidating assets, reconciling claims and making distributions to creditors as well as managing client money and returning it to the rightful owners.

11. On December 2, 2009, the Administrators obtained an order from the High Court permitting distributions to be made to unsecured creditors. Following entry of that order, the Administrators notified all parties they believed may have had a pre-Administration relationship with the Debtor that they needed to file proofs of debt against the Debtor no later than December 31, 2010, which was subsequently extended to December 31, 2012. The Administrators then undertook an extensive claims reconciliation process to determine the quantum of claims against the Debtor. Beginning in November 2012,<sup>10</sup> the Administrators made distributions to creditors in the aggregate amount of approximately £12.6 billion, repaying the principal amount of all Admitted Claims against the Debtor.

12. The Debtor previously appeared before this Court in early 2013 as a result of the Debtor entering into a settlement agreement with the trustee for Lehman Brothers Inc. (“LBI”) which settled the intercompany claims between LBI and the Debtor. The settlement agreement was approved first by this Court, the Honorable James M. Peck presiding, in the LBI Securities Investor Protection Act (“SIPA”) proceedings and subsequently by the English High Court.

### **C. Connections to the United States**

13. Since the commencement of the Administration, the Debtor has been managed and controlled by the Administrators each of whom is located in London, England and

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<sup>9</sup> The Foreign Representative was appointed to serve as an Administrator pursuant to an order of the High Court dated November 2, 2011.

<sup>10</sup> The four interim distributions were made on November 26, 2012, June 19, 2013, June 28, 2013 and November 21, 2013.

supervised by the High Court in England. The Debtor also has substantial connections to the United States. The Debtor is a party to over 300 ISDA Master Agreements and other contracts that are governed by New York law and contain New York forum selection clauses. The Debtor has the following assets located in the United States: (i) securities evidenced by physical certificates issued by a U.S. entity that are held by a custodian in New York; (ii) a judgment issued by a New York state court against a non-U.S. entity in the amount of approximately \$230 million; (iii) allowed claims in the aggregate amount of approximately \$2 billion in the chapter 11 cases of Lehman Brothers Holdings Inc. and its affiliates; (iv) a residual \$1 million claim in the LBI SIPA proceeding; and (v) a \$50,000 evergreen retainer with the New York office of Linklaters LLP being held in a client trust account located in New York (the “Retainer Account”). The Debtor is also the plaintiff in a lawsuit against AG Financial Products, Inc. that is pending before the Supreme Court of the State of New York pursuant to which the Debtor seeks a judgment against the defendant arising out of the early termination of 28 credit derivative transactions on the grounds of the Debtor’s Administration (the “AG Financial Products Litigation”).<sup>11</sup>

## **II. Events Leading to the Development of the Scheme**

14. As noted above, around the time that interim distributions began, the Administrators determined that the Administration may have a Surplus and that various issues regarding creditors’ entitlements to the Surplus would have to be resolved. The Administrators, therefore, commenced legal proceedings to determine those issues (the “Waterfall I Proceedings”). Further proceedings were subsequently commenced to determine additional questions related to such entitlements (the “Waterfall II Proceedings” and the “Waterfall III”).

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<sup>11</sup> The case is *Lehman Brothers International Europe (in administration) vs. AG Financial Products, Inc.*, Index No. 653284/2011, pending in the Supreme Court of the State of New York, County of New York.

Proceedings,” and together with the Waterfall I Proceedings, collectively, the “Waterfall Proceedings”). As of the date hereof, the Waterfall I Proceedings and the Waterfall III Proceedings have concluded. The Waterfall II Proceedings consist of several parts (referred to as Tranche A, Tranche B and Tranche C), only one of which (Tranche B) has concluded. The Tranche A and Tranche C parts of the Waterfall II Proceedings remain pending. The Administrators have been advised that the Waterfall II Proceedings will remain pending until at least 2020 if that litigation is not settled as contemplated by the Scheme.

**A. The Waterfall I Proceedings Have Concluded**

15. The Administrators commenced the Waterfall I Proceedings in February 2013 to resolve issues relating to, among other things, (i) the ranking and payment of the Subordinated Debt arising under certain intercompany loan agreements between the Debtor and LB Holdings Intermediate 2 Limited (in administration) (“LBHI2”), which LBHI2 assigned to the Subordinated Creditor in January 2014 and (ii) the impact of a liquidation on claims to statutory interest under applicable English insolvency law (“Statutory Interest”) as a result of the Surplus. The Waterfall I Proceedings were litigated in the High Court and were appealed to the Court of Appeal of England and Wales (the “Court of Appeal”) and the Supreme Court of the United Kingdom (the “Supreme Court”) (collectively, the “English Courts”).

16. In 2014, the High Court held that (a) the Subordinated Debt ranked behind (i) all creditors that hold Provable Claims, (ii) any claims to Statutory Interest and (iii) claims that are not provable in the Administration, but that are payable in the Administration after payment of Statutory Interest (the “Non-Provable Claims”) and (b) those senior liabilities would have to be paid in full before the Subordinated Creditor could submit a proof of debt for the Subordinated Debt. Following an appeal to the Court of Appeal (which overturned certain of the High Court’s findings), in May 2017, the Supreme Court affirmed the High Court’s ruling. The Supreme



Court also affirmed the High Court's ruling that, if the Debtor moved from administration into liquidation, any claim to Statutory Interest that had become payable during the Administration (as a result of the Surplus) but had not been paid prior to the commencement of the liquidation could not subsequently be paid or proved in the liquidation. Following the Supreme Court's ruling, the Waterfall I Proceedings concluded, and no further rights of appeal exist. As such, the Scheme does not settle any of the issues that arose in the Waterfall I Proceedings. The Scheme is consistent with the English Courts' rulings in the Waterfall I Proceedings.

**B. The Waterfall II Proceedings**

17. The Administrators commenced the Waterfall II Proceedings in June 2014. As noted above, those proceedings fall into three "tranches" of issues, of which Tranche A and Tranche C remain pending.

18. **Tranche A Remains Pending.** The Tranche A proceedings primarily deal with the issues regarding the calculation of Statutory Interest to be paid from the Surplus and seeks further guidance as to the proper distribution of the Surplus. The issues raised in the Tranche A proceedings include, among other things, (i) how distributions paid in the Administration are to be applied in respect of debts proved against the Debtor, (ii) where the relevant interest rate to be applied is a compounding rate, whether Statutory Interest continues to accrue following the payment in full of the principal amount of a creditor's Provable Claim and (iii) the date from which Statutory Interest on admitted future and contingent claims is calculated. In 2015, the High Court held that (i) distributions to a creditor in the Administration are applied first to the principal amount of the creditor's Provable Claim, (ii) Statutory Interest does not continue to compound following the payment of the principal amount of the Provable Claim and (iii) Statutory Interest is calculated from the date of the Administration. In October 2017, the Court of Appeal upheld the High Court's ruling.

19. Certain creditors have filed an application to appeal the Court of Appeal's decision to the Supreme Court. The Court of Appeal denied the application for permission to appeal to the Supreme Court. Following the Court of Appeal's denial of the request for permission to appeal, those creditors made an application for permission to appeal directly to the Supreme Court. That application now is pending before the Supreme Court itself. Following agreement on the settlement of the outstanding issues in the Tranche A proceedings to be implemented through the Scheme and execution of the Lock-Up Agreement (as defined below), the Supreme Court granted the parties' request to defer its decision on the application for permission to appeal pending implementation of the Scheme. If the Scheme becomes effective, the applications for permission to appeal will be withdrawn. If the Scheme does not become effective, the Supreme Court will decide those applications.

20. **Tranche B Has Been Settled.** The Tranche B proceedings deal with the construction and effect of release clauses in various agreements made between the Debtor and a large number of its creditors in respect of their Admitted Claims after the commencement of the Administration, including whether the releases in those agreements precluded creditors from asserting certain Non-Provable Claims that otherwise carry a right to claim an entitlement against the Surplus. The High Court issued a ruling on the Tranche B issues, which was appealed to the Court of Appeal. However, that appeal was rendered moot following the Supreme Court's decision in the Waterfall I Proceedings, and no parties are pursuing any of the Tranche B issues. Accordingly, the Tranche B proceedings have concluded, and the Scheme has no effect on the issues raised in the Tranche B proceedings.

21. **Tranche C Remains Pending.** The Tranche C proceedings deal with, among other things, the construction of English and New York law ISDA Master Agreements (as

defined in the Scheme), which may give rise to an entitlement to Statutory Interest on debts owed by the Debtor at an annual rate of higher than 8% per annum. The High Court was asked to interpret the definition of “Default Rate” under the ISDA Master Agreements, which is defined as the “*rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.*” The High Court held, among other things, that (i) the relevant payee for purposes of the certification was the original counterparty to the ISDA Master Agreement, not an assignee, (ii) the cost of funding does not include the cost of equity funding and (iii) a certification was conclusive unless it was made irrationally or in bad faith, contained a manifest error or did not comply with the High Court’s findings on the “cost of funding” issue.

22. Certain parties to the Tranche C proceedings appealed the High Court’s holding that the “Default Rate” provisions of the ISDA Master Agreements referring to the parties’ “cost of funding” do not include cost of equity funding.<sup>12</sup> The Court of Appeal is scheduled to hear that appeal in July 2018. The Scheme provides for a full and final settlement of the Tranche C proceedings in a manner consistent with the High Court’s rulings on these issues. Therefore, if the Scheme becomes effective, the appeal will be withdrawn. If the Scheme does not become effective, the Court of Appeal hearing in respect of the appeal of the Tranche C proceedings will proceed.

### **C. The Waterfall III Proceedings Have Been Settled**

23. The Administrators commenced the Waterfall III Proceedings in April 2016 to resolve issues relating to certain contributory claims and other affiliate issues, including, among other things, (i) the scope of contribution claims that the Debtor might make against LBHI2 and

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<sup>12</sup> That appeal does not challenge the High Court’s ruling regarding the identity of the relevant payee and the grounds for challenging a certification.

Lehman Brothers Limited (in administration) (“LBL”), as shareholders of the Debtor,<sup>13</sup> (ii) the set-off rights of the Debtor, LBL and LBHI2 against each other, (iii) the claims of LBL and LBHI2 against each other with respect to any contribution they are required to make to the Debtor, (iv) the existence of LBL’s claim against the Debtor and other members of the Lehman Group to recharge certain liabilities against them and (v) whether LBL was the Debtor’s shareholder such that it is liable for contribution claims. The Waterfall III Proceedings were divided into two parts – Part A, which concerned legal issues and was heard at a trial commencing in January 2017, and Part B, which concerned factual issues and was scheduled to be heard at a trial commencing in September 2017.

24. Following the conclusion of the Part A trial (but before the High Court issued its ruling on the Part A issues and held the Part B trial), the parties reached a settlement of the Waterfall III Proceedings. The settlement was approved by the High Court in August 2017 and became effective in September 2017. The Waterfall III Proceedings were subsequently dismissed pursuant to a December 2017 order of the High Court. Given the dismissal, the Scheme has no effect on the Waterfall III Proceedings.

**D. The Lacuna Application Remains Pending**

25. The Lacuna Application (as defined below) arose out of the Supreme Court’s determination in May 2017 that any unpaid Statutory Interest arising in the Administration cannot constitute a claim or be paid in a subsequent liquidation. The impact of this finding was that, upon commencement of a liquidation, any sums that would otherwise be payable as Statutory Interest in the Administration would instead flow down to the Subordinated Creditor, and depending on the amount of such sums, to the Debtor’s shareholder. In October 2017, the

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<sup>13</sup> LBHI2 is now the sole shareholder of the Debtor. LBL previously held a single share in the Debtor, but that share was transferred to LBHI2 in 2017.

Subordinated Creditor sent a written request to the Administrators to seek a creditors' decision on whether to terminate the Administration and commence a liquidation pursuant to applicable English insolvency law. In response, the Administrators filed an application (the "Lacuna Application") seeking directions from the High Court in respect of (i) the Administrators' obligations to comply with the request and (ii) the Subordinated Creditor's ability to make the request or take other steps to initiate the liquidation of the Debtor.

26. In January 2018, the High Court granted a request by the Administrators and the Subordinated Creditor to stay the proceedings regarding the Lacuna Application pending implementation of the Scheme, which provides for a full and final settlement of the Lacuna Application. If the Scheme becomes effective, the Lacuna Application will be dismissed. If the Scheme does not become effective, the parties will apply to lift the stay of the proceedings with respect to the Lacuna Application.

**E. The Olivant Application Remains Pending**

27. In addition to the three Waterfall Proceedings and the Lacuna Application, the Administrators also have a pending application commenced by the Subordinated Creditor on the issue of the Administrators' decision to admit the largest ordinary unsecured claim in the Administration. On September 19, 2017, the Subordinated Creditor filed an application (the "Olivant Application") seeking to reverse or modify the Administrators' decision to admit a proof of debt submitted by Olivant Investment Switzerland S.A. ("Olivant") for an agreed amount of £555,250,000. Olivant had originally submitted a proof of debt in the amount of over £800 million. However, the £555,250,000 amount was agreed between Olivant and the Debtor through a claims negotiation process (the "Claim Determination").

28. There are several open issues related to the Olivant Application. One of these issues is whether a third-party, such as the Subordinated Creditor, may challenge a creditor's

claim, like Olivant's claim, that has been agreed upon by the Debtor and the relevant creditor through the Claim Determination. Following a preliminary case management hearing, the High Court scheduled a trial on certain preliminary issues in June 2018, with the remainder of the issues addressed at a hearing to be held in 2019.

29. In January 2018, the High Court granted a request by the Administrators and the Subordinated Creditor to stay the proceedings regarding the Olivant Application, pending implementation of the Scheme, which provides for a full and final settlement of the Olivant Application. If the Scheme becomes effective, the Olivant Application will be dismissed. If the Scheme does not become effective, the parties will apply to lift the stay of the proceedings with respect to the Olivant Application. The Scheme includes a provision that will prevent Scheme Creditors from challenging claims of other creditors which have been admitted prior to a specified date, including Olivant's claim. This provision will provide certainty with respect to the amount of Admitted Claims, which will enable the Administrators to calculate the total amount of Statutory Interest liability and make distributions of the Surplus on the basis of that calculation.

### **III. Origins and Development of the Scheme**

30. As noted above, if the Waterfall II Proceedings, the Lacuna Application and the Olivant Application were litigated to conclusion, it is likely that those proceedings would not end until 2020 at the earliest, resulting in significant additional costs and further delay in making distributions of the Surplus to Scheme Creditors. Accordingly, the Administrators determined in late 2017 to engage in negotiations with the SCG and the Wentworth Group in an effort to reach a consensual resolution regarding the Surplus.

31. Following extensive arm's-length negotiations, the Administrators successfully reached an agreement with the SCG and the Wentworth Group on the terms of a consensual

resolution of the issues related to creditors' entitlements to the Surplus. The parties entered into the Lock-Up Agreement, pursuant to which the parties agreed to support the implementation of the settlement through the Scheme, including agreeing to stay the Tranche A Waterfall II Proceedings, the Lacuna Application and the Olivant Application. Although the Tranche C Waterfall II Proceedings are not stayed, the next hearing is scheduled for July 2018, by which time it is anticipated that the Scheme will be approved and effective. The Lock-Up Agreement terminates on June 30, 2018 (or such later date as may be agreed in writing between the original parties to the Lock-Up Agreement). The Wentworth Group and the SCG are not entitled to any fee, payment (other than payments made pursuant to the terms of the Scheme) or other inducements from the Debtor in exchange for executing the Lock-Up Agreement and supporting the Scheme, but the SCG is receiving a payment from the Wentworth Group as described in paragraph 33 below.

32. The SCG and the Wentworth Group together hold approximately 78% by value of all Admitted Claims. The SCG collectively holds or controls approximately 40% by value of all Admitted Claims, and the Wentworth Group holds or controls approximately 38% by value of all Admitted Claims. Accordingly, each of the SCG and the Wentworth Group is in a position to block any attempted consensual resolution.

33. The Administrators issued the Practice Statement Letter dated April 18, 2018 (the "PSL"), which was distributed to all persons who the Administrators believe are Scheme Creditors for the purposes of notifying those parties of (i) the Administrators' decision to cause the Debtor to propose the Scheme, (ii) the objectives the Scheme is designed to achieve and (iii) the composition of the Scheme Meetings that the Debtor intends to convene, subject to High Court approval, for Scheme Creditors to vote on the Scheme. On May 2, 2018, the Debtor

issued an update to the PSL. The update informed Scheme Creditors that the Subordinated Creditor, certain other members of the Wentworth Group and certain of the SCG creditors had entered into a separate settlement agreement in parallel with the Lock-Up Agreement which provided, among other things, that some of the entities that make up the SCG would receive from those Wentworth Group parties a £35 million “consent fee” in the event that the Scheme becomes effective (the “Arrangement”).<sup>14</sup> In light of the Arrangement, the Administrators determined that the SCG will be classified in a separate fourth class of creditors and vote at a separate Scheme Meeting from other Scheme Creditors.

34. Also on May 2, 2018, the Debtor issued the necessary court documents to commence the Scheme. The Scheme will facilitate an expedited payment to Scheme Creditors in respect of their entitlements to Statutory Interest by (i) bringing an end to the Waterfall II Proceedings, the Lacuna Application and the Olivant Application, (ii) barring challenges by Scheme Creditors to the validity or amount of any Admitted Claim admitted prior to a specified date, (iii) providing a Certification Option (as defined below) to determine the amount of a Higher Rate Claim in respect of the ISDA Master Agreements (and certain other contracts with similar features) and a dispute resolution procedure to adjudicate any issues arising from such certification, (iv) releasing the Debtor from any further claims by Scheme Creditors by establishing a bar date (the “Bar Date”)<sup>15</sup> for asserting claims against the Debtor and (v) providing a framework to make payments to creditors on their Statutory Interest claims.

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<sup>14</sup> The Administrators first became aware of the Arrangement on April 25, 2018 and received a copy of the agreement implementing the Arrangement on April 29, 2018.

<sup>15</sup> The imposition of the Bar Date is key to establishing the universe of creditors entitled to share in the Surplus, which then facilitates the payment of Statutory Interest to those who have proved their claims prior to the Bar Date. In the absence of the Bar Date, Scheme Creditors would be exposed to the risk of new claims being admitted which could decrease the amount payable to them. The Bar Date is proposed to be the effective date of the Scheme (the “Effective Date”). If the Scheme becomes effective, all claims (other than certain claims not affected by the Scheme and certain future or contingent expense claims) will need to be proved for (or in the



35. The Scheme recognizes four different types of Scheme Creditors: (i) Scheme Creditors (other than the Subordinated Creditor) with claims that cannot give rise to a contractual rate of interest greater than 8% per annum (the “8% Interest Claims,” and the Scheme Creditors holding such claims, the “8% Creditors”); (ii) Scheme Creditors with claims under contracts that entitle them to a specified fixed or floating rate of interest that results in an entitlement to Statutory Interest greater than 8% (the “Specified Interest Claims,” and the Scheme Creditors holding such claims, the “Specified Interest Creditors”)<sup>16</sup>; (iii) Scheme Creditors with claims under 1992 or 2002 ISDA Master Agreements, or certain French Master Agreements (as defined in the Scheme), which give rise to a right to Statutory Interest calculated by reference to costs specific to the particular party as opposed to a fixed or floating rate (the “Higher Rate Claims,” and the Scheme Creditors holding such claims, the “Higher Rate Creditors”); and (iv) the Subordinated Creditor.

36. For purposes of organizing the Scheme Meetings, the Debtor proposes to have the following four classes: (i) 8% Creditors and Specified Interest Creditors (other than the SCG); (ii) Higher Rate Creditors (other than the SCG); (iii) the SCG; and (iv) the Subordinated Creditor. For each class, there will be a separate Scheme Meeting at which Scheme Creditors will consider approval of the Scheme. As stated above, the SCG will vote in a separate class than other Scheme Creditors in respect of the 8% Interest Claims, Specified Interest Claims and Higher Rate Claims that they hold in light of the Arrangement.

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case of Non-Provable Claims and expense claims, notified to the Debtor) by this date. Scheme Creditors failing to do so will not be entitled to assert such claims.

<sup>16</sup> Currently, the only contract known to the Administrators that gives rise to a Specified Interest Claim is owned by LBHI.

37. The Scheme provides for distributions to Scheme Creditors that are consistent with the existing judgments in the Waterfall Proceedings. Specifically:

- 8% Creditors will receive payment of Statutory Interest at a rate of 8% per annum on the principal amount of their Provable Claim, calculated from the Administration Date to the date when the principal amount of such 8% Interest Claim is paid in full, with such calculation being done in accordance with the Relevant Principles (as defined below);
- Specified Interest Creditors will receive payment of Statutory Interest at the interest rate specified in the contract under which the claim arises, calculated from the Administration Date to the date when the principal amount of such Specified Interest Claim is paid in full, with such calculation being done in accordance with the Relevant Principles and
- Higher Rate Creditors will elect either to:
  - receive a payment in full and final settlement of their Statutory Interest entitlements calculated by applying a simple rate of 8% per annum (calculated in the same manner as 8% Interest Claims) plus an additional settlement payment of 2.5% of the value of their Admitted Claims in consideration for electing not to pursue the Certification Option described below (the “Settlement Payment Option”); or
  - submit a certification for the rate and amount of interest applicable to their Higher Rate Claims (the “Certification Option”). Such certification should be made, to the extent relevant, in accordance with (i) the judgments in Tranche A and Tranche C of the Waterfall II Proceedings, (ii) the agreed position in relation to certain French Master Agreements (as defined in the Scheme) and (iii) the principle that a contractual compounding rate of interest continues to compound on claims that have been paid in part by interim dividends until the principal amount of such claims has been paid in full (collectively, the “Relevant Principles”). Where a holder of a Higher Rate Claim elects the Certification Option, it will receive a payment in respect of its Statutory Interest entitlements consistent with one of the following:
    - the rate(s) and amount of interest specified in its certification, where such rate(s) and amount is agreed to by the Debtor or where (in the absence of an agreement between the parties) that rate(s) and amount is approved by the adjudicator pursuant to the Dispute

Resolution Procedure set forth in the Scheme and described more fully in the Downs Declaration (the “Dispute Resolution Procedure”);

- the rate(s) and amount counteroffered by the Debtor, where such rate(s) and amount are agreed to by the relevant Higher Rate Creditor or where (in the absence of an agreement) the relevant rate(s) and amount is approved pursuant to the Dispute Resolution Procedure; or
- payment of interest at the statutory minimum rate (8%) in circumstances where a certification is rejected by the Debtor and either such rejection is not appealed pursuant to the Dispute Resolution Procedure or an appeal of such rejection is unsuccessful.

38. The Scheme also provides for certain Releases to be given by all Scheme Creditors, including:

- a full release of all rights in respect of the Waterfall Proceedings, the Olivant Application, the Lacuna Application and any other proceedings (other than certain excluded proceedings) which have been formally commenced against the Debtor on or prior to the Bar Date (including any right to seek to put the Debtor into liquidation before statutory interest has been paid in full or otherwise provided for);
- a full release of all rights or claims against the Debtor (excluding those claims notified to the Debtor prior to the Bar Date and certain other Retained Claims (as defined in the Scheme));
- a full release of all rights to require any future liquidator to bring contributory proceedings under applicable English insolvency law (to provide finality regarding the scope of the assets to be distributed);
- a full release by all Scheme Creditors of any right to bring actions or disputes in the future in respect of: (i) their Admitted Claims; and (ii) the Admitted Claims of any other Scheme Creditor that were admitted by the Administrators prior to the Record Date (as defined in the Scheme); and
- a full release (to the extent permitted by law) of any right to appeal first instance decisions (subject to certain exceptions) of any court of competent jurisdiction which relate to an exercise of the Administrators’ powers or functions after the

Effective Date, including an application by the Administrators to the High Court for directions or an appeal by a creditor to the High Court against the Administrators' decision in relation to a proof of debt.

In addition, each Scheme Creditor will provide a full release of:

- any claim against the Administrators, their firm and their advisors and certain other connected parties, arising from actions taken between the commencement of the Administration and the Bar Date and in respect of which the relevant person would have an indemnity or similar claim against the Debtor; and
- any claim against the Administrators, their firm, the parties to the Lock-Up Agreement and their respective advisors and certain other connected parties, arising from actions taken on or after November 1, 2017 with respect to the promotion or implementation of the Scheme (but not including (i) claims for breach of a term of the Scheme or (ii) certain claims between parties to the Lock-Up Agreement).

39. Following the Effective Date of the Scheme, the Debtor will remain in administration, and the Administrators will make the distributions to Scheme Creditors under the Scheme. The Scheme will not resolve all remaining issues in the Administration. For example, the Scheme will not impact any trust entitlement of a Scheme Creditor.<sup>17</sup>

#### **IV. Commencement of the English Proceeding under Part 26 of the Companies Act**

40. On May 2, 2018, the Debtor filed an application under part 26 of the Companies Act 2006 of England and Wales, thereby commencing the English Proceeding and requesting that the High Court approve the Debtor's request to convene the Scheme Meetings. On May 2, 2018, the Debtor notified the Scheme Creditors of the date, time and location of the convening hearing (the "Convening Hearing") regarding the Schemes and published the Scheme and related documents on the Debtor's website. On May 9 and 10, 2018, the High Court held the Convening Hearing. At the Convening Hearing, three creditors – CRC Credit Fund, Ltd., Deutsche Bank

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<sup>17</sup> Prior to the Administration, the Debtor held, in the course of its prime brokerage, custody and other businesses, securities and cash (the "Trust Property") in trust for its clients and other affiliates (the "Trust Property Creditors"). While such trust entitlements will not be released by the Scheme, the Scheme will release any unsecured claim of a Trust Property Creditor if such a claim is not proved before the Bar Date.

AG and Marble Ridge Special Situations GP LLC – presented oral argument and written submissions in opposition to the Debtor’s proposed classification of Scheme Creditors at the Scheme Meetings. Following the two-day Convening Hearing, on May 11, 2018, the High Court dismissed (*i.e.* overruled) those objections and entered an order (the “Convening Order”) authorizing the Debtor to convene the Scheme Meetings on June 5, 2018 based on the composition of classes proposed by the Debtor.

41. The Scheme and accompanying documents contemplate that the Debtor will seek recognition of the Scheme under chapter 15 of the Bankruptcy Code. To that end, the Convening Order approved the appointment of the Foreign Representative and authorized the Foreign Representative to seek chapter 15 recognition of the English Proceeding.

42. A notice of the Scheme Meetings, together with the Scheme and an explanatory statement for the Scheme have been made available to the Scheme Creditors.<sup>18</sup> Following the Scheme Meetings and upon receiving the necessary votes in favor of the Scheme, the High Court will conduct a hearing to consider sanctioning (*i.e.* approval) of the Scheme on or around June 13, 2018 (the “Sanction Hearing”). The Debtor requests that the relief requested herein be heard on or about the same date as the Sanction Hearing.

### **JURISDICTION AND VENUE**

43. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and the Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

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<sup>18</sup> A copy of the explanatory statement is annexed hereto as **Exhibit C**.

44. Venue is proper in this District pursuant to 28 U.S.C. § 1410 because the Debtor (i) has U.S. assets that are located within this District, (ii) is a party to litigation that is pending within this District and (iii) is a party to over 300 ISDA Master Agreements and other contracts that are governed by New York law and contain New York forum selection clauses. *See* Downs Declaration ¶ 59. This case has been properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code by the filing of the Petition seeking recognition of the English Proceeding as a foreign main proceeding under section 1515 of the Bankruptcy Code. The statutory bases for relief are sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code.

**RELIEF REQUESTED**

45. The Foreign Representative respectfully requests the entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**:

- a. finding that (i) the Debtor is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code, (ii) the English Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code;
- b. granting recognition of the Scheme as a foreign main proceeding under sections 1517 and 1520 of the Bankruptcy Code;
- c. granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code;
- d. recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the English Proceeding, the Scheme and the Sanction Order, including giving effect to the Releases;
- e. enjoining all parties from commencing or continuing any action or proceeding in the United States against the Debtor or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme;

- f. waiving the 14-day stay of effectiveness of the Proposed Order; and
- g. granting related relief.

46. The Foreign Representative submits that the relief requested herein should be granted, as “[r]ecognition and enforcement of schemes of arrangement sanctioned by UK courts has become commonplace in chapter 15 cases in the United States . . . .” *In re Avanti Communs. Grp. plc*, No. 18-10458 (MG), 2018 Bankr. LEXIS 1078, at \*1 (Bankr. S.D.N.Y. Apr. 9, 2018).

**I. The Debtor is Eligible to be a “Debtor” Under Chapter 15 of the Bankruptcy Code**

47. The Debtor qualifies as a “debtor” as that term is defined in section 1502(a)(1) of the Bankruptcy Code because it is an “entity,” which includes corporations. See 11 U.S.C. §§ 101(15) (definition of “entity,” which includes a “person”) and 101(41) (definition of “person,” which includes a “corporation”). The Debtor is a company incorporated in England and Wales under English law. Hodgson Declaration ¶ 1.

48. The Debtor has property in the United States for purposes of being eligible under section 109(a) of the Bankruptcy Code, which requires that a debtor must either reside or have a domicile, a place of business or property in the United States. 11 U.S.C. § 109(a); *see Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013) (holding that section 109(a) applies to chapter 15 debtors). Section 109(a) of the Bankruptcy Code does not require a specific quantum of property in the United States, nor does it state when or for how long that property must be located within the United States. *See In re Berau Capital Res. PTE. Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015). Accordingly, courts in this District have required that the debtor have only nominal property in the United States to be eligible to file a chapter 15 case. *See, e.g., In re Globo Comunicacoes e Participacoes S.A.*, 317 B.R. 235, 249 (S.D.N.Y. 2004) (“For a foreign corporation to qualify as a debtor under Section 109, courts have required only nominal amounts of property to be located in the United States,

and have noted that there is ‘virtually no formal barrier’ to having federal courts adjudicate debtors’ bankruptcy proceedings.”); *In re Paper I Partners, L.P.*, 283 B.R. 661, 674 (Bankr. S.D.N.Y. 2002) (“There is no statutory requirement as to the property’s minimum value.”).

49. Here, the Debtor meets the flexible threshold for having property in the United States as required under section 109(a) because it owns securities evidenced by physical certificates that are held in New York. *See In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 413-416 (Bankr. S.D.N.Y. 2014) (holding that a New York bank account over which a chapter 15 debtor possessed power to direct disbursement of funds was property sufficient to establish venue for chapter 15 case in New York). In addition, the Debtor owns the funds in the Retainer Account that are held in New York. *See, e.g., In re Poymanov*, 571 B.R. 24, 30 (Bankr. S.D.N.Y. 2017) (“A debtor’s funds held in a retainer account in the possession of counsel to a foreign representative constitute property of the debtor in the United States and satisfy the eligibility requirements of section 109(a).”); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 372-374 (Bankr. S.D.N.Y. 2014) (noting the “line of authority that support the fact that prepetition deposits or retainers can supply ‘property’ sufficient to make a foreign debtor eligible to file in the United States” and holding that cash in a client trust account maintained by U.S. counsel to the foreign representative satisfied section 109(a)).

50. The Debtor also possesses a judgment issued by a New York state court against a non-US entity in the amount of approximately \$230 million. *See, e.g., Byblos Bank Europe, S.A. v. Syrketi*, 819 N.Y.S.2d 412, 414–15 (Sup. Ct. 2006) (stating that “the locality of a judgment is the situs of the court where it is entered.”). The Debtor’s property in the United States also includes allowed claims against LBHI and its affiliates in their chapter 11 cases that are pending before this Court and causes of action that the Debtor has asserted in the AG Financial Products



Litigation. *See, e.g., In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 369-372 (Bankr. S.D.N.Y. 2014) (noting that “[i]t is well established that claims and causes of action, though intangible, constitute ‘property’” and holding that causes of action asserted by the Debtor in New York federal and state courts constituted “property in the United States sufficient to satisfy the eligibility requirements of section 109(a).”); *In re B.C.I. Fin. Pty Ltd. (In Liquidation)*, No. 17-11266 (SHL) (Bankr. S.D.N.Y. Apr. 24, 2018) (chapter 15 debtor’s causes of action against its principal were located in New York and together with an attorney retainer in a New York bank account, conferred eligibility under section 109(a)). And the Debtor is party to over 300 ISDA Master Agreements and other contracts that are governed by New York law and contain New York forum selection clauses, which also satisfies the section 109(a) requirements for eligibility. *See, e.g., In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*22 (holding that debt documents governed by New York law and containing New York forum selection clauses satisfied the eligibility requirements under section 109(a)); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017) (same); *In re Berau*, 540 B.R. at 82-84 (same). Accordingly, the Debtor is eligible to be a chapter 15 debtor.

## **II. The English Proceeding is a Foreign Main Proceeding**

51. The English Proceeding is entitled to recognition as a foreign main proceeding under chapter 15 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides that, subject to section 1506 of the Bankruptcy Code, a court “shall” enter an order granting recognition of a foreign proceeding if:

- (1) such foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502 of the Bankruptcy Code;
- (2) the foreign representative applying for recognition is a person or body; and

(3) the petition meets the requirements of section 1515 of the Bankruptcy Code.

11 U.S.C. § 1517(a); *see* H.R. Rep. 109-31, pt. 1 (2005) (“The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings . . . [t]he requirements of this section . . . are all that must be fulfilled to attain recognition.”). Section 1517(b) of the Bankruptcy Code provides that a foreign proceeding “shall be recognized . . . (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Here, all of the requirements for recognition of the English Proceeding as a foreign main proceeding are satisfied.

**A. The English Proceeding Constitutes a “Foreign Proceeding”**

52. The English Proceeding is a “foreign proceeding” under chapter 15 of the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as:

[A] collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). Based on this definition, courts have held that a “foreign proceeding” is one:

- a. in which acts and formalities are set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice;
- b. that has either a judicial or an administrative character;
- c. that is collective in nature, in the sense that the proceeding considers the rights and obligations of all creditors;
- d. that is located in a foreign country;
- e. that is authorized or conducted under a law related to insolvency or the adjustment of debt, even if the debtor that has commenced such proceedings is not actually insolvent;

- f. in which the debtor's assets and affairs are subject to the control or supervision of a foreign court or other authority competent to control or supervise a foreign proceeding; and
- g. that is for the purpose of reorganization or liquidation.

*See Armada (Singapore) Pte Ltd. v. Shah (In re Ashapura Minechem Ltd.)*, 480 B.R. 129, 136 (S.D.N.Y. 2012) (citing *In re Betcorp Ltd.*, 400 B.R. 266, 277 (Bankr. D. Nev. 2009)); *see also In re Overnight & Control Comm'n of Avanzit, S.A.*, 385 B.R. 525 (Bankr. S.D.N.Y. 2008) (discussing factors).

53. Courts in this district and elsewhere routinely recognize schemes of arrangement under UK law as foreign proceedings in chapter 15 cases. *See, e.g., In re Avanti Communs. Grp. plc*, No. 18-10458 (MG) [Dkt. No. 15] (Bankr. S.D.N.Y. Apr. 6, 2018); *In re Bibby Offshore Servs. Plc*, No. 17-13588 (MG) [Dkt. No. 16] (Bankr. S.D.N.Y. Jan. 18, 2018); *In re Metinvest B.V.*, No. 17-10130 (LSS) [Dkt. No. 19] (Bankr. D. Del. Feb. 8, 2017); *In re DTK Fin. (plc)*, No. 16-13521 (SHL) [Dkt. No. 15] (Bankr. S.D.N.Y. Jan. 18, 2017); *In re EnQuest PLC*, No. 16-12983 (MEW) [Dkt. No. 14] (Bankr. S.D.N.Y. Nov. 17, 2016); *In re Abengoa Concessions Inv. Ltd.*, No. 16-12590 (KJC) [Dkt. No. 19] (Bankr. D. Del. Dec. 8, 2016); *In re YH Ltd.*, No. 16-12262 (SCC) [Dkt. No. 14] (Bankr. S.D.N.Y. Sep. 8, 2016); *In re OIC Run-Off Ltd.*, No. 15-13054 (SCC) [Dkt. No. 18] (Bankr. S.D.N.Y. Jan. 11, 2016); *In re Codere Fin. (UK) Ltd.*, No. 15-13017 (JLG) [Dkt. No. 16] (Bankr. S.D.N.Y. Dec. 22, 2015); *In re Towergate Fin. plc*, No. 15-10509 (SMB) [Dkt. No. 16] (Bankr. S.D.N.Y. Mar. 27, 2015); *In re New World Resources N.V.*, No. 14-12226 (SMB) [Dkt. No. 20] (Bankr. S.D.N.Y. Sept. 9, 2014); *In re Zlomrex Int'l Fin. S.A.*, No. 13-14138 (SHL) [Dkt. No. 17] (Bankr. S.D.N.Y. Jan. 31, 2014); *In re Magyar Telecom B.V.*, No. 13-13508 (SHL) [Dkt. No. 26] (Bankr. S.D.N.Y. Dec. 11, 2013); *In re Tokio Marine Europe Ins. Ltd.*, No. 11-13420 (MG) [Dkt. No. 13] (Bankr. S.D.N.Y. Sept. 8, 2011); *In re Castle Holdco 4, Ltd.*, No. 09-11761 (REG) [Dkt. No. 25] (Bankr. S.D.N.Y. May 7, 2009).

54. The Downs Declaration and the Hodgson Declaration provide the factual basis to support a finding that the Debtor's English Proceeding constitutes a "foreign proceeding" under section 101(23).

55. First, the English Proceeding is a proceeding commenced pursuant to part 26 of the Companies Act, an English law that governs corporate reorganizations and that is frequently used in a restructuring context. *See* Hodgson Declaration ¶ 9. For purposes of chapter 15 recognition, "the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets." *In re Betcorp Ltd.*, 400 B.R. at 278.

56. Second, the proceeding is "judicial," as it is commenced before the High Court and thereafter is subject to the supervision of the High Court. *See* Hodgson Declaration ¶¶ 1, 11. The High Court entered the Convening Order to commence the English Proceeding, and the Scheme must be approved by the High Court for it to be effective. *See id.* ¶¶ 27, 30. Therefore, the English Proceeding is a "judicial" proceeding. *See In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*23 (finding that an English proceeding "is a judicial proceeding—it required the Convening Order to convene the Debtor's Scheme Meeting and required the Sanction Order for the Scheme to be sanctioned, each issued by the UK Court."); *see also In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3rd Cir. 2013) (a proceeding is judicial when a "[c]ourt exercises its supervisory powers.").

57. Third, the English Proceeding is collective in nature, as it affects all Scheme Creditors and requires approval by a majority in number of the voting Scheme Creditors representing at least 75% in amount of the Scheme claims voted in each class of creditors in order for the Scheme to proceed. *See* Hodgson Declaration ¶¶ 10, 22. The Scheme is intended

to benefit creditors based on their collective rights, rather than to benefit any single creditor alone. Id. ¶ 10. Accordingly, the Scheme is collective in nature. *See In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*19-20 (finding that an English proceeding “fits the definition of a ‘foreign proceeding’ . . . as a collective proceeding . . . .”); *In re Betcorp*, 400 B.R. at 281 (a proceeding is collective where it “considers the rights and obligations of all creditors” in contrast to a “receivership remedy instigated at the request, and for the benefit, of a single secured creditor”).

58. Fourth, the English Proceeding is being administered by the High Court in London, England. *See* Hodgson Declaration ¶¶ 1, 11.

59. Fifth, the English Proceeding is administered under part 26 of the Companies Act, which is an English law that governs, among other things, the adjustment of creditors’ rights and the Debtor’s liabilities, as contemplated by the Scheme that the Debtor is seeking to implement with the approval of the High Court. *See* Hodgson Declaration ¶ 9. Therefore, the English Proceeding is conducted under a law related to insolvency or the adjustment of debt. *See In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*22-23 (“The UK Proceeding is pending in a foreign country under a law that allows companies to effectuate binding compromises or arrangements, including the restructuring of liabilities owed to their members or creditors (or any class of them) (i.e., Part 26 of the Companies Act) and is therefore an ‘adjustment of debt.’”).

60. Sixth, pursuant to part 26 of the Companies Act, the Debtor’s assets and affairs are subject to the supervision of the High Court during the pendency of the English Proceeding. *See* Hodgson Declaration ¶ 11.

61. Seventh, the objective of the English Proceeding is to facilitate expedited payments to Scheme Creditors in respect of their claims for Statutory Interest. *See* Hodgson Declaration ¶ 2. The Scheme submitted to the High Court will govern the distributions of interest that will be made to Scheme Creditors in furtherance of the Administration. *See id.*

62. Accordingly, the Foreign Representative respectfully requests that the Court find that the English Proceeding constitutes a “foreign proceeding.”

**B. The English Proceeding is a “Foreign Main Proceeding”**

63. The English Proceeding also qualifies as a “foreign main proceeding,” which is defined in the Bankruptcy Code as “a foreign proceeding pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). The relevant time period to determine the location of a debtor’s “center of main interests” (“COMI”) is the date on which the chapter 15 petition is filed. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013).

64. While the Bankruptcy Code does not expressly define COMI, it provides that, in the absence of evidence to the contrary, a debtor’s registered office is presumed to be its COMI. *See* 11 U.S.C. § 1516(c); *see also In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012); *In re Tri-Continental Exch.*, 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006) (“In effect, the registered office . . . is evidence that is probative of, and that may in the absence of other evidence be accepted as proxy for, ‘center of main interest.’”). Here, the Debtor’s registered office and the Administrators’ PwC offices are located in London, England. *See* Downs Declaration ¶ 58. Accordingly, the Debtor is entitled to the statutory presumption that its COMI is located in England.

65. In addition, courts consider the following factors relevant to the determination of a debtor’s COMI:

the location of the debtor's headquarters; the location of those who actually manage the debtor . . .; the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

*In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 654 (Bankr. S.D.N.Y. 2016) (internal citations omitted); see *In re Fairfield Sentry Ltd.*, 714 F.3d at 130 (“Among other factors that may be considered [in determining COMI] are the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes.”); *In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*23 (concluding that the UK constituted the debtor’s “center of main interests” where “the Debtor is incorporated in the UK and its registered offices and headquarters are in London.”).

66. Under all of the relevant criteria, the Debtor’s COMI is located in England. The Debtor’s headquarters are located in England, and the Debtor is in an English administration under the supervision of the High Court. Downs Declaration ¶ 58. The Debtor is also under the management and control of the Administrators who are responsible for strategic and other decisions on behalf of the Debtor. *Id.* All key activities relating to the Debtor, including meetings of the Administrators, typically occur either at the Debtor’s headquarters in London, PwC’s office in Leeds, England or at PwC’s London offices, where the Administrators maintain offices. *Id.* The periodic progress reports that update the Debtor’s creditors with respect to matters affecting the Debtor are prepared by the Administrators in England and state that the Debtor’s registered office is located in London, England. *Id.* Other public filings made by, and correspondence from, the Debtor, typically note that the Debtor is an English company and has a registered office in England. *Id.* All of the Debtor’s employees are located in England. *Id.*

67. Accordingly, the Debtor’s COMI in England is well-known and readily ascertainable by third parties. See *In re Fairfield Sentry Ltd.*, 714 F.3d at 130 (“The relevant

principle [to determine a debtor's COMI] is that COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties . . . ."); *In re OAS S.A.*, 533 B.R. 83, 103 (Bankr. S.D.N.Y. 2015) (chapter 15 debtor's COMI was readily ascertainable as Brazil, among other reasons, because note purchasers understood that their investment was in a Brazil-based business and expected to receive payment from cash generated by a Brazilian entity). As the English Proceeding is pending in the Debtor's COMI, the English Proceeding should be recognized as a foreign main proceeding.

### **III. The Foreign Representative Satisfies the Requirements of a “Foreign Representative” Under Section 101(24) of the Bankruptcy Code**

68. For recognition under chapter 15, a foreign proceeding must also have a foreign representative. *See* 11 U.S.C. § 1517(a)(2). The Foreign Representative submits that this Chapter 15 Case was commenced by a duly appointed and authorized “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. Section 101(24) of the Bankruptcy Code provides as follows:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

69. The Debtor has commenced the English Proceeding, and the High Court has approved the appointment of the Foreign Representative in the Convening Order entered by the High Court following the Convening Hearing held on May 9 and 10, 2018. Downs Declaration ¶ 3. Thus, Russell Downs has met the requirements of section 101(24) of the Bankruptcy Code and is the Debtor's “foreign representative” as defined thereunder. *See In re SPhinX, Ltd.*, 351 B.R. 103, 116-17 (Bankr. S.D.N.Y. 2006) *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007) (noting that the



foreign representatives had submitted a “copy of the Cayman Court’s order appointing them to administer the Debtors’ winding up under the Companies Law and authorizing their commencement of these chapter 15 cases, thereby satisfying Bankruptcy Code sections 101(24) and 1515(c).”).

**IV. The Petition Was Properly Filed and Satisfied the Requirements of Section 1515 of the Bankruptcy Code**

70. The Foreign Representative duly and properly commenced this Chapter 15 Case in accordance with sections 1504 and 1509 of the Bankruptcy Code, which require the filing of a petition for recognition under section 1515 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1504, 1509(a). In accordance with section 1515(b)(1) of the Bankruptcy Code, the Foreign Representative attached to the Form of Voluntary Petition a certified copy of the Convening Order commencing the English Proceeding and appointing Russell Downs as foreign representative with respect thereto. In accordance with section 1515(c) of the Bankruptcy Code, the Foreign Representative also submitted a declaration attached to the Form of Voluntary Petition containing a statement identifying the English Proceeding and the Administration as the only known pending “foreign proceedings” with respect to the Debtor.<sup>19</sup> Accordingly, the requirements of section 1515 have been satisfied.

**V. The Debtor is Entitled to Automatic Relief Under Section 1520 of the Bankruptcy Code**

71. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign main proceeding, including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property located within the territorial jurisdiction of the

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<sup>19</sup> The Debtor commenced ancillary proceedings in Switzerland and South Korea to liquidate the Debtor’s branches in those countries. Upon information and belief, those proceedings are no longer pending.

United States. *See* 11 U.S.C. 1520(a). Given that the protections set forth in section 1520(a) flow automatically from the recognition of a foreign main proceeding under section 1517, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the English Proceeding as a foreign main proceeding.

**VI. Certain Additional Relief Upon Recognition is Both Necessary and Appropriate to Implement the English Proceeding and Should be Granted**

72. In addition to recognition of the English Proceeding as a foreign main proceeding, the Foreign Representative submits that any relief sought in the Petition that does not flow automatically from section 1520(a), including (i) enforcement of the Scheme and the Releases contained therein and the Sanction Order within the territorial jurisdiction of the United States and (ii) approval of the Injunction, is authorized under sections 105(a), 1507 and 1521 of the Bankruptcy Code and is consistent with well-established principles of international comity.

73. Chapter 15 of the Bankruptcy Code empowers “courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity.” *In re Rede Energia S.A.*, 515 B.R. 69, 91 (Bankr. S.D.N.Y. 2014) (*citing In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 333-34 (S.D.N.Y. 2008)); *see In re SPhinX, Ltd.*, 351 B.R. at 112 (“chapter 15 maintains – and in some respects enhances – the ‘maximum flexibility’ . . . that section 304 provided bankruptcy courts in handling ancillary cases in light of principles of international comity and respect for the laws and judgments of other nations.”) (internal citations omitted); *see also* 11 U.S.C. § 1501 (stating that the purpose of chapter 15 is to provide mechanisms for cooperation and comity between courts dealing with cross-border insolvency cases). As this Court has explained:

While recognition of the foreign proceeding turns on the objective criteria under § 1517, relief [post-recognition] is largely discretionary and turns on subjective factors that embody principles of comity. Once a case is recognized as a foreign main proceeding, chapter 15 specifically

contemplates that the court will exercise its discretion consistent with the principles of comity.

*In re Sino-Forest Corp.*, 501 B.R. 655, 664 (Bankr. S.D.N.Y. 2013) (internal citations and quotations omitted). Here, the Court should exercise its discretion under sections 1507 and 1521 of the Bankruptcy Code, consistent with the principles of comity, to recognize and enforce the Scheme, including the Releases, and the Sanction Order and approve the Injunction.<sup>20</sup> See e.g., *In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*28 (“Cases have held that in the exercise of comity that appropriate relief under section 1521 or additional assistance under section 1507 may include recognizing and enforcing a foreign plan confirmation order.”).

**A. The Scheme and the Sanction Order Should be Recognized and Enforced**

**1. Recognition and Enforcement of the Scheme and the Sanction Order is Warranted Under Section 1521 of the Bankruptcy Code**

74. Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to grant “any appropriate relief” at the request of the foreign representative “where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors[,]” including any relief that may be available to a trustee or debtor-in-possession, subject to certain exceptions that do not apply here. 11 U.S.C. § 1521(a); *In re Daebo Int'l Shipping Co., Ltd.*, 543 B.R. 47, 52–53 (Bankr. S.D.N.Y. 2015); *Hosking v. TPG Capital Mgmt. (In re Hellas Telecomms. (Lux.) II SCA)*, 535 B.R. 543, 586 (Bankr. S.D.N.Y. 2015) (“a foreign representative may obtain relief available to a trustee under the Bankruptcy Code . . . .”); see also *In re ABC Learning Centres Ltd.*, 728 F.3d at 306 (“Foreign Representatives can access U.S. courts to request enforcement of orders of the foreign proceeding and to stay actions against foreign debtors’ property in the United States.”).

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<sup>20</sup> The relief requested herein is also consistent with section 1525(a) of the Bankruptcy Code, which provides that “[c]onsistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.” 11 U.S.C. § 1525(a).

75. Recognition and enforcement of the Scheme and the Sanction Order is “appropriate relief” under section 1521(a) of the Bankruptcy Code because that relief is necessary to ensure that the Scheme, which has the support of the vast majority of Scheme Creditors, can be implemented without disruption or adverse actions being brought against the Debtor or its assets in the United States. Specifically, enforcement of the Scheme, including the Releases contained therein, and the Sanction Order is appropriate because certain Scheme Creditors or other entities may seek to obtain judgments in the United States against the Debtor under their New York law governed ISDA Master Agreements to obtain better treatment than they will receive under the Scheme. If those Scheme Creditors can effectively evade the terms of the Scheme by commencing actions in the United States, the purpose of the Scheme could be thwarted, and the Debtor would be required to defend those proceedings at considerable expense to the Debtor and its creditors.

76. Courts in this District routinely grant recognition and enforcement of foreign court orders approving a foreign debtor’s scheme of arrangement. *See, e.g., In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*19-24 (recognizing and enforcing UK scheme and order of English court sanctioning same); *In re Cell C Proprietary Ltd.*, 571 B.R. 542, 554 (Bankr. S.D.N.Y. 2017) (recognizing and enforcing order of South African Court sanctioning a scheme of arrangement); *In re Bibby Offshore Servs. Plc*, No. 17–13588 (MG) [Dkt. No. 16] (Bankr. S.D.N.Y. Jan. 18, 2018) (recognizing and enforcing UK scheme and order of English court sanctioning same); *In re Ocean Rig UDW Inc.*, No. 17-10736 (MG) [Dkt. No. 153] (Bankr. S.D.N.Y. Sept. 20, 2017) (recognizing and enforcing Cayman schemes and orders of Cayman court sanctioning same); *In re Boart Longyear Ltd.*, No. 17-11156 (MEW) [Dkt. No. 45] (Bankr. S.D.N.Y. Aug. 30, 2017) (recognizing and enforcing order of Supreme Court of New South

Wales sanctioning Australian schemes of arrangement); *In re EnQuest PLC*, No. 16-12983 (MEW) [Dkt. No. 14] (Bankr. S.D.N.Y. Nov. 17, 2016) (recognizing and enforcing UK scheme and UK scheme sanction order); *In re YH Ltd.*, No. 16-12262 (SCC) [Dkt. No. 14] (Bankr. S.D.N.Y. Sept 8, 2016) (recognizing and enforcing UK scheme and order of English court sanctioning same).

77. Further, the Releases are an integral part of the Scheme and are consistent with English law. “[T]hird-party non-debtor releases are common in schemes sanctioned under U.K. law.” *In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*24. Moreover, courts in this District routinely enforce third-party releases in foreign proceedings. *See, e.g., id.* at \*19-24 (recognizing and enforcing UK scheme and sanction order that provided third-party non-debtor guarantor releases); *In re Ocean Rig UDW Inc.*, 570 B.R. at 702 (recognizing and enforcing scheme of arrangement that released affiliate guarantees); *In re Sino-Forest Corp.*, 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013) (enforcing foreign order containing third-party releases); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010) (concluding that “principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter 11 case.”); *In re Bibby Offshore Servs. Plc*, No. 17-13588 (MG) [Dkt. No. 16] (Bankr. S.D.N.Y. Jan. 18, 2018) (recognizing and enforcing UK scheme and sanction order that provided third-party non-debtor guarantor releases).<sup>21</sup>

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<sup>21</sup> *See also In re EnQuest PLC*, No. 16-12983 (MEW) [Dkt. No. 14] (Bankr. S.D.N.Y. Nov. 17, 2016); *In re Towergate Fin. plc*, No. 15-10509 (SMB) [Dkt. No. 16] (Bankr. S.D.N.Y. Mar. 27, 2015); *In re New World Res. N.V.*, No. 14-12226 (SMB) [Dkt. No. 20] (Bankr. S.D.N.Y. Sept. 9, 2014); *In re Magyar Telecom B.V.*, No. 13-13508 (SHL) [Dkt. No. 26] (Bankr. S.D.N.Y. Dec. 11, 2013).

78. Here, the Releases are limited to rights in connection with the litigation surrounding creditors' entitlements to the Surplus, claims asserted by Scheme Creditors against the Debtor that are not asserted by the Bar Date and rights of Scheme Creditors to challenge Admitted Claims held by other Scheme Creditors. The Releases also include claims that could be brought against the Administrators and the parties to the Lock-Up Agreement, but those Releases are narrow in scope and are consistent with the types of releases and exculpations that are generally provided (and approved) in chapter 11 cases. The only parties giving the Releases under the Scheme are Scheme Creditors, and those Releases will only become effective if the Scheme is approved by a majority in number of voting Scheme Creditors representing at least 75% in amount of Scheme claims voted. The Releases, therefore, are narrowly tailored to achieve the purpose of the Scheme – to bring an expeditious end to the litigation surrounding the Surplus and provide finality regarding the scope of claims that may share in the Surplus so that the Administrators can make distributions to Scheme Creditors.

79. The Foreign Representative, therefore, respectfully requests that the Court recognize and enforce the Scheme, including the Releases contained therein, and Sanction Order to ensure that the Scheme is successfully implemented across jurisdictions, including the United States.

**2. Recognition and Enforcement of the Scheme and the Sanction Order is Also Authorized Under Section 1507 of the Bankruptcy Code**

80. The Court may also grant relief pursuant to section 1507, which authorizes the Court to provide “additional assistance” to a foreign representative under the Bankruptcy Code or other U.S. law at any time after recognition. *See* 11 U.S.C. § 1507(a). Recognition and enforcement of the Sanction Order is authorized as “additional assistance” under section 1507 of the Bankruptcy Code. Under section 1507(b) of the Bankruptcy Code, in considering a request

for additional assistance consistent with principles of comity, the Court also considers whether the requested relief will ensure:

- (a) just treatment of all holders of claims against or interests in the debtor's property;
- (b) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (c) prevention of preferential or fraudulent dispositions of property of the debtor;
- (d) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
- (e) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507(b).

81. The Foreign Representative submits that the additional assistance being sought here does not run afoul of any of the principles set forth in section 1507(b) of the Bankruptcy Code. Section 1507(b)(1) is satisfied because the Companies Act provides a comprehensive procedure for the orderly compromise of claims and equitable distribution of the Surplus among all Scheme Creditors. Hodgson Declaration ¶ 2; *see In re Bd. of Dirs. of Telecom Arg., S.A.*, 528 F.3d 162, 170 (2d Cir. 2008) (*quoting* 2 COLLIER ON BANKRUPTCY ¶ 304.08 (15th ed. 2007) (“The just treatment factor is satisfied upon a showing that the applicable law provides for a comprehensive procedure for the orderly and equitable distribution of [the debtor]’s assets among all of its creditors.”). Section 1507(b)(2) is satisfied because the timing and procedure for Scheme Creditors to asserts claims for payment from the Surplus do not create additional burdens for U.S. creditors. Section 1507(b)(3) is inapplicable because there are no preferential or fraudulent dispositions of property.

82. Section 1507(b)(4) is satisfied because the Scheme contemplates that distributions of the Surplus will be shared ratably among the members of each class of Scheme Creditors, which is similar to the treatment that separate classes would receive under chapter 11. *See Telecom Arg.*, 528 F.3d at 170 n.9 (noting that “the priority rules of a foreign jurisdiction need not be identical to those of the United States”) (citing *Schimmelpenninck v. Byrne (In re Schimmelpenninck)*, 183 F.3d 347, 364 (5th Cir. 1999)); *In re Rede Energia S.A.*, 515 B.R. at 97; *In re Manning*, 236 B.R. 14, 25 (9th Cir. B.A.P. 1999) (citation omitted). Importantly, to approve the Scheme, the High Court must find that the classes of creditors were fairly represented and that Scheme Creditors’ approval of the Scheme was reasonable. Hodgson Declaration ¶¶ 25, 26. Accordingly, the priority scheme for distributions under the Scheme is consistent with U.S. law. Section 1507(b)(5) is inapplicable because the Debtor is not an individual.

**3. The Scheme and the Sanction Order Are Entitled to Recognition and Enforcement as a Matter of Comity**

83. In determining whether to recognize and enforce a foreign judgment, courts also consider general comity principles. *See In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 698 (citing *Hilton v. Guyot*, 159 U.S. 113, 166 (1895); *Pariante v. Scott Meredith Literary Agency, Inc.*, 771 F. Supp. 609, 615 (S.D.N.Y. 1991)). In *Hilton v. Guyot*, the Supreme Court held that if the foreign court provides “a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is



sitting,” the foreign judgment should be enforced and not “tried afresh.” *Hilton*, 159 U.S. at 202-03.

84. “Federal courts generally extend comity whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.” *In re Atlas Shipping A/S*, 404 B.R. 726, 733 (Bankr. S.D.N.Y. 2009) (citations omitted); *see also JP Morgan Chase Bank v. Altos Hornos de Mexico S.A.*, 412 F.3d 418, 424 (2d Cir. 2005) (“[D]eference to the foreign court is appropriate so long as the foreign proceedings are procedurally fair and . . . do not contravene the laws or public policy of the United States.”); *Universal Cas. & Sur. Co. v. Gee (In re Gee)*, 53 B.R. 891, 902, 904 (Bankr. S.D.N.Y. 1985) (noting that if the bankruptcy court is satisfied with the procedural fairness of the foreign proceeding, it “should not sit as an appellate court over the foreign proceedings.”).

85. Extending comity to orders confirming foreign plans of reorganization is particularly significant given the importance of “assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.” *Atlas Shipping*, 404 B.R. at 737 (internal citation omitted); *see also Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985) (“The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.”).

86. “[P]rinciples of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of [provisions in foreign court orders], even if those provisions could not be entered in a plenary chapter 11 case.” *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 696. The “relief granted in [a] foreign proceeding and the relief available in a U.S. proceeding need not be identical[.]” and U.S.

bankruptcy courts are “not required to make an independent determination about the propriety of individual acts of a foreign court.” *Id.* at 697 (citing *In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384, 391 (Bankr. S.D.N.Y. 2004)). Rather, “[a]s long as the manner in which the scheme acquired statutory effect comports with our notions of procedural fairness, comity should be extended to it.” *In re Bd. of Dirs. of Hopewell Int’l Ins., Ltd.*, 238 B.R. 25, 56–61 (Bankr. S.D.N.Y. 1999), *aff’d*, 275 B.R. 699 (S.D.N.Y. 2002) (citations omitted).

87. Here, the United States and the United Kingdom share the same common law traditions and fundamental principles of law. All Scheme Creditors will have a full and fair opportunity to vote on the Scheme at the Scheme Meetings, in each case, after ample notice and adequate disclosure of the Scheme terms. Hodgson Declaration ¶ 21. Specifically, on April 18, 2018, the Debtor published the PSL on its website and distributed it to all persons who the Administrators believe are or may be Scheme Creditors. Downs Declaration ¶ 32. The PSL provided information regarding the Scheme and the Convening Hearing to Scheme Creditors. *Id.* On May 2, 2018, that PSL was updated to disclose the Arrangement. *Id.* Also on May 2, 2018, the Debtor published on its website and filed the application under part 26 of the Companies Act requesting that the High Court convene the Scheme Meetings and served a copy of the application and supporting evidence by email on all known Scheme Creditors. *Id.* ¶ 3. The published information provided Scheme Creditors with notice of the proposed Scheme and the Convening Hearing so that the Scheme Creditors could attend the Convening Hearing and raise objections or responses to the proposed classification of Scheme Creditors. Hodgson Declaration ¶¶ 11, 12. Here, three creditors appeared at the Convening Hearing to oppose the proposed classification of Scheme Creditors at the Scheme Meetings, but those objections were dismissed (*i.e.* overruled) by the High Court. *Id.* ¶ 30. On May 14, 2018, all Scheme Creditors

were provided with copies of the Scheme, notice of the Scheme Meetings and the explanatory statement which, like a disclosure statement in a chapter 11 case, provides detailed information on the effects of the Scheme for Scheme Creditors to enable those Scheme Creditors to make a reasonable decision about whether to vote in favor of the Scheme. *Id.* ¶¶ 13, 20. It also describes the Releases being provided under the Scheme. *Id.* ¶ 20.

88. All Scheme Creditors have the right to vote on such Scheme at the Scheme Meetings convened by order of the High Court. *Id.* ¶ 21. The Scheme must be approved by the requisite percentages of the number of creditors and total value. *Id.* ¶ 22. In addition, Scheme Creditors are entitled to appear and object to the Scheme at the Convening Hearing and Sanction Hearing. *Id.* ¶¶ 12, 24. The High Court retains independent and final authority to review and approve the Scheme before implementation. *Id.* ¶ 25. All creditors will have had a full and fair opportunity to be heard in the English Proceeding under a sophisticated insolvency regime before an impartial court in accordance with fundamental standards of due process. Accordingly, the Court should recognize and enforce the Scheme and the Sanction Order (including the Releases), consistent with the principles of comity.

**4. Recognition of the Scheme and Sanction Order, Including the Releases, Comports with the Bankruptcy Code and is Consistent with U.S. Public Policy**

89. Although section 1506 places a limitation on relief available under chapter 15 if such relief is manifestly contrary to U.S. public policy, this exception is narrowly construed. *See In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 697 (citing *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333 (S.D.N.Y. 2006)); *see also In re Poymanov*, 571 B.R. at 38 (noting that the public policy exception “is to be applied sparingly”); *In re OAS S.A.*, 533 B.R. at 103 (recognizing that the public policy exception “requires a narrow reading”) (internal citation and quotations omitted). “[T]he word ‘manifestly’ in international usage restricts the public policy

exception to the most fundamental policies of the United States.” *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 697 (internal citation omitted).

90. Nothing in the Scheme or the Sanction Order (including the Releases) is manifestly contrary to U.S. public policy. The Scheme provides for a comprehensive resolution of the claims asserted against the Debtor and the distribution of the Surplus that is substantially similar to the result that would be achieved under the Bankruptcy Code. The High Court’s exercise of jurisdiction over, and supervision of, the Debtor was proper under the Companies Act, which provides for a fundamentally fair process that “accords with the source of civilized jurisprudence.” *In re Rede Energia*, 515 B.R. at 98. And this Court has repeatedly held that third-party releases in foreign restructuring plans are not manifestly contrary to public policy. *See, e.g., In re Sino-Forest Corp.*, 501 B.R. at 665 (enforcing foreign order containing third-party releases, noting that, in the Second Circuit, “where the third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy”). Accordingly, the public policy exception does not apply.

**B. Granting a Permanent Injunction Is Necessary to Enforce the Scheme and the Sanction Order**

91. To the extent not otherwise stayed under sections 1520 and 362 of the Bankruptcy Code, the Foreign Representative also seeks the Injunction to prevent any parties from attempting to continue or commence actions or assert claims in the United States against the Debtor or its property inconsistent with the Scheme or the Sanction Order. The Injunction requested herein is necessary to ensure that the Scheme can be implemented successfully and will ensure that no party may take actions adverse to the Debtor or its property located within the territorial jurisdiction of the United States in an effort to gain an unfair advantage over other parties in interest subject to the Scheme.

92. This Court has the authority to grant the Injunction in this Chapter 15 Case. *See, e.g., Can. S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883) (actions brought in the United States by bondholders who did not participate in the Canadian insolvency proceedings of a Canadian railroad could not be maintained, even though the bonds were payable in New York); *In re Metcalfe & Mansfield Alternative Inv.*, 421 B.R. at 700 (granting permanent injunctive relief in chapter 15 case in respect of Canadian plan); *In re CGG S.A.*, 579 B.R. 716, 720 (Bankr. S.D.N.Y. 2017) (granting permanent injunctive relief in respect of French plan and order of French court approving same); *In re Avanti Communs. Grp. plc*, 2018 Bankr. LEXIS 1078, at \*19-24 (permanently enjoining any action inconsistent with UK scheme, including scheme releases, and order of English court sanctioning same); *In re Bibby Offshore Servs. Plc*, No. 17-13588 (MG) [Dkt. No. 16] (Bankr. S.D.N.Y. Jan. 18, 2018) (same); *In re YH Ltd.*, No. 16-12262 (SCC) [Dkt. No. 14] (Bankr. S.D.N.Y. Sept 8, 2016) (permanently enjoining any actions inconsistent with UK Scheme, including against parties released pursuant to scheme releases); *In re OIC Run-Off Ltd.*, No. 15-13054 (SCC) [Dkt. No. 18] (Bankr. S.D.N.Y. Jan. 11, 2016) (permanently enjoining scheme creditors from pursuing any actions against chapter 15 debtors or their US property in contravention of a UK scheme).<sup>22</sup>

93. The standards, procedures and limitations applicable to an injunction apply to relief sought under section 1521(a) of the Bankruptcy Code. *See* 11 U.S.C. § 1521(e). Generally, to obtain a permanent injunction, a movant must demonstrate the likelihood of

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<sup>22</sup> *See also In re Ocean Rig UDW Inc.*, No. 17-10736 (MG) [Dkt. No. 153]; *In re Boart Longyear Ltd.*, No. 17-11156 (MEW) [Dkt. No. 45] (Bankr. S.D.N.Y. Aug. 30, 2017); *In re Grupo Isolux Corsán, S.A.*, No. 16-12202 (SHL) [Dkt. No. 50] (Bankr. S.D.N.Y. Nov. 17, 2016); *In re Pac. Expl. & Prod. Corp.*, No. 16-11189 (JLG) [Dkt. No. 31] (Bankr. S.D.N.Y. Oct. 3, 2016); *In re EnQuest PLC*, No. 16-12983 (MEW) (Bankr. S.D.N.Y. Nov. 17, 2016) [Dkt. No. 14]; *In re Winsway Enters. Holdings Ltd.*, No. 16-10833 (MG) [Dkt. No. 22] (Bankr. S.D.N.Y. June 16, 2016); *In re Zlomrex Int'l Financing S.A.*, No. 13-14138 (SHL) [Dkt. No. 17] (Bankr. S.D.N.Y. Jan. 31, 2014); *In re BTA Bank JSC*, No. 12-13081 (JMP) [Dkt. No. 20] (Bankr. S.D.N.Y. Jan. 3, 2013); *In re Highlands Ins. Co. (U.K.) Ltd.*, No. 07-13970 (MG) [Dkt. No. 40] (Bankr. S.D.N.Y. Aug. 18, 2009); *In re Castle Holdco 4, Ltd.*, No. 09-11761 (REG) [Dkt. No. 25] (Bankr. S.D.N.Y. May 7, 2009); *In re Gordian RunOff (UK) Ltd.*, No. 06-11563 (RDD) [Dkt. No. 14] (Bankr. S.D.N.Y. Aug. 29, 2006).

irreparable harm. *See Clarkson v. Coughlin*, 898 F. Supp. 1019, 1035 (S.D.N.Y. 1995). Irreparable harm in the chapter 15 context may exist if there is a risk of disruption to the orderly and fair distribution of assets through dissenting creditor actions to the detriment of other creditors. *See, e.g., Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 714-15 (2d Cir. 1987); *In re CGG S.A.*, 579 B.R. at 720 (permanent injunctive relief in respect of French plan was “warranted under section 1521(e) of the Bankruptcy Code to prevent any parties from gaining an unfair advantage over other parties in interest subject to the [foreign plan].”); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (“[I]rreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and fair distribution of assets in a single, centralized forum.”) (quoting COLLIER ON BANKRUPTCY ¶ 304.05 (15th ed. Rev. 2003)); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”); *In re Petition of Brierley*, 145 B.R. 151, 168 (Bankr. S.D.N.Y. 1992) (“Harm to the estate exists from the failure to grant injunctive relief in the form of disruption of an orderly determination of claims and the fair distribution in a single case.”) (internal citation and quotations omitted).

94. Irreparable harm exists here because dissenting creditors may seek judgments in the United States against the Debtor and its property located in the United States in an effort to obtain more than the *pro rata* treatment to which they are entitled under the Scheme. As stated above, the Debtor is a party to over 300 ISDA Master Agreements and other contracts governed by New York law and containing New York forum selection clauses. Additionally, as described above, the Debtor possesses several significant U.S. assets, including securities certificates, a \$230 million New York state court judgment, proofs of claim allowed in the chapter 11 cases of

LBHI and its affiliates and causes of action asserted in the AG Financial Products Litigation. If Scheme Creditors could effectively circumvent the terms of the Scheme by commencing actions in the United States, the purpose of the Scheme could be undermined, and the Debtor would be left to defend against these lawsuits, however meritless, which would be a tremendous waste of time and resources. The Injunction will help to ensure the fair and efficient implementation of the Scheme and to bind all of the Debtor's creditors to the terms of the Scheme, as approved by the Sanction Order.

95. Absent permanent injunctive relief, the Debtor's efforts to consummate the settlement embodied in the Scheme could be thwarted by the actions of dissenting creditors, a result that is inconsistent with the Bankruptcy Code. The interests of affected parties under the Scheme are sufficiently protected under section 1522(a) of the Bankruptcy Code by the treatment afforded to them in the English Proceeding because all similarly situated parties will be treated equally and fairly. The Injunction also will not cause undue hardship or prejudice to the rights of any U.S.-based creditors and is consistent with principles of comity. Accordingly, the Injunction should be granted.

**VII. Waiver of the Stay is Appropriate to Ensure Expedient Implementation of the Scheme**

96. The Foreign Representative respectfully requests that, to the extent applicable, the Court cause the Proposed Order to become effective immediately upon entry notwithstanding the 14-day stay of effectiveness of the order imposed by operation of the Bankruptcy Code or the Bankruptcy Rules, including Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014. Such a waiver is appropriate in these circumstances to allow the Debtor to proceed immediately with consummation of the Scheme and orderly distribution of the Surplus to Scheme Creditors. For these reasons and in light of the high degree of creditor support for the Scheme, granting a

waiver of the 14-day stay of effectiveness period is appropriate so that the Scheme can be implemented as soon as possible.

97. Courts in this district routinely provide full or partial waivers of the 14-day stay of effectiveness period in chapter 15 cases. *In re Avanti Communs. Grp. plc*, No. 18-10458 (MG) [Dkt. No. 15] (Bankr. S.D.N.Y. Apr. 6, 2018); *In re Bibby Offshore Servs. Plc*, No. 17-13588 (MG) [Dkt. No. 16] (Bankr. S.D.N.Y. Jan. 18, 2018); *In re CGG S.A.*, No. 17-11636 (MG) [Dkt. No. 25] (Bankr. S.D.N.Y. Dec. 21, 2017); *In re Boart Longyear Ltd.*, No. 17-11156 (MEW) [Dkt. No. 45] (Bankr. S.D.N.Y. Aug. 30, 2017); *In re Pac. Expl. & Prod. Corp.*, No. 16-11189 (JLG) [Dkt. No. 31] (Bankr. S.D.N.Y. Oct. 3, 2016); *In re Landsbanki Islands HF.*, No. 08-14921 (RDD) [Dkt. No. 65] (Bankr. S.D.N.Y. Mar. 17, 2016); *In re Metcalfe & Mansfield Alternative Invs.*, No. 09-16709 (MG) [Dkt. No. 28] (Bankr. S.D.N.Y. Jan. 5, 2010); *In re Quebecor World Inc.*, Chapter 15, No. 08-13814 (JMP) [Dkt. No. 12] (Bankr. S.D.N.Y. July 1, 2009).

#### **NOTICE**

98. Notice of this Petition has been provided to: (i) the United States Trustee for the Southern District of New York; (ii) the Scheme Creditors; (iii) counsel to the SCG; (iv) counsel to the Wentworth Group; (v) the Debtor; (vi) all parties authorized to administer the Debtor as set forth in the Petition; (vii) the party listed in the Petition as a defendant in litigation with the Debtor in the U.S. and (viii) all parties that have filed a notice of appearance in this chapter 15 case. The Foreign Representative submits that no other or further notice of this Petition is necessary or required.

#### **NO PRIOR REQUEST**

99. No prior request for the relief sought in this Petition has been made to this or any other court.



WHEREFORE, the Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York  
May 14, 2018

Respectfully submitted,

*/s/ Robert H. Trust*

---

Amy Edgy  
Robert H. Trust  
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*Counsel to the Foreign Representative*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re*

Lehman Brothers International (Europe) (in  
administration),

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-11470 (SCC)

**STATEMENT OF VERIFICATION**

Pursuant to 28 U.S.C. § 1746, Russell Downs hereby declares as follows under penalty of perjury:

1. I am a joint administrator of Lehman Brothers International (Europe) (in administration), and I am its duly authorized foreign representative. I am duly authorized to file this Petition and to commence and act in this Chapter 15 Case.

2. I have read the foregoing Petition and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 14, 2018

/s/ Russell Downs

Russell Downs  
Joint Administrator

**Exhibit A**

**Proposed Recognition Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re*

Lehman Brothers International (Europe) (in  
administration),<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-11470 (SCC)

**[PROPOSED] ORDER RECOGNIZING  
FOREIGN PROCEEDING AND GRANTING RELATED RELIEF**

Upon the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* [Dkt. No. 2] (together with the Form of Voluntary Petition [Dkt. No. 1], the “**Petition**”)<sup>2</sup> of Russell Downs, in his capacity as the duly authorized foreign representative (the “**Foreign Representative**”) of Lehman Brothers International (Europe) (in administration) (the “**Debtor**”), which is the subject of proceedings under English law (the “**English Proceeding**”) currently pending before the Chancery Division (Companies Court) of the High Court of Justice of England and Wales (the “**High Court**”), in support of entry of an order:

- a. finding that (i) the Debtor is eligible to be a “debtor” under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), (ii) the English Proceeding is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code, and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code;
- b. granting recognition of the English Proceeding as a “foreign main proceeding” under sections 1517 and 1520 of the Bankruptcy Code;

<sup>1</sup> The last four digits of the Debtor’s England and Wales company registration number are 8254. The location of the Debtor’s registered office is Level 23, 25 Canada Square, London, United Kingdom E14 5LQ.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition.

- c. granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code;
- d. recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the English Proceeding, the Scheme and the Sanction Order, including giving effect to the releases set forth in the Scheme (the “**Releases**”);
- e. permanently enjoining all parties from commencing or continuing any action or proceeding in the United States against the Debtor or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme (the “**Injunction**”);
- f. waiving the 14-day stay of effectiveness of the order; and
- g. granting related relief;

and upon the hearing (the “**Hearing**”) on the Petition and this Court’s review and consideration of the Petition, the Downs Declaration and the Hodgson Declaration; and the Court having found and determined that the relief sought in the Petition is consistent with the purposes of chapter 15 of the Bankruptcy Code and is in the best interests of the Debtor; and after due deliberation and sufficient cause appearing therefor; and for the reasons stated on the record at the Hearing;

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction to consider the Petition and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York dated as of January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.).

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<sup>3</sup> The findings and conclusions set forth herein and on the record of the Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

B. The consideration of the Petition and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States Constitution.

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410(1) because the Debtor (i) has U.S. assets that are located within this District, (ii) is a party to litigation that is pending within this District and (iii) is a party to over 300 ISDA Master Agreements and other contracts that are governed by New York law and contain New York forum selection clauses.

D. Good, sufficient, appropriate, and timely notice of the filing of the Petition and the Hearing has been given by the Foreign Representative, pursuant to Bankruptcy Rules 1011(b) and 2002(q) and the *Order Scheduling a Hearing on Chapter 15 Petition for Recognition and Related Relief and Specifying the Form and Manner of Service of Notice* [Dkt. No. \_\_\_\_] to (i) the United States Trustee for the Southern District of New York, (ii) the Scheme Creditors (as defined in the Petition), (iii) counsel to the SCG, (iv) counsel to the Wentworth Group, (v) the Debtor, (vi) all parties authorized to administer the Debtor as set forth in the Petition, (vii) the party listed in the Petition as a defendant in litigation with the Debtor in the U.S. and (viii) all parties that have filed a notice of appearance in this chapter 15 case. In light of the nature of the relief requested and prior orders of this Court, no other or further notice is required.

E. No objections or responses were filed that have not been overruled, withdrawn, or otherwise resolved.

F. The Debtor has tangible and intangible property within this District and therefore, the Debtor is “eligible” to be a debtor in this Chapter 15 Case pursuant to sections 109 and 1501 of the Bankruptcy Code.

G. The English Proceeding is a “foreign proceeding” as such term is defined in section 101(23) of the Bankruptcy Code.

H. The English Proceeding is pending in England, which is where the Debtor has its “center of main interests” as referred to in section 1517(b)(1) of the Bankruptcy Code. As such, the English Proceeding is a “foreign main proceeding” pursuant to section 1502(4) of the Bankruptcy Code, is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code and is entitled to all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code.

I. The Foreign Representative is a “person” as such term is defined in section 101(41) of the Bankruptcy Code and has been duly appointed, made responsible for administering the Debtor and designated as the “foreign representative” of the Debtor as such term is defined in section 101(24) of the Bankruptcy Code.

J. This Chapter 15 Case was properly commenced pursuant to sections 1504 and 1509 of the Bankruptcy Code, and the Petition satisfies the requirements of section 1515 of the Bankruptcy Code.

K. The Foreign Representative and the Debtor, as applicable, are entitled to the additional assistance and discretionary relief requested in the Petition (including recognition and enforcement of the Scheme and the Sanction Order and the Releases contained therein) under sections 1507 and 1521 of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code and will not cause hardship to any party in interest. To the extent that any hardship or

inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, the Debtor, its creditors and other parties in interest.

M. The relief granted herein is necessary to effectuate the purposes and objectives of chapter 15 of the Bankruptcy Code and to protect the Debtor and the interests of its creditors and all parties in interest.

N. Absent the relief granted herein, the Scheme, the English Proceeding and the Debtor's efforts to consummate the settlement embodied in the Scheme may be thwarted by the actions of certain creditors, which would be at odds with the purpose of chapter 15 of the Bankruptcy Code as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. Such results could threaten, frustrate, delay, and ultimately jeopardize the implementation of the settlement embodied in the Scheme. Absent the Injunction, the Debtor and its assets may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with claims under the English Proceeding against the Debtor and its assets, thereby interfering with and causing irreparable harm to the Debtor, its creditors and other parties in interest.

O. The Injunction contained herein (i) is within the Court's jurisdiction to grant, (ii) is essential to the success and objectives of the Scheme and the English Proceeding and (iii) confers material benefits on, and is in the best interests of, the Debtor, its creditors and all other parties in interest.

P. The relief granted herein will, in accordance with section 1507(b) of the Bankruptcy Code, reasonably assure: (i) the just treatment of all holders of claims against or interests in the Debtor's property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the English Proceeding; (iii) the prevention of



preferential or fraudulent dispositions of property of the Debtor; and (iv) the distribution of proceeds of the Debtor's property substantially in accordance with the order prescribed in the Bankruptcy Code.

Q. All creditors and other parties in interest, including the Debtor, are sufficiently protected in the grant of the relief ordered hereby in compliance with section 1522(a) of the Bankruptcy Code.

**BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:**

1. The Petition and the relief requested therein are granted, and any objections or responses thereto that have not been withdrawn or resolved are overruled with prejudice.

2. The English Proceeding is recognized as a "foreign main proceeding" under sections 1517(a) and 1517(b)(1) of the Bankruptcy Code.

3. The Foreign Representative is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the English Proceeding.

4. All relief and protections afforded foreign main proceedings under section 1520 of the Bankruptcy Code are hereby granted to the English Proceeding, the Debtor and the Debtor's assets located in the United States, as applicable, including, without limitation, the application of the automatic stay under section 362 of the Bankruptcy Code to the Debtor and its property within the territorial jurisdiction of the United States.

5. The Scheme and the Sanction Order (including the Releases) granted in the English Proceeding are hereby recognized, granted comity and given full force and effect in the United States and are binding and fully enforceable in accordance with their terms pursuant to sections 105(a), 1507, 1521 and 1525 of the Bankruptcy Code on all entities (as that term is defined in section 101(15) of the Bankruptcy Code) whose claims or interests are affected by the Scheme

and each of their respective heirs, successors, assigns, trustees, subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians and similar officers, or any persons claiming through or in the right of any such persons or entities (collectively, other than the Debtor and its expressly authorized representatives and agents, the “**Affected Entities**”), whether or not the Affected Entity consented to be bound by or participated in the Scheme.

6. As of the Effective Date, all Affected Entities are hereby permanently enjoined from asserting any debt, claim or interest affected by the Sanction Order and the Scheme, except as expressly permitted by the Scheme, including without limitation:

- a. executing against any of the Debtor’s assets;
- b. commencing or continuing, including issuing or employing process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtor, its property, or any direct or indirect transferee of or successor to any property of the Debtor, or any property of such transferee or successor, or the seeking of any discovery related to any of the foregoing, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtor’s estate in the English Proceeding, English law or the implementation or consummation of the Sanction Order or the Scheme (including the Releases);

- c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtor or any of its property or proceeds thereof, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtor's estate in the English Proceeding, English law or the implementation or consummation of the Sanction Order or the Scheme (including the Releases);
- d. transferring, relinquishing or disposing of any property of the Debtor to any entity other than the Foreign Representative and his authorized representatives and agents or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtor's estate in the English Proceeding, English law or the implementation or consummation of the Sanction Order or the Scheme (including the Releases);
- e. commencing or continuing in any manner, directly or indirectly, an individual action or proceeding concerning the Debtor's assets, rights, obligations or liabilities, or to resolve any dispute arising out of any provision of the Scheme, including the Releases, or English law relating to the Scheme, in each case, to the extent they have not been stayed pursuant to section 1520(a) and 362 of the Bankruptcy Code; and

- f. declaring or considering the filing of the English Proceeding, the Scheme, the Sanction Order or this Chapter 15 Case a default or event of default under any agreement, contract or arrangement;

*provided*, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; *provided, further*, that nothing contained herein shall enjoin or otherwise stay the AG Financial Products Litigation that is pending in the Supreme Court of the State of New York, County of New York.

7. As of the Effective Date, any judgment, wherever and whenever obtained, to the extent such judgment is a determination of the liability of the Debtor or any other person released under the Scheme pursuant to the Releases, with respect to any debt cancelled, discharged or restructured under the Scheme, or as a result of English law relating to the Scheme, is unenforceable in the United States, in each case, to the extent inconsistent with the Scheme, the Sanction Order or such law.

8. The Foreign Representative and the Debtor are authorized and empowered to, and may in their discretion and without further delay, execute and deliver documents to effectuate the Scheme (including the Releases) and take any action and perform any act necessary to implement and effectuate the terms of this Order, the Sanction Order and the Scheme. The Debtor and the Foreign Representative are authorized and empowered to exercise all consent and approval rights provided for in the Scheme in the manner set forth in the Scheme, whether prior to or after the Effective Date.

9. No action taken by the Foreign Representative, the Debtor or their respective agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the English Proceeding, the documents

contemplated thereunder, this Order, the Chapter 15 Case, any further order for additional relief in the Chapter 15 Case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded such persons under sections 306 or 1510 of the Bankruptcy Code.

10. No party shall incur any liability for following the terms of this Order (whether by acting or refraining from acting), except in the case of the party's own gross negligence or willful misconduct.

11. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

12. The Foreign Representative, the Debtor, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

13. Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, including, but not limited to Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014, (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (c) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

14. This Court shall retain jurisdiction with respect to the implementation, enforcement, amendment or modification of this Order.

Dated: June [●], 2018  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Scheme of Arrangement**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
COMPANIES COURT (ChD)**

**No. CR-2018-003713**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)**

**- and -**

**IN THE MATTER OF THE COMPANIES ACT 2006**

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**SCHEME OF ARRANGEMENT**

(under Part 26 of the Companies Act 2006)

BETWEEN

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)

AND

THE SCHEME CREDITORS  
(as hereinafter defined)

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**Table of Contents**

<b>Contents</b>	<b>Page</b>
PART I: RECITALS, DEFINITIONS AND INTERPRETATION .....	5
Recitals .....	5
1 Definitions and interpretation .....	5
PART II: EFFECTIVE DATE AND INITIAL SCHEME STEPS .....	30
2 Scheme Effective Date .....	30
3 Scheme Outcome Statements .....	30
4 Adequate Reserves .....	31
5 Higher Rate Claims, 8% Interest Claims and Specified Interest Claims .....	32
PART III: SCHEME DISTRIBUTIONS TO 8% CREDITORS, SETTLEMENT CREDITORS AND SPECIFIED INTEREST CREDITORS .....	33
6 The 8% Payment .....	33
7 The Specified Interest Payment .....	33
8 The Settlement Premium .....	34
9 Timing of the 8% Payment, the Specified Interest Payment and the Settlement Premium	34
PART IV: SCHEME DISTRIBUTIONS TO CERTIFYING CREDITORS .....	35
10 Applicable CI Payments .....	35
11 Determination of Applicable CI Payments .....	35
12 Consultation with the Subordinated Creditor .....	37
13 Failure to submit a Certification .....	37
14 Forfeit of entitlement to Settlement Premium .....	37
15 Timing of payment of Applicable CI Payment .....	37
16 Undetermined Certification Claims .....	38
PART V: GENERAL PROVISIONS APPLICABLE TO SCHEME DISTRIBUTIONS AND SUBORDINATED DISTRIBUTIONS .....	39



17	General.....	39
18	Tax.....	39
19	Conditions to payment of Scheme Distributions and Subordinated Distributions.....	42
20	UCC Challenges .....	43
21	Unclaimed Scheme Distributions .....	44
22	Representations by Scheme Creditors .....	44
	PART VI: DISPUTE RESOLUTION PROCEDURE .....	45
23	The Adjudicator .....	45
24	The Appeal .....	47
25	Service of documents and other communications .....	50
26	Adjudication Costs .....	51
27	Confidentiality.....	52
	PART VII: SETTLEMENT OF PROCEEDINGS AND RELEASE OF CLAIMS .....	54
28	Settlement of Proceedings and release of Claims.....	54
	PART VIII: ADMINISTRATORS' POWERS AND REMUNERATION AND SUBORDINATED DISTRIBUTIONS .....	56
29	Powers of the Company and the Administrators.....	56
30	Retained Expense Claims.....	57
31	The Storm Payment .....	58
32	The Subordinated Debt.....	58
33	Equity Distributions .....	59
34	Dissolution of the Creditors' Committee.....	59
	PART IX: MISCELLANEOUS PROVISIONS .....	60
35	Third Party rights and enforcement.....	60
36	Chapter 15.....	60

37	Governing law and jurisdiction .....	60
38	Duration of this Scheme.....	61
39	Limit on Company's obligations .....	61
40	Partial invalidity .....	61
41	Notices .....	61
42	Modifications .....	63
43	Extension and calculation of deadlines.....	63
44	Conflict .....	63
45	Modification of foreign law contracts.....	64
46	FCA Notices .....	64
	Schedule 1 Appeal Form .....	65
	Schedule 2 Governance Protocol.....	66
1	Operating Committee .....	66
2	Meetings, voting etc. ....	67
3	Amendment or waiver .....	69
4	Disputes .....	69
	Schedule 3 Shareholder Undertaking .....	70
	Schedule 4 Storm Undertaking.....	79

## PART I: RECITALS, DEFINITIONS AND INTERPRETATION

### Recitals

- (A) The Company was incorporated in England and Wales on 10 September 1990 under the Companies Act 1985 as a private limited company with registered number 02538254 under the name Lehman Brothers International Limited.
- (B) The Company was re-registered on 21 December 1992 under the Companies Act 1985 as a private unlimited company under the name Lehman Brothers International (Europe).
- (C) On 15 September 2008, on an application of the directors of the Company, the Company was placed into administration pursuant to Schedule B1 to the Insolvency Act.
- (D) On 15 September 2008, Anthony Victor Lomas and Steven Anthony Pearson, on 2 November 2011, Russell Downs and on 22 March 2013, Julian Guy Parr, each of PricewaterhouseCoopers LLP, were appointed as joint administrators of the Company pursuant to orders of the High Court.

## 1 Definitions and interpretation

### Definitions

- 1.1 In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

<b>“1992 ISDA Master Agreement”</b>	means the 1992 version of the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.
<b>“2002 ISDA Master Agreement”</b>	means the 2002 version of the Master Agreement as published by the International Swaps and Derivatives Association, Inc.
<b>“8% Creditor”</b>	means a Scheme Creditor who holds legal title to one or more 8% Interest Claims
<b>“8% Interest Claim”</b>	means a Provable Claim other than a Higher Rate Claim, a Specified Interest Claim or the Subordinated Debt
<b>“8% Interest Rate”</b>	means a simple rate of interest at 8% per annum
<b>“8% Payment”</b>	means a payment to: <ul style="list-style-type: none"><li>(i) an 8% Creditor, of Statutory Interest in respect of its 8% Interest Claims; or</li><li>(ii) a Settlement Creditor, of Statutory Interest in respect of its Higher Rate Claims,</li></ul> in each case calculated in accordance with Clause 6.2
<b>“Additional Information Request”</b>	has the meaning given to it in Clause 11.2.4
<b>“Adequate Reserves”</b>	has the meaning given to it in Clause 4.1
<b>“Adjudication Costs”</b>	means all fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his Support Team which are payable by the Company in respect of an Appeal

<b>“Adjudicator”</b>	means a person appointed as an adjudicator (including any replacement adjudicator) by the Company to determine an Appeal in accordance with Clause 23
<b>“Adjudicator’s Address for Service”</b>	has the meaning given to it in Clause 25.1.1
<b>“Administration”</b>	means the administration of the Company pursuant to an order of the High Court on the Administration Date
<b>“Administration Claim”</b>	means any Claim, pursuant to the Insolvency Act or otherwise, against the Administrators or the Released Third Parties where such Claim arises from actions taken (or failure to take action) by any such person on or after the Administration Date but prior to the Effective Date
<b>“Administration Date”</b>	means 15 September 2008
<b>“Administration Expenses”</b>	means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act
<b>“Administrators”</b>	means the persons from time to time serving as joint administrators in the Administration who, as at the date of this Scheme, are Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability
<b>“Administrators’ Address for Service”</b>	has the meaning given to it in Clause 25.1.2
<b>“Admitted Certification Claim”</b>	means the amount of an Undetermined Certification Claim that is admitted for dividend by the Administrators pursuant to Rule 14.7 of the Insolvency Rules
<b>“Admitted Claim”</b>	means any ordinary unsecured claim against the Company (whether in respect of unpaid principal or unpaid interest accrued prior to the Administration Date) which is or has been admitted for dividend by the Administrators in accordance with either Rule 14.7 of the Insolvency Rules or Rule 2.77 of the Insolvency Rules 1986
<b>“Advisers”</b>	means: <ul style="list-style-type: none"><li>(i) Linklaters LLP; and</li><li>(ii) any other professional advisers to the Administrators</li></ul>
<b>“AFB Master Agreement”</b>	means the AFB Master Agreement for Foreign Exchange and Derivatives Transactions (1994) (AFB)
<b>“AFB/BBF Agreed Position”</b>	means the agreed position in respect of issues concerning the

	Euro-denominated claims arising under the AFB/FBF French Master Agreements, as published on the Website on 14 September 2015
<b>“AFB/FBF French Master Agreements”</b>	means: (i) the AFB Master Agreement; (ii) the FBF Master Agreement; and (iii) any long-form confirmation which incorporates the terms of the AFB Master Agreement or the FBF Master Agreement
<b>“Affiliates”</b>	means, with respect to any person, any other person (other than an individual) directly or indirectly controlling or controlled by or under direct or indirect common control with such person
<b>“AFTB/AFTI French Master Agreements”</b>	means the AFTB Master Agreement for Repurchase Transactions with Delivery of Securities (1994) (AFTB) and the AFTI Master Agreement for Loans of Securities (1997) (AFTI)
<b>“AGFP Proceedings”</b>	means ongoing litigation with AG Financial Products Inc. before the Supreme Court of the State of New York (with Court Reference 653284/2011)
<b>“Appeal”</b>	means an appeal against a Rejection Notice to be determined by an Adjudicator in accordance with Part VI
<b>“Appeal Form”</b>	means a document in the same, or substantially the same, form as appended at Schedule 1
<b>“Appellant Certifying Creditor”</b>	has the meaning given to it in Clause 24.1.1
<b>“Appellant Certifying Creditor’s Case”</b>	has the meaning given to it in Clause 24.2.1
<b>“Applicable CI Payment”</b>	means a payment made to a Certifying Creditor of Statutory Interest in respect of a Certification Claim determined in accordance with Clauses 11, 13 and 24
<b>“Available Funds”</b>	means Cash and Cash Equivalents held in the House Estate together with such sum in respect of anticipated future realisations and receivables of the Company as the Administrators determine in their sole discretion
<b>“Bar Date”</b>	means the Effective Date
<b>“Benchmark Rate”</b>	means a variable reference rate of interest which is generally published on a daily basis (when banks are open for business) by Thomson Reuters or such other internationally recognised information service as the Administrators may in their sole discretion (acting reasonably) determine
<b>“Books and Records”</b>	means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm and, for the avoidance of doubt, shall include information received by the Company from Scheme Parties through the Portal or otherwise

- “Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York
- “Cash and Cash Equivalents”** means, at the relevant time, all cash held in any bank or other accounts, and all investments in any short-term money market deposits, UK government or quasi-government debt securities and supranational debt, in each case held by the Company, in accordance with the investment strategy set out in the Nineteenth Progress Report
- “CASS”** means the Client Assets Sourcebook of the FCA Handbook as it applies to the Company
- “CASS7”** means Chapter 7 of CASS and, if and to the extent relevant, Chapter 7A of CASS as they apply to the Company
- “Certification”** means a statement submitted to the Company and identified by a Certifying Creditor as being a “Certification” stating the Higher Rate Claim to which it relates by reference to the relevant Claim Reference and:
- (i) in respect of an ISDA Master Agreement:
    - (a) the asserted Cost of Funding applicable from time to time for the period during which the relevant Higher Rate Claim was, or has been, outstanding, in whole or in part;
    - (b) the asserted Certified Rate(s); and
    - (c) the asserted Certified Sum; and
  - (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the asserted Certified Rate and the asserted Certified Sum,
- together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes in its discretion to submit
- “Certification Claim”** means a Higher Rate Claim that is the subject of a Valid Certification Election
- “Certification Deadline”** means the Effective Date
- “Certification Option”** means the option available to Higher Rate Creditors to submit a Certification
- “Certified Rate”** means:
- (i) in respect of an ISDA Master Agreement, the rate(s) per annum equal to the asserted Cost of Funding plus 1% per annum; or
  - (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the rate(s) of interest stated in the

- relevant Certification as the relevant interest rate(s),  
in each case in respect of the relevant Certification Claim
- “Certified Sum”** means the amount in GBP of interest that a Certifying Creditor states in a Certification as being payable to it in respect of the relevant Certification Claim calculated by applying the relevant Certified Rate(s) set out in the Certification to the balance outstanding from time to time of the relevant Certification Claim (calculated in accordance with the Relevant Principles)
- “Certifying Creditor”** means a Higher Rate Creditor in relation to the Higher Rate Claims held by it that are Certification Claims
- “Chapter 15 Order”** means an order of the US Bankruptcy Court which, among other things, recognises this Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, enforces the Court Order within the territorial jurisdiction of the United States and enjoins Scheme Parties from commencing or continuing any action or Proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with this Scheme
- “Civil Procedure Rules”** means the civil procedure rules used by the High Court of England and Wales that are in force as at the Effective Date
- “Claim Reference”** means:
- (i) in respect of an Admitted Claim, the unique identifying number used by the Company to identify such Admitted Claim, as stated in the relevant UCC4; and
  - (ii) in respect of an Undetermined Provable Claim, such reference number used by the Company to identify the relevant Undetermined Provable Claim as may be communicated by the Company to the relevant holder of such Undetermined Provable Claim prior to the Bar Date
- “Claims”** means all claims, actions, Proceedings, demands, rights or causes of action, be they known or unknown, incurred solely or jointly or as principal or surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law or statute or by reason of breach of contract or trust, as a result of a restitutionary claim, 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 in existence now or coming into existence at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date

hereof, and including:

- (i) any and all claims, actions, Proceedings, demands, rights or causes of action to, for or in respect of interest, late payment or a Shortfall;
- (ii) any and all claims, actions, Proceedings, demands, rights or causes of action arising by reason of, among 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;
- (iii) any and all claims, actions, Proceedings, demands, rights or causes of action for, among other things, the enforcement of any right to, or any Liability in respect of a right to:
  - (a) seek or enforce a judgment;
  - (b) exercise any remedy (for damages or otherwise), indemnity and/or 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), or for 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;
- (iv) any and all claims, actions, Proceedings, demands, rights or causes of action in respect of any Loss;
- (v) any "Debt" as defined in Rule 14.1(3) of the Insolvency Rules; and
- (vi) any "liability" as defined in Rule 14.1(6) of the Insolvency Rules

**"Clearance"**

has the meaning given to it in Clause 18.2.1(ii)

**"Client Money"**

means "client money" as defined in the FCA Rules for the purposes of, *inter alia*, CASS7

**"Client Money Entitlement"**

means a "client money entitlement" as such term is used in CASS, by reference to which the quantum of a beneficial interest in the Client Money Estate arising under the statutory trust created by CASS7, is calculated in accordance with CASS7

**"Client Money Estate"**

means the notional pool of Client Money constituted at the date



	of the Company's primary pooling event (as defined in CASS7)
<b>"Companies Act"</b>	means the Companies Act 2006
<b>"Company"</b>	means Lehman Brothers International (Europe) (in administration), a private unlimited company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ
<b>"Company's Case"</b>	has the meaning given to it in Clause 24.3.1
<b>"Compounding Principle"</b>	means, where: <ul style="list-style-type: none"><li>(i) Statutory Interest in respect of a Higher Rate Claim or Specified Interest Claim is calculated (subject to the terms of this Scheme) by reference to a contractual compounding rate(s) of interest; and</li><li>(ii) prior to being paid in full, such Higher Rate Claim or Specified Interest Claim was discharged in part by the payment of one or more interim dividends,</li></ul> the principle to be applied for the purpose of calculating the amount of Statutory Interest that accrues on the balance of the relevant claim outstanding from the date(s) of payment of the relevant interim dividend(s) to the date on which the relevant Claim was paid in full, being that any accrued Statutory Interest referable to the amount(s) by which the relevant claim was discharged by the relevant interim dividend(s) shall continue to compound in accordance with the terms of the relevant Specified Interest Contract or Relevant Contract (as applicable)
<b>"Conflict of Interest"</b>	means any agreement, arrangement, affiliation, interest, understanding or activity which conflicts or has a significant risk of conflicting with the Adjudicator's or a member of his Support Team's ability to perform their respective roles
<b>"Consultation Period"</b>	has the meaning given to it in Clause 11.2
<b>"Contributory Claim"</b>	means any call, claim, action, proceeding, demand, right or cause of action that may be made or brought by a future liquidator of the Company against any contributory (as defined in section 79 of the Insolvency Act) arising pursuant to section 74 or section 165 of the Insolvency Act
<b>"Control"</b>	means the right to determine Voting and Elections in respect of a Higher Rate Claim whether by way of a sub-participation agreement or otherwise, and <b>"Controlled"</b> shall be construed accordingly
<b>"Cost of Funding"</b>	means the cost to the relevant party (i) if it were to fund or (ii) of funding, the relevant Certification Claim, as certified by the Certifying Creditor
<b>"Counteroffer"</b>	means a counteroffer, setting out an amount in GBP of Statutory Interest that the Company states as being payable to

	a Certifying Creditor in respect of its Certification Claim
<b>“Counteroffer Sum”</b>	the amount in GBP of Statutory Interest stated in a Counteroffer
<b>“Court of Appeal”</b>	means the Court of Appeal of England and Wales
<b>“Court Order”</b>	means an order of the High Court sanctioning this Scheme under Section 899 of the Companies Act
<b>“Courts”</b>	means the High Court, Court of Appeal and/or Supreme Court
<b>“Creditor Challenge Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to challenge the quantum or validity of an Admitted Claim whether by bringing a Claim against the relevant Scheme Party, the Company, the Administrators and/or any future liquidator of the Company and/or issuing an application in the Administration and/or any future liquidation of the Company
<b>“Creditor Contributory Claim Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to request or require a future liquidator of the Company to make a Contributory Claim
<b>“Creditors’ Committee”</b>	means the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act
<b>“De Minimis Distribution”</b>	has the meaning given to it in Clause 21.1.1
<b>“Decision Notice”</b>	has the meaning given to it in Clause 11.2
<b>“Delegate”</b>	means any person appointed as a delegate pursuant to Clause 29.2.2
<b>“Direction”</b>	has the meaning given to it in Clause 18.2.1(i)
<b>“Directions Application”</b>	means an application by the Administrators to the High Court pursuant to paragraph 63 of Schedule B1 to the Insolvency Act
<b>“Dispute Resolution Procedure”</b>	means the dispute resolution procedure described in Part VI for determining the Applicable CI Payment in respect of a Rejected Certification that is the subject of an Appeal
<b>“Disputed Claim”</b>	means a Retained Claim (other than Excluded Proceedings), where: <ul style="list-style-type: none"><li>(i) the amount claimed by the holder of such Retained Claim is stated to be either (a) a certain sum equal to or greater than GBP 20,000,000; or (b) an uncertain sum that in the Company’s opinion (acting reasonably) could give rise to a liability of the Company equal to or greater than GBP 20,000,000; and</li><li>(ii) such claim has not been agreed by the Administrators</li></ul>
<b>“DRP Election”</b>	has the meaning given to it in Clause 11.9
<b>“Effective Date”</b>	means the date upon which a copy of the Court Order is delivered to the Registrar of Companies in England and Wales
<b>“Election”</b>	means the election by a Scheme Creditor, made at the time it

submitted its Vote, for either the Settlement Payment Option or the Certification Option in respect of its Higher Rate Claims and “**Elect**” and “**Elected**” shall be construed accordingly

**“Election Deadline”**

means, where a Higher Rate Creditor is Voting by proxy submitted via the Portal, the Proxy Deadline or, in all other cases, the date and time of Voting at the relevant Scheme Meeting

**“Equity Distribution”**

means any distribution (including a distribution *in specie*) or dividends paid, or return of capital (whether ordinary or preferred) made by the Company or any office holder appointed in respect of it to the Shareholder, in accordance with the Insolvency Act, the Insolvency Rules, and, if applicable, the Companies Act

**“Excluded Claims”**

means (exclusively) any:

- (i) Undetermined Provable Claim (but excluding for the avoidance of doubt any entitlement, right to or interest in Statutory Interest in respect of such claim);
- (ii) proprietary claim or trust entitlement of a Scheme Creditor to Client Money held by the Company (but excluding, for the avoidance of doubt, any Provable Claim arising from or in connection with a Client Money Entitlement);
- (iii) Non-Provable Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (iv) Expense Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (v) UCC Challenge, the details of which have been notified to the Company prior to the Bar Date;
- (vi) Administration Claim, the details of which have been notified to the Company and the relevant person against whom such Claim is being asserted or brought, prior to the Bar Date; and
- (vii) Creditor Challenge Rights in respect of any Admitted Claim that is admitted by the Administrators on or after the Record Date

**“Excluded Proceedings”**

means any of the following:

- (i) the WHT Proceedings;
- (ii) the LBA Proceedings; and
- (iii) the AGFP Proceedings,

but only to the extent that such Proceedings do not seek to

	determine the calculation of Statutory Interest in a manner that is inconsistent with the payment of Statutory Interest pursuant to this Scheme
<b>“Exclusion Application”</b>	means an application to the High Court pursuant to Rule 14.11(1)(a) of the Insolvency Rules to exclude a proof of debt or to reduce the amount claimed by a Scheme Party in respect of an Admitted Claim
<b>“Expense Claims”</b>	means Claims that rank as Administration Expenses
<b>“Explanatory Statement”</b>	means the statement dated 14 May 2018, as may be amended or supplemented (and the appendices thereto), explaining the effect of this Scheme in compliance with Section 897 of the Companies Act
<b>“FBF Master Agreement”</b>	means the FBF Master Agreement Relating to Transactions on Forward Financial Instruments (2001) (FBF)
<b>“FCA”</b>	means the Financial Conduct Authority of the United Kingdom
<b>“FCA Handbook”</b>	means the handbook containing rules, principles and guidance made by the FCA under powers given to it by FSMA as applicable to the Company from time to time
<b>“FCA Rules”</b>	means FSMA and the FCA Handbook
<b>“Final Certification”</b>	has the meaning given to it in Clause 16.1.2
<b>“Final Certification Deadline”</b>	has the meaning given to it in Clause 16.1.2
<b>“Fixed Rate”</b>	means a fixed rate of interest expressed as a percentage
<b>“Floating Rate”</b>	means a rate of interest expressed as a Benchmark Rate or as a Benchmark Rate plus X, where X is a number or a percentage
<b>“FSMA”</b>	means the Financial Services and Markets Act 2000
<b>“Full SI Payment Statement”</b>	means a statement confirming that the Company’s Net Available Funds are sufficient to allow for the payment in full of the High Case Scheme Distribution
<b>“Governance Protocol”</b>	means a protocol in respect of the formation, rights and obligations of the Operating Committee as set out in Schedule 2
<b>“High Case Scheme Distribution”</b>	means a notional amount equal to the aggregate of all Scheme Distributions to be made under this Scheme, assuming (where relevant) for the purposes of such calculation that: <ul style="list-style-type: none"><li>(i) any Undetermined Provable Claims are admitted by the Administrators for the full amount proved for (or, if relevant, in the amount ordered by the Court to be reserved for in respect of such claim(s)) and the principal amount of such claim(s) is paid in full on 15 September 2021; and</li><li>(ii) the Applicable CI Payment in respect of any</li></ul>

Certification that is, at the relevant time, yet to be determined will be the Certified Sum set out in such Certification

<b>“High Court”</b>	means the High Court of Justice in England and Wales
<b>“Higher Rate Claim”</b>	means a Provable Claim (or the component part thereof) derived from a Relevant Contract
<b>“Higher Rate Creditor”</b>	means a Scheme Creditor who holds the legal title to one or more Higher Rate Claims
<b>“HMRC”</b>	means HM Revenue & Customs and any other authority, body or official in the United Kingdom competent to assess, demand, impose, administer or collect Tax or amounts in respect of Tax or make any decision or ruling on any matter relating to Tax
<b>“House Estate”</b>	means all of the Company’s cash, property and assets which do not form part of the Client Money Estate or which are not otherwise held on trust for another person
<b>“Income Tax Act”</b>	means the Income Tax Act 2007
<b>“Increased Voting Rights Decision”</b>	means the decision of the chairman of the Scheme Meetings in respect of a request by a Higher Rate Creditor for Voting Rights in respect of its Higher Rate Claims in excess of those stated in its UCC4 (or as otherwise communicated to it by the Company prior to the Scheme Meetings)
<b>“Initial Certification”</b>	means a Certification in respect of an Undetermined Certification Claim prepared and submitted in accordance with Clause 16
<b>“Insolvency Act”</b>	means the Insolvency Act 1986
<b>“Insolvency Rules”</b>	means the Insolvency (England & Wales) Rules 2016
<b>“Insufficient Funds Statement”</b>	means a statement confirming that the Company’s Net Available Funds are insufficient to allow for either a part payment or the full payment of the High Case Scheme Distribution
<b>“ISDA Master Agreement”</b>	means: <ul style="list-style-type: none"><li>(i) the 1992 ISDA Master Agreement;</li><li>(ii) the 2002 ISDA Master Agreement; and</li><li>(iii) any long-form confirmation which incorporates the terms of the 1992 ISDA Master Agreement or the 2002 ISDA Master Agreement</li></ul>
<b>“Issued Scheme Outcome Statement”</b>	means a Scheme Outcome Statement that has been published on the Website and is not subject to a Retraction Notice in accordance with Clause 3.3
<b>“KYC Information”</b>	means information requested by the Company to ensure compliance with any relevant regulatory and anti-money

laundering requirements

**“Lacuna Application”**

means the application issued on 28 November 2017 by the Administrators, with the Subordinated Creditor as respondent, seeking directions in relation to a request, made by the Subordinated Creditor, that the Administrators seek a decision of creditors, pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act, to bring about the termination of the Administration and the commencement of a liquidation of the Company

**“LBA Proceedings”**

means an application issued by Lehman Brothers Australia Limited – in liquidation on 20 December 2016 pursuant to paragraph 74 of Schedule B1 to the Insolvency Act seeking to vary the amount of its Provable Claim

**“LBEL”**

means Lehman Brothers Europe Limited (in administration), a company incorporated in England and Wales with registered number 03950078 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBH PLC”**

means Lehman Brothers Holdings PLC (in administration), a company incorporated in England and Wales with registered number 01854685 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBHI”**

means Lehman Brothers Holdings Inc., a corporation incorporated under the laws of the State of Delaware, United States of America with registered number 2024634 whose registered address is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, United States of America, and whose principal place of business is at 277 Park Avenue, 46th Floor, New York, NY 10172, United States of America as Plan Administrator (as defined in the Chapter 11 Plan) under the Chapter 11 Plan, on behalf of itself

**“LBHI2”**

means LB Holdings Intermediate 2 Limited (in administration), a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBL”**

means Lehman Brothers Limited (in administration), a company incorporated in England and Wales with registered number 00846922 whose registered address is 7 More London Riverside, London SE1 2RT

**“Leap Year”**

means a 12-month period (beginning on 15 September) that includes 29 February

<b>“Liabilities”</b>	means all liabilities, duties and obligations of every description, whether deriving from contract, common law, case law, legal provisions, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety and <b>“Liability”</b> means any one of them
<b>“Liquidation Event”</b>	means either an order by the High Court to compulsorily wind up the Company or the commencement of a voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)
<b>“Lock-Up Agreement”</b>	means a lock-up agreement dated 22 December 2017 made between (among others) the Company, the Administrators, Burlington Loan Management DAC, Wentworth Sons Senior Claims S.à r.l., LBHI and the Subordinated Creditor
<b>“Locked Up Parties”</b>	means: <ul style="list-style-type: none"><li>(i) each of the parties (other than the Company and the Administrators) to the Lock-Up Agreement and their respective professional advisers; and</li><li>(ii) in respect of (i) above, their respective members, partners, investment managers, directors, officers, employees and any of their respective agents, professional advisers or their employees</li></ul>
<b>“Loss”</b>	means any loss (including loss of profit or loss of earnings), damage, cost, charge, penalty, expense or Liability of whatever nature
<b>“Lugano Convention”</b>	means the convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the Official Journal of the European Union on 21 December 2007
<b>“Minimum Sum”</b>	means an amount sufficient for a payment of at least GBP 0.01 to each Scheme Creditor (save for the Subordinated Creditor) and Storm in respect of the Scheme Distributions
<b>“Net Available Funds”</b>	means from time to time the sum in GBP calculated by deducting the aggregate amount of Adequate Reserves from the amount of Available Funds
<b>“Nineteenth Progress Report”</b>	means the nineteenth progress report dated 10 April 2018 prepared by the Administrators in accordance with Rule 18.3 of the Insolvency Rules
<b>“Non-Provable Claims”</b>	means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration of the Company from the Surplus after the payment of Statutory Interest and before payment of the Subordinated Debt
<b>“Notice”</b>	means any notice given in accordance with Clause 41 and

	<p><b>“Notify”</b> and <b>“Notified”</b> shall be construed accordingly</p>
<b>“Olivant Application”</b>	<p>means the application pursuant to Rule 14.8(3) of the Insolvency Rules issued in the Administration by the Subordinated Creditor on 19 September 2017 challenging the decision of the Administrators to admit the proof of debt filed in the Administration by Olivant Investments Switzerland S.A. and the associated joinder application brought by Lehman Brothers Opportunity Holdings Inc.</p>
<b>“Operating Committee”</b>	<p>means a committee to be formed following the dissolution of the Creditors’ Committee pursuant to Clause 34 whose rights and obligations against the Company and the Administrators are described in the Governance Protocol</p>
<b>“Other Proceedings”</b>	<p>means any and all Proceedings (other than Excluded Proceedings) of any nature, however arising, whether brought directly or indirectly, in any jurisdiction or forum, which have been formally commenced against the Company on or prior to the Bar Date</p>
<b>“Part SI Payment Rate”</b>	<p>means the rate of distribution set out in a Part SI Payment Statement or such updated rate of distribution as may be published on the Website from time to time in accordance with Clause 3.4</p>
<b>“Part SI Payment Statement”</b>	<p>means a statement confirming (i) that the Company’s Net Available Funds are sufficient to allow for a part payment of the High Case Scheme Distribution and (ii) the rate of Scheme Distributions to be paid by reference to the Net Available Funds as a percentage of the High Case Scheme Distribution</p>
<b>“Payment”</b>	<p>means a payment by the Company of a Scheme Distribution, Subordinated Distribution (other than the Subordinated Principal) or any other amount pursuant to this Scheme but excluding, for the avoidance of doubt, a WHT Repayment</p>
<b>“Portal”</b>	<p>means a secure online facility made available to Scheme Creditors with Admitted Claims on the website of PricewaterhouseCoopers LLP at <a href="https://dm.pwc.com/LBIE_CIP/login.aspx">https://dm.pwc.com/LBIE_CIP/login.aspx</a></p>
<b>“Practice Statement Letter”</b>	<p>means the letter sent to creditors of the Company on 18 April 2018 in accordance with the practice statement issued by the High Court on 15 April 2002 in relation to schemes of arrangement proposed under the Companies Act</p>
<b>“Preferential Debts”</b>	<p>has the meaning given to that term in Section 386 of the Insolvency Act</p>
<b>“Proceedings”</b>	<p>means any process, action, application, legal or other proceeding, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution,</p>



	enforcement of judgment or any other step taken for the purpose of creating or enforcing a lien
<b>“Provable Claim”</b>	means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules including, for the avoidance of doubt, any Shortfall Claim
<b>“Proxy Deadline”</b>	means 5.00 p.m. on the day falling one Business Day prior to the Scheme Meetings, being the deadline by which creditors wishing to submit a form of proxy via the Portal must do so in order to Vote and (where applicable) make an Election
<b>“Recast Jurisdiction and Judgments Regulation”</b>	means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
<b>“Record Date”</b>	means 5.00 pm London time on 24 May 2018
<b>“Rejected Certification”</b>	has the meaning given to it in Clause 11.9
<b>“Rejection Date”</b>	means the date of delivery of a Rejection Notice in accordance with Clause 11
<b>“Rejection Notice”</b>	means a Decision Notice informing a Higher Rate Creditor of its Rejected Certification pursuant to Clause 11.2.2, 11.7.2, 11.8.1 or 11.8.2
<b>“Released Administration Claims”</b>	has the meaning given to it in Clause 28.1.4
<b>“Released Claims”</b>	means the Claims released and waived by the Scheme Parties pursuant to Clause 28
<b>“Released Scheme Implementation Claims”</b>	<p>means any Claims against the Company, the Administrators, the Released Third Parties or the Locked Up Parties where such Claims arise from or in connection with an action taken by any such person on or after 1 November 2017 with respect to:</p> <ul style="list-style-type: none"><li>(i) the negotiation, preparation, implementation and/or consummation of this Scheme; or</li><li>(ii) the execution of any documents required in order to implement this Scheme and the carrying out of the actions, steps and transactions contemplated by such documents,</li></ul> <p>but excluding (a) Claims by the Locked Up Parties against each other or the Shareholder, or by the Shareholder against any Locked Up Party, under contracts in existence prior to the Bar Date, and (b) for the avoidance of doubt, any Scheme Breach Claims</p>
<b>“Released Third Parties”</b>	<p>means:</p> <ul style="list-style-type: none"><li>(i) the Administrators’ firm;</li><li>(ii) the Advisers;</li><li>(iii) in respect of paragraphs (i) and (ii) above, their</li></ul>

- respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees; and
- (iv) current and former employees of the Company
- “Released Third Party Claims”** means the Released Administration Claims and the Released Scheme Implementation Claims
- “Relevant Contracts”** means certain pre-administration contracts, the counterparties to which may be entitled to Statutory Interest calculated at a rate in excess of the 8% Interest Rate, being:
- (i) ISDA Master Agreements;
- (ii) AFB/FBF French Master Agreements; and
- (iii) AFTB/AFTI French Master Agreements
- “Relevant Employees”** means (in relation only to Claims relating to their individual contracts of employment) employees or former employees of the Company who are domiciled in a Relevant State and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
- “Relevant Jurisdiction Clause Creditors”** means (in relation only to Claims arising in connection with such contracts) any person domiciled in a Relevant State who holds a contractual claim against the Company under a contract which is in writing or evidenced in writing and which contains an agreement that the courts of a Relevant State are to have exclusive jurisdiction to settle any disputes which have arisen or which may arise in connection with that contractual relationship and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
- “Relevant Principles”** means:
- (i) in respect of ISDA Master Agreements, the principles set out in the Tranche C Judgment as set out in the declarations contained in the Tranche C Order;
- (ii) in respect of AFB/FBF French Master Agreements, the AFB/FBF Agreed Position;
- (iii) in respect of all Statutory Interest Claims, the Courts’ decisions in Tranche A; and
- (iv) in respect of Certification Claims and Specified Interest Claims, the Compounding Principle (if applicable)
- “Relevant State”** means a state other than the United Kingdom which is a party to the Recast Jurisdiction and Judgments Regulation or the Lugano Convention
- “Retained Claims”** means Excluded Claims, Excluded Proceedings and Retained

	Expense Claims
<b>“Retained Expense Claim”</b>	means any Expense Claim held by a Scheme Party, which: <ul style="list-style-type: none"><li>(i) was a contingent claim as at the Bar Date and which became payable on or after the Bar Date under a contract that was entered into by the Company between the Administration Date and the Bar Date;</li><li>(ii) relates to the Company’s payment obligations under a contract that was continuing to be performed as at the Bar Date;</li><li>(iii) arises from an action or activity of the Company that takes place on or after the Bar Date (including a Scheme Breach Claim) or a contract entered into by the Company after the Bar Date; or</li><li>(iv) arose within 10 days prior to the Bar Date in circumstances where (in the Administrators’ sole discretion (acting reasonably)) the relevant Scheme Party could not reasonably have been expected to notify the Company or the Administrators of the Expense Claim prior to the Bar Date</li></ul>
<b>“Retained Unclaimed Scheme Distribution”</b>	means an Unclaimed Scheme Distribution that is not a De Minimis Distribution
<b>“Retraction Notice”</b>	has the meaning given to it in Clause 3.3.1
<b>“Revised Scheme Outcome Statement”</b>	has the meaning given to it in Clause 3.3.2
<b>“Scheme”</b>	means this scheme of arrangement in its present form or with or subject to any modification, addition or condition approved or imposed pursuant to Clause 42
<b>“Scheme Breach Claims”</b>	means any Claims against the Company or the Administrators arising out of or in connection with a breach by the Company or the Administrators of the terms of this Scheme
<b>“Scheme Creditor”</b>	means any person who holds a Provable Claim against the Company (including, for the avoidance of doubt, (i) any Admitted Claim whether unpaid or paid in full or in part; and (ii) the Subordinated Debt), save for: <ul style="list-style-type: none"><li>(i) Storm;</li><li>(ii) any Relevant Employees; and</li><li>(iii) any Relevant Jurisdiction Clause Creditors</li></ul>
<b>“Scheme Distribution”</b>	means (as the context requires) a payment by the Company in respect of: <ul style="list-style-type: none"><li>(i) the 8% Payment;</li><li>(ii) the Specified Interest Payment;</li></ul>

- (iii) the Storm Payment;
- (iv) the Settlement Premium; and/or
- (v) the Applicable CI Payment

<b>“Scheme Meetings”</b>	means the separate meetings of the relevant classes of Scheme Creditors convened by order of the High Court pursuant to Section 896 of the Companies Act for the purpose of considering and, if thought appropriate, approving this Scheme, including any adjournment thereof
<b>“Scheme Outcome Statement”</b>	means (as relevant): <ul style="list-style-type: none"><li>(i) a Full SI Payment Statement;</li><li>(ii) a Part SI Payment Statement;</li><li>(iii) an Insufficient Funds Statement; or</li><li>(iv) a Revised Scheme Outcome Statement</li></ul>
<b>“Scheme Party”</b>	means each Scheme Creditor and Storm
<b>“Settled Proceedings”</b>	means : <ul style="list-style-type: none"><li>(i) the Waterfall Proceedings;</li><li>(ii) the Lacuna Application;</li><li>(iii) the Olivant Application; and</li><li>(iv) any Other Proceedings</li></ul>
<b>“Settlement Creditor”</b>	means a Higher Rate Creditor in relation to any Higher Rate Claim(s) held by it that is not subject to a Valid Certification Election
<b>“Settlement Higher Rate Claim”</b>	means a Higher Rate Claim that is not subject to a Valid Certification Election
<b>“Settlement Instructions”</b>	means a Scheme Party’s settlement instructions that meet the Company’s minimum requirements in respect of settlement instructions as set out in the Portal (from time to time)
<b>“Settlement Payment”</b>	means, in respect of a Settlement Creditor, the 8% Payment and the Settlement Premium together
<b>“Settlement Payment Option”</b>	means the option available to Higher Rate Creditors to receive the Settlement Payment in respect of their Higher Rate Claims
<b>“Settlement Premium”</b>	means a settlement sum to be paid to a Settlement Creditor equal to 2.5% of the amount admitted for dividend by the Administrators in respect of its Settlement Higher Rate Claim(s)
<b>“Shareholder”</b>	means LBHI2 in its capacity as a shareholder of the Company
<b>“Shareholder Undertaking”</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and the Shareholder in connection with this Scheme in the form set out in Schedule 3

<b>“Shareholder Undertaking Claim”</b>	means any Claims against the Shareholder arising out of a breach by the Shareholder of the terms of the Shareholder Undertaking
<b>“Shortfall”</b>	means, where the total distributions received by a client of the Company from the Client Money Estate (X) are less than its Client Money Entitlement (Y), the difference between X and Y
<b>“Shortfall Claim”</b>	means any unsecured claim against the House Estate to recover any Shortfall
<b>“Specified Countries”</b>	means the Netherlands, France, Italy, Germany, Switzerland, the United Arab Emirates, Qatar, Spain, Sweden, Israel and South Korea
<b>“Specified Interest Claim”</b>	means a Provable Claim (or the component part thereof) that is derived from a Specified Interest Contract
<b>“Specified Interest Contract”</b>	means a contract other than a Relevant Contract or a Subordinated Debt Agreement which stipulates a Specified Interest Rate which, when applied to the balance outstanding from time to time under such contract (in accordance with Relevant Principles), would give rise to an amount of Statutory Interest that is greater than the amount of Statutory Interest that would be calculated if the 8% Interest Rate were to have applied in place of such Specified Interest Rate
<b>“Specified Interest Creditor”</b>	means a Scheme Creditor who holds legal title to one or more Specified Interest Claims
<b>“Specified Interest Payment”</b>	means a payment to a Specified Interest Creditor of Statutory Interest in respect of its Specified Interest Claims calculated in accordance with Clause 7.2
<b>“Specified Interest Rate”</b>	means either: (i) a Fixed Rate; or (ii) a Floating Rate, whether such rate is applied on a simple or compound basis
<b>“SSI Deadline”</b>	means the later of: (i) 20 Business Days from the date on which all Scheme Distributions other than Unclaimed Scheme Distributions have been paid in full by the Company; and (ii) 12 months from the Effective Date
<b>“Statutory Interest”</b>	means any statutory interest payable by the Company pursuant to Rule 14.23 of the Insolvency Rules
<b>“Statutory Interest Claims”</b>	means Claims in respect of Statutory Interest
<b>“Storm”</b>	means Storm Funding Limited (in administration), a company incorporated in England and Wales with registered number

	02682306 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“Storm Payment”</b>	means a payment in the amount of GBP 20,955,623.55 to Storm in full and final settlement of its rights to Statutory Interest in respect of its Admitted Claim
<b>“Storm Undertaking”</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and Storm pursuant to which Storm agrees to be bound by and perform certain of the terms of this Scheme, in the form set out in Schedule 4
<b>“Subordinated Creditor”</b>	means Wentworth Sons Sub-Debt S.à r.l., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated and existing under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies’ Register under number B 179. 340, whose registered office is 6 Rue Eugène Ruppert, L 2453 Luxembourg, Grand Duchy of Luxembourg
<b>“Subordinated Debt”</b>	means Claims in respect of the subordinated liabilities of the Company arising pursuant to the Subordinated Debt Agreements
<b>“Subordinated Debt Admittance Date”</b>	has the meaning given to it in Clause 32.2
<b>“Subordinated Debt Agreements”</b>	means any of the three intercompany loan agreements entered into between the Company and LBHI2, each dated 1 November 2006 and which have been assigned by LBHI2 to the Subordinated Creditor pursuant to a deed of assignment dated 31 January 2014
<b>“Subordinated Debt SI Payment”</b>	has the meaning given to it in Clause 32.5
<b>“Subordinated Distributions”</b>	means any payment in respect of the Subordinated Debt (whether in respect of principal, interest accrued prior to the Administration Date, Statutory Interest or otherwise) made in accordance with the terms of this Scheme
<b>“Subordinated Interest”</b>	has the meaning given to it in Clause 32.3
<b>“Subordinated Principal”</b>	means the part of the Subordinated Creditor’s Provable Claim that relates to the principal amount of the Subordinated Debt, in the sum of GBP 1,240,452,696, and excluding any part that relates to interest on the Subordinated Debt accrued prior to the Administration Date
<b>“Support Team”</b>	means one or more appropriately qualified and trained, technically competent and independent professionals (with relevant market and/or financial experience) engaged by the Adjudicator to support and assist the Adjudicator with his understanding of the Appellant Certifying Creditor’s Case and the Company’s Case
<b>“Supreme Court”</b>	means the Supreme Court of the United Kingdom

<b>“Surplus”</b>	means the Company’s assets remaining after the provision for or payment in full of Expense Claims, Preferential Debts and Admitted Claims and before the payment of Statutory Interest, Non-Provable Claims, the Subordinated Debt and Equity Distributions, but excluding any Contributory Claim
<b>“Tax”</b>	means all forms of taxation, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments in respect of or on account of such forms of taxation (including any interest and/or penalties in relation to such taxation), in each case whether of the United Kingdom or elsewhere in the world whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Company, a Scheme Party or any other person
<b>“Tax Authority”</b>	means any taxing or other authority, whether of the United Kingdom or elsewhere in the world, competent to impose any liability in respect of Tax, or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax
<b>“Third Party”</b>	means a person that is not the Company, a Scheme Party, an Administrator, a Released Third Party or a Locked Up Party
<b>“Tranche A”</b>	means “Tranche A” of Waterfall II as described in the definition of Waterfall II
<b>“Tranches A and B Costs Principle”</b>	means, in relation to any costs payable by the Company pursuant to Clause 28.3, the limitation imposed by the High Court in paragraph 2 under the heading “Costs” in the order of David Richards J dated 17 October 2016 in relation to Tranche A and Tranche B
<b>“Tranche B”</b>	means “Tranche B” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C”</b>	means “Tranche C” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C Judgment”</b>	means <i>Lomas &amp; Ors v Burlington Loan Management Limited &amp; Ors</i> [2016] EWHC 2417 (Ch)
<b>“Tranche C Order”</b>	means the declarations made by Hildyard J in the order of the High Court dated 12 December 2016 in respect of the Tranche C Judgment
<b>“UCC Challenge”</b>	means a challenge in writing to the Company by a Scheme Creditor of the allocation or composition of its Admitted Claim(s) between any combination of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) set out in its UCC4 (or as otherwise communicated to it in writing by the Company), where such challenge includes a statement as to the allocation or composition of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)

	claimed by that Scheme Creditor as constituting its Admitted Claim(s)
<b>“UCC4”</b>	means the certificate provided by the Company to a Scheme Creditor on or around the date of the Explanatory Statement setting out, among other things, the disaggregation of such Scheme Creditor’s Admitted Claim(s) between 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)
<b>“Unclaimed Scheme Distribution”</b>	means any Scheme Distribution which (i) would be payable by the Company to a Scheme Party but for that Scheme Party’s failure to provide the Company with Settlement Instructions and/or KYC Information (or confirm such information) in accordance with Clause 19.4 or (ii) was paid by way of a cheque that is cancelled by the Company pursuant to Clause 19.6.3
<b>“Unclaimed Scheme Distribution Application”</b>	has the meaning given to it in Clause 21.2
<b>“Undetermined Certification Claim”</b>	means a Certification Claim that is an Undetermined Provable Claim
<b>“Undetermined Provable Claim”</b>	means, as at any given date, a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules prior to the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Administrators or is the subject of determination by the Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired
<b>“US Bankruptcy Code”</b>	means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
<b>“US Bankruptcy Court”</b>	means the United States Bankruptcy Court for the Southern District of New York or other court of competent jurisdiction presiding over any case filed under Chapter 15 of the US Bankruptcy Code seeking, among other things, recognition of this Scheme as a foreign main proceeding and enforcement of the Court Order in the United States
<b>“Valid Certification Election”</b>	means an Election by a Higher Rate Creditor that is: <ul style="list-style-type: none"><li>(i) for the Certification Option in relation to one or more Higher Rate Claims;</li><li>(ii) made prior to the Election Deadline; and</li><li>(iii) made contemporaneously with a representation by that Scheme Creditor to the Company (such representation being true and accurate as at the date it is made) that:<ul style="list-style-type: none"><li>(a) it has made the same Election in respect of all Higher Rate Claims which it legally owns and Controls; and</li></ul></li></ul>



- (b) where it has Elected for the Certification Option in respect of Higher Rate Claim(s) which are Controlled by a third party, it has made the same Election in respect of all Higher Rate Claim(s) that are Controlled by such party

**“VAT”** means, within the European Union, such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC and, outside the European Union, any tax of a similar nature levied by reference to added value or sales

**“Voting”** means the exercise of a Scheme Creditor’s vote to approve or reject this Scheme at a meeting of Scheme Creditors convened for that purpose and **“Vote”** shall be construed accordingly

**“Voting Rights”** means the value attributed to 8% Interest Claims, Specified Interest Claims and Higher Rate Claims for the purpose of Voting at the relevant Scheme Meeting(s)

**“Waterfall I”** means a joint application issued on 14 February 2013 by the respective administrators of the Company, LBL and LBHI2, with LBHI as a respondent, seeking a determination as to, among other things, the existence and priority ranking of certain claims in respect of the Surplus, and the rights and obligations of the Company as against its contributories, heard by the High Court, the Court of Appeal and the Supreme Court, the Supreme Court judgment being given on 17 May 2017

**“Waterfall II”** means the application issued on 12 June 2014 (as amended pursuant to the orders of David Richards J dated 9 March 2015 and Hildyard J dated 9 October 2015) by the Administrators, with Burlington Loan Management Limited, CVI GVF (Lux) S.à r.l., Hutchinson Investors, LLC, the Subordinated Creditor and York Global Finance BDH, LLC as respondents, seeking determination of issues that impact the potential entitlements of the Company’s creditors to payments from the Surplus, split into Tranche A and Tranche B (with case citation, in respect of the Court of Appeal decision, [2017] EWCA Civ 1462), and Tranche C (with case citation, in respect of the first instance decision, [2016] EWHC 2417 (Ch))

**“Waterfall III”** means the application issued on 25 April 2016 by the Administrators with the respective joint administrators of LBHI2, LBL and LBEL as respondents, seeking determination of issues relating to the rights and obligations of the Company, LBHI2, LBL, LBEL and LBH PLC arising out of (i) the Company’s status as an unlimited liability company and (ii) certain recharge arrangements among those entities, and the associated cross-application issued on 17 October 2016 by the administrators of LBL

**“Waterfall Proceedings”** means Waterfall I, Waterfall II and Waterfall III as the context

	requires
<b>“Website”</b>	means the website which can be accessed at <a href="https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html">https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html</a>
<b>“Wentworth Parties”</b>	means: <ul style="list-style-type: none"><li>(i) LBHI;</li><li>(ii) Wentworth Sons Senior Claims S.à. r.l.;</li><li>(iii) the Subordinated Creditor;</li><li>(iv) the Shareholder;</li><li>(v) King Street Capital Management, L.P.;</li><li>(vi) Elliott Management Corporation; and</li><li>(vii) in respect of (v) and (vi) above, their respective Affiliates that are parties to the Lock Up Agreement</li></ul>
<b>“WHT Deduction”</b>	has the meaning given to it in Clause 18.1.1
<b>“WHT Deduction Certificate”</b>	has the meaning given to it in Clause 18.1.3(ii)
<b>“WHT Determination Event”</b>	has the meaning given to it in Clause 18.3
<b>“WHT Proceedings”</b>	means the application issued by the Administrators on 22 December 2015, with HMRC as respondent, seeking directions of the High Court in relation to the application of section 874 of the Income Tax Act to payments of Statutory Interest (with case citations, in respect of the first instance decision, [2016] EWHC 2492 (Ch), and in respect of the Court of Appeal decision, [2017] EWCA Civ 2124)
<b>“WHT Repayment”</b>	has the meaning given to it in Clause 18.3.1
<b>“WHT Repayment Event”</b>	has the meaning given to it in Clause 18.3.2

### **Interpretation**

**1.2** In this Scheme, unless the context otherwise requires or unless otherwise expressly provided:

**1.2.1** references to any specified provision of this Scheme shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 42;

**1.2.2** 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;

**1.2.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;

- 1.2.4 all monetary amounts stated in this Scheme are in GBP unless expressly stated otherwise;
  - 1.2.5 a reference to “**GBP**” is to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
  - 1.2.6 references to specific Insolvency Rules shall include references to the equivalent provisions of the Insolvency Rules 1986 (if the context so allows);
  - 1.2.7 a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
  - 1.2.8 a reference to a “**law**” includes common or customary law and any constitution, decree, judgment, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;
  - 1.2.9 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
  - 1.2.10 headings are for ease of reference only and shall not affect the interpretation of this Scheme;
  - 1.2.11 the words “**include**” and “**including**” mean include and including without limitation (and “**includes**” shall be construed accordingly);
  - 1.2.12 the words “**prior to**” before a stated date shall be construed to mean “prior to and not including” the stated date; and
  - 1.2.13 references to Clauses, Parts and Schedules are to Clauses and Parts of and Schedules to this Scheme, and references to time are to London time.
- 1.3** In determining whether any action is “**reasonably practicable**” for the Company and/or the Administrators for the purposes of this Scheme, regard shall be had to:
- 1.3.1 the fact that the Company is in administration;
  - 1.3.2 the limitations on access to Books and Records of the Company and other resources; and
  - 1.3.3 the materiality of the likely impact of such action on the Company’s aim to manage costs appropriately and to deal with matters arising under this Scheme expeditiously.

## **PART II: EFFECTIVE DATE AND INITIAL SCHEME STEPS**

### **2 Scheme Effective Date**

- 2.1** This Scheme shall become effective on and from the Effective Date and shall be binding on the Company, the Administrators and the Scheme Creditors and their respective successors and assigns on and from the Effective Date.
- 2.2** Storm has consented to, and agreed to be bound by, the terms of this Scheme, on and from the Effective Date, pursuant to the terms of the Storm Undertaking.
- 2.3** The Shareholder has consented to this Scheme and, on and from the Effective Date, undertaken certain obligations in connection with this Scheme pursuant to the Shareholder Undertaking in consideration for being entitled to enforce each of the rights conferred on it pursuant to this Scheme.
- 2.4** The Company shall notify the Scheme Parties and the Shareholder of the occurrence of the Effective Date by:
- 2.4.1** immediately publishing a Notice on the Website confirming the occurrence of the Effective Date;
  - 2.4.2** promptly arranging for the publication of a notice in the following publications in relation to the same:
    - (i) the Financial Times (United Kingdom and International editions);
    - (ii) the London Gazette;
    - (iii) The Times Newspaper; and
    - (iv) the Wall Street Journal (US National Edition); and
  - 2.4.3** promptly arranging for the publication of the notice specified at Clause 2.4.2 to be published in such other publications (if any) as the Company may in its sole discretion consider appropriate in each of the countries in which Company branches operated, including the Specified Countries.
- 2.5** A Scheme Party's entitlement to Statutory Interest (if any) shall be quantified, provided for, paid and fully satisfied in accordance with the provisions of this Scheme only, such that Scheme Parties shall have no entitlement to Statutory Interest save as set out in this Scheme.

### **3 Scheme Outcome Statements**

- 3.1** As soon as is reasonably practicable, the Company shall:
- 3.1.1** determine the High Case Scheme Distribution;
  - 3.1.2** determine the Adequate Reserves in accordance with Clause 4;
  - 3.1.3** determine the Net Available Funds; and
  - 3.1.4** publish a Scheme Outcome Statement on the Website in accordance with Clause 3.2.

**3.2** Where:

**3.2.1** the Net Available Funds are the same as or greater than the High Case Scheme Distribution, the Company shall publish a Full SI Payment Statement on the Website;

**3.2.2** the Net Available Funds are the same as or greater than the amount required in order to distribute the Minimum Sum but less than the High Case Scheme Distribution, the Company shall publish a Part SI Payment Statement on the Website; and

**3.2.3** the Net Available Funds are insufficient to distribute the Minimum Sum, the Company shall publish an Insufficient Funds Statement on the Website.

**3.3** Subject to Clause 3.4, if at any time there is a change in the Net Available Funds, such that the Company determines (in its sole discretion) that an Issued Scheme Outcome Statement does not accurately reflect whether Scheme Distributions can be paid in full, in part or at all, in accordance with Clause 3.2, the Company shall:

**3.3.1** promptly upon becoming aware of the relevant change, publish on the Website a notice confirming (i) that the Company has determined that the Issued Scheme Outcome Statement is no longer valid and (ii) the reason for such conclusion (a "**Retraction Notice**"); and

**3.3.2** within five Business Days of the Company publishing a Retraction Notice, publish on the Website an updated Scheme Outcome Statement that reflects the relevant change in the Net Available Funds (a "**Revised Scheme Outcome Statement**").

**3.4** If an Issued Scheme Outcome Statement is a Part SI Payment Statement, the Company shall:

**3.4.1** make further Scheme Distributions as soon as is reasonably practicable following an increase in the Part SI Payment Rate, on account of a change in the Net Available Funds; and

**3.4.2** Notify the Scheme Parties of any changes to the Part SI Payment Rate on or before the payment of any further Scheme Distribution.

**4 Adequate Reserves**

**4.1** Subject to Clause 4.2, the Administrators shall as soon as is reasonably practicable and from time to time, in their sole discretion, set aside from the Available Funds such amounts as they consider necessary in order to adequately reserve for:

**4.1.1** the Retained Claims (other than Non-Provable Claims); and

**4.1.2** any other matters that the Administrators consider it necessary to reserve for in accordance with their statutory duties,

(each an "**Adequate Reserve**" and, together, the "**Adequate Reserves**").

**4.2** Subject to Clause 4.4, in respect of any Retained Claim that is a Disputed Claim as at 30 September 2018, the Administrators shall promptly take one of the actions specified in Clause 4.3.

- 4.3** In respect of a Disputed Claim referred to in Clause 4.2 that is:
- 4.3.1** an Undetermined Provable Claim, the Administrators shall:
- (i) either admit or reject such Undetermined Provable Claim (in whole or in part); and/or
  - (ii) issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of the Undetermined Provable Claim and/or the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Undetermined Provable Claim;
- 4.3.2** an Expense Claim or a Non-Provable Claim, the Administrators shall issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of:
- (i) the validity and quantum of such Claim;
  - (ii) in respect of an Expense Claim, the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Expense Claim; and
  - (iii) in respect of a Non-Provable Claim, the appropriate amount to be reserved for in respect of such Non-Provable Claim for the purposes of making any Subordinated Distribution.
- 4.4** The Company will not be required to take any of the actions referred to in Clause 4.3 in respect of a Disputed Claim that is, as at 30 September 2018, subject to extant proceedings before the Courts that seeks to determine the amount to be held by way of a reserve (including an Adequate Reserve) in respect of such Retained Claim.
- 4.5** Nothing in Clauses 4.2 or 4.3 shall delay the determination of Adequate Reserves under Clause 4.1 and/or the publication of a Scheme Outcome Statement unless a Disputed Claim would, if allowed in full, prevent the Company from publishing a Full SI Payment Statement or a Part SI Payment Statement.

## **5 Higher Rate Claims, 8% Interest Claims and Specified Interest Claims**

- 5.1** The amount of each Scheme Creditor's Higher Rate Claim(s), 8% Interest Claim(s) and/or Specified Interest Claim(s) (as relevant) for the purposes of this Scheme shall be:
- 5.1.1** if the Scheme Creditor has not notified the Company of a UCC Challenge prior to the Bar Date, the amounts stated in its UCC4 or, if it did not receive a UCC4, such amounts as have been communicated in writing to it by the Company prior to the Bar Date;
- 5.1.2** if the Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, such amounts as may be agreed between it and the Company in accordance with Clause 20.1 or as are determined by the High Court in accordance with Clause 20.2; and
- 5.1.3** in respect of any Retained Claim that is an Undetermined Provable Claim that is admitted by the Administrators after the Bar Date, such amount as may be communicated in writing to the holder of such Claim by the Company at the time of the relevant admittance by the Administrators.

### **PART III: SCHEME DISTRIBUTIONS TO 8% CREDITORS, SETTLEMENT CREDITORS AND SPECIFIED INTEREST CREDITORS**

#### **6 The 8% Payment**

**6.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the 8% Payment to:

**6.1.1** each 8% Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its 8% Interest Claims; and

**6.1.2** each Settlement Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Settlement Higher Rate Claims.

**6.2** In respect of the Admitted Claim to which it relates, the Company shall calculate the relevant 8% Payment applying the Relevant Principles and accordingly:

**6.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**6.2.2** the 8% Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 6.2.1) from the Administration Date until the date on which the amount of such Admitted Claim was paid in full by the Company; and

**6.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the 8% Interest Rate by 366.

#### **7 The Specified Interest Payment**

**7.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the Specified Interest Payment to each Specified Interest Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Specified Interest Claims.

**7.2** In respect of an Admitted Claim to which it relates, the Company shall calculate the Specified Interest Payment applying the Relevant Principles and accordingly:

**7.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**7.2.2** the relevant Specified Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 7.2.1 and, if relevant, the Compounding Principle) from the Administration Date (or, if later, the date on which the entitlement to interest arises under the relevant Specified Interest Contract) until the date(s) on which the amount of such Admitted Claim was paid in full by the Company; and

**7.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the Specified Interest Rate by 366.

**8 The Settlement Premium**

Subject to Clause 9 and the provisions of Part V, and in consideration of each Settlement Creditor not having exercised its right to Elect for the Certification Option, the Company shall pay the Settlement Premium to each Settlement Creditor.

**9 Timing of the 8% Payment, the Specified Interest Payment and the Settlement Premium**

**9.1** Subject to the provisions of Part V, the Company shall pay:

**9.1.1** the 8% Payment in accordance with Clause 6;

**9.1.2** the Specified Interest Payment in accordance with Clause 7; and

**9.1.3** the Settlement Premium in accordance with Clause 8,

within 20 Business Days of the publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).



## PART IV: SCHEME DISTRIBUTIONS TO CERTIFYING CREDITORS

### 10 Applicable CI Payments

Subject to Clause 15 and the provisions of Part V, the Company shall pay the Applicable CI Payment to each Certifying Creditor in full and final satisfaction of its rights to Statutory Interest in respect of each of its Certification Claims.

### 11 Determination of Applicable CI Payments

11.1 Subject to Clause 16, each Certifying Creditor shall provide the Company with a Certification prior to the Certification Deadline.

11.2 Subject to Clauses 11.4 and 15.3, where a Certifying Creditor has duly provided the Company with a Certification prior to the Certification Deadline, within 20 Business Days of the Effective Date (the "**Consultation Period**"), the Company shall Notify the Certifying Creditor that it has decided to take one of the following actions in respect of the relevant Certification:

11.2.1 accept the Certification;

11.2.2 reject the Certification;

11.2.3 propose a Counteroffer that contains a Counteroffer Sum that is lower than the Certified Sum; or

11.2.4 request that the Certifying Creditor provides additional information in support of its Certification (an "**Additional Information Request**"),

(each a "**Decision Notice**").

11.3 During the Consultation Period, the Company may engage in confidential, without prejudice, settlement discussions with a Certifying Creditor, with the intention of reaching agreement as regards the action to be taken by the Company pursuant to Clause 11.2. Subject to Clause 27, any communication or request for information between the Company and a Certifying Creditor during the Consultation Period, that is expressed as being made pursuant to this Clause 11.3, shall remain private and confidential, shall not constitute an Additional Information Request or Counteroffer for the purposes of Clauses 11.7 and 11.8, and shall not be disclosable to any other Scheme Party or the Adjudicator save that it will be disclosable by the Company to the Subordinated Creditor in accordance with Clause 12.

11.4 The Company and a Certifying Creditor may agree in writing to an extension to the Consultation Period of up to 15 Business Days.

11.5 In taking any of the actions set out in Clause 11.2, the Company shall have regard to, where applicable, the Relevant Principles.

11.6 If the Company accepts a Certifying Creditor's Certification in respect of a Certification Claim pursuant to Clause 11.2.1 or following an Additional Information Request pursuant to Clause 11.2.4, the Applicable CI Payment in respect of that Certification Claim shall be the Certified Sum.

11.7 If the Company proposes a Counteroffer pursuant to Clause 11.2.3, the relevant Certifying Creditor shall Notify the Company of its acceptance or rejection of such Counteroffer within

10 Business Days of the date on which it receives the Decision Notice containing the Counteroffer, and:

11.7.1 where the relevant Certifying Creditor accepts the Counteroffer or fails to respond within the 10 Business Day period specified in this Clause 11.7, the Applicable CI Payment shall be the Counteroffer Sum; or

11.7.2 where the relevant Certifying Creditor rejects the Counteroffer within the 10 Business Day period specified in this Clause 11.7, the Company shall automatically reject the Certification to which the Counteroffer relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice (which shall include details of the rejected Counteroffer) in accordance with Clause 11.2.2.

**11.8** If the Company makes an Additional Information Request pursuant to Clause 11.2.4, the Certifying Creditor to whom the Additional Information Request is made shall provide the relevant information to the Company within 10 Business Days of receipt of the Decision Notice containing the Additional Information Request and:

11.8.1 where the Certifying Creditor does not provide the information set out in the Additional Information Request within the 10 Business Day period specified in this Clause 11.8, the Company shall automatically reject the Certification to which the Additional Information Request relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.2; or

11.8.2 where the Certifying Creditor provides the requested additional information within the 10 Business Day period specified in this Clause 11.8, the Company shall, having considered such additional information, take one of the actions described in Clauses 11.2.1 to 11.2.3 within 10 Business Days of receiving the relevant additional information and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.1, 11.2.2 or 11.2.3 as applicable.

**11.9** If the Company rejects a Certification pursuant to Clause 11.2.2, 11.7.2 or 11.8 (a "**Rejected Certification**"), the relevant Certifying Creditor may elect to have the Rejected Certification determined by an Adjudicator pursuant to the provisions of Part VI (a "**DRP Election**").

**11.10** If a Certifying Creditor does not make a DRP Election in accordance with Clause 24.1.1, the Applicable CI Payment in respect of the Certification Claim to which the Rejected Certification relates shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

**11.11** For the avoidance of doubt, in no circumstances shall the Applicable CI Payment in respect of a Certification Claim:

11.11.1 exceed the Certified Sum; or

11.11.2 be less than the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim (subject to any deductions made pursuant to Clause 26.4 (if applicable)).

## **12 Consultation with the Subordinated Creditor**

**12.1** Notwithstanding any provision to the contrary, the Company shall consult with the Subordinated Creditor prior to issuing any Decision Notice pursuant to Clause 11.2; however, the final decision regarding which Decision Notice to issue pursuant to Clause 11.2 shall be made by the Company in its sole discretion.

**12.2** Without prejudice to the generality of Clause 12.1, in the event that the Company determines to make a Counteroffer pursuant to Clause 11.2.3, it shall first agree the terms of the Counteroffer with the Subordinated Creditor and, in the absence of such agreement, shall issue a Decision Notice containing such Counteroffer as the Subordinated Creditor recommends to the Company to propose to the relevant Certifying Creditor.

## **13 Failure to submit a Certification**

Where a Certifying Creditor fails to submit a Certification in respect of a Certification Claim that it holds by the Certification Deadline, the Applicable CI Payment in respect of the relevant Certification Claim shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

## **14 Forfeit of entitlement to Settlement Premium**

No Settlement Premium shall be payable in respect of any Certification Claim, including any Certification Claim in respect of which the relevant Certifying Creditor fails to submit a Certification by the Certification Deadline.

## **15 Timing of payment of Applicable CI Payment**

**15.1** Subject to the provisions of Part V and Part VI the Company shall pay the Applicable CI Payment to the relevant Certifying Creditor in respect of the Certification Claim to which it relates within 20 Business Days of the later of:

**15.1.1** the Applicable CI Payment in respect of such Certification Claim being determined in accordance with Clause 11 or 13; and

**15.1.2** publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).

**15.2** For the avoidance of doubt, the Company shall pay the Applicable CI Payment in respect of a Certification Claim in accordance with Clause 15.1, notwithstanding that, at the time of such payment, an Applicable CI Payment may not have been determined in respect of all of such Certifying Creditor's Certification Claims.

**15.3** Where a Certifying Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the determination of its Certification(s) pursuant to this Part IV shall be stayed, and any time periods set out in this Part IV shall be suspended, until such time as the UCC Challenge has been either agreed in accordance with Clause 20.1 or finally determined by the Courts in accordance with Clause 20.2 (as applicable).

## **16 Undetermined Certification Claims**

### **16.1** Where a Certifying Creditor holds an Undetermined Certification Claim:

**16.1.1** it shall provide an Initial Certification to the Company in respect of that Undetermined Certification Claim prior to the Certification Deadline; and

**16.1.2** to the extent the Undetermined Certification Claim is admitted for dividend (in whole or in part) by the Administrators, it shall update its Initial Certification to include all Certified Rates applicable to the Admitted Certification Claim up to the date of payment in full of the principal amount of the Admitted Certification Claim and a revised Certified Sum (a "**Final Certification**") to the Company in respect of the relevant Admitted Certification Claim within 10 Business Days of the Admitted Certification Claim having been paid in full by the Company (the "**Final Certification Deadline**").

### **16.2** The provisions of this Part IV and Part VI shall apply to any Initial Certification or Final Certification submitted in accordance with Clause 16.1, subject to the following modifications:

**16.2.1** subject to Clause 16.2.3, references to a Certification shall be construed to mean both the Initial Certification and the Final Certification;

**16.2.2** references to a Certification Claim shall be construed to mean the relevant Admitted Certification Claim;

**16.2.3** references in Clause 13 to a Certification shall be construed to mean an Initial Certification;

**16.2.4** an Initial Certification shall be prepared on the assumption that the relevant Undetermined Certification Claim is an Admitted Claim and was paid in full by the Company on the date of such Initial Certification; and

**16.2.5** determination of the Initial Certification pursuant to Clause 11.2.2 shall be stayed until such time as the company receives the Final Certification and all time periods specified in this Part IV will commence from that date.

### **16.3** Where a Certifying Creditor fails to submit a Final Certification by the Final Certification Deadline in accordance with Clause 16.1.2, its Initial Certification shall be deemed to be its Final Certification for the purposes of this Clause 16.

**PART V: GENERAL PROVISIONS APPLICABLE TO SCHEME DISTRIBUTIONS  
AND SUBORDINATED DISTRIBUTIONS**

**17 General**

- 17.1** Any Scheme Distribution or Subordinated Distribution payable by the Company pursuant to this Scheme shall be paid in GBP.
- 17.2** The Company shall not be required to pay any Scheme Distribution or Subordinated Distribution at any time when an Issued Scheme Outcome Statement is an Insufficient Funds Statement.
- 17.3** In calculating the amount of any Scheme Distribution pursuant to this Scheme, the Company shall treat any and all dividends paid in respect of Admitted Claims from time to time in the Administration as having discharged the component parts of such Admitted Claim (whether 8% Interest Claims, Higher Rate Claims and/or Specified Interest Claims) pro rata.
- 17.4** If at the time the Company makes a Scheme Distribution in accordance with this Scheme, the Issued Scheme Outcome Statement is:
- 17.4.1** a Full SI Payment Statement, the Scheme Distribution shall be paid in full; and
- 17.4.2** a Part SI Payment Statement, the Scheme Distribution shall be paid in part and rateably at the Part SI Payment Rate set out in the relevant Part SI Payment Statement.
- 17.5** The Company shall, from time to time following the publication of a Part SI Payment Statement, make such further payments of Scheme Distributions, subject to the terms of this Scheme, as it considers necessary to ensure that all Scheme Creditors receive Scheme Distributions rateably at the prevailing Part SI Payment Rate.
- 17.6** Where a Full SI Payment Statement or a Part SI Payment Statement is subject to a Retraction Notice, no Scheme Party shall have a Claim against the Company (or any other Scheme Party) in relation to or arising from any Scheme Distribution that was effected prior to the issuance of the Retraction Notice and will not be entitled to disturb or otherwise challenge the payment of such Scheme Distribution(s).
- 17.7** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distributions or Subordinated Distributions or Equity Distribution at any time when a Retraction Notice has been published and a Revised Scheme Outcome Statement has not been published in accordance with Clause 3.3.2.
- 17.8** Scheme Distributions shall rank equally between themselves and shall be paid rateably if not otherwise paid in full.
- 17.9** The Company shall be entitled to effect the payment of any Scheme Distribution to a Scheme Party in accordance with such Scheme Party's Settlement Instructions.

**18 Tax**

**18.1 Payments and Withholding Tax**

- 18.1.1** Subject to Clause 18.2 below, on making a Payment to any Scheme Party, the Company shall deduct from the Payment a sum representing United Kingdom

income tax at the basic rate in force for the year in which the Payment is made as if the Payment were a payment of yearly interest arising in the United Kingdom for the purposes of Section 874 of the Income Tax Act and Section 874(2) of the Income Tax Act required such deduction (a "**WHT Deduction**").

**18.1.2** For the purposes of this Clause 18, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.1.1 shall apply accordingly.

**18.1.3** Where the Company makes a WHT Deduction, the Company shall:

- (i) pay to HMRC the amount of the WHT Deduction in accordance with Chapter 15 of Part 15 of the Income Tax Act; and
- (ii) issue to the relevant Scheme Party, within 10 Business Days of the date of the payment in paragraph (i) above, a statement showing the gross amount of the Payment, the amount of the WHT Deduction and the actual amount paid to the Scheme Party (a "**WHT Deduction Certificate**").

## **18.2 Exceptions from WHT Deduction**

**18.2.1** Notwithstanding Clause 18.1:

- (i) if not less than seven Business Days prior to making a Payment to a Scheme Party, the Company has received a written direction from HMRC to the Company's satisfaction (a "**Direction**") that the Company may make that Payment (or any part thereof) to that Scheme Party without a WHT Deduction pursuant to an applicable double tax treaty or with a WHT Deduction at a reduced rate of deduction under an applicable double tax treaty, the Company shall make that Payment (or the relevant part thereof) to that Scheme Party without a WHT Deduction or with a WHT Deduction at a reduced rate of deduction, as the case may be, and in compliance with the Direction (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Payment paid to a Scheme Party prior to the receipt of such Direction with respect to that Scheme Party); or
- (ii) if not less than seven Business Days prior to making a payment of a Settlement Premium, the Company has received written confirmation from HMRC to the Company's satisfaction that the Settlement Premium does not constitute yearly interest for the purposes of Section 874 of the Income Tax Act and that it may be paid without withholding or deduction in respect of United Kingdom income tax (the "**Clearance**"), the Company shall pay that Settlement Premium without any deduction for or on account of United Kingdom income tax (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3 below) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Settlement Premium paid to a Scheme Party prior to the receipt of the Clearance).

**18.2.2** The Company shall, at a Scheme Party's written request and expense, provide that Scheme Party with such information and assistance as is reasonably requested by that Scheme Party to enable it (or any person deriving beneficial ownership of the

relevant Payment through it) to obtain a Direction or to obtain any available refund with respect to a WHT Deduction, provided that such request is made prior to the SSI Deadline and further provided that such provision of information or assistance is not materially disadvantageous to the Company, the Administrators or any other creditor (including a former creditor) of the Company, and would not require the disclosure of identifying information regarding other creditors (or former creditors) of the Company, in each case as determined by the Company.

### **18.3 WHT Repayments**

In the event that the Company makes a WHT Deduction as provided for under Clause 18.1 and either (i) it is finally determined as a consequence of the WHT Proceedings that the Payment in respect of which the WHT Deduction was made was not a payment of yearly interest for the purposes of Section 874 of the Income Tax Act; or (ii) the Company receives the Clearance to its satisfaction (each a **“WHT Determination Event”**):

**18.3.1** if and to the extent that the Company is entitled to claim from HMRC a repayment of the whole or any part of the WHT Deduction (and any interest or repayment supplement thereon) attributable to a Payment (a **“WHT Repayment”**) in circumstances where (i) the Scheme Party in question is not entitled to claim such WHT Repayment directly from HMRC; and (ii) that Scheme Party has not already received a refund or credit in respect of that WHT Deduction, the Company shall, at the Scheme Party’s written request and expense, use reasonable efforts to claim such WHT Repayment;

**18.3.2** if and to the extent that HMRC makes a WHT Repayment to the Company following the WHT Determination Event (a **“WHT Repayment Event”**), the Company shall pay to the Scheme Party to whom the Company paid the Payment from which the relevant WHT Deduction was made, within 20 Business Days of the relevant WHT Repayment Event, an amount equal to the WHT Repayment received from HMRC, provided that if HMRC subsequently seeks to recover all or any part of the WHT Repayment from the Company, the Scheme Party to whom the Company paid the WHT Repayment shall promptly reimburse the Company in respect of all or any part of the WHT Repayment recovered by HMRC from the Company upon receipt of a copy of HMRC’s notice seeking recovery;

**18.3.3** if HMRC does not make a WHT Repayment to the Company following the WHT Determination Event, there shall be no obligation on the Company to (i) pay or repay any amounts in respect of the WHT Deduction to any Scheme Party; or (ii) other than as provided in Clause 18.3.1 above, to recover any amount in respect of any WHT Deduction from HMRC; and

**18.3.4** following a WHT Determination Event, each Scheme Party shall provide the Company and/or HMRC with such information as the Company and/or HMRC may require in order to determine whether, or to what extent, HMRC shall make a WHT Repayment to the Company or to that Scheme Party.

### **18.4 Other Withholding Taxes**

**18.4.1** The Company shall withhold, deduct or retain any amount for or on account of Tax which is required by any applicable law (other than Section 874(2) of the Income Tax Act) to be withheld, deducted, retained or otherwise accounted for in respect of, or in connection with, any Payment made or treated as made as a result of the

implementation and operation of this Scheme and the Company shall account for the amount of such withholding, deduction or retention to the appropriate Tax Authority as may be required by applicable law, provide evidence reasonably requested by a Scheme Party that the relevant Tax has been withheld, deducted or retained and accounted for to the appropriate Tax Authority, and take such other steps as may be required by applicable law.

**18.4.2** For the purposes of Clause 18.4.1, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.4.1 shall apply accordingly.

**18.4.3** Except as permitted by this Clause 18 or required by any applicable law, the Company shall not withhold, deduct or retain any amount for or on account of Tax from any Payment.

### **18.5 No Compensation**

Except as provided in Clause 18.3 and without prejudice to any remedies available to Scheme Parties for Scheme Breach Claims, the Company shall be under no obligation to pay, repay or compensate any Scheme Party in respect of any WHT Deduction, or other deduction or withholding permitted under this Scheme, from any Payment.

### **18.6 Reporting**

The Company and the Administrators (acting in accordance with the Administrators' statutory duties) may make any disclosures or reports to any Tax Authority as such Tax Authority reasonably requests in respect of any matters which are the subject of, or arise as a result of the implementation and operation of, this Scheme.

### **18.7 Other Taxes**

Any stamp duty, stamp duty reserve tax or other transfer taxes, VAT or other Tax liabilities or costs (including any penalties and interest thereon) arising out of or in connection with any Payment shall be borne by the Scheme Party to whom such Payment is made, whether chargeable directly or primarily against or attributable directly or primarily to the Scheme Party or any other person.

## **19 Conditions to payment of Scheme Distributions and Subordinated Distributions**

**19.1** The Scheme Distributions are payable in respect of Admitted Claims that have been paid in full only.

**19.2** Notwithstanding any other term of this Scheme, no Scheme Distribution (or part of a Scheme Distribution, if relevant) shall be payable by the Company until 10 Business Days following the date on which the Provable Claim(s) to which such Scheme Distribution relates has/have been admitted by the Administrators.

**19.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution (as applicable) to a Scheme Party that has taken any action that is inconsistent with the releases, waivers and undertakings set out in this Scheme until such time that such action has been remedied by such Scheme Party to the Company's sole satisfaction.



- 19.4** Subject to Clause 19.5 and notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution to a Scheme Party until 15 Business Days following the date on which the Company receives to its sole satisfaction from such Scheme Party (i) Settlement Instructions and KYC Information or (ii) confirmation that the Settlement Instructions and KYC Information previously provided by it to the Company are still valid.
- 19.5** Any Settlement Instructions and KYC Information to be provided or confirmed to the Company by a Scheme Party pursuant to Clause 19.4, shall be provided to the Company as follows:
- 19.5.1** Settlement Instructions shall be provided through the Portal; and
- 19.5.2** KYC Information shall be provided by electronic mail to [compliancequeries@lbia-eu.com](mailto:compliancequeries@lbia-eu.com).
- 19.6** To the extent that a Scheme Party's Settlement Instructions specify that it is to receive payment of any Scheme Distribution or Subordinated Distribution by cheque:
- 19.6.1** the Company shall effect payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) by posting a cheque for the relevant amount by first class post to the address provided by such Scheme Party in its Settlement Instructions;
- 19.6.2** the date of payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) for the purposes of the Company satisfying its payment obligations within a specified time period pursuant to this Scheme shall be the date of posting, or leaving with, delivering to or collection by, the relevant postal service provider;
- 19.6.3** any such cheques that are not cashed by the SSI Deadline will be cancelled; and
- 19.6.4** without prejudice to Clause 19.6.2, and subject to Clause 19.6.3, the Company shall, within 20 Business Days of a request to do so by such Scheme Party (provided that such request is made prior to the SSI Deadline), cancel and reissue any uncashed cheque and effect payment of the relevant Scheme Distribution or Subordinated Distribution in accordance with Clause 19.6.1.

## **20 UCC Challenges**

- 20.1** Where a Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the Scheme Creditor and the Company shall negotiate in good faith in order to resolve the UCC Challenge by agreement.
- 20.2** If a UCC Challenge has not been resolved by agreement within 20 Business Days of the Effective Date, either the Company or the relevant Scheme Creditor shall be at liberty to commence Proceedings seeking the determination of the UCC Challenge by the High Court.
- 20.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution to any Scheme Creditor that has notified the Company of a UCC Challenge prior to the Bar Date, until such UCC Challenge has been finally resolved by agreement in accordance with Clause 20.1 or finally determined by the Courts (as applicable).

## **21 Unclaimed Scheme Distributions**

### **21.1** Upon the SSI Deadline:

**21.1.1** each Scheme Creditor shall be deemed to have irrevocably waived any right to receive an Unclaimed Scheme Distribution the amount of which is less than GBP 1,000,000 (a "**De Minimis Distribution**");

**21.1.2** the Company shall be deemed to have satisfied its obligation to pay such De Minimis Distribution to the relevant Scheme Creditor; and

**21.1.3** all De Minimis Distributions shall automatically form part of the Available Funds.

**21.2** To the extent that any Retained Unclaimed Scheme Distribution remains unpaid after the SSI Deadline, the Administrators shall, within 30 Business Days of the SSI Deadline, issue a Directions Application which seeks determination as to how the Company shall deal with such Retained Unclaimed Scheme Distribution (an "**Unclaimed Scheme Distribution Application**") and the Scheme Creditors hereby acknowledge that such determination may result in the rights of the relevant Scheme Creditor to a Retained Unclaimed Scheme Distribution being extinguished.

**21.3** Subject to Clause 21.4, the Company's and/or the Administrators' costs in respect of an Unclaimed Scheme Distribution Application (including in respect of legal fees) shall, unless ordered otherwise by the Courts, be borne in equal shares by the Scheme Creditors to whom the Retained Unclaimed Scheme Distribution(s) are payable as at the SSI Deadline, and shall be payable from such Retained Unclaimed Scheme Distributions, and to the extent such Retained Unclaimed Scheme Distribution are insufficient to meet the relevant costs, the relevant costs shall be paid as an Administration Expense.

**21.4** If, prior to receiving directions of the High Court in relation to an Unclaimed Scheme Distribution Application, the Company receives to its sole satisfaction, (i) KYC Information and/or (ii) Settlement Instructions (or confirmation of such information) that specify a method of payment other than cheque, from a Scheme Creditor to whom a Retained Unclaimed Scheme Distribution is payable (as relevant), the Company shall pay such Retained Unclaimed Scheme Distribution to such Scheme Creditor in accordance with Clause 19.4 less such proportional amount in respect of the Company's and/or the Administrators' costs (including legal fees) in respect of the Unclaimed Scheme Distribution Application as the Administrators may determine in their sole discretion (acting reasonably).

**21.5** Each Scheme Party undertakes and agrees to be bound by the directions of the High Court in relation to any Unclaimed Scheme Distribution Application.

## **22 Representations by Scheme Creditors**

In paying Scheme Distributions to Scheme Creditors, the Company and the Administrators shall be entitled to rely on the representations made by Scheme Creditors at the time of Voting or making their Election(s).

## **PART VI: DISPUTE RESOLUTION PROCEDURE**

### **23 The Adjudicator**

#### **23.1 Engagement**

23.1.1 In respect of each Appeal, the Company shall use reasonable endeavours to appoint one of (in the following order of priority):

- (i) Sir Bernard Rix;
- (ii) Michael Brindle QC; or
- (iii) Tim Howe QC

as the Adjudicator, to act in the capacity of an expert and not as an arbitrator.

23.1.2 In the event that none of the persons named in Clause 23.1.1 is able to accept an appointment as Adjudicator in respect of an Appeal, the Company and the Subordinated Creditor shall negotiate with each other in good faith to agree the name of an alternative suitably qualified, independent Adjudicator and the Company shall use reasonable endeavours to appoint such person as Adjudicator in respect of the relevant Appeal. Where agreement on the same cannot be reached as between the Company and the Subordinated Creditor, the Company shall appoint in its sole discretion an alternative former member of the England & Wales judiciary and/or English law qualified Queen's Counsel as Adjudicator.

23.1.3 Any person appointed as an Adjudicator shall be engaged by the Company on such reasonable terms as may be agreed by the Company, which terms shall be consistent with the provisions of this Part VI.

#### **23.2 Support Team**

23.2.1 The Adjudicator may engage the services of a Support Team if he deems that this is necessary to enable him to understand fully the type of funding asserted in the Appellant Certifying Creditor's Case and/or the Company's Case and/or any accompanying calculations.

23.2.2 The Support Team shall be engaged by the Adjudicator on such reasonable terms as may be agreed by the Adjudicator, in consultation with the Company.

23.2.3 The Support Team shall not be permitted to conduct their own factual investigations.

#### **23.3 Independence and conflicts of interest**

23.3.1 The Adjudicator must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

23.3.2 In the event the Adjudicator becomes aware that he has a Conflict of Interest in respect of an Appeal, the Adjudicator must as soon as reasonably practicable serve upon the Company a notice of resignation from the role of Adjudicator for the Appeal in respect of which the Conflict of Interest has been identified and ensure that all documentation relating to the relevant Appeal in his possession is destroyed or returned to the Company or, as applicable, the relevant serving Appellant Certifying Creditor.

**23.3.3** All members of the Support Team must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

**23.3.4** In the event the Adjudicator becomes aware that a member of the Support Team has a Conflict of Interest in respect of any Appeal, the Adjudicator must as soon as reasonably practicable inform the Company and the relevant Appellant Certifying Creditor of the Conflict of Interest, terminate the retainer of the relevant member of the Support Team in respect of the relevant Appeal only, and ensure that all documentation relating to the relevant Appeal in the possession of that member of the Support Team is destroyed or returned to the Adjudicator.

#### **23.4 Liability**

**23.4.1** Save in circumstances of fraud or bad faith, the Adjudicator shall not be liable to any Scheme Creditor for any act or omission arising from any Appeal, and Scheme Creditors shall not bring any claims against the Adjudicator in respect of any Appeal.

**23.4.2** The Adjudicator shall not provide details or copies of any documents or information arising from an Appeal to any person other than members of the Support Team, the Company, the Administrators and the relevant Appellant Certifying Creditor, unless he is under a legal obligation to provide oral or written evidence, documents or other details, including where he has been ordered to do so by a court of competent jurisdiction.

#### **23.5 Incapacity, resignation or death**

**23.5.1** If the Adjudicator is unable to make a determination in an ongoing Appeal due to incapacity, resignation or death:

- (i) the Adjudicator (if possible) and the Company shall use reasonable endeavours to arrange for documents provided to the Adjudicator to be destroyed, or returned to the Appellant Certifying Creditor or the Company, as the case may be;
- (ii) a replacement Adjudicator shall be appointed in accordance with Clause 23.1; and
- (iii) as soon as reasonably practicable following the appointment of the replacement Adjudicator:
  - (a) the Company shall provide the replacement Adjudicator with copies of any documentation served on the previous Adjudicator, the Company and/or the Appellant Certifying Creditor in accordance with Clause 24; and
  - (b) the replacement Adjudicator shall use reasonable endeavours to engage the same Support Team as retained by the previous Adjudicator, on substantially the same terms.

## **24 The Appeal**

### **24.1 Initiating an Appeal**

24.1.1 A Certifying Creditor who wishes to appeal against a Rejection Notice (an “**Appellant Certifying Creditor**”) must serve a completed Appeal Form on the Company within 10 Business Days of the Rejection Date to initiate an Appeal.

24.1.2 The Company shall use reasonable endeavours to appoint an Adjudicator in respect of the Appeal in accordance with Clause 23.1 as soon as reasonably practicable following service of the Appeal Form.

24.1.3 As soon as reasonably practicable following the appointment of the Adjudicator, the Company shall notify the Appellant Certifying Creditor of that appointment.

### **24.2 Appellant Certifying Creditor’s Case**

24.2.1 Within 10 Business Days of receiving notice of the Adjudicator’s appointment, the Appellant Certifying Creditor shall serve upon the Adjudicator and the Company copies of the following documents:

- (i) its Certification as lodged with the Company prior to the Certification Deadline;
- (ii) any information provided to the Company pursuant to an Additional Information Request;
- (iii) the Appeal Form; and
- (iv) any further information or documents, and/or written submissions upon which the Appellant Certifying Creditor wishes to rely to support the Certified Rate and Certified Sum as set out in the Certification,

(together, the “**Appellant Certifying Creditor’s Case**”).

24.2.2 If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Appellant Certifying Creditor’s Case should be served, the Appellant Certifying Creditor shall serve the Appellant Certifying Creditor’s Case on the Company alone.

### **24.3 The Company’s Case**

24.3.1 Within 20 Business Days of the service of the Appellant Certifying Creditor’s Case in accordance with Clause 24.2, the Company shall, following consultation with the Subordinated Creditor but in its sole discretion, serve upon the Adjudicator and the Appellant Certifying Creditor:

- (i) the Rejection Notice (and, where relevant, the Counteroffer) issued by the Administrators in respect of the Certification relevant to the Appeal;
- (ii) any further information, documents and/or written submissions upon which the Company wishes to rely to support:
  - (a) where the Company made a Counteroffer in accordance with Clause 11.2.3, the Counteroffer Sum proposed by the Company in its Counteroffer; or

- (b) where the Company made no Counteroffer in accordance with Clause 11.2.3, the Company's decision to reject the Appellant Certifying Creditor's Certification; and/or
  - (iii) any further information, documents and/or written submissions upon which the Company wishes to rely in response to the Appellant Certifying Creditor's Case,
- (together, the "**Company's Case**").

**24.3.2** If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Company's Case should be served, the Company shall serve the Company's Case on the Appellant Certifying Creditor alone.

#### **24.4 Increased Voting Rights Decisions**

Neither the Appellant Certifying Creditor's Case nor the Company's Case may include any reference to any Increased Voting Rights Decision.

#### **24.5 Oral hearing**

There shall be no oral hearing in respect of the Appeal.

#### **24.6 The Adjudicator's procedural discretion**

The Adjudicator may, having regard to the Relevant Principles where relevant:

- 24.6.1** vary the timetable provided for in this Clause 24 including, for the avoidance of doubt, the time period specified for service of the Adjudicator's determination in Clause 24.7.9, in respect of any Appeal;
- 24.6.2** require the Appellant Certifying Creditor to serve further information, documents and/or written submissions in order to clarify his understanding of the Appellant Certifying Creditor's Case; and/or
- 24.6.3** require the Company to serve further information, documents and/or written submissions in order to clarify his understanding of the Company's Case,

should the Adjudicator think it necessary to do so in order to determine the Appeal.

#### **24.7 Determination of the Appeal**

**24.7.1** The Adjudicator shall determine each Appeal by:

- (i) considering the Appellant Certifying Creditor's Case, the Company's Case, any information provided by the Support Team to assist the Adjudicator's understanding of the Appellant Certifying Creditor's Case and/or the Company's Case (as relevant) and any further information provided pursuant to a request under Clause 24.6.2 and/or 24.6.3; and
- (ii) having regard to, where applicable, the Relevant Principles.

**24.7.2** In making a determination in an Appeal, the Adjudicator shall not be permitted to have regard to any Increased Voting Rights Decision.

**24.7.3** In making a determination in an Appeal, the Adjudicator shall not be permitted to conduct his own factual investigations.

- 24.7.4** Save as provided in Clauses 24.7.6 and 24.7.7, upon making a determination in accordance with Clause 24.7.5, the Adjudicator shall either:
- (i) uphold the Appellant Certifying Creditor's Case in its entirety; or
  - (ii) uphold the Company's Case in its entirety.
- 24.7.5** The Adjudicator shall uphold the Company's Case if he is satisfied on the balance of probabilities (with the burden of proof resting on the Company) that the Certification of the Appellant Certifying Creditor has been made in bad faith, irrationally or other than in accordance with the Relevant Principles. If he is not so satisfied, the Adjudicator must uphold the Appellant Certifying Creditor's Case (save as provided in Clause 24.7.6).
- 24.7.6** Where the Adjudicator (including through his Support Team) identifies a mathematical or numerical error in either the Appellant Certifying Creditor's Case or the Company's Case, he shall consult with the Appellant Certifying Creditor and the Company and following such consultation he shall be permitted to correct such error and replace an erroneous number or rate in a calculation or document.
- 24.7.7** Where the Adjudicator (including through his Support Team) identifies that a Certified Sum stated in a Certification has been calculated in a manner that is inconsistent with Clause 5, the Adjudicator shall be permitted to correct such error and replace the Certified Sum with a figure calculated by applying the Certified Rate(s) stated in the Certification to the relevant Certification Claim (in accordance with Clause 5).
- 24.7.8** Where the Adjudicator:
- (i) upholds the Appellant Certifying Creditor's Case in its entirety, the Applicable CI Payment shall be the Certified Sum (corrected as necessary in accordance with Clause 24.7.6 or 24.7.7);
  - (ii) upholds the Company's Case in its entirety where the Company made a Counteroffer, the Applicable CI Payment shall be the Counteroffer Sum (corrected as necessary in accordance with Clause 24.7.6); or
  - (iii) upholds the Company's Case in its entirety where the Company did not make a Counteroffer, the Applicable CI Payment shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.
- 24.7.9** The Adjudicator shall use reasonable endeavours to serve his determination in writing on the Appellant Certifying Creditor and the Company as soon as practicable after service of the Company's Case on the Adjudicator (or the provision of further information pursuant to a request in accordance with Clause 24.6.2 and/or 24.6.3) and in any event within 20 Business Days of service of the Company's Case on the Adjudicator (or the provision of further information, if applicable).
- 24.7.10** The Adjudicator shall not provide the reasons behind his determination and the Appellant Certifying Creditor and the Company shall not request the Adjudicator to provide such reasons following his determination.

24.7.11 Where the Adjudicator's determination contains a clerical mistake, an accidental error or omission, a miscalculation or a mistake in the description of any item or matter, the Adjudicator may correct the determination within 20 Business Days of service of that determination. The Company and the Appellant Certifying Creditor shall notify the Adjudicator of any such errors, mistakes, omissions or miscalculations within 10 Business Days of service of the determination.

## 24.8 Exclusivity and finality

24.8.1 The process described in this Part VI of this Scheme shall be the exclusive method for the determination of the subject matter of any Appeal, and the Adjudicator shall have exclusive jurisdiction to make a determination on the subject matter of any Appeal.

24.8.2 Insofar as the law allows, the Adjudicator's determination is final and binding on the Company, the Administrators, the Appellant Certifying Creditor and all other Scheme Parties.

24.8.3 For the avoidance of doubt, insofar as the law allows, the Adjudicator's determination is final and binding regardless of whether it was served within 20 Business Days of service of the Company's Case.

## 25 Service of documents and other communications

### 25.1 Service of documents

25.1.1 As soon as practicable following the Adjudicator's appointment under Clause 23.1, the Adjudicator shall provide to the Company an email address for service of documents on, and any other communications with, the Adjudicator in relation to any Appeal (the "**Adjudicator's Address for Service**").

25.1.2 Upon receipt of the Adjudicator's Address for Service, the Company shall communicate:

- (i) the Adjudicator's Address for Service; and
- (ii) an email address for service of documents on, and any other communications with, the Company in relation to any Appeal (the "**Administrators' Address for Service**"),

to the Appellant Certifying Creditor.

25.1.3 Any document to be served upon each of the following in relation to any Appeal must be delivered in electronic format by email to:

- (i) in respect of the Adjudicator, the Adjudicator's Address for Service;
- (ii) in respect of the Company, the Administrators' Address for Service; and
- (iii) in respect of the Appellant Certifying Creditor, the address specified by the Appellant Certifying Creditor in its Certification.

### 25.2 Other communications

25.2.1 The Adjudicator, the Company and the Appellant Certifying Creditor shall ensure that any communications (including notices) in respect of an Appeal shall be copied to:



- (i) in the case of communications sent by the Appellant Certifying Creditor to the Adjudicator, the Administrators' Address for Service;
- (ii) in the case of communications sent by the Company to the Adjudicator, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification;
- (iii) in the case of communications sent by the Adjudicator to the Company, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification; and
- (iv) in the case of communications sent by the Adjudicator to the Appellant Certifying Creditor, the Administrators' Address for Service.

## **26 Adjudication Costs**

### **26.1** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

**26.1.1** the reasonable legal costs of the Appellant Certifying Creditor in relation to the Appeal; and

**26.1.2** the Company's and the Administrators' costs (including the Adjudication Costs) in relation to the Appeal,

shall be borne on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules) by the Company as an expense of the Administration.

### **26.2** If the Adjudicator upholds the Company's Case, the Appellant Certifying Creditor shall bear on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules):

**26.2.1** its own legal and professional costs in relation to the Appeal; and

**26.2.2** the Company's and the Administrators' reasonable legal costs (including the Adjudication Costs, which would otherwise be payable by the Company) in relation to the Appeal.

### **26.3** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

**26.3.1** the Appellant Certifying Creditor must serve upon the Company a statement of costs; and

**26.3.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of costs to be paid, the matter shall be referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable in respect of the Appeal (which determination shall be in his sole discretion, final and binding).

### **26.4** If the Adjudicator upholds the Company's Case:

**26.4.1** the Company must serve upon the Appellant Certifying Creditor a statement of its costs;

**26.4.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of the costs to be paid, the matter shall be

referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable (which determination shall be in his sole discretion, final and binding);

**26.4.3** the Company shall deduct the amount payable in respect of its costs and the Administrators' costs in relation to the Appeal from the Appellant Certifying Creditor's Scheme Distribution; and

**26.4.4** in the event that the amount payable in costs exceeds the Appellant Certifying Creditor's Scheme Distribution entitlement, the Appellant Certifying Creditor shall pay the balance to the Administrators within 15 Business Days of written demand by the Company.

## **27 Confidentiality**

**27.1** Each Appellant Certifying Creditor, the Company, the Adjudicator and the Support Team shall maintain the confidentiality of any Appeal and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person save for the Subordinated Creditor and/or the Operating Committee the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.1.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.1.2** the information is already in the public domain;

**27.1.3** the disclosure is necessary in connection with legal proceedings or is otherwise required by law or any regulatory body;

**27.1.4** the disclosure is required by current insolvency practice or to enable the Administrators properly to carry out the duties of their office;

**27.1.5** the disclosure is made by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;

**27.1.6** the Administrators consider it desirable in the course of carrying out the duties of their office to disclose the Adjudicator's determination in respect of an Appeal; or

**27.1.7** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality.

**27.2** Each of the Subordinated Creditor and each member of the Operating Committee shall maintain the confidentiality of any Appeal disclosed to it and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.2.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.2.2** the information is already in the public domain;

**27.2.3** the disclosure is necessary in connection with legal proceedings (including any Chapter 11 case, if relevant) or is otherwise required by law or any regulatory body;

- 27.2.4** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality; or
- 27.2.5** the disclosure is made to an Affiliate that has, prior to any such disclosure, entered into a confidentiality undertaking in favour, and to the satisfaction, of the relevant Appellant Certifying Creditor and/or the Company (as applicable).

## PART VII: SETTLEMENT OF PROCEEDINGS AND RELEASE OF CLAIMS

### 28 Settlement of Proceedings and release of Claims

**28.1** Without prejudice to a Scheme Party's right to receive Scheme Distributions and/or Subordinated Distributions (as applicable), and save in respect of any Retained Claim, with effect from the Effective Date, each Scheme Party hereby irrevocably and unconditionally:

**28.1.1** agrees to the Settled Proceedings being brought to an end;

**28.1.2** releases and waives in favour of the Company and each other Scheme Party (and, in respect of Clause 28.1.2(v) only, the Shareholder) all its rights, entitlements and interest in any Claims against the Company including:

- (i) subject to Clause 38, any Claims arising from, or in connection with, the subject matter of any of the Settled Proceedings;
- (ii) any Provable Claims;
- (iii) any Non-Provable Claims;
- (iv) any Expense Claims;
- (v) any Creditor Contributory Claim Rights;
- (vi) subject to Clause 18.3, any Claims arising from, or in connection with, any WHT Deduction; and
- (vii) any Shortfall Claims;

**28.1.3** releases and waives in favour of the Company, the Administrators and each other Scheme Party all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators prior to the Record Date;

**28.1.4** releases and waives in favour of the Administrators and the Released Third Parties all its rights, entitlements and interest in any Administration Claims to the extent that the Administrators or the Released Third Parties would have an indemnity or other similar claim against the Company arising in respect of such Administration Claim(s) (the "**Released Administration Claims**");

**28.1.5** releases and waives in favour of the Administrators, the Released Third Parties and the Locked Up Parties all its rights, entitlements and interest in any Released Scheme Implementation Claims; and

**28.1.6** undertakes and agrees not to commence, voluntarily aid, or in any way prosecute against the Company, the Administrators, the Released Third Parties, the Locked Up Parties or the Scheme Parties (as applicable) in any jurisdiction whatsoever, any Claim which seeks recovery or a determination in respect of or arising out of any Released Claim.

**28.2** The Company and the Administrators shall be authorised by the Scheme Parties to take such steps as they consider necessary or expedient to bring an end to the Settled Proceedings. The costs of any such actions taken by the Company or the Administrators in respect of the Settled Proceedings (excluding Other Proceedings) shall be payable as an Administration Expense.

- 28.3** The terms of any costs orders made by the Courts in respect of the Settled Proceedings prior to the Effective Date shall remain in full force and effect and remain binding on the parties to the Settled Proceedings. The costs of the parties to any Settled Proceedings (excluding Other Proceedings) in respect of which no costs order has been made by the Courts prior to the Effective Date shall be paid by the Company as Administration Expenses in such amounts as may be agreed between the Administrators and the relevant parties to such Settled Proceedings (subject to assessment on the standard basis (pursuant to the Civil Procedure Rules) if not otherwise agreed).
- 28.4** Provided that the Settled Proceedings (excluding Other Proceedings) are brought to an end in accordance with Clause 28.2 and the costs of the parties to the Settled Proceedings (excluding Other Proceedings) are paid by the Company in accordance with Clause 28.3, each Scheme Party hereby undertakes and agrees not to seek any further order for its costs in respect of the Settled Proceedings.
- 28.5** Save in respect of any Excluded Proceedings and any Scheme Breach Claims, each of the Scheme Parties, the Company and the Administrators hereby (i) irrevocably and unconditionally releases and waives, insofar as the law allows, all its rights of appeal in respect of any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable or exercised by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt) and each of the Scheme Parties, the Company and the Administrators hereby undertakes and agrees to be bound by any such first instance decision; and (ii) undertakes not to pursue any such rights of appeal.
- 28.6** No Scheme Party shall take any action that is inconsistent with the releases, waivers and undertakings set out in this Clause 28.
- 28.7** Each Scheme Party shall hold on trust for the benefit of the Company, the Administrators any Released Third Party and/or any Locked Up Party (as applicable) any recovery made against such person after the Effective Date, pursuant to any Released Claim in breach of this Clause 28, and the Scheme Party shall turn over any such recovery to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction. To the extent that the asset comprising the recovery cannot be held on trust by the Scheme Party, the Scheme Party shall pay to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) an amount equal to that recovery immediately upon demand being made by the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction and, to the extent such amount is paid to the Company, such amount shall form part of the Available Funds.
- 28.8** The Company and the Administrators undertake and agree not to make an Exclusion Application in respect of any Scheme Party's Admitted Claims which were admitted as at the Effective Date.

## **PART VIII: ADMINISTRATORS' POWERS AND REMUNERATION AND SUBORDINATED DISTRIBUTIONS**

### **29 Powers of the Company and the Administrators**

**29.1** The Company and the Administrators shall in their sole discretion (acting reasonably) deal with any Scheme Party or any group of them in such order as the Administrators see fit, provided that this does not conflict with the terms of this Scheme or the Administrators' statutory duties.

**29.2** In carrying out its functions under this Scheme, the Company shall (without prejudice to the terms of this Scheme) be empowered, to the extent that such powers are necessary for or reasonably incidental to the implementation of this Scheme, to:

**29.2.1** employ and remunerate its Advisers in connection with this Scheme; and

**29.2.2** delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Scheme, and from time to time to revoke any such delegation, provided that the Company shall be responsible for any act or omission of any such Delegate to the same extent as if the Company had itself exercised the relevant functions, rights, authorities, powers and discretions.

**29.3** The Administrators have undertaken and agreed to be bound by this Scheme as it applies to them and to execute or do, or to procure to be executed or done, all documents (including any deeds of release in favour of Third Parties), acts or things as may be necessary, or as the High Court may order necessary, to be executed or done by the Company or on its behalf to implement and to give effect to this Scheme (in all cases, without prejudice and in addition to the general powers afforded to the Administrators pursuant to Schedule 1 to the Insolvency Act).

**29.4** Each Scheme Party hereby authorises the Administrators to carry out all acts and exercise all discretions, authorities, powers and duties conferred upon the Company by this Scheme in order to facilitate its implementation.

**29.5** Each Scheme Party hereby irrevocably authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of that Scheme Party, with express power of delegation and substitution sign, execute, seal and deliver any documents in such form as the Company or the Administrators may deem appropriate on behalf of such Scheme Party and generally do any other act, matter or thing, that is, in each case in the reasonable opinion of the Company or the Administrators, desirable, necessary, ancillary or expedient in order to:

**29.5.1** bring an end to the Settled Proceedings;

**29.5.2** give effect to the release of Released Third Party Claims pursuant to Clauses 28.1.4 and 28.1.5;

**29.5.3** bring an end to any Proceedings brought in contravention of Clause 28.5; and

**29.5.4** subject to Clause 29.6 and without prejudice to the foregoing, facilitate the implementation of this Scheme on its terms,

in the same manner and as fully and effectually as that Scheme Party could have done.

- 29.6** Not less than three Business Days prior to exercising its or their powers pursuant to Clause 29.5.4, the Company or the Administrators (as applicable) shall send a Notice to the relevant Scheme Party that includes: (i) a statement of its intention to exercise such powers; (ii) a description of the relevant act, matter or thing it intends to do in their name or on their behalf; and (iii) a request that the relevant Scheme Party does the relevant act, matter or thing prior to the Company or the Administrators exercising its or their powers pursuant to Clause 29.5.4.
- 29.7** Each Scheme Party hereby ratifies any act whatsoever that the Company or the Administrators may do in their name or on their behalf by exercising its or their powers pursuant to Clause 29.5 and the costs of any such actions taken by the Company or the Administrators shall be payable as an Administration Expense.
- 29.8** The authority granted in Clause 29.5 shall be treated, for all purposes whatsoever and without limitation, as having been granted by each Scheme Party to the Company and the Administrators by deed.
- 29.9** All actions and determinations by the Company or the Administrators under this Scheme shall be made in good faith.
- 29.10** Subject to any applicable provision of the Insolvency Act, no Scheme Party shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, the Administrators or any Delegate, in pursuance of its functions or duties under this Scheme, or the exercise or non-exercise by the Company, the Administrators or any Delegate, in good faith, of any power or discretion conferred upon it for the purposes of this Scheme, and neither the Company, the Administrators nor any Delegate shall be liable for any Loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such Loss is attributable to the wilful default, fraud or dishonesty of the Company or to the wilful default, fraud or dishonesty of the Administrators or Delegate (as applicable).
- 29.11** The Administrators shall be entitled to claim their remuneration as an Administration Expense in relation to actions taken by them in respect of this Scheme.
- 29.12** The Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in this Scheme as agents for and on behalf of the Company and neither they, their firm, partners, 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 Scheme.
- 30 Retained Expense Claims**
- 30.1** The Administrators shall establish an Adequate Reserve in respect of a Retained Expense Claim upon the Company being Notified of such Retained Expense Claim.
- 30.2** No Scheme Party that holds a Retained Expense Claim shall be entitled to disturb or in any way challenge any payments (in whole or part) of any Scheme Distribution or Subordinated Distribution made by the Company prior to the Company receiving Notice of such Retained Expense Claim from the relevant Scheme Party.

### **31 The Storm Payment**

- 31.1** Subject to Clause 31.3 and the provisions of Part V, the Company shall pay the Storm Payment to Storm in full and final satisfaction of its rights to Statutory Interest in respect of its Admitted Claim.
- 31.2** The provisions of Part V shall be construed to apply to Storm as if it were a Scheme Creditor.
- 31.3** The Company shall pay the Storm Payment within the time period specified in relation to the payment of the 8% Payment, the Specified Interest Payment and the Settlement Premium pursuant to Clause 9.1.

### **32 The Subordinated Debt**

- 32.1** The Company shall not make any Subordinated Distributions prior to the Subordinated Debt Admittance Date.
- 32.2** On the Business Day following the earlier of:
- 32.2.1** the date falling 20 Business Days from the date on which a Full SI Payment Statement has been published and not withdrawn in accordance with Clause 3.3.1; and
  - 32.2.2** the day on which the Company makes the final payment which results in it having paid in full the 8% Payment, the Settlement Premium and the Specified Interest Payment to the Scheme Creditors in accordance with the provisions of Part III, and the Storm Payment to Storm in accordance with Clause 31,
- (the "**Subordinated Debt Admittance Date**"), the Administrators shall admit the Subordinated Principal.
- 32.3** The Administrators shall not be required to admit, on the Subordinated Debt Admittance Date, the part of the Subordinated Creditor's Provable Claim that relates to interest on the Subordinated Debt accrued prior to the Administration Date ("**Subordinated Interest**"), and Subordinated Interest shall be determined at a future time by the Administrators without prejudice to the Subordinated Principal admitted pursuant to Clause 32.1.
- 32.4** On the date that is 10 Business Days after the Subordinated Debt Admittance Date, the Company shall make payments to the Subordinated Creditor in respect of the Subordinated Principal and, to the extent it has been admitted by the Administrators prior to such date, any Subordinated Interest from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).
- 32.5** Following the date on which the Company has paid in full the Subordinated Principal and Subordinated Interest the Company shall pay to the Subordinated Creditor Statutory Interest on the Subordinated Principal and the Subordinated Interest at a rate to be determined at a future date (the "**Subordinated Debt SI Payment**") from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).



**32.6** Any Statutory Interest payable in respect of the Subordinated Debt (whether in respect of Subordinated Principal or Subordinated Interest) shall be calculated in accordance with the Relevant Principles.

### **33 Equity Distributions**

**33.1** The Company shall not make any Equity Distributions prior to the Subordinated Debt Admittance Date.

**33.2** Subject to Clause 33.1 and the relevant provisions of the Companies Act and Insolvency Act, the Company may make Equity Distributions at the Company's discretion.

### **34 Dissolution of the Creditors' Committee**

**34.1** With effect from the Subordinated Debt Admittance Date:

**34.1.1** the Company's existing Creditors' Committee shall be dissolved;

**34.1.2** thereafter, the Operating Committee shall be constituted in accordance with the Governance Protocol; and

**34.1.3** the Administrators' remuneration shall be approved by the Operating Committee in accordance with the Governance Protocol, without any recourse to the remaining creditors of the Company, except for Scheme Creditors that are members of the Operating Committee (if any).

## **PART IX: MISCELLANEOUS PROVISIONS**

### **35 Third Party rights and enforcement**

- 35.1** Save as expressly provided for in this Scheme and as identified in this Clause 35, nothing in this Scheme or the Explanatory Statement is intended to confer any rights on, or to be enforceable by, any Third Party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 35.2** The Administrators and Storm shall be entitled to enforce each of the terms of this Scheme as if they were a party to it.
- 35.3** Each of the Released Third Parties, the Locked Up Parties and the Shareholder shall be entitled to enforce the releases and undertakings expressed to be granted in their favour in this Scheme.
- 35.4** Any Adjudicator shall be entitled to enforce Clause 23.4.1.
- 35.5** The Company hereby undertakes to and agrees with each Scheme Party to take such actions as it considers to be reasonable and appropriate to bring any Shareholder Undertaking Claim.
- 35.6** In the event that the Company fails to take actions to bring a Shareholder Undertaking Claim within a reasonable period of such claim arising, the Company shall, if requested to do so by a Scheme Party, bring the relevant Shareholder Undertaking Claim provided that it has received to its satisfaction an indemnity from such Scheme Party in respect of the associated legal costs (including fees and disbursements of legal advisers and all costs associated with attending Proceedings).

### **36 Chapter 15**

To the extent it has not already done so prior to the Effective Date, the Company may file a petition for recognition of this Scheme under Chapter 15 of the US Bankruptcy Code.

### **37 Governing law and jurisdiction**

- 37.1** This Scheme shall be governed by, and construed in accordance with, English law and the Scheme Parties hereby severally agree that the courts of England shall (save as otherwise provided in the Dispute Resolution Procedure set out at Part VI of this Scheme) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with the Explanatory Statement or this Scheme, or the operation of this Scheme, and the Scheme Parties hereby severally submit to the exclusive jurisdiction of the courts of England for such purposes. The Scheme Parties also waive any objections to Proceedings in the courts of England that are based on the grounds of venue or that the Proceedings have been brought in an inconvenient forum.
- 37.2** Notwithstanding the provisions of Clause 37.1, the Company and the Administrators 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.
- 37.3** The US Bankruptcy Court shall have exclusive jurisdiction to hear and determine any dispute, suit, action or Proceeding (including any settlement thereof) which may arise out of or in connection with any Chapter 15 Order relating to the Company or its assets located within the territorial jurisdiction of the United States.

### **38 Duration of this Scheme**

- 38.1** Subject to Clause 38.3, the Scheme Parties, the Company and the Administrators hereby undertake in favour of each other not to take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)) have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion (acting by the Administrators), ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by this Scheme will be in no way adversely affected by a Liquidation Event.
- 38.2** If on the date falling 90 days prior to the expiry of the Administration, (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme have not been paid in full, the Administrators shall apply to Court for an order extending the period of the Administration.
- 38.3** The Administrators may initiate a Liquidation Event one Business Day prior to the expiry of the Administration.
- 38.4** If the Company shall become subject to a Liquidation Event, this Scheme shall not terminate and shall continue in full force and effect.
- 38.5** In the event of any inconsistency between the provisions of this Scheme and the Companies Act, the Insolvency Act or the Insolvency Rules or the FCA Rules as they apply to the Company following a Liquidation Event in accordance with Clause 38.1, for the purposes of this Scheme the provisions of this Scheme shall prevail to the extent that the law allows.

### **39 Limit on Company's obligations**

Notwithstanding any other provision of this Scheme, each Scheme Party hereby acknowledges and agrees that the Company's payment obligations in respect of the Scheme Distributions, Non-Provable Claims and the Subordinated Distributions shall be no greater than an amount equal to the value from time to time of the Surplus.

### **40 Partial invalidity**

If at any time any provision of this Scheme 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 Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

### **41 Notices**

#### **41.1 General provisions**

- 41.1.1** Subject to Clause 41.1.3, any Notice, document or other communication to be given, delivered or served pursuant to or in connection with this Scheme, except where this Scheme otherwise provides, shall be in writing and in English and shall be delivered in accordance with this Clause 41.

41.1.2 The non-receipt by any Scheme Party of any Notice, communication or document delivered or sent in accordance with this Clause 41, shall not affect the provisions of this Scheme or the validity of such Notice.

41.1.3 In the event of a conflict between this Clause 41 and Clause 25, insofar as they relate to the provisions of Part VI of this Scheme, Clause 25 shall prevail.

#### **41.2 Electronic mail addresses**

41.2.1 Subject to Clause 19.5, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme to the Company by electronic mail to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com).

41.2.2 Subject to Clause 41.2.3, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme, by the Company to a Scheme Party by electronic mail to:

- (i) the electronic mail address from which any Notice, document or communication under or in connection with this Scheme has been sent by or on behalf of that Scheme Party to the Company and/or the Administrators; or
- (ii) such other electronic mail address as the Scheme Party may Notify to the Company from time to time.

41.2.3 The Scheme Parties shall provide details of an electronic mail address and maintain such electronic mail account at their own risk and shall be responsible for informing the Company of any changes to the electronic mail address and/or providing an alternative electronic mail address (as appropriate).

#### **41.3 Notices by electronic mail**

Any Notice, document or communication given, delivered or served by electronic mail shall be deemed to have been received:

41.3.1 if delivered to the Company, at the time recorded on the response email that will be automatically generated by the Company's electronic mail system; or

41.3.2 otherwise at the time recorded on the computer of the person to whom the electronic mail is addressed,

provided that if such receipt occurs on a day which is not a Business Day or after 5.00 p.m. on any Business Day, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day.

#### **41.4 Notices by upload to the Website**

41.4.1 Any Notice, document or communication shall be deemed to be given, delivered or served (as applicable) by the Company to all Scheme Parties by the Company publishing such Notice, document or communication on the Website.

41.4.2 Any Notice, document or communication uploaded to the Website in accordance with Clause 41.4.1 shall state on its face a date and time of upload.

41.4.3 Any Notice, document or communication given, delivered or served by upload to the Website shall be deemed to have been received at the time of upload stated in such Notice, document or communication provided that if the date of upload stated

in such Notice, document or communication is not a Business Day or the time of upload stated in such Notice, document or communication is, or is after, 5.00 p.m. on any Business Day, such Notice, document or communication shall be deemed to have been received by Scheme Parties at 9.30 a.m. on the next Business Day.

#### **41.5 Authority to sign notices and documents**

In the case of a Notice, document or communication which is signed on behalf of a Scheme Party, neither the Company, the Administrators nor the Adjudicator (as applicable) shall be required to make any enquiry as to the authority of the signatory of that Notice, document or communication to sign such Notice, document or communication on behalf of such Scheme Party.

#### **42 Modifications**

**42.1** The Company may, at any hearing to sanction this Scheme, consent on behalf of the Scheme Parties to any modification of the Scheme or terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the interests of a Scheme Party or the Shareholder, then the Company shall not be entitled to provide such consent without the prior written consent of that Scheme Party or the Shareholder respectively.

**42.2** The Company shall inform the Scheme Parties, by publishing a Notice on the Website in accordance with Clause 41, of any modification of, addition to or condition imposed by the Courts on this Scheme approved in accordance with this Clause 42.

**42.3** Modifications, additions or conditions approved or imposed pursuant to this Clause 42 shall be binding on the Scheme Parties, the Company and the Administrators and this Scheme shall be amended accordingly.

**42.4** The Company shall be entitled, in its sole discretion, to amend the form of any Notice to be provided to the Scheme Parties under this Scheme provided that such modifications shall not adversely affect the rights of any class of Scheme Creditors as a whole.

#### **43 Extension and calculation of deadlines**

Subject to Clause 42.1, all or any of the deadlines laid down by this Scheme for the taking of any step by the Administrators or the Company or by any Scheme Party, save in respect of: (i) the Dispute Resolution Procedure; (ii) Clauses 9.1 and 15.1; and (iii) the Bar Date, may be postponed or extended for such period or periods as may be determined by the Company and Notified to the Scheme Parties in accordance with Clause 41.

#### **44 Conflict**

In the event of a conflict or inconsistency between the provisions of this Scheme, the Companies Act, the Insolvency Act, the Insolvency Rules and/or the FCA Rules, for the purposes of this Scheme, and to the extent such acts and/or rules permit, the provisions of this Scheme shall prevail.

**45 Modification of foreign law contracts**

Where this Scheme 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 and the Company and Scheme Parties will each take any necessary steps to ensure that such modifications are effective to the fullest extent possible under such governing law.

**46 FCA Notices**

Copies of the Practice Statement Letter, the Explanatory Statement and this Scheme have been sent to the FCA in accordance with Section 362 of FSMA.

**Schedule 1  
Appeal Form<sup>1</sup>**

Appeal Form

Capitalised terms used in this document shall have the meaning given to them in the scheme of arrangement between Lehman Brothers International (Europe) (in administration) and the Scheme Creditors (as defined therein), as sanctioned by the High Court on \_\_\_\_\_ 2018 (the "**Scheme**").

Name of Certifying Creditor: \_\_\_\_\_

Claim Reference to which the Certification relates: \_\_\_\_\_

Date of Certification being appealed: \_\_\_\_\_

Date of Rejection Notice: \_\_\_\_\_

The above-named Certifying Creditor hereby:

- (a) acknowledges that it has received a Rejection Notice from the Company;
- (b) confirms that it wishes to make a DRP Election pursuant to Clause 11.9 of the Scheme;
- (c) confirms that this Appeal Form has been served within 10 Business Days of the Rejection Date in accordance with Clause 24.1.1 of the Scheme; and
- (d) accepts that the Applicable CI Payment in respect of its Certification Claim shall be determined by an Adjudicator in accordance with the provisions of Part VI of the Scheme.

Signed:

\_\_\_\_\_

Name:

Position:

Dated:

\_\_\_\_\_

<sup>1</sup> This Appeal Form is to be served upon the Company in accordance with Clause 25.1.3(ii) of the Scheme.

## **Schedule 2 Governance Protocol**

This Governance Protocol summarises the guidelines for the formation and governance of the Operating Committee with respect to the Scheme and assisting with the management of the Administration.

In this Schedule 2 only, the following words and expressions shall have the following meanings:

<b>"Elliott Delegate"</b>	means any representative of Elliott Management Corporation appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"King Street Delegate"</b>	means any representative of King Street Capital Management, L.P. appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"LBHI Delegate"</b>	means any representative of LBHI appointed by the Subordinated Creditor as its delegate(s) from time to time;
<b>"LBHI2 Delegate"</b>	means the joint administrators of LBHI2 from time to time (or any one of them) and/or their representative, in each case appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"Subordinated Creditor Delegates"</b>	means the Elliott Delegate, the King Street Delegate, the LBHI Delegate and the LBHI2 Delegate as notified by the Subordinated Creditor to the Administrators from time to time
<b>"Unsecured Creditor Representative"</b>	means a Scheme Creditor whose Claim has not been paid or provided for by the Company, if any

### **1 Operating Committee**

- 1.1** With effect from the Subordinated Debt Admittance Date, a new, informal, oversight body called the Operating Committee shall be constituted in place of the Creditors' Committee. For the avoidance of any doubt, the Operating Committee is not a creditors' committee for the purposes of Rule 18 of the Insolvency Rules but it will have a similar purpose and function in the context of the Scheme.
- 1.2** The Administrators will manage the Administration in a manner consistent with the statutory objective. In performing their duties, the Administrators shall (among other things) take all reasonable steps in order to:



- 1.2.1 give effect to the Scheme;
  - 1.2.2 expedite the realisation of the Company's residual assets;
  - 1.2.3 finalise the Company's client money and trust estates;
  - 1.2.4 accelerate (where possible) the run-off of indemnities provided by the Company after the commencement of the Administration;
  - 1.2.5 adjudicate any unagreed creditor claims;
  - 1.2.6 manage distributions to stakeholders;
  - 1.2.7 wind-down operations of people, systems and data in an orderly manner; and
  - 1.2.8 comply with statutory formalities and regulatory requirements (including document retention and destruction).
- 1.3 The Operating Committee will assist the Administrators in performing their functions and act in accordance with the relevant guidelines (as summarised in this Governance Protocol) and the Scheme. In particular, the Operating Committee shall be empowered to:
- 1.3.1 consider and approve actions and decisions taken by the Administrators, where such approval is sought; and
  - 1.3.2 authorise the remuneration of the Administrators.
- 1.4 The Operating Committee will comprise a maximum of five members:
- 1.4.1 one Elliott Delegate;
  - 1.4.2 one King Street Delegate;
  - 1.4.3 one LBHI Delegate; and
  - 1.4.4 one LBHI2 Delegate, (as the Subordinated Creditor Delegates); and
  - 1.4.5 at the Administrators' election, one Unsecured Creditor Representative.
- (each an "**OC Member**" and together the "**OC Members**").
- 1.5 The Subordinated Creditor Delegates will not be entitled to payment of their (or their representatives') fees or expenses in attending meetings or otherwise in respect of their membership of the Operating Committee.
- 1.6 The Unsecured Creditor Representative shall be entitled to be reimbursed for reasonable travel expenses directly incurred by the Unsecured Creditor Representative or its representative in attending meetings of the Operating Committee (but not, for the avoidance of doubt, the fees or expenses of the Unsecured Creditor Representative's advisers).
- 1.7 The Operating Committee shall remain in effect until the Company exits administration.

## 2 Meetings, voting etc.

- 2.1 Subject to appropriate confidentiality arrangements being put in place, meetings of the Operating Committee shall be called for the participation of the Subordinated Creditor Delegates on a monthly basis to discuss (as applicable) the following:
- 2.1.1 a report of receipts and payments;

- 2.1.2 an update on the position of unsecured claims, including:
    - (i) any new Claims notified,
    - (ii) Certifications;
    - (iii) the resolution of disputes through the adjudication process provided by the Scheme; and
    - (iv) reserving for Claims;
  - 2.1.3 an update on the realisation of assets;
  - 2.1.4 an update on the run-off of priority claims and indemnities;
  - 2.1.5 an update on ongoing litigation and settlement;
  - 2.1.6 a report on progress of matters relating to the Scheme;
  - 2.1.7 an update on anticipated future distributions to the Subordinated Creditor;
  - 2.1.8 a qualitative update in respect of other matters e.g. budgeting and staffing; and
  - 2.1.9 the strategy for ending the Administration.
- 2.2** The following will be permitted to attend meetings of the Operating Committee:
- 2.2.1 the Administrators, one of whom (or a person appointed by them) will act as chairperson;
  - 2.2.2 each OC Member;
  - 2.2.3 each OC Member's legal advisors;
  - 2.2.4 the FCA where relevant and for so long as the Company remains FCA regulated and where the FCA wishes to attend as an observer at a meeting; and
  - 2.2.5 a fee advisor, to be appointed by the Administrators, with the agreement of the Operating Committee.
- 2.3** In respect of all meetings of the Operating Committee:
- 2.3.1 if voting is necessary:
    - (i) each OC Member has one vote; and
    - (ii) a resolution is passed when a majority of the OC Members attending, or represented at, the meeting have voted in favour of it;
  - 2.3.2 meetings may take place in person or by phone. In respect of meetings held by phone, the Administrators shall make appropriate arrangements to:
    - (i) verify the identity of those attending the meeting; and
    - (ii) (enable those attending the meeting to exercise their rights to speak or vote;
  - 2.3.3 physical meetings shall take place every six months (unless agreed otherwise between the Administrators and the Subordinated Creditor Delegates) at a venue to be chosen by the Administrators. In respect of all physical meetings, notice of the date and venue shall be provided to each OC Member at least 5 Business Days in advance of the relevant meeting;

**2.3.4** meetings may be called on 5 Business Days' notice if so requested by at least two OC Members; and

**2.3.5** a quorum of at least two Subordinated Creditor Delegates must be present at each meeting, one of whom must be an Elliott Delegate or a King Street Delegate and one of whom must be an LBHI Delegate or an LBHI2 Delegate.

**2.4** In the event that an Unsecured Creditor Representative is appointed, the Administrators and the Subordinated Creditor Delegates will agree the information to be provided to the Unsecured Creditor Representative in order to enable it to meaningfully participate in the meeting (or part thereof).

### **3 Amendment or waiver**

Any term of this Governance Protocol may be amended or waived only with the written consent of the Subordinated Creditor and the Company.

### **4 Disputes**

**4.1** The Administrators and the Operating Committee shall negotiate in good faith in order to resolve any disputes between them in relation to the matters referred to above.

**4.2** If it is not possible for the Administrators to reach agreement with the Subordinated Creditor Delegates as regards actions proposed by the Administrators, save where expressly agreed otherwise (including under the terms of the Scheme), the Administrators shall not be bound to follow a course of action directed by the Subordinated Creditor Delegates, where they consider such a direction to be contrary to their statutory duties.

**4.3** In the event that the Operating Committee refuses to authorise the Administrators' remuneration, the Administrators shall be entitled to have recourse to the courts as provided for by Rule 18 of the Insolvency Rules or pursuant to paragraph 63 of Schedule B1 to the Insolvency Act.

**Schedule 3**  
**Shareholder Undertaking**

Dated [●] 2018

LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

## DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP

**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT (the "**Shareholder**") acting by its joint administrators Gillian Eleanor Bruce, Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell and Julian Guy Parr, each of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**LBH12 Administrators**");

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the "**Company**") acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**LBIE Administrators**"); and
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the "**High Court**").

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 with certain of its creditors (the "**Scheme Creditors**") in the terms set out in Appendix 1 to this Deed.
- (B) The Scheme Creditors are creditors with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate payments to Scheme Creditors in full and final settlement of their rights to Statutory Interest which has accrued on their Admitted Claims during the Administration. The Scheme also provides the basis on which the Subordinated Creditor is to be paid Subordinated Distributions.
- (C) The Shareholder is the sole shareholder of the Company.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

References in this Deed to the "**Scheme**" or the "**Scheme Document**" are to a scheme of arrangement in the terms set out in Appendix 1 to this Deed with or subject to any modification approved or imposed pursuant to clause 42.1 of the terms set out in Appendix 1 to this Deed.

**This Deed witnesses** and it is hereby declared as follows:

- 1 From and with effect from the Effective Date, the Shareholder hereby irrevocably:
- 1.1 consents to the Scheme;
- 1.2 acknowledges that the Company may make Equity Distributions at the Company's discretion, however, no Equity Distribution will be made prior to the Subordinated Debt

Admittance Date or otherwise than in accordance with the relevant provisions of the Companies Act and Insolvency Act;

**1.3** in consideration of the Scheme being implemented in accordance with its terms, agrees and undertakes that it shall not:

**1.3.1** take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions; and (ii) any other payments in respect of Statutory Interest contemplated by the Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)), have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion, ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by the Scheme will be in no way adversely affected by a Liquidation Event;

**1.3.2** seek to disturb or otherwise challenge:

- (i) any Decision Notice, the Company's Case or any decision made by the Adjudicator in respect of a Certification;
- (ii) any Scheme Outcome Statement;
- (iii) any petition for recognition of the Scheme under Chapter 15 of the US Bankruptcy Code;
- (iv) the Company's determination of the Available Funds, the Net Available Funds, the High Case Scheme Distribution or the Adequate Reserves;
- (v) the Settled Proceedings being brought to an end;
- (vi) the payment of costs in relation to the Settled Proceedings, pursuant to the terms of the Scheme;
- (vii) the payment (in whole or in part) of any Scheme Distribution;
- (viii) the payment (in whole or in part) of any Subordinated Distribution;
- (ix) any payment of Tax in relation to a Scheme Distribution or a Subordinated Distribution;
- (x) the release and waiver of the Released Claims,  
in each case, made or given in accordance with the terms of the Scheme;
- (xi) insofar as the law allows, any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt but excluding any Claim arising out of a breach of this Deed); or
- (xii) without prejudice to the foregoing, the validity of any act done or omitted to be done in good faith by the Company, the LBIE Administrators or any Delegate in pursuance of its or their powers, functions or duties under the Scheme; and

**1.4** unconditionally releases and waives:

- 1.4.1 all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators for dividend prior to the Record Date; and
- 1.4.2 any Released Third Party Claims.
- 2** From and with effect from the Effective Date, the Company undertakes to the Shareholder to implement the Scheme in accordance with its terms (as amended from time to time).
- 3** The LBHI2 Administrators have signed this Deed as agents for and on behalf of the Shareholder, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Shareholder in respect of any failure by the Shareholder 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 4** The LBIE Administrators have signed this Deed as agents for and on behalf of the Company, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Company in respect of any failure by 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 5** The exclusions of liability set out in Clauses 3 and 4 above shall arise and continue notwithstanding the termination of the agency of the LBHI2 Administrators and the LBIE Administrators respectively 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.
- 6** If requested by the Company in writing before the earlier of: (a) the conclusion of the administration of the Shareholder; (b) the Shareholder being placed into liquidation; and (c) the expiry of twelve months from the Effective Date, the Shareholder (acting by the LBHI2 Administrators) shall (at the expense of the Company) enter into documents or agreements necessary to give effect to the terms of this Deed, provided that any such documents or agreements: (i) shall be prepared by the Company or its advisers at the Company's expense and all reasonable legal and other external costs of the Shareholder and the LBHI2 Administrators shall be payable as an Administration Expense; (ii) do not impose any liabilities on the Shareholder or the LBHI2 Administrators; (iii) do not require the Shareholder or the LBHI2 Administrators to commence or continue or be joined as any party to any Proceedings; (iv) do not require the LBHI2 Administrators to be made a separate party thereto; and (v) contain an exclusion of the LBHI2 Administrators' liability on terms substantially similar to the exclusion terms set out in Clauses 3 and 4 above.
- 7** No party may assign, grant any security over, hold on trust or otherwise transfer the benefit of the whole or any part of this Deed.
- 8** The consent and undertakings set out in this Deed are given strictly on the basis of the terms of this Deed and without prejudice to the rights of the parties otherwise.



- 9** No variation of this Deed or any waiver of any term of this Deed shall be effective unless in writing and signed by or on behalf of the Shareholder and the Company.
- 10** The terms of this Deed shall remain in full force and effect if the Company makes minor or procedural modifications to the operation of the Scheme after the Effective Date, for the purposes of the implementation of the Scheme, provided that such modifications do not adversely affect the rights of the Shareholder.
- 11** This Deed together with any documents or agreements expressly referred to in this Deed or entered into by the Shareholder in connection with it after the Effective Date in accordance with Clause 6 represents the entire understanding and constitutes the whole agreement in relation to its subject matter and supersedes any previous agreement or understanding, whether oral or in writing, between the parties with respect to such subject matter and, without prejudice to the generality of the foregoing, excludes any express or implied representation, warranty, condition or other undertaking or assurance implied at law or by custom, usage or course of dealing.
- 12** Clauses 1.2 (*Definitions and interpretation*), 41 (*Notices*) and 44 (*Conflict*) of the Scheme Document are incorporated *mutatis mutandis* in this Deed, with references to "this Scheme" being understood to refer to this Deed.
- 13** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the LBHI2 Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives and (ii) the LBIE Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 14** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.
- 15** Nothing in this Deed is intended or shall be deemed to waive or release any right and/or entitlement of the Shareholder:
- 15.1** subject to Clause 1.2 above, to receive any Equity Distribution;
- 15.2** to exercise set-off, defend or make a counterclaim in respect of any Contributory Claim;
- 15.3** in respect of any Claim arising out of a breach of this Deed; and
- 15.4** to claim for costs arising out of future litigation in respect of the matters referred to in Clauses 15.1 to 15.3 above.
- 16** Nothing in this Deed is intended to or shall be deemed to constitute any submission by the Shareholder to the jurisdiction of the US Bankruptcy Court.
- 17** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.

**In witness whereof** this Deed has been delivered on the date first stated above.

## **Appendix 1**

### **Scheme Document**

**The Shareholder**

SIGNED as a DEED by  
**LB HOLDINGS INTERMEDIATE 2 LIMITED**  
**(IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_]   
Joint administrator acting as agent for and on behalf  
of LB Holdings Intermediate 2 Limited (in  
administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**The Company**

SIGNED as a DEED by  
**LEHMAN BROTHERS INTERNATIONAL**  
**(EUROPE) (IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_]   
Joint administrator acting as agent for and on behalf  
of Lehman Brothers International (Europe) (in  
administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**Schedule 4**  
**Storm Undertaking**

Dated [●] 2018

STORM FUNDING LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP

**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **STORM FUNDING LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02682306 whose registered address is 7 More London Riverside, London SE1 2RT (the "**Grantor**") acting by its joint administrators Dan Schwarzmann, Anthony Victor Lomas, Steven Anthony Pearson, and Julian Guy Parr, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**Storm Administrators**");

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the "**Company**") acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**Administrators**");
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the "**High Court**"); and
- (4) **THE SCHEME PARTIES** as defined in the Scheme Document.

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 (the "**Scheme**") with certain of its creditors (the "**Scheme Creditors**") substantially in the terms set out in Appendix 1 of this Deed (the "**Scheme Document**").
- (B) The Scheme Creditors are persons with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate Scheme Distributions in full and final settlement of the relevant recipients' rights to Statutory Interest which has accrued on their Admitted Claims during the Administration.
- (C) The Grantor is Storm, as such term is defined in the Scheme Document.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

**This Deed witnesses** and it is hereby declared as follows:

- 1 From and with effect from the Effective Date, the Grantor hereby irrevocably:
- 1.1 consents to the Scheme;
- 1.2 agrees and undertakes that it shall be bound by the Scheme and each of the waivers, releases and restrictions expressed to apply to Storm under the Scheme, and shall perform each of the obligations expressed to apply to Storm under the Scheme;

- 1.3** authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of the Grantor, with express power of delegation and substitution, sign, execute, seal and deliver any documents on behalf of the Grantor that are in the reasonable opinion of the Company or the Administrators desirable or necessary in order to facilitate the implementation of the Scheme and generally to do any other act, matter or thing which the Company or the Administrators shall consider ancillary or expedient for such purposes or any of the acts authorised by this power of attorney in the same manner and as fully and effectually as the Grantor could have done;
- 1.4** ratifies any act whatsoever that the Company or the Administrators may do in the name or on behalf of the Grantor by exercising its powers pursuant to paragraph 1.3 above; and
- 1.5** agrees that the costs of any actions taken by the Company or the Administrators pursuant to paragraph 1.3 above shall be payable as an Administration Expense.
- 2** The Storm Administrators have signed this Deed as agents for and on behalf of the Grantor, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken (including representations given) by the Grantor or in respect of any failure by the Grantor 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 3** The exclusions of liability set out in paragraph 2 above shall arise and continue notwithstanding the termination of the agency of the Storm 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.
- 4** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the Storm Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives; (ii) the Administrators; and (iii) the Released Parties shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 5** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.
- 6** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.

**In witness whereof** this Deed has been delivered on the date first stated above.



## **Appendix 1**

### **Scheme Document**

**The Grantor**

SIGNED as a DEED by **STORM FUNDING LIMITED**  
**(IN ADMINISTRATION)**

acting by:

[\_\_\_\_\_]

Joint administrator acting as agent for and on behalf  
of Storm Funding Limited (in administration) without  
personal liability

in the presence of

Name:

Address:

Occupation:

**Exhibit C**

**Explanatory Statement for Scheme of Arrangement**

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

If you are in any doubt as to the action you should take, you should consult your professional adviser without delay. Further copies of this Explanatory Statement can be downloaded from the Website at <https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html> or may be obtained from the Company by emailing [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by writing to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ Attention: Rebecca Browne.

In the event that you have assigned, sold or otherwise transferred your interest (or any part thereof) in your Provable Claims, you are requested to forward a copy of this Explanatory Statement to the person or persons to whom you have assigned, sold or otherwise transferred such interest. If you intend to assign, sell or otherwise transfer your interest (or any part thereof) in your Provable Claims, you are requested to forward a copy of this Explanatory Statement to the person or persons to whom you intend to assign, sell or otherwise transfer such interest.

This Explanatory Statement is for the attention of Scheme Creditors. If you do not believe that you are a Scheme Creditor, you do not need to take any further action, however you will not be entitled to receive any dividends in the Administration or any distributions made pursuant to the Scheme and you will be prevented from proving for any Provable Claim after the Effective Date.

Unless stated otherwise, defined terms used in this Explanatory Statement have the meanings given to them in Appendix 1 (*Definitions and interpretation*) of this Explanatory Statement.

Proposal in relation to a

## SCHEME OF ARRANGEMENT

Pursuant to Part 26 of the Companies Act 2006

between

LEHMAN BROTHERS INTERNATIONAL (EUROPE) (in administration)

and its

## SCHEME CREDITORS

(as defined in the Scheme Document)

---

Scheme Meetings of Scheme Creditors of the above-named company to consider and, if thought fit, agree to the Scheme, will be held from 4.00 pm (London time) on 5 June 2018 at Linklaters LLP, One Silk Street, London EC2Y 8HQ, UK as set out in the Notice of Scheme Meetings at Appendix 3 (*Notice of Scheme Meetings*) of this Explanatory Statement.

The actions you should take are set out in paragraph 28 (*Actions to be taken by Scheme Creditors*) of Part I (*Letter from the Administrators*) of this Explanatory Statement. You are requested to Vote at the Scheme Meetings in accordance with the instructions and notes contained herein.

Scheme Creditors are requested to Vote on the Scheme whether or not they intend to attend the Scheme Meetings. If you have an Admitted Claim and wish to appoint the Chairman to Vote on your behalf at the Scheme Meetings, you should complete and submit a Form of Proxy by making the appropriate selections via the Portal. If you: (i) have an Admitted Claim and wish to appoint the Chairman or another person to attend the Scheme Meetings and Vote on your behalf; or (ii) have an Undetermined Provable Claim and wish to appoint the Chairman or another person to attend the Scheme Meetings and Vote on your behalf, you may do so by submitting a hard copy Form of Proxy in accordance with the instructions and notes contained therein. Hard copy Forms of Proxy: (i) may be downloaded from the Portal if you have an Admitted Claim; (ii) will be appended to your Voting Rights Letter if you have an Undetermined Provable Claim; or (iii) can otherwise be obtained

from the Company by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by pre-paid first-class post or air mail with delivery receipt to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, for the attention of Rebecca Browne. If you believe you have a Provable Claim but have not yet submitted a proof of debt, you are urged to do so as soon as possible. If you have not submitted a proof of debt by the Record Date you will not be able to Vote at the Scheme Meetings.

Hard copy Forms of Proxy may be submitted to the Company by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by pre-paid first-class post or air mail with delivery receipt to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, for the attention of Rebecca Browne.

Forms of Proxy should be submitted as soon as possible and, in any event, so as to be received by the Company no later than 5.00 pm (London time) on 4 June 2018. Hard copy Forms of Proxy not so received may be handed to the Chairman at the Scheme Meetings.

Scheme Creditors may attend and Vote in person at the relevant Scheme Meetings. If a Scheme Creditor is a company or corporation and wishes to attend the Scheme Meeting(s) and Vote in person, it must appoint an individual as its representative at the relevant Scheme Meetings and that representative must produce at the Scheme Meeting(s) an appropriately certified copy of the resolution of directors or other governing body of the company or corporation evidencing that he or she is authorised to act as its representative at the Scheme Meeting(s).

In the event that the Scheme is approved by Scheme Creditors, a hearing before the High Court is necessary in order to sanction the Scheme. All Scheme Creditors are entitled to attend the High Court hearing in person or through counsel to support or oppose the sanctioning of the Scheme. It is expected that the High Court hearing will be held on or around 13 June 2018.

This Explanatory Statement has been prepared solely in connection with the proposed Scheme. Nothing in this Explanatory Statement or any other document issued with or appended to it should be relied on for any other purpose.

**Legal Advisers to the Company and the Administrators:**

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ

**Administrators of the Company:**

Mr. Russell Downs  
PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT

Mr. Anthony Victor Lomas  
PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT

Mr. Steven Anthony Pearson  
PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT

Mr. Julian Guy Parr  
PricewaterhouseCoopers LLP  
7 More London Riverside  
London  
SE1 2RT

## Important Notice to Scheme Creditors

This Explanatory Statement has been prepared in connection with the proposed Scheme between the Company and its Scheme Creditors.

The information contained in this Explanatory Statement has been prepared by the Company and the Administrators, based upon information available to them.

The statements contained herein are made as at the date of this Explanatory Statement, unless some other time is specified in relation to them, and provision of this Explanatory Statement shall not give rise to any implication that there has been no change in the facts set forth herein prior to the date of this Explanatory Statement.

Certain of the statements in this Explanatory Statement are forward-looking statements with respect to the outcome of the Scheme and certain aspects of the Administration. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as “anticipate”, “target”, “expect”, “estimate”, “intend”, “plan”, “goal”, “believe”, “will”, “may”, “should”, “would”, “could” or other words of similar meaning. These statements are based on numerous assumptions and assessments by the Administrators in light of their experience and their perception of expected future developments and other factors which they believe appropriate. By their nature, forward-looking statements involve risk and uncertainty, and the factors described in the context of such forward-looking statements in this Explanatory Statement could cause actual results and developments to differ materially from those expressed in or otherwise implied by such forward-looking statements. You should review carefully paragraph 13 (*Risk Factors*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement for a more complete discussion of the risks associated with such statements, the Scheme and certain aspects of the Administration. Should one or more of these risks or uncertainties materialise, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein. The Administrators do not assume any obligation to update or correct or revise any forward-looking statements contained in this Explanatory Statement to reflect any change of expectations with respect thereto or any change in event, situation or circumstances on which any such forward-looking statement was based.

Nothing contained herein shall constitute any admission of any fact or liability on the part of the Company or the Administrators with respect to any asset to which it, they or any Scheme Creditor may be entitled or any claim against it, them or any Scheme Creditor.

The summary of the principal provisions of the Scheme and related matters in Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement is qualified in its entirety by reference to the Scheme Document, the full text of which is set out in Appendix 2 (*Scheme of Arrangement*) of this Explanatory Statement. Each Scheme Creditor is advised to read and consider carefully the text of the Scheme Document itself. This is because the Explanatory Statement has been prepared solely to assist Scheme Creditors in respect of Voting on the Scheme and nothing in the Explanatory Statement or any documents issued with or appended to it should be relied upon for any other purpose.

No person has been authorised by the Company or the Administrators to make any representations concerning the Scheme which are inconsistent with the statements contained herein, and, if made, such representations may not be relied upon as having been so authorised.

Scheme Creditors should not construe the contents of this Explanatory Statement as legal, tax or financial advice. Scheme Creditors should consider consulting professional advisers as to legal, tax, financial or other relevant matters before taking any action in connection with the Scheme.

## EXPLANATORY STATEMENT

(in compliance with Part 26 of the Companies Act 2006)

in relation to a

## SCHEME OF ARRANGEMENT

between

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)

and its

## SCHEME CREDITORS

(as defined in the Scheme of Arrangement)



**Table of Contents**

<b>Contents</b>	<b>Page</b>
<b>Part I: Letter from the Administrators .....</b>	<b>6</b>
<b>1 Purpose of this letter .....</b>	<b>6</b>
<b>2 What is a scheme of arrangement? .....</b>	<b>6</b>
<b>3 Executive summary .....</b>	<b>7</b>
<b>4 Background to the Scheme.....</b>	<b>8</b>
<b>5 Who is a Scheme Creditor? .....</b>	<b>9</b>
<b>6 Who are the Scheme Parties? .....</b>	<b>10</b>
<b>7 Statutory Interest entitlements of 8% Creditors .....</b>	<b>10</b>
<b>8 Statutory Interest entitlements of Specified Interest Creditors .....</b>	<b>10</b>
<b>9 Provisions applicable to both 8% Creditors and Specified Interest Creditors.....</b>	<b>11</b>
<b>10 Statutory Interest entitlements of Higher Rate Creditors .....</b>	<b>11</b>
<b>11 Subordinated Distributions.....</b>	<b>14</b>
<b>12 Dispute Resolution Procedure .....</b>	<b>14</b>
<b>13 What rights are compromised by the Scheme?.....</b>	<b>15</b>
<b>14 Bar Date.....</b>	<b>16</b>
<b>15 Tax .....</b>	<b>16</b>
<b>16 Chapter 15 Order .....</b>	<b>16</b>
<b>17 When does the Scheme become effective? .....</b>	<b>16</b>
<b>18 What happens after the Scheme has become effective?.....</b>	<b>17</b>
<b>19 Continuation of the Administration.....</b>	<b>17</b>
<b>20 Voting Rights .....</b>	<b>18</b>
<b>21 Voting at the Scheme Meetings .....</b>	<b>19</b>
<b>22 Splitting Votes and/or Elections .....</b>	<b>19</b>

23	<b>Scheme classes .....</b>	<b>19</b>
24	<b>Advantages of the Scheme .....</b>	<b>20</b>
25	<b>Disadvantages of the Scheme .....</b>	<b>21</b>
26	<b>What happens if the Scheme does not become effective? .....</b>	<b>22</b>
27	<b>Anticipated payments and factors that may impact Scheme Distributions .....</b>	<b>23</b>
28	<b>Actions to be taken by Scheme Creditors .....</b>	<b>25</b>
29	<b>Administrators' recommendation.....</b>	<b>26</b>
	<b>Part II: Summary of the terms of the Scheme of Arrangement.....</b>	<b>27</b>
1	<b>Scheme Creditors .....</b>	<b>27</b>
2	<b>Non-Scheme Creditors .....</b>	<b>27</b>
3	<b>Scheme Parties and the Storm and Shareholder Undertakings .....</b>	<b>28</b>
4	<b>Scheme Distributions paid to 8% Creditors and Specified Interest Creditors .....</b>	<b>28</b>
5	<b>Scheme Distributions paid to Higher Rate Creditors .....</b>	<b>29</b>
6	<b>The Settlement Payment Option.....</b>	<b>30</b>
7	<b>The Certification Option .....</b>	<b>31</b>
8	<b>Certifications .....</b>	<b>32</b>
9	<b>Determination and payment of the Applicable CI Payment.....</b>	<b>34</b>
10	<b>The Dispute Resolution Procedure .....</b>	<b>37</b>
11	<b>Relevant Principles .....</b>	<b>42</b>
12	<b>Admitted amounts of 8% Interest Claims, Specified Interest Claims and Higher Rate Claims.....</b>	<b>46</b>
13	<b>Payment of Scheme Distributions in full or in part .....</b>	<b>47</b>
14	<b>Adequate Reserves.....</b>	<b>48</b>
15	<b>Provisions relating to all Scheme Distributions .....</b>	<b>49</b>
16	<b>Rights of Scheme Parties which are extinguished and released by the Scheme .....</b>	<b>51</b>

17	<b>Rights of Scheme Parties which are not extinguished or released by the Scheme ..</b>	<b>53</b>
18	<b>Payments to Storm, the Subordinated Creditor and the Shareholder .....</b>	<b>55</b>
19	<b>Effect of the Company being wound-up (liquidation) .....</b>	<b>56</b>
20	<b>Operating Committee.....</b>	<b>56</b>
21	<b>Representations by Scheme Creditors.....</b>	<b>57</b>
22	<b>Tax .....</b>	<b>57</b>
23	<b>Details of material interests of the Administrators.....</b>	<b>60</b>
24	<b>Powers of the Administrators .....</b>	<b>60</b>
25	<b>Limit on Company's obligations .....</b>	<b>61</b>
26	<b>Modifications .....</b>	<b>61</b>
27	<b>Duty to act in good faith .....</b>	<b>61</b>
28	<b>Extension and calculation of deadlines.....</b>	<b>61</b>
	<b>Part III: Implementing the Scheme, risk factors and expected outcomes.....</b>	<b>62</b>
1	<b>Introduction .....</b>	<b>62</b>
2	<b>Key dates for implementing the Scheme.....</b>	<b>62</b>
3	<b>Voting Rights .....</b>	<b>64</b>
4	<b>Voting at the Scheme Meetings .....</b>	<b>68</b>
5	<b>Elections .....</b>	<b>69</b>
6	<b>Certifications .....</b>	<b>70</b>
7	<b>Split-Holdings Requests.....</b>	<b>70</b>
8	<b>Representations .....</b>	<b>71</b>
9	<b>Submitting Forms of Proxy.....</b>	<b>71</b>
10	<b>Portal .....</b>	<b>72</b>
11	<b>Communications .....</b>	<b>72</b>
12	<b>Meetings of Scheme Creditors .....</b>	<b>73</b>

<b>13</b>	<b>Risk Factors.....</b>	<b>74</b>
<b>14</b>	<b>Anticipated payments under the Scheme .....</b>	<b>76</b>
<b>15</b>	<b>Alternatives to the Scheme.....</b>	<b>79</b>
	<b>Appendix 1 Definitions and interpretation.....</b>	
	<b>Appendix 2 Scheme of Arrangement .....</b>	
	<b>Appendix 3 Notice of Scheme Meetings .....</b>	
	<b>Appendix 4 Background to the Company, the Administration and the Surplus.....</b>	
	<b>Appendix 5 Tranche C Order.....</b>	
	<b>Appendix 6 AFB/BBF Agreed Position .....</b>	
	<b>Appendix 7 Adjudicator CVs .....</b>	
	<b>Appendix 8 SCG Entities .....</b>	

## Key Dates and Expected Timetable<sup>1</sup>

Portal opened and UCC4s provided to Scheme Creditors with Admitted Claims	14 May 2018
Dispatch of Voting Rights Letters (together with hard copy Forms of Proxy) to Scheme Creditors with Undetermined Provable Claims	14 May 2018
Record Date <sup>2</sup>	5.00 pm (London time) on 24 May 2018
Increased Voting Rights Deadline	5.00 pm (London time) on 31 May 2018
Proxy Deadline/Election Deadline <sup>3</sup>	5.00 pm (London time) on 4 June 2018
Scheme Meetings/Election Deadline <sup>4</sup>	4.00 pm (London time) on 5 June 2018
Sanction Hearing	13 June 2018
US Bankruptcy Court hearing for Chapter 15 recognition	on or around 15 June 2018
Effective Date/Bar Date/Certification Deadline	on or around 15 June 2018

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<sup>1</sup> These times and dates are indicative only and will depend on, among other things, the date upon which the High Court sanctions the Scheme.

<sup>2</sup> The Record Date is the date by which Scheme Creditors who have not already done so must submit a proof of debt in order to Vote at the Scheme Meetings and is also the deadline for the submission of Split-Holdings Requests (if relevant).

<sup>3</sup> This is the Election Deadline for Higher Rate Creditors appointing the Chairman as their proxy via the Portal.

<sup>4</sup> This is the Election Deadline for Higher Rate Creditors Voting in person or by a proxy appointed pursuant to a hard copy Form of Proxy that is handed in at the Scheme Meetings.

## **Part I: Letter from the Administrators**

### **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**

**To:** Scheme Creditors of Lehman Brothers International (Europe) (in administration)

**Date:** 14 May 2018

Dear Sirs/Madams,

#### **1 Purpose of this letter**

- 1.1** The purpose of this letter is to provide a brief explanation of the proposed scheme of arrangement between the Company and its Scheme Creditors under Part 26 of the Companies Act, which is described in this Explanatory Statement, and its effect should it become effective. The Company, acting by its Administrators, proposes to seek the sanction of the High Court in respect of the Scheme should it first be approved by the requisite majorities of Scheme Creditors at the Scheme Meetings to be convened for that purpose.
- 1.2** The actions to be taken by Scheme Creditors in respect of the Scheme are summarised in paragraph 28 (*Actions to be taken by Scheme Creditors*) of this Part I (*Letter from the Administrators*) below.
- 1.3** Unless stated otherwise, defined terms used in this letter have the meanings given to them in Appendix 1 (*Definitions and interpretation*) of this Explanatory Statement (of which this letter forms Part I).

#### **2 What is a scheme of arrangement?**

- 2.1** Under English law, a scheme of arrangement of the kind proposed by the Company (acting by the Administrators) is a compromise or arrangement provided for under Part 26 of the Companies Act which will take effect between a company and its creditors (or any class of them) and become binding on all the creditors to whom it applies if:
- 2.1.1** a majority in number representing 75% in value of the creditors (or each class of creditors) present and voting either in person or by proxy at each meeting ordered to be convened by the High Court agrees to the compromise or arrangement;
  - 2.1.2** the High Court subsequently sanctions the compromise or arrangement; and
  - 2.1.3** a copy of the order of the High Court to that effect is delivered to the Registrar of Companies for registration.
- 2.2** If a scheme becomes effective, it will bind the company and all the creditors to whom it applies, being in this case the Scheme Creditors and Storm, whether they voted in favour of the scheme or not.

### **3 Executive summary**

**3.1** The Administrators have adjudicated upon almost all Provable Claims that have been lodged in the Administration and have declared and paid four separate dividends (and related “catch-up” dividends) in respect of Admitted Claims, culminating in the declaration on 23 April 2014 of a dividend that took the cumulative rate of dividend on Admitted Claims in the Administration to 100 pence in the pound. The aggregate amount of distributions paid to creditors with Admitted Claims to date is £12.6 billion.

**3.2** Having paid or provided for in full all Admitted Claims, a Surplus remains which is potentially sufficient for the Company to pay Statutory Interest in full, make a payment in respect of its Subordinated Debt and make a payment to the Shareholder.

**3.3** However, to date, the Administrators have been prevented from making payments in respect of the Surplus due to the uncertainty regarding creditor entitlements to the Surplus, given the issues still to be finally determined pursuant to the Waterfall Proceedings, the Lacuna Application and the Olivant Application:

**3.3.1** The Waterfall Proceedings were summarised in paragraph 3 of the Practice Statement Letter and are further summarised in paragraph 7 (*Waterfall Proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement. The Waterfall I Proceedings have been subject to a final determination by the Supreme Court (and the Waterfall III Proceedings have been settled), but Tranche A and Tranche C have not been subject to a final appellate determination and remain pending.

**3.3.2** The Lacuna Application was summarised in paragraph 4 of the Practice Statement Letter and is further summarised in paragraph 8 (*The Lacuna Application*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement.

**3.3.3** The Olivant Application is summarised in paragraph 9 (*Third party challenges to creditor proofs – the Olivant Application*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement.

**3.3.4** The Supreme Court has agreed not to determine the application for permission to appeal the Court of Appeal’s order in Tranche A in order to facilitate the implementation of the Scheme. If the Scheme does not become effective, the Supreme Court will be invited to determine that application. If the Scheme becomes effective, the application will be dismissed by consent.

**3.3.5** The Lacuna Application and the Olivant Application were stayed pursuant to orders of the High Court dated 12 January 2018, in order to facilitate the implementation of the Scheme. If the Scheme becomes effective, the Olivant Application and the Lacuna Application will be discontinued. If the Scheme does not become effective, the stay will be lifted, and the Olivant Application and the Lacuna Application will proceed before the High Court.

**3.4** The primary purpose of the Scheme is to provide a framework for the consensual determination of creditor entitlements to the Surplus, so as to facilitate an expedited payment to creditors in respect of their Statutory Interest entitlements. This will be effected by:

**3.4.1** bringing to an end:

(i) the Waterfall II Proceedings;

- (ii) the Lacuna Application (thereby avoiding the Lacuna Issue arising); and
  - (iii) the Olivant Application;
- 3.4.2 barring challenges by Scheme Parties to the quantum or validity of any Admitted Claim that was admitted prior to the Record Date;
- 3.4.3 providing a process for the Certification of Higher Rate Claims, having regard to the principles set out in the Waterfall Judgments, and resolution of any issues arising with the Certification by means of an independent expert adjudicator;
- 3.4.4 releasing the Company from any further Claims (with the exception of Retained Claims) that may be brought by Scheme Parties, through the introduction of a bar date that takes effect immediately upon the Effective Date; and
- 3.4.5 providing a framework for the making of payments to Scheme Parties in respect of their entitlements to Statutory Interest as set out in the Scheme.

#### **4 Background to the Scheme**

- 4.1 Since the commencement of the Waterfall Proceedings, the Administrators have been seeking to build consensus for the resolution of disputes regarding creditor entitlements to the Surplus that would allow for distributions in respect of Statutory Interest to be made. Such proposals were not implemented as they failed to receive the requisite support from the Company's creditors that were essential to their success.
- 4.2 Accordingly, in the latter half of 2017, the Administrators took the view that it was appropriate and in the interests of the creditors generally to explore again with the Company's largest creditors, namely the SCG and the Wentworth Group, whether they were open to seeking to agree the terms of a consensual resolution of the above issues, given that at this stage the Administrators had received significant guidance from the Courts in respect of the Waterfall Proceedings.
- 4.3 The SCG consists of a number of creditors who hold Admitted Claims that rank *pari passu* with all other ordinary unsecured claims. The Wentworth Group consists of a number of creditors, including: (i) the holders of Admitted Claims that rank *pari passu* with all other ordinary unsecured claims; and (ii) the Subordinated Creditor, whose principal claim in respect of the Subordinated Debt is valued at £1.24 billion (excluding any potential pre-administration interest entitlement thereon).
- 4.4 Members of the SCG and the Subordinated Creditor are the principal participants (together with York Global Finance BDH LLC and Goldman Sachs International) in the Waterfall II Proceedings. Each of the SCG and the Wentworth Group is in a position to block any attempted consensual resolution, whether through a scheme of arrangement or otherwise, and it is therefore imperative to ensure that any proposal to be put to the Company's creditors to resolve the remaining disputes and uncertainties has the confirmed support of both of these creditor groups.
- 4.5 In the course of negotiations, in which the Administrators encouraged the parties to reach an agreement which would facilitate distributions from the Surplus whilst maintaining the current positions of the Courts in the Waterfall Proceedings, the Wentworth Group stated that they would only support a proposal if that proposal provided for the Subordinated Creditor to have rights to influence the determination of matters likely to impact its ultimate recovery in respect of the Subordinated Debt, such as consultation rights regarding the



adjudication of Certifications in respect of Higher Rate Claims and the approval of the Administrators' remuneration.

- 4.6** Likewise, the SCG stated that they would only support a proposal that achieved a full distribution of Statutory Interest in accordance with current decisions of the Courts, without any discount to account for a relatively earlier distribution of Statutory Interest and/or any risk arising from the Lacuna Issue. Terms were ultimately agreed among the Administrators, the SCG and the Wentworth Group. Such terms are set out in a term sheet (the "**Term Sheet**") that was scheduled to the Lock-Up Agreement.
- 4.7** The Lock-Up Agreement contains legally binding commitments from the SCG and the Wentworth Group to (among other things):
- 4.7.1** take all reasonable steps (and procure that their affiliates take all reasonable steps) to support the implementation of the Scheme (provided that it is not unduly burdensome to such party or materially inconsistent with the Term Sheet), including voting to approve the Scheme;
  - 4.7.2** refrain from taking actions which would reasonably be expected to impede or prevent the implementation of the Scheme; and
  - 4.7.3** accept (and procure that their affiliates accept) the Settlement Payment Option (as to which, see below) in respect of all of their Higher Rate Claims.
- 4.8** In addition, pursuant to the Lock-Up Agreement, the Company, the SCG and the Wentworth Group agreed to stay Tranche A, the Lacuna Application and the Olivant Application (which is discussed further in paragraph 9 (*Third party challenges to creditor proofs – the Olivant Application*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement), in order to facilitate the implementation of the Scheme.
- 4.9** Such commitments and obligations will no longer have binding effect in the event that the Lock-Up Agreement is terminated in accordance with its terms, including an automatic termination on 30 June 2018 (or such later date as may be agreed in writing between the original parties to the Lock-Up Agreement).
- 4.10** No fees, payments (other than the payments to be made pursuant to the terms of the Scheme) or other inducements have been, or will be, paid or otherwise made by the Company to the SCG or the Wentworth Group pursuant to the terms of the Lock-Up Agreement or the Scheme.

## **5 Who is a Scheme Creditor?**

- 5.1** The Scheme is proposed between the Company and the Scheme Creditors. You will be a Scheme Creditor if you have a Provable Claim (including, for the avoidance of doubt, any Admitted Claim whether unpaid, paid in full or paid in part), subject to certain limited exceptions, as further explained in paragraphs 1 (*Scheme Creditors*) and 2 (*Non-Scheme Creditors*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.
- 5.2** The Company will take steps to give notice of the Scheme to parties who it believes are or may be Scheme Creditors prior to the Scheme Meetings by: (i) making the Scheme Documentation available to Scheme Creditors with Admitted Claims via the Portal; (ii) sending the Scheme Documentation to such parties by email or post (where the Company is in possession of contact details for such parties); (iii) publishing a copy of the Scheme

Documents on the Website; and (iv) arranging for the publication of a notice in respect of the Scheme in certain financial and general news publications.

## **6 Who are the Scheme Parties?**

**6.1** From the Effective Date, the Scheme will be binding on the Administrators, the Company and all Scheme Parties, being each of the Scheme Creditors and Storm.

**6.2** As further described in paragraph 3 (*Scheme Parties and the Storm and Shareholder Undertakings*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement, the Shareholder (in its capacity as shareholder of the Company) is not a Scheme Party, but has agreed to enter into the Shareholder Undertaking pursuant to which it will consent to the Scheme and, on and from the Effective Date, will undertake certain obligations in connection with the Scheme.

## **7 Statutory Interest entitlements of 8% Creditors**

**7.1** 8% Creditors are Scheme Creditors with 8% Interest Claims.

**7.2** If the Scheme becomes effective, 8% Creditors will receive the 8% Payment (in whole or (if relevant) in part) within 20 Business Days of the Company determining that it has sufficient funds to make such payments (in whole or in part).

**7.3** The 8% Payment will be calculated by the Company applying the Relevant Principles (as summarised in paragraph 11 (*Relevant Principles*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement) and accordingly:

**7.3.1** 8% Creditors will receive a payment calculated by applying a simple interest rate of 8% per annum to their 8% Interest Claims (subject to sufficient funds being available and, where relevant, deduction for or on account of UK income tax) in satisfaction of their Statutory Interest entitlements;

**7.3.2** 8% Payments will be calculated in respect of the period(s) from the Administration Date up to the date(s) when the principal amount(s) of each 8% Interest Claim was paid in full and to reflect the reduction to that principal amount as a result of any interim dividends received by the relevant 8% Creditor; and

**7.3.3** 8% Payments will be calculated on the basis that, where an 8% Creditor has received payment(s) in respect of an 8% Interest Claim during the Administration, such payment(s) discharged the principal amount of such claim before discharging interest.

**7.4** A worked example of an 8% Payment is provided in paragraph 14.2 (*8% Interest Claims and Specified Interest Claims*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement for illustrative purposes only.

## **8 Statutory Interest entitlements of Specified Interest Creditors**

**8.1** Specified Interest Creditors are Scheme Creditors with Specified Interest Claims, being Provable Claims that derive from Specified Interest Contracts which stipulate a Specified Interest Rate which would give rise to an amount of Statutory Interest that is greater than the Statutory Minimum.

- 8.2** The Administrators are currently only aware of one Specified Interest Claim, which is owned by LBHI and is in relation to a "Master Agreement Concerning Gensaki Transactions of Bond, Etc.".
- 8.3** If the Scheme becomes effective, Specified Interest Creditors will receive the Specified Interest Payment (in whole or (if relevant) in part) within 20 Business Days of the Company determining that it has sufficient funds to make such payments (in whole or in part).
- 8.4** The Specified Interest Payment shall be paid in accordance with the Relevant Principles.

## **9 Provisions applicable to both 8% Creditors and Specified Interest Creditors**

- 9.1** 8% Creditors and Specified Interest Creditors will only be paid their Scheme Distributions (subject to any deduction for or on account of UK income tax) if they have provided the Company with certain information requested by it to enable such payment, being Settlement Instructions and KYC Information.
- 9.2** In the event that an 8% Creditor or Specified Interest Creditor has submitted a UCC Challenge (as explained in paragraph 12 (*Admitted amounts of 8% Interest Claims, Specified Interest Claims and Higher Rate Claims*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement) prior to the Bar Date, such creditor will not be entitled to receive its Scheme Distributions until that UCC Challenge has been resolved by agreement or finally determined by the High Court.

## **10 Statutory Interest entitlements of Higher Rate Creditors**

- 10.1** Higher Rate Creditors are Scheme Creditors with Higher Rate Claims, being Provable Claims that derive from one of the following contracts under which there may be an entitlement to an amount of Statutory Interest higher than the Statutory Minimum:
- 10.1.1** ISDA Master Agreements;
- 10.1.2** AFB/FBF French Master Agreements; and
- 10.1.3** AFTB/AFTI French Master Agreements.
- 10.2** As far as the Administrators are aware, apart from the Relevant Contracts (and excluding the contract referred to in paragraph 8.2 of this Part I (*Letter from the Administrators*) above which gives rise to a Specified Interest Claim), there are no other contracts which give rise to a claim against the Company at a rate of interest greater than the Statutory Minimum.
- 10.3** If the Scheme becomes effective, Higher Rate Creditors will receive a payment in respect of their Higher Rate Claims, calculated in one of two ways depending on whether they elect for the Settlement Payment Option or the Certification Option (as further explained below).
- 10.4** Higher Rate Creditors will elect for either the Settlement Payment Option or the Certification Option at the point of Voting on the Scheme.
- 10.5** If: (i) no Election is made; or (ii) the Election does not constitute a Valid Certification Election (as described in paragraph 7.2 (*Valid Certification Elections*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement), Higher Rate Creditors will be deemed to have elected for the Settlement Payment Option.

*Settlement Payment Option*

- 10.6** The Settlement Payment Option will provide for Higher Rate Creditors to receive the 8% Payment in respect of their Higher Rate Claims (in satisfaction of their Statutory Interest entitlements), calculated in the manner described in paragraph 7.3 of this Part I (*Letter from the Administrators*) above, and in accordance with the terms of the Scheme, together with an additional settlement premium equal to 2.5% of the value of their admitted Higher Rate Claims in consideration for not exercising their right to certify for an amount of Statutory Interest higher than the Statutory Minimum (and so sparing the Company the time and expense associated with processing Certifications and, accordingly, enabling the Administrators to make distributions to Scheme Creditors within a shorter timeframe).
- 10.7** A worked example of a Settlement Payment is provided in paragraph 14.3 (*Higher Rate Claims*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement for illustrative purposes only.

*Certification Option*

- 10.8** Higher Rate Creditors who elect for the Certification Option will be required to submit a Certification (as further described in paragraph 7 (*The Certification Option*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement) asserting the rate applicable to, and amount of interest payable in respect of, their Higher Rate Claims, and will receive a payment calculated by reference to one of the following:
- 10.8.1** the amount of Statutory Interest specified in their Certification, where the Company agrees with such amount or where (in the absence of such agreement) the Certifying Creditor's Certification is upheld by the Adjudicator pursuant to the Dispute Resolution Procedure in the Scheme (as further described in paragraph 12 (*Dispute Resolution Procedure*) of this Part I (*Letter from the Administrators*) below);
  - 10.8.2** an amount of Statutory Interest counteroffered by the Company (either in consultation with, or in certain circumstances an amount recommended by, the Subordinated Creditor) where the relevant Higher Rate Creditor agrees with such amount or where (in the absence of such an agreement) the Adjudicator approves the Counteroffer pursuant to the Dispute Resolution Procedure;
  - 10.8.3** the Statutory Minimum, where the Certifying Creditor's Certification is rejected by the Company in circumstances where no Counteroffer has been made and, if such rejection is appealed to the Adjudicator, such rejection is upheld by the Adjudicator pursuant to the Dispute Resolution Procedure; or
  - 10.8.4** in certain very limited circumstances (as further described in paragraph 10.5 (*The timings of the Dispute Resolution Procedure*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement), the corrected amount of Statutory Interest calculated by the Adjudicator.
- 10.9** Certifications must be submitted prior to the Effective Date. The Administrators consider this reasonable as Higher Rate Creditors were provided with copies of the (close to) final form Scheme Document and Explanatory Statement several weeks prior to the Effective Date and will likely have given a great deal of thought to the decision as to whether to elect for the Certification Option prior to Voting on the Scheme at the Scheme Meetings.
- 10.10** In no circumstances will a Certifying Creditor receive less than the Statutory Minimum (subject only to any applicable cost deductions).

**10.11** A worked example of the Certification Option is provided in paragraph 14.3.7 of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement, for illustrative purposes only.

**10.12** If a Higher Rate Creditor elects for the Certification Option, it will not in any circumstances be entitled to receive the Settlement Premium.

*General conditions applicable to Higher Rate Creditors*

**10.13** Higher Rate Creditors will be required to make the same Election in respect of all the Higher Rate Claims which they Control (i.e. a Higher Rate Creditor will not be able to elect for the Settlement Payment Option in respect of certain of the Higher Rate Claims it Controls and elect for the Certification Option in respect of other Higher Rate Claims that it Controls). The Administrators consider this reasonable on the basis that a Higher Rate Creditor should not be entitled to receive the Settlement Premium, which is in consideration for sparing the Company the time and expense associated with processing Certifications, in respect of certain of its Higher Rate Claims if it is continuing to put the Company to the time and expense of processing Certifications in respect of its other Higher Rate Claims.

**10.14** Payments to:

**10.14.1** Higher Rate Creditors who elect for the Settlement Payment Option will be paid (in whole or (if relevant) in part) within 20 Business Days of the Company determining that it has sufficient funds to make such a payment (in whole or in part); and

**10.14.2** Higher Rate Creditors who elect for the Certification Option will be paid (in whole or (if relevant) in part) in respect of each Higher Rate Claim within 20 Business Days of the applicable amount of Statutory Interest having been determined (provided that the Company has sufficient funds to make such a payment (in whole or in part)).

**10.15** Whilst Higher Rate Creditors who elect for the Certification Option will therefore receive their payment in respect of Statutory Interest at a later date than Higher Rate Creditors who elect for the Settlement Payment Option, this delay is minor and such creditors will still receive their Statutory Interest far sooner than they would but for the Scheme.

**10.16** A Higher Rate Creditor will, however, only be paid their Scheme Distributions (subject to any deduction of UK withholding tax) if it has provided the Company with certain information requested by it to enable such payment, being its Settlement Instructions and KYC Information.

**10.17** In the event that:

**10.17.1** a Settlement Creditor has submitted a UCC Challenge prior to the Bar Date, such creditor will not be entitled to receive any Scheme Distributions until that UCC Challenge has been resolved by agreement or finally determined by the High Court; and

**10.17.2** a Certifying Creditor has submitted a UCC Challenge prior to the Bar Date, the determination of its Certification shall be stayed until that UCC Challenge has been agreed (or finally determined by the High Court).

**10.18** A flow chart illustrating the Certification Option process is set out in paragraph 9.18 of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.

## **11 Subordinated Distributions**

- 11.1** The principal amount of the Subordinated Debt will only be admitted by the Administrators once all Statutory Interest on prior ranking claims has been fully paid or fully reserved for.
- 11.2** The Company will agree the amount of any pre-Administration interest or Statutory Interest payable in respect of the Subordinated Debt at a later date following the Subordinated Debt Admittance Date.

## **12 Dispute Resolution Procedure**

- 12.1** The Dispute Resolution Procedure referred to in paragraph 10.8.1 of this Part I (*Letter from the Administrators*) above is an out of court dispute resolution procedure pursuant to which an independent Adjudicator (acting as an expert not an arbitrator) will determine the applicable contractual interest rate and Statutory Interest payable in respect of Higher Rate Claims where the Company has rejected a Certifying Creditor's Certification or a Certifying Creditor has rejected the Company's Counteroffer.
- 12.2** In making his/her decision, the Adjudicator will be obliged (save in limited circumstances) either to:
- 12.2.1** uphold the rate(s)/amount stated in the Certifying Creditor's Certification; or
  - 12.2.2** uphold the rate(s)/amount put forward by the Company (i.e. a Counteroffer or the Statutory Minimum).

The Administrators consider this to be a suitable approach on the basis that: (i) it allows for the Certification process to be dealt with quickly and efficiently; and (ii) it encourages all parties to propose figures that are reasonable in the first instance, as opposed to speculative.

- 12.3** In reaching his/her decision, the Adjudicator will consider, without an oral hearing, the material put before him/her by the parties (including any submissions on the relevant law) and will also have regard to the Relevant Principles, being: (i) the principles set out by the Judge in the Tranche C judgment as regards ISDA Master Agreements; (ii) the AFB/FBF Agreed Position in relation to AFB/FBF French Master Agreements; (iii) the principles set out by the Judge in the Tranche A judgment as regards claims in respect of Statutory Interest generally; and (iv) the Compounding Principle.
- 12.4** The Adjudicator will assess whether the Certifying Creditor's Certification is consistent with the Relevant Principles. In reaching a decision in this regard, the Adjudicator will apply the relevant law as he/she finds it to be at the Effective Date.
- 12.5** Save in respect of mathematical or numerical errors (as to which see paragraph 10.6.3 of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement), the Adjudicator will only be permitted to depart from the Certifying Creditor's Certification where he/she is satisfied on the balance of probabilities that the Company has demonstrated that the certification has been made in bad faith, irrationally, or other than in accordance with the Relevant Principles. The burden of proof is on the Company to establish that one of these permitted grounds of challenge has been made out. If one of the permitted grounds is made out, the Adjudicator must (save, again, where there has been a mathematical or numerical error) uphold the rate(s)/amount put forward by the Company.
- 12.6** The Adjudicator's decision will determine the Statutory Interest payable by the Company in respect of the adjudicated claim. The decision will be final and binding on the Company, the

Administrators, the appellant Higher Rate Creditor, all other Scheme Parties and the Shareholder, and insofar as the law allows there will be no right of appeal against the Adjudicator's decision (whether to a court or otherwise).

**12.7** Where the Adjudicator:

**12.7.1** upholds the Appellant Certifying Creditor's Case in its entirety, the reasonable costs of the Dispute Resolution Procedure will be paid as an Administration Expense on an indemnity basis; or

**12.7.2** upholds the Company's Case in its entirety, the reasonable costs of the Dispute Resolution Procedure will be paid by the Appellant Certifying Creditor on an indemnity basis.

**12.8** The Dispute Resolution Procedure is described in detail in paragraph 10 (*The Dispute Resolution Procedure*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement, together with a flow chart illustrating the process.

**13 What rights are compromised by the Scheme?**

**13.1** The key compromise contained in the Scheme relates to Statutory Interest entitlements. In essence, upon the Scheme becoming effective, each Scheme Party will automatically release its right to have its Statutory Interest entitlement determined by the Courts and will instead receive a right to Scheme Distributions in full and final satisfaction of its right to receive Statutory Interest on its Admitted Claims.

**13.2** The Scheme also provides for a full release of all Claims against the Company and certain third parties, other than Retained Claims (whether a Scheme Party is aware of the existence of such Claims or not). Retained Claims include those where a proof of debt has been submitted prior to the Bar Date (whether or not the proof has been finally adjudicated upon by that date) or (in the case of Claims other than Provable Claims) where details of such Claims have been notified to the Company prior to the Bar Date.

**13.3** Additionally, the Scheme Parties will give up:

**13.3.1** any right to appeal any first instance decision (other than in respect of the Excluded Proceedings and Scheme Breach Claims) of any court of competent jurisdiction which relates to an exercise of the Administrators' functions after the Effective Date, so as to promote the efficient conclusion of the Administration; as well as

**13.3.2** any right to challenge the quantum or validity of another creditor's Admitted Claim, where such claim was admitted prior to the Record Date.

**13.4** Further detail in relation to the releases given by Scheme Parties and their scope is provided in paragraph 16 (*Rights of Scheme Parties which are extinguished and released by the Scheme*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.

**13.5** For the avoidance of any doubt, the Scheme will not impact any trust entitlement or proprietary claim to the Company's Client Money Estate (although, as part of the release described in paragraph 13.2 of this Part I (*Letter from the Administrators*) above, any unsecured claim arising from an entitlement to the Company's Client Money Estate will be released by the Scheme, unless such claim has been proved for prior to the Bar Date).

**13.6** The Scheme will not compromise certain of the Shareholder's rights (as described in paragraph 17.4 of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement). Equity Distributions will however only be made to the extent that all possible Claims that rank in priority to the Subordinated Debt, and the Subordinated Debt itself, are either paid or reserved for in full by the Administrators.

#### **14 Bar Date**

**14.1** All Claims (other than proprietary claims and Retained Expense Claims) must be proved for (in respect of Provable Claims) or otherwise notified to the Company prior to the Bar Date. Scheme Parties who fail to do so will irrevocably and unconditionally release and waive any entitlement to assert such Claims, meaning that they will not be able to receive any Scheme Distributions or other payments in respect of such Claims.

**14.2** The Bar Date will be the date on which the Scheme becomes effective, which is currently expected to occur on or around 15 June 2018.

**14.3** The Administrators consider the imposition of the Bar Date to be reasonable given: (i) the length of time since the commencement of the Administration and its high-profile nature; and (ii) that Scheme Creditors were first made aware of it pursuant to the First Announcement on 22 December 2017.

#### **15 Tax**

A summary of the background to and current status of the WHT Proceedings is set out in paragraph 10 (*The WHT Proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement and an explanation of how "withholding tax" will apply to the Scheme Distributions is set out in paragraph 22 (*Tax*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.

#### **16 Chapter 15 Order**

**16.1** The Company intends to seek entry of a Chapter 15 Order from the US Bankruptcy Court which, among other things, recognises the Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, gives the Scheme full force and effect within the territorial jurisdiction of the United States and enjoins Scheme Parties from commencing or continuing any action or proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme.

**16.2** The Administrators consider this to be a prudent course of action given that there are a number of United States domiciled Scheme Creditors with claims under contracts governed by US law, and the Company has certain assets within the United States. However, given the Company's status as an England and Wales domiciled entity and the fact that the Company's assets are predominantly located within the United Kingdom, the Administrators do not consider obtaining such recognition to be essential and, accordingly, the effectiveness of the Scheme will not be conditional on the receipt of the Chapter 15 Order.

#### **17 When does the Scheme become effective?**

**17.1** As explained in paragraph 2 (*What is a scheme of arrangement?*) of this Part I (*Letter from the Administrators*) above, the Scheme can only become effective and binding on the



Company and the Scheme Parties if the requisite statutory majorities are obtained at the Scheme Meetings and an order of the High Court is subsequently obtained sanctioning the Scheme and delivered for registration to the Registrar of Companies.

**17.2** It is currently expected that the Scheme will become effective on or around 15 June 2018.

**17.3** Immediately after the Scheme becoming effective, the Company will publish notice of the Effective Date on the Website and in a number of international news publications.

## **18 What happens after the Scheme has become effective?**

**18.1** As further described in paragraph 13 (*Payment of Scheme Distributions in full or in part*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement, as soon as reasonably practicable after the Scheme becomes effective the Company will:

**18.1.1** determine the High Case Scheme Distribution, being the maximum amount of distributions to be made under the Scheme;

**18.1.2** determine the Net Available Funds, being the funds available for distribution after reserving for Retained Claims (other than Non-Provable Claims) and any other matters the Administrators consider it necessary to reserve for; and

**18.1.3** publish a Scheme Outcome Statement on the Website which will inform Scheme Parties as to whether the funds available for distribution are sufficient to pay all 8% Payments, Specified Interest Payments, Settlement Premiums and Applicable CI Payments:

(i) in full, in which case a Full SI Payment Statement will be published;

(ii) in part, in which case a Part SI Payment Statement will be published; or

(iii) not at all, in which case an Insufficient Funds Statement will be published.

**18.2** If by 30 September 2018 the Administrators have not agreed any Retained Claims (other than Excluded Proceedings) which are (or are likely to be) in excess of £20 million, the Administrators will promptly take action to adjudicate upon the relevant claims and/or seek direction from the High Court in respect of the reserve to be set aside for them. This will not however delay the determination of the reserves described in paragraph 18.1.2 of this Part I (*Letter from the Administrators*) above and/or the publication of a Scheme Outcome Statement unless the relevant claim would, if allowed in full, prevent the Company from publishing a Full SI Payment Statement or a Part SI Payment Statement.

**18.3** As further described in paragraph 27 (*Anticipated payments and factors that may impact Scheme Distributions*) of this Part I (*Letter from the Administrators*) below, on the basis of the Admitted Claims and proofs of debt submitted to date, the Administrators currently expect to be able to issue a Full SI Payment Statement, however the timing and issuance of such a statement depends on a number of factors, including the potential for new claims to be submitted prior to the Bar Date.

## **19 Continuation of the Administration**

**19.1** On 4 November 2016, the Administration was extended by the High Court to 30 November 2022. The Scheme will not resolve all issues in the Administration. For example, it will be necessary for the Administrators to (among other things):

- 19.1.1 continue the Excluded Proceedings;
- 19.1.2 adjudicate or determine Excluded Claims and Retained Expense Claims;
- 19.1.3 seek to maximise realisations of all remaining House Estate assets; and
- 19.1.4 settle or have determined by the Courts any outstanding issues in respect of the Client Money Estate.

**19.2** The Administrators currently consider that creditors' interests are best served by these actions being undertaken whilst the Company remains in administration and it is therefore proposed that the Administration will continue regardless of whether the Scheme becomes effective in accordance with its terms.

**19.3** Pursuant to the Scheme each of the Scheme Parties, the Company and the Administrators will undertake in favour of each other, and on and from the Effective Date the Shareholder will undertake in favour of the Company and the Courts, not to take any action or step to initiate a Liquidation Event until: (i) all Scheme Distributions; and (ii) any other payments in respect of Statutory Interest contemplated by the Scheme have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion (acting by the Administrators), ensures that payments of Statutory Interest will be in no way adversely affected by a Liquidation Event.

**19.4** If the Company becomes subject to a Liquidation Event, the Scheme will not terminate and will continue in full force and effect and rights of Scheme Parties to receive Scheme Distributions will not be affected.

## **20 Voting Rights**

**20.1** If you are a Scheme Creditor, you are entitled to attend and Vote, pursuant to your allocated Voting Rights, at the Scheme Meeting(s) relevant to your Provable Claims.

**20.2** If you have an Admitted Claim or Undetermined Provable Claim, your Voting Rights have been calculated by the Administrators in accordance with paragraph 3.2 (*Admitted Claims*) or 3.3 (*Undetermined Provable Claims*) (respectively) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement and are set out in your UCC4 (in respect of Admitted Claims) or Voting Rights Letter (in respect of Undetermined Provable Claims).

**20.3** If you are a Higher Rate Creditor and consider that you are entitled to Statutory Interest in excess of the Statutory Minimum, and wish to Vote in respect of such entitlement, you may request Voting Rights greater than those calculated by the Administrators in accordance with paragraph 3.2 (*Admitted Claims*) or 3.3 (*Undetermined Provable Claims*) (respectively) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement by submitting an Increased Voting Rights Request by the Increased Voting Rights Deadline. Further information on Increased Voting Rights Requests is set out in paragraph 3.4 (*Increased Voting Rights Requests*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

**20.4** If you have not yet proved for your Provable Claim, you must submit a proof of debt in respect of such Provable Claim by the Record Date in order to be able to Vote in respect of it at the Scheme Meetings. If the Administrators believe that you may be a Scheme Creditor (and are in possession of your contact details) a blank form of proof of debt should have been provided to you. If not, a blank form of proof of debt can otherwise be obtained on request

from the Administrators by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by writing to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ Attention: Rebecca Browne.

- 20.5** In the event that you submit a proof of debt in respect of a Provable Claim by the Record Date, such Provable Claim will constitute an Undetermined Provable Claim for Voting purposes and be ascribed Voting Rights in the same manner as other Undetermined Provable Claims in accordance with paragraph 3.3 (*Undetermined Provable Claims*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **21 Voting at the Scheme Meetings**

- 21.1** It is not necessary that you attend the Scheme Meetings in person in order to cast your Vote. Scheme Creditors can:

**21.1.1** appoint the Chairman as their proxy (either via the Portal (for Admitted Claims) or pursuant to a hard copy Form of Proxy) to Vote on their behalf at the relevant Scheme Meeting(s);

**21.1.2** appoint another person (pursuant to a hard copy form of proxy) as their proxy to attend and Vote on their behalf at the relevant Scheme Meeting(s); and

**21.1.3** attend the Scheme Meetings and Vote in person. If a Scheme Creditor is a company or corporation and wishes to attend the Scheme Meeting(s) and Vote in person, it must appoint an individual as its representative at the relevant Scheme Meetings.

- 21.2** Further information on how Scheme Creditors can Vote at the Scheme Meetings is set out in paragraph 4 (*Voting at the Scheme Meetings*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **22 Splitting Votes and/or Elections**

- 22.1** Scheme Creditors:

**22.1.1** who hold more than one Admitted Claim (or Undetermined Provable Claim); and

**22.1.2** do not Control all such Admitted Claims (or Undetermined Provable Claims) (i.e. they do not have the right to determine Voting and/or (if applicable) Elections in respect of such claims) due to sub-participations or similar arrangements,

may submit a Split-Holdings Request by the Record Date, such that the Administrators have sufficient time to split their UCC4s or Voting Rights Letters (as applicable) to allow different Votes and/or Elections to be made in accordance with the instructions of the party/parties who Control such claims.

- 22.2** Further information on splitting Votes and/or Elections is set out in paragraph 4 (*Voting at the Scheme Meetings*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **23 Scheme classes**

- 23.1** In the Practice Statement Letter issued on 18 April 2018, the Administrators indicated that there ought to be three Scheme Meetings on the basis that Scheme Creditors fall into three separate classes. Late in the evening on 25 April 2018, the Administrators were sent a letter

by the administrators of LBHI2 indicating that Wentworth Sons Senior Claims S.à r.l., the Subordinated Creditor and certain of the creditors that form the SCG had entered into a separate settlement arrangement in parallel with the Lock-Up Agreement, which provided that (amongst other things) some of the entities that make up the SCG would receive from those Wentworth parties the sum of £35 million, by way of a “consent fee” in the event that the Scheme becomes effective. On the evening of 29 April 2018, the Administrators received a copy of the agreement that gives effect to this arrangement. In light of this information, the Administrators immediately sought advice on the implications in relation to the Scheme and, having done so, concluded that it would be appropriate for the proposed classes to be revised with the SCG forming a new, separate class. On 2 May 2018 the Administrators sent the PSL Update Letter to all Scheme Creditors to inform them of this development.

**23.2** On 11 May 2018 the High Court ordered that four Scheme Meetings of the following classes of creditors be convened:

**23.2.1** 8% Creditors and Specified Interest Creditors (as one class), excluding the SCG;

**23.2.2** Higher Rate Creditors, excluding the SCG;

**23.2.3** the SCG; and

**23.2.4** the Subordinated Creditor.

**23.3** The SCG will therefore vote at a single separate meeting in respect of all 8% Interest Claims, Specified Interest Claims and Higher Rate Claims that are legally held by them and will not be entitled to vote at the Scheme Meetings for other Scheme Creditors who hold 8% Interest Claims and/or Specified Interest Claims or Higher Rate Claims.

**23.4** Where an 8% Interest Claim, Specified Interest Claim or Higher Rate Claim is legally held by a creditor that does not form part of the SCG, the legal holder of the claim will vote at the Scheme Meeting relevant to that claim with other Scheme Creditors, even if a creditor that forms part of the SCG has an interest in the claim (such as rights under a sub-participation agreement).

**23.5** Scheme Creditors (other than the SCG) who hold: (i) 8% Interest Claims and/or Specified Interest Claims; and (ii) Higher Rate Claims, will be able to Vote in respect of their 8% Interest Claims and/or Specified Interest Claims at the meeting convened for 8% Creditors and Specified Interest Creditors and in respect of their Higher Rate Claims at the meeting convened for Higher Rate Creditors.

## **24 Advantages of the Scheme**

**24.1** The Administrators consider that the Scheme represents a fair outcome for all Scheme Creditors that is consistent with the existing Waterfall Judgments and should be implemented on the basis that, in respect of all Scheme Creditors, it will provide the following key advantages:

**24.1.1** payment in respect of Statutory Interest on Admitted Claims at a much earlier date than would likely be the case but for the Scheme;

**24.1.2** avoidance of the risk of Scheme Creditor’s Statutory Interest entitlements potentially being extinguished in the event that they are not paid prior to the Company going into liquidation (as a result of the Lacuna Issue described in paragraph 7.1.1(v) of

Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement;

- 24.1.3 certainty that Statutory Interest on Provable Claims will be calculated from the date of the commencement of the Administration as regards future and contingent claims;
  - 24.1.4 avoidance of the risk of the quantum or validity of their Admitted Claims being challenged by other Scheme Creditors after the Effective Date (provided such claim was admitted by the Record Date);
  - 24.1.5 reduced risk of there being insufficient funds to make a full payment of Statutory Interest at the Statutory Minimum on Admitted Claims, as a result of the settlement of Tranche C on terms that mean that Higher Rate Creditors cannot apply an equity cost of funding when certifying their cost of funding for the purposes of establishing the amount of Statutory Interest applicable to their Higher Rate Claims; and
  - 24.1.6 the reduction of costs incurred in relation to, and expedition of the resolution of, any issues arising from time to time in the Administration through the release described in paragraph 13.3.1 of this Part I (*Letter from the Administrators*) above.
- 24.2 In addition to the above advantages, in respect of Higher Rate Creditors the Scheme will provide the right to elect for either:
- 24.2.1 the Settlement Payment Option, which could result in a payment of a greater amount than they would receive but for the Scheme; or
  - 24.2.2 the Certification Option, which results in the ability to certify for the amount of interest applicable to their claims, having regard to the principles set out by the High Court in Tranche C (which provide limited grounds for challenge by the Company to a certification), in an expedient and cost-efficient manner that avoids the need for further litigation to: (i) clarify the guiding principles relevant to contractual interest entitlements; and (ii) potentially determine an applicable cost of funding in respect of any particular claim.

## 25 Disadvantages of the Scheme

25.1 Notwithstanding the advantages of the Scheme noted in paragraph 24 (*Advantages of the Scheme*) of this Part I (*Letter from the Administrators*) above, the Scheme will give rise to the following potential disadvantages:

- 25.1.1 for all Scheme Creditors:
  - (i) the withdrawal of the application for permission to appeal the Court of Appeal judgment in Tranche A to the Supreme Court which, if allowed, could lead to (among other things) the Supreme Court concluding that:
    - (a) Statutory Interest should be calculated and paid in accordance with the rule in *Bower v Marris* (as described in paragraph 7.2.1(ii) of Appendix 4 (*Background to the Company, the Administration and the Surplus*)) of this Explanatory Statement; and
    - (b) Statutory Interest should continue to compound following the final dividend payment in respect of a Provable Claim; and
  - (ii) the loss of any right to appeal any first instance decision in so far as the law allows (other than in respect of the Excluded Proceedings and any Scheme

Breach Claim) in any jurisdiction of any court of competent jurisdiction which relates to the exercise of the Administrators' functions after the Effective Date; and

25.1.2 for Higher Rate Creditors only:

- (i) the loss of the chance that a higher court might overturn the High Court judgment in respect of Tranche C in some respects which might result in Higher Rate Creditors being able to claim a greater amount of Statutory Interest; and
- (ii) the loss of the right to have any dispute regarding a certified amount of Statutory Interest determined by the Courts, as all such disputes will be determined by the Adjudicator in accordance with the Dispute Resolution Procedure.

## **26 What happens if the Scheme does not become effective?**

**26.1** If the Scheme is not approved, the Settled Proceedings, including the Waterfall II Proceedings, the Olivant Application and the Lacuna Application, will not be settled and so will likely continue. The Administrators consider this to have the following disadvantages to Scheme Creditors:

**26.1.1** the uncertainty as regards creditor entitlements to the Surplus would likely remain for some time. If all of the issues to be determined in the Waterfall II Proceedings and the Lacuna Application were to require determination by the Supreme Court, the Administrators are advised that it is possible that creditor entitlements to the Surplus might not be determined until 2020 at the earliest;

**26.1.2** the continuation of the Settled Proceedings would also result in additional costs being incurred in the Administration (as further explained in paragraph 15.2 (*Increased costs for the Administration*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement) as well as leading to substantial delays as regards the ability of the Administrators to make material distributions from the Surplus;

**26.1.3** it is possible that a final determination of the Waterfall II Proceedings through the courts could result in at least some Scheme Creditors being found to have a lesser or greater entitlement to the Surplus than that provided for by the existing judgments in the Waterfall Proceedings, on which the Scheme is based (and which may in turn increase or decrease Scheme Creditors' Surplus recoveries);

**26.1.4** the continuation of the Lacuna Application might, if the Lacuna Issue were to arise, result in Scheme Creditors' entitlements to Statutory Interest which has accrued during the Administration but not yet been paid being extinguished; and

**26.1.5** the continuation of the Olivant Application and the possibility of challenges of other Admitted Claims could create further uncertainty and disruption.

**26.2** In addition, in the absence of a bar date Scheme Creditors would be exposed for a longer period to the risk of new Claims being received which (if of sufficient quantum) could decrease the amount payable to Scheme Creditors in respect of their Statutory Interest entitlements.

**26.3** Further details concerning the possible alternatives to the Scheme, including a summary of the possible outcomes of the Waterfall II Proceedings, the Lacuna Application and the Olivant Application are explained in paragraph 15 (*Alternatives to the Scheme*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **27 Anticipated payments and factors that may impact Scheme Distributions**

**27.1** As described in paragraph 18.1 of this Part I (*Letter from the Administrators*) above, as soon as reasonably practicable after the Scheme becomes effective the Administrators will, having determined the High Case Scheme Distribution, the Adequate Reserves and the Net Available Funds, publish a Scheme Outcome Statement on the Website which informs Scheme Parties as to whether the Company has sufficient funds to pay all Scheme Distributions in full, in part or not at all.

**27.2** As matters presently stand, the funds in the House Estate amount to £6.582 billion. After reserving for prior ranking claims (in particular Expense claims and proofs which have been lodged but not yet admitted), the funds potentially available to meet Statutory Interest entitlements amount to £6.070 billion. The value of Statutory Interest relating to 8% Interest Claims and Specified Interest Claims (including a value by reference to the proved value where the proof of debt has not yet been admitted) is £3.181 billion, the value of Statutory Interest relating to the Higher Rate Claims of Locked-Up Scheme Creditors plus the 2.5% settlement premium afforded to those Locked-Up Scheme Creditors under the Scheme is £1.589 billion, and the value of Statutory Interest (and any applicable 2.5% settlement premiums) relating to the Higher Rate Claims of non-locked up creditors calculated in accordance with the Scheme ranges from £353 million to £1.039 billion (assuming Statutory Interest at 8% (with a 2.5% settlement premium payable) on the low-case and 15% on the high-case). Accordingly, the total payments in respect of Statutory Interest and any applicable settlement premiums are expected to be between £5.123 billion and £5.809 billion and, if the Scheme becomes effective, the Surplus would be sufficient to pay Statutory Interest in full and a Full SI Payment Statement would be issued.

**27.3** That said, the type of Scheme Outcome Statement that is issued, and the timing of its issuance, will depend on a number of factors, including that there is the possibility of new claims being submitted prior to the Bar Date, which could have an impact on the issuance of the statement.

**27.4** In particular, the Administrators are aware of the possibility of a claim or claims being lodged by certain German state authorities arising out of alleged tax-motivated “cum/ex” transactions undertaken pre-Administration, although no proofs of debt have yet been submitted. The Public Prosecutor’s Office in Cologne (*Staatsanwaltschaft Köln*) has instigated investigations into a large number of banks and financial institutions, including the Company, in relation to alleged “cum/ex” trading. Its investigation into the Company could result in an administrative fine or penalty being levied against the Company and this figure could include an element calculated by reference to the Company’s profits in relation to the alleged activity. It is also possible that certain personnel who participated in “cum/ex” trading (including former employees of the Company) could be the subject of investigation, prosecution and/or other proceedings by the Public Prosecutor’s Office. There is also the possibility of a claim being submitted by the German Federal Tax Authority (*Bundeszentralamt für Steuern*) for recovery of withholding tax reclaimed in relation to alleged “cum/ex” transactions. Given that the investigation is at an early stage, the

Administrators are not currently in a position to provide further detail about the likely outcome of such investigation or likely quantum of liability. The Administrators are actively seeking to engage with the relevant German authorities in order to obtain further clarity as soon as possible, including as regards the level of reserves that should be maintained in respect of any claims that might be lodged. Depending on the progress of these discussions, it may be necessary to seek direction from the High Court (as provided for in Clause 4.3 of the Scheme Document and described in paragraph 14 (*Adequate Reserves*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement) regarding the appropriate course of action in respect of these potential claims.

**27.5** Scheme Creditors should also be aware that:

- 27.5.1** the Administrators anticipate that some Scheme Creditors will submit Certifications before the Certification Deadline, in which case the Administrators will be required to assess these Certifications and reach a decision in respect of them;
- 27.5.2** Retained Expense Claims are not subject to the Bar Date, such that the Administrators could be notified of previously unknown Retained Expense Claims after the Bar Date. However, the Administrators have and will continue to set aside Adequate Reserves for all known and expected Expense Claims;
- 27.5.3** creditors of the Company that have an Expense Claim and/or a Non-Provable Claim but do not also have a Provable Claim are not Scheme Creditors and are not therefore subject to the provisions of the Scheme, including the imposition of the Bar Date. Such creditors could therefore notify the Company of new Expense Claims after the Bar Date (which, depending on their ranking, could impact on the Scheme Outcome Statement);
- 27.5.4** Relevant Employees or Relevant Jurisdiction Clause Creditors who have not lodged a proof of debt in the Administration will fall outside the definition of "Scheme Creditor" and will therefore not be bound by the Scheme (meaning they could notify the Company of new Claims after the Bar Date). The Administrators consider that it is unlikely that there are any, or any substantial, creditors falling within those categories who have failed to submit a proof of debt in the Administration;
- 27.5.5** the Administrators anticipate that the Company will make further realisations and releases of Adequate Reserves after the Scheme becomes effective that will increase the sums available for distribution. Details of anticipated future realisations and releases of Adequate Reserves are set out in the Nineteenth Progress Report;
- 27.5.6** the Company may be required to withhold amounts in respect of tax from any distributions of interest made (as further explained in paragraph 22 (*Tax*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement); and
- 27.5.7** the Company's ability to make the payments envisaged by the Scheme depends on the Company being able to: (i) gain access to its cash and assets held with various financial institutions; and (ii) facilitate substantial payments in a short period of time. The Administrators have sought to manage this risk by holding cash and placing assets with more than one institution and ensuring that assets are selected based on their low level of risk and their ability to be converted to cash at reasonably short notice.



## **28 Actions to be taken by Scheme Creditors**

### **28.1** Having considered the contents of this letter, Scheme Creditors should take the following steps:

#### *Preliminary*

- 28.1.1** consider the documentation provided with this letter carefully and, if necessary take professional advice in relation to its terms;
- 28.1.2** if applicable, submit a Split-Holdings Request in accordance with paragraph 7 (*Split-Holdings Requests*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement by the Record Date;
- 28.1.3** if applicable, submit a proof of debt in respect of Provable Claims which have not yet been proved for by the Record Date in order to be able to Vote in respect of such claims at the Scheme Meetings;
- 28.1.4** if you are a Higher Rate Creditor and consider that you are entitled to Statutory Interest in excess of the Statutory Minimum in respect of your Higher Rate Claims, and wish to Vote in respect of such entitlement, submit an Increased Voting Rights Request in accordance with paragraph 3.4 (*Increased Voting Rights Requests*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement by the Increased Voting Rights Deadline;

#### *Voting*

- 28.1.5** cast your Votes in accordance with paragraph 4 (*Voting at the Scheme Meetings*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement;

#### *Elections and Certification*

- 28.1.6** if you are a Higher Rate Creditor, elect for either the Settlement Payment Option or the Certification Option in accordance with paragraph 5.1 (*Electing for the Settlement Payment Option or Certification Option*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement;
- 28.1.7** if you are a Higher Rate Creditor and have elected for the Certification Option, submit your Certification before the Certification Deadline (which is the Effective Date) in accordance with paragraph 8 (*Certifications*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement;

#### *Other*

- 28.1.8** if applicable: (i) prove for any Provable Claims; or (ii) notify the Company of any other Claims, including UCC Challenges, that have not previously been proved for or notified to the Company (as applicable) and which are not Retained Expense Claims prior to the Bar Date in order to preserve any potential right of recovery in respect of such Claims;
- 28.1.9** either provide the Administrators with your Settlement Instructions or, where you have provided Settlement Instructions previously, confirm that the relevant details are unchanged, in accordance with paragraph 15.2 (*Settlement Instructions and KYC Information*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement; and

**28.1.10** if required by the Company, provide the Administrators with your KYC Information in accordance with paragraph 15.2 (*Settlement Instructions and KYC Information*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.

## **29 Administrators' recommendation**

Having obtained leave of the High Court to convene meetings of Scheme Creditors to approve the Scheme, the Administrators remain of the firm view that the Scheme represents a fair and appropriate compromise that has been carefully negotiated and structured with the support of the largest creditor groups in the Administration. If the Scheme is not approved, then the Administrators consider it likely that the extant litigation to determine creditor entitlements to the Surplus will continue, resulting in significant further delay to the payment of distributions to creditors. Accordingly, the Administrators recommend to all Scheme Creditors that they approve the Scheme for the reasons set out in this letter. The Creditors' Committee has also expressed its unanimous support for the Scheme.

Yours faithfully,



Russell Downs

Joint administrator acting as agent for and on behalf of Lehman Brothers International (Europe) (in administration) without personal liability

## **Part II: Summary of the terms of the Scheme of Arrangement**

**SCHEME CREDITORS SHOULD NOTE THAT THIS PART II (SUMMARY OF THE TERMS OF THE SCHEME OF ARRANGEMENT) CONTAINS A SUMMARY ONLY OF THE PRINCIPAL PROVISIONS OF THE SCHEME. THE SCHEME DOCUMENT SET OUT IN APPENDIX 2 (SCHEME OF ARRANGEMENT) OF THIS EXPLANATORY STATEMENT CONTAINS THE TERMS OF THE SCHEME THAT WILL BE BINDING ON THE COMPANY AND ALL SCHEME CREDITORS IF THE SCHEME IS SANCTIONED BY THE HIGH COURT AND BECOMES EFFECTIVE. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE SUMMARY CONTAINED IN THIS PART II (SUMMARY OF THE TERMS OF THE SCHEME OF ARRANGEMENT) AND THE SCHEME DOCUMENT, THE TERMS OF THE SCHEME DOCUMENT WILL PREVAIL.**

### **1 Scheme Creditors**

- 1.1** The creditors who are bound by the terms of the Scheme, if it becomes effective, are referred to in the Scheme as Scheme Creditors.
- 1.2** Subject to the limited exceptions described in paragraph 2 (*Non-Scheme Creditors*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below, you will be a Scheme Creditor if you hold any Provable Claim(s) against the Company, regardless of whether such claim:
  - 1.2.1** is an Admitted Claim and has been paid in full or in part;
  - 1.2.2** is an Undetermined Provable Claim, being a claim which has been proved for in the Administration prior to the Bar Date but is yet to be finally adjudicated upon by the Administrators or the High Court; or
  - 1.2.3** has not yet been proved for in the Administration.
- 1.3** For the avoidance of doubt, the Subordinated Creditor is a Scheme Creditor.
- 1.4** The Scheme will impact all Claims of Scheme Creditors (other than Retained Claims), as further explained below.

### **2 Non-Scheme Creditors**

- 2.1** The following persons are not Scheme Creditors and are not therefore bound by the Scheme:
  - 2.1.1** creditors who only hold Expense Claims;
  - 2.1.2** creditors who only hold Non-Provable Claims;
  - 2.1.3** Relevant Employees (in relation only to claims relating to their individual contracts of employment), being employees or former employees of the Company who are domiciled in a Relevant State (other than the UK) and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date (for the reasons set out in paragraph 12.7 of the Practice Statement Letter); and
  - 2.1.4** Relevant Jurisdiction Clause Creditors (in relation only to claims arising in connection with such contracts), being creditors domiciled in a Relevant State (other than the UK) with a contractual claim against the Company under a contract which

is in writing or evidenced in writing and which contains an agreement that the courts of a Relevant State (other than the UK) are to have exclusive jurisdiction to settle any disputes which have arisen or which may arise in connection with that contractual relationship and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date (for the reasons set out in paragraph 12.7 of the Practice Statement Letter).

### **3 Scheme Parties and the Storm and Shareholder Undertakings**

**3.1** Storm, which has agreed its Statutory Interest entitlement with the Company (as further explained in paragraph 18.1.1 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below) will not be a Scheme Creditor and will not Vote at the Scheme Meetings, but has agreed to enter into the Storm Undertaking pursuant to which it will agree to be bound by the Scheme on and from the Effective Date. The term Scheme Parties is therefore used to refer to both the Scheme Creditors and Storm.

**3.2** From the Effective Date, the Scheme will be binding on the Company, the Administrators, and all Scheme Parties.

**3.3** In addition, the Shareholder (in its capacity as shareholder of the Company) has agreed to enter into the Shareholder Undertaking pursuant to which it will consent to the Scheme and, on and from the Effective Date, undertake certain obligations in connection with the Scheme, including (as applicable) granting or agreeing not to challenge or disturb the releases described in paragraph 16 (*Rights of Scheme Parties which are extinguished and released by the Scheme*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

### **4 Scheme Distributions paid to 8% Creditors and Specified Interest Creditors**

#### **4.1 8% Creditors**

An 8% Creditor is a Scheme Creditor that holds one or more 8% Interest Claims.

#### **4.2 8% Interest Claims**

An 8% Interest Claim is a Provable Claim against the Company which is not: (i) a Specified Interest Claim (as described in paragraph 4.4 (*Specified Interest Claims*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below); (ii) a Higher Rate Claim (as described in paragraph 5.2.1 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below); or (iii) the Subordinated Debt.

#### **4.3 Specified Interest Creditors**

A Specified Interest Creditor is a Scheme Creditor that holds one or more Specified Interest Claims.

#### **4.4 Specified Interest Claims**

**4.4.1** A Specified Interest Claim is, in summary, a Provable Claim against the Company which derives from a contract (other than a Relevant Contract) which stipulates a specified interest rate which gives rise to an amount of Statutory Interest greater than the Statutory Minimum.

#### **4.5 Consideration for the 8% Payment and Specified Interest Payment**

4.5.1 8% Creditors will receive the 8% Payment in full and final satisfaction of their right to receive Statutory Interest on their 8% Interest Claims.

4.5.2 Specified Interest Creditors will receive the Specified Interest Payment in full and final satisfaction of their right to receive Statutory Interest on their Specified Interest Claims.

#### **4.6 Calculation of the 8% Payment and the Specified Interest Payment**

The 8% Payment and the Specified Interest Payment will be calculated by the Company in accordance with the Relevant Principles (as described in paragraph 11 (*Relevant Principles*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below).

#### **4.7 Timing of and conditions applicable to the 8% Payment and the Specified Interest Payment**

4.7.1 Payment of the 8% Payment and Specified Interest Payment is subject to certain general conditions applicable to the payment of all Scheme Distributions. These are explained in paragraph 15.1 (*General conditions*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

4.7.2 Subject to those general conditions, within 20 Business Days of the issuance of a Scheme Outcome Statement (other than an Insufficient Funds Statement), the Company will pay the 8% Payment and the Specified Interest Payment either in full or in part.

### **5 Scheme Distributions paid to Higher Rate Creditors**

#### **5.1 Higher Rate Creditors**

A Higher Rate Creditor is a Scheme Creditor that holds one or more Higher Rate Claims.

#### **5.2 Higher Rate Claims**

5.2.1 A Higher Rate Claim is a Provable Claim which is derived from a Relevant Contract, namely:

- (i) ISDA Master Agreements;
- (ii) AFB/FBF French Master Agreements; and
- (iii) AFTB/AFTI French Master Agreements.

5.2.2 The contractual rate of interest applicable to Higher Rate Claims is determined by provisions in the Relevant Contracts that reference the relevant party's "cost of funding" (ISDA Master Agreements), "overnight refinancing rate" (AFB/FBF French Master Agreements), "average overnight rates" (AFTB French Master Agreement) or "average of the daily rates" (AFTI French Master Agreement) (together the "**Default Interest Provisions**").

5.2.3 It is possible that the application of the Default Interest Provisions in the Relevant Contracts may give rise to an effective rate of Statutory Interest in respect of such Higher Rate Claims in excess of the Statutory Minimum.

5.2.4 The interpretation of certain Default Interest Provisions is the subject of ongoing litigation (as described in paragraph 7 (*Waterfall Proceedings*) of Appendix 4

(*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement). In particular, the High Court handed down a judgment in respect of the Default Interest Provisions in respect of the ISDA Master Agreements in Tranche C and a number of aspects of this decision are subject to appeal.

- 5.2.5 The interpretation of certain provisions in AFB/BBF French Master Agreements were also originally part of the Tranche C proceedings but are now set out in the AFB/BBF Agreed Position, as set out in Appendix 6 (*AFB/BBF Agreed Position*) of this Explanatory Statement.
- 5.2.6 No specific principles have been determined by the High Court or agreed between the parties in respect of the AFTB/AFTI French Master Agreements.
- 5.2.7 The German Master Agreement is not a Relevant Contract since further to the Tranche C Judgment and the declarations contained in the Tranche C Order, this type of agreement does not entitle the counterparty to such an agreement to interest on their Provable Claim at a rate in excess of 8% per annum (and the relevant findings of the High Court were not appealed) and therefore creditors who hold claims derived from German Master Agreements are 8% Creditors.

### **5.3 Determination of Higher Rate Creditors' Statutory Interest rights**

- 5.3.1 Each Higher Rate Creditor will, at the time of Voting, have the ability to Elect for one of the following options:
- (i) the Settlement Payment Option, being a right to receive the Settlement Payment (as described in paragraph 6 (*The Settlement Payment Option*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below); or
  - (ii) the Certification Option, being a right to certify the contractual rate(s), and amount, of interest it asserts to apply to its Higher Rate Claims and therefore to receive the Applicable CI Payment (as described in paragraph 7 (*The Certification Option*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below).
- 5.3.2 Higher Rate Creditors who do not make a Valid Certification Election will be deemed to have elected for the Settlement Payment Option and will receive the Settlement Payment.

## **6 The Settlement Payment Option**

### **6.1 Settlement Creditors**

Settlement Creditors are, in summary, Higher Rate Creditors who in respect of their Higher Rate Claims have: (i) Elected for the Settlement Payment Option; or (ii) not made either a Valid Certification Election (as described in paragraph 7.2 (*Valid Certification Elections*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below) or any Election.

### **6.2 Consideration for the Settlement Payment**

Settlement Creditors will receive the Settlement Payment in respect of their Higher Rate Claims, consisting of:

- 6.2.1 the 8% Payment element of the Settlement Payment in full and final satisfaction of their right to receive Statutory Interest on their Higher Rate Claim(s); and

6.2.2 the Settlement Premium element of the Settlement Payment as compensation for not exercising their right to certify the contractual rate(s) of interest that apply to their Higher Rate Claims.

### **6.3 Calculation of the Settlement Payment**

6.3.1 The 8% Payment element of the Settlement Payment will be calculated in accordance with the Relevant Principles.

6.3.2 The Settlement Premium element of the Settlement Payment will be calculated as an amount equal to 2.5% of the Admitted Claim value in respect of a Settlement Creditor's Higher Rate Claim.

### **6.4 Timing of and conditions applicable to the Settlement Payment**

6.4.1 Payment of the Settlement Payment is subject to certain general conditions applicable to the payment of all Scheme Distributions. These are explained in paragraph 15 (*Provisions relating to all Scheme Distributions*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

6.4.2 Subject to those general conditions, within 20 Business Days of the publication of an issued Scheme Outcome Statement (other than an Insufficient Funds Statement), the Company will pay the Settlement Payment either in full or in part.

## **7 The Certification Option**

### **7.1 Certifying Creditors**

Certifying Creditors are, in summary, Higher Rate Creditors who in respect of their Higher Rate Claims have made a Valid Certification Election.

### **7.2 Valid Certification Elections**

7.2.1 In order for a Higher Rate Creditor to make a Valid Certification Election in relation to a Higher Rate Claim it must:

- (i) submit an Election for the Certification Option by the Election Deadline; and
- (ii) at the same time make a representation (which is true and accurate as at the date it is made) that: (a) it has made the same Election in respect of all Higher Rate Claims which it legally owns and Controls; and (b) in respect of Higher Rate Claims which are Controlled by third parties, it has made the same Election in respect of all Higher Rate Claims that are Controlled by the same third parties.

7.2.2 This reflects that Scheme Creditors who hold more than one Higher Rate Claim and do not Control all such claims will be able to Elect for the Certification Option in respect of some of their Higher Rate Claims and the Settlement Payment Option in respect of other Higher Rate Claims, in accordance with the instructions of the third parties who Control such claims, provided they have submitted a Split-Holdings Request by the Record Date (as further explained in paragraph 7 (*Split-Holdings Requests*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

7.2.3 The process by which Elections can be submitted by Higher Rate Creditors is explained in paragraph 5 (*Elections*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

### **7.3 Consideration for the Applicable CI Payment**

Certifying Creditors will receive the Applicable CI Payment in full and final satisfaction of their right to receive Statutory Interest on their Higher Rate Claim(s).

### **7.4 Calculation of the Applicable CI Payment**

7.4.1 Certifying Creditors who submit a Certification to the Company prior to the Certification Deadline will have their Applicable CI Payment calculated in accordance with paragraph 9 (*Determination and payment of the Applicable CI Payment*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

7.4.2 Certifying Creditors who fail to submit a Certification (or an Initial Certification in respect of an Undetermined Provable Claim) to the Company prior to the Certification Deadline will receive an Applicable CI Payment in an amount equal to the 8% Payment as if the relevant Higher Rate Claim was an 8% Interest Claim. These Certifying Creditors will not receive any Settlement Premium.

## **8 Certifications**

*Valid Certifications – admitted Higher Rate Claims*

8.1 In order for a Certification to be validly made in respect of admitted Higher Rate Claims, it must:

8.1.1 be identified by a Certifying Creditor as being a “Certification”, state the Higher Rate Claim to which it relates (by reference to the relevant Claim Reference) and:

- (i) in respect of an ISDA Master Agreement, set out:
  - (a) the asserted Cost of Funding applicable from time to time for the period during which the relevant Certification Claim was outstanding, in whole or in part;
  - (b) the asserted Certified Rate(s), being the rate(s) per annum equal to the asserted Cost of Funding plus 1% per annum; and
  - (c) the Certified Sum calculated by applying the Certified Rate(s) of interest to the balance outstanding from time to time of the relevant Certification Claim in accordance with the Relevant Principles; and
- (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, set out the asserted Certified Rate and Certified Sum calculated having regard to the Relevant Principles; and

8.1.2 be submitted:

- (i) together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes to submit; and
- (ii) by the Certification Deadline, which is the Effective Date.



- 8.2** Higher Rate Creditors are required to set out the Certified Rate and Certified Sum to which they believe they are entitled (as opposed to just the Certified Rate) on the basis that it will allow for a comparison between the amounts of Statutory Interest arrived at by applying the statutory rate of 8% simple on the one hand and the contractual rate(s) on the other hand so as to establish which is the higher rate for the purposes of Rule 14.23 of the Insolvency Rules.

*Valid Certifications – Undetermined Certification Claims*

- 8.3** In order for a Certification to be validly made in respect of an Undetermined Certification Claim (being an Undetermined Provable Claim in respect of which a Valid Certification Election has been made) the relevant Certifying Creditor must:

- 8.3.1** submit an Initial Certification which must:

- (i) satisfy the Certification requirements described in paragraph 8.1.1 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above;
- (ii) be prepared on the assumption that the relevant Undetermined Certification Claim is an Admitted Claim that was paid in full on the date of the Initial Certification; and
- (iii) be submitted:
  - (a) together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes to submit; and
  - (b) by the Certification Deadline; and

- 8.3.2** to the extent the Undetermined Certification Claim is admitted for dividend by the Administrators and the principal amount of such Admitted Claim is paid in full, submit a Final Certification, which must:

- (i) update the Initial Certification by including: (i) details of all relevant Certified Rates up to the date of payment of the principal amount of the Undetermined Certification Claim; and (ii) a revised Certified Sum; and
- (ii) be submitted within 10 Business Days of the Admitted Certification Claim having been paid in full,

failing which the Initial Certification will be deemed to be the Final Certification.

- 8.4** The Applicable CI Payment in respect of an Undetermined Certification Claim that is subsequently admitted and paid will be determined in the same manner described in paragraphs 9 (*Determination and payment of the Applicable CI Payment*) and 10 (*The Dispute Resolution Procedure*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below in respect of admitted Higher Rate Claims, save that: (i) references to the "Certification" are to both the Initial Certification and the Final Certification; and (ii) the determination of the Initial Certification is stayed until the Company has received the Final Certification and all time periods for the determination of the Applicable CI Payment commence from that date (instead of the Certification Deadline).

*Submitting Certifications*

- 8.5** Certifications should be submitted to the Company in accordance with paragraph 6 (*Certifications*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **9 Determination and payment of the Applicable CI Payment**

- 9.1** Within 20 Business Days of the Certification Deadline (or if relevant, the date of the Final Certification) (referred to as the Consultation Period), and provided the relevant Certifying Creditor has not notified the Company of a UCC Challenge prior to the Bar Date (the consequences of which are explained in paragraph 9.6 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below), the Company will issue a Decision Notice in respect of the Certifications it has received from Certifying Creditors pursuant to which the Company will:
- 9.1.1** accept the Certification;
  - 9.1.2** propose a Counteroffer that contains a Counteroffer Sum that is lower than the Certified Sum (which can then be accepted or rejected by the Certifying Creditor as described below);
  - 9.1.3** reject the Certification without making a Counteroffer on the basis that the Company's decision is that the Applicable CI Payment should be the Statutory Minimum (with the consequences set out below); and/or
  - 9.1.4** make an Additional Information Request in which the Company requests that the Certifying Creditor provides additional information in support of its Certification (following which, if information is duly provided by the Certifying Creditor, the Company may accept or reject the Certification, or make a Counteroffer, as described more fully below).
- 9.2** In deciding which course of action to take in relation to any Certifications, the Company will have regard (where applicable) to the Relevant Principles (as described more fully in paragraph 11 (*Relevant Principles*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below).
- 9.3** The Company will consult with the Subordinated Creditor prior to issuing any Decision Notice. This approach is considered acceptable by the Administrators on the basis that the Subordinated Creditor is likely to be the only creditor of the Company with a material economic interest in the adjudication of a Certification (other than the Scheme Creditor to whom a Certification relates). Where agreement cannot be reached as between the Company and the Subordinated Creditor, the Company will (subject to paragraph 9.4 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below) decide in its sole discretion which Decision Notice to issue.
- 9.4** Where the Company, following consultation with the Subordinated Creditor, decides to make a Counteroffer to the Certifying Creditor, it will seek to agree the terms of the Counteroffer with the Subordinated Creditor. Where agreement cannot be reached, the Company will issue a Decision Notice containing such Counteroffer as the Subordinated Creditor may recommend to the Company.
- 9.5** Prior to taking any of the steps outlined above, the Company may, for a period of up to 20 Business Days (extendable by agreement with the relevant Certifying Creditor by a further 15 Business Days), engage in without prejudice confidential settlement discussions with a Certifying Creditor with the intention of reaching agreement as regards the outcome of the

Company's adjudication. Any without prejudice communications between the Company and the Certifying Creditor which are made for the purpose of confidential settlement negotiations will remain private and confidential and cannot be disclosed to the Adjudicator or any other Scheme Party (save the Subordinated Creditor, who must also maintain the confidentiality of such communications).

- 9.6** Where a Certifying Creditor has notified the Company of a UCC Challenge (as explained in paragraph 12 (*Admitted amounts of 8% Interest Claims, Specified Interest Claims and Higher Rate Claims*) of this Part II (*Summary of the terms of the Scheme of Arrangement*)) below prior to the Bar Date, the determination of its Certification(s) shall be suspended until such time as the UCC Challenge has been either agreed or finally determined by the High Court.
- 9.7** In no circumstances will the Applicable CI Payment in respect of a Certification Claim be less than the Statutory Minimum or (other than in very limited circumstances) exceed the Certified Sum.

*Acceptance of Certification*

- 9.8** If the Company accepts the Certification, the Applicable CI Payment will be equal to the Certified Sum (being the amount of Statutory Interest asserted by the relevant Certifying Creditor in its Certification).

*Counteroffer*

- 9.9** If the Company makes a Counteroffer, the Certifying Creditor will have 10 Business Days from receipt of the Counteroffer to accept or reject the Counteroffer. If:
- 9.9.1** the Certifying Creditor accepts the Company's Counteroffer or fails to respond within the specified time period, the Applicable CI Payment will be the Counteroffer Sum; or
- 9.9.2** the Certifying Creditor rejects the Counteroffer within the specified time period, the Certification will then be automatically rejected by the Company and the Company will provide a Rejection Notice in respect of the Certification. The Rejection Notice must include details of the Counteroffer Sum.
- 9.10** Where the Company issues a Rejection Notice, the Certifying Creditor will have the option to challenge this decision and have its Certification determined in accordance with the Dispute Resolution Procedure described in paragraph 10 (*The Dispute Resolution Procedure*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below by making a "DRP Election" as described in paragraph 10.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.
- 9.11** If the Certifying Creditor does not make a DRP Election within 10 Business Days of the date on which the Company rejects the Certification pursuant to paragraph 9.10 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, its Applicable CI Payment will be the Statutory Minimum.

*Rejection where no Counteroffer is made*

- 9.12** If the Company rejects a Certification on the basis that the Company's decision is that the Applicable CI Payment should be the Statutory Minimum, the Certifying Creditor will have the option to challenge this decision and have its Certification determined in accordance with

the Dispute Resolution Procedure described in paragraph 10 (*The Dispute Resolution Procedure*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

- 9.13** If the Certifying Creditor does not make a DRP Election within 10 Business Days of the date on which the Company rejects the Certification pursuant to paragraph 9.12 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, its Applicable CI Payment will be the Statutory Minimum.

*Request for further information*

- 9.14** Prior to accepting or rejecting a Certification or making a Counteroffer, the Company may request that the Certifying Creditor provides additional information in support of the Certification (an Additional Information Request). Upon receipt of such an Additional Information Request, the Certifying Creditor will have 10 Business Days to provide the requested information to the Company. If:

**9.14.1** the Certifying Creditor provides the requested information, the Company will have 10 Business Days from receipt of the relevant information to accept or reject the Certification or make a Counteroffer; or

**9.14.2** the Certifying Creditor fails to provide the requested information within the relevant period, the Certification will be automatically rejected by the Company, and the Company will promptly issue a Rejection Notice on the basis that the Company's decision is that the Applicable CI Payment should be the Statutory Minimum.

- 9.15** If the Company rejects a Certification following the Certifying Creditor's failure to respond satisfactorily to an Additional Information Request, the Certifying Creditor will have the option to challenge this decision and have its Certification determined in accordance with the Dispute Resolution Procedure.

- 9.16** If the Certifying Creditor does not make a DRP Election within 10 Business Days of the date on which the Company rejects the Certification pursuant to paragraph 9.14.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, its Applicable CI Payment will be the Statutory Minimum.

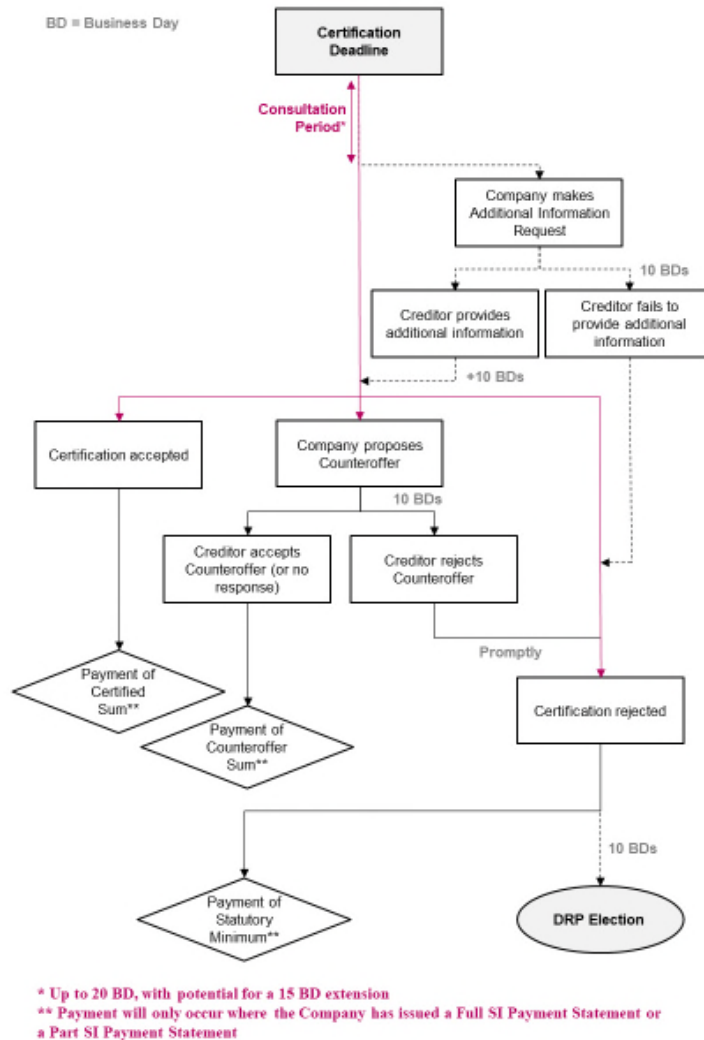
**9.17 Timing of and conditions applicable to the Applicable CI Payment**

**9.17.1** Payment of the Applicable CI Payment is subject to certain general conditions applicable to the payment of all Scheme Distributions. These are explained in paragraph 15 (*Provisions relating to all Scheme Distributions*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

**9.17.2** Subject to these general conditions, the Company will pay the Applicable CI Payment in respect of each Certification Claim (either in full or in part) within 20 Business Days of the later of:

- (i) such amount being determined in respect of that Certification Claim in accordance with the terms of the Scheme (as described above); or
- (ii) the issuance by the Company of a Scheme Outcome Statement that is not an Insufficient Funds Statement.

**9.18** A flow chart summarising the Certification Option process is set out below, for illustrative purposes only:



## 10 The Dispute Resolution Procedure

**10.1** The Dispute Resolution Procedure is a dispute resolution mechanism which is available to a Certifying Creditor whose Certification has been rejected by the Company (including where the Certification has been rejected following a Counteroffer or an Additional Information Request) and who wishes to appeal that rejection. This is the sole means available to a Certifying Creditor to challenge the Company's rejection of its Certification.

**10.2** If, following receipt of a Rejection Notice, a Certifying Creditor wishes to appeal the rejection, it must make a DRP Election by submitting an Appeal Form (in the same or substantially the same form as Schedule 1 of the Scheme Document) within 10 Business Days. Following submission of an Appeal Form, the Certifying Creditor will be entitled to have the Applicable CI Payment in respect of its Higher Rate Claim determined by an independent Adjudicator (acting as an expert, not an arbitrator) on the terms described in the Dispute Resolution Procedure.

### **10.3 The appointment of the Adjudicator**

- 10.3.1** Following the submission of an Appeal Form, the Company will as soon as reasonably practicable appoint on reasonable terms an Adjudicator to act in the capacity of an independent expert (and not as an arbitrator) and determine the Appeal.
- 10.3.2** The Company will use reasonable endeavours to appoint (in the following order of priority): Sir Bernard Rix; Michael Brindle QC; or Tim Howe QC as Adjudicator. A copy of the CV for each of the above-named individuals is set out in Appendix 7 (*Adjudicator CVs*) of this Explanatory Statement. If none of these individuals can accept an appointment as Adjudicator, the Company and the Subordinated Creditor will negotiate with each other in good faith to select an alternative suitably qualified, independent Adjudicator and the Company will use reasonable endeavours to appoint such person as Adjudicator in respect of the relevant Appeal. Where agreement cannot be reached as between the Company and the Subordinated Creditor, the Company will in its sole discretion select an alternative former member of the England and Wales judiciary and/or English law qualified Queen's Counsel as Adjudicator.
- 10.3.3** To ensure that appeals are heard expediently, the availability of the preferred individuals for the role of Adjudicator will be checked in respect of each Appeal which is brought. Owing to Adjudicator availability and/or conflicts of interest, it may therefore be the case that different persons act as Adjudicator in respect of different appeals.

### **10.4 Support Team**

- 10.4.1** The Adjudicator may engage the services of a Support Team. The Support Team is not permitted to conduct its own factual investigations. The Support Team's role is limited to helping the Adjudicator to understand fully the Appellant Certifying Creditor's Case and the Company's Case, particularly as regards any calculations set out by the Appellant Certifying Creditor or the Company.

### **10.5 The timings of the Dispute Resolution Procedure**

- 10.5.1** Once an Adjudicator has been formally appointed in respect of the Appeal as described in paragraph 10.3 (*The appointment of the Adjudicator*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, the Appellant Certifying Creditor must within 10 Business Days of the appointment serve upon the Adjudicator and the Company the Appellant Certifying Creditor's Case (as described in paragraph 10.6.1(i) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below).
- 10.5.2** The Company will then have a period of 20 Business Days in which to serve on the Adjudicator and the Appellant Certifying Creditor the Company's Case (as described in paragraph 10.6.1(ii) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below). The Company will consult with the Subordinated Creditor concerning the Company's Case, however, the Company shall have the final decision in respect of the Company's Case.
- 10.5.3** Prior to making his/her determination, the Adjudicator may, having regard to the Relevant Principles where relevant, require the Appellant Certifying Creditor and/or the Company to serve further information, documents and/or written submissions

(which may include legal submissions) in order to clarify his/her understanding of the parties' respective cases.

- 10.5.4** After service by the Company of the Company's Case (or, where the Adjudicator has requested the Appellant Certifying Creditor or the Company to serve further information, the date on which such information was provided), the Adjudicator shall use reasonable endeavours to provide his/her decision as soon as practicable and in any event within 20 Business Days.

## **10.6 Information submitted to the Adjudicator for the Appeal**

- 10.6.1** The Adjudicator will consider the following information when reaching his/her decision:

- (i) the Appellant Certifying Creditor's Case, comprising its Certification, any information provided to the Company in response to an Additional Information Request or Counteroffer, its Appeal Form and any further documents or written submissions upon which the Appellant Certifying Creditor wishes to rely on to support its Certification;
- (ii) the Company's Case, comprising its Rejection Notice (including, where relevant, its Counteroffer) and any further information or submissions upon which the Company wishes to rely on to: (i) support its decision to issue a Rejection Notice and, where relevant, its decision to make a Counteroffer; and/or (ii) respond to the Appellant Certifying Creditor's Case;
- (iii) any further information provided to the Adjudicator by the parties pursuant to a request by the Adjudicator; and
- (iv) any information provided to the Adjudicator by a member of his/her Support Team to further the Adjudicator's understanding of the Appellant Certifying Creditor's Case and/or the Company's Case.

- 10.6.2** Neither the Appellant Certifying Creditor's Case nor the Company's Case may include any reference to any decision by the Chairman in respect of any Higher Rate Creditor's request for increased Voting Rights (as described in paragraph 3.4 (*Increased Voting Rights Requests*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement).

- 10.6.3** Where the Adjudicator (including through his/her Support Team) identifies a mathematical or numerical error in the information submitted as part of the Appellant Certifying Creditor's Case or the Company's Case, he/she shall consult with the Appellant Certifying Creditor and the Company about the error. Following this consultation, the Adjudicator is permitted to correct such error and replace an erroneous number or rate in a calculation or document, before making his/her determination.

- 10.6.4** The Adjudicator (including through his/her Support Team) may also correct any Certified Sum that has been calculated in a manner that is inconsistent with any of the following:

- (i) the information set out in the Certifying Creditor's UCC4 where the Certifying Creditor has not notified the Company of a UCC Challenge prior to the Bar Date;

- (ii) the allocation and composition of the Certifying Creditor's 8% Interest Claims, Specified Interest Claims and Higher Rate Claims, as agreed between the Company and the Certifying Creditor or finally determined by the High Court, if the Certifying Creditor has notified the Company of a UCC Challenge prior to the Bar Date; or
- (iii) in respect of any Undetermined Certification Claim that is admitted after the Bar Date, the amount of the admitted Higher Rate Claim as communicated by the Company to the holder of such claim at the time of its admittance.

## **10.7 Method of adjudication**

**10.7.1** To determine an Appeal, the Adjudicator is required to consider the information described in paragraph 10.6 (*Information submitted to the Adjudicator for the Appeal*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) above. The Adjudicator is not permitted to conduct his own factual investigations or to take account of information not included in the categories described above.

**10.7.2** Further, the Adjudicator must also have regard, where applicable, to the Relevant Principles, as set out in paragraph 11 (*Relevant Principles*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

## **10.8 The Adjudicator's determination**

**10.8.1** The Adjudicator will assess whether the Certifying Creditor's Certification is consistent with the Relevant Principles. In reaching a decision in this regard, the Adjudicator will apply the relevant law as he finds it to be at the Effective Date.

**10.8.2** Save where there has been a mathematical or numerical error (as to which, see paragraphs 10.6.3 and 10.6.4 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above) the outcome of any Appeal will be a finding by the Adjudicator that the Applicable CI Payment for the Higher Rate Claim is one of:

- (i) the Certified Sum put forward in the Appellant Certifying Creditor's Case;
- (ii) the Counteroffer Sum put forward by the Company, where a Counteroffer was made prior to rejection of the Certification; or
- (iii) the Statutory Minimum.

In other words, the Adjudicator is obliged to decide which of the amounts put forward by the parties (as corrected as necessary in accordance with the above) should be the Applicable CI Payment and is not permitted to determine that any other amount is the Applicable CI Payment.

**10.8.3** The Adjudicator may only uphold the Company's Case (save as corrected for any mathematical or numerical errors, as discussed in paragraphs 10.6.3 and 10.6.4 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above) if he/she is satisfied on the balance of probabilities that the Company has demonstrated that the Certification of the Appellant Certifying Creditor has been made in bad faith, irrationally or other than in accordance with the Relevant Principles. The burden of proof for establishing that one of these permitted grounds of challenge has been made out is on the Company. If the Company does not satisfy the burden, then the Adjudicator must uphold the Appellant Certifying Creditor's case (as corrected, if relevant, for any mathematical or numerical errors, as described in paragraphs



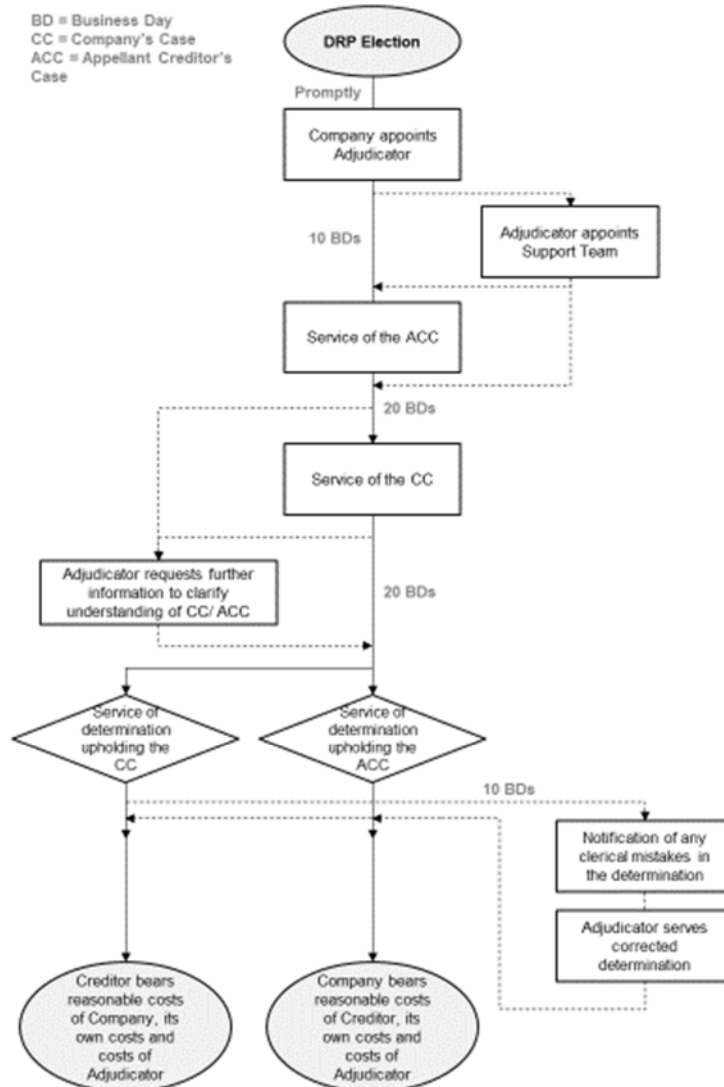
10.6.3 and 10.6.4 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above).

- 10.8.4 In making his/her determination of an Appeal, the Adjudicator is not permitted to have regard to the Chairman's decision in respect of any Higher Rate Creditor's request for increased Voting Rights.
- 10.8.5 The Adjudicator will not give reasons for his/her determination and the Appellant Certifying Creditor and the Company may not request the Adjudicator to provide such reasons following his/her determination. The Administrators consider this reasonable on the basis that the process is intended to be expedient and result in Scheme Creditors' Statutory Interest entitlements being paid sooner than they otherwise would be.
- 10.8.6 The Adjudicator's determination will be final and binding (save in circumstances of fraud or bias) on the parties, all other Scheme Parties and the Shareholder. No claim can be brought directly against the Adjudicator by the Company, the Appellant Certifying Creditor, any other Scheme Party or the Shareholder in respect of his/her decision.

## **10.9 Costs**

- 10.9.1 If the Adjudicator finds that the Applicable CI Payment is the Certified Sum (as corrected for any errors), then the Company will bear the reasonable costs of the Dispute Resolution Procedure as an expense of the Administration on an indemnity basis.
- 10.9.2 If the Adjudicator finds that the Applicable CI Payment is the Counteroffer Sum (as corrected for any errors) or the Statutory Minimum, then the Appellant Certifying Creditor will bear the reasonable costs of the Dispute Resolution Procedure on an indemnity basis.

**10.10** A flow chart summarising the Dispute Resolution Procedure is set out below, for illustrative purposes only:



## 11 Relevant Principles

### 11.1 Summary

11.1.1 As explained in this Part II (*Summary of the terms of the Scheme of Arrangement*) above, among other things:

- (i) Scheme Distributions will be calculated in accordance with the Relevant Principles;
- (ii) Certifications must contain a Certified Sum calculated in accordance with the Relevant Principles;
- (iii) the Company must have regard to, where relevant, the Relevant Principles when considering what Decision Notice to issue; and

- (iv) the Adjudicator must have regard to, where relevant, the Relevant Principles when adjudicating on any Appeal.

**11.1.2** In summary, the Relevant Principles are:

- (i) where a Higher Rate Claim is derived from an ISDA Master Agreement, the principles of the judgment of the High Court in Tranche C, as set out in the declarations made by Hildyard J in an Order dated 12 December 2016 following his judgment (as summarised in paragraph 11.2 (*The principles from Hildyard J's decision in Waterfall II Tranche C*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below);
- (ii) where a Higher Rate Claim arises from an AFB Master Agreement or an FBF Master Agreement, the AFB/BBF Agreed Position (as summarised in paragraph 11.3 (*The AFB/BBF Agreed Position*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below);
- (iii) in respect of all 8% Interest Claims, Specified Interest Claims and Higher Rate Claims, the Courts' decisions in Tranche A which are applicable to the calculation of Statutory Interest (as summarised in paragraph 11.4 (*Relevant principles from Tranche A*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below); and
- (iv) for the purposes of calculating the amount of Statutory Interest payable in respect of Certification Claims or Specified Interest Claims where the applicable contract provides for a compound rate of interest, the Compounding Principle, which provides that interest shall continue to compound in accordance with the contractual rate until the payment of a final dividend in respect of the applicable claim. The Compounding Principle, though not decided by the High Court in Tranche A, reflects what the Administrators consider to be the correct interpretation of the Tranche A judgment and, in the absence of the Scheme, such principle could otherwise be challenged and potentially determined by the Courts to be the incorrect approach. An example of the application of the Compounding Principle is set out in paragraph 14.3.7 of Part III (*Implementing the Scheme, risk factors and expected outcome*) of this Explanatory Statement.

**11.2 The principles from Hildyard J's decision in Waterfall II Tranche C**

**11.2.1** The Tranche C litigation addressed several issues concerning the construction of standard form interest provisions contained in the ISDA Master Agreement, being the Relevant Contract which gives rise to the majority of the Higher Rate Claims.

**11.2.2** The issues decided by the High Court in Tranche C are described in Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement. Following his judgment, Hildyard J gave the Tranche C Order which sets out a number of declarations that record his decision in respect of these issues. A copy of the Tranche C Order is included in Appendix 5 (*Tranche C Order*) of this Explanatory Statement. The following declarations from the Tranche C Order are relevant to the definition of the "Default Rate" in New York and English law ISDA Master Agreements and therefore form part of the Relevant Principles:

- (i) Declaration (i) concerns whose cost of funding is relevant to calculating the Default Rate (see Issue 1 in paragraph 7.4 (*Waterfall II Proceedings* –

*Tranche C*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).

- (ii) Declarations (ii) to (xii) concern the essential characteristics of the contractual term “cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount” plus 1% per annum which is the definition of the “Default Rate” in the ISDA Master Agreement (see Issues 2 and 3 in paragraph 7.4 (*Waterfall II Proceedings – Tranche C*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).
- (iii) Declarations (xiii) to (xvi) concern how a creditor’s cost of borrowing should be assessed, for the purpose of calculating a creditor’s cost of funding, in circumstances where the relevant payee has not, in fact, raised an amount equal to the sums owed and has decided rationally and in good faith that it would have done so through debt funding (see Issues 4 and 5 in paragraph 7.4 (*Waterfall II Proceedings – Tranche C*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).
- (iv) Declaration (xvii) concerns the points in time (or periods of time) which are permitted to be the basis for establishing the relevant payee’s cost of borrowing (see Issue 6 in paragraph 7.4 (*Waterfall II Proceedings – Tranche C*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).
- (v) Declarations (xviii) and (xix) concern the ambit of a creditor’s Certification, the permissible grounds for a challenge to the Certification and the burden of proof in such a challenge. In particular, declaration (xviii) states that the Certification made by a Certifying Creditor is conclusive unless it is made irrationally, otherwise than in good faith, contains a manifest numerical or mathematical error or states a cost of funding which does not fall wholly within the scope of the expression “cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount” as that phrase has been construed by the High Court. Declaration (xix) confirms that the burden will be on the Company to demonstrate that the relevant Certification is capable of being challenged on one of the permissible grounds (see Issues 7 and 8 in paragraph 7.4 (*Waterfall II Proceedings – Tranche C*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).

### **11.3 The AFB/FBF Agreed Position**

**11.3.1** When the Administrators first issued the application that commenced the *Tranche C* litigation, the application included five issues relating to the construction of certain euro-denominated standard form contracts entered into between the Company and certain counterparties (being FBF Master Agreements, AFB Master Agreements, AFTB Master Agreements and AFTI Master Agreements).

**11.3.2** These issues were raised for the purpose of confirming whether interest provisions in those standard agreements could be relevant when determining the extent of the Statutory Interest entitlements of those counterparties in the Administration.

- 11.3.3** Following the exchange of position papers and expert reports, the SCG and the Wentworth Group agreed the AFB/FBF Agreed Position in respect of these issues, insofar as those issues concerned euro-denominated claims arising under either an AFB Master Agreement or a FBF Master Agreement. The AFB/FBF Agreed Position was published on the Website on 14 September 2015.
- 11.3.4** In summary, for a *cession de créance* (transfer of claim), interest payable under clause 9.1 of the FBF Master Agreement and AFB Master Agreement is calculated by reference to the overnight financing rate of the original counterparty, whether before or after the date of the relevant transfer.
- 11.3.5** What constitutes “overnight refinancing rate of the party” is a question of fact to be determined objectively and by reference to the relevant overnight refinancing rates which would have been offered to the original counterparty, if such rate is not specified in the relevant master agreement. The Certification can be challenged by the defaulting party (i.e. the Company) on the basis of manifest error, fraud or lack of good faith (which includes a duty of loyalty).
- 11.3.6** In considering the Appellant Certifying Creditor’s Case and the Company’s Case in respect of a Higher Rate Claim arising from an AFB/FBF French Master Agreement, the Adjudicator must consider whether the cases put forward by the parties are consistent with the AFB/FBF Agreed Position.

#### **11.4 Relevant principles from Tranche A**

- 11.4.1** The issues which were addressed in Tranche A are set out in paragraph 7.2 (*Waterfall II Proceedings – Tranche A*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement. In summary, the Courts have held that:
- (i) the Bower v Marris Argument does not apply, such that where the Company has made payment(s) in respect of an Admitted Claim during the course of the Administration, such payment(s) discharged the principal amount of such claim before discharging any accrued interest;
  - (ii) Statutory Interest accrues on such portion of the relevant Admitted Claim as remains outstanding from time to time having regard to the fact that the Bower v Marris Argument does not apply;
  - (iii) Statutory Interest accrues from the Administration Date up to the date on which the relevant Admitted Claim is paid in full by the Company in respect of contingent and future claims;
  - (iv) where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period will be calculated by dividing the applicable rate by 366;
  - (v) where the Company has made payment(s) in respect of an Admitted Claim which is made up of a combination of 8% Interest Claim(s), and/or Specified Interest Claims and/or part Higher Rate Claim(s), such payment(s) discharged the component parts of such Admitted Claim pro rata;
  - (vi) where a creditor has a Provable Claim in respect of a contractual close-out sum arising post-Administration (e.g. a creditor who has triggered close-out provisions under an ISDA Master Agreement), then the “*rate applicable to*

*the debt apart from the administration*” under Rule 2.88(9) of the Insolvency Rules 1986 can be the contractual rate of interest which would, under the terms of the contract, accrue once the close-out sum became due and payable;

- (vii) such a contractual rate of interest is calculated from the date the entitlement to interest started under the contract. Where the contractual rate of interest accrues on a compounding basis, Statutory Interest will be payable on such a compounding basis but will stop compounding at the point when the principal is paid in full;
- (viii) in order to determine which is “the greater of” the two interest options available under Rule 2.88(9) of the Insolvency Rules 1986, a comparison must be made between the total amounts of interest payable based on each method of calculation. If different parts of a proved debt would attract different rates of interest, the proved debt must be broken down into its constituent parts so that the correct interest can be applied to each part accordingly;
- (ix) for the purpose of calculating the total amount of interest payable “apart from the administration”, the calculation is from the Administration Date. Where the interest rate for that entitlement is a contractual rate which only started to run under the contract from a date after the Administration Date, then the “*rate applicable to the debt apart from the administration*” between the Administration Date and the date when the interest first started to run under the contract would be zero;
- (x) for the purpose of determining under Rule 2.88(9) of the Insolvency Rules 1986 whether an entitlement to interest on this basis was greater or lower than an entitlement based on the Judgments Act rate, the interest for the periods before and after the date on which the contractual interest started to run should be taken together; and
- (xi) a creditor is not entitled to a further interest claim in respect of the period of time between payment of the principal debt and payment of the Statutory Interest payable in respect of that debt.

## **12 Admitted amounts of 8% Interest Claims, Specified Interest Claims and Higher Rate Claims**

**12.1** The allocation and composition of a Scheme Creditor’s Admitted Claims between 8% Interest Claims, Specified Interest Claims and Higher Rate Claims were set out in the UCC3 that Scheme Creditors with Admitted Claims should have received on or before 22 December 2017. The information contained in the UCC3s will be reconfirmed to each Scheme Creditor in a UCC4 which will be made available via the Portal on or around the date of this Explanatory Statement.

**12.2** Should any Scheme Creditor dispute the allocation or composition of its Admitted Claims between 8% Interest Claims, Specified Interest Claims and/or Higher Rate Claims set out in its UCC4, it must provide details of its objection (including what it considers to be the correct allocation/composition of the 8% Interest Claims, Specified Interest Claims and/or Higher Rate Claims that it holds), together with supporting evidence, by email to [UCC4queries@lbia-eu.com](mailto:UCC4queries@lbia-eu.com) prior to the Bar Date. Such a dispute is referred to in the Scheme as a UCC Challenge.

- 12.3** The Company will negotiate in good faith to resolve any UCC Challenge that has been notified to it prior to the Bar Date. If a UCC Challenge has not been resolved by agreement within 20 Business Days of the Effective Date, both the Company and the relevant Scheme Creditor shall be at liberty to apply to the High Court to seek the determination of the UCC Challenge.
- 12.4** The Company is not required to pay any Scheme Distribution to a Scheme Creditor that has raised a UCC Challenge prior to the Bar Date until that dispute has been resolved by agreement or determined by the High Court. Pursuant to the Scheme, Scheme Creditors will give up the ability to appeal any such determination by the High Court.
- 12.5** A Scheme Creditor that does not raise a UCC Challenge prior to the Bar Date will be bound by the allocation/composition of its Admitted Claims as between 8% Interest Claims, Specified Interest Claims and Higher Rate Claims set out in its UCC4, which will form the basis of that Scheme Creditor's Scheme Distributions.

### **13 Payment of Scheme Distributions in full or in part**

- 13.1** Scheme Parties will be notified as to whether Scheme Distributions will be paid in full, in part or at all by the Administrators publishing a Scheme Outcome Statement on the Website.
- 13.2** As soon as reasonably practicable after the Effective Date, the Administrators will:
- 13.2.1** calculate the High Case Scheme Distribution, being a notional aggregate amount of all Scheme Distributions, assuming that:
- (i) any Undetermined Provable Claim will be admitted in full and the principal amount paid in full on 15 September 2021; and
  - (ii) the Applicable CI Payment in respect of any Certification that is yet to be adjudicated will be the Certified Sum stated in such Certification;
- 13.2.2** calculate the Adequate Reserves (as described in more detail in paragraph 14 (*Adequate Reserves*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below);
- 13.2.3** calculate the Net Available Funds (being the funds from which Scheme Distributions may be made to Scheme Parties), by determining:
- (i) the amount of the Available Funds (being Cash and Cash Equivalents in the House Estate, and including such amount attributable to expected future realisations as the Administrators consider in their sole discretion to be appropriate); less
  - (ii) the amount of the Adequate Reserves; and
- 13.2.4** publish one of the Scheme Outcome Statements described in paragraphs 13.3 to 13.5 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below on the Website.
- 13.3** If the Administrators determine that the amount of Net Available Funds is the same as or greater than the High Case Scheme Distribution, they will publish a Full SI Payment Statement on the Website confirming that there are sufficient Net Available Funds to pay Scheme Distributions in full.

- 13.4** If the Administrators determine that the amount of Net Available Funds is: (i) sufficient to make a pro rata payment of at least £0.01 to all Scheme Parties in respect of their Scheme Distributions; but (ii) insufficient to pay the High Case Scheme Distribution, they will publish a Part SI Payment Statement on the Website confirming: (a) that there are only sufficient Net Available Funds to pay Scheme Distributions in part; and (b) the expected rate at which Scheme Distributions will be paid.
- 13.5** If the Administrators determine that the amount of Net Available Funds is insufficient for a pro rata payment of at least £0.01 to all Scheme Parties in respect of their Scheme Distributions, they will publish an Insufficient Funds Statement on the Website confirming that there are insufficient Net Available Funds available to pay any Scheme Distributions.
- 13.6** After the initial Scheme Outcome Statement has been issued, the Administrators will monitor the amount of the Net Available Funds (by reference to the amounts (from time to time) of Available Funds and Adequate Reserves) on an ongoing basis. If at any time after publishing a Scheme Outcome Statement, the Administrators determine that such Scheme Outcome Statement does not accurately reflect whether the High Case Scheme Distribution can be paid in full, in part or at all, they will promptly withdraw it (by publishing a notice to that effect on the Website) and publish a Revised Scheme Outcome Statement within the next five Business Days that does reflect the Company's current ability to pay the High Case Scheme Distribution.
- 13.7** If an Insufficient Funds Statement is published and not withdrawn in accordance with paragraph 13.6 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, no Scheme Distributions will be paid to Scheme Parties but the Scheme (and the releases contained therein) will still be effective and binding on all Scheme Parties and the Shareholder and Storm will remain bound by their undertakings.
- 13.8** If at any time after a Part SI Payment Statement is published, the Administrators determine that the amount of the Net Available Funds has increased such that the expected rate of payment of Scheme Distributions is greater than the rate at which Scheme Distributions have been paid as at that date, as soon as reasonably practicable the Company will notify Scheme Parties of the change to the expected rate of payment stated in the Part SI Payment Statement and make such additional payments of Scheme Distributions to Scheme Parties as necessary so as to ensure that Scheme Distributions are paid rateably and at the prevailing Part SI Payment Rate.

#### **14 Adequate Reserves**

- 14.1** To the extent that Claims against the Company are not released or extinguished in accordance with the terms of the Scheme, the Administrators will ensure that Adequate Reserves are set aside from the Available Funds in respect of amounts that they consider (in accordance with their statutory duties and in their sole discretion) are or may become payable from time to time in priority to Scheme Distributions by the Company following the Effective Date, including the Retained Claims (other than Non-Provable Claims), which are described in more detail in paragraph 17 (*Rights of Scheme Parties which are not extinguished or released by the Scheme*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.
- 14.2** If by 30 September 2018 there are Disputed Claims (being Retained Claims (other than Excluded Proceedings) that have not been agreed by the Administrators and where the amount claimed is: (i) in excess of £20 million; or (ii) an uncertain sum which in the



Company's opinion could give rise to a liability greater than £20 million), the Administrators will take steps to:

**14.2.1** adjudicate upon the relevant Disputed Claim; and/or

**14.2.2** seek directions from the High Court in respect of the reserve to be set aside for the relevant Disputed Claim (to the extent the High Court has not already been asked to determine such reserves).

**14.3** Where the Disputed Claim is:

**14.3.1** an Undetermined Provable Claim, the Administrators may take either or both of the actions described in paragraph 14.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above; or

**14.3.2** an Expense Claim or a Non-Provable Claim, the Administrators must always seek directions in respect of it.

**14.4** If reasonable to do so, any application for directions will be made on an expedited (i.e. urgent) basis.

**14.5** The Existence of Disputed Claims after the Bar Date will not delay the determination of Adequate Reserves and/or the publication of a Scheme Outcome Statement unless a Disputed Claim would, if allowed in full, prevent the Company from publishing a Full SI Payment Statement or a Part SI Payment Statement.

## **15 Provisions relating to all Scheme Distributions**

Notwithstanding any other provision of the Scheme, the payment of any Scheme Distribution is subject to the general and tax conditions set out in this paragraph 15 (*Provisions relating to all Scheme Distributions*) of this Part II (*Summary of the terms of the Scheme of Arrangement*).

### **15.1 General conditions**

**15.1.1** Scheme Distributions will be paid in GBP.

**15.1.2** No Scheme Party will be entitled to receive a Scheme Distribution until 10 Business Days after the claim to which that Scheme Distribution relates has been admitted by the Administrators in accordance with Rule 14.7 of the Insolvency Rules.

**15.1.3** No Scheme Party who has submitted a UCC Challenge prior to the Bar Date will be entitled to receive a Scheme Distribution until that UCC Challenge has been resolved by agreement or finally determined by the High Court.

**15.1.4** Scheme Distributions rank equally between themselves and will be paid rateably if not paid in full.

**15.1.5** In paying any part of any Scheme Distribution, the Company and the Administrators are entitled to rely on the representations made by Scheme Creditors contemporaneously with submitting their Votes in relation to the Scheme (as described in more detail in paragraphs 8 (*Representations*) of Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement and paragraph 21 (*Representations by Scheme Creditors*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.

15.1.6 The Company is entitled to withhold Scheme Distributions from any Scheme Party that takes any action that is inconsistent with the releases, waivers and undertakings set out in the Scheme until such time as the relevant Scheme Party remedies the relevant breach to the Company's sole satisfaction.

15.1.7 No Scheme Party that holds a Retained Expense Claim will be able to challenge any payments of any Scheme Distributions made prior to the Company being Notified of such Retained Expense Claim by that Scheme Party.

## 15.2 Settlement Instructions and KYC Information

15.2.1 The Company shall not be required to pay any Scheme Distribution to a Scheme Party until 15 Business Days following the date on which the Company receives to its sole satisfaction from that Scheme Party:

- (i) Settlement Instructions, or confirmation that the Settlement Instructions previously provided by that Scheme Party to the Company are still valid; and
- (ii) if requested by the Company, KYC Information.

15.2.2 Any Settlement Instructions to be provided or confirmed to the Company by a Scheme Party should be provided to the Company through the Portal.

15.2.3 Any KYC Information to be provided to the Company by a Scheme Party, if requested by the Company, should be provided by electronic mail to [compliancequeries@lbia-eu.com](mailto:compliancequeries@lbia-eu.com).

15.2.4 To the extent that a Scheme Party's Settlement Instructions specify that it is to receive payment of any Scheme Distributions by cheque:

- (i) the Company shall effect payment of the relevant Scheme Distribution (or any part thereof) by posting a cheque for the relevant amount by first class post to the address provided by such Scheme Party in its Settlement Instructions;
- (ii) any such cheques that are not cashed before the SSI Deadline (as described in paragraph 15.3.1 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below) will be cancelled; and
- (iii) subject to paragraph (ii) above, the Company shall, within 20 Business Days of a request to do so by such Scheme Party (provided that such request is made before the SSI Deadline), cancel and reissue any uncashed cheque and effect payment of the relevant Scheme Distribution in accordance with paragraph (i) above.

## 15.3 Unclaimed Scheme Distributions

15.3.1 Any Scheme Party who does not provide the Company with Settlement Instructions or KYC Information to the Company's satisfaction (or confirm such information) by the SSI Deadline, being at least 12 months from the Effective Date, will be deemed to have irrevocably waived its right to receive any Scheme Distribution which is less than £1 million.

15.3.2 To the extent that any such Scheme Distributions are equal to or greater than £1 million, the Administrators will seek directions from the High Court to determine how

the Company should deal with them. These directions will be binding on each Scheme Party.

- 15.3.3** Unless the High Court orders otherwise, the Company's and/or the Administrators' costs in respect of any such directions application (including in respect of legal fees) will be borne in equal shares by the Scheme Parties to whom the relevant Scheme Distribution(s) are payable and will be payable from such Scheme Distributions (or as Administration Expenses if such amounts are insufficient).

#### **15.4 Tax conditions**

- 15.4.1** The Company may withhold amounts for or in respect of UK income tax from any Payment. Further details are set out in paragraph 22 (*Tax*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below.
- 15.4.2** Any stamp duty, stamp duty reserve tax, transfer taxes, VAT or other tax liabilities or costs (including any penalties or interest thereon) arising out of or in connection with any Payment made by the Company will be borne by the Scheme Creditor to whom such Payment is made, and the Company and the Administrators shall have no liability for such taxes.

### **16 Rights of Scheme Parties which are extinguished and released by the Scheme**

- 16.1** Scheme Parties will not lose their right to pursue Retained Claims (as described in paragraph 17.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below) or to receive Scheme Distributions but will otherwise, immediately upon the Effective Date, release all their rights, entitlements and interest in the Released Claims.

- 16.2** The Released Claims include:

- 16.2.1** all rights in respect of the Settled Proceedings (being the Waterfall Proceedings, the Lacuna Application and the Olivant Application and any other Proceedings which have been commenced against the Company on or prior to the Effective Date (save where specifically identified as Retained Claims));
- 16.2.2** any Claims arising from the subject matter of the Settled Proceedings, such that Scheme Parties will not be able to participate in those proceedings or assert claims/legal arguments addressed in those proceedings;
- 16.2.3** any Provable Claims (being Claims provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules) that have not been proved for prior to the Bar Date;
- 16.2.4** any Non-Provable Claims (being claims which are not provable in the Administration and are not Expense Claims, but that are payable in the Administration from the Surplus after the payment of Statutory Interest and before the payment of the Subordinated Debt) that have not been notified to the Company prior to the Bar Date;
- 16.2.5** any Expense Claims (save for Retained Expense Claims) that have not been notified to the Company prior to the Bar Date;
- 16.2.6** any Creditor Contributory Claim Rights (being rights, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to request or require a future liquidator of the Company to make a Contributory Claim);

- 16.2.7** any Claims arising from, or in connection with, any WHT Deduction (save in respect of any WHT Repayment (as described in paragraph 22.5 (*Repayments and refunds*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below));
- 16.2.8** any Shortfall Claims (being unsecured claims against the House Estate to recover any Shortfall in respect of a Client Money Claim) that have not been proved for prior to the Bar Date (as further explained in paragraph 14 (*The Client Money Estate*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement);
- 16.2.9** any Creditor Challenge Rights (being rights, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to challenge the quantum or validity of an Admitted Claim which has been admitted prior to the Record Date);
- 16.2.10** any Administration Claims (being Claims against the Administrators or the Released Third Parties (who are parties connected to the Administrators, their firm or the Company), where such Claims arise from actions taken by such person on or after the Administration Date but prior to the Effective Date), but only to the extent that the Administrators or Released Third Parties would have an indemnity or other similar claim against the Company; and
- 16.2.11** any Released Scheme Implementation Claims (being Claims against the Company, the Administrators, the Released Third Parties or the Locked Up Parties where such Claims arise from or in connection with action taken by any such person on or after 1 November 2017 in relation to the proposal or implementation of the Scheme (other than: (i) Claims between the Locked Up Parties and the Shareholder under pre-Bar Date contracts; and (ii) Scheme Breach Claims)).
- 16.3** Pursuant to the Shareholder Undertaking, on and from the Effective Date the Shareholder will also be bound by the releases described in paragraphs 16.2.9 to 16.2.11 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above.
- 16.4** The above releases will be binding on all Scheme Parties (and where applicable the Shareholder) from the Effective Date and are not conditional in any way upon the payment of Scheme Distributions. They will continue to be binding even if no Scheme Distributions are made. The releases are broadly worded so as to include contingent and future claims, as well as claims in respect of as yet unknown matters, e.g. potential claims arising from employee indemnities.
- 16.5** In addition:
- 16.5.1** each of the Scheme Parties will give up the right to bring any UCC Challenge (unless such UCC Challenge is notified to the Company prior to the Bar Date); and
- 16.5.2** save in respect of any Excluded Proceedings and Scheme Breach Claims, each of the Scheme Parties, the Company, the Administrators and the Shareholder (but not in respect of a Claim arising from a breach of the Shareholder Undertaking) will release and waive, insofar as the law allows, all their rights of appeal in respect of any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever which relates to a function or power exercisable by the Administrators and made after the Effective Date. This will include any first instance decision in respect of any application for direction in respect of a UCC Challenge, any appeal of the Administrators' adjudication of an Undetermined Provable Claim, and any application for directions in relation to Retained Claims which have not been

adjudicated on by 30 September 2018. Any appeal in respect of the Administrators' adjudication of an Undetermined Provable Claim must be initiated within the 21 day time period provided for in Rule 14.8 of the Insolvency Rules.

**16.6** Each of the Scheme Parties, the Company and the Shareholder will also agree not to take any step to initiate a Liquidation Event until all Scheme Distributions and any other payments in respect of Statutory Interest contemplated by the Scheme have been paid in full by the Company or otherwise protected such that they would not be adversely affected by the liquidation of the Company.

**16.7 Impact on the Settled Proceedings**

**16.7.1** The release provisions in the Scheme have the effect of enabling the Company to bring the Settled Proceedings to an end.

**16.7.2** The Company and the Administrators will be authorised to take all actions necessary on behalf of the Company and the Scheme Parties to terminate the Settled Proceedings (for example, instructing solicitors to write to the relevant court, preparing consent orders and arranging for the necessary court formalities to be complied with). The costs involved with any such actions are payable as Administration Expenses.

**16.7.3** The terms of any costs orders that have been or are made prior to the Effective Date in relation to any Settled Proceedings will remain in full force and effect.

**16.7.4** Subject to paragraph 16.7.5 of this Part II (*Summary of the terms of the Scheme of Arrangement*) below, the costs of the parties to any Settled Proceedings (excluding Other Proceedings) in respect of which no costs order has been made by the Courts prior to the Effective Date will be paid by the Company as Administration Expenses in such amounts as may be agreed between the Administrators and the relevant parties to the Settled Proceedings.

**16.7.5** Each Scheme Party will agree not to seek any order for its costs (if any) in respect of the Settled Proceedings.

**17 Rights of Scheme Parties which are not extinguished or released by the Scheme**

**17.1** Retained Claims are not extinguished or released by the Scheme and will be reserved for by the Administrators, in accordance with their statutory duties and in their sole discretion. Scheme Creditors will however release any right to appeal any first instance decision in respect of any Retained Claims (as described in paragraph 16.5.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above).

**17.2** Retained Claims include the following:

**17.2.1 Excluded Claims**

The following Claims that are (exclusively) the Excluded Claims:

- (i) any Provable Claims proved for prior to the Bar Date (by the lodging of a proof of debt in respect of such claims in accordance with Rule 14.2 of the Insolvency Rules) but, for the avoidance of doubt, the Scheme will compromise rights to Statutory Interest in respect of such claims;

- (ii) a Scheme Party's proprietary claim or trust entitlement to Client Money held by the Company (but excluding any Provable Claims arising from or in connection with such entitlement);
- (iii) any Non-Provable Claims which have been notified to the Company prior to the Bar Date;
- (iv) any Expense Claims which have been notified to the Company prior to the Bar Date;
- (v) any UCC Challenges which have been notified to the Company prior to the Bar Date;
- (vi) any Administration Claims which have been notified to the Company (and the relevant person against whom such claim is being brought) prior to the Bar Date; and
- (vii) Creditor Challenge Rights in respect of any Admitted Claim that is admitted by the Administrators on or after the Record Date.

#### **17.2.2 Retained Expense Claims**

Expense Claims held by a Scheme Party that:

- (i) arise under a contract that was entered into by the Company between the Administration Date and the Bar Date and were contingent as at the Bar Date but became payable after the Bar Date;
- (ii) relate to the Company's obligations under a contract that was continuing to be performed as at the Bar Date;
- (iii) arise from an action or activity of the Company that takes place on or after the Bar Date (including a Scheme Breach Claim); or
- (iv) arose within 10 days prior to the Bar Date in circumstances where the relevant Scheme Party could not reasonably have been expected to notify the Company or the Administrators of the Expense Claim prior to the Bar Date.

#### **17.2.3 Excluded Proceedings**

The following specific proceedings that are subject to ongoing litigation between the Company and certain Scheme Creditors, being:

- (i) the WHT Proceedings;
- (ii) the LBA Proceedings; and
- (iii) the AGFP Proceedings.

**17.3** For the avoidance of doubt, Scheme Parties will also retain any right they may have to challenge any Undetermined Provable Claim which is admitted after the Record Date (subject to the release described in paragraph 16.5.2 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above).

**17.4** Nothing in the Scheme or the Shareholder Undertaking will waive or release any right and/or entitlement of the Shareholder:

- 17.4.1** to receive any Equity Distribution;

- 17.4.2 to exercise set-off, defend or make a counterclaim in respect of any Contributory Claim;
- 17.4.3 in respect of any Claim arising out of a breach of the Shareholder Undertaking; and
- 17.4.4 to claim for costs arising out of future litigation in respect of the foregoing.

## **18 Payments to Storm, the Subordinated Creditor and the Shareholder**

### **18.1 Payments to Storm**

- 18.1.1 Under the terms of the Storm CDD, as part of the commercial settlement between the parties, Storm and the Company agreed that any payment made to Storm in respect of Statutory Interest would be paid in respect of its Admitted Claim at an effective rate of 8% simple interest per annum but calculated from a date later than the Administration Date to the date when Storm's Admitted Claim was paid in full. As such, Storm is entitled to receive an amount in respect of Statutory Interest that is less than the amount it would have received had its Admitted Claim been an 8% Interest Claim.
- 18.1.2 The Scheme contemplates that the Company will pay the Storm Payment to Storm subject to the same general terms as are applicable to the 8% Payment (including, where applicable, the Relevant Principles other than in respect of the date on which Statutory Interest accrues) and at the same time as all other Scheme Distributions. The Storm Payment will rank *pari passu* with all other Scheme Distributions.

### **18.2 Payments to the Subordinated Creditor**

- 18.2.1 The Subordinated Debt will not be paid until the Administrators determine that the Company holds sufficient funds to pay Scheme Distributions in full. On the Business Day following the earlier of: (i) the date falling 20 Business Days from the date on which a Full SI Payment Statement (which has not been withdrawn) has been published; and (ii) the date on which the 8% Payment, the Specified Interest Payment, the Storm Payment and the Settlement Premium are paid in full to Scheme Parties, the Administrators will admit the part of the Subordinated Creditor's Provable Claim that relates to the principal amount of the Subordinated Debt in the sum of £1,240,452,696 (but without making any determination as to the part of the Subordinated Creditor's Provable Claim that relates to interest on the Subordinated Debt that accrued prior to the Administration Date).
- 18.2.2 The Company will make payments to the Subordinated Creditor in respect of the principal amount of the Subordinated Debt from Net Available Funds (having reserved for all prior ranking Claims including the High Case Scheme Distribution and any Non-Provable Claims notified to the Company prior to the Bar Date) 10 Business Days after the Subordinated Debt Admittance Date.
- 18.2.3 No Scheme Party that holds a Retained Expense Claim will be able to challenge any payments to the Subordinated Creditor made prior to the Company being Notified of such Retained Expense Claim by that Scheme Party.
- 18.2.4 Once the Subordinated Debt (including any interest that accrued prior to the Administration Date) has been paid in full by the Company, the Company will pay Statutory Interest to the Subordinated Creditor on the Subordinated Debt at a rate to be determined from the Net Available Funds (having reserved for all prior ranking

Claims including the High Case Scheme Distribution and any Non-Provable Claims notified to the Company prior to the Bar Date). The payment of Statutory Interest in relation to the Subordinated Debt will be calculated in accordance with the Relevant Principles.

### **18.3 Payments to the Shareholder**

**18.3.1** The Company will not pay any distributions to the Shareholder prior to the Subordinated Debt Admittance Date. Any Equity Distributions to the Shareholder shall be at the Company's discretion and paid in a manner consistent with the Companies Act and/or the Insolvency Act and shall not be made pursuant to the Scheme. For the avoidance of doubt, the manner in which the Company will make any Equity Distribution is not governed by the terms of the Scheme.

**18.3.2** Equity Distributions will only be made to the extent that all possible Claims that rank in priority to the Subordinated Debt, and the Subordinated Debt itself, are either paid or reserved for in full by the Administrators.

## **19 Effect of the Company being wound-up (liquidation)**

**19.1** As noted in paragraph 16.6 of this Part II (*Summary of the terms of the Scheme of Arrangement*) above, each of the Scheme Parties, the Company and the Shareholder will agree not to seek to put the Company into liquidation until all Scheme Distributions have been paid in full under the Scheme (or some other arrangement has been made to protect such payments).

**19.2** The Administrators will apply to the High Court to extend the Administration if: (i) any Scheme Distributions; and (ii) any other payments in respect of Statutory Interest contemplated by the Scheme remain outstanding on the date falling 90 days prior to the expiry of the Administration.

**19.3** If, notwithstanding the above, the Company does become subject to a Liquidation Event, the Scheme will not terminate and will continue in full force and effect and the amount payable in respect of the Scheme Distributions will not be in any way reduced or otherwise affected.

**19.4** In the event of any inconsistency between the provisions of the Scheme and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event, for the purposes of the Scheme, the provisions of the Scheme shall prevail to the extent that the law allows.

**19.5** It is expected that the Company will remain in administration after the Scheme is effective and that the Administrators will effect the Scheme Distributions.

## **20 Operating Committee**

**20.1** With effect from the Subordinated Debt Admittance Date, the Company's existing Creditors' Committee will be dissolved and replaced by the Operating Committee which will be constituted on the terms described in the Governance Protocol.

**20.2** The Administrators' remuneration will from that point onwards be approved by the Operating Committee in the manner described in the Governance Protocol without any recourse to the remaining creditors of the Company unless they are members of the Operating Committee.



**20.3** This reflects that from the Subordinated Debt Admittance Date, the members of the Operating Committee will be the only parties with an economic interest in the matters that are ordinarily reserved for the Creditors' Committee.

**20.4** The Governance Protocol is set out at Schedule 2 of the Scheme Document.

## **21 Representations by Scheme Creditors**

By: (i) submitting a Form of Proxy; or (ii) Voting and/or making Elections (where applicable) at the Scheme Meetings pursuant to a Voting Card, a Scheme Creditor will be deemed to make to the Company the representations set out in the Form of Proxy or Voting Card (as applicable). Further details in respect of the Forms of Proxy and Voting Cards are set out in Part III (*Implementing the Scheme, risk factors and expected outcomes*) of this Explanatory Statement.

## **22 Tax**

This paragraph 22 (*Tax*) does not constitute tax advice and is not intended to be relied upon by any Scheme Party. Scheme Parties are strongly advised to consult their own professional advisers in relation to any taxation matters arising in connection with the Scheme.

### **22.1 Background to the withholding tax position**

**22.1.1** The UK levies "withholding tax" under Section 874 of the Income Tax Act ("**Section 874**") on payments of yearly interest with a UK source. The person by or through whom the UK source payment of yearly interest is made is required to deduct and account for income tax at the basic rate (currently 20%) unless an exemption applies.

**22.1.2** The WHT Proceedings, discussed further in paragraph 10 (*The WHT Proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement, are concerned with the question as to whether Statutory Interest constitutes yearly interest for these purposes. The outcome of the WHT Proceedings may not be known for some time.

**22.1.3** Following the judgment of the Court of Appeal on 19 December 2017, the current position in law is that Statutory Interest is yearly interest for the purposes of Section 874 and, accordingly, the Company must withhold tax on any payments of Statutory Interest that it makes, subject to any applicable exemptions.

### **22.2 The application of withholding tax to the Scheme**

**22.2.1** The Company intends to deduct amounts in respect of tax pursuant to Section 874(2) of the Income Tax Act from all Payments that it makes under the Scheme. There are only two exceptions:

- (i) where the Company has received a direction from HMRC to pay gross (or at a reduced rate of withholding) pursuant to an applicable double tax treaty; or
- (ii) in respect of the Settlement Premium only, if the Company has received a clearance from HMRC confirming that the Settlement Premium is not yearly interest for the purposes of Section 874,

each of which are discussed further below.

- 22.2.2** In the absence of an agreed clearance process with HMRC, the Company will not be applying the 'excepted payments' regime in Sections 933 to 937 of the Income Tax Act to any Payments made pursuant to the Scheme.
- 22.2.3** The Company and HMRC do not consider any Payment to be made pursuant to the Scheme will constitute a payment of interest on an advance from a bank. Therefore, the Company will not be applying Section 879 of the Income Tax Act to any Payments made pursuant to the Scheme.
- 22.2.4** The Company will pay all WHT Deductions to HMRC in accordance with Chapter 15 of Part 15 of the Income Tax Act (the "**Collection Rules**"). The requirements of the Collection Rules include the filing of quarterly returns and payment of the WHT Deduction to HMRC within 14 days of the end of the relevant quarter.
- 22.2.5** In order to assist Scheme Parties in the management of their own tax affairs, the Company will issue a WHT Deduction Certificate to the relevant Scheme Party within 10 Business Days of a payment to HMRC pursuant to the Collection Rules. Each WHT Deduction Certificate will confirm the gross amount of the relevant Payment, the amount of the WHT Deduction and the actual amount paid.

### **22.3 Double tax treaties**

- 22.3.1** The Company strongly advises Scheme Parties to seek their own professional advice as to whether they may be eligible to receive Payments without, or at a reduced rate of, withholding tax under an applicable double tax treaty with the United Kingdom and to take appropriate action.
- 22.3.2** Provided the Company receives a satisfactory Direction from HMRC (confirming that a Payment to a specific Scheme Party may be paid by the Company without, or with a reduced rate of, withholding) at least seven Business Days prior to the Payment being made, the Company will make that Payment without any WHT Deduction, or with the reduced rate of withholding applied, as the case may be.
- 22.3.3** Where a Direction applies to only part of a Payment (for example, where there are multiple beneficial owners of the Payment, only some of whom have obtained a Direction) the Company will make the Payment to the Scheme Party with the WHT Deduction applied only to the relevant part.
- 22.3.4** If the Company does not receive a satisfactory Direction, or receives a Direction after the deadline set out in the Scheme Document, the Company will make the Payment to the relevant Scheme Party as reduced by the WHT Deduction. It is the responsibility of the Scheme Party to apply to HMRC directly for a refund of or credit for any WHT Deduction, if appropriate. Save as described in paragraph 22.5 (*Repayments and refunds*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below, the Company shall be under no obligation to pay or repay any amounts in respect of the WHT Deduction to any Scheme Party.
- 22.3.5** Information will be provided to a Scheme Party (at the Scheme Party's written request and expense) to assist the Scheme Party, or the beneficial owner(s) of the Payment, in obtaining a Direction or an available refund with respect to a WHT Deduction. Information will not be provided where it would be materially disadvantageous to the Company, the Administrators or any other creditor of the Company (past or present), nor will identifying information of such other creditors be disclosed. Any requests for information must be made prior to the SSI Deadline.

## **22.4 The Settlement Premium**

- 22.4.1** The Company has applied to HMRC for a non-statutory clearance in respect of the Settlement Premium.
- 22.4.2** Provided the Company receives a satisfactory Clearance from HMRC (confirming that the Settlement Premium does not constitute yearly interest for the purposes of Section 874 and may be paid by the Company without withholding) at least seven Business Days prior to a payment of the Settlement Premium, the Company will make that payment without any WHT Deduction.
- 22.4.3** From the date falling seven Business Days after receipt of a satisfactory Clearance, the Company will make all future payments of the Settlement Premium to Scheme Creditors without any WHT Deduction.
- 22.4.4** If the Company does not receive a satisfactory Clearance, or receives a Clearance after the deadline, the Company will pay the Settlement Premium as reduced by the WHT Deduction. Where the Settlement Premium has already been paid, it is the responsibility of the Scheme Party to apply to HMRC directly for a refund of or credit for any WHT Deduction, if appropriate. Save as described in paragraph 22.5 (*Repayments and refunds*) of this Part II (*Summary of the terms of the Scheme of Arrangement*) below, the Company shall be under no obligation to pay or repay any amounts in respect of the WHT Deduction to any Scheme Party.

## **22.5 Repayments and refunds**

- 22.5.1** Where a Payment has been made as reduced by a WHT Deduction, it is the responsibility of the Scheme Party to apply to HMRC directly (and not to the Company) for a refund of or credit for that WHT Deduction if the Scheme Party believes a refund or credit is available.
- 22.5.2** There are two circumstances in which a repayment of the whole or part of the WHT Deduction may be made by HMRC to the Company, rather than to a Scheme Party:
- (i) it is finally determined as a consequence of the WHT Proceedings that the Payment in respect of which the WHT Deduction was made was not a payment of yearly interest for the purposes of Section 874 of the Income Tax Act; or
  - (ii) the Company receives a satisfactory Clearance.
- 22.5.3** In such circumstances, the Company will use its reasonable efforts to claim the repayment itself, at the written request and expense of the relevant Scheme Party, where:
- (i) the Company is entitled to claim such WHT Repayment from HMRC;
  - (ii) the Scheme Party is not entitled to claim a WHT Repayment directly from HMRC; and
  - (iii) the Scheme Party has not already received a refund or credit from HMRC in respect of that WHT Deduction.
- 22.5.4** To the extent HMRC makes a WHT Repayment, the Company will pay any amounts that it receives from HMRC (including any interest or repayment supplement) to the relevant Scheme Party within 20 Business Days. The Company will only pass on amounts that it receives from HMRC, if any, and shall be under no obligation to pay

or repay any additional amounts in respect of a WHT Deduction to any Scheme Party.

- 22.5.5** If HMRC subsequently seeks to recover all or any part of a WHT Repayment from the Company, the relevant Scheme Party must promptly reimburse the Company following receipt of a copy of HMRC's notice seeking recovery.
- 22.5.6** Each Scheme Party must provide the Company and/or HMRC with such information as the Company and/or HMRC may require in order for HMRC to make a repayment of all or part of the WHT Deduction to the Company or to that Scheme Party.
- 22.5.7** Save as described in this paragraph 22.5 (*Repayments and refunds*), the Company shall have no obligation to pay, repay or compensate any Scheme Party in respect of any withholding or deduction from any Payment. For the avoidance of doubt, this is subject to the rights retained by Scheme Parties to bring a Scheme Breach Claim against the Company or the Administrators.

## **22.6 Other taxes**

- 22.6.1** In the event that the Company is required by any applicable law (other than Section 874(2) of the Income Tax Act) to deduct amounts in respect of tax from any Payment, the Company shall make that tax deduction and account for the amount of such tax deduction to the appropriate Tax Authority as may be required by applicable law and take any other steps required to comply with any applicable law. The Company will provide such evidence to a Scheme Party of the retention and account as may be reasonably requested. The Company does not currently anticipate needing to make any such deductions.
- 22.6.2** The Company and the Administrators are permitted to make any disclosures or reports to any Tax Authority in respect of any matters which are the subject of, or arise as a result of the implementation and operation of, the Scheme.
- 22.6.3** Any stamp duty, stamp duty reserve tax, transfer taxes, VAT or other tax liabilities or costs (including any penalties or interest thereon) arising out of or in connection with any Payment made by the Company will be borne by the Scheme Creditor to whom such Payment is made, and the Company and the Administrators shall have no liability for such taxes.

## **23 Details of material interests of the Administrators**

- 23.1** As set out above, the Administrators are Russell Downs, Anthony Victor Lomas, Stephen Anthony Pearson and Julian Guy Parr.
- 23.2** None of the Administrators hold any (beneficial or non-beneficial) interest in any claims (admitted or otherwise) against the Company, other than in respect of their remuneration, expenses and any claim for indemnification.
- 23.3** As at the date of this Explanatory Statement, the Company has no directors.

## **24 Powers of the Administrators**

- 24.1** In implementing the Scheme on behalf of the Company, the Administrators shall have all of the powers granted to them under the Insolvency Act, the Insolvency Rules and the Scheme.

**24.2** The Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in the Scheme as agents for and on behalf of the Company and neither they, their firm, its partners or employees, or their or its 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 the Scheme.

**25 Limit on Company's obligations**

The Company's payment obligations in respect of the Scheme Distributions, Non-Provable Claims and the Subordinated Distributions shall be no greater than an amount equal to the value of the Surplus from time to time. This reflects that the Scheme releases Scheme Parties' rights to request or require that: (i) the Company enters liquidation; or (ii) a future liquidator brings a Contributory Claim against the Shareholder.

**26 Modifications**

The Company may, at the hearing to sanction the Scheme, consent on behalf of the Scheme Parties to any modification of the Scheme on terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected to have a material adverse effect on the interests of a Scheme Party or the Shareholder (whether directly or indirectly), the Company will not be entitled to provide such consent without the prior written consent of that Scheme Party or the Shareholder respectively.

**27 Duty to act in good faith**

All actions and determinations by the Company or the Administrators under the Scheme will be made in good faith. Subject to any applicable provision of the Insolvency Act, no Scheme Party will be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, the Administrators or any delegate of the Company and it/they will not be liable for any loss whatsoever and howsoever arising unless such loss is attributable to wilful default, fraud or dishonesty.

**28 Extension and calculation of deadlines**

All or any of the deadlines laid down by the Scheme for the taking of any step by the Administrators or the Company or by any Scheme Party, save in respect of the Dispute Resolution Procedure and the timing of payment of Scheme Distributions, may be postponed or extended for such period or periods as may be determined by the Administrators (and notified to the Scheme Parties).

## Part III: Implementing the Scheme, risk factors and expected outcomes

### 1 Introduction

This Part III (*Implementing the Scheme, risk factors and expected outcomes*) summarises the process by which Scheme Creditors can (among other things) Vote and (if applicable) make Elections in respect of the Scheme. It also discusses risk factors relevant to the Scheme and provides an overview of the payments which are expected to be made pursuant to, and as a result of, the Scheme.

### 2 Key dates for implementing the Scheme<sup>5</sup>

Set out below is a table of key dates in relation to Voting and the implementation of the Scheme.

Portal opened and UCC4s provided to Scheme Creditors with Admitted Claims	14 May 2018
Dispatch of Voting Rights Letters (together with hard copy Forms of Proxy) to Scheme Creditors with Undetermined Provable Claims	14 May 2018
Record Date <sup>6</sup>	5.00 pm (London time) on 24 May 2018
Increased Voting Rights Deadline	5.00 pm (London time) on 31 May 2018
Proxy Deadline/Election Deadline <sup>7</sup>	5.00 pm (London time) on 4 June 2018
Scheme Meetings/Election Deadline <sup>8</sup>	4.00 pm (London time) on 5 June 2018
Sanction Hearing	13 June 2018
US Bankruptcy Court hearing for Chapter 15 recognition	on or around 15 June 2018
Effective Date/Bar Date/Certification Deadline	on or around 15 June 2018

#### 2.1 Record Date

This is the date by which:

- 2.1.1 Scheme Creditors must prove for any Provable Claims that have not previously been proved or admitted which they purport to hold in order to be entitled to Vote at the Scheme Meetings and/or (if applicable) make Elections in respect of such claims. Only those persons who legally hold Admitted Claims or Undetermined Provable

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<sup>5</sup> These times and dates are indicative only and will depend on, among other things, the date upon which the High Court sanctions the Scheme.

<sup>6</sup> The Record Date is the date by which Scheme Creditors who have not already done so must submit a proof of debt in order to Vote at the Scheme Meetings and is also the deadline for the submission of Split-Holdings Requests (if relevant).

<sup>7</sup> This is the Election Deadline for Higher Rate Creditors appointing the Chairman as their proxy via the Portal.

<sup>8</sup> This is the Election Deadline for Higher Rate Creditors Voting in person or by a proxy appointed pursuant to a hard copy Form of Proxy that is handed in at the Scheme Meetings.

Claims as at the Record Date will be entitled to Vote at the Scheme Meetings (as further explained in paragraph 3.5 (*Unnotified Provable Claims*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below); and

- 2.1.2 Scheme Creditors who: (i) hold more than one Admitted Claim; and (ii) do not Control all such claims, must submit a Split-Holdings Request if they wish to split their Votes and/or Elections in respect of such claims in accordance with the instructions of the parties who Control them. Further information on Split-Holdings Requests is set out in paragraph 7 (*Split-Holdings Requests*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

## **2.2 Increased Voting Rights Deadline**

This is the date by which Higher Rate Creditors who consider that they are entitled to Statutory Interest in excess of the Statutory Minimum, and wish to Vote in respect of such entitlement, must submit an Increased Voting Rights Request in order to be potentially admitted for Voting at an amount representing their view of their entitlement to Statutory Interest. Further information on Increased Voting Rights Requests is set out in paragraph 3.4 (*Increased Voting Rights Requests*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

## **2.3 Proxy Deadline**

This is the date by which Scheme Creditors wishing to submit a Form of Proxy via the Portal must do so.

Hard copy Forms of Proxy not received by the Proxy Deadline may be handed to the Chairman at the Scheme Meetings.

## **2.4 Election Deadline**

This is the date by which Higher Rate Creditors must Elect for either the Settlement Payment Option or the Certification Option in respect of their Higher Rate Claims, being: (i) 5.00 pm (London time) on the day falling one Business Day prior to the Scheme Meetings for Higher Rate Creditors appointing the Chairman as their proxy via the Portal; and (ii) the date and time of the Scheme Meetings for Higher Rate Creditors Voting in person or by a proxy appointed pursuant to a hard copy Form of Proxy that is handed in at the Scheme Meetings.

## **2.5 Effective Date**

This is the date upon which the Scheme becomes effective in accordance with its terms and will be the date on which the Court Order is delivered to the Registrar of Companies. Delivery is intended to take place as soon as possible after the Sanction Hearing, if the Court exercises its discretion to sanction the Scheme pursuant to section 899 of the Companies Act.

## **2.6 Bar Date**

This is the date prior to which all Claims (other than proprietary claims and Retained Expense Claims) must be proved for (in respect of Provable Claims) or notified to the Company (in respect of UCC Challenges and any other Claims). Scheme Parties who fail to prove or otherwise notify any Claims will irrevocably and unconditionally release and waive any entitlement to assert such Claims, meaning that (if applicable) they will not be able to recover or receive payments for such Claims or receive any Scheme Distributions in respect of such Claims. The Bar Date will be the Effective Date.

## **2.7 Certification Deadline**

This is the date by which a Certifying Creditor must provide a Certification in respect of each Higher Rate Claim for which it has made a Valid Certification Election, in order to potentially be eligible to receive a Statutory Interest payment in excess of the Statutory Minimum. If a Higher Rate Creditor fails to submit a Certification in respect of a Higher Rate Claim for which it has made a Valid Certification Election by the Certification Deadline, it will receive an Applicable CI Payment equal to the Statutory Minimum. The Certification Deadline will be the Effective Date.

## **3 Voting Rights**

### **3.1 Introduction**

**3.1.1** If you are a Scheme Creditor who holds an Admitted Claim or Undetermined Provable Claim as at the Record Date, you are entitled to attend and Vote, pursuant to your allocated Voting Rights, at the Scheme Meeting(s) relevant to your Provable Claim(s).

**3.1.2** Voting Rights have been calculated by the Administrators: (i) in respect of Admitted Claims, in accordance with paragraph 3.2 (*Admitted Claims*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below; and (ii) in respect of Undetermined Provable Claims, in accordance with paragraph 3.3 (*Undetermined Provable Claims*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

**3.1.3** The Chairman shall retain sole discretion to determine at the Scheme Meetings the Voting Rights of any Scheme Creditor.

**3.1.4** Voting Rights have been calculated by the Company solely for the purpose of calculating the value of Votes cast at the Scheme Meetings, in order to determine whether the Scheme has been approved by the requisite majority of Scheme Creditors in each class, and will not be determinative or indicative of the Administrators' views as to the validity or value of an Undetermined Provable Claim, nor what entitlements to Scheme Distributions will derive from/attach to such Provable Claim.

**3.1.5** Other than in the limited circumstances described in paragraph 7.4 of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below, for the purposes of ascertaining whether a majority in number of Scheme Creditors have Voted in favour of the Scheme in each class, each Scheme Creditor that legally owns one or more claim(s) will have one vote in each of the class(es) relevant to their claim(s).

### **3.2 Admitted Claims**

**3.2.1** Subject to paragraph 3.4 (*Increased Voting Rights Requests*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below, Scheme Creditors with Admitted Claims will be allocated Voting Rights as set out in their UCC4s (which also set out whether a Scheme Creditor's Admitted Claims are 8% Interest Claims, Specified Interest Claims and/or Higher Rate Claims).

**3.2.2** Voting Rights in respect of admitted 8% Interest Claims and Higher Rate Claims have been calculated by the Administrators, in accordance with the Relevant



Principles, by applying a simple rate of 8% per annum to the admitted value of such claims, calculated for the period(s) from the Administration Date to the date(s) when the principal amount(s) of each claim was paid in full and reflecting the reduction to that principal amount as a result of any interim dividends received by the relevant Scheme Creditor.

**3.2.3** Voting Rights in respect of admitted Specified Interest Claims have been calculated by the Administrators, in accordance with the Relevant Principles, by applying the Specified Interest Rate stated in a Specified Interest Contract to the admitted value of such claims, calculated for the period(s) from the Administration Date to the date(s) when the principal amount(s) of each claim was paid in full and reflecting the reduction to that principal amount as a result of any interim dividends received by the relevant Scheme Creditor.

**3.2.4** A worked example of how Voting Rights would be calculated on a hypothetical £10 million 8% Interest Claim or Higher Rate Claim (for which no Increased Voting Rights Request is submitted) admitted prior to the First Interim Dividend and for which subsequent dividends were paid on the dates they were declared is set out below:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2012	4.00	3,200,000		
10,000,000	15/09/2012	30/11/2012	0.21	166,575	25.2%	(2,520,000)
7,480,000	30/11/2012	28/06/2013	0.58	344,285	43.3%	(4,330,000)
3,150,000	28/06/2013	29/11/2013	0.42	106,323	23.7%	(2,370,000)
780,000	29/11/2013	30/04/2014	0.42	25,986	7.8%	(780,000)
0						
				3,843,169		(10,000,000)
Voting Rights	3,843,169					

**3.2.5** A worked example of how Voting Rights would be calculated on a hypothetical £10 million 8% Interest Claim or Higher Rate Claim (for which no Increased Voting Rights Request is submitted) admitted after the Fourth Interim Dividend is set out below:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2014	6.00	4,800,000	100.0%	(10,000,000)
Voting Rights	4,800,000					

**3.2.6** A worked example of how Voting Rights would be calculated on a hypothetical £10 million Specified Interest Claim, with a specified simple interest rate of 12% per annum, admitted prior to the First Interim Dividend and for which subsequent dividends were paid on the dates they were declared is set out below:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 12% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2012	4.00	4,800,000		
10,000,000	15/09/2012	30/11/2012	0.21	249,863	25.2%	(2,520,000)
7,480,000	30/11/2012	28/06/2013	0.58	516,427	43.3%	(4,330,000)
3,150,000	28/06/2013	29/11/2013	0.42	159,485	23.7%	(2,370,000)
780,000	29/11/2013	30/04/2014	0.42	38,979	7.8%	(780,000)
0						
				5,764,754		(10,000,000)
Voting Rights	5,764,754					

### 3.3 Undetermined Provable Claims

3.3.1 Scheme Creditors with Undetermined Provable Claims, including the Subordinated Creditor, will receive a Voting Rights Letter which sets out the Administrators' determination of their Voting Rights, including whether such claims qualify as 8% Interest Claims, Specified Interest Claims or Higher Rate Claims for the purposes of Voting at the Scheme Meetings.

3.3.2 Subject to paragraph 3.4 (*Increased Voting Rights Requests*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below, the Voting Rights allocated in respect of:

- (i) 8% Interest Claims and Higher Rate Claims which are Undetermined Provable Claims have been calculated by the Administrators: (a) by reference to the estimated value of the claim, determined by the Administrators in their sole discretion based on their assessment of the possible quantum of the claim; and (b) based on the Statutory Interest that would have accrued on such estimated value, applying a simple rate of 8% per annum calculated for the period from the Administration Date to the date of the Scheme Meetings (based on the same principles on which the 8% Payment is calculated), save that where the estimated value is £1, the Voting Rights ascribed to that Undetermined Provable Claim will be £1 only;
- (ii) Specified Interest Claims which are Undetermined Provable Claims have been calculated by the Administrators: (a) by reference to the estimated value of the claim, determined by the Administrators in their sole discretion based on their assessment of the possible quantum of the claim; and (b) based on the Statutory Interest that would have accrued on such estimated value, applying the Specified Interest Rate stipulated in the relevant Specified Interest Contract calculated for the period from the Administration Date to the date of the Scheme Meetings (based on the same principles on which the Specified Interest Payment is calculated), save that where the estimated value is £1, the Voting Rights ascribed to that Undetermined Provable Claim will be £1 only; and
- (iii) the Subordinated Debt has been calculated by the Administrators by reference to the principal amount of such claim.

- 3.3.3 A worked example of how Voting Rights would be calculated on an 8% Interest Claim (for which no Increased Voting Rights Request is submitted) which is an Undetermined Provable Claim and where the Administrators have estimated the claim at the value of £10 million is set out below:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2021	13	10,040,000	0.0%	0
Voting Rights	10,040,000					

- 3.3.4 Scheme Creditors who:

- (i) have not received a Voting Rights Letter and believe they have an Undetermined Provable Claim, should contact the Administrators as soon as possible and in any event by the Record Date, being 5.00 pm (London time) on 24 May 2018; or
- (ii) have a query or dispute in relation to the Voting Rights set out in their Voting Rights Letter, should contact the Administrators by the Increased Voting Rights Deadline, being 5.00 pm (London time) on 31 May 2018,

using the contact information set out in paragraph 11 (*Communications*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

### 3.4 Increased Voting Rights Requests

- 3.4.1 If a Higher Rate Creditor considers that it is entitled to Statutory Interest in excess of the Statutory Minimum, and wishes to Vote in respect of such entitlement, that Higher Rate Creditor may request Voting Rights in respect of their Higher Rate Claim(s) greater than those calculated in accordance with paragraph 3.2.2 or 3.3.2(i) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) above by:

- (i) notifying the Company of the rate(s) of interest that they consider to apply to their Higher Rate Claims and the amount of interest derived from such rate(s), together with a confirmation that such rate(s) and amount have been calculated in accordance with the Relevant Principles; and
- (ii) providing to the Company, together with any such notification, any information, documents and submissions in support of such rate/amount that the creditor wishes in its discretion to submit,

(an “**Increased Voting Rights Request**”).

- 3.4.2 Increased Voting Rights Requests should be provided to the Company via email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) and must be received by the Company by the Increased Voting Rights Deadline, being 5.00 pm (London time) on 31 May 2018.

- 3.4.3 The Chairman of the Scheme Meeting for Higher Rate Creditors shall have absolute discretion as to whether to allow a Higher Rate Creditor to Vote in the amount stated in an Increased Voting Rights Request at the Scheme Meeting for Higher Rate Creditors, or at such other level as the Chairman considers appropriate. Any such decision will in no way be determinative or binding on that Higher Rate Creditor, the Company or the Subordinated Creditor as regards the subsequent adjudication of

any Certification submitted by that Higher Rate Creditor (or any other Scheme Creditor) and the Adjudicator shall not be permitted to have regard to it.

**3.4.4** Following the Scheme Meetings, the Company will confirm to each Higher Rate Creditor who submits an Increased Voting Rights Request the amount at which their Vote was admitted and, if such amount is different from the amount stated in their Increased Voting Rights Request, the reasons for this. The Chairman's report to the High Court following the Scheme Meetings (as described in paragraph 4.4 (*Outcome of the Scheme Meetings*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below) will also summarise the Increased Voting Rights Requests received, the Chairman's determination of them, and whether such determination impacted the results of the Scheme Meetings.

**3.4.5** For the avoidance of doubt, any Higher Rate Creditor who submits an Increased Voting Rights Request will remain entitled to Elect either for the Settlement Payment Option or the Certification Option in respect of all its Higher Rate Claims.

### **3.5 Unnotified Provable Claims**

**3.5.1** If you have not yet proved for your Provable Claim, you must submit a proof of debt in respect of such Provable Claim by the Record Date in order to be able to Vote in respect of it at the Scheme Meetings. If the Administrators believe that you may be a Scheme Creditor (and are in possession of your contact details) a blank form of proof of debt should have been provided to you. If not, a blank form of proof of debt can otherwise be obtained on request from the Administrators by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com).

**3.5.2** In the event that you submit a proof of debt in respect of a Provable Claim by the Record Date, such Provable Claim will constitute an Undetermined Provable Claim for Voting purposes and will be ascribed Voting Rights in the manner set out in paragraph 3.3 (*Undetermined Provable Claims*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) above.

## **4 Voting at the Scheme Meetings**

### **4.1 Appointing the Chairman as proxy**

**4.1.1** Scheme Creditors who wish to appoint the Chairman as their proxy and instruct the Chairman to Vote on their behalf at the Scheme Meetings can do so by lodging a Form of Proxy in the following manner:

- (i) only if that Scheme Creditor has an Admitted Claim, by logging onto the Portal and following the process set out there. Please see paragraph 10 (*Portal*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below for more information on the Portal; or
- (ii) by completing a hard copy Form of Proxy in accordance with the instructions and notes contained therein. Please see paragraph 9.2.2 (*Hard copy Forms of Proxy*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below for more information on hard copy Forms of Proxy.

**4.1.2** Lodging a Form of Proxy to appoint the Chairman as proxy in advance of the relevant Scheme Meeting does not prevent a Scheme Creditor from revoking such proxy and

delivering a new Form of Proxy at or prior to the relevant Scheme Meeting or revoking such proxy and attending the relevant Scheme Meeting in person.

#### **4.2 Appointing another person as your proxy**

**4.2.1** Scheme Creditors may appoint another person (who need not be a Scheme Creditor but must be an individual) as their proxy to attend and Vote on their behalf at the Scheme Meetings by completing a hard copy Form of Proxy and returning it to the Administrators in accordance with paragraph 9.2.2 (*Hard copy Forms of Proxy*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

**4.2.2** Lodging a Form of Proxy to appoint another person as proxy in advance of the relevant Scheme Meeting does not prevent a Scheme Creditor from revoking such proxy and delivering a new Form of Proxy at or prior to the relevant Scheme Meeting or revoking such proxy and attending the relevant Scheme Meeting in person.

#### **4.3 Attending the Scheme Meetings in person**

**4.3.1** Scheme Creditors may attend and Vote at the Scheme Meetings in person.

**4.3.2** Scheme Creditors who are a company or corporation and wish to attend the Scheme Meetings in person must appoint an individual as their representative. To Vote at the Scheme Meetings, this representative must produce at the Scheme Meetings an appropriately certified copy of the resolution of the directors or other governing body of the company or corporation evidencing that he/she is authorised to act as the company or corporation's representative at the Scheme Meetings.

**4.3.3** Further information on attending the Scheme Meetings and Voting in person is set out in paragraph 12.3 (*Attending a Scheme Meeting*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below.

#### **4.4 Outcome of the Scheme Meetings**

The Company will notify Scheme Parties of the outcome of the Scheme Meetings as soon as possible after they are held, and, prior to the Sanction Hearing, the Chairman will report such outcome to the High Court, including information in respect of the Votes cast and Elections made by Higher Rate Creditors.

### **5 Elections**

#### **5.1 Electing for the Settlement Payment Option or Certification Option**

**5.1.1** Higher Rate Creditors may Elect for either the Settlement Payment Option or the Certification Option in respect of their Higher Rate Claims. Such Elections must be made by the Election Deadline.

**5.1.2** Higher Rate Creditors who hold Admitted Claims should make their Elections by logging onto the Portal and following the process explained on the Portal.

**5.1.3** All Higher Rate Creditors can make their Elections using hard copy Forms of Proxy or (if they or their proxies will be attending the Scheme Meetings in person) using Voting Cards at the Scheme Meetings.

**5.1.4** If a Higher Rate Creditor fails to make a Valid Certification Election by the Election Deadline, it will be deemed to have Elected for the Settlement Payment Option for all of its Higher Rate Claims and such deemed Election will be final and binding on

that Higher Rate Creditor, all other Scheme Parties, the Shareholder and the Company.

- 5.1.5 As explained in paragraph 7.2.1 of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement, Higher Rate Creditors will be required to make the same Election in respect of all Higher Rate Claims which they Control, and must provide a representation to the Company to this effect (as further explained in paragraph 8 (*Representations*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below).

## 6 Certifications

- 6.1 Higher Rate Creditors who have made a Valid Certification Election and:

- 6.1.1 hold Admitted Claims should submit their Certifications to the Company via the Portal; and
- 6.1.2 hold Undetermined Provable Claims should submit their Certifications to the Company via email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com),

so as to be received by the Company prior to the Effective Date.

## 7 Split-Holdings Requests

- 7.1 Scheme Creditors:

- 7.1.1 who hold more than one Admitted Claim (or Undetermined Provable Claim); and

- 7.1.2 do not Control all such Admitted Claims (or Undetermined Provable Claims),

may request that the Administrators split their UCC4s or Voting Rights Letters, such that different Votes and/or Elections in respect of different Admitted Claims (or Undetermined Provable Claims) can be made in accordance with the instructions of the parties who Control such claims ("**Split-Holdings Requests**").

- 7.2 Split-Holdings Requests must be submitted via email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) so as to be received by the Company no later than the Record Date, and must state:

- 7.2.1 the number of parts into which their UCC4 or Voting Rights Letter should be split; and

- 7.2.2 which Admitted Claims (or Undetermined Provable Claims), identified by GAC and Claim Reference where relevant, fall into each part.

- 7.3 This is to ensure that the Administrators have sufficient time to use the information contained in the Split-Holdings Requests to split a Scheme Creditor's existing UCC4 or Voting Rights Letter into separate UCC4s or Voting Rights Letters. Following this:

- 7.3.1 those Scheme Creditors with Admitted Claims will be provided with unique Log-on Credentials for each separate UCC4, which can then be used to Vote and (if applicable) make Elections via the Portal in accordance with the instructions of the parties who Control the Claim(s) set out in that separate UCC4; and

- 7.3.2 all such Scheme Creditors will be entitled to Vote and (if applicable) make Elections using a separate hard copy Form of Proxy for each separate UCC4 or Voting Rights Letter, so as to Vote and (if applicable) make Elections in accordance with the

instructions of the parties who Control the Claim(s) set out in that separate UCC4 or Voting Rights Letter.

**7.4** Where Scheme Creditors split their Votes in this way and cast one or more Votes to approve the Scheme and one or more Votes to reject the Scheme in a single class, they will be counted as having cast one Vote to approve the Scheme and one Vote to reject the Scheme for the purposes of determining whether the Scheme has been approved by a majority in number of Scheme Creditors.

**7.5** In no circumstances will a single Admitted Claim (or Undetermined Provable Claim) be split by the Administrators for the purposes of Voting or Elections.

## **8 Representations**

**8.1** At the time of Voting and (if applicable) making Elections in respect of the Scheme, all Scheme Creditors will be required to make a representation (which is true and accurate as at the date it is made) that:

**8.1.1** (i) they have Voted in the same way in respect of all the 8% Interest Claims and Specified Interest Claims which they legally own and Control; and (ii) in respect of 8% Interest Claims and Specified Interest Claims which are Controlled by third parties, they have Voted in the same way in respect of all such claims that are Controlled by the same third parties; and

**8.1.2** in respect of their Higher Rate Claims (if applicable): (i) they have Voted and (if applicable) Elected in the same way in respect of all the Higher Rate Claims which they legally own and Control; and (ii) in respect of Higher Rate Claims which are Controlled by third parties, they have Voted and (if applicable) Elected in the same way in respect of all such claims that are Controlled by the same third parties.

## **9 Submitting Forms of Proxy**

### **9.1 Deadlines for submission**

Each Scheme Creditor should submit its duly completed Form of Proxy so as to be received by the Company no later than the Proxy Deadline, being 5.00 pm (London time) on 4 June 2018. Hard copy Forms of Proxy not so received may be handed to the Chairman at the Scheme Meetings.

### **9.2 How to submit Forms of Proxy**

#### **9.2.1 Portal**

- (i) Scheme Creditors with Admitted Claims who wish to appoint the Chairman as their proxy and instruct the Chairman to Vote on their behalf at the Scheme Meetings should complete and submit their Forms of Proxy electronically by the Proxy Deadline, by following the process set out in the Portal.
- (ii) The completion and submission of a Form of Proxy electronically via the Portal will constitute an electronic signature of such Form of Proxy and therefore does not require the signature or submission of a hard copy Form of Proxy.

### 9.2.2 Hard copy Forms of Proxy

- (i) All Scheme Creditors may complete and sign a hard copy Form of Proxy in accordance with the instructions set out therein and return a scanned copy via email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by pre-paid first-class post or air mail with delivery receipt to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, for the attention of Rebecca Browne.
- (ii) Hard copy Forms of Proxy not so received may be handed to the Chairman at the Scheme Meetings.

## 10 Portal

**10.1** Scheme Creditors with Admitted Claims will have been provided with Log-on Credentials which can be used to access the Portal.

**10.2** The Portal provides a secure website for Scheme Creditors with Admitted Claims where they can:

**10.2.1** update their contact details to receive information and other written correspondence from the Company and the Administrators;

**10.2.2** access, view and download the Scheme Documents;

**10.2.3** view their UCC4s, which set out (among other things) their Voting Rights and the allocation and composition of their Admitted Claims between 8% Interest Claims, Specified Interest Claims and Higher Rate Claims;

**10.2.4** complete and submit an electronic Form of Proxy appointing the Chairman as their proxy and instructing the Chairman to Vote on their behalf at the Scheme Meetings;

**10.2.5** download a hard copy Form of Proxy in order to: (i) nominate a proxy other than the Chairman to attend the Scheme Meetings and Vote on their behalf; and (ii) in respect of Higher Rate Creditors only, make their Elections;

**10.2.6** in respect of Higher Rate Creditors only, Elect for the Settlement Payment Option or the Certification Option;

**10.2.7** provide the Company with Settlement Instructions or, where they have provided such information previously, update the relevant details or confirm that the relevant details are unchanged; and

**10.2.8** in respect of Higher Rate Creditors who elect for the Certification Option only, submit a Certification.

**10.3** Any Scheme Creditor with an Admitted Claim who is unable to access the Portal should contact the Administrators (using the contact details set out in paragraph 11 (*Communications*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) below) as soon as possible to resolve any such issue.

## 11 Communications

All communications with the Company before the Effective Date should be made: (i) by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com); or (ii) by pre-paid first-class post or by air mail with delivery



receipt to the following address: Lehman Brothers International (Europe) (in administration)  
Level 23, 25 Canada Square, London E14 5LQ, for the attention of Rebecca Browne.

## **12 Meetings of Scheme Creditors**

### **12.1 Notice of meetings of Scheme Creditors**

The Scheme Meetings have been ordered to be convened by the High Court. The Notice of Scheme Meetings to be held on 5 June 2018 is set out in Appendix 3 (*Notice of Scheme Meetings*) of this Explanatory Statement.

### **12.2 Time and location of Scheme Meetings**

The Scheme Meetings will be at Linklaters LLP, One Silk Street, London EC2Y 8HQ, UK and:

- 12.2.1 the first Scheme Meeting (in respect of 8% Creditors and Specified Interest Creditors, excluding the SCG) will commence at 4.00 pm;
- 12.2.2 the second Scheme Meeting (in respect of Higher Rate Creditors, excluding the SCG) will commence immediately after the first Scheme Meeting concludes;
- 12.2.3 the third Scheme Meeting (in respect of the SCG) will commence immediately after the second Scheme Meeting concludes; and
- 12.2.4 the fourth Scheme Meeting (in respect of the Subordinated Creditor) will commence immediately after the third Scheme Meeting concludes.

### **12.3 Attending a Scheme Meeting**

12.3.1 Scheme Creditors (or their appointed proxies/representatives attending the Scheme Meetings on their behalf) will be required to register their attendance by presenting themselves at the registration desk prior to the commencement of the Scheme Meetings. Registration will commence at 3.00 pm (London time) on 5 June 2018. Each Scheme Creditor or proxy/representative should arrive in sufficient time prior to the commencement of the Scheme Meetings in order to ensure completion of registration.

12.3.2 Each such person should produce:

- (i) evidence of his/her personal identity, for example, passport, driver's licence or other picture identification acceptable to the Chairman;
- (ii) a copy of the UCC4(s) or Voting Rights Letter(s) in respect of the relevant Scheme Creditor;
- (iii) in the case of a proxy, a copy of the Form of Proxy under which they were appointed; and
- (iv) in the case of an individual representing a Scheme Creditor that is a company or corporation, the appropriately certified copy of the resolution of directors or other governing body of the company or corporation evidencing that individual's authority to act as the company or corporation's representative at the Scheme Meeting(s).

- 12.3.3 Scheme Creditors attending the Scheme Meetings in person (or by a representative or proxy who is not the Chairman) will be provided with a Voting Card pursuant to which they can Vote and (if applicable) make Elections at the Scheme Meetings.

## **13 Risk Factors**

### **13.1 Introduction**

13.1.1 All statements in this Explanatory Statement are to be read subject to, and are qualified in their entirety by, the matters referred to in this paragraph 13 (*Risk Factors*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*).

13.1.2 This Explanatory Statement also contains forward-looking statements that involve risks and uncertainties. Actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including the risks described below and elsewhere in this Explanatory Statement.

### **13.2 Effectiveness of the Scheme requires the approval of Scheme Creditors**

13.2.1 In order for the Scheme to become effective, a majority in number representing not less than 75% in value of those Scheme Creditors who are present and voting at each of the Scheme Meetings must Vote in favour of the Scheme.

13.2.2 Other than in the limited circumstances described in paragraph 7.4 of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) above, for the purposes of ascertaining whether a majority in number of Scheme Creditors have Voted in favour of the Scheme in each class, each Scheme Creditor that legally owns one or more claim(s) will have one vote in each of the class(es) relevant to its claim(s).

13.2.3 If the requisite majorities of Scheme Creditors do not Vote in favour of the Scheme at the Scheme Meetings, the Scheme will not be implemented. Although Locked-Up Scheme Creditors have undertaken to Vote in favour of the Scheme (as described in paragraph 4.4 of Part I (*Letter from the Administrators*) of this Explanatory Statement), such undertaking may cease to be binding in the circumstances set out under the terms of the Lock-Up Agreement, including automatic termination of the Lock-Up Agreement on 30 June 2018 unless extended.

### **13.3 The Scheme may not be implemented in accordance with the timeline envisaged in this Explanatory Statement**

Factors unknown to the Administrators and the Company at the date of this Explanatory Statement may result in delays to the implementation of the Scheme.

### **13.4 Even if the Scheme Creditors approve the Scheme, the Scheme may be objected to and may not be sanctioned by the High Court**

Even if the Scheme is approved at the Scheme Meetings, it is possible for a person with an interest in the Scheme (whether a Scheme Creditor or otherwise) to object to the Scheme and to attend or be represented at the Sanction Hearing in order to make representations that the Scheme should not be approved and, if unsuccessful, to appeal against the decision of the Court sanctioning the Scheme. Therefore, it is possible that objections will be made at or before the Sanction Hearing or that an appeal will be brought in respect of the sanction

order and that any such objections or appeal will delay or possibly prevent the implementation of the Scheme.

### **13.5 Effectiveness of the Scheme requires the sanction of the High Court**

13.5.1 In order for the Scheme to become effective under English law, it must receive the sanction of the High Court and the Court Order must be lodged with the Registrar of Companies.

13.5.2 The High Court will not sanction the Scheme unless it is satisfied that the correct procedures have been followed, the proposed arrangements are fair and that there are no other reasons why the Scheme should not be approved. There can be no assurance as to the High Court's decision in this regard.

13.5.3 If the High Court does not approve the Scheme, or it is only prepared to sanction it subject to conditions or amendments which: (i) the Administrators deem unacceptable; or (ii) would have a material adverse effect on the interests of a Scheme Party or the Shareholder (to which they do not consent), the Scheme may not be implemented.

### **13.6 New Claims or Certifications may prevent the issuance of a Full SI Payment Statement or Part SI Payment Statement**

13.6.1 New Claims received prior to the Bar Date (including any Claim notified by the German authorities (as described in paragraph 27.4 of Part I (*Letter from the Administrators*) of this Explanatory Statement)) may result in an increase to the Adequate Reserves, which will in turn result in a decrease of the Company's Net Available Funds. Similarly, the number of Certifications received, and the amounts asserted in such Certifications will impact the High Case Scheme Distribution.

13.6.2 In the event that (as a result of such new Claims and/or Certifications):

- (i) the Net Available Funds are insufficient to pay the Minimum Sum, the Company will be required to publish on the Website an Insufficient Funds Statement and Scheme Parties will not receive any payment in respect of their Scheme Distribution(s) (at least until such time as the Company is in a position to issue a Full SI Payment Statement or Part SI Payment Statement); or
- (ii) the Net Available Funds are greater than the Minimum Sum but less than the High Case Scheme Distribution, the Company will be required to publish on the Website a Part SI Payment Statement and Scheme Parties will receive a part payment of their Scheme Distributions (at least until such time as the Company is in a position to issue a Full SI Payment Statement).

### **13.7 Rights to Scheme Distribution(s) expire or are compromised after 12 months**

13.7.1 In the event that a Scheme Party does not provide the Company with (or re-confirm) its Settlement Instructions and/or KYC Information by the SSI Deadline (being at least 12 months from the Effective Date): (i) that Scheme Party shall be deemed to have irrevocably waived its right to receive the unpaid amount of any Unclaimed Scheme Distribution, the amount of which is less than £1 million, to which it was otherwise entitled; (ii) the Company shall be deemed to have satisfied its obligation to pay such Scheme Distributions to that Scheme Party; and (iii) such Scheme Distributions shall automatically form part of the Available Funds.

13.7.2 In relation to Unclaimed Scheme Distributions, the amount of which is more than £1 million, the Company will issue a Directions Application which seeks determination as to how the Company shall deal with such Scheme Distributions. This may result in the rights of the relevant Scheme Creditor to the Unclaimed Scheme Distribution being extinguished.

### **13.8 Access to liquid assets may restrict payments under the Scheme**

The Company's ability to make Scheme Distributions depends on its ability to access cash, to liquidate cash equivalent assets held in the House Estate and the certainty that can be placed on receipt of future receivables. The majority of the Company's cash equivalent assets consist of low-risk highly liquid investments (e.g. sovereign bonds) which are intended to be easily converted into Sterling cash at short notice. However, if for some reason: (i) the Company is unable to convert these assets into cash; (ii) the institutions with which the Company's assets are held are unable to process payments due to operational difficulties; or (iii) such assets default, are disclaimed or their value otherwise reduces, this may affect the Company's ability to make Scheme Distributions.

## **14 Anticipated payments under the Scheme**

### **14.1 Summary**

14.1.1 As further described in paragraph 13 (*The House Estate*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement, the Company currently holds £6.582 billion of Cash and Cash Equivalents in the House Estate. For the purposes of making Scheme Distributions, this is subject to the deduction of Adequate Reserves which may be established by the Administrators from time to time in their sole discretion to the extent that (among other things) new Claims are notified to the Company (or the Administrators) prior to the Bar Date, or any other matters arise that the Administrators consider it necessary to reserve for in accordance with their statutory duties. Similarly, amounts may be released from the Adequate Reserves from time to time by the Administrators in their sole discretion should they consider it appropriate to do so.

14.1.2 After reserving for prior ranking claims (in particular Expense claims and proofs which have been lodged but not yet admitted), the funds potentially available to meet Statutory Interest entitlements amount to £6.070 billion.

14.1.3 The High Case Scheme Distribution is dependent on the value of Higher Rate Claims for which the Certification Option is taken and the Certified Sums in respect of these claims. The Administrators cannot predict these values but if, for illustrative purposes only, all Higher Rate Creditors who are not bound by the Lock-Up Agreement receive a payment at a rate of between 8% (plus the 2.5% Settlement Premiums) and 15% per annum, the High Case Scheme Distribution would be between £5.123 billion and £5.809 billion.

14.1.4 Accordingly, if no new Claims are submitted, the Administrators expect to be able to issue a Full SI Payment Statement. However, the timing and issuance of such a statement depends on the factors set out in paragraph 27 (*Anticipated payments and factors that may impact Scheme Distributions*) of Part I (*Letter from the Administrators*) of this Explanatory Statement and paragraph 13 (*Risk Factors*) of this Part III (*Implementing the Scheme, risk factors and expected outcomes*) above.

## 14.2 8% Interest Claims and Specified Interest Claims

14.2.1 Taking account of all Admitted Claims and Undetermined Provable Claims as at the date of this Explanatory Statement, the Administrators expect to make total payments in respect of 8% Interest Claims of £3.168 billion and total payments in respect of Specified Interest Payments of £13 million pursuant to the Scheme.

14.2.2 A worked example of an 8% Payment on a hypothetical £10 million 8% Interest Claim admitted prior to the First Interim Dividend and for which subsequent dividends were paid on the dates they were declared is set out below for illustrative purposes only:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2012	4.00	3,200,000		
10,000,000	15/09/2012	30/11/2012	0.21	166,575	25.2%	(2,520,000)
7,480,000	30/11/2012	28/06/2013	0.58	344,285	43.3%	(4,330,000)
3,150,000	28/06/2013	29/11/2013	0.42	106,323	23.7%	(2,370,000)
780,000	29/11/2013	30/04/2014	0.42	25,986	7.8%	(780,000)
0						
				3,843,169		(10,000,000)
Payment	3,843,169					

14.2.3 A worked example of an 8% Payment on a hypothetical £10 million 8% Interest Claim admitted and paid on 15 September 2014, i.e. after the Fourth Interim Dividend, is set out below for illustrative purposes only:

<b>£10 million 8% Interest Claim admitted after the Fourth Interim Dividend</b>						
<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2014	6.00	4,800,000	100.0%	(10,000,000)
Payment	4,800,000					

## 14.3 Higher Rate Claims

14.3.1 Locked-Up Scheme Creditors are bound to accept the Settlement Payment Option. The Administrators understand that (based predominantly on the information provided pursuant to the Lock-Up Agreement) such creditors Control Higher Rate Claims with an aggregate value of £3.704 billion, such that the Administrators currently expect the total Settlement Premiums paid to Locked-Up Scheme Creditors to equal £93 million, and total payments to Locked-Up Scheme Creditors in respect of their Higher Rate Claims to equal £1.589 billion.

- 14.3.2** The low case payment to Higher Rate Creditors who are not party to the Lock-Up Agreement assumes that all such creditors elect for the Settlement Payment Option. In this scenario, total Settlement Premiums to such creditors would equal £20 million and total payments to Higher Rate Creditors who are not party to the Lock-Up Agreement would equal £353 million.
- 14.3.3** For illustration purposes only, the Administrators have assumed a high case payment to Higher Rate Creditors who are not party to the Lock-Up Agreement on the basis that that all such creditors elect to certify and are ultimately paid at a rate of 15% per annum. In this scenario, total payments to Higher Rate Creditors who are not party to the Lock-Up Agreement would equal £1.039 billion.
- 14.3.4** Accordingly, total payments in respect of Higher Rate Claims may range from between £1.942 billion to £2.628 billion.
- 14.3.5** A worked example of the Settlement Payment which a Higher Rate Creditor with a hypothetical £10 million Higher Rate Claim (admitted prior to the First Interim Dividend and for which subsequent dividends were paid on the dates they were declared) who has Elected for the Settlement Payment Option would receive, is provided below for illustrative purposes only:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2012	4.00	3,200,000		
10,000,000	15/09/2012	30/11/2012	0.21	166,575	25.2%	(2,520,000)
7,480,000	30/11/2012	28/06/2013	0.58	344,285	43.3%	(4,330,000)
3,150,000	28/06/2013	29/11/2013	0.42	106,323	23.7%	(2,370,000)
780,000	29/11/2013	30/04/2014	0.42	25,986	7.8%	(780,000)
0						
				<u>3,843,169</u>		<u>(10,000,000)</u>
8% Payment Settlement Premium	3,843,169					
	<u>250,000</u>					
Total	<u>4,093,169</u>					

- 14.3.6** A worked example of the Settlement Payment which a Higher Rate Creditor with a hypothetical £10 million Higher Rate Claim (admitted and paid on 15 September 2014, i.e. after the Fourth Interim Dividend) who has Elected for the Settlement Payment Option would receive, is provided below for illustrative purposes only:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>SI accrued @ 8% pa</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	15/09/2014	6.00	4,800,000	100.0%	(10,000,000)
8% Payment Settlement Premium	4,800,000					
	<u>250,000</u>					
Total	<u>5,050,000</u>					

14.3.7 A worked example of the Applicable CI Payment which a Higher Rate Creditor with a hypothetical £10 million Higher Rate Claim (admitted prior to the First Interim Dividend and for which subsequent dividends were paid on the dates they were declared) who has Elected for the Certification Option and certified an annually compounding rate of 10% effective from an early termination date of 29 September 2008 could receive, is provided below for illustrative purposes only:

<i>Balance Outstanding</i>	<i>From</i>	<i>To</i>	<i>Years</i>	<i>Interest Rate</i>	<i>SI accrued</i>	<i>Dividend Paid %</i>	<i>Dividend Paid £</i>
10,000,000	15/09/2008	29/09/2008	0.04	Nil	0		0
10,000,000	29/09/2008	30/11/2012	4.17	10.00%	4,879,962	25.2%	(2,520,000)
12,359,962	30/11/2012	28/06/2013	0.58	10.00%	696,698	43.3%	(4,330,000)
8,726,660	28/06/2013	29/11/2013	0.42	10.00%	358,077	23.7%	(2,370,000)
6,714,738	29/11/2013	30/04/2014	0.42	10.00%	271,873	7.80%	(780,000)
					<u>6,206,611</u>		<u>(10,000,000)</u>
Payment	6,206,611						

#### 14.4 Payments to the Subordinated Creditor and the Shareholder

14.4.1 Following the payment or reserving in full of all Scheme Distributions and any prior ranking claims, any remaining Net Available Funds will be paid by the Company to the Subordinated Creditor in respect of the Subordinated Debt (and Statutory Interest in respect of such Subordinated Debt) in accordance with clause 32 of the Scheme Document.

14.4.2 No distributions will be made to the Shareholder pursuant to the Scheme, and any distributions to the Shareholder remain in all respects subject to the relevant provisions of the Companies Act and the Insolvency Act.

### 15 Alternatives to the Scheme

#### 15.1 Delay in the determination and payment of Scheme Parties' entitlements

15.1.1 If the Scheme is not implemented, Scheme Parties' entitlements to the Surplus will remain undetermined and the Administrators will remain unable to make a material distribution to Scheme Parties in respect of their entitlements to Statutory Interest.

15.1.2 Absent the Scheme, the Settled Proceedings, including the Waterfall II Proceedings, will not be settled but will need to be continued so as to enable the determination of creditors' entitlements to the Surplus.

15.1.3 If all of the issues to be determined in the Settled Proceedings were to require determination by the Supreme Court, the Administrators are advised that it is possible that Scheme Creditors' entitlements to the Surplus might not be determined until 2020 at the earliest. It therefore follows that absent the Scheme, the Administrators may be unable to make a material distribution in respect of creditors'

entitlements to Statutory Interest before 2020, with the actual timing of such payment unclear.

## **15.2 Increased costs for the Administration**

Continuing the Settled Proceedings will also result in (among other costs) significant legal costs for the Administration. In addition, if the Scheme is not implemented, the Administrators will continue to hold a substantial amount of assets (primarily consisting of Cash and Cash Equivalents) and manage creditors' entitlements to such assets, which result in (among other things) material Administrators' fees and legal, payroll and administrative costs. In the Eighteenth Progress Report the Administrators estimated that future costs of the Administration, assuming the Waterfall II Proceedings run their course, would be around £254 million. The Scheme is expected to result in a direct saving of around £117 million on such future costs.

## **15.3 Potential impact on Scheme Parties' entitlements/ultimate payments**

### **15.3.1 Impact of new Claims being received**

In the absence of a Bar Date, Scheme Parties would be exposed to the risk of new Claims being received which (if of sufficient quantum) could dilute any payments that Scheme Parties may ultimately receive in respect of their entitlements to Statutory Interest.

### **15.3.2 The Waterfall II Tranche A Proceedings**

- (i) Absent the Scheme, parties to Tranche A would continue to seek to appeal certain of the Court of Appeal's findings (as discussed in paragraph 7.2 (*Waterfall II Proceedings - Tranche A*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement. If the Supreme Court were to grant permission to hear the appeal, the Supreme Court would then make findings in respect of the issues which are being appealed. Those issues are:

*The Bower v Marris Argument* (described as Issue 1 in paragraph 7.2.1 (*Summary of the issues heard in the Waterfall II Tranche A proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement)

- (ii) The Supreme Court could reverse the current position (which is reflected in the terms of the Scheme) that in an administration the *Bower v Marris Argument* does not apply (and therefore dividend payments are allocated first to the payment of principal and then to interest). A reversal would require the Administrators to adjust their calculations of creditors' total Statutory Interest entitlements to reflect the notional allocation of dividend payments first to interest and secondly to principal. In their Eighteenth Progress Report, the Administrators estimated that if the Supreme Court reversed the current position on the *Bower v Marris Argument*, additional Statutory Interest entitlements of c.£1.7 billion would arise for the period of up to 14 September 2017. This would increase with each further year the Surplus is not distributed.

*The date from which interest on contingent debts starts to run* (described as Issue 2, paragraph 7.2.1 (*Summary of the issues heard in the Waterfall II*



*Tranche A proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).

- (iii) The Supreme Court could reverse the current position (which is reflected in the terms of the Scheme) that Statutory Interest on contingent debts should be calculated from the date of the Administration and instead find that Statutory Interest should be calculated from a later date, e.g. the date when the debt ceases to be contingent. This would have the effect of reducing the Statutory Interest entitlement of creditors with contingent and future debts.

*Whether interest calculated on a compounding basis ceases to compound once the underlying principle has been fully repaid* (described as Issue 5 in paragraph 7.2.1 (*Summary of the issues heard in the Waterfall II Tranche A proceedings*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement).

- (iv) The Supreme Court could reverse the current position (which is reflected in the terms of the Scheme) that Statutory Interest calculated on a compounding basis stops compounding once the principal debt has been fully repaid and instead find that Statutory Interest calculated on a compounding basis continues to accrue after the principal debt has been repaid. Such reversal would lead to an increase in the Statutory Interest entitlements of creditors with compounding contractual interest entitlements.

### **15.3.3 The Waterfall II Tranche C Proceedings**

- (i) Absent the Scheme, the appeal of certain parts of the Tranche C Order would continue.
- (ii) Those parts of the Tranche C Order which are subject to appeal concern the construction of the definition "Default Rate" in ISDA Master Agreements. If some or all of the findings being appealed were reversed by the Court of Appeal (and if such a reversal were upheld by the Supreme Court) on any future appeal, this could result in (a) a widening of the type of funding potentially relevant to identifying the rate "apart from the administration", by allowing Scheme Creditors to certify Statutory Interest entitlements in respect of Higher Rate Claims taking into account cost of equity funding, and/or (b) a widening of what costs can be included in the total cost of funding calculations. This could have the effect of: (i) increasing the scope for Scheme Creditors to certify their Default Rate at levels above the 8% Interest Rate; and (ii) increasing the quantum of these Scheme Creditors' respective costs of funding.
- (iii) Approximately £4.5 billion of Admitted Claims derive from claims relating to ISDA Master Agreements or other Relevant Contracts. The Administrators estimate a total Statutory Interest liability of c.£2.009 billion on the assumption that only a small number of the Scheme Creditors holding such claims can claim a contractual cost of funding rate which is greater than the 8% Interest Rate (the amount in excess of an entitlement at the 8% Interest Rate that such Scheme Creditors might claim being estimated at c.£180 million). While the precise extent of any increase to Statutory Interest entitlements that would occur if some or all of the Tranche C outstanding issues were reversed on appeal is unknown, for illustrative purposes the

Administrators have sought to estimate the increase based on certain scenarios. As explained in the Eighteenth Progress Report, if all Higher Rate Creditors were to certify a compound contractual rate of 12% per annum, then an additional Statutory Interest entitlement of c.£2.3 billion would arise.

- (iv) On appeal, should the outcome of Tranche C result in several Higher Rate Creditors being able to certify for rates of interest significantly in excess of 8% simple and the outcome of Tranche A result in the *Bower v Marris* Argument prevailing, then the Statutory Interest entitlements of Scheme Creditors will substantially increase, and the Company will likely be unable to pay all Statutory Interest entitlements in full. In this scenario, those Scheme Creditors not entitled to interest at a rate in excess of 8% simple could each receive less Statutory Interest than is currently proposed under the Scheme.
- (v) In light of the above, while these issues remain unresolved (and absent a bar date for certification), it would not be possible for the Administrators to make a part or full distribution of Statutory Interest without reserving in respect of this issue and there is significant doubt as to whether any accurate reserve could be calculated without Higher Rate Creditors' confirmation of the contractual rates for which they will certify.

#### **15.3.4 The Lacuna Application**

- (i) Absent the Scheme, the Lacuna Application would continue and a first instance decision would be reached by the High Court. (The issues in the Lacuna Application are described more fully in paragraph 8 (*The Lacuna Application*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement.) That High Court decision could then be appealed to the Court of Appeal and possibly the Supreme Court.
- (ii) If the proceedings were to continue, the possibility would exist that, subject to the High Court's directions, steps would be taken resulting in the Company being placed into liquidation without Statutory Interest arising in the Administration having been paid. In that event, the Lacuna Issue would arise, i.e. such Statutory Interest unpaid at the commencement of the liquidation would cease to be payable and the entitlements of Scheme Creditors to Statutory Interest which has accrued on their Claims from the Administration Date could be entirely eroded.

#### **15.3.5 The Olivant Application**

- (i) Absent the Scheme, the Olivant Application would continue (the issues in the Olivant Application are described more fully in paragraph 9 (*Third party challenges to creditor proofs – the Olivant Application*) of Appendix 4 (*Background to the Company, the Administration and the Surplus*) of this Explanatory Statement). Those proceedings and the possibility of challenges to other Admitted Claims could create further uncertainty and disruption.
- (ii) If the Olivant Application were to continue, the High Court would need to determine whether the challenge to the Olivant Proof has been made within the statutory time limit (either by the Wentworth Group or, if joined, LBOH).

If the High Court were to find a valid challenge had been made, it would also need to consider the treatment of the Olivant Proof.

- (iii) If the High Court were to find that the true value of the Olivant Proof is more than the amount it was admitted for and that the proof should be re-admitted for a higher amount, the Administrators would be required to pay catch-up dividends for the additional portion of the Olivant Proof and revise upwards their estimate of the entitlement to Statutory Interest due on the Claim. Any increase in the value of the Olivant Proof therefore has the potential to impact the amount of the available Surplus.
- (iv) Alternatively, if the High Court were to find that the true value of the Olivant Proof is less than the amount it was admitted for and that the proof should be re-admitted for a lower amount, then such reduction in the Olivant Proof could increase the Surplus available for the payment of Statutory Interest.

## Appendix 1 Definitions and interpretation

The following defined terms have the following meanings in this Explanatory Statement, and in the Notice of Scheme Meetings, unless the context requires otherwise. The principles of interpretation in clause 1.2 of the Scheme Document will also apply to this Explanatory Statement, save that references to “Parts” or “paragraphs” herein shall mean the Parts or paragraphs of this Explanatory Statement.

Scheme Creditors should note that certain defined terms that are used in the Scheme Document are summarised or explained in the body of this Explanatory Statement for ease of reference and descriptive purposes only. In the event of any inconsistencies with such summaries or explanations, the relevant definitions as set out in clause 1 of the Scheme Document shall prevail.

<b>1992 ISDA Master Agreement</b>	means the 1992 version of the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.
<b>2002 ISDA Master Agreement</b>	means the 2002 version of the Master Agreement as published by the International Swaps and Derivatives Association, Inc.
<b>8% Creditor</b>	means a Scheme Creditor who holds legal title to one or more 8% Interest Claims
<b>8% Interest Claim</b>	means a Provable Claim other than a Higher Rate Claim, a Specified Interest Claim or the Subordinated Debt
<b>8% Interest Rate</b>	means a simple rate of interest at 8% per annum
<b>8% Payment</b>	means a payment to: (i) an 8% Creditor, of Statutory Interest in respect of its 8% Interest Claims; or (ii) a Settlement Creditor, of Statutory Interest in respect of its Higher Rate Claims, in each case calculated in accordance with clause 6.2 of the Scheme Document
<b>Additional Information Request</b>	has the meaning given to it in clause 11.2.4 of the Scheme Document
<b>Adequate Reserves</b>	has the meaning given to it in clause 4.1 of the Scheme Document
<b>Adjudication Costs</b>	means all fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his Support Team which are payable by the Company in respect of an Appeal
<b>Adjudicator</b>	means a person appointed as an adjudicator (including any replacement adjudicator) by the Company to determine an Appeal in accordance with clause 23 of the Scheme Document

<b>Adjudicator's Address for Service</b>	has the meaning given to it in clause 25.1.1 of the Scheme Document
<b>Administration</b>	means the administration of the Company pursuant to an order of the High Court on the Administration Date
<b>Administration Claim</b>	means any Claim, pursuant to the Insolvency Act or otherwise, against the Administrators or the Released Third Parties where such Claim arises from actions taken (or failure to take action) by any such person on or after the Administration Date but prior to the Effective Date
<b>Administration Date</b>	means 15 September 2008
<b>Administration Expenses</b>	means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act
<b>Administration Order</b>	has the meaning given to it in paragraph 2.1.11 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Administrators</b>	means the persons from time to time serving as joint administrators in the Administration who, as at the date of the Scheme, are Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability
<b>Administrators' Address for Service</b>	has the meaning given to it in clause 25.1.2 of the Scheme Document
<b>Admitted Certification Claim</b>	means the amount of an Undetermined Certification Claim that is admitted for dividend by the Administrators pursuant to Rule 14.7 of the Insolvency Rules
<b>Admitted Claim</b>	means any ordinary unsecured claim against the Company (whether in respect of unpaid principal or unpaid interest accrued prior to the Administration Date) which is or has been admitted for dividend by the Administrators in accordance with either Rule 14.7 of the Insolvency Rules or Rule 2.77 of the Insolvency Rules 1986
<b>Advisers</b>	means: (i) Linklaters LLP; and (ii) any other professional advisers to the Administrators
<b>AFB Master Agreement</b>	means the AFB Master Agreement for Foreign Exchange and Derivatives Transactions (1994) (AFB)
<b>AFB/FBF Agreed Position</b>	means the agreed position in respect of issues concerning the euro-denominated claims arising under the AFB/FBF French Master Agreements, as published on the Website on 14 September 2015

<b>AFB/FBF French Master Agreements</b>	means: (i) the AFB Master Agreement; (ii) the FBF Master Agreement; and (iii) any long-form confirmation which incorporates the terms of the AFB Master Agreement or the FBF Master Agreement
<b>Affiliates</b>	means, with respect to any person, any other person (other than an individual) directly or indirectly controlling or controlled by or under direct or indirect common control with such person
<b>AFTB/AFTI French Master Agreements</b>	means the AFTB Master Agreement for Repurchase Transactions with Delivery of Securities (1994) (AFTB) and the AFTI Master Agreement for Loans of Securities (1997) (AFTI)
<b>AGFP Proceedings</b>	means ongoing litigation with AG Financial Products Inc. before the Supreme Court of the State of New York (with Court Reference 653284/2011)
<b>Appeal</b>	means an appeal against a Rejection Notice to be determined by an Adjudicator in accordance with Part VI of the Scheme Document
<b>Appeal Applications</b>	has the meaning given to it in paragraph 7.2.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Appeal Form</b>	means a document in the same, or substantially the same, form as appended at Schedule 1 of the Scheme Document
<b>Appellant Certifying Creditor</b>	has the meaning given to it in clause 24.1.1 of the Scheme Document
<b>Appellant Certifying Creditor's Case</b>	has the meaning given to it in clause 24.2.1 of the Scheme Document
<b>Applicable CI Payment</b>	means a payment made to a Certifying Creditor of Statutory Interest in respect of a Certification Claim determined in accordance with clauses 11, 13 and 24 of the Scheme Document
<b>Available Funds</b>	means Cash and Cash Equivalents held in the House Estate together with such sum in respect of anticipated future realisations and receivables of the Company as the Administrators determine in their sole discretion
<b>Bar Date</b>	means the Effective Date
<b>BarCap</b>	has the meaning given to it in paragraph 14.2.1(i)(b) of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>BarCap Proceedings</b>	means an application issued by the Administrators on 5 September 2016 with Barclays Capital Inc and the Subordinated Creditor as respondents, seeking directions of the High Court in relation to certain issues relating to the treatment of certain claims received from Barclays Capital Inc.
<b>Benchmark Rate</b>	means a variable reference rate of interest which is generally published on a daily basis (when banks are open for business) by Thomson Reuters or

	such other internationally recognised information service as the Administrators may in their sole discretion (acting reasonably) determine
<b>Books and Records</b>	means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm and, for the avoidance of doubt, shall include information received by the Company from Scheme Parties through the Portal or otherwise
<b>Bower v Marris</b>	means <i>Bower v Marris</i> [1841] 41 ER 525
<b>Bower v Marris Argument</b>	has the meaning given to it in paragraph 7.2.1(ii) of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York
<b>Cash and Cash Equivalents</b>	means, at the relevant time, all cash held in any bank or other accounts, and all investments in any short-term money market deposits, UK government or quasi-government debt securities and supranational debt, in each case held by the Company, in accordance with the investment strategy set out in the Nineteenth Progress Report
<b>CASS</b>	means the Client Assets Sourcebook of the FCA Handbook as it applies to the Company
<b>CASS7</b>	means Chapter 7 of CASS and, if and to the extent relevant, Chapter 7A of CASS as they apply to the Company
<b>CDD</b>	has the meaning given to it in paragraph 5.1.8 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Certification</b>	<p>means a statement submitted to the Company and identified by a Certifying Creditor as being a “Certification” stating the Higher Rate Claim to which it relates by reference to the relevant Claim Reference and:</p> <ul style="list-style-type: none"> <li>(i) in respect of an ISDA Master Agreement:                             <ul style="list-style-type: none"> <li>(a) the asserted Cost of Funding applicable from time to time for the period during which the relevant Higher Rate Claim was, or has been, outstanding, in whole or in part;</li> <li>(b) the asserted Certified Rate(s); and</li> <li>(c) the asserted Certified Sum; and</li> </ul> </li> <li>(ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the asserted Certified Rate and the asserted Certified Sum,</li> </ul> <p>together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes in its discretion to submit</p>
<b>Certification Claim</b>	means a Higher Rate Claim that is the subject of a Valid Certification Election
<b>Certification Deadline</b>	means the Effective Date

<b>Certification Option</b>	means the option available to Higher Rate Creditors to submit a Certification
<b>Certified Rate</b>	means: (i) in respect of an ISDA Master Agreement, the rate(s) per annum equal to the asserted Cost of Funding plus 1% per annum; or (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the rate(s) of interest stated in the relevant Certification as the relevant interest rate(s), in each case in respect of the relevant Certification Claim
<b>Certified Sum</b>	means the amount in GBP of interest that a Certifying Creditor states in a Certification as being payable to it in respect of the relevant Certification Claim calculated by applying the relevant Certified Rate(s) set out in the Certification to the balance outstanding from time to time of the relevant Certification Claim (calculated in accordance with the Relevant Principles)
<b>Certifying Creditor</b>	means a Higher Rate Creditor in relation to the Higher Rate Claims held by it that are Certification Claims
<b>Chairman</b>	means the individual appointed to act as chairman at the Scheme Meetings
<b>Chapter 15</b>	means Chapter 15 of the US Bankruptcy Code
<b>Chapter 15 Order</b>	means an order of the US Bankruptcy Court which, among other things, recognises the Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, enforces the Court Order within the territorial jurisdiction of the United States and enjoins Scheme Parties from commencing or continuing any action or Proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme
<b>Civil Procedure Rules</b>	means the civil procedure rules used by the High Court of England and Wales that are in force as at the Effective Date
<b>Claim Reference</b>	means: (i) in respect of an Admitted Claim, the unique identifying number used by the Company to identify such Admitted Claim, as stated in the relevant UCC4; and (ii) in respect of an Undetermined Provable Claim, such reference number used by the Company to identify the relevant Undetermined Provable Claim as may be communicated by the Company to the relevant holder of such Undetermined Provable Claim prior to the Bar Date
<b>Claims</b>	means all claims, actions, Proceedings, demands, rights or causes of action, be they known or unknown, incurred solely or jointly or as principal or surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law or statute or by reason of breach of contract or trust, as a result of a restitutionary claim, 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 in existence now or coming into existence



	<p>at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date hereof, and including:</p> <p>(i) any and all claims, actions, Proceedings, demands, rights or causes of action to, for or in respect of interest, late payment or a Shortfall;</p> <p>(ii) any and all claims, actions, Proceedings, demands, rights or causes of action arising by reason of, among 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;</p> <p>(iii) any and all claims, actions, Proceedings, demands, rights or causes of action for, among other things, the enforcement of any right to, or any Liability in respect of a right to:</p> <p>(a) seek or enforce a judgment;</p> <p>(b) exercise any remedy (for damages or otherwise), indemnity and/or 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), or for costs and expenses of any nature; or</p> <p>(c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or Liability whatsoever;</p> <p>(iv) any and all claims, actions, Proceedings, demands, rights or causes of action in respect of any Loss;</p> <p>(v) any "Debt" as defined in Rule 14.1(3) of the Insolvency Rules; and</p> <p>(vi) any "liability" as defined in Rule 14.1(6) of the Insolvency Rules</p>
<b>Clearance</b>	has the meaning given to it in clause 18.2.1(ii) of the Scheme Document
<b>Client Money</b>	means "client money" as defined in the FCA Rules for the purposes of, <i>inter alia</i> , CASS7
<b>Client Money Appeal Judgment</b>	has the meaning given to it in paragraph 5.1.4 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Client Money Entitlement</b>	means a "client money entitlement" as such term is used in CASS, by reference to which the quantum of a beneficial interest in the Client Money Estate arising under the statutory trust created by CASS7, is calculated in accordance with CASS7
<b>Client Money Estate</b>	means the notional pool of Client Money constituted at the date of the Company's primary pooling event (as defined in CASS7)
<b>Companies Act</b>	means the Companies Act 2006

<b>Company</b>	means Lehman Brothers International (Europe) (in administration), a private unlimited company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ
<b>Company's Case</b>	has the meaning given to it in clause 24.3.1 of the Scheme Document
<b>Company Determination</b>	has the meaning given to it in paragraph 5.1.8 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Compounding Principle</b>	<p>means, where:</p> <p>(i) Statutory Interest in respect of a Higher Rate Claim or Specified Interest Claim is calculated (subject to the terms of the Scheme) by reference to a contractual compounding rate(s) of interest; and</p> <p>(ii) prior to being paid in full, such Higher Rate Claim or Specified Interest Claim was discharged in part by the payment of one or more interim dividends,</p> <p>the principle to be applied for the purpose of calculating the amount of Statutory Interest that accrues on the balance of the relevant claim outstanding from the date(s) of payment of the relevant interim dividend(s) to the date on which the relevant Claim was paid in full, being that any accrued Statutory Interest referable to the amount(s) by which the relevant claim was discharged by the relevant interim dividend(s) shall continue to compound in accordance with the terms of the relevant Specified Interest Contract or Relevant Contract (as applicable)</p>
<b>Conflict of Interest</b>	means any agreement, arrangement, affiliation, interest, understanding or activity which conflicts or has a significant risk of conflicting with the Adjudicator's or a member of his Support Team's ability to perform their respective roles
<b>Consensual Approach</b>	has the meaning given to it in paragraph 5.1.7 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Consultation Period</b>	has the meaning given to it in clause 11.2 of the Scheme Document
<b>Contributory Claim</b>	means any call, claim, action, proceeding, demand, right or cause of action that may be made or brought by a future liquidator of the Company against any contributory (as defined in section 79 of the Insolvency Act) arising pursuant to section 74 or section 165 of the Insolvency Act
<b>Control</b>	means the right to determine Voting and Elections in respect of a Higher Rate Claim whether by way of a sub-participation agreement or otherwise, and "Controlled" shall be construed accordingly
<b>Cost of Funding</b>	means the cost to the relevant party (i) if it were to fund or (ii) of funding, the relevant Certification Claim, as certified by the Certifying Creditor
<b>Cost of Funding Provisions</b>	has the meaning given to it in paragraph 5.2.2 of Part II ( <i>Summary of the terms of the Scheme of Arrangement</i> )

<b>Counteroffer</b>	means a counteroffer, setting out an amount in GBP of Statutory Interest that the Company states as being payable to a Certifying Creditor in respect of its Certification Claim
<b>Counteroffer Sum</b>	the amount in GBP of Statutory Interest stated in a Counteroffer
<b>Court of Appeal</b>	means the Court of Appeal of England and Wales
<b>Court Order</b>	means an order of the High Court sanctioning the Scheme under Section 899 of the Companies Act
<b>Courts</b>	means the High Court, Court of Appeal and/or Supreme Court
<b>CRA</b>	has the meaning given to it in paragraph 4.3.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Creditor Challenge Right</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to challenge the quantum or validity of an Admitted Claim whether by bringing a Claim against the relevant Scheme Party, the Company, the Administrators and/or any future liquidator of the Company and/or issuing an application in the Administration and/or any future liquidation of the Company
<b>Creditor Contributory Claim Right</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to request or require a future liquidator of the Company to make a Contributory Claim
<b>Creditors' Committee</b>	means the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act
<b>Currency Conversion Claim</b>	has the meaning given to it in paragraph 7.1.1(iv) of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>De Minimis Distribution</b>	has the meaning given to it in clause 21.1.1 of the Scheme Document
<b>Decision Notice</b>	has the meaning given to it in clause 11.2 of the Scheme Document
<b>Delegate</b>	means any person appointed as a delegate pursuant to clause 29.2.2 of the Scheme Document
<b>Direction</b>	has the meaning given to it in clause 18.2.1(i) of the Scheme Document
<b>Directions Application</b>	means an application by the Administrators to the High Court pursuant to paragraph 63 of Schedule B1 to the Insolvency Act
<b>Dispute Resolution Procedure</b>	means the dispute resolution procedure described in Part VI of the Scheme Document for determining the Applicable CI Payment in respect of a Rejected Certification that is the subject of an Appeal
<b>Disputed Claim</b>	means a Retained Claim (other than Excluded Proceedings), where: <ul style="list-style-type: none"> <li>(i) the amount claimed by the holder of such Retained Claim is stated to be either (a) a certain sum equal to or greater than GBP 20,000,000; or (b) an uncertain sum that in the Company's opinion (acting reasonably) could give rise to a liability of the Company equal to or greater than GBP 20,000,000; and</li> <li>(ii) such claim has not been agreed by the Administrators</li> </ul>

<b>Distribution Notice</b>	has the meaning given to it in paragraph 5.1.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>DRP Election</b>	has the meaning given to it in clause 11.9 of the Scheme Document
<b>Effective Date</b>	means the date upon which a copy of the Court Order is delivered to the Registrar of Companies in England and Wales
<b>Eighteenth Progress Report</b>	means the eighteenth progress report dated 10 October 2017 prepared by the Administrators in accordance with Rule 18.3 of the Insolvency Rules
<b>Election</b>	means the election by a Scheme Creditor, made at the time it submitted its Vote, for either the Settlement Payment Option or the Certification Option in respect of its Higher Rate Claims and “Elect” and “Elected” shall be construed accordingly
<b>Election Deadline</b>	means, where a Higher Rate Creditor is Voting by proxy submitted via the Portal, the Proxy Deadline or, in all other cases, the date and time of Voting at the relevant Scheme Meeting
<b>EMP</b>	has the meaning given to it in paragraph 11.3 ( <i>Employee Offer</i> ) of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Equity Distribution</b>	means any distribution (including a distribution <i>in specie</i> ) or dividends paid, or return of capital (whether ordinary or preferred) made by the Company or any office holder appointed in respect of it to the Shareholder, in accordance with the Insolvency Act, the Insolvency Rules, and, if applicable, the Companies Act
<b>Excluded Claims</b>	means (exclusively) any: <ul style="list-style-type: none"> <li>(i) Undetermined Provable Claim (but excluding for the avoidance of doubt any entitlement, right to or interest in Statutory Interest in respect of such claim);</li> <li>(ii) proprietary claim or trust entitlement of a Scheme Creditor to Client Money held by the Company (but excluding, for the avoidance of doubt, any Provable Claim arising from or in connection with a Client Money Entitlement);</li> <li>(iii) Non-Provable Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;</li> <li>(iv) Expense Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;</li> <li>(v) UCC Challenge, the details of which have been notified to the Company prior to the Bar Date;</li> <li>(vi) Administration Claim, the details of which have been notified to the Company and the relevant person against whom such Claim is being asserted or brought, prior to the Bar Date; and</li> <li>(vii) Creditor Challenge Rights in respect of any Admitted Claim that is admitted by the Administrators on or after the Record Date</li> </ul>
<b>Excluded Proceedings</b>	means any of the following: <ul style="list-style-type: none"> <li>(i) the WHT Proceedings;</li> <li>(ii) the LBA Proceedings; and</li> </ul>

	(iii) the AGFP Proceedings, but only to the extent that such Proceedings do not seek to determine the calculation of Statutory Interest in a manner that is inconsistent with the payment of Statutory Interest pursuant to the Scheme
<b>Exclusion Application</b>	means an application to the High Court pursuant to Rule 14.11(1)(a) of the Insolvency Rules to exclude a proof of debt or to reduce the amount claimed by a Scheme Party in respect of an Admitted Claim
<b>Expense Claims</b>	means Claims that rank as Administration Expenses
<b>Explanatory Statement</b>	means this statement dated 14 May 2018, as may be amended or supplemented (and the appendices thereto), explaining the effect of the Scheme in compliance with Section 897 of the Companies Act
<b>FBF Master Agreement</b>	means the FBF Master Agreement Relating to Transactions on Forward Financial Instruments (2001) (FBF)
<b>FCA</b>	means the Financial Conduct Authority of the United Kingdom
<b>FCA Handbook</b>	means the handbook containing rules, principles and guidance made by the FCA under powers given to it by FSMA as applicable to the Company from time to time
<b>FCA Rules</b>	means FSMA and the FCA Handbook
<b>Final Certification</b>	has the meaning given to it in clause 16.1.2 of the Scheme Document
<b>Final Certification Deadline</b>	has the meaning given to it in clause 16.1.2 of the Scheme Document
<b>First Announcement</b>	means the announcement in respect of the Scheme made by the Administrators via the Website on 22 December 2017
<b>First Interim Dividend</b>	has the meaning given to it in paragraph 6.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Fixed Rate</b>	means a fixed rate of interest expressed as a percentage
<b>Floating Rate</b>	means a rate of interest expressed as a Benchmark Rate or as a Benchmark Rate plus X, where X is a number or a percentage
<b>Form of Proxy</b>	means: (i) a form of proxy completed electronically via the Portal pursuant to which a Scheme Creditor may appoint the Chairman as proxy to attend the Scheme Meeting(s) and Vote on their behalf; and (ii) the hard copy form of proxy pursuant to which a Scheme Creditor may appoint a proxy (who may be the Chairman) to attend the Scheme Meeting(s) and Vote on their behalf
<b>Fourth Interim Dividend</b>	has the meaning given to it in paragraph 6.6 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>FSMA</b>	means the Financial Services and Markets Act 2000

<b>Full SI Payment Statement</b>	means a statement confirming that the Company's Net Available Funds are sufficient to allow for the payment in full of the High Case Scheme Distribution
<b>GAC</b>	means Global Account Code, being a unique identifier used by the Company for each of its counterparties
<b>German Master Agreement</b>	means the German law governed standardised master agreement for financial derivative transactions, as considered by Hildyard J in the Tranche C Judgment with respect to issues 20.1, 20.2 and 21 of the Waterfall II Proceedings
<b>Governance Protocol</b>	means a protocol in respect of the formation, rights and obligations of the Operating Committee as set out in Schedule 2 of the Scheme Document
<b>High Case Scheme Distribution</b>	means a notional amount equal to the aggregate of all Scheme Distributions to be made under the Scheme, assuming (where relevant) for the purposes of such calculation that: <ul style="list-style-type: none"> <li>(i) any Undetermined Provable Claims are admitted by the Administrators for the full amount proved for (or, if relevant, in the amount ordered by the Court to be reserved for in respect of such claim(s)) and the principal amount of such claim(s) is paid in full on 15 September 2021; and</li> <li>(ii) the Applicable CI Payment in respect of any Certification that is, at the relevant time, yet to be determined will be the Certified Sum set out in such Certification</li> </ul>
<b>High Court</b>	means the High Court of Justice in England and Wales
<b>Higher Rate Claim</b>	means a Provable Claim (or the component part thereof) derived from a Relevant Contract
<b>Higher Rate Creditor</b>	means a Scheme Creditor who holds the legal title to one or more Higher Rate Claims
<b>HMRC</b>	means HM Revenue & Customs and any other authority, body or official in the United Kingdom competent to assess, demand, impose, administer or collect Tax or amounts in respect of Tax or make any decision or ruling on any matter relating to Tax
<b>House Estate</b>	means all of the Company's cash, property and assets which do not form part of the Client Money Estate or which are not otherwise held on trust for another person
<b>Income Tax Act</b>	means the Income Tax Act 2007
<b>Increased Voting Rights Deadline</b>	means 5.00 pm (London time) on 31 May 2018
<b>Increased Voting Rights Decision</b>	means the decision of the Chairman of the Scheme Meetings in respect of a request by a Higher Rate Creditor for Voting Rights in respect of its Higher Rate Claims in excess of those stated in its UCC4 (or as otherwise communicated to it by the Company prior to the Scheme Meetings)

<b>Increased Voting Rights Request</b>	has the meaning given to it in paragraph 3.4.1 of Part III ( <i>Implementing the Scheme, risk factors and expected outcomes</i> )
<b>Initial Certification</b>	means a Certification in respect of an Undetermined Certification Claim prepared and submitted in accordance with clause 16 of the Scheme Document
<b>Insolvency Act</b>	means the Insolvency Act 1986
<b>Insolvency Rules</b>	means the Insolvency (England & Wales) Rules 2016
<b>Insufficient Funds Statement</b>	means a statement confirming that the Company's Net Available Funds are insufficient to allow for either a part payment or the full payment of the High Case Scheme Distribution
<b>ISDA Master Agreement</b>	means: (i) the 1992 ISDA Master Agreement; (ii) the 2002 ISDA Master Agreement; and (iii) any long-form confirmation which incorporates the terms of the 1992 ISDA Master Agreement or the 2002 ISDA Master Agreement
<b>Issued Scheme Outcome Statement</b>	means a Scheme Outcome Statement that has been published on the Website and is not subject to a Retraction Notice in accordance with clause 3.3 of the Scheme Document
<b>Judgments Act</b>	means the Judgments Act 1838
<b>KYC Information</b>	means information requested by the Company to ensure compliance with any relevant regulatory and anti-money laundering requirements
<b>LACA I</b>	has the meaning given to it in paragraph 11.2.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>LACA II</b>	has the meaning given to it in paragraph 11.2.4 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>LACA III</b>	has the meaning given to it in paragraph 11.2.5 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>LACA Series</b>	has the meaning given to it in paragraph 11.2.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Lacuna Application</b>	means the application issued on 28 November 2017 by the Administrators, with the Subordinated Creditor as respondent, seeking directions in relation to a request, made by the Subordinated Creditor, that the Administrators seek a decision of creditors, pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act, to bring about the termination of the Administration and the commencement of a liquidation of the Company
<b>Lacuna Issue</b>	has the meaning given to it in paragraph 7.1.1(v) of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Last Date for Proving</b>	has the meaning given to it in paragraph 5.1.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )

<b>LBA Proceedings</b>	means an application issued by Lehman Brothers Australia Limited – in liquidation on 20 December 2016 pursuant to paragraph 74 of Schedule B1 to the Insolvency Act seeking to vary the amount of its Provable Claim
<b>LBEL</b>	means Lehman Brothers Europe Limited (in administration), a company incorporated in England and Wales with registered number 03950078 whose registered address is 7 More London Riverside, London SE1 2RT
<b>LBH PLC</b>	means Lehman Brothers Holdings PLC (in administration), a company incorporated in England and Wales with registered number 01854685 whose registered address is 7 More London Riverside, London SE1 2RT
<b>LBHI</b>	means Lehman Brothers Holdings Inc., a corporation incorporated under the laws of the State of Delaware, United States of America with registered number 2024634 whose registered address is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, United States of America, and whose principal place of business is at 277 Park Avenue, 46th Floor, New York, NY 10172, United States of America as Plan Administrator (as defined in the Chapter 11 Plan) under the Chapter 11 Plan, on behalf of itself
<b>LBHI2</b>	means LB Holdings Intermediate 2 Limited (in administration), a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT
<b>LBL</b>	means Lehman Brothers Limited (in administration), a company incorporated in England and Wales with registered number 00846922 whose registered address is 7 More London Riverside, London SE1 2RT
<b>LBNL</b>	has the meaning given to it in paragraph 11.3 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>LBOH</b>	has the meaning given to it in paragraph 9.1.3 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Leap Year</b>	means a 12-month period (beginning on 15 September) that includes 29 February
<b>Lehman Group</b>	means the Lehman group of companies under the ultimate ownership of LBHI of which the Company is a member
<b>Liabilities</b>	means all liabilities, duties and obligations of every description, whether deriving from contract, common law, case law, legal provisions, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety and “Liability” means any one of them
<b>Liquidation Event</b>	means either an order by the High Court to compulsorily wind up the Company or the commencement of a voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)
<b>Lock-Up Agreement</b>	means a lock-up agreement dated 22 December 2017 made between (among others) the Company, the Administrators, Burlington Loan Management DAC, Wentworth Sons Senior Claims S.à r.l., LBHI and the Subordinated Creditor



<b>Locked Up Parties</b>	means: (i) each of the parties (other than the Company and the Administrators) to the Lock-Up Agreement and their respective professional advisers; and (ii) in respect of (i) above, their respective members, partners, investment managers, directors, officers, employees and any of their respective agents, professional advisers or their employees
<b>Locked-Up Scheme Creditors</b>	means each of the Scheme Creditors which are a party to the Lock-Up Agreement
<b>Log-on Credentials</b>	means the unique username and password attributed to Scheme Creditors with Admitted Claims for the purposes of accessing the Portal
<b>Loss</b>	means any loss (including loss of profit or loss of earnings), damage, cost, charge, penalty, expense or Liability of whatever nature
<b>Lugano Convention</b>	means the convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the Official Journal of the European Union on 21 December 2007
<b>Minimum Sum</b>	means an amount sufficient for a payment of at least GBP 0.01 to each Scheme Creditor (save for the Subordinated Creditor) and Storm in respect of the Scheme Distributions
<b>Net Available Funds</b>	means from time to time the sum in GBP calculated by deducting the aggregate amount of Adequate Reserves from the amount of Available Funds
<b>Net Contractual Position</b>	has the meaning given to it in paragraph 4.3.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Nineteenth Progress Report</b>	means the nineteenth progress report dated 10 April 2018 prepared by the Administrators in accordance with Rule 18.3 of the Insolvency Rules
<b>Non-Provable Claims</b>	means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration of the Company from the Surplus after the payment of Statutory Interest and before payment of the Subordinated Debt
<b>Notice</b>	means any notice given in accordance with clause 41 of the Scheme Document and "Notify" and "Notified" shall be construed accordingly
<b>Notice of Scheme Meetings</b>	means the notice of the Scheme Meetings set out at Appendix 3 ( <i>Notice of Scheme Meetings</i> )
<b>Olivant</b>	has the meaning given to it in paragraph 9.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Olivant CDD</b>	has the meaning given to it in paragraph 9.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Olivant Application</b>	means the application pursuant to Rule 14.8(3) of the Insolvency Rules issued in the Administration by the Subordinated Creditor on 19 September 2017 challenging the decision of the Administrators to admit the proof of debt filed in the Administration by Olivant Investments Switzerland S.A. and

	the associated joinder application brought by Lehman Brothers Opportunity Holdings Inc.
<b>Olivant Proof</b>	has the meaning given to it in paragraph 9.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Operating Committee</b>	means a committee to be formed following the dissolution of the Creditors' Committee pursuant to clause 34 of the Scheme Document whose rights and obligations against the Company and the Administrators are described in the Governance Protocol
<b>Other Proceedings</b>	means any and all Proceedings (other than Excluded Proceedings) of any nature, however arising, whether brought directly or indirectly, in any jurisdiction or forum, which have been formally commenced against the Company on or prior to the Bar Date
<b>Paragraph 56(1) Request</b>	has the meaning given to it in paragraph 8.1.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Part SI Payment Rate</b>	means the rate of distribution set out in a Part SI Payment Statement or such updated rate of distribution as may be published on the Website from time to time in accordance with clause 3.4 of the Scheme Document
<b>Part SI Payment Statement</b>	means a statement confirming (i) that the Company's Net Available Funds are sufficient to allow for a part payment of the High Case Scheme Distribution and (ii) the rate of Scheme Distributions to be paid by reference to the Net Available Funds as a percentage of the High Case Scheme Distribution
<b>Payment</b>	means a payment by the Company of a Scheme Distribution, Subordinated Distribution (other than the Subordinated Principal) or any other amount pursuant to the Scheme but excluding, for the avoidance of doubt, a WHT Repayment
<b>Portal</b>	means a secure online facility made available to Scheme Creditors with Admitted Claims on the website of PricewaterhouseCoopers LLP at <a href="https://dm.pwc.com/LBIE_CIP/login.aspx">https://dm.pwc.com/LBIE_CIP/login.aspx</a>
<b>Practice Statement Letter</b>	means the letter sent to creditors of the Company on 18 April 2018 in accordance with the practice statement issued by the High Court on 15 April 2002 in relation to schemes of arrangement proposed under the Companies Act
<b>Preferential Debts</b>	has the meaning given to that term in Section 386 of the Insolvency Act
<b>Proceedings</b>	means any process, action, application, legal or other proceeding, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution, enforcement of judgment or any other step taken for the purpose of creating or enforcing a lien
<b>Project Alaska</b>	has the meaning given to it in paragraph 5.2.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )

<b>Project Canada</b>	has the meaning given to it in paragraph 5.1.7 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Provable Claim</b>	means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules including, for the avoidance of doubt, any Shortfall Claim
<b>Proxy Deadline</b>	means 5.00 pm on the day falling one Business Day prior to the Scheme Meetings, being the deadline by which creditors wishing to submit a form of proxy via the Portal must do so in order to Vote and (where applicable) make an Election
<b>PSL Update Letter</b>	means the letter sent to creditors of the Company on 2 May 2018 with an update to the Practice Statement Letter
<b>Recast Jurisdiction and Judgments Regulation</b>	means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
<b>Record Date</b>	means 5.00 pm (London time) on 24 May 2018
<b>Registrar of Companies</b>	means the Registrar of Companies for England and Wales
<b>Rejected Certification</b>	has the meaning given to it in clause 11.9 of the Scheme Document
<b>Rejection Date</b>	means the date of delivery of a Rejection Notice in accordance with clause 11 of the Scheme Document
<b>Rejection Notice</b>	means a Decision Notice informing a Higher Rate Creditor of its Rejected Certification pursuant to clause 11.2.2, 11.7.2, 11.8.1 or 11.8.2 of the Scheme Document
<b>Released Administration Claims</b>	has the meaning given to it in clause 28.1.4 of the Scheme Document
<b>Released Claims</b>	means the Claims released and waived by the Scheme Parties pursuant to clause 28 of the Scheme Document
<b>Released Scheme Implementation Claims</b>	<p>means any Claims against the Company, the Administrators, the Released Third Parties or the Locked Up Parties where such Claims arise from or in connection with an action taken by any such person on or after 1 November 2017 with respect to:</p> <ul style="list-style-type: none"> <li>(i) the negotiation, preparation, implementation and/or consummation of the Scheme; or</li> <li>(ii) the execution of any documents required in order to implement the Scheme and the carrying out of the actions, steps and transactions contemplated by such documents,</li> </ul> <p>but excluding (a) Claims by the Locked Up Parties against each other or the Shareholder, or by the Shareholder against any Locked Up Party, under contracts in existence prior to the Bar Date, and (b) for the avoidance of doubt, any Scheme Breach Claims</p>

<b>Released Third Parties</b>	means: (i) the Administrators' firm; (ii) the Advisers; (iii) in respect of paragraphs (i) and (ii) above, their respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees; and (iv) current and former employees of the Company
<b>Released Third Party Claims</b>	means the Released Administration Claims and the Released Scheme Implementation Claims
<b>Relevant Contracts</b>	means certain pre-administration contracts, the counterparties to which may be entitled to Statutory Interest calculated at a rate in excess of the 8% Interest Rate, being: (i) ISDA Master Agreements; (ii) AFB/FBF French Master Agreements; and (iii) AFTB/AFTI French Master Agreements
<b>Relevant Employees</b>	means (in relation only to Claims relating to their individual contracts of employment) employees or former employees of the Company who are domiciled in a Relevant State and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
<b>Relevant Jurisdiction Clause Creditors</b>	means (in relation only to Claims arising in connection with such contracts) any person domiciled in a Relevant State who holds a contractual claim against the Company under a contract which is in writing or evidenced in writing and which contains an agreement that the courts of a Relevant State are to have exclusive jurisdiction to settle any disputes which have arisen or which may arise in connection with that contractual relationship and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
<b>Relevant Principles</b>	means: (i) in respect of ISDA Master Agreements, the principles set out in the Tranche C Judgment as set out in the declarations contained in the Tranche C Order; (ii) in respect of AFB/FBF French Master Agreements, the AFB/FBF Agreed Position; (iii) in respect of all Statutory Interest Claims, the Courts' decisions in Tranche A; and (iv) in respect of Certification Claims and Specified Interest Claims, the Compounding Principle (if applicable)
<b>Relevant State</b>	means a state other than the United Kingdom which is a party to the Recast Jurisdiction and Judgments Regulation or the Lugano Convention
<b>Retained Claims</b>	means Excluded Claims, Excluded Proceedings and Retained Expense Claims

<b>Retained Expense Claim</b>	<p>means any Expense Claim held by a Scheme Party, which:</p> <ul style="list-style-type: none"> <li>(i) was a contingent claim as at the Bar Date and which became payable on or after the Bar Date under a contract that was entered into by the Company between the Administration Date and the Bar Date;</li> <li>(ii) relates to the Company's payment obligations under a contract that was continuing to be performed as at the Bar Date;</li> <li>(iii) arises from an action or activity of the Company that takes place on or after the Bar Date (including a Scheme Breach Claim) or a contract entered into by the Company after the Bar Date; or</li> <li>(iv) arose within 10 days prior to the Bar Date in circumstances where (in the Administrators' sole discretion (acting reasonably)) the relevant Scheme Party could not reasonably have been expected to notify the Company or the Administrators of the Expense Claim prior to the Bar Date</li> </ul>
<b>Retained Unclaimed Scheme Distribution</b>	<p>means an Unclaimed Scheme Distribution that is not a De Minimis Distribution</p>
<b>Retraction Notice</b>	<p>has the meaning given to it in clause 3.3.1 of the Scheme Document</p>
<b>Revised Scheme Outcome Statement</b>	<p>has the meaning given to it in clause 3.3.2 of the Scheme Document</p>
<b>Rule 2.88(7)</b>	<p>means Rule 2.88(7) of the Insolvency Rules 1986</p>
<b>Rule 2.95 Order</b>	<p>has the meaning given to it in paragraph 5.1.1 of Appendix 4 (<i>Background to the Company, the Administration and the Surplus</i>)</p>
<b>Sanction Hearing</b>	<p>means the court hearing, to be held following the requisite approvals of the Scheme being obtained at the Scheme Meetings, at which the Company will request that the High Court sanction the Scheme in accordance with Section 899 of the Companies Act</p>
<b>SCG</b>	<p>the "Senior Creditor Group", consisting of the entities listed in Appendix 8 (<i>SCG Entities</i>)</p>
<b>Scheme</b>	<p>means this scheme of arrangement in its present form or with or subject to any modification, addition or condition approved or imposed pursuant to clause 42 of the Scheme Document</p>
<b>Scheme Breach Claims</b>	<p>means any Claims against the Company or the Administrators arising out of or in connection with a breach by the Company or the Administrators of the terms of the Scheme</p>
<b>Scheme Creditor</b>	<p>means any person who holds a Provable Claim against the Company (including, for the avoidance of doubt, (i) any Admitted Claim whether unpaid or paid in full or in part; and (ii) the Subordinated Debt), save for:</p> <ul style="list-style-type: none"> <li>(i) Storm;</li> <li>(ii) any Relevant Employees; and</li> </ul>

	(iii) any Relevant Jurisdiction Clause Creditors
<b>Scheme Distribution</b>	means (as the context requires) a payment by the Company in respect of: (i) the 8% Payment; (ii) the Specified Interest Payment; (iii) the Storm Payment; (iv) the Settlement Premium; and/or (v) the Applicable CI Payment
<b>Scheme Document</b>	means the scheme document set out in Appendix 2 ( <i>Scheme of Arrangement</i> ) of this Explanatory Statement
<b>Scheme Documentation</b>	means this Explanatory Statement, the Scheme Document and the Practice Statement Letter
<b>Scheme Meetings</b>	means the separate meetings of the relevant classes of Scheme Creditors convened by order of the High Court pursuant to Section 896 of the Companies Act for the purpose of considering and, if thought appropriate, approving the Scheme, including any adjournment thereof
<b>Scheme Outcome Statement</b>	means (as relevant): (i) a Full SI Payment Statement; (ii) a Part SI Payment Statement; (iii) an Insufficient Funds Statement; or (iv) a Revised Scheme Outcome Statement
<b>Scheme Party</b>	means each Scheme Creditor and Storm
<b>SCSO</b>	has the meaning given to it in paragraph 11.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>SDO I</b>	has the meaning given to it in paragraph 11.4.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>SDO II</b>	has the meaning given to it in paragraph 11.4.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Second Interim Dividend</b>	has the meaning given to it in paragraph 6.4 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Section 874</b>	has the meaning given to it in paragraph 10.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Settled Proceedings</b>	means: (i) the Waterfall Proceedings; (ii) the Lacuna Application; (iii) the Olivant Application; and (iv) any Other Proceedings
<b>Settlement Creditor</b>	means a Higher Rate Creditor in relation to any Higher Rate Claim(s) held by it that is not subject to a Valid Certification Election
<b>Settlement Higher Rate Claim</b>	means a Higher Rate Claim that is not subject to a Valid Certification Election

<b>Settlement Instructions</b>	means a Scheme Party's settlement instructions that meet the Company's minimum requirements in respect of settlement instructions as set out in the Portal (from time to time)
<b>Settlement Payment</b>	means, in respect of a Settlement Creditor, the 8% Payment and the Settlement Premium together
<b>Settlement Payment Option</b>	means the option available to Higher Rate Creditors to receive the Settlement Payment in respect of their Higher Rate Claims
<b>Settlement Premium</b>	means a settlement sum to be paid to a Settlement Creditor equal to 2.5% of the amount admitted for dividend by the Administrators in respect of its Settlement Higher Rate Claim(s)
<b>Shareholder</b>	means LBHI2 in its capacity as a shareholder of the Company
<b>Shareholder Undertaking</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and the Shareholder in connection with the Scheme in the form set out in Schedule 3 of the Scheme Document
<b>Shareholder Undertaking Claim</b>	means any Claims against the Shareholder arising out of a breach by the Shareholder of the terms of the Shareholder Undertaking
<b>Shortfall</b>	means, where the total distributions received by a client of the Company from the Client Money Estate (X) are less than its Client Money Entitlement (Y), the difference between X and Y
<b>Shortfall Claim</b>	means any unsecured claim against the House Estate to recover any Shortfall
<b>Specified Countries</b>	means the Netherlands, France, Italy, Germany, Switzerland, the United Arab Emirates, Qatar, Spain, Sweden, Israel and South Korea
<b>Specified Interest Claim</b>	means a Provable Claim (or the component part thereof) that is derived from a Specified Interest Contract
<b>Specified Interest Contract</b>	means a contract other than a Relevant Contract or a Subordinated Debt Agreement which stipulates a Specified Interest Rate which, when applied to the balance outstanding from time to time under such contract (in accordance with Relevant Principles), would give rise to an amount of Statutory Interest that is greater than the amount of Statutory Interest that would be calculated if the 8% Interest Rate were to have applied in place of such Specified Interest Rate
<b>Specified Interest Creditor</b>	means a Scheme Creditor who holds legal title to one or more Specified Interest Claims
<b>Specified Interest Payment</b>	means a payment to a Specified Interest Creditor of Statutory Interest in respect of its Specified Interest Claims calculated in accordance with clause 7.2 of the Scheme Document
<b>Specified Interest Rate</b>	means either: (i) a Fixed Rate; or (ii) a Floating Rate, whether such rate is applied on a simple or compound basis

<b>SSI Deadline</b>	means the later of: (i) 20 Business Days from the date on which all Scheme Distributions other than Unclaimed Scheme Distributions have been paid in full by the Company; and (ii) 12 months from the Effective Date
<b>Statutory Interest</b>	means any statutory interest payable by the Company pursuant to Rule 14.23 of the Insolvency Rules
<b>Statutory Interest Claims</b>	means Claims in respect of Statutory Interest
<b>Statutory Minimum</b>	means Statutory Interest calculated at the 8% Interest Rate
<b>Sterling</b>	means the lawful currency of the United Kingdom
<b>Storm</b>	means Storm Funding Limited (in administration), a company incorporated in England and Wales with registered number 02682306 whose registered address is 7 More London Riverside, London SE1 2RT
<b>Storm Payment</b>	means a payment in the amount of GBP 20,955,623.55 to Storm in full and final settlement of its rights to Statutory Interest in respect of its Admitted Claim
<b>Storm Undertaking</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and Storm pursuant to which Storm agrees to be bound by and perform certain of the terms of the Scheme, in the form set out in Schedule 4 of the Scheme Document
<b>Subordinated Creditor</b>	means Wentworth Sons Sub-Debt S.à r.l., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated and existing under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies' Register under number B 179. 340, whose registered office is 6 Rue Eugène Ruppert, L 2453 Luxembourg, Grand Duchy of Luxembourg
<b>Subordinated Debt</b>	means Claims in respect of the subordinated liabilities of the Company arising pursuant to the Subordinated Debt Agreements
<b>Subordinated Debt Admittance Date</b>	has the meaning given to it in clause 32.2 of the Scheme Document
<b>Subordinated Debt Agreements</b>	means any of the three intercompany loan agreements entered into between the Company and LBHI2, each dated 1 November 2006 and which have been assigned by LBHI2 to the Subordinated Creditor pursuant to a deed of assignment dated 31 January 2014
<b>Subordinated Debt SI Payment</b>	has the meaning given to it in clause 32.5 of the Scheme Document
<b>Subordinated Distributions</b>	means any payment in respect of the Subordinated Debt (whether in respect of principal, interest accrued prior to the Administration Date,



	Statutory Interest or otherwise) made in accordance with the terms of the Scheme
<b>Subordinated Interest</b>	has the meaning given to it in clause 32.3 of the Scheme Document
<b>Subordinated Principal</b>	means the part of the Subordinated Creditor's Provable Claim that relates to the principal amount of the Subordinated Debt, in the sum of GBP 1,240,452,696, and excluding any part that relates to interest on the Subordinated Debt accrued prior to the Administration Date
<b>Support Team</b>	means one or more appropriately qualified and trained, technically competent and independent professionals (with relevant market and/or financial experience) engaged by the Adjudicator to support and assist the Adjudicator with his understanding of the Appellant Certifying Creditor's Case and the Company's Case
<b>Supreme Court</b>	means the Supreme Court of the United Kingdom
<b>Surplus</b>	means the Company's assets remaining after the provision for or payment in full of Expense Claims, Preferential Debts and Admitted Claims and before the payment of Statutory Interest, Non-Provable Claims, the Subordinated Debt and Equity Distributions, but excluding any Contributory Claim
<b>Tax</b>	means all forms of taxation, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments in respect of or on account of such forms of taxation (including any interest and/or penalties in relation to such taxation), in each case whether of the United Kingdom or elsewhere in the world whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Company, a Scheme Party or any other person
<b>Tax Authority</b>	means any taxing or other authority, whether of the United Kingdom or elsewhere in the world, competent to impose any liability in respect of Tax, or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax
<b>Term Sheet</b>	has the meaning given to it in paragraph 4.6 of Part I ( <i>Letter from the Administrators</i> )
<b>Third Interim Dividend</b>	has the meaning given to it in paragraph 6.5 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Third Party</b>	means a person that is not the Company, a Scheme Party, an Administrator, a Released Third Party or a Locked Up Party
<b>Tranche A</b>	means "Tranche A" of Waterfall II as described in the definition of Waterfall II
<b>Tranches A and B Costs Principle</b>	means, in relation to any costs payable by the Company pursuant to clause 28.3 of the Scheme Document, the limitation imposed by the High Court in paragraph 2 under the heading Costs in the order of David Richards J dated 17 October 2016 in relation to Tranche A and Tranche B

<b>Tranche B</b>	means “Tranche B” of Waterfall II as described in the definition of Waterfall II
<b>Tranche C</b>	means “Tranche C” of Waterfall II as described in the definition of Waterfall II
<b>Tranche C Judgment</b>	means <i>Lomas &amp; Ors v Burlington Loan Management Limited &amp; Ors</i> [2016] EWHC 2417 (Ch)
<b>Tranche C Order</b>	means the declarations made by Hildyard J in the order of the High Court dated 12 December 2016 in respect of the Tranche C Judgment
<b>Trust Property</b>	has the meaning given to it in paragraph 4.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>Trust Property Creditors</b>	has the meaning given to it in paragraph 4.1.1 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>UCC Challenge</b>	means a challenge in writing to the Company by a Scheme Creditor of the allocation or composition of its Admitted Claim(s) between any combination of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) set out in its UCC4 (or as otherwise communicated to it in writing by the Company), where such challenge includes a statement as to the allocation or composition of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant) claimed by that Scheme Creditor as constituting its Admitted Claim(s)
<b>UCC1</b>	has the meaning given to it in paragraph 12.2 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>UCC2</b>	has the meaning given to it in paragraph 12.4 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>UCC3</b>	has the meaning given to it in paragraph 12.6 of Appendix 4 ( <i>Background to the Company, the Administration and the Surplus</i> )
<b>UCC4</b>	means the certificate provided by the Company to a Scheme Creditor on or around the date of this Explanatory Statement setting out, among other things, the disaggregation of such Scheme Creditor’s Admitted Claim(s) between 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)
<b>Unclaimed Scheme Distribution</b>	means any Scheme Distribution which (i) would be payable by the Company to a Scheme Party but for that Scheme Party’s failure to provide the Company with Settlement Instructions and/or KYC Information (or confirm such information) in accordance with clause 19.4 of the Scheme Document or (ii) was paid by way of a cheque that is cancelled by the Company pursuant to clause 19.6.3 of the Scheme Document
<b>Unclaimed Scheme Distribution Application</b>	has the meaning given to it in clause 21.2 of the Scheme Document

<b>Undetermined Certification Claim</b>	means a Certification Claim that is an Undetermined Provable Claim
<b>Undetermined Provable Claim</b>	means, as at any given date, a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules prior to the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Administrators or is the subject of determination by the Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired
<b>US Bankruptcy Code</b>	means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
<b>US Bankruptcy Court</b>	means the United States Bankruptcy Court for the Southern District of New York or other court of competent jurisdiction presiding over any case filed under Chapter 15 of the US Bankruptcy Code seeking, among other things, recognition of the Scheme as a foreign main proceeding and enforcement of the Court Order in the United States
<b>Valid Certification Election</b>	means an Election by a Higher Rate Creditor that is: <ul style="list-style-type: none"> <li>(i) for the Certification Option in relation to one or more Higher Rate Claims;</li> <li>(ii) made prior to the Election Deadline; and</li> <li>(iii) made contemporaneously with a representation by that Scheme Creditor to the Company (such representation being true and accurate as at the date it is made) that:                         <ul style="list-style-type: none"> <li>(a) it has made the same Election in respect of all Higher Rate Claims which it legally owns and Controls; and</li> <li>(b) where it has Elected for the Certification Option in respect of Higher Rate Claim(s) which are Controlled by a third party, it has made the same Election in respect of all Higher Rate Claim(s) that are Controlled by such party</li> </ul> </li> </ul>
<b>VAT</b>	means, within the European Union, such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC and, outside the European Union, any tax of a similar nature levied by reference to added value or sales
<b>Voting</b>	means the exercise of a Scheme Creditor's vote to approve or reject the Scheme at a meeting of Scheme Creditors convened for that purpose and "Vote" shall be construed accordingly
<b>Voting Card</b>	means the voting card to be completed by Scheme Creditors if they (or their proxies) attend the Scheme Meetings in person for the purposes of Voting and (if applicable) making Elections
<b>Voting Rights</b>	means the value attributed to 8% Interest Claims, Specified Interest Claims and Higher Rate Claims for the purpose of Voting at the relevant Scheme Meeting(s)

<b>Voting Rights Letter</b>	means the letter sent by the Company to any Scheme Creditor with an Undetermined Provable Claim(s) setting out the Company's determination of that Scheme Creditor's Voting Rights in respect of its Undetermined Provable Claim(s)
<b>Waterfall I</b>	means a joint application issued on 14 February 2013 by the respective administrators of the Company, LBL and LBHI2, with LBHI as a respondent, seeking a determination as to, among other things, the existence and priority ranking of certain claims in respect of the Surplus, and the rights and obligations of the Company as against its contributories, heard by the High Court, the Court of Appeal and the Supreme Court, the Supreme Court judgment being given on 17 May 2017
<b>Waterfall II</b>	means the application issued on 12 June 2014 (as amended pursuant to the orders of David Richards J dated 9 March 2015 and Hildyard J dated 9 October 2015) by the Administrators, with Burlington Loan Management Limited, CVI GVF (Lux) S.à r.l., Hutchinson Investors, LLC, the Subordinated Creditor and York Global Finance BDH, LLC as respondents, seeking determination of issues that impact the potential entitlements of the Company's creditors to payments from the Surplus, split into Tranche A and Tranche B (with case citation, in respect of the Court of Appeal decision, [2017] EWCA Civ 1462), and Tranche C (with case citation, in respect of the first instance decision, [2016] EWHC 2417 (Ch))
<b>Waterfall III</b>	means the application issued on 25 April 2016 by the Administrators with the respective joint administrators of LBHI2, LBL and LBEL as respondents, seeking determination of issues relating to the rights and obligations of the Company, LBHI2, LBL, LBEL and LBH PLC arising out of (i) the Company's status as an unlimited liability company and (ii) certain recharge arrangements among those entities, and the associated cross-application issued on 17 October 2016 by the administrators of LBL
<b>Waterfall Judgments</b>	means the judgments made by the Courts in the Waterfall Proceedings
<b>Waterfall Proceedings</b>	means Waterfall I, Waterfall II and Waterfall III as the context requires
<b>Website</b>	means the website which can be accessed at <a href="https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html">https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html</a>
<b>Wentworth Group</b>	means the Wentworth Parties, but excluding the Shareholder
<b>Wentworth Parties</b>	means: <ul style="list-style-type: none"> <li>(i) LBHI;</li> <li>(ii) Wentworth Sons Senior Claims S.à r.l.;</li> <li>(iii) the Subordinated Creditor;</li> <li>(iv) the Shareholder;</li> <li>(v) King Street Capital Management, L.P.;</li> </ul>

	(vi) Elliott Management Corporation; and (vii) in respect of (v) and (vi) above, their respective Affiliates that are parties to the Lock-Up Agreement
<b>WHT Deduction</b>	has the meaning given to it in clause 18.1.1 of the Scheme Document
<b>WHT Deduction Certificate</b>	has the meaning given to it in clause 18.1.3(ii) of the Scheme Document
<b>WHT Determination Event</b>	has the meaning given to it in clause 18.3 of the Scheme Document
<b>WHT Proceedings</b>	means the application issued by the Administrators on 22 December 2015, with HMRC as respondent, seeking directions of the High Court in relation to the application of section 874 of the Income Tax Act to payments of Statutory Interest (with case citations, in respect of the first instance decision, [2016] EWHC 2492 (Ch), and in respect of the Court of Appeal decision, [2017] EWCA Civ 2124)
<b>WHT Repayment</b>	has the meaning given to it in clause 18.3.1 of the Scheme Document
<b>WHT Repayment Event</b>	has the meaning given to it in clause 18.3.2 of the Scheme Document

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**Appendix 2**  
**Scheme of Arrangement**

*[separately attached]*

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
COMPANIES COURT (ChD)**

**No. CR-2018-003713**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)**

**- and -**

**IN THE MATTER OF THE COMPANIES ACT 2006**

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**SCHEME OF ARRANGEMENT**

(under Part 26 of the Companies Act 2006)

BETWEEN

LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(in administration)

AND

THE SCHEME CREDITORS  
(as hereinafter defined)

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**Table of Contents**

<b>Contents</b>	<b>Page</b>
PART I: RECITALS, DEFINITIONS AND INTERPRETATION .....	5
Recitals .....	5
1 Definitions and interpretation .....	5
PART II: EFFECTIVE DATE AND INITIAL SCHEME STEPS .....	30
2 Scheme Effective Date .....	30
3 Scheme Outcome Statements .....	30
4 Adequate Reserves .....	31
5 Higher Rate Claims, 8% Interest Claims and Specified Interest Claims .....	32
PART III: SCHEME DISTRIBUTIONS TO 8% CREDITORS, SETTLEMENT CREDITORS AND SPECIFIED INTEREST CREDITORS .....	33
6 The 8% Payment .....	33
7 The Specified Interest Payment .....	33
8 The Settlement Premium .....	34
9 Timing of the 8% Payment, the Specified Interest Payment and the Settlement Premium	34
PART IV: SCHEME DISTRIBUTIONS TO CERTIFYING CREDITORS .....	35
10 Applicable CI Payments .....	35
11 Determination of Applicable CI Payments .....	35
12 Consultation with the Subordinated Creditor .....	37
13 Failure to submit a Certification .....	37
14 Forfeit of entitlement to Settlement Premium .....	37
15 Timing of payment of Applicable CI Payment .....	37
16 Undetermined Certification Claims .....	38
PART V: GENERAL PROVISIONS APPLICABLE TO SCHEME DISTRIBUTIONS AND SUBORDINATED DISTRIBUTIONS .....	39



17	General.....	39
18	Tax.....	39
19	Conditions to payment of Scheme Distributions and Subordinated Distributions.....	42
20	UCC Challenges .....	43
21	Unclaimed Scheme Distributions .....	44
22	Representations by Scheme Creditors .....	44
	PART VI: DISPUTE RESOLUTION PROCEDURE .....	45
23	The Adjudicator .....	45
24	The Appeal .....	47
25	Service of documents and other communications .....	50
26	Adjudication Costs .....	51
27	Confidentiality.....	52
	PART VII: SETTLEMENT OF PROCEEDINGS AND RELEASE OF CLAIMS .....	54
28	Settlement of Proceedings and release of Claims.....	54
	PART VIII: ADMINISTRATORS' POWERS AND REMUNERATION AND SUBORDINATED DISTRIBUTIONS .....	56
29	Powers of the Company and the Administrators.....	56
30	Retained Expense Claims.....	57
31	The Storm Payment .....	58
32	The Subordinated Debt.....	58
33	Equity Distributions .....	59
34	Dissolution of the Creditors' Committee.....	59
	PART IX: MISCELLANEOUS PROVISIONS .....	60
35	Third Party rights and enforcement.....	60
36	Chapter 15.....	60

37	Governing law and jurisdiction .....	60
38	Duration of this Scheme.....	61
39	Limit on Company's obligations .....	61
40	Partial invalidity .....	61
41	Notices .....	61
42	Modifications .....	63
43	Extension and calculation of deadlines.....	63
44	Conflict .....	63
45	Modification of foreign law contracts.....	64
46	FCA Notices .....	64
	Schedule 1 Appeal Form .....	65
	Schedule 2 Governance Protocol.....	66
1	Operating Committee .....	66
2	Meetings, voting etc. ....	67
3	Amendment or waiver .....	69
4	Disputes .....	69
	Schedule 3 Shareholder Undertaking .....	70
	Schedule 4 Storm Undertaking.....	79

## PART I: RECITALS, DEFINITIONS AND INTERPRETATION

### Recitals

- (A) The Company was incorporated in England and Wales on 10 September 1990 under the Companies Act 1985 as a private limited company with registered number 02538254 under the name Lehman Brothers International Limited.
- (B) The Company was re-registered on 21 December 1992 under the Companies Act 1985 as a private unlimited company under the name Lehman Brothers International (Europe).
- (C) On 15 September 2008, on an application of the directors of the Company, the Company was placed into administration pursuant to Schedule B1 to the Insolvency Act.
- (D) On 15 September 2008, Anthony Victor Lomas and Steven Anthony Pearson, on 2 November 2011, Russell Downs and on 22 March 2013, Julian Guy Parr, each of PricewaterhouseCoopers LLP, were appointed as joint administrators of the Company pursuant to orders of the High Court.

## 1 Definitions and interpretation

### Definitions

- 1.1 In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

<b>“1992 ISDA Master Agreement”</b>	means the 1992 version of the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.
<b>“2002 ISDA Master Agreement”</b>	means the 2002 version of the Master Agreement as published by the International Swaps and Derivatives Association, Inc.
<b>“8% Creditor”</b>	means a Scheme Creditor who holds legal title to one or more 8% Interest Claims
<b>“8% Interest Claim”</b>	means a Provable Claim other than a Higher Rate Claim, a Specified Interest Claim or the Subordinated Debt
<b>“8% Interest Rate”</b>	means a simple rate of interest at 8% per annum
<b>“8% Payment”</b>	means a payment to: <ul style="list-style-type: none"><li>(i) an 8% Creditor, of Statutory Interest in respect of its 8% Interest Claims; or</li><li>(ii) a Settlement Creditor, of Statutory Interest in respect of its Higher Rate Claims,</li></ul> in each case calculated in accordance with Clause 6.2
<b>“Additional Information Request”</b>	has the meaning given to it in Clause 11.2.4
<b>“Adequate Reserves”</b>	has the meaning given to it in Clause 4.1
<b>“Adjudication Costs”</b>	means all fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his Support Team which are payable by the Company in respect of an Appeal

<b>“Adjudicator”</b>	means a person appointed as an adjudicator (including any replacement adjudicator) by the Company to determine an Appeal in accordance with Clause 23
<b>“Adjudicator’s Address for Service”</b>	has the meaning given to it in Clause 25.1.1
<b>“Administration”</b>	means the administration of the Company pursuant to an order of the High Court on the Administration Date
<b>“Administration Claim”</b>	means any Claim, pursuant to the Insolvency Act or otherwise, against the Administrators or the Released Third Parties where such Claim arises from actions taken (or failure to take action) by any such person on or after the Administration Date but prior to the Effective Date
<b>“Administration Date”</b>	means 15 September 2008
<b>“Administration Expenses”</b>	means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act
<b>“Administrators”</b>	means the persons from time to time serving as joint administrators in the Administration who, as at the date of this Scheme, are Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability
<b>“Administrators’ Address for Service”</b>	has the meaning given to it in Clause 25.1.2
<b>“Admitted Certification Claim”</b>	means the amount of an Undetermined Certification Claim that is admitted for dividend by the Administrators pursuant to Rule 14.7 of the Insolvency Rules
<b>“Admitted Claim”</b>	means any ordinary unsecured claim against the Company (whether in respect of unpaid principal or unpaid interest accrued prior to the Administration Date) which is or has been admitted for dividend by the Administrators in accordance with either Rule 14.7 of the Insolvency Rules or Rule 2.77 of the Insolvency Rules 1986
<b>“Advisers”</b>	means: <ul style="list-style-type: none"><li>(i) Linklaters LLP; and</li><li>(ii) any other professional advisers to the Administrators</li></ul>
<b>“AFB Master Agreement”</b>	means the AFB Master Agreement for Foreign Exchange and Derivatives Transactions (1994) (AFB)
<b>“AFB/BBF Agreed Position”</b>	means the agreed position in respect of issues concerning the

	Euro-denominated claims arising under the AFB/FBF French Master Agreements, as published on the Website on 14 September 2015
<b>“AFB/FBF French Master Agreements”</b>	means: (i) the AFB Master Agreement; (ii) the FBF Master Agreement; and (iii) any long-form confirmation which incorporates the terms of the AFB Master Agreement or the FBF Master Agreement
<b>“Affiliates”</b>	means, with respect to any person, any other person (other than an individual) directly or indirectly controlling or controlled by or under direct or indirect common control with such person
<b>“AFTB/AFTI French Master Agreements”</b>	means the AFTB Master Agreement for Repurchase Transactions with Delivery of Securities (1994) (AFTB) and the AFTI Master Agreement for Loans of Securities (1997) (AFTI)
<b>“AGFP Proceedings”</b>	means ongoing litigation with AG Financial Products Inc. before the Supreme Court of the State of New York (with Court Reference 653284/2011)
<b>“Appeal”</b>	means an appeal against a Rejection Notice to be determined by an Adjudicator in accordance with Part VI
<b>“Appeal Form”</b>	means a document in the same, or substantially the same, form as appended at Schedule 1
<b>“Appellant Certifying Creditor”</b>	has the meaning given to it in Clause 24.1.1
<b>“Appellant Certifying Creditor’s Case”</b>	has the meaning given to it in Clause 24.2.1
<b>“Applicable CI Payment”</b>	means a payment made to a Certifying Creditor of Statutory Interest in respect of a Certification Claim determined in accordance with Clauses 11, 13 and 24
<b>“Available Funds”</b>	means Cash and Cash Equivalents held in the House Estate together with such sum in respect of anticipated future realisations and receivables of the Company as the Administrators determine in their sole discretion
<b>“Bar Date”</b>	means the Effective Date
<b>“Benchmark Rate”</b>	means a variable reference rate of interest which is generally published on a daily basis (when banks are open for business) by Thomson Reuters or such other internationally recognised information service as the Administrators may in their sole discretion (acting reasonably) determine
<b>“Books and Records”</b>	means books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm and, for the avoidance of doubt, shall include information received by the Company from Scheme Parties through the Portal or otherwise

- “Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York
- “Cash and Cash Equivalents”** means, at the relevant time, all cash held in any bank or other accounts, and all investments in any short-term money market deposits, UK government or quasi-government debt securities and supranational debt, in each case held by the Company, in accordance with the investment strategy set out in the Nineteenth Progress Report
- “CASS”** means the Client Assets Sourcebook of the FCA Handbook as it applies to the Company
- “CASS7”** means Chapter 7 of CASS and, if and to the extent relevant, Chapter 7A of CASS as they apply to the Company
- “Certification”** means a statement submitted to the Company and identified by a Certifying Creditor as being a “Certification” stating the Higher Rate Claim to which it relates by reference to the relevant Claim Reference and:
- (i) in respect of an ISDA Master Agreement:
    - (a) the asserted Cost of Funding applicable from time to time for the period during which the relevant Higher Rate Claim was, or has been, outstanding, in whole or in part;
    - (b) the asserted Certified Rate(s); and
    - (c) the asserted Certified Sum; and
  - (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the asserted Certified Rate and the asserted Certified Sum,
- together with an electronic mail address to which Notices and any communications regarding the Certification may be sent, and any information, documents and submissions in support of such statement that a Certifying Creditor wishes in its discretion to submit
- “Certification Claim”** means a Higher Rate Claim that is the subject of a Valid Certification Election
- “Certification Deadline”** means the Effective Date
- “Certification Option”** means the option available to Higher Rate Creditors to submit a Certification
- “Certified Rate”** means:
- (i) in respect of an ISDA Master Agreement, the rate(s) per annum equal to the asserted Cost of Funding plus 1% per annum; or
  - (ii) in respect of any Relevant Contract other than an ISDA Master Agreement, the rate(s) of interest stated in the

- relevant Certification as the relevant interest rate(s),  
in each case in respect of the relevant Certification Claim
- “Certified Sum”** means the amount in GBP of interest that a Certifying Creditor states in a Certification as being payable to it in respect of the relevant Certification Claim calculated by applying the relevant Certified Rate(s) set out in the Certification to the balance outstanding from time to time of the relevant Certification Claim (calculated in accordance with the Relevant Principles)
- “Certifying Creditor”** means a Higher Rate Creditor in relation to the Higher Rate Claims held by it that are Certification Claims
- “Chapter 15 Order”** means an order of the US Bankruptcy Court which, among other things, recognises this Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, enforces the Court Order within the territorial jurisdiction of the United States and enjoins Scheme Parties from commencing or continuing any action or Proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with this Scheme
- “Civil Procedure Rules”** means the civil procedure rules used by the High Court of England and Wales that are in force as at the Effective Date
- “Claim Reference”** means:
- (i) in respect of an Admitted Claim, the unique identifying number used by the Company to identify such Admitted Claim, as stated in the relevant UCC4; and
  - (ii) in respect of an Undetermined Provable Claim, such reference number used by the Company to identify the relevant Undetermined Provable Claim as may be communicated by the Company to the relevant holder of such Undetermined Provable Claim prior to the Bar Date
- “Claims”** means all claims, actions, Proceedings, demands, rights or causes of action, be they known or unknown, incurred solely or jointly or as principal or surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law or statute or by reason of breach of contract or trust, as a result of a restitutionary claim, 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 in existence now or coming into existence at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date

hereof, and including:

- (i) any and all claims, actions, Proceedings, demands, rights or causes of action to, for or in respect of interest, late payment or a Shortfall;
- (ii) any and all claims, actions, Proceedings, demands, rights or causes of action arising by reason of, among 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;
- (iii) any and all claims, actions, Proceedings, demands, rights or causes of action for, among other things, the enforcement of any right to, or any Liability in respect of a right to:
  - (a) seek or enforce a judgment;
  - (b) exercise any remedy (for damages or otherwise), indemnity and/or 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), or for 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;
- (iv) any and all claims, actions, Proceedings, demands, rights or causes of action in respect of any Loss;
- (v) any "Debt" as defined in Rule 14.1(3) of the Insolvency Rules; and
- (vi) any "liability" as defined in Rule 14.1(6) of the Insolvency Rules

**"Clearance"**

has the meaning given to it in Clause 18.2.1(ii)

**"Client Money"**

means "client money" as defined in the FCA Rules for the purposes of, *inter alia*, CASS7

**"Client Money Entitlement"**

means a "client money entitlement" as such term is used in CASS, by reference to which the quantum of a beneficial interest in the Client Money Estate arising under the statutory trust created by CASS7, is calculated in accordance with CASS7

**"Client Money Estate"**

means the notional pool of Client Money constituted at the date



	of the Company's primary pooling event (as defined in CASS7)
<b>"Companies Act"</b>	means the Companies Act 2006
<b>"Company"</b>	means Lehman Brothers International (Europe) (in administration), a private unlimited company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ
<b>"Company's Case"</b>	has the meaning given to it in Clause 24.3.1
<b>"Compounding Principle"</b>	means, where: <ul style="list-style-type: none"><li>(i) Statutory Interest in respect of a Higher Rate Claim or Specified Interest Claim is calculated (subject to the terms of this Scheme) by reference to a contractual compounding rate(s) of interest; and</li><li>(ii) prior to being paid in full, such Higher Rate Claim or Specified Interest Claim was discharged in part by the payment of one or more interim dividends,</li></ul> the principle to be applied for the purpose of calculating the amount of Statutory Interest that accrues on the balance of the relevant claim outstanding from the date(s) of payment of the relevant interim dividend(s) to the date on which the relevant Claim was paid in full, being that any accrued Statutory Interest referable to the amount(s) by which the relevant claim was discharged by the relevant interim dividend(s) shall continue to compound in accordance with the terms of the relevant Specified Interest Contract or Relevant Contract (as applicable)
<b>"Conflict of Interest"</b>	means any agreement, arrangement, affiliation, interest, understanding or activity which conflicts or has a significant risk of conflicting with the Adjudicator's or a member of his Support Team's ability to perform their respective roles
<b>"Consultation Period"</b>	has the meaning given to it in Clause 11.2
<b>"Contributory Claim"</b>	means any call, claim, action, proceeding, demand, right or cause of action that may be made or brought by a future liquidator of the Company against any contributory (as defined in section 79 of the Insolvency Act) arising pursuant to section 74 or section 165 of the Insolvency Act
<b>"Control"</b>	means the right to determine Voting and Elections in respect of a Higher Rate Claim whether by way of a sub-participation agreement or otherwise, and <b>"Controlled"</b> shall be construed accordingly
<b>"Cost of Funding"</b>	means the cost to the relevant party (i) if it were to fund or (ii) of funding, the relevant Certification Claim, as certified by the Certifying Creditor
<b>"Counteroffer"</b>	means a counteroffer, setting out an amount in GBP of Statutory Interest that the Company states as being payable to

	a Certifying Creditor in respect of its Certification Claim
<b>“Counteroffer Sum”</b>	the amount in GBP of Statutory Interest stated in a Counteroffer
<b>“Court of Appeal”</b>	means the Court of Appeal of England and Wales
<b>“Court Order”</b>	means an order of the High Court sanctioning this Scheme under Section 899 of the Companies Act
<b>“Courts”</b>	means the High Court, Court of Appeal and/or Supreme Court
<b>“Creditor Challenge Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to challenge the quantum or validity of an Admitted Claim whether by bringing a Claim against the relevant Scheme Party, the Company, the Administrators and/or any future liquidator of the Company and/or issuing an application in the Administration and/or any future liquidation of the Company
<b>“Creditor Contributory Claim Right”</b>	means a right, pursuant to the Insolvency Rules, Insolvency Act or otherwise, to request or require a future liquidator of the Company to make a Contributory Claim
<b>“Creditors’ Committee”</b>	means the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act
<b>“De Minimis Distribution”</b>	has the meaning given to it in Clause 21.1.1
<b>“Decision Notice”</b>	has the meaning given to it in Clause 11.2
<b>“Delegate”</b>	means any person appointed as a delegate pursuant to Clause 29.2.2
<b>“Direction”</b>	has the meaning given to it in Clause 18.2.1(i)
<b>“Directions Application”</b>	means an application by the Administrators to the High Court pursuant to paragraph 63 of Schedule B1 to the Insolvency Act
<b>“Dispute Resolution Procedure”</b>	means the dispute resolution procedure described in Part VI for determining the Applicable CI Payment in respect of a Rejected Certification that is the subject of an Appeal
<b>“Disputed Claim”</b>	means a Retained Claim (other than Excluded Proceedings), where: <ul style="list-style-type: none"><li>(i) the amount claimed by the holder of such Retained Claim is stated to be either (a) a certain sum equal to or greater than GBP 20,000,000; or (b) an uncertain sum that in the Company’s opinion (acting reasonably) could give rise to a liability of the Company equal to or greater than GBP 20,000,000; and</li><li>(ii) such claim has not been agreed by the Administrators</li></ul>
<b>“DRP Election”</b>	has the meaning given to it in Clause 11.9
<b>“Effective Date”</b>	means the date upon which a copy of the Court Order is delivered to the Registrar of Companies in England and Wales
<b>“Election”</b>	means the election by a Scheme Creditor, made at the time it

submitted its Vote, for either the Settlement Payment Option or the Certification Option in respect of its Higher Rate Claims and “**Elect**” and “**Elected**” shall be construed accordingly

**“Election Deadline”**

means, where a Higher Rate Creditor is Voting by proxy submitted via the Portal, the Proxy Deadline or, in all other cases, the date and time of Voting at the relevant Scheme Meeting

**“Equity Distribution”**

means any distribution (including a distribution *in specie*) or dividends paid, or return of capital (whether ordinary or preferred) made by the Company or any office holder appointed in respect of it to the Shareholder, in accordance with the Insolvency Act, the Insolvency Rules, and, if applicable, the Companies Act

**“Excluded Claims”**

means (exclusively) any:

- (i) Undetermined Provable Claim (but excluding for the avoidance of doubt any entitlement, right to or interest in Statutory Interest in respect of such claim);
- (ii) proprietary claim or trust entitlement of a Scheme Creditor to Client Money held by the Company (but excluding, for the avoidance of doubt, any Provable Claim arising from or in connection with a Client Money Entitlement);
- (iii) Non-Provable Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (iv) Expense Claim, the details of which have been notified to the Company by the holder of such claim prior to the Bar Date;
- (v) UCC Challenge, the details of which have been notified to the Company prior to the Bar Date;
- (vi) Administration Claim, the details of which have been notified to the Company and the relevant person against whom such Claim is being asserted or brought, prior to the Bar Date; and
- (vii) Creditor Challenge Rights in respect of any Admitted Claim that is admitted by the Administrators on or after the Record Date

**“Excluded Proceedings”**

means any of the following:

- (i) the WHT Proceedings;
- (ii) the LBA Proceedings; and
- (iii) the AGFP Proceedings,

but only to the extent that such Proceedings do not seek to

	determine the calculation of Statutory Interest in a manner that is inconsistent with the payment of Statutory Interest pursuant to this Scheme
<b>“Exclusion Application”</b>	means an application to the High Court pursuant to Rule 14.11(1)(a) of the Insolvency Rules to exclude a proof of debt or to reduce the amount claimed by a Scheme Party in respect of an Admitted Claim
<b>“Expense Claims”</b>	means Claims that rank as Administration Expenses
<b>“Explanatory Statement”</b>	means the statement dated 14 May 2018, as may be amended or supplemented (and the appendices thereto), explaining the effect of this Scheme in compliance with Section 897 of the Companies Act
<b>“FBF Master Agreement”</b>	means the FBF Master Agreement Relating to Transactions on Forward Financial Instruments (2001) (FBF)
<b>“FCA”</b>	means the Financial Conduct Authority of the United Kingdom
<b>“FCA Handbook”</b>	means the handbook containing rules, principles and guidance made by the FCA under powers given to it by FSMA as applicable to the Company from time to time
<b>“FCA Rules”</b>	means FSMA and the FCA Handbook
<b>“Final Certification”</b>	has the meaning given to it in Clause 16.1.2
<b>“Final Certification Deadline”</b>	has the meaning given to it in Clause 16.1.2
<b>“Fixed Rate”</b>	means a fixed rate of interest expressed as a percentage
<b>“Floating Rate”</b>	means a rate of interest expressed as a Benchmark Rate or as a Benchmark Rate plus X, where X is a number or a percentage
<b>“FSMA”</b>	means the Financial Services and Markets Act 2000
<b>“Full SI Payment Statement”</b>	means a statement confirming that the Company’s Net Available Funds are sufficient to allow for the payment in full of the High Case Scheme Distribution
<b>“Governance Protocol”</b>	means a protocol in respect of the formation, rights and obligations of the Operating Committee as set out in Schedule 2
<b>“High Case Scheme Distribution”</b>	means a notional amount equal to the aggregate of all Scheme Distributions to be made under this Scheme, assuming (where relevant) for the purposes of such calculation that: <ul style="list-style-type: none"><li>(i) any Undetermined Provable Claims are admitted by the Administrators for the full amount proved for (or, if relevant, in the amount ordered by the Court to be reserved for in respect of such claim(s)) and the principal amount of such claim(s) is paid in full on 15 September 2021; and</li><li>(ii) the Applicable CI Payment in respect of any</li></ul>

Certification that is, at the relevant time, yet to be determined will be the Certified Sum set out in such Certification

<b>“High Court”</b>	means the High Court of Justice in England and Wales
<b>“Higher Rate Claim”</b>	means a Provable Claim (or the component part thereof) derived from a Relevant Contract
<b>“Higher Rate Creditor”</b>	means a Scheme Creditor who holds the legal title to one or more Higher Rate Claims
<b>“HMRC”</b>	means HM Revenue & Customs and any other authority, body or official in the United Kingdom competent to assess, demand, impose, administer or collect Tax or amounts in respect of Tax or make any decision or ruling on any matter relating to Tax
<b>“House Estate”</b>	means all of the Company’s cash, property and assets which do not form part of the Client Money Estate or which are not otherwise held on trust for another person
<b>“Income Tax Act”</b>	means the Income Tax Act 2007
<b>“Increased Voting Rights Decision”</b>	means the decision of the chairman of the Scheme Meetings in respect of a request by a Higher Rate Creditor for Voting Rights in respect of its Higher Rate Claims in excess of those stated in its UCC4 (or as otherwise communicated to it by the Company prior to the Scheme Meetings)
<b>“Initial Certification”</b>	means a Certification in respect of an Undetermined Certification Claim prepared and submitted in accordance with Clause 16
<b>“Insolvency Act”</b>	means the Insolvency Act 1986
<b>“Insolvency Rules”</b>	means the Insolvency (England & Wales) Rules 2016
<b>“Insufficient Funds Statement”</b>	means a statement confirming that the Company’s Net Available Funds are insufficient to allow for either a part payment or the full payment of the High Case Scheme Distribution
<b>“ISDA Master Agreement”</b>	means: <ul style="list-style-type: none"><li>(i) the 1992 ISDA Master Agreement;</li><li>(ii) the 2002 ISDA Master Agreement; and</li><li>(iii) any long-form confirmation which incorporates the terms of the 1992 ISDA Master Agreement or the 2002 ISDA Master Agreement</li></ul>
<b>“Issued Scheme Outcome Statement”</b>	means a Scheme Outcome Statement that has been published on the Website and is not subject to a Retraction Notice in accordance with Clause 3.3
<b>“KYC Information”</b>	means information requested by the Company to ensure compliance with any relevant regulatory and anti-money

laundering requirements

**“Lacuna Application”**

means the application issued on 28 November 2017 by the Administrators, with the Subordinated Creditor as respondent, seeking directions in relation to a request, made by the Subordinated Creditor, that the Administrators seek a decision of creditors, pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act, to bring about the termination of the Administration and the commencement of a liquidation of the Company

**“LBA Proceedings”**

means an application issued by Lehman Brothers Australia Limited – in liquidation on 20 December 2016 pursuant to paragraph 74 of Schedule B1 to the Insolvency Act seeking to vary the amount of its Provable Claim

**“LBEL”**

means Lehman Brothers Europe Limited (in administration), a company incorporated in England and Wales with registered number 03950078 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBH PLC”**

means Lehman Brothers Holdings PLC (in administration), a company incorporated in England and Wales with registered number 01854685 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBHI”**

means Lehman Brothers Holdings Inc., a corporation incorporated under the laws of the State of Delaware, United States of America with registered number 2024634 whose registered address is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, United States of America, and whose principal place of business is at 277 Park Avenue, 46th Floor, New York, NY 10172, United States of America as Plan Administrator (as defined in the Chapter 11 Plan) under the Chapter 11 Plan, on behalf of itself

**“LBHI2”**

means LB Holdings Intermediate 2 Limited (in administration), a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT

**“LBL”**

means Lehman Brothers Limited (in administration), a company incorporated in England and Wales with registered number 00846922 whose registered address is 7 More London Riverside, London SE1 2RT

**“Leap Year”**

means a 12-month period (beginning on 15 September) that includes 29 February

- “Liabilities”** means all liabilities, duties and obligations of every description, whether deriving from contract, common law, case law, legal provisions, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety and **“Liability”** means any one of them
- “Liquidation Event”** means either an order by the High Court to compulsorily wind up the Company or the commencement of a voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)
- “Lock-Up Agreement”** means a lock-up agreement dated 22 December 2017 made between (among others) the Company, the Administrators, Burlington Loan Management DAC, Wentworth Sons Senior Claims S.à r.l., LBHI and the Subordinated Creditor
- “Locked Up Parties”** means:
- (i) each of the parties (other than the Company and the Administrators) to the Lock-Up Agreement and their respective professional advisers; and
  - (ii) in respect of (i) above, their respective members, partners, investment managers, directors, officers, employees and any of their respective agents, professional advisers or their employees
- “Loss”** means any loss (including loss of profit or loss of earnings), damage, cost, charge, penalty, expense or Liability of whatever nature
- “Lugano Convention”** means the convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed in Lugano on 30 October 2007 and published in the Official Journal of the European Union on 21 December 2007
- “Minimum Sum”** means an amount sufficient for a payment of at least GBP 0.01 to each Scheme Creditor (save for the Subordinated Creditor) and Storm in respect of the Scheme Distributions
- “Net Available Funds”** means from time to time the sum in GBP calculated by deducting the aggregate amount of Adequate Reserves from the amount of Available Funds
- “Nineteenth Progress Report”** means the nineteenth progress report dated 10 April 2018 prepared by the Administrators in accordance with Rule 18.3 of the Insolvency Rules
- “Non-Provable Claims”** means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration of the Company from the Surplus after the payment of Statutory Interest and before payment of the Subordinated Debt
- “Notice”** means any notice given in accordance with Clause 41 and

	<p><b>“Notify”</b> and <b>“Notified”</b> shall be construed accordingly</p>
<p><b>“Olivant Application”</b></p>	<p>means the application pursuant to Rule 14.8(3) of the Insolvency Rules issued in the Administration by the Subordinated Creditor on 19 September 2017 challenging the decision of the Administrators to admit the proof of debt filed in the Administration by Olivant Investments Switzerland S.A. and the associated joinder application brought by Lehman Brothers Opportunity Holdings Inc.</p>
<p><b>“Operating Committee”</b></p>	<p>means a committee to be formed following the dissolution of the Creditors’ Committee pursuant to Clause 34 whose rights and obligations against the Company and the Administrators are described in the Governance Protocol</p>
<p><b>“Other Proceedings”</b></p>	<p>means any and all Proceedings (other than Excluded Proceedings) of any nature, however arising, whether brought directly or indirectly, in any jurisdiction or forum, which have been formally commenced against the Company on or prior to the Bar Date</p>
<p><b>“Part SI Payment Rate”</b></p>	<p>means the rate of distribution set out in a Part SI Payment Statement or such updated rate of distribution as may be published on the Website from time to time in accordance with Clause 3.4</p>
<p><b>“Part SI Payment Statement”</b></p>	<p>means a statement confirming (i) that the Company’s Net Available Funds are sufficient to allow for a part payment of the High Case Scheme Distribution and (ii) the rate of Scheme Distributions to be paid by reference to the Net Available Funds as a percentage of the High Case Scheme Distribution</p>
<p><b>“Payment”</b></p>	<p>means a payment by the Company of a Scheme Distribution, Subordinated Distribution (other than the Subordinated Principal) or any other amount pursuant to this Scheme but excluding, for the avoidance of doubt, a WHT Repayment</p>
<p><b>“Portal”</b></p>	<p>means a secure online facility made available to Scheme Creditors with Admitted Claims on the website of PricewaterhouseCoopers LLP at <a href="https://dm.pwc.com/LBIE_CIP/login.aspx">https://dm.pwc.com/LBIE_CIP/login.aspx</a></p>
<p><b>“Practice Statement Letter”</b></p>	<p>means the letter sent to creditors of the Company on 18 April 2018 in accordance with the practice statement issued by the High Court on 15 April 2002 in relation to schemes of arrangement proposed under the Companies Act</p>
<p><b>“Preferential Debts”</b></p>	<p>has the meaning given to that term in Section 386 of the Insolvency Act</p>
<p><b>“Proceedings”</b></p>	<p>means any process, action, application, legal or other proceeding, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution,</p>



	enforcement of judgment or any other step taken for the purpose of creating or enforcing a lien
<b>“Provable Claim”</b>	means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules including, for the avoidance of doubt, any Shortfall Claim
<b>“Proxy Deadline”</b>	means 5.00 p.m. on the day falling one Business Day prior to the Scheme Meetings, being the deadline by which creditors wishing to submit a form of proxy via the Portal must do so in order to Vote and (where applicable) make an Election
<b>“Recast Jurisdiction and Judgments Regulation”</b>	means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
<b>“Record Date”</b>	means 5.00 pm London time on 24 May 2018
<b>“Rejected Certification”</b>	has the meaning given to it in Clause 11.9
<b>“Rejection Date”</b>	means the date of delivery of a Rejection Notice in accordance with Clause 11
<b>“Rejection Notice”</b>	means a Decision Notice informing a Higher Rate Creditor of its Rejected Certification pursuant to Clause 11.2.2, 11.7.2, 11.8.1 or 11.8.2
<b>“Released Administration Claims”</b>	has the meaning given to it in Clause 28.1.4
<b>“Released Claims”</b>	means the Claims released and waived by the Scheme Parties pursuant to Clause 28
<b>“Released Scheme Implementation Claims”</b>	means any Claims against the Company, the Administrators, the Released Third Parties or the Locked Up Parties where such Claims arise from or in connection with an action taken by any such person on or after 1 November 2017 with respect to: <ul style="list-style-type: none"><li>(i) the negotiation, preparation, implementation and/or consummation of this Scheme; or</li><li>(ii) the execution of any documents required in order to implement this Scheme and the carrying out of the actions, steps and transactions contemplated by such documents,</li></ul> but excluding (a) Claims by the Locked Up Parties against each other or the Shareholder, or by the Shareholder against any Locked Up Party, under contracts in existence prior to the Bar Date, and (b) for the avoidance of doubt, any Scheme Breach Claims
<b>“Released Third Parties”</b>	means: <ul style="list-style-type: none"><li>(i) the Administrators’ firm;</li><li>(ii) the Advisers;</li><li>(iii) in respect of paragraphs (i) and (ii) above, their</li></ul>

- respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees; and
- (iv) current and former employees of the Company
- “Released Third Party Claims”** means the Released Administration Claims and the Released Scheme Implementation Claims
- “Relevant Contracts”** means certain pre-administration contracts, the counterparties to which may be entitled to Statutory Interest calculated at a rate in excess of the 8% Interest Rate, being:
- (i) ISDA Master Agreements;
- (ii) AFB/FBF French Master Agreements; and
- (iii) AFTB/AFTI French Master Agreements
- “Relevant Employees”** means (in relation only to Claims relating to their individual contracts of employment) employees or former employees of the Company who are domiciled in a Relevant State and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
- “Relevant Jurisdiction Clause Creditors”** means (in relation only to Claims arising in connection with such contracts) any person domiciled in a Relevant State who holds a contractual claim against the Company under a contract which is in writing or evidenced in writing and which contains an agreement that the courts of a Relevant State are to have exclusive jurisdiction to settle any disputes which have arisen or which may arise in connection with that contractual relationship and who have not submitted a proof of debt in the Administration or otherwise submitted to the jurisdiction of the English Courts in relation to the Administration prior to the Effective Date
- “Relevant Principles”** means:
- (i) in respect of ISDA Master Agreements, the principles set out in the Tranche C Judgment as set out in the declarations contained in the Tranche C Order;
- (ii) in respect of AFB/FBF French Master Agreements, the AFB/FBF Agreed Position;
- (iii) in respect of all Statutory Interest Claims, the Courts’ decisions in Tranche A; and
- (iv) in respect of Certification Claims and Specified Interest Claims, the Compounding Principle (if applicable)
- “Relevant State”** means a state other than the United Kingdom which is a party to the Recast Jurisdiction and Judgments Regulation or the Lugano Convention
- “Retained Claims”** means Excluded Claims, Excluded Proceedings and Retained

	Expense Claims
<b>“Retained Expense Claim”</b>	means any Expense Claim held by a Scheme Party, which: <ul style="list-style-type: none"><li>(i) was a contingent claim as at the Bar Date and which became payable on or after the Bar Date under a contract that was entered into by the Company between the Administration Date and the Bar Date;</li><li>(ii) relates to the Company’s payment obligations under a contract that was continuing to be performed as at the Bar Date;</li><li>(iii) arises from an action or activity of the Company that takes place on or after the Bar Date (including a Scheme Breach Claim) or a contract entered into by the Company after the Bar Date; or</li><li>(iv) arose within 10 days prior to the Bar Date in circumstances where (in the Administrators’ sole discretion (acting reasonably)) the relevant Scheme Party could not reasonably have been expected to notify the Company or the Administrators of the Expense Claim prior to the Bar Date</li></ul>
<b>“Retained Unclaimed Scheme Distribution”</b>	means an Unclaimed Scheme Distribution that is not a De Minimis Distribution
<b>“Retraction Notice”</b>	has the meaning given to it in Clause 3.3.1
<b>“Revised Scheme Outcome Statement”</b>	has the meaning given to it in Clause 3.3.2
<b>“Scheme”</b>	means this scheme of arrangement in its present form or with or subject to any modification, addition or condition approved or imposed pursuant to Clause 42
<b>“Scheme Breach Claims”</b>	means any Claims against the Company or the Administrators arising out of or in connection with a breach by the Company or the Administrators of the terms of this Scheme
<b>“Scheme Creditor”</b>	means any person who holds a Provable Claim against the Company (including, for the avoidance of doubt, (i) any Admitted Claim whether unpaid or paid in full or in part; and (ii) the Subordinated Debt), save for: <ul style="list-style-type: none"><li>(i) Storm;</li><li>(ii) any Relevant Employees; and</li><li>(iii) any Relevant Jurisdiction Clause Creditors</li></ul>
<b>“Scheme Distribution”</b>	means (as the context requires) a payment by the Company in respect of: <ul style="list-style-type: none"><li>(i) the 8% Payment;</li><li>(ii) the Specified Interest Payment;</li></ul>

- (iii) the Storm Payment;
  - (iv) the Settlement Premium; and/or
  - (v) the Applicable CI Payment
- “Scheme Meetings”** means the separate meetings of the relevant classes of Scheme Creditors convened by order of the High Court pursuant to Section 896 of the Companies Act for the purpose of considering and, if thought appropriate, approving this Scheme, including any adjournment thereof
- “Scheme Outcome Statement”** means (as relevant):
- (i) a Full SI Payment Statement;
  - (ii) a Part SI Payment Statement;
  - (iii) an Insufficient Funds Statement; or
  - (iv) a Revised Scheme Outcome Statement
- “Scheme Party”** means each Scheme Creditor and Storm
- “Settled Proceedings”** means :
- (i) the Waterfall Proceedings;
  - (ii) the Lacuna Application;
  - (iii) the Olivant Application; and
  - (iv) any Other Proceedings
- “Settlement Creditor”** means a Higher Rate Creditor in relation to any Higher Rate Claim(s) held by it that is not subject to a Valid Certification Election
- “Settlement Higher Rate Claim”** means a Higher Rate Claim that is not subject to a Valid Certification Election
- “Settlement Instructions”** means a Scheme Party’s settlement instructions that meet the Company’s minimum requirements in respect of settlement instructions as set out in the Portal (from time to time)
- “Settlement Payment”** means, in respect of a Settlement Creditor, the 8% Payment and the Settlement Premium together
- “Settlement Payment Option”** means the option available to Higher Rate Creditors to receive the Settlement Payment in respect of their Higher Rate Claims
- “Settlement Premium”** means a settlement sum to be paid to a Settlement Creditor equal to 2.5% of the amount admitted for dividend by the Administrators in respect of its Settlement Higher Rate Claim(s)
- “Shareholder”** means LBHI2 in its capacity as a shareholder of the Company
- “Shareholder Undertaking”** means a deed of undertaking to be entered into prior to the Effective Date between the Company and the Shareholder in connection with this Scheme in the form set out in Schedule 3

<b>“Shareholder Undertaking Claim”</b>	means any Claims against the Shareholder arising out of a breach by the Shareholder of the terms of the Shareholder Undertaking
<b>“Shortfall”</b>	means, where the total distributions received by a client of the Company from the Client Money Estate (X) are less than its Client Money Entitlement (Y), the difference between X and Y
<b>“Shortfall Claim”</b>	means any unsecured claim against the House Estate to recover any Shortfall
<b>“Specified Countries”</b>	means the Netherlands, France, Italy, Germany, Switzerland, the United Arab Emirates, Qatar, Spain, Sweden, Israel and South Korea
<b>“Specified Interest Claim”</b>	means a Provable Claim (or the component part thereof) that is derived from a Specified Interest Contract
<b>“Specified Interest Contract”</b>	means a contract other than a Relevant Contract or a Subordinated Debt Agreement which stipulates a Specified Interest Rate which, when applied to the balance outstanding from time to time under such contract (in accordance with Relevant Principles), would give rise to an amount of Statutory Interest that is greater than the amount of Statutory Interest that would be calculated if the 8% Interest Rate were to have applied in place of such Specified Interest Rate
<b>“Specified Interest Creditor”</b>	means a Scheme Creditor who holds legal title to one or more Specified Interest Claims
<b>“Specified Interest Payment”</b>	means a payment to a Specified Interest Creditor of Statutory Interest in respect of its Specified Interest Claims calculated in accordance with Clause 7.2
<b>“Specified Interest Rate”</b>	means either: (i) a Fixed Rate; or (ii) a Floating Rate, whether such rate is applied on a simple or compound basis
<b>“SSI Deadline”</b>	means the later of: (i) 20 Business Days from the date on which all Scheme Distributions other than Unclaimed Scheme Distributions have been paid in full by the Company; and (ii) 12 months from the Effective Date
<b>“Statutory Interest”</b>	means any statutory interest payable by the Company pursuant to Rule 14.23 of the Insolvency Rules
<b>“Statutory Interest Claims”</b>	means Claims in respect of Statutory Interest
<b>“Storm”</b>	means Storm Funding Limited (in administration), a company incorporated in England and Wales with registered number

	02682306 whose registered address is 7 More London Riverside, London SE1 2RT
<b>“Storm Payment”</b>	means a payment in the amount of GBP 20,955,623.55 to Storm in full and final settlement of its rights to Statutory Interest in respect of its Admitted Claim
<b>“Storm Undertaking”</b>	means a deed of undertaking to be entered into prior to the Effective Date between the Company and Storm pursuant to which Storm agrees to be bound by and perform certain of the terms of this Scheme, in the form set out in Schedule 4
<b>“Subordinated Creditor”</b>	means Wentworth Sons Sub-Debt S.à r.l., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated and existing under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies’ Register under number B 179. 340, whose registered office is 6 Rue Eugène Ruppert, L 2453 Luxembourg, Grand Duchy of Luxembourg
<b>“Subordinated Debt”</b>	means Claims in respect of the subordinated liabilities of the Company arising pursuant to the Subordinated Debt Agreements
<b>“Subordinated Debt Admittance Date”</b>	has the meaning given to it in Clause 32.2
<b>“Subordinated Debt Agreements”</b>	means any of the three intercompany loan agreements entered into between the Company and LBHI2, each dated 1 November 2006 and which have been assigned by LBHI2 to the Subordinated Creditor pursuant to a deed of assignment dated 31 January 2014
<b>“Subordinated Debt SI Payment”</b>	has the meaning given to it in Clause 32.5
<b>“Subordinated Distributions”</b>	means any payment in respect of the Subordinated Debt (whether in respect of principal, interest accrued prior to the Administration Date, Statutory Interest or otherwise) made in accordance with the terms of this Scheme
<b>“Subordinated Interest”</b>	has the meaning given to it in Clause 32.3
<b>“Subordinated Principal”</b>	means the part of the Subordinated Creditor’s Provable Claim that relates to the principal amount of the Subordinated Debt, in the sum of GBP 1,240,452,696, and excluding any part that relates to interest on the Subordinated Debt accrued prior to the Administration Date
<b>“Support Team”</b>	means one or more appropriately qualified and trained, technically competent and independent professionals (with relevant market and/or financial experience) engaged by the Adjudicator to support and assist the Adjudicator with his understanding of the Appellant Certifying Creditor’s Case and the Company’s Case
<b>“Supreme Court”</b>	means the Supreme Court of the United Kingdom

<b>“Surplus”</b>	means the Company’s assets remaining after the provision for or payment in full of Expense Claims, Preferential Debts and Admitted Claims and before the payment of Statutory Interest, Non-Provable Claims, the Subordinated Debt and Equity Distributions, but excluding any Contributory Claim
<b>“Tax”</b>	means all forms of taxation, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments in respect of or on account of such forms of taxation (including any interest and/or penalties in relation to such taxation), in each case whether of the United Kingdom or elsewhere in the world whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Company, a Scheme Party or any other person
<b>“Tax Authority”</b>	means any taxing or other authority, whether of the United Kingdom or elsewhere in the world, competent to impose any liability in respect of Tax, or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax
<b>“Third Party”</b>	means a person that is not the Company, a Scheme Party, an Administrator, a Released Third Party or a Locked Up Party
<b>“Tranche A”</b>	means “Tranche A” of Waterfall II as described in the definition of Waterfall II
<b>“Tranches A and B Costs Principle”</b>	means, in relation to any costs payable by the Company pursuant to Clause 28.3, the limitation imposed by the High Court in paragraph 2 under the heading “Costs” in the order of David Richards J dated 17 October 2016 in relation to Tranche A and Tranche B
<b>“Tranche B”</b>	means “Tranche B” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C”</b>	means “Tranche C” of Waterfall II as described in the definition of Waterfall II
<b>“Tranche C Judgment”</b>	means Lomas & Ors v Burlington Loan Management Limited & Ors [2016] EWHC 2417 (Ch)
<b>“Tranche C Order”</b>	means the declarations made by Hildyard J in the order of the High Court dated 12 December 2016 in respect of the Tranche C Judgment
<b>“UCC Challenge”</b>	means a challenge in writing to the Company by a Scheme Creditor of the allocation or composition of its Admitted Claim(s) between any combination of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) set out in its UCC4 (or as otherwise communicated to it in writing by the Company), where such challenge includes a statement as to the allocation or composition of 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)

	claimed by that Scheme Creditor as constituting its Admitted Claim(s)
<b>“UCC4”</b>	means the certificate provided by the Company to a Scheme Creditor on or around the date of the Explanatory Statement setting out, among other things, the disaggregation of such Scheme Creditor’s Admitted Claim(s) between 8% Interest Claim(s), Specified Interest Claim(s) and/or Higher Rate Claim(s) (as relevant)
<b>“Unclaimed Scheme Distribution”</b>	means any Scheme Distribution which (i) would be payable by the Company to a Scheme Party but for that Scheme Party’s failure to provide the Company with Settlement Instructions and/or KYC Information (or confirm such information) in accordance with Clause 19.4 or (ii) was paid by way of a cheque that is cancelled by the Company pursuant to Clause 19.6.3
<b>“Unclaimed Scheme Distribution Application”</b>	has the meaning given to it in Clause 21.2
<b>“Undetermined Certification Claim”</b>	means a Certification Claim that is an Undetermined Provable Claim
<b>“Undetermined Provable Claim”</b>	means, as at any given date, a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules prior to the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Administrators or is the subject of determination by the Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired
<b>“US Bankruptcy Code”</b>	means Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
<b>“US Bankruptcy Court”</b>	means the United States Bankruptcy Court for the Southern District of New York or other court of competent jurisdiction presiding over any case filed under Chapter 15 of the US Bankruptcy Code seeking, among other things, recognition of this Scheme as a foreign main proceeding and enforcement of the Court Order in the United States
<b>“Valid Certification Election”</b>	means an Election by a Higher Rate Creditor that is: <ul style="list-style-type: none"><li>(i) for the Certification Option in relation to one or more Higher Rate Claims;</li><li>(ii) made prior to the Election Deadline; and</li><li>(iii) made contemporaneously with a representation by that Scheme Creditor to the Company (such representation being true and accurate as at the date it is made) that:<ul style="list-style-type: none"><li>(a) it has made the same Election in respect of all Higher Rate Claims which it legally owns and Controls; and</li></ul></li></ul>



- (b) where it has Elected for the Certification Option in respect of Higher Rate Claim(s) which are Controlled by a third party, it has made the same Election in respect of all Higher Rate Claim(s) that are Controlled by such party

**“VAT”** means, within the European Union, such tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC and, outside the European Union, any tax of a similar nature levied by reference to added value or sales

**“Voting”** means the exercise of a Scheme Creditor’s vote to approve or reject this Scheme at a meeting of Scheme Creditors convened for that purpose and **“Vote”** shall be construed accordingly

**“Voting Rights”** means the value attributed to 8% Interest Claims, Specified Interest Claims and Higher Rate Claims for the purpose of Voting at the relevant Scheme Meeting(s)

**“Waterfall I”** means a joint application issued on 14 February 2013 by the respective administrators of the Company, LBL and LBHI2, with LBHI as a respondent, seeking a determination as to, among other things, the existence and priority ranking of certain claims in respect of the Surplus, and the rights and obligations of the Company as against its contributories, heard by the High Court, the Court of Appeal and the Supreme Court, the Supreme Court judgment being given on 17 May 2017

**“Waterfall II”** means the application issued on 12 June 2014 (as amended pursuant to the orders of David Richards J dated 9 March 2015 and Hildyard J dated 9 October 2015) by the Administrators, with Burlington Loan Management Limited, CVI GVF (Lux) S.à r.l., Hutchinson Investors, LLC, the Subordinated Creditor and York Global Finance BDH, LLC as respondents, seeking determination of issues that impact the potential entitlements of the Company’s creditors to payments from the Surplus, split into Tranche A and Tranche B (with case citation, in respect of the Court of Appeal decision, [2017] EWCA Civ 1462), and Tranche C (with case citation, in respect of the first instance decision, [2016] EWHC 2417 (Ch))

**“Waterfall III”** means the application issued on 25 April 2016 by the Administrators with the respective joint administrators of LBHI2, LBL and LBEL as respondents, seeking determination of issues relating to the rights and obligations of the Company, LBHI2, LBL, LBEL and LBH PLC arising out of (i) the Company’s status as an unlimited liability company and (ii) certain recharge arrangements among those entities, and the associated cross-application issued on 17 October 2016 by the administrators of LBL

**“Waterfall Proceedings”** means Waterfall I, Waterfall II and Waterfall III as the context

	requires
<b>“Website”</b>	means the website which can be accessed at <a href="https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html">https://www.pwc.co.uk/services/business-recovery/administrations/lehman.html</a>
<b>“Wentworth Parties”</b>	means: <ul style="list-style-type: none"><li>(i) LBHI;</li><li>(ii) Wentworth Sons Senior Claims S.à. r.l.;</li><li>(iii) the Subordinated Creditor;</li><li>(iv) the Shareholder;</li><li>(v) King Street Capital Management, L.P.;</li><li>(vi) Elliott Management Corporation; and</li><li>(vii) in respect of (v) and (vi) above, their respective Affiliates that are parties to the Lock Up Agreement</li></ul>
<b>“WHT Deduction”</b>	has the meaning given to it in Clause 18.1.1
<b>“WHT Deduction Certificate”</b>	has the meaning given to it in Clause 18.1.3(ii)
<b>“WHT Determination Event”</b>	has the meaning given to it in Clause 18.3
<b>“WHT Proceedings”</b>	means the application issued by the Administrators on 22 December 2015, with HMRC as respondent, seeking directions of the High Court in relation to the application of section 874 of the Income Tax Act to payments of Statutory Interest (with case citations, in respect of the first instance decision, [2016] EWHC 2492 (Ch), and in respect of the Court of Appeal decision, [2017] EWCA Civ 2124)
<b>“WHT Repayment”</b>	has the meaning given to it in Clause 18.3.1
<b>“WHT Repayment Event”</b>	has the meaning given to it in Clause 18.3.2

## **Interpretation**

**1.2** In this Scheme, unless the context otherwise requires or unless otherwise expressly provided:

**1.2.1** references to any specified provision of this Scheme shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 42;

**1.2.2** 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;

**1.2.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;

- 1.2.4 all monetary amounts stated in this Scheme are in GBP unless expressly stated otherwise;
  - 1.2.5 a reference to “**GBP**” is to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland;
  - 1.2.6 references to specific Insolvency Rules shall include references to the equivalent provisions of the Insolvency Rules 1986 (if the context so allows);
  - 1.2.7 a reference to a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
  - 1.2.8 a reference to a “**law**” includes common or customary law and any constitution, decree, judgment, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever;
  - 1.2.9 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
  - 1.2.10 headings are for ease of reference only and shall not affect the interpretation of this Scheme;
  - 1.2.11 the words “**include**” and “**including**” mean include and including without limitation (and “**includes**” shall be construed accordingly);
  - 1.2.12 the words “**prior to**” before a stated date shall be construed to mean “prior to and not including” the stated date; and
  - 1.2.13 references to Clauses, Parts and Schedules are to Clauses and Parts of and Schedules to this Scheme, and references to time are to London time.
- 1.3** In determining whether any action is “**reasonably practicable**” for the Company and/or the Administrators for the purposes of this Scheme, regard shall be had to:
- 1.3.1 the fact that the Company is in administration;
  - 1.3.2 the limitations on access to Books and Records of the Company and other resources; and
  - 1.3.3 the materiality of the likely impact of such action on the Company’s aim to manage costs appropriately and to deal with matters arising under this Scheme expeditiously.

## **PART II: EFFECTIVE DATE AND INITIAL SCHEME STEPS**

### **2 Scheme Effective Date**

- 2.1** This Scheme shall become effective on and from the Effective Date and shall be binding on the Company, the Administrators and the Scheme Creditors and their respective successors and assigns on and from the Effective Date.
- 2.2** Storm has consented to, and agreed to be bound by, the terms of this Scheme, on and from the Effective Date, pursuant to the terms of the Storm Undertaking.
- 2.3** The Shareholder has consented to this Scheme and, on and from the Effective Date, undertaken certain obligations in connection with this Scheme pursuant to the Shareholder Undertaking in consideration for being entitled to enforce each of the rights conferred on it pursuant to this Scheme.
- 2.4** The Company shall notify the Scheme Parties and the Shareholder of the occurrence of the Effective Date by:
- 2.4.1** immediately publishing a Notice on the Website confirming the occurrence of the Effective Date;
- 2.4.2** promptly arranging for the publication of a notice in the following publications in relation to the same:
- (i) the Financial Times (United Kingdom and International editions);
  - (ii) the London Gazette;
  - (iii) The Times Newspaper; and
  - (iv) the Wall Street Journal (US National Edition); and
- 2.4.3** promptly arranging for the publication of the notice specified at Clause 2.4.2 to be published in such other publications (if any) as the Company may in its sole discretion consider appropriate in each of the countries in which Company branches operated, including the Specified Countries.
- 2.5** A Scheme Party's entitlement to Statutory Interest (if any) shall be quantified, provided for, paid and fully satisfied in accordance with the provisions of this Scheme only, such that Scheme Parties shall have no entitlement to Statutory Interest save as set out in this Scheme.

### **3 Scheme Outcome Statements**

- 3.1** As soon as is reasonably practicable, the Company shall:
- 3.1.1** determine the High Case Scheme Distribution;
- 3.1.2** determine the Adequate Reserves in accordance with Clause 4;
- 3.1.3** determine the Net Available Funds; and
- 3.1.4** publish a Scheme Outcome Statement on the Website in accordance with Clause 3.2.

**3.2** Where:

**3.2.1** the Net Available Funds are the same as or greater than the High Case Scheme Distribution, the Company shall publish a Full SI Payment Statement on the Website;

**3.2.2** the Net Available Funds are the same as or greater than the amount required in order to distribute the Minimum Sum but less than the High Case Scheme Distribution, the Company shall publish a Part SI Payment Statement on the Website; and

**3.2.3** the Net Available Funds are insufficient to distribute the Minimum Sum, the Company shall publish an Insufficient Funds Statement on the Website.

**3.3** Subject to Clause 3.4, if at any time there is a change in the Net Available Funds, such that the Company determines (in its sole discretion) that an Issued Scheme Outcome Statement does not accurately reflect whether Scheme Distributions can be paid in full, in part or at all, in accordance with Clause 3.2, the Company shall:

**3.3.1** promptly upon becoming aware of the relevant change, publish on the Website a notice confirming (i) that the Company has determined that the Issued Scheme Outcome Statement is no longer valid and (ii) the reason for such conclusion (a "**Retraction Notice**"); and

**3.3.2** within five Business Days of the Company publishing a Retraction Notice, publish on the Website an updated Scheme Outcome Statement that reflects the relevant change in the Net Available Funds (a "**Revised Scheme Outcome Statement**").

**3.4** If an Issued Scheme Outcome Statement is a Part SI Payment Statement, the Company shall:

**3.4.1** make further Scheme Distributions as soon as is reasonably practicable following an increase in the Part SI Payment Rate, on account of a change in the Net Available Funds; and

**3.4.2** Notify the Scheme Parties of any changes to the Part SI Payment Rate on or before the payment of any further Scheme Distribution.

**4 Adequate Reserves**

**4.1** Subject to Clause 4.2, the Administrators shall as soon as is reasonably practicable and from time to time, in their sole discretion, set aside from the Available Funds such amounts as they consider necessary in order to adequately reserve for:

**4.1.1** the Retained Claims (other than Non-Provable Claims); and

**4.1.2** any other matters that the Administrators consider it necessary to reserve for in accordance with their statutory duties,

(each an "**Adequate Reserve**" and, together, the "**Adequate Reserves**").

**4.2** Subject to Clause 4.4, in respect of any Retained Claim that is a Disputed Claim as at 30 September 2018, the Administrators shall promptly take one of the actions specified in Clause 4.3.

**4.3** In respect of a Disputed Claim referred to in Clause 4.2 that is:

**4.3.1** an Undetermined Provable Claim, the Administrators shall:

- (i) either admit or reject such Undetermined Provable Claim (in whole or in part); and/or
- (ii) issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of the Undetermined Provable Claim and/or the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Undetermined Provable Claim;

**4.3.2** an Expense Claim or a Non-Provable Claim, the Administrators shall issue a Directions Application (on an expedited basis if in the Administrators' opinion (acting reasonably) it is reasonable to do so), which seeks determination of:

- (i) the validity and quantum of such Claim;
- (ii) in respect of an Expense Claim, the appropriate amount to be set aside by way of an Adequate Reserve in respect of such Expense Claim; and
- (iii) in respect of a Non-Provable Claim, the appropriate amount to be reserved for in respect of such Non-Provable Claim for the purposes of making any Subordinated Distribution.

**4.4** The Company will not be required to take any of the actions referred to in Clause 4.3 in respect of a Disputed Claim that is, as at 30 September 2018, subject to extant proceedings before the Courts that seeks to determine the amount to be held by way of a reserve (including an Adequate Reserve) in respect of such Retained Claim.

**4.5** Nothing in Clauses 4.2 or 4.3 shall delay the determination of Adequate Reserves under Clause 4.1 and/or the publication of a Scheme Outcome Statement unless a Disputed Claim would, if allowed in full, prevent the Company from publishing a Full SI Payment Statement or a Part SI Payment Statement.

## **5 Higher Rate Claims, 8% Interest Claims and Specified Interest Claims**

**5.1** The amount of each Scheme Creditor's Higher Rate Claim(s), 8% Interest Claim(s) and/or Specified Interest Claim(s) (as relevant) for the purposes of this Scheme shall be:

**5.1.1** if the Scheme Creditor has not notified the Company of a UCC Challenge prior to the Bar Date, the amounts stated in its UCC4 or, if it did not receive a UCC4, such amounts as have been communicated in writing to it by the Company prior to the Bar Date;

**5.1.2** if the Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, such amounts as may be agreed between it and the Company in accordance with Clause 20.1 or as are determined by the High Court in accordance with Clause 20.2; and

**5.1.3** in respect of any Retained Claim that is an Undetermined Provable Claim that is admitted by the Administrators after the Bar Date, such amount as may be communicated in writing to the holder of such Claim by the Company at the time of the relevant admittance by the Administrators.

### **PART III: SCHEME DISTRIBUTIONS TO 8% CREDITORS, SETTLEMENT CREDITORS AND SPECIFIED INTEREST CREDITORS**

#### **6 The 8% Payment**

**6.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the 8% Payment to:

**6.1.1** each 8% Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its 8% Interest Claims; and

**6.1.2** each Settlement Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Settlement Higher Rate Claims.

**6.2** In respect of the Admitted Claim to which it relates, the Company shall calculate the relevant 8% Payment applying the Relevant Principles and accordingly:

**6.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**6.2.2** the 8% Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 6.2.1) from the Administration Date until the date on which the amount of such Admitted Claim was paid in full by the Company; and

**6.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the 8% Interest Rate by 366.

#### **7 The Specified Interest Payment**

**7.1** Subject to Clause 9 and the provisions of Part V, the Company shall pay the Specified Interest Payment to each Specified Interest Creditor in full and final satisfaction of its rights to Statutory Interest in respect of its Specified Interest Claims.

**7.2** In respect of an Admitted Claim to which it relates, the Company shall calculate the Specified Interest Payment applying the Relevant Principles and accordingly:

**7.2.1** any and all dividends paid in respect of the relevant Admitted Claim from time to time in the Administration shall be treated as having discharged the amount of the relevant Admitted Claim(s) before discharging any Statutory Interest in respect thereof;

**7.2.2** the relevant Specified Interest Rate shall be applied to such portion of the relevant Admitted Claim as remained outstanding from time to time (having regard to Clause 7.2.1 and, if relevant, the Compounding Principle) from the Administration Date (or, if later, the date on which the entitlement to interest arises under the relevant Specified Interest Contract) until the date(s) on which the amount of such Admitted Claim was paid in full by the Company; and

**7.2.3** where any amount of the relevant Admitted Claim remained outstanding for a period falling partly or wholly within a Leap Year, the daily rate for the relevant period shall be calculated by dividing the Specified Interest Rate by 366.

**8 The Settlement Premium**

Subject to Clause 9 and the provisions of Part V, and in consideration of each Settlement Creditor not having exercised its right to Elect for the Certification Option, the Company shall pay the Settlement Premium to each Settlement Creditor.

**9 Timing of the 8% Payment, the Specified Interest Payment and the Settlement Premium**

**9.1** Subject to the provisions of Part V, the Company shall pay:

**9.1.1** the 8% Payment in accordance with Clause 6;

**9.1.2** the Specified Interest Payment in accordance with Clause 7; and

**9.1.3** the Settlement Premium in accordance with Clause 8,

within 20 Business Days of the publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).



## PART IV: SCHEME DISTRIBUTIONS TO CERTIFYING CREDITORS

### 10 Applicable CI Payments

Subject to Clause 15 and the provisions of Part V, the Company shall pay the Applicable CI Payment to each Certifying Creditor in full and final satisfaction of its rights to Statutory Interest in respect of each of its Certification Claims.

### 11 Determination of Applicable CI Payments

11.1 Subject to Clause 16, each Certifying Creditor shall provide the Company with a Certification prior to the Certification Deadline.

11.2 Subject to Clauses 11.4 and 15.3, where a Certifying Creditor has duly provided the Company with a Certification prior to the Certification Deadline, within 20 Business Days of the Effective Date (the "**Consultation Period**"), the Company shall Notify the Certifying Creditor that it has decided to take one of the following actions in respect of the relevant Certification:

11.2.1 accept the Certification;

11.2.2 reject the Certification;

11.2.3 propose a Counteroffer that contains a Counteroffer Sum that is lower than the Certified Sum; or

11.2.4 request that the Certifying Creditor provides additional information in support of its Certification (an "**Additional Information Request**"),

(each a "**Decision Notice**").

11.3 During the Consultation Period, the Company may engage in confidential, without prejudice, settlement discussions with a Certifying Creditor, with the intention of reaching agreement as regards the action to be taken by the Company pursuant to Clause 11.2. Subject to Clause 27, any communication or request for information between the Company and a Certifying Creditor during the Consultation Period, that is expressed as being made pursuant to this Clause 11.3, shall remain private and confidential, shall not constitute an Additional Information Request or Counteroffer for the purposes of Clauses 11.7 and 11.8, and shall not be disclosable to any other Scheme Party or the Adjudicator save that it will be disclosable by the Company to the Subordinated Creditor in accordance with Clause 12.

11.4 The Company and a Certifying Creditor may agree in writing to an extension to the Consultation Period of up to 15 Business Days.

11.5 In taking any of the actions set out in Clause 11.2, the Company shall have regard to, where applicable, the Relevant Principles.

11.6 If the Company accepts a Certifying Creditor's Certification in respect of a Certification Claim pursuant to Clause 11.2.1 or following an Additional Information Request pursuant to Clause 11.2.4, the Applicable CI Payment in respect of that Certification Claim shall be the Certified Sum.

11.7 If the Company proposes a Counteroffer pursuant to Clause 11.2.3, the relevant Certifying Creditor shall Notify the Company of its acceptance or rejection of such Counteroffer within

10 Business Days of the date on which it receives the Decision Notice containing the Counteroffer, and:

11.7.1 where the relevant Certifying Creditor accepts the Counteroffer or fails to respond within the 10 Business Day period specified in this Clause 11.7, the Applicable CI Payment shall be the Counteroffer Sum; or

11.7.2 where the relevant Certifying Creditor rejects the Counteroffer within the 10 Business Day period specified in this Clause 11.7, the Company shall automatically reject the Certification to which the Counteroffer relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice (which shall include details of the rejected Counteroffer) in accordance with Clause 11.2.2.

**11.8** If the Company makes an Additional Information Request pursuant to Clause 11.2.4, the Certifying Creditor to whom the Additional Information Request is made shall provide the relevant information to the Company within 10 Business Days of receipt of the Decision Notice containing the Additional Information Request and:

11.8.1 where the Certifying Creditor does not provide the information set out in the Additional Information Request within the 10 Business Day period specified in this Clause 11.8, the Company shall automatically reject the Certification to which the Additional Information Request relates and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.2; or

11.8.2 where the Certifying Creditor provides the requested additional information within the 10 Business Day period specified in this Clause 11.8, the Company shall, having considered such additional information, take one of the actions described in Clauses 11.2.1 to 11.2.3 within 10 Business Days of receiving the relevant additional information and shall promptly Notify the relevant Certifying Creditor of such decision by way of a Decision Notice in accordance with Clause 11.2.1, 11.2.2 or 11.2.3 as applicable.

**11.9** If the Company rejects a Certification pursuant to Clause 11.2.2, 11.7.2 or 11.8 (a "**Rejected Certification**"), the relevant Certifying Creditor may elect to have the Rejected Certification determined by an Adjudicator pursuant to the provisions of Part VI (a "**DRP Election**").

**11.10** If a Certifying Creditor does not make a DRP Election in accordance with Clause 24.1.1, the Applicable CI Payment in respect of the Certification Claim to which the Rejected Certification relates shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

**11.11** For the avoidance of doubt, in no circumstances shall the Applicable CI Payment in respect of a Certification Claim:

11.11.1 exceed the Certified Sum; or

11.11.2 be less than the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim (subject to any deductions made pursuant to Clause 26.4 (if applicable)).

## **12 Consultation with the Subordinated Creditor**

**12.1** Notwithstanding any provision to the contrary, the Company shall consult with the Subordinated Creditor prior to issuing any Decision Notice pursuant to Clause 11.2; however, the final decision regarding which Decision Notice to issue pursuant to Clause 11.2 shall be made by the Company in its sole discretion.

**12.2** Without prejudice to the generality of Clause 12.1, in the event that the Company determines to make a Counteroffer pursuant to Clause 11.2.3, it shall first agree the terms of the Counteroffer with the Subordinated Creditor and, in the absence of such agreement, shall issue a Decision Notice containing such Counteroffer as the Subordinated Creditor recommends to the Company to propose to the relevant Certifying Creditor.

## **13 Failure to submit a Certification**

Where a Certifying Creditor fails to submit a Certification in respect of a Certification Claim that it holds by the Certification Deadline, the Applicable CI Payment in respect of the relevant Certification Claim shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.

## **14 Forfeit of entitlement to Settlement Premium**

No Settlement Premium shall be payable in respect of any Certification Claim, including any Certification Claim in respect of which the relevant Certifying Creditor fails to submit a Certification by the Certification Deadline.

## **15 Timing of payment of Applicable CI Payment**

**15.1** Subject to the provisions of Part V and Part VI the Company shall pay the Applicable CI Payment to the relevant Certifying Creditor in respect of the Certification Claim to which it relates within 20 Business Days of the later of:

**15.1.1** the Applicable CI Payment in respect of such Certification Claim being determined in accordance with Clause 11 or 13; and

**15.1.2** publication of an Issued Scheme Outcome Statement (other than an Insufficient Funds Statement).

**15.2** For the avoidance of doubt, the Company shall pay the Applicable CI Payment in respect of a Certification Claim in accordance with Clause 15.1, notwithstanding that, at the time of such payment, an Applicable CI Payment may not have been determined in respect of all of such Certifying Creditor's Certification Claims.

**15.3** Where a Certifying Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the determination of its Certification(s) pursuant to this Part IV shall be stayed, and any time periods set out in this Part IV shall be suspended, until such time as the UCC Challenge has been either agreed in accordance with Clause 20.1 or finally determined by the Courts in accordance with Clause 20.2 (as applicable).

## **16 Undetermined Certification Claims**

### **16.1** Where a Certifying Creditor holds an Undetermined Certification Claim:

**16.1.1** it shall provide an Initial Certification to the Company in respect of that Undetermined Certification Claim prior to the Certification Deadline; and

**16.1.2** to the extent the Undetermined Certification Claim is admitted for dividend (in whole or in part) by the Administrators, it shall update its Initial Certification to include all Certified Rates applicable to the Admitted Certification Claim up to the date of payment in full of the principal amount of the Admitted Certification Claim and a revised Certified Sum (a "**Final Certification**") to the Company in respect of the relevant Admitted Certification Claim within 10 Business Days of the Admitted Certification Claim having been paid in full by the Company (the "**Final Certification Deadline**").

### **16.2** The provisions of this Part IV and Part VI shall apply to any Initial Certification or Final Certification submitted in accordance with Clause 16.1, subject to the following modifications:

**16.2.1** subject to Clause 16.2.3, references to a Certification shall be construed to mean both the Initial Certification and the Final Certification;

**16.2.2** references to a Certification Claim shall be construed to mean the relevant Admitted Certification Claim;

**16.2.3** references in Clause 13 to a Certification shall be construed to mean an Initial Certification;

**16.2.4** an Initial Certification shall be prepared on the assumption that the relevant Undetermined Certification Claim is an Admitted Claim and was paid in full by the Company on the date of such Initial Certification; and

**16.2.5** determination of the Initial Certification pursuant to Clause 11.2.2 shall be stayed until such time as the company receives the Final Certification and all time periods specified in this Part IV will commence from that date.

### **16.3** Where a Certifying Creditor fails to submit a Final Certification by the Final Certification Deadline in accordance with Clause 16.1.2, its Initial Certification shall be deemed to be its Final Certification for the purposes of this Clause 16.

## **PART V: GENERAL PROVISIONS APPLICABLE TO SCHEME DISTRIBUTIONS AND SUBORDINATED DISTRIBUTIONS**

### **17 General**

- 17.1** Any Scheme Distribution or Subordinated Distribution payable by the Company pursuant to this Scheme shall be paid in GBP.
- 17.2** The Company shall not be required to pay any Scheme Distribution or Subordinated Distribution at any time when an Issued Scheme Outcome Statement is an Insufficient Funds Statement.
- 17.3** In calculating the amount of any Scheme Distribution pursuant to this Scheme, the Company shall treat any and all dividends paid in respect of Admitted Claims from time to time in the Administration as having discharged the component parts of such Admitted Claim (whether 8% Interest Claims, Higher Rate Claims and/or Specified Interest Claims) pro rata.
- 17.4** If at the time the Company makes a Scheme Distribution in accordance with this Scheme, the Issued Scheme Outcome Statement is:
- 17.4.1** a Full SI Payment Statement, the Scheme Distribution shall be paid in full; and
- 17.4.2** a Part SI Payment Statement, the Scheme Distribution shall be paid in part and rateably at the Part SI Payment Rate set out in the relevant Part SI Payment Statement.
- 17.5** The Company shall, from time to time following the publication of a Part SI Payment Statement, make such further payments of Scheme Distributions, subject to the terms of this Scheme, as it considers necessary to ensure that all Scheme Creditors receive Scheme Distributions rateably at the prevailing Part SI Payment Rate.
- 17.6** Where a Full SI Payment Statement or a Part SI Payment Statement is subject to a Retraction Notice, no Scheme Party shall have a Claim against the Company (or any other Scheme Party) in relation to or arising from any Scheme Distribution that was effected prior to the issuance of the Retraction Notice and will not be entitled to disturb or otherwise challenge the payment of such Scheme Distribution(s).
- 17.7** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distributions or Subordinated Distributions or Equity Distribution at any time when a Retraction Notice has been published and a Revised Scheme Outcome Statement has not been published in accordance with Clause 3.3.2.
- 17.8** Scheme Distributions shall rank equally between themselves and shall be paid rateably if not otherwise paid in full.
- 17.9** The Company shall be entitled to effect the payment of any Scheme Distribution to a Scheme Party in accordance with such Scheme Party's Settlement Instructions.

### **18 Tax**

#### **18.1 Payments and Withholding Tax**

- 18.1.1** Subject to Clause 18.2 below, on making a Payment to any Scheme Party, the Company shall deduct from the Payment a sum representing United Kingdom

income tax at the basic rate in force for the year in which the Payment is made as if the Payment were a payment of yearly interest arising in the United Kingdom for the purposes of Section 874 of the Income Tax Act and Section 874(2) of the Income Tax Act required such deduction (a "**WHT Deduction**").

**18.1.2** For the purposes of this Clause 18, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.1.1 shall apply accordingly.

**18.1.3** Where the Company makes a WHT Deduction, the Company shall:

- (i) pay to HMRC the amount of the WHT Deduction in accordance with Chapter 15 of Part 15 of the Income Tax Act; and
- (ii) issue to the relevant Scheme Party, within 10 Business Days of the date of the payment in paragraph (i) above, a statement showing the gross amount of the Payment, the amount of the WHT Deduction and the actual amount paid to the Scheme Party (a "**WHT Deduction Certificate**").

## **18.2 Exceptions from WHT Deduction**

**18.2.1** Notwithstanding Clause 18.1:

- (i) if not less than seven Business Days prior to making a Payment to a Scheme Party, the Company has received a written direction from HMRC to the Company's satisfaction (a "**Direction**") that the Company may make that Payment (or any part thereof) to that Scheme Party without a WHT Deduction pursuant to an applicable double tax treaty or with a WHT Deduction at a reduced rate of deduction under an applicable double tax treaty, the Company shall make that Payment (or the relevant part thereof) to that Scheme Party without a WHT Deduction or with a WHT Deduction at a reduced rate of deduction, as the case may be, and in compliance with the Direction (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Payment paid to a Scheme Party prior to the receipt of such Direction with respect to that Scheme Party); or
- (ii) if not less than seven Business Days prior to making a payment of a Settlement Premium, the Company has received written confirmation from HMRC to the Company's satisfaction that the Settlement Premium does not constitute yearly interest for the purposes of Section 874 of the Income Tax Act and that it may be paid without withholding or deduction in respect of United Kingdom income tax (the "**Clearance**"), the Company shall pay that Settlement Premium without any deduction for or on account of United Kingdom income tax (and for the avoidance of doubt the Company shall be under no obligation (other than as provided in Clause 18.3 below) to pay or repay to any Scheme Party any amounts in respect of any WHT Deduction in respect of any Settlement Premium paid to a Scheme Party prior to the receipt of the Clearance).

**18.2.2** The Company shall, at a Scheme Party's written request and expense, provide that Scheme Party with such information and assistance as is reasonably requested by that Scheme Party to enable it (or any person deriving beneficial ownership of the

relevant Payment through it) to obtain a Direction or to obtain any available refund with respect to a WHT Deduction, provided that such request is made prior to the SSI Deadline and further provided that such provision of information or assistance is not materially disadvantageous to the Company, the Administrators or any other creditor (including a former creditor) of the Company, and would not require the disclosure of identifying information regarding other creditors (or former creditors) of the Company, in each case as determined by the Company.

### **18.3 WHT Repayments**

In the event that the Company makes a WHT Deduction as provided for under Clause 18.1 and either (i) it is finally determined as a consequence of the WHT Proceedings that the Payment in respect of which the WHT Deduction was made was not a payment of yearly interest for the purposes of Section 874 of the Income Tax Act; or (ii) the Company receives the Clearance to its satisfaction (each a **“WHT Determination Event”**):

**18.3.1** if and to the extent that the Company is entitled to claim from HMRC a repayment of the whole or any part of the WHT Deduction (and any interest or repayment supplement thereon) attributable to a Payment (a **“WHT Repayment”**) in circumstances where (i) the Scheme Party in question is not entitled to claim such WHT Repayment directly from HMRC; and (ii) that Scheme Party has not already received a refund or credit in respect of that WHT Deduction, the Company shall, at the Scheme Party’s written request and expense, use reasonable efforts to claim such WHT Repayment;

**18.3.2** if and to the extent that HMRC makes a WHT Repayment to the Company following the WHT Determination Event (a **“WHT Repayment Event”**), the Company shall pay to the Scheme Party to whom the Company paid the Payment from which the relevant WHT Deduction was made, within 20 Business Days of the relevant WHT Repayment Event, an amount equal to the WHT Repayment received from HMRC, provided that if HMRC subsequently seeks to recover all or any part of the WHT Repayment from the Company, the Scheme Party to whom the Company paid the WHT Repayment shall promptly reimburse the Company in respect of all or any part of the WHT Repayment recovered by HMRC from the Company upon receipt of a copy of HMRC’s notice seeking recovery;

**18.3.3** if HMRC does not make a WHT Repayment to the Company following the WHT Determination Event, there shall be no obligation on the Company to (i) pay or repay any amounts in respect of the WHT Deduction to any Scheme Party; or (ii) other than as provided in Clause 18.3.1 above, to recover any amount in respect of any WHT Deduction from HMRC; and

**18.3.4** following a WHT Determination Event, each Scheme Party shall provide the Company and/or HMRC with such information as the Company and/or HMRC may require in order to determine whether, or to what extent, HMRC shall make a WHT Repayment to the Company or to that Scheme Party.

### **18.4 Other Withholding Taxes**

**18.4.1** The Company shall withhold, deduct or retain any amount for or on account of Tax which is required by any applicable law (other than Section 874(2) of the Income Tax Act) to be withheld, deducted, retained or otherwise accounted for in respect of, or in connection with, any Payment made or treated as made as a result of the

implementation and operation of this Scheme and the Company shall account for the amount of such withholding, deduction or retention to the appropriate Tax Authority as may be required by applicable law, provide evidence reasonably requested by a Scheme Party that the relevant Tax has been withheld, deducted or retained and accounted for to the appropriate Tax Authority, and take such other steps as may be required by applicable law.

**18.4.2** For the purposes of Clause 18.4.1, a Payment shall be treated as made where a Payment which would otherwise be due from the Company is set off against a liability which is owed to the Company and Clause 18.4.1 shall apply accordingly.

**18.4.3** Except as permitted by this Clause 18 or required by any applicable law, the Company shall not withhold, deduct or retain any amount for or on account of Tax from any Payment.

### **18.5 No Compensation**

Except as provided in Clause 18.3 and without prejudice to any remedies available to Scheme Parties for Scheme Breach Claims, the Company shall be under no obligation to pay, repay or compensate any Scheme Party in respect of any WHT Deduction, or other deduction or withholding permitted under this Scheme, from any Payment.

### **18.6 Reporting**

The Company and the Administrators (acting in accordance with the Administrators' statutory duties) may make any disclosures or reports to any Tax Authority as such Tax Authority reasonably requests in respect of any matters which are the subject of, or arise as a result of the implementation and operation of, this Scheme.

### **18.7 Other Taxes**

Any stamp duty, stamp duty reserve tax or other transfer taxes, VAT or other Tax liabilities or costs (including any penalties and interest thereon) arising out of or in connection with any Payment shall be borne by the Scheme Party to whom such Payment is made, whether chargeable directly or primarily against or attributable directly or primarily to the Scheme Party or any other person.

## **19 Conditions to payment of Scheme Distributions and Subordinated Distributions**

**19.1** The Scheme Distributions are payable in respect of Admitted Claims that have been paid in full only.

**19.2** Notwithstanding any other term of this Scheme, no Scheme Distribution (or part of a Scheme Distribution, if relevant) shall be payable by the Company until 10 Business Days following the date on which the Provable Claim(s) to which such Scheme Distribution relates has/have been admitted by the Administrators.

**19.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution (as applicable) to a Scheme Party that has taken any action that is inconsistent with the releases, waivers and undertakings set out in this Scheme until such time that such action has been remedied by such Scheme Party to the Company's sole satisfaction.



- 19.4** Subject to Clause 19.5 and notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution or Subordinated Distribution to a Scheme Party until 15 Business Days following the date on which the Company receives to its sole satisfaction from such Scheme Party (i) Settlement Instructions and KYC Information or (ii) confirmation that the Settlement Instructions and KYC Information previously provided by it to the Company are still valid.
- 19.5** Any Settlement Instructions and KYC Information to be provided or confirmed to the Company by a Scheme Party pursuant to Clause 19.4, shall be provided to the Company as follows:
- 19.5.1** Settlement Instructions shall be provided through the Portal; and
- 19.5.2** KYC Information shall be provided by electronic mail to [compliancequeries@lbia-eu.com](mailto:compliancequeries@lbia-eu.com).
- 19.6** To the extent that a Scheme Party's Settlement Instructions specify that it is to receive payment of any Scheme Distribution or Subordinated Distribution by cheque:
- 19.6.1** the Company shall effect payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) by posting a cheque for the relevant amount by first class post to the address provided by such Scheme Party in its Settlement Instructions;
- 19.6.2** the date of payment of the relevant Scheme Distribution or Subordinated Distribution (or any part thereof) for the purposes of the Company satisfying its payment obligations within a specified time period pursuant to this Scheme shall be the date of posting, or leaving with, delivering to or collection by, the relevant postal service provider;
- 19.6.3** any such cheques that are not cashed by the SSI Deadline will be cancelled; and
- 19.6.4** without prejudice to Clause 19.6.2, and subject to Clause 19.6.3, the Company shall, within 20 Business Days of a request to do so by such Scheme Party (provided that such request is made prior to the SSI Deadline), cancel and reissue any uncashed cheque and effect payment of the relevant Scheme Distribution or Subordinated Distribution in accordance with Clause 19.6.1.

## **20 UCC Challenges**

- 20.1** Where a Scheme Creditor has notified the Company of a UCC Challenge prior to the Bar Date, the Scheme Creditor and the Company shall negotiate in good faith in order to resolve the UCC Challenge by agreement.
- 20.2** If a UCC Challenge has not been resolved by agreement within 20 Business Days of the Effective Date, either the Company or the relevant Scheme Creditor shall be at liberty to commence Proceedings seeking the determination of the UCC Challenge by the High Court.
- 20.3** Notwithstanding any other term of this Scheme, the Company shall not be required to pay any Scheme Distribution to any Scheme Creditor that has notified the Company of a UCC Challenge prior to the Bar Date, until such UCC Challenge has been finally resolved by agreement in accordance with Clause 20.1 or finally determined by the Courts (as applicable).

## **21 Unclaimed Scheme Distributions**

### **21.1** Upon the SSI Deadline:

**21.1.1** each Scheme Creditor shall be deemed to have irrevocably waived any right to receive an Unclaimed Scheme Distribution the amount of which is less than GBP 1,000,000 (a "**De Minimis Distribution**");

**21.1.2** the Company shall be deemed to have satisfied its obligation to pay such De Minimis Distribution to the relevant Scheme Creditor; and

**21.1.3** all De Minimis Distributions shall automatically form part of the Available Funds.

**21.2** To the extent that any Retained Unclaimed Scheme Distribution remains unpaid after the SSI Deadline, the Administrators shall, within 30 Business Days of the SSI Deadline, issue a Directions Application which seeks determination as to how the Company shall deal with such Retained Unclaimed Scheme Distribution (an "**Unclaimed Scheme Distribution Application**") and the Scheme Creditors hereby acknowledge that such determination may result in the rights of the relevant Scheme Creditor to a Retained Unclaimed Scheme Distribution being extinguished.

**21.3** Subject to Clause 21.4, the Company's and/or the Administrators' costs in respect of an Unclaimed Scheme Distribution Application (including in respect of legal fees) shall, unless ordered otherwise by the Courts, be borne in equal shares by the Scheme Creditors to whom the Retained Unclaimed Scheme Distribution(s) are payable as at the SSI Deadline, and shall be payable from such Retained Unclaimed Scheme Distributions, and to the extent such Retained Unclaimed Scheme Distribution are insufficient to meet the relevant costs, the relevant costs shall be paid as an Administration Expense.

**21.4** If, prior to receiving directions of the High Court in relation to an Unclaimed Scheme Distribution Application, the Company receives to its sole satisfaction, (i) KYC Information and/or (ii) Settlement Instructions (or confirmation of such information) that specify a method of payment other than cheque, from a Scheme Creditor to whom a Retained Unclaimed Scheme Distribution is payable (as relevant), the Company shall pay such Retained Unclaimed Scheme Distribution to such Scheme Creditor in accordance with Clause 19.4 less such proportional amount in respect of the Company's and/or the Administrators' costs (including legal fees) in respect of the Unclaimed Scheme Distribution Application as the Administrators may determine in their sole discretion (acting reasonably).

**21.5** Each Scheme Party undertakes and agrees to be bound by the directions of the High Court in relation to any Unclaimed Scheme Distribution Application.

## **22 Representations by Scheme Creditors**

In paying Scheme Distributions to Scheme Creditors, the Company and the Administrators shall be entitled to rely on the representations made by Scheme Creditors at the time of Voting or making their Election(s).

## **PART VI: DISPUTE RESOLUTION PROCEDURE**

### **23 The Adjudicator**

#### **23.1 Engagement**

23.1.1 In respect of each Appeal, the Company shall use reasonable endeavours to appoint one of (in the following order of priority):

- (i) Sir Bernard Rix;
- (ii) Michael Brindle QC; or
- (iii) Tim Howe QC

as the Adjudicator, to act in the capacity of an expert and not as an arbitrator.

23.1.2 In the event that none of the persons named in Clause 23.1.1 is able to accept an appointment as Adjudicator in respect of an Appeal, the Company and the Subordinated Creditor shall negotiate with each other in good faith to agree the name of an alternative suitably qualified, independent Adjudicator and the Company shall use reasonable endeavours to appoint such person as Adjudicator in respect of the relevant Appeal. Where agreement on the same cannot be reached as between the Company and the Subordinated Creditor, the Company shall appoint in its sole discretion an alternative former member of the England & Wales judiciary and/or English law qualified Queen's Counsel as Adjudicator.

23.1.3 Any person appointed as an Adjudicator shall be engaged by the Company on such reasonable terms as may be agreed by the Company, which terms shall be consistent with the provisions of this Part VI.

#### **23.2 Support Team**

23.2.1 The Adjudicator may engage the services of a Support Team if he deems that this is necessary to enable him to understand fully the type of funding asserted in the Appellant Certifying Creditor's Case and/or the Company's Case and/or any accompanying calculations.

23.2.2 The Support Team shall be engaged by the Adjudicator on such reasonable terms as may be agreed by the Adjudicator, in consultation with the Company.

23.2.3 The Support Team shall not be permitted to conduct their own factual investigations.

#### **23.3 Independence and conflicts of interest**

23.3.1 The Adjudicator must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

23.3.2 In the event the Adjudicator becomes aware that he has a Conflict of Interest in respect of an Appeal, the Adjudicator must as soon as reasonably practicable serve upon the Company a notice of resignation from the role of Adjudicator for the Appeal in respect of which the Conflict of Interest has been identified and ensure that all documentation relating to the relevant Appeal in his possession is destroyed or returned to the Company or, as applicable, the relevant serving Appellant Certifying Creditor.

**23.3.3** All members of the Support Team must be independent and must not have any Conflict of Interest as regards the Company, the Administrators, PricewaterhouseCoopers LLP, the Appellant Certifying Creditor or the Wentworth Parties.

**23.3.4** In the event the Adjudicator becomes aware that a member of the Support Team has a Conflict of Interest in respect of any Appeal, the Adjudicator must as soon as reasonably practicable inform the Company and the relevant Appellant Certifying Creditor of the Conflict of Interest, terminate the retainer of the relevant member of the Support Team in respect of the relevant Appeal only, and ensure that all documentation relating to the relevant Appeal in the possession of that member of the Support Team is destroyed or returned to the Adjudicator.

#### **23.4 Liability**

**23.4.1** Save in circumstances of fraud or bad faith, the Adjudicator shall not be liable to any Scheme Creditor for any act or omission arising from any Appeal, and Scheme Creditors shall not bring any claims against the Adjudicator in respect of any Appeal.

**23.4.2** The Adjudicator shall not provide details or copies of any documents or information arising from an Appeal to any person other than members of the Support Team, the Company, the Administrators and the relevant Appellant Certifying Creditor, unless he is under a legal obligation to provide oral or written evidence, documents or other details, including where he has been ordered to do so by a court of competent jurisdiction.

#### **23.5 Incapacity, resignation or death**

**23.5.1** If the Adjudicator is unable to make a determination in an ongoing Appeal due to incapacity, resignation or death:

- (i) the Adjudicator (if possible) and the Company shall use reasonable endeavours to arrange for documents provided to the Adjudicator to be destroyed, or returned to the Appellant Certifying Creditor or the Company, as the case may be;
- (ii) a replacement Adjudicator shall be appointed in accordance with Clause 23.1; and
- (iii) as soon as reasonably practicable following the appointment of the replacement Adjudicator:
  - (a) the Company shall provide the replacement Adjudicator with copies of any documentation served on the previous Adjudicator, the Company and/or the Appellant Certifying Creditor in accordance with Clause 24; and
  - (b) the replacement Adjudicator shall use reasonable endeavours to engage the same Support Team as retained by the previous Adjudicator, on substantially the same terms.

## **24 The Appeal**

### **24.1 Initiating an Appeal**

**24.1.1** A Certifying Creditor who wishes to appeal against a Rejection Notice (an “**Appellant Certifying Creditor**”) must serve a completed Appeal Form on the Company within 10 Business Days of the Rejection Date to initiate an Appeal.

**24.1.2** The Company shall use reasonable endeavours to appoint an Adjudicator in respect of the Appeal in accordance with Clause 23.1 as soon as reasonably practicable following service of the Appeal Form.

**24.1.3** As soon as reasonably practicable following the appointment of the Adjudicator, the Company shall notify the Appellant Certifying Creditor of that appointment.

### **24.2 Appellant Certifying Creditor’s Case**

**24.2.1** Within 10 Business Days of receiving notice of the Adjudicator’s appointment, the Appellant Certifying Creditor shall serve upon the Adjudicator and the Company copies of the following documents:

- (i) its Certification as lodged with the Company prior to the Certification Deadline;
- (ii) any information provided to the Company pursuant to an Additional Information Request;
- (iii) the Appeal Form; and
- (iv) any further information or documents, and/or written submissions upon which the Appellant Certifying Creditor wishes to rely to support the Certified Rate and Certified Sum as set out in the Certification,

(together, the “**Appellant Certifying Creditor’s Case**”).

**24.2.2** If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Appellant Certifying Creditor’s Case should be served, the Appellant Certifying Creditor shall serve the Appellant Certifying Creditor’s Case on the Company alone.

### **24.3 The Company’s Case**

**24.3.1** Within 20 Business Days of the service of the Appellant Certifying Creditor’s Case in accordance with Clause 24.2, the Company shall, following consultation with the Subordinated Creditor but in its sole discretion, serve upon the Adjudicator and the Appellant Certifying Creditor:

- (i) the Rejection Notice (and, where relevant, the Counteroffer) issued by the Administrators in respect of the Certification relevant to the Appeal;
- (ii) any further information, documents and/or written submissions upon which the Company wishes to rely to support:
  - (a) where the Company made a Counteroffer in accordance with Clause 11.2.3, the Counteroffer Sum proposed by the Company in its Counteroffer; or

- (b) where the Company made no Counteroffer in accordance with Clause 11.2.3, the Company's decision to reject the Appellant Certifying Creditor's Certification; and/or
  - (iii) any further information, documents and/or written submissions upon which the Company wishes to rely in response to the Appellant Certifying Creditor's Case,
- (together, the "**Company's Case**").

**24.3.2** If for any reason the Adjudicator appointed in relation to the Appeal is no longer engaged at the point at which the Company's Case should be served, the Company shall serve the Company's Case on the Appellant Certifying Creditor alone.

#### **24.4 Increased Voting Rights Decisions**

Neither the Appellant Certifying Creditor's Case nor the Company's Case may include any reference to any Increased Voting Rights Decision.

#### **24.5 Oral hearing**

There shall be no oral hearing in respect of the Appeal.

#### **24.6 The Adjudicator's procedural discretion**

The Adjudicator may, having regard to the Relevant Principles where relevant:

- 24.6.1** vary the timetable provided for in this Clause 24 including, for the avoidance of doubt, the time period specified for service of the Adjudicator's determination in Clause 24.7.9, in respect of any Appeal;
- 24.6.2** require the Appellant Certifying Creditor to serve further information, documents and/or written submissions in order to clarify his understanding of the Appellant Certifying Creditor's Case; and/or
- 24.6.3** require the Company to serve further information, documents and/or written submissions in order to clarify his understanding of the Company's Case,

should the Adjudicator think it necessary to do so in order to determine the Appeal.

#### **24.7 Determination of the Appeal**

**24.7.1** The Adjudicator shall determine each Appeal by:

- (i) considering the Appellant Certifying Creditor's Case, the Company's Case, any information provided by the Support Team to assist the Adjudicator's understanding of the Appellant Certifying Creditor's Case and/or the Company's Case (as relevant) and any further information provided pursuant to a request under Clause 24.6.2 and/or 24.6.3; and
- (ii) having regard to, where applicable, the Relevant Principles.

**24.7.2** In making a determination in an Appeal, the Adjudicator shall not be permitted to have regard to any Increased Voting Rights Decision.

**24.7.3** In making a determination in an Appeal, the Adjudicator shall not be permitted to conduct his own factual investigations.

- 24.7.4** Save as provided in Clauses 24.7.6 and 24.7.7, upon making a determination in accordance with Clause 24.7.5, the Adjudicator shall either:
- (i) uphold the Appellant Certifying Creditor's Case in its entirety; or
  - (ii) uphold the Company's Case in its entirety.
- 24.7.5** The Adjudicator shall uphold the Company's Case if he is satisfied on the balance of probabilities (with the burden of proof resting on the Company) that the Certification of the Appellant Certifying Creditor has been made in bad faith, irrationally or other than in accordance with the Relevant Principles. If he is not so satisfied, the Adjudicator must uphold the Appellant Certifying Creditor's Case (save as provided in Clause 24.7.6).
- 24.7.6** Where the Adjudicator (including through his Support Team) identifies a mathematical or numerical error in either the Appellant Certifying Creditor's Case or the Company's Case, he shall consult with the Appellant Certifying Creditor and the Company and following such consultation he shall be permitted to correct such error and replace an erroneous number or rate in a calculation or document.
- 24.7.7** Where the Adjudicator (including through his Support Team) identifies that a Certified Sum stated in a Certification has been calculated in a manner that is inconsistent with Clause 5, the Adjudicator shall be permitted to correct such error and replace the Certified Sum with a figure calculated by applying the Certified Rate(s) stated in the Certification to the relevant Certification Claim (in accordance with Clause 5).
- 24.7.8** Where the Adjudicator:
- (i) upholds the Appellant Certifying Creditor's Case in its entirety, the Applicable CI Payment shall be the Certified Sum (corrected as necessary in accordance with Clause 24.7.6 or 24.7.7);
  - (ii) upholds the Company's Case in its entirety where the Company made a Counteroffer, the Applicable CI Payment shall be the Counteroffer Sum (corrected as necessary in accordance with Clause 24.7.6); or
  - (iii) upholds the Company's Case in its entirety where the Company did not make a Counteroffer, the Applicable CI Payment shall be an amount equal to the 8% Payment that would be payable under this Scheme if the relevant Certification Claim were an 8% Interest Claim.
- 24.7.9** The Adjudicator shall use reasonable endeavours to serve his determination in writing on the Appellant Certifying Creditor and the Company as soon as practicable after service of the Company's Case on the Adjudicator (or the provision of further information pursuant to a request in accordance with Clause 24.6.2 and/or 24.6.3) and in any event within 20 Business Days of service of the Company's Case on the Adjudicator (or the provision of further information, if applicable).
- 24.7.10** The Adjudicator shall not provide the reasons behind his determination and the Appellant Certifying Creditor and the Company shall not request the Adjudicator to provide such reasons following his determination.

24.7.11 Where the Adjudicator's determination contains a clerical mistake, an accidental error or omission, a miscalculation or a mistake in the description of any item or matter, the Adjudicator may correct the determination within 20 Business Days of service of that determination. The Company and the Appellant Certifying Creditor shall notify the Adjudicator of any such errors, mistakes, omissions or miscalculations within 10 Business Days of service of the determination.

## 24.8 Exclusivity and finality

24.8.1 The process described in this Part VI of this Scheme shall be the exclusive method for the determination of the subject matter of any Appeal, and the Adjudicator shall have exclusive jurisdiction to make a determination on the subject matter of any Appeal.

24.8.2 Insofar as the law allows, the Adjudicator's determination is final and binding on the Company, the Administrators, the Appellant Certifying Creditor and all other Scheme Parties.

24.8.3 For the avoidance of doubt, insofar as the law allows, the Adjudicator's determination is final and binding regardless of whether it was served within 20 Business Days of service of the Company's Case.

## 25 Service of documents and other communications

### 25.1 Service of documents

25.1.1 As soon as practicable following the Adjudicator's appointment under Clause 23.1, the Adjudicator shall provide to the Company an email address for service of documents on, and any other communications with, the Adjudicator in relation to any Appeal (the "**Adjudicator's Address for Service**").

25.1.2 Upon receipt of the Adjudicator's Address for Service, the Company shall communicate:

- (i) the Adjudicator's Address for Service; and
- (ii) an email address for service of documents on, and any other communications with, the Company in relation to any Appeal (the "**Administrators' Address for Service**"),

to the Appellant Certifying Creditor.

25.1.3 Any document to be served upon each of the following in relation to any Appeal must be delivered in electronic format by email to:

- (i) in respect of the Adjudicator, the Adjudicator's Address for Service;
- (ii) in respect of the Company, the Administrators' Address for Service; and
- (iii) in respect of the Appellant Certifying Creditor, the address specified by the Appellant Certifying Creditor in its Certification.

### 25.2 Other communications

25.2.1 The Adjudicator, the Company and the Appellant Certifying Creditor shall ensure that any communications (including notices) in respect of an Appeal shall be copied to:



- (i) in the case of communications sent by the Appellant Certifying Creditor to the Adjudicator, the Administrators' Address for Service;
- (ii) in the case of communications sent by the Company to the Adjudicator, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification;
- (iii) in the case of communications sent by the Adjudicator to the Company, save for communications in relation to the Adjudicator's retainer and/or the engagement of the Support Team, the address specified by the Appellant Certifying Creditor in its Certification; and
- (iv) in the case of communications sent by the Adjudicator to the Appellant Certifying Creditor, the Administrators' Address for Service.

## **26 Adjudication Costs**

### **26.1** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

**26.1.1** the reasonable legal costs of the Appellant Certifying Creditor in relation to the Appeal; and

**26.1.2** the Company's and the Administrators' costs (including the Adjudication Costs) in relation to the Appeal,

shall be borne on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules) by the Company as an expense of the Administration.

### **26.2** If the Adjudicator upholds the Company's Case, the Appellant Certifying Creditor shall bear on an indemnity basis (in accordance with the principles in Part 44.3 of the Civil Procedure Rules):

**26.2.1** its own legal and professional costs in relation to the Appeal; and

**26.2.2** the Company's and the Administrators' reasonable legal costs (including the Adjudication Costs, which would otherwise be payable by the Company) in relation to the Appeal.

### **26.3** If the Adjudicator upholds the Appellant Certifying Creditor's Case:

**26.3.1** the Appellant Certifying Creditor must serve upon the Company a statement of costs; and

**26.3.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of costs to be paid, the matter shall be referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable in respect of the Appeal (which determination shall be in his sole discretion, final and binding).

### **26.4** If the Adjudicator upholds the Company's Case:

**26.4.1** the Company must serve upon the Appellant Certifying Creditor a statement of its costs;

**26.4.2** in the event that there is disagreement between the Company and the Appellant Certifying Creditor as to the amount of the costs to be paid, the matter shall be

referred to the Adjudicator that heard the Appeal to determine an appropriate amount of costs payable (which determination shall be in his sole discretion, final and binding);

**26.4.3** the Company shall deduct the amount payable in respect of its costs and the Administrators' costs in relation to the Appeal from the Appellant Certifying Creditor's Scheme Distribution; and

**26.4.4** in the event that the amount payable in costs exceeds the Appellant Certifying Creditor's Scheme Distribution entitlement, the Appellant Certifying Creditor shall pay the balance to the Administrators within 15 Business Days of written demand by the Company.

## **27 Confidentiality**

**27.1** Each Appellant Certifying Creditor, the Company, the Adjudicator and the Support Team shall maintain the confidentiality of any Appeal and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person save for the Subordinated Creditor and/or the Operating Committee the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.1.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.1.2** the information is already in the public domain;

**27.1.3** the disclosure is necessary in connection with legal proceedings or is otherwise required by law or any regulatory body;

**27.1.4** the disclosure is required by current insolvency practice or to enable the Administrators properly to carry out the duties of their office;

**27.1.5** the disclosure is made by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;

**27.1.6** the Administrators consider it desirable in the course of carrying out the duties of their office to disclose the Adjudicator's determination in respect of an Appeal; or

**27.1.7** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality.

**27.2** Each of the Subordinated Creditor and each member of the Operating Committee shall maintain the confidentiality of any Appeal disclosed to it and any documentation or information provided to it pursuant to Clause 11.3 and shall not disclose to any person the Adjudicator's determination or any information concerning or documentation provided exclusively in the course of the Appeal or pursuant to Clause 11.3, save where:

**27.2.1** the Appellant Certifying Creditor and the Company have agreed otherwise in writing;

**27.2.2** the information is already in the public domain;

**27.2.3** the disclosure is necessary in connection with legal proceedings (including any Chapter 11 case, if relevant) or is otherwise required by law or any regulatory body;

- 27.2.4** the disclosure is made to a professional adviser that is bound by professional duties of confidentiality; or
- 27.2.5** the disclosure is made to an Affiliate that has, prior to any such disclosure, entered into a confidentiality undertaking in favour, and to the satisfaction, of the relevant Appellant Certifying Creditor and/or the Company (as applicable).

## PART VII: SETTLEMENT OF PROCEEDINGS AND RELEASE OF CLAIMS

### 28 Settlement of Proceedings and release of Claims

**28.1** Without prejudice to a Scheme Party's right to receive Scheme Distributions and/or Subordinated Distributions (as applicable), and save in respect of any Retained Claim, with effect from the Effective Date, each Scheme Party hereby irrevocably and unconditionally:

**28.1.1** agrees to the Settled Proceedings being brought to an end;

**28.1.2** releases and waives in favour of the Company and each other Scheme Party (and, in respect of Clause 28.1.2(v) only, the Shareholder) all its rights, entitlements and interest in any Claims against the Company including:

(i) subject to Clause 38, any Claims arising from, or in connection with, the subject matter of any of the Settled Proceedings;

(ii) any Provable Claims;

(iii) any Non-Provable Claims;

(iv) any Expense Claims;

(v) any Creditor Contributory Claim Rights;

(vi) subject to Clause 18.3, any Claims arising from, or in connection with, any WHT Deduction; and

(vii) any Shortfall Claims;

**28.1.3** releases and waives in favour of the Company, the Administrators and each other Scheme Party all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators prior to the Record Date;

**28.1.4** releases and waives in favour of the Administrators and the Released Third Parties all its rights, entitlements and interest in any Administration Claims to the extent that the Administrators or the Released Third Parties would have an indemnity or other similar claim against the Company arising in respect of such Administration Claim(s) (the "**Released Administration Claims**");

**28.1.5** releases and waives in favour of the Administrators, the Released Third Parties and the Locked Up Parties all its rights, entitlements and interest in any Released Scheme Implementation Claims; and

**28.1.6** undertakes and agrees not to commence, voluntarily aid, or in any way prosecute against the Company, the Administrators, the Released Third Parties, the Locked Up Parties or the Scheme Parties (as applicable) in any jurisdiction whatsoever, any Claim which seeks recovery or a determination in respect of or arising out of any Released Claim.

**28.2** The Company and the Administrators shall be authorised by the Scheme Parties to take such steps as they consider necessary or expedient to bring an end to the Settled Proceedings. The costs of any such actions taken by the Company or the Administrators in respect of the Settled Proceedings (excluding Other Proceedings) shall be payable as an Administration Expense.

- 28.3** The terms of any costs orders made by the Courts in respect of the Settled Proceedings prior to the Effective Date shall remain in full force and effect and remain binding on the parties to the Settled Proceedings. The costs of the parties to any Settled Proceedings (excluding Other Proceedings) in respect of which no costs order has been made by the Courts prior to the Effective Date shall be paid by the Company as Administration Expenses in such amounts as may be agreed between the Administrators and the relevant parties to such Settled Proceedings (subject to assessment on the standard basis (pursuant to the Civil Procedure Rules) if not otherwise agreed).
- 28.4** Provided that the Settled Proceedings (excluding Other Proceedings) are brought to an end in accordance with Clause 28.2 and the costs of the parties to the Settled Proceedings (excluding Other Proceedings) are paid by the Company in accordance with Clause 28.3, each Scheme Party hereby undertakes and agrees not to seek any further order for its costs in respect of the Settled Proceedings.
- 28.5** Save in respect of any Excluded Proceedings and any Scheme Breach Claims, each of the Scheme Parties, the Company and the Administrators hereby (i) irrevocably and unconditionally releases and waives, insofar as the law allows, all its rights of appeal in respect of any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable or exercised by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt) and each of the Scheme Parties, the Company and the Administrators hereby undertakes and agrees to be bound by any such first instance decision; and (ii) undertakes not to pursue any such rights of appeal.
- 28.6** No Scheme Party shall take any action that is inconsistent with the releases, waivers and undertakings set out in this Clause 28.
- 28.7** Each Scheme Party shall hold on trust for the benefit of the Company, the Administrators any Released Third Party and/or any Locked Up Party (as applicable) any recovery made against such person after the Effective Date, pursuant to any Released Claim in breach of this Clause 28, and the Scheme Party shall turn over any such recovery to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction. To the extent that the asset comprising the recovery cannot be held on trust by the Scheme Party, the Scheme Party shall pay to the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) an amount equal to that recovery immediately upon demand being made by the Company, the Administrators, the Released Third Party and/or the Locked Up Party (as applicable) without set-off, counterclaim or deduction and, to the extent such amount is paid to the Company, such amount shall form part of the Available Funds.
- 28.8** The Company and the Administrators undertake and agree not to make an Exclusion Application in respect of any Scheme Party's Admitted Claims which were admitted as at the Effective Date.

## **PART VIII: ADMINISTRATORS' POWERS AND REMUNERATION AND SUBORDINATED DISTRIBUTIONS**

### **29 Powers of the Company and the Administrators**

**29.1** The Company and the Administrators shall in their sole discretion (acting reasonably) deal with any Scheme Party or any group of them in such order as the Administrators see fit, provided that this does not conflict with the terms of this Scheme or the Administrators' statutory duties.

**29.2** In carrying out its functions under this Scheme, the Company shall (without prejudice to the terms of this Scheme) be empowered, to the extent that such powers are necessary for or reasonably incidental to the implementation of this Scheme, to:

**29.2.1** employ and remunerate its Advisers in connection with this Scheme; and

**29.2.2** delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Scheme, and from time to time to revoke any such delegation, provided that the Company shall be responsible for any act or omission of any such Delegate to the same extent as if the Company had itself exercised the relevant functions, rights, authorities, powers and discretions.

**29.3** The Administrators have undertaken and agreed to be bound by this Scheme as it applies to them and to execute or do, or to procure to be executed or done, all documents (including any deeds of release in favour of Third Parties), acts or things as may be necessary, or as the High Court may order necessary, to be executed or done by the Company or on its behalf to implement and to give effect to this Scheme (in all cases, without prejudice and in addition to the general powers afforded to the Administrators pursuant to Schedule 1 to the Insolvency Act).

**29.4** Each Scheme Party hereby authorises the Administrators to carry out all acts and exercise all discretions, authorities, powers and duties conferred upon the Company by this Scheme in order to facilitate its implementation.

**29.5** Each Scheme Party hereby irrevocably authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of that Scheme Party, with express power of delegation and substitution sign, execute, seal and deliver any documents in such form as the Company or the Administrators may deem appropriate on behalf of such Scheme Party and generally do any other act, matter or thing, that is, in each case in the reasonable opinion of the Company or the Administrators, desirable, necessary, ancillary or expedient in order to:

**29.5.1** bring an end to the Settled Proceedings;

**29.5.2** give effect to the release of Released Third Party Claims pursuant to Clauses 28.1.4 and 28.1.5;

**29.5.3** bring an end to any Proceedings brought in contravention of Clause 28.5; and

**29.5.4** subject to Clause 29.6 and without prejudice to the foregoing, facilitate the implementation of this Scheme on its terms,

in the same manner and as fully and effectually as that Scheme Party could have done.

- 29.6** Not less than three Business Days prior to exercising its or their powers pursuant to Clause 29.5.4, the Company or the Administrators (as applicable) shall send a Notice to the relevant Scheme Party that includes: (i) a statement of its intention to exercise such powers; (ii) a description of the relevant act, matter or thing it intends to do in their name or on their behalf; and (iii) a request that the relevant Scheme Party does the relevant act, matter or thing prior to the Company or the Administrators exercising its or their powers pursuant to Clause 29.5.4.
- 29.7** Each Scheme Party hereby ratifies any act whatsoever that the Company or the Administrators may do in their name or on their behalf by exercising its or their powers pursuant to Clause 29.5 and the costs of any such actions taken by the Company or the Administrators shall be payable as an Administration Expense.
- 29.8** The authority granted in Clause 29.5 shall be treated, for all purposes whatsoever and without limitation, as having been granted by each Scheme Party to the Company and the Administrators by deed.
- 29.9** All actions and determinations by the Company or the Administrators under this Scheme shall be made in good faith.
- 29.10** Subject to any applicable provision of the Insolvency Act, no Scheme Party shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, the Administrators or any Delegate, in pursuance of its functions or duties under this Scheme, or the exercise or non-exercise by the Company, the Administrators or any Delegate, in good faith, of any power or discretion conferred upon it for the purposes of this Scheme, and neither the Company, the Administrators nor any Delegate shall be liable for any Loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such Loss is attributable to the wilful default, fraud or dishonesty of the Company or to the wilful default, fraud or dishonesty of the Administrators or Delegate (as applicable).
- 29.11** The Administrators shall be entitled to claim their remuneration as an Administration Expense in relation to actions taken by them in respect of this Scheme.
- 29.12** The Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in this Scheme as agents for and on behalf of the Company and neither they, their firm, partners, 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 Scheme.
- 30 Retained Expense Claims**
- 30.1** The Administrators shall establish an Adequate Reserve in respect of a Retained Expense Claim upon the Company being Notified of such Retained Expense Claim.
- 30.2** No Scheme Party that holds a Retained Expense Claim shall be entitled to disturb or in any way challenge any payments (in whole or part) of any Scheme Distribution or Subordinated Distribution made by the Company prior to the Company receiving Notice of such Retained Expense Claim from the relevant Scheme Party.

### **31 The Storm Payment**

- 31.1** Subject to Clause 31.3 and the provisions of Part V, the Company shall pay the Storm Payment to Storm in full and final satisfaction of its rights to Statutory Interest in respect of its Admitted Claim.
- 31.2** The provisions of Part V shall be construed to apply to Storm as if it were a Scheme Creditor.
- 31.3** The Company shall pay the Storm Payment within the time period specified in relation to the payment of the 8% Payment, the Specified Interest Payment and the Settlement Premium pursuant to Clause 9.1.

### **32 The Subordinated Debt**

- 32.1** The Company shall not make any Subordinated Distributions prior to the Subordinated Debt Admittance Date.
- 32.2** On the Business Day following the earlier of:
- 32.2.1** the date falling 20 Business Days from the date on which a Full SI Payment Statement has been published and not withdrawn in accordance with Clause 3.3.1; and
  - 32.2.2** the day on which the Company makes the final payment which results in it having paid in full the 8% Payment, the Settlement Premium and the Specified Interest Payment to the Scheme Creditors in accordance with the provisions of Part III, and the Storm Payment to Storm in accordance with Clause 31,
- (the "**Subordinated Debt Admittance Date**"), the Administrators shall admit the Subordinated Principal.
- 32.3** The Administrators shall not be required to admit, on the Subordinated Debt Admittance Date, the part of the Subordinated Creditor's Provable Claim that relates to interest on the Subordinated Debt accrued prior to the Administration Date ("**Subordinated Interest**"), and Subordinated Interest shall be determined at a future time by the Administrators without prejudice to the Subordinated Principal admitted pursuant to Clause 32.1.
- 32.4** On the date that is 10 Business Days after the Subordinated Debt Admittance Date, the Company shall make payments to the Subordinated Creditor in respect of the Subordinated Principal and, to the extent it has been admitted by the Administrators prior to such date, any Subordinated Interest from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).
- 32.5** Following the date on which the Company has paid in full the Subordinated Principal and Subordinated Interest the Company shall pay to the Subordinated Creditor Statutory Interest on the Subordinated Principal and the Subordinated Interest at a rate to be determined at a future date (the "**Subordinated Debt SI Payment**") from the Net Available Funds (and after setting aside reserves in respect of (i) the High Case Scheme Distribution (to the extent unpaid); and (ii) any Non-Provable Claims notified to the Company prior to the Bar Date).



**32.6** Any Statutory Interest payable in respect of the Subordinated Debt (whether in respect of Subordinated Principal or Subordinated Interest) shall be calculated in accordance with the Relevant Principles.

### **33 Equity Distributions**

**33.1** The Company shall not make any Equity Distributions prior to the Subordinated Debt Admittance Date.

**33.2** Subject to Clause 33.1 and the relevant provisions of the Companies Act and Insolvency Act, the Company may make Equity Distributions at the Company's discretion.

### **34 Dissolution of the Creditors' Committee**

**34.1** With effect from the Subordinated Debt Admittance Date:

**34.1.1** the Company's existing Creditors' Committee shall be dissolved;

**34.1.2** thereafter, the Operating Committee shall be constituted in accordance with the Governance Protocol; and

**34.1.3** the Administrators' remuneration shall be approved by the Operating Committee in accordance with the Governance Protocol, without any recourse to the remaining creditors of the Company, except for Scheme Creditors that are members of the Operating Committee (if any).

## **PART IX: MISCELLANEOUS PROVISIONS**

### **35 Third Party rights and enforcement**

- 35.1** Save as expressly provided for in this Scheme and as identified in this Clause 35, nothing in this Scheme or the Explanatory Statement is intended to confer any rights on, or to be enforceable by, any Third Party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 35.2** The Administrators and Storm shall be entitled to enforce each of the terms of this Scheme as if they were a party to it.
- 35.3** Each of the Released Third Parties, the Locked Up Parties and the Shareholder shall be entitled to enforce the releases and undertakings expressed to be granted in their favour in this Scheme.
- 35.4** Any Adjudicator shall be entitled to enforce Clause 23.4.1.
- 35.5** The Company hereby undertakes to and agrees with each Scheme Party to take such actions as it considers to be reasonable and appropriate to bring any Shareholder Undertaking Claim.
- 35.6** In the event that the Company fails to take actions to bring a Shareholder Undertaking Claim within a reasonable period of such claim arising, the Company shall, if requested to do so by a Scheme Party, bring the relevant Shareholder Undertaking Claim provided that it has received to its satisfaction an indemnity from such Scheme Party in respect of the associated legal costs (including fees and disbursements of legal advisers and all costs associated with attending Proceedings).

### **36 Chapter 15**

To the extent it has not already done so prior to the Effective Date, the Company may file a petition for recognition of this Scheme under Chapter 15 of the US Bankruptcy Code.

### **37 Governing law and jurisdiction**

- 37.1** This Scheme shall be governed by, and construed in accordance with, English law and the Scheme Parties hereby severally agree that the courts of England shall (save as otherwise provided in the Dispute Resolution Procedure set out at Part VI of this Scheme) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with the Explanatory Statement or this Scheme, or the operation of this Scheme, and the Scheme Parties hereby severally submit to the exclusive jurisdiction of the courts of England for such purposes. The Scheme Parties also waive any objections to Proceedings in the courts of England that are based on the grounds of venue or that the Proceedings have been brought in an inconvenient forum.
- 37.2** Notwithstanding the provisions of Clause 37.1, the Company and the Administrators 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.
- 37.3** The US Bankruptcy Court shall have exclusive jurisdiction to hear and determine any dispute, suit, action or Proceeding (including any settlement thereof) which may arise out of or in connection with any Chapter 15 Order relating to the Company or its assets located within the territorial jurisdiction of the United States.

### **38 Duration of this Scheme**

- 38.1** Subject to Clause 38.3, the Scheme Parties, the Company and the Administrators hereby undertake in favour of each other not to take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)) have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion (acting by the Administrators), ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by this Scheme will be in no way adversely affected by a Liquidation Event.
- 38.2** If on the date falling 90 days prior to the expiry of the Administration, (i) all Scheme Distributions and (ii) any other payments in respect of Statutory Interest contemplated by this Scheme have not been paid in full, the Administrators shall apply to Court for an order extending the period of the Administration.
- 38.3** The Administrators may initiate a Liquidation Event one Business Day prior to the expiry of the Administration.
- 38.4** If the Company shall become subject to a Liquidation Event, this Scheme shall not terminate and shall continue in full force and effect.
- 38.5** In the event of any inconsistency between the provisions of this Scheme and the Companies Act, the Insolvency Act or the Insolvency Rules or the FCA Rules as they apply to the Company following a Liquidation Event in accordance with Clause 38.1, for the purposes of this Scheme the provisions of this Scheme shall prevail to the extent that the law allows.

### **39 Limit on Company's obligations**

Notwithstanding any other provision of this Scheme, each Scheme Party hereby acknowledges and agrees that the Company's payment obligations in respect of the Scheme Distributions, Non-Provable Claims and the Subordinated Distributions shall be no greater than an amount equal to the value from time to time of the Surplus.

### **40 Partial invalidity**

If at any time any provision of this Scheme 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 Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

### **41 Notices**

#### **41.1 General provisions**

- 41.1.1** Subject to Clause 41.1.3, any Notice, document or other communication to be given, delivered or served pursuant to or in connection with this Scheme, except where this Scheme otherwise provides, shall be in writing and in English and shall be delivered in accordance with this Clause 41.

41.1.2 The non-receipt by any Scheme Party of any Notice, communication or document delivered or sent in accordance with this Clause 41, shall not affect the provisions of this Scheme or the validity of such Notice.

41.1.3 In the event of a conflict between this Clause 41 and Clause 25, insofar as they relate to the provisions of Part VI of this Scheme, Clause 25 shall prevail.

#### **41.2 Electronic mail addresses**

41.2.1 Subject to Clause 19.5, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme to the Company by electronic mail to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com).

41.2.2 Subject to Clause 41.2.3, any Notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme, by the Company to a Scheme Party by electronic mail to:

- (i) the electronic mail address from which any Notice, document or communication under or in connection with this Scheme has been sent by or on behalf of that Scheme Party to the Company and/or the Administrators; or
- (ii) such other electronic mail address as the Scheme Party may Notify to the Company from time to time.

41.2.3 The Scheme Parties shall provide details of an electronic mail address and maintain such electronic mail account at their own risk and shall be responsible for informing the Company of any changes to the electronic mail address and/or providing an alternative electronic mail address (as appropriate).

#### **41.3 Notices by electronic mail**

Any Notice, document or communication given, delivered or served by electronic mail shall be deemed to have been received:

41.3.1 if delivered to the Company, at the time recorded on the response email that will be automatically generated by the Company's electronic mail system; or

41.3.2 otherwise at the time recorded on the computer of the person to whom the electronic mail is addressed,

provided that if such receipt occurs on a day which is not a Business Day or after 5.00 p.m. on any Business Day, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day.

#### **41.4 Notices by upload to the Website**

41.4.1 Any Notice, document or communication shall be deemed to be given, delivered or served (as applicable) by the Company to all Scheme Parties by the Company publishing such Notice, document or communication on the Website.

41.4.2 Any Notice, document or communication uploaded to the Website in accordance with Clause 41.4.1 shall state on its face a date and time of upload.

41.4.3 Any Notice, document or communication given, delivered or served by upload to the Website shall be deemed to have been received at the time of upload stated in such Notice, document or communication provided that if the date of upload stated

in such Notice, document or communication is not a Business Day or the time of upload stated in such Notice, document or communication is, or is after, 5.00 p.m. on any Business Day, such Notice, document or communication shall be deemed to have been received by Scheme Parties at 9.30 a.m. on the next Business Day.

#### **41.5 Authority to sign notices and documents**

In the case of a Notice, document or communication which is signed on behalf of a Scheme Party, neither the Company, the Administrators nor the Adjudicator (as applicable) shall be required to make any enquiry as to the authority of the signatory of that Notice, document or communication to sign such Notice, document or communication on behalf of such Scheme Party.

#### **42 Modifications**

**42.1** The Company may, at any hearing to sanction this Scheme, consent on behalf of the Scheme Parties to any modification of the Scheme or terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the interests of a Scheme Party or the Shareholder, then the Company shall not be entitled to provide such consent without the prior written consent of that Scheme Party or the Shareholder respectively.

**42.2** The Company shall inform the Scheme Parties, by publishing a Notice on the Website in accordance with Clause 41, of any modification of, addition to or condition imposed by the Courts on this Scheme approved in accordance with this Clause 42.

**42.3** Modifications, additions or conditions approved or imposed pursuant to this Clause 42 shall be binding on the Scheme Parties, the Company and the Administrators and this Scheme shall be amended accordingly.

**42.4** The Company shall be entitled, in its sole discretion, to amend the form of any Notice to be provided to the Scheme Parties under this Scheme provided that such modifications shall not adversely affect the rights of any class of Scheme Creditors as a whole.

#### **43 Extension and calculation of deadlines**

Subject to Clause 42.1, all or any of the deadlines laid down by this Scheme for the taking of any step by the Administrators or the Company or by any Scheme Party, save in respect of: (i) the Dispute Resolution Procedure; (ii) Clauses 9.1 and 15.1; and (iii) the Bar Date, may be postponed or extended for such period or periods as may be determined by the Company and Notified to the Scheme Parties in accordance with Clause 41.

#### **44 Conflict**

In the event of a conflict or inconsistency between the provisions of this Scheme, the Companies Act, the Insolvency Act, the Insolvency Rules and/or the FCA Rules, for the purposes of this Scheme, and to the extent such acts and/or rules permit, the provisions of this Scheme shall prevail.

**45 Modification of foreign law contracts**

Where this Scheme 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 and the Company and Scheme Parties will each take any necessary steps to ensure that such modifications are effective to the fullest extent possible under such governing law.

**46 FCA Notices**

Copies of the Practice Statement Letter, the Explanatory Statement and this Scheme have been sent to the FCA in accordance with Section 362 of FSMA.

**Schedule 1  
Appeal Form<sup>1</sup>**

Appeal Form

Capitalised terms used in this document shall have the meaning given to them in the scheme of arrangement between Lehman Brothers International (Europe) (in administration) and the Scheme Creditors (as defined therein), as sanctioned by the High Court on \_\_\_\_\_ 2018 (the "**Scheme**").

Name of Certifying Creditor: \_\_\_\_\_

Claim Reference to which the Certification relates: \_\_\_\_\_

Date of Certification being appealed: \_\_\_\_\_

Date of Rejection Notice: \_\_\_\_\_

The above-named Certifying Creditor hereby:

- (a) acknowledges that it has received a Rejection Notice from the Company;
- (b) confirms that it wishes to make a DRP Election pursuant to Clause 11.9 of the Scheme;
- (c) confirms that this Appeal Form has been served within 10 Business Days of the Rejection Date in accordance with Clause 24.1.1 of the Scheme; and
- (d) accepts that the Applicable CI Payment in respect of its Certification Claim shall be determined by an Adjudicator in accordance with the provisions of Part VI of the Scheme.

Signed:

\_\_\_\_\_

Name:

Position:

Dated:

\_\_\_\_\_

<sup>1</sup> This Appeal Form is to be served upon the Company in accordance with Clause 25.1.3(ii) of the Scheme.

## **Schedule 2 Governance Protocol**

This Governance Protocol summarises the guidelines for the formation and governance of the Operating Committee with respect to the Scheme and assisting with the management of the Administration.

In this Schedule 2 only, the following words and expressions shall have the following meanings:

<b>"Elliott Delegate"</b>	means any representative of Elliott Management Corporation appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"King Street Delegate"</b>	means any representative of King Street Capital Management, L.P. appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"LBHI Delegate"</b>	means any representative of LBHI appointed by the Subordinated Creditor as its delegate(s) from time to time;
<b>"LBHI2 Delegate"</b>	means the joint administrators of LBHI2 from time to time (or any one of them) and/or their representative, in each case appointed by the Subordinated Creditor as its delegate(s) from time to time
<b>"Subordinated Creditor Delegates"</b>	means the Elliott Delegate, the King Street Delegate, the LBHI Delegate and the LBHI2 Delegate as notified by the Subordinated Creditor to the Administrators from time to time
<b>"Unsecured Creditor Representative"</b>	means a Scheme Creditor whose Claim has not been paid or provided for by the Company, if any

### **1 Operating Committee**

**1.1** With effect from the Subordinated Debt Admittance Date, a new, informal, oversight body called the Operating Committee shall be constituted in place of the Creditors' Committee. For the avoidance of any doubt, the Operating Committee is not a creditors' committee for the purposes of Rule 18 of the Insolvency Rules but it will have a similar purpose and function in the context of the Scheme.

**1.2** The Administrators will manage the Administration in a manner consistent with the statutory objective. In performing their duties, the Administrators shall (among other things) take all reasonable steps in order to:



- 1.2.1 give effect to the Scheme;
  - 1.2.2 expedite the realisation of the Company's residual assets;
  - 1.2.3 finalise the Company's client money and trust estates;
  - 1.2.4 accelerate (where possible) the run-off of indemnities provided by the Company after the commencement of the Administration;
  - 1.2.5 adjudicate any unagreed creditor claims;
  - 1.2.6 manage distributions to stakeholders;
  - 1.2.7 wind-down operations of people, systems and data in an orderly manner; and
  - 1.2.8 comply with statutory formalities and regulatory requirements (including document retention and destruction).
- 1.3 The Operating Committee will assist the Administrators in performing their functions and act in accordance with the relevant guidelines (as summarised in this Governance Protocol) and the Scheme. In particular, the Operating Committee shall be empowered to:
- 1.3.1 consider and approve actions and decisions taken by the Administrators, where such approval is sought; and
  - 1.3.2 authorise the remuneration of the Administrators.
- 1.4 The Operating Committee will comprise a maximum of five members:
- 1.4.1 one Elliott Delegate;
  - 1.4.2 one King Street Delegate;
  - 1.4.3 one LBHI Delegate; and
  - 1.4.4 one LBHI2 Delegate, (as the Subordinated Creditor Delegates); and
  - 1.4.5 at the Administrators' election, one Unsecured Creditor Representative.
- (each an "**OC Member**" and together the "**OC Members**").
- 1.5 The Subordinated Creditor Delegates will not be entitled to payment of their (or their representatives') fees or expenses in attending meetings or otherwise in respect of their membership of the Operating Committee.
- 1.6 The Unsecured Creditor Representative shall be entitled to be reimbursed for reasonable travel expenses directly incurred by the Unsecured Creditor Representative or its representative in attending meetings of the Operating Committee (but not, for the avoidance of doubt, the fees or expenses of the Unsecured Creditor Representative's advisers).
- 1.7 The Operating Committee shall remain in effect until the Company exits administration.

## 2 Meetings, voting etc.

- 2.1 Subject to appropriate confidentiality arrangements being put in place, meetings of the Operating Committee shall be called for the participation of the Subordinated Creditor Delegates on a monthly basis to discuss (as applicable) the following:
- 2.1.1 a report of receipts and payments;

- 2.1.2 an update on the position of unsecured claims, including:
    - (i) any new Claims notified,
    - (ii) Certifications;
    - (iii) the resolution of disputes through the adjudication process provided by the Scheme; and
    - (iv) reserving for Claims;
  - 2.1.3 an update on the realisation of assets;
  - 2.1.4 an update on the run-off of priority claims and indemnities;
  - 2.1.5 an update on ongoing litigation and settlement;
  - 2.1.6 a report on progress of matters relating to the Scheme;
  - 2.1.7 an update on anticipated future distributions to the Subordinated Creditor;
  - 2.1.8 a qualitative update in respect of other matters e.g. budgeting and staffing; and
  - 2.1.9 the strategy for ending the Administration.
- 2.2** The following will be permitted to attend meetings of the Operating Committee:
- 2.2.1 the Administrators, one of whom (or a person appointed by them) will act as chairperson;
  - 2.2.2 each OC Member;
  - 2.2.3 each OC Member's legal advisors;
  - 2.2.4 the FCA where relevant and for so long as the Company remains FCA regulated and where the FCA wishes to attend as an observer at a meeting; and
  - 2.2.5 a fee advisor, to be appointed by the Administrators, with the agreement of the Operating Committee.
- 2.3** In respect of all meetings of the Operating Committee:
- 2.3.1 if voting is necessary:
    - (i) each OC Member has one vote; and
    - (ii) a resolution is passed when a majority of the OC Members attending, or represented at, the meeting have voted in favour of it;
  - 2.3.2 meetings may take place in person or by phone. In respect of meetings held by phone, the Administrators shall make appropriate arrangements to:
    - (i) verify the identity of those attending the meeting; and
    - (ii) (enable those attending the meeting to exercise their rights to speak or vote;
  - 2.3.3 physical meetings shall take place every six months (unless agreed otherwise between the Administrators and the Subordinated Creditor Delegates) at a venue to be chosen by the Administrators. In respect of all physical meetings, notice of the date and venue shall be provided to each OC Member at least 5 Business Days in advance of the relevant meeting;

- 2.3.4 meetings may be called on 5 Business Days' notice if so requested by at least two OC Members; and
- 2.3.5 a quorum of at least two Subordinated Creditor Delegates must be present at each meeting, one of whom must be an Elliott Delegate or a King Street Delegate and one of whom must be an LBHI Delegate or an LBHI2 Delegate.

**2.4** In the event that an Unsecured Creditor Representative is appointed, the Administrators and the Subordinated Creditor Delegates will agree the information to be provided to the Unsecured Creditor Representative in order to enable it to meaningfully participate in the meeting (or part thereof).

### **3 Amendment or waiver**

Any term of this Governance Protocol may be amended or waived only with the written consent of the Subordinated Creditor and the Company.

### **4 Disputes**

- 4.1 The Administrators and the Operating Committee shall negotiate in good faith in order to resolve any disputes between them in relation to the matters referred to above.
- 4.2 If it is not possible for the Administrators to reach agreement with the Subordinated Creditor Delegates as regards actions proposed by the Administrators, save where expressly agreed otherwise (including under the terms of the Scheme), the Administrators shall not be bound to follow a course of action directed by the Subordinated Creditor Delegates, where they consider such a direction to be contrary to their statutory duties.
- 4.3 In the event that the Operating Committee refuses to authorise the Administrators' remuneration, the Administrators shall be entitled to have recourse to the courts as provided for by Rule 18 of the Insolvency Rules or pursuant to paragraph 63 of Schedule B1 to the Insolvency Act.

**Schedule 3**  
**Shareholder Undertaking**

Dated [●] 2018

LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

## DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP

**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 05957878 whose registered address is 7 More London Riverside, London SE1 2RT (the "**Shareholder**") acting by its joint administrators Gillian Eleanor Bruce, Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell and Julian Guy Parr, each of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**LBH2 Administrators**");

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the "**Company**") acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**LBIE Administrators**"); and
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the "**High Court**").

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 with certain of its creditors (the "**Scheme Creditors**") in the terms set out in Appendix 1 to this Deed.
- (B) The Scheme Creditors are creditors with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate payments to Scheme Creditors in full and final settlement of their rights to Statutory Interest which has accrued on their Admitted Claims during the Administration. The Scheme also provides the basis on which the Subordinated Creditor is to be paid Subordinated Distributions.
- (C) The Shareholder is the sole shareholder of the Company.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

References in this Deed to the "**Scheme**" or the "**Scheme Document**" are to a scheme of arrangement in the terms set out in Appendix 1 to this Deed with or subject to any modification approved or imposed pursuant to clause 42.1 of the terms set out in Appendix 1 to this Deed.

**This Deed witnesses** and it is hereby declared as follows:

- 1 From and with effect from the Effective Date, the Shareholder hereby irrevocably:
- 1.1 consents to the Scheme;
- 1.2 acknowledges that the Company may make Equity Distributions at the Company's discretion, however, no Equity Distribution will be made prior to the Subordinated Debt

Admittance Date or otherwise than in accordance with the relevant provisions of the Companies Act and Insolvency Act;

**1.3** in consideration of the Scheme being implemented in accordance with its terms, agrees and undertakes that it shall not:

**1.3.1** take any action or step to initiate a Liquidation Event until (i) all Scheme Distributions; and (ii) any other payments in respect of Statutory Interest contemplated by the Scheme (including the Subordinated Debt SI Payment (unless the Subordinated Creditor agrees otherwise)), have been paid in full by the Company or some other arrangement has been made, which in the Company's opinion, ensures that Scheme Distributions, the Subordinated Debt SI Payment and any other payments of Statutory Interest contemplated by the Scheme will be in no way adversely affected by a Liquidation Event;

**1.3.2** seek to disturb or otherwise challenge:

- (i) any Decision Notice, the Company's Case or any decision made by the Adjudicator in respect of a Certification;
- (ii) any Scheme Outcome Statement;
- (iii) any petition for recognition of the Scheme under Chapter 15 of the US Bankruptcy Code;
- (iv) the Company's determination of the Available Funds, the Net Available Funds, the High Case Scheme Distribution or the Adequate Reserves;
- (v) the Settled Proceedings being brought to an end;
- (vi) the payment of costs in relation to the Settled Proceedings, pursuant to the terms of the Scheme;
- (vii) the payment (in whole or in part) of any Scheme Distribution;
- (viii) the payment (in whole or in part) of any Subordinated Distribution;
- (ix) any payment of Tax in relation to a Scheme Distribution or a Subordinated Distribution;
- (x) the release and waiver of the Released Claims,  
in each case, made or given in accordance with the terms of the Scheme;
- (xi) insofar as the law allows, any first instance decision of any court of competent jurisdiction in any jurisdiction whatsoever (save in the event of fraud or bias by the relevant court) which relates to a function or power exercisable by the Administrators and which is made after the Effective Date (including in respect of any Directions Application issued by the Administrators or any appeal of the Administrators' adjudication of a proof of debt but excluding any Claim arising out of a breach of this Deed); or
- (xii) without prejudice to the foregoing, the validity of any act done or omitted to be done in good faith by the Company, the LBIE Administrators or any Delegate in pursuance of its or their powers, functions or duties under the Scheme; and

**1.4** unconditionally releases and waives:

- 1.4.1 all its rights, entitlements and interest in any Creditor Challenge Rights in respect of any Admitted Claim that was admitted by the Administrators for dividend prior to the Record Date; and
- 1.4.2 any Released Third Party Claims.
- 2** From and with effect from the Effective Date, the Company undertakes to the Shareholder to implement the Scheme in accordance with its terms (as amended from time to time).
- 3** The LBHI2 Administrators have signed this Deed as agents for and on behalf of the Shareholder, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Shareholder in respect of any failure by the Shareholder 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 4** The LBIE Administrators have signed this Deed as agents for and on behalf of the Company, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken by the Company in respect of any failure by 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 5** The exclusions of liability set out in Clauses 3 and 4 above shall arise and continue notwithstanding the termination of the agency of the LBHI2 Administrators and the LBIE Administrators respectively 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.
- 6** If requested by the Company in writing before the earlier of: (a) the conclusion of the administration of the Shareholder; (b) the Shareholder being placed into liquidation; and (c) the expiry of twelve months from the Effective Date, the Shareholder (acting by the LBHI2 Administrators) shall (at the expense of the Company) enter into documents or agreements necessary to give effect to the terms of this Deed, provided that any such documents or agreements: (i) shall be prepared by the Company or its advisers at the Company's expense and all reasonable legal and other external costs of the Shareholder and the LBHI2 Administrators shall be payable as an Administration Expense; (ii) do not impose any liabilities on the Shareholder or the LBHI2 Administrators; (iii) do not require the Shareholder or the LBHI2 Administrators to commence or continue or be joined as any party to any Proceedings; (iv) do not require the LBHI2 Administrators to be made a separate party thereto; and (v) contain an exclusion of the LBHI2 Administrators' liability on terms substantially similar to the exclusion terms set out in Clauses 3 and 4 above.
- 7** No party may assign, grant any security over, hold on trust or otherwise transfer the benefit of the whole or any part of this Deed.
- 8** The consent and undertakings set out in this Deed are given strictly on the basis of the terms of this Deed and without prejudice to the rights of the parties otherwise.



- 9** No variation of this Deed or any waiver of any term of this Deed shall be effective unless in writing and signed by or on behalf of the Shareholder and the Company.
- 10** The terms of this Deed shall remain in full force and effect if the Company makes minor or procedural modifications to the operation of the Scheme after the Effective Date, for the purposes of the implementation of the Scheme, provided that such modifications do not adversely affect the rights of the Shareholder.
- 11** This Deed together with any documents or agreements expressly referred to in this Deed or entered into by the Shareholder in connection with it after the Effective Date in accordance with Clause 6 represents the entire understanding and constitutes the whole agreement in relation to its subject matter and supersedes any previous agreement or understanding, whether oral or in writing, between the parties with respect to such subject matter and, without prejudice to the generality of the foregoing, excludes any express or implied representation, warranty, condition or other undertaking or assurance implied at law or by custom, usage or course of dealing.
- 12** Clauses 1.2 (*Definitions and interpretation*), 41 (*Notices*) and 44 (*Conflict*) of the Scheme Document are incorporated *mutatis mutandis* in this Deed, with references to "this Scheme" being understood to refer to this Deed.
- 13** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the LBHI2 Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives and (ii) the LBIE Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 14** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.
- 15** Nothing in this Deed is intended or shall be deemed to waive or release any right and/or entitlement of the Shareholder:
- 15.1** subject to Clause 1.2 above, to receive any Equity Distribution;
- 15.2** to exercise set-off, defend or make a counterclaim in respect of any Contributory Claim;
- 15.3** in respect of any Claim arising out of a breach of this Deed; and
- 15.4** to claim for costs arising out of future litigation in respect of the matters referred to in Clauses 15.1 to 15.3 above.
- 16** Nothing in this Deed is intended to or shall be deemed to constitute any submission by the Shareholder to the jurisdiction of the US Bankruptcy Court.
- 17** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.

**In witness whereof** this Deed has been delivered on the date first stated above.

## **Appendix 1**

### **Scheme Document**

**The Shareholder**

SIGNED as a DEED by  
**LB HOLDINGS INTERMEDIATE 2 LIMITED**  
**(IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_]   
Joint administrator acting as agent for and on behalf  
of LB Holdings Intermediate 2 Limited (in  
administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**The Company**

SIGNED as a DEED by  
**LEHMAN BROTHERS INTERNATIONAL**  
**(EUROPE) (IN ADMINISTRATION)**  
acting by:

[\_\_\_\_\_]   
Joint administrator acting as agent for and on behalf  
of Lehman Brothers International (Europe) (in  
administration) without personal liability

in the presence of

Name:

Address:

Occupation:

**Schedule 4**  
**Storm Undertaking**

Dated [●] 2018

STORM FUNDING LIMITED (IN ADMINISTRATION)  
and  
LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

## DEED OF UNDERTAKING

**Linklaters**

Ref: L-245528

Linklaters LLP

**THIS DEED OF UNDERTAKING** is made on [●] 2018

**By:**

- (1) **STORM FUNDING LIMITED (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02682306 whose registered address is 7 More London Riverside, London SE1 2RT (the "**Grantor**") acting by its joint administrators Dan Schwarzmann, Anthony Victor Lomas, Steven Anthony Pearson, and Julian Guy Parr, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**Storm Administrators**");

**In favour of:**

- (2) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)** a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London E14 5LQ (the "**Company**") acting by its joint administrators Anthony Victor Lomas, Steven Anthony Pearson, Julian Guy Parr and Russell Downs, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, acting as agents only for and on behalf of the Company and without personal liability (the "**Administrators**");
- (3) **THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES** (the "**High Court**"); and
- (4) **THE SCHEME PARTIES** as defined in the Scheme Document.

**Whereas**

- (A) The Company proposes to enter into a scheme of arrangement under Part 26 of the Companies Act 2006 (the "**Scheme**") with certain of its creditors (the "**Scheme Creditors**") substantially in the terms set out in Appendix 1 of this Deed (the "**Scheme Document**").
- (B) The Scheme Creditors are persons with Provable Claims against the Company. The primary purpose of the Scheme is to facilitate Scheme Distributions in full and final settlement of the relevant recipients' rights to Statutory Interest which has accrued on their Admitted Claims during the Administration.
- (C) The Grantor is Storm, as such term is defined in the Scheme Document.

**Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words and expressions used in this Deed shall have the meanings given to them in the Scheme Document.

**This Deed witnesses** and it is hereby declared as follows:

- 1 From and with effect from the Effective Date, the Grantor hereby irrevocably:
- 1.1 consents to the Scheme;
- 1.2 agrees and undertakes that it shall be bound by the Scheme and each of the waivers, releases and restrictions expressed to apply to Storm under the Scheme, and shall perform each of the obligations expressed to apply to Storm under the Scheme;

- 1.3** authorises the Company and the Administrators so that any of them, acting individually or jointly, may, as true and lawful agent and attorney of the Grantor, with express power of delegation and substitution, sign, execute, seal and deliver any documents on behalf of the Grantor that are in the reasonable opinion of the Company or the Administrators desirable or necessary in order to facilitate the implementation of the Scheme and generally to do any other act, matter or thing which the Company or the Administrators shall consider ancillary or expedient for such purposes or any of the acts authorised by this power of attorney in the same manner and as fully and effectually as the Grantor could have done;
- 1.4** ratifies any act whatsoever that the Company or the Administrators may do in the name or on behalf of the Grantor by exercising its powers pursuant to paragraph 1.3 above; and
- 1.5** agrees that the costs of any actions taken by the Company or the Administrators pursuant to paragraph 1.3 above shall be payable as an Administration Expense.
- 2** The Storm Administrators have signed this Deed as agents for and on behalf of the Grantor, and neither they, their firm, its members, partners, directors, officers or employees nor any of their respective agents, advisers or representatives shall incur any personal liability whatever in respect of this Deed, any of the obligations undertaken (including representations given) by the Grantor or in respect of any failure by the Grantor 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 or in connection with it or in relation to any related matter or claims, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum.
- 3** The exclusions of liability set out in paragraph 2 above shall arise and continue notwithstanding the termination of the agency of the Storm 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.
- 4** A person who is not a party to this Deed shall not have any right by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term (express or implied) of this Deed, except that: (i) the Storm Administrators, their firm, its members, partners, directors, officers, employees and any of their respective agents, advisers and representatives; (ii) the Administrators; and (iii) the Released Parties shall each be entitled to rely on this Deed as if they were a party to this Deed.
- 5** This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and construed in accordance with, the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to hear and/or decide any claim, action or proceedings and to settle any disputes arising out of or in connection with this Deed.
- 6** This Deed may be executed in any number of separate counterparts, each of which is an original but all of which taken together shall constitute one and the same instrument.

**In witness whereof** this Deed has been delivered on the date first stated above.



## **Appendix 1**

### **Scheme Document**

**The Grantor**

SIGNED as a DEED by **STORM FUNDING LIMITED**  
**(IN ADMINISTRATION)**

acting by:

[\_\_\_\_\_]

Joint administrator acting as agent for and on behalf  
of Storm Funding Limited (in administration) without  
personal liability

in the presence of

Name:

Address:

Occupation:

**Appendix 3  
Notice of Scheme Meetings**

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
COMPANIES COURT (ChD)**

**No. CR-2018-003713**

**THE HONOURABLE MR JUSTICE  
HILDYARD**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)**

- and -

**IN THE MATTER OF THE COMPANIES ACT 2006**

NOTICE IS HEREBY GIVEN that by an Order dated 11 May 2018 made in the above matter, the Court has directed that four meetings (the “**Scheme Meetings**”) of Scheme Creditors (as defined in the Scheme of Arrangement hereinafter mentioned) of Lehman Brothers International (Europe) (in administration) (the “**Company**”) be convened for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement pursuant to Part 26 of the Companies Act (the “**Scheme of Arrangement**”) proposed to be made between the Company and the Scheme Creditors. The Scheme Meetings will be meetings of those classes of Scheme Creditors set out below.

A copy of the Scheme of Arrangement and a copy of the explanatory statement required to be furnished pursuant to Section 897 of the Companies Act (the “**Explanatory Statement**”) are incorporated in the document of which this notice forms part. Unless otherwise stated, defined terms used in this Notice have the meaning given to them in the Explanatory Statement.

The four separate Scheme Meetings will be for Scheme Creditors holding: (i) 8% Interest Claims and Specified Interest Claims (excluding the SCG); (ii) Higher Rate Claims (excluding the SCG); (iii) 8% Interest Claims, Specified Interest Claims and Higher Rate Claims legally held by the SCG; and (iv) the Subordinated Debt.

The Scheme Meetings will be held at Linklaters LLP, One Silk Street, London EC2Y 8HQ, UK on 5 June 2018 with:

- (i) the first Scheme Meeting (in respect of Scheme Creditors with 8% Interest Claims and Specified Interest Claims, excluding the SCG) commencing at 4.00 pm (London time);
  - (ii) the second Scheme Meeting (in respect of Scheme Creditors with Higher Rate Claims, excluding the SCG) commencing immediately after the conclusion of the first Scheme Meeting;
  - (iii) the third Scheme Meeting (in respect of the SCG) commencing immediately after the conclusion of the second Scheme Meeting; and
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- (iv) the fourth Scheme Meeting (in respect of the Subordinated Creditor who holds the Subordinated Debt) commencing immediately after the conclusion of the third Scheme Meeting,

at which place and time each class of Scheme Creditors are invited to attend.

Scheme Creditors are requested to Vote on the Scheme, whether or not they intend to attend the Scheme Meetings.

Scheme Creditors who have an Admitted Claim and wish to appoint the Chairman to Vote on their behalf at the Scheme Meetings, should complete a Form of Proxy by making the appropriate selections via the Portal.

If Scheme Creditors: (i) have an Admitted Claim and wish to appoint a proxy to attend the Scheme Meetings and Vote on their behalf; or (ii) do not have an Admitted Claim and wish to appoint the Chairman or another person as their proxy to attend the Scheme Meetings and Vote on their behalf, they may do so by submitting a hard copy Form of Proxy in accordance with the instructions and notes contained therein.

Hard copy Forms of Proxy: (i) may be downloaded from the Portal if Scheme Creditors have an Admitted Claim; (ii) will be appended to Scheme Creditors' Voting Rights Letters if they have an Undetermined Provable Claim; or (iii) can otherwise be obtained from the Company on request by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by pre-paid first-class post or air mail with delivery receipt to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, marked for the attention of Rebecca Browne.

Scheme Creditors are requested to submit their Forms of Proxy in accordance with the instructions and notes contained therein as soon as possible and, in any event, so as to be received by the Company no later than 5.00 pm (London time) on 4 June 2018. Hard copy Forms of Proxy that are not so received may be handed to the Chairman at the Scheme Meetings.

Hard copy Forms of Proxy may be submitted to the Company by email to [schemequeries@lbia-eu.com](mailto:schemequeries@lbia-eu.com) or by pre-paid first-class post or air mail with delivery receipt to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London E14 5LQ, marked for the attention of Rebecca Browne.

Scheme Creditors may also attend and Vote in person at the relevant Scheme Meetings. Scheme Creditors who are a company or corporation and wish to attend the Scheme Meetings in person must appoint an individual as their representative. To Vote at the Scheme Meetings, this representative must produce an appropriately certified copy of the resolution of the directors or other governing body of the company or corporation evidencing that he or she is authorised to act as the company or corporation's representative at the Scheme Meeting(s).

Scheme Creditors attending the Scheme Meetings in person (or by a representative or proxy who is not the Chairman) will be provided with a Voting Card pursuant to which they can Vote and make Elections (where applicable) at the Scheme Meetings.

Entitlement to attend and Vote at a Scheme Meeting and any adjournment thereof and the number of Votes which may be cast thereat shall be determined in accordance with the procedures set out in the Explanatory Statement.

By the aforementioned Order, the Court has appointed Russell Downs or, failing him, another of the Administrators, to act as Chairman of each of the Scheme Meetings and has directed the Chairman to report the results thereof to the Court.

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The Scheme of Arrangement shall be subject to the subsequent sanction of the Court.

Dated 14 May 2018

LINKLATERS LLP (Matthew Harding/Richard  
Hodgson/Susan Roscoe/Tony Bugg)  
One Silk Street  
London EC2Y 8HQ  
Solicitors for the Company

## **Appendix 4**

### **Background to the Company, the Administration and the Surplus**

#### **1 Background to the Company**

##### **1.1 Statutory information**

The Company was incorporated on 10 September 1990 as a private limited company. On 21 December 1992, the Company was re-registered as an unlimited company under the name Lehman Brothers International (Europe). The authorised share capital of the Company is US\$18,100,000,000 divided into US\$10,850,000,000 ordinary shares of US\$1.00, US\$150,000,000 preference shares of US\$0.01, 2,000,000 5% redeemable preference shares of US\$1,000 and 5,100,000 5% redeemable class B preference shares of US\$1,000, of which, at 15 September 2008, 6,273,113,999 ordinary shares of US\$1.00, 2,000,000 5% redeemable preference shares of US\$1,000 and 5,100,000 5% redeemable class B preference shares of US\$1,000 had been issued and were fully paid and the remainder were unissued.

##### **1.2 Corporate structure**

1.2.1 The Lehman Group was headquartered in New York, with regional headquarters in London and Tokyo and many offices in North America, Europe, the Middle East, Latin America and the Asia-Pacific region.

1.2.2 The ultimate parent company of the Lehman Group is LBHI, which is incorporated in the United States and filed for Chapter 11 protection in the US on 15 September 2008.

##### **1.3 Business activities**

1.3.1 Investment banking was at the core of the business of the Lehman Group. Until its collapse, the Lehman Group was one of the four biggest investment banks in the United States. It provided financial services to corporations, governments and municipalities, institutional clients and high-net-worth individuals.

1.3.2 The Company was LBHI's main European broker-dealer. Its clients included corporate customers, institutions, governments, hedge funds and private clients on a global basis.

#### **2 Background to the Administration**

##### **2.1 Background**

2.1.1 The Lehman Group operated in a market that depended heavily on investor and market confidence. In the period immediately prior to its insolvency, there was an escalating loss of confidence in the Lehman Group, as evidenced by a significant deterioration in LBHI's share price on the New York Stock Exchange of almost 80% during the week from Friday 5 September 2008 to Friday 12 September 2008.

2.1.2 On Tuesday 9 September 2008, the share price fell 45% following reports that negotiations with the Korean Development Bank, regarding a potential major investment in the Lehman Group, had been put on hold.

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- 2.1.3 The following day, the Lehman Group announced a third quarter loss of US\$3.9 billion.
- 2.1.4 At the same time, the Lehman Group announced plans to sell a majority stake in its investment management business and to spin off the majority of its commercial real estate assets into a new, separate public company. These measures failed to restore investor confidence and the share price fell a further 7% on Wednesday 10 September 2008.
- 2.1.5 Following the close of business that day, Moody's Investors Service, one of the main credit rating agencies, announced that, in the absence of a purchaser for the Lehman Group or its business by Monday 15 September 2008, it intended to downgrade the Lehman Group's credit rating.
- 2.1.6 Various steps were taken in an attempt to resolve the Lehman Group's situation. The Administrators understand that weekend discussions were held in New York with potential investors in and purchasers of the Lehman Group's business (or part thereof).
- 2.1.7 During 14 September 2008, the Administrators' firm, PricewaterhouseCoopers LLP, met with the directors of the Company in order to consider what steps should be taken in the event that the New York discussions to save the Lehman Group were to fail.
- 2.1.8 LBHI managed substantially all of the material cash resources of the Lehman Group centrally. A continuing failure of LBHI to settle obligations on behalf of the Company at any point in time would result in the insolvency of the Company, as it would be unable to meet its liabilities as they fell due. On 14 September 2008, the directors of the Company sought assurances from LBHI that payments due to be made on 15 September 2008 on its behalf would in fact be made by LBHI. The directors also planned how to react in the event that these assurances could no longer be given by LBHI.
- 2.1.9 At approximately 12.30 am on 15 September 2008, the Company was informed by LBHI that it would no longer be in a position to make payments to or for the Company and other Lehman Group companies and that it was preparing to file for Chapter 11 bankruptcy protection in the United States.
- 2.1.10 Overnight, preparations were made by the directors, employees and advisers of a number of the Lehman Group companies in the UK for those companies to seek an administration order, and the directors of those companies, including the Company, met and resolved to place those companies into administration.
- 2.1.11 At 7.56 am on 15 September 2008, on an application of its directors, the Company was placed in administration. The original administrators (i.e. Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael Andrew Jervis) were appointed pursuant to an order of the High Court (the "**Administration Order**") and following their appointment, immediately assumed responsibility for the Company's affairs and began to pursue the purpose of the Administration.
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### **3 Purpose of the Administration, the Creditors' Committee and progress reports**

#### **3.1 Background**

3.1.1 The Administration Order was made to achieve a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being placed in administration).

3.1.2 The specific aims of the Administration (as set out in the Nineteenth Progress Report) are to:

- (i) realise all assets, including all cash, securities and in-the-money positions on a managed basis;
- (ii) admit remaining unsecured claims and make distributions to creditors from the Surplus; and
- (iii) manage cash and assets within the Client Money Estate and return them to their rightful owners on a systematic basis.

#### **3.2 Creditors' Committee and progress reports**

3.2.1 The Company's creditors were notified of the Administrators' statement of proposals for achieving the purpose of the Administration on 28 October 2008. The statement of proposals was approved with modification at a meeting of creditors held on 14 November 2008 pursuant to paragraph 51 of Schedule B1 of the Insolvency Act.

3.2.2 In addition, the Creditors' Committee was elected at the meeting of creditors of 14 November 2008. Its current members are:

- (i) Lehman Brothers Holdings Inc;
- (ii) Ramius LLC; and
- (iii) Lehman Brothers Commercial Corporation Asia Limited.

3.2.3 The Administrators have produced 19 progress reports, pursuant to the Insolvency Rules, to update creditors in respect of matters occurring in the Administration since their appointment. All such progress reports are available on the Website.

### **4 Steps taken by the Administrators to deal with Trust Property entitlements**

#### **4.1 Background**

4.1.1 Prior to the Administration, the Company held, in the course of its prime brokerage, custody and other businesses, a very considerable quantity of securities and cash on trust ("**Trust Property**") for clients and other parties (including affiliates) ("**Trust Property Creditors**"). The Administrators faced immediate calls for the return of Trust Property, which in many cases was critical to the businesses of the Trust Property Creditors.

4.1.2 After dealing with the return of Trust Property to Trust Property Creditors who claimed hardship and provided bespoke indemnities for their returns, the Administrators moved away from a bilateral approach to dealing with Trust Property and focussed on identifying a consensual contractual approach to the return to Trust Property. First, the Administrators contemplated a scheme of arrangement for dealing with

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client assets (see below under “The 2009 Scheme”). When this Scheme was not implemented, the Administrators developed a consensual contractual mechanism known as the “Claims Resolution Agreement” (see below under “Claims Resolution Agreement”).

## 4.2 The 2009 scheme

- 4.2.1 In early 2009, the Administrators engaged with the Creditors’ Committee to develop the outline of a scheme of arrangement to deal with Trust Property and notified Trust Property Creditors and the High Court of the intention to explore the feasibility of such a scheme. The scheme included provisions which enabled the net indebtedness between the Company and Trust Property creditors to be determined and for these amounts to be settled as part of the return of Trust Property. The scheme also contained a mechanism for allocating any stock shortfalls to the competing claims of Trust Property Creditors.
- 4.2.2 On 14 July 2009, the Administrators made an application to the High Court to commence the process of implementing the scheme of arrangement for Trust Property. An application to confirm that the High Court had jurisdiction to allow the scheme to be promoted on the terms proposed by the Administrators was heard on 29 and 30 July 2009. On 21 August 2009, Justice Blackburne determined that the High Court did not have jurisdiction to sanction the scheme. The Administrators filed an appeal in respect of this decision, however they ultimately decided to develop an alternative proposal for returning Trust Property, which became the Claims Resolution Agreement.

## 4.3 Claims Resolution Agreement

- 4.3.1 The claims resolution agreement (“**CRA**”) was a multilateral contract produced to govern the return of Trust Property. The CRA provided for the release of a signatory’s existing claims against the Company in relation to their Trust Property, in exchange for new rights.
- 4.3.2 In consideration for the release of their existing claims, a signatory would, in addition to any receipt of Trust Property (as stipulated in the CRA), also become entitled to have its unsecured claims or liabilities determined in accordance with the CRA, giving rise to a new “**Net Contractual Position**” under the CRA.
- 4.3.3 Under the terms of the CRA, in the event that a Trust Property Creditor’s Net Contractual Position was an amount payable to the Company, such liability would be applied against that creditor’s entitlement to its Trust Property. In the event that a Trust Property Creditor’s Net Contractual Position was a claim against the Company however, such claim would be admitted as an unsecured claim against the Company for the purposes of any future distributions from the Company’s unsecured estate.
- 4.3.4 The CRA was proposed by the Administrators on 24 November 2009 for collective approval and was therefore not subject to negotiation or amendment. The CRA was accepted by a wide majority of Trust Property Creditors. The bar date for claims in relation to Trust Property was set as 19 March 2010, with the first returns to clients pursuant to the CRA process being made shortly thereafter.
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## 5 Steps taken by the Administrators to determine unsecured claims

### 5.1 Project Canada and Claim Determination Deed development

- 5.1.1 On 2 December 2009, the Administrators obtained an order from the High Court pursuant to Rule 2.95 of the Insolvency Rules 1986, permitting a distribution to be made to unsecured creditors of the Company (the "**Rule 2.95 Order**").
- 5.1.2 On, or about, 4 December 2009, the Administrators sent to all parties they believed may have had a pre-Administration relationship with the Company (and whose addresses were known to them at that time), a notice pursuant to Rule 2.95 of the Insolvency Rules 1986 informing them that the Administrators proposed to make a distribution to the Company's unsecured creditors (the "**Distribution Notice**"). The Distribution Notice specified 31 December 2010 as the date up to which proofs of debt could be lodged (the "**Last Date for Proving**") which, by reason of Rule 2.97(1) of the Insolvency Rules 1986, required the Administrators to declare a dividend to unsecured creditors by 28 February 2011.
- 5.1.3 Sending out the Distribution Notice triggered the set-off provisions contained in Rule 2.85 of the Insolvency Rules 1986, providing the Administrators with greater certainty as to the quantum of claims in the Company's estate. In addition to this, following receipt of the Rule 2.95 Order, the Administrators actively encouraged creditors to submit their proofs of debt before the Last Date for Proving, which catalysed the unsecured claims determination process.
- 5.1.4 In seeking to affect a systematic, collective determination of unsecured claims, the Administrators were, however, hindered by the judgment given by the Court of Appeal in August 2010, in respect of the Administrators' application in relation to pre-Administration client money (the "**Client Money Appeal Judgment**").
- 5.1.5 The practical impact of the Client Money Appeal Judgment was to create considerable uncertainty as to: (i) which of the Company's creditors had client money claims, unsecured claims, or both; (ii) the value of the client money pool; and (iii) therefore, what funds, that would otherwise be available for distribution to the Company's unsecured creditors, might be needed to 'top up' the client money pool.
- 5.1.6 It was accordingly apparent that the Administrators would not be able to declare a distribution to unsecured creditors by 28 February 2011 as required by the Distribution Notice and following an application to the High Court by the Administrators, the Last Date for Proving was extended for a two-year period, to 31 December 2012.
- 5.1.7 The Administrators then focused on developing a process for unsecured creditors in order to accelerate the agreement of their claims, whilst also accommodating the uncertainty created by the Client Money Appeal Judgment. This process of development was undertaken in consultation with the Unsecured Creditors' Resolution Working Group (a sub-committee of the Creditors' Committee). This project was referred to externally as the "**Consensual Approach**" but was referred to internally as "**Project Canada**".
- 5.1.8 Project Canada proceeded on the basis that the Company would offer a creditor a single value representing the Company's determination of the creditor's claim(s) against the Company, taking account of the positions under all master agreements and other trading arrangements between the Company and the relevant creditor (the
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“**Company Determination**”). The Company Determination calculation was based on the Company’s own valuation methodology which the Administrators considered to be a reliable and pragmatic alternative to a bespoke assessment of the vast amount of counterparty-generated data. This approach ultimately proved to be acceptable to a significant proportion of unsecured creditors who accepted the Company Determination and entered into a claims determination deed (“**CDD**”) with the Company.

- 5.1.9 Creditors were advised that the Company Determination was not intended to be a matter for negotiation and that they were entitled either to accept or reject it. If the Company Determination was accepted, the agreement would be formalised in a CDD, which would also document the releases, ongoing rights and obligations between the Company and the relevant creditor. In addition, the CDDs set out a mechanism by which a creditor could notify the Company of a transfer of its claim to a third party. The Administrators wanted to ensure that, once a claim amount had been agreed, it could not subsequently be reopened by the creditor.
- 5.1.10 From a creditor’s perspective, entering into a CDD gave it certainty as to the amount of its claim and, upon the claim becoming an Admitted Claim pursuant to the terms of the CDD, an entitlement to participate in the dividends which would be paid in the Administration. In addition, if the creditor wished to sell its claim, the transfer notice mechanism ensured that both the creditor and the Administrators had a defined process by which the claim assignment would be acknowledged by the Company, which was regarded as beneficial in the claims trading market.
- 5.1.11 If the Company Determination was rejected, the creditor was advised that it would be able to negotiate its claim on a bilateral basis at a later stage.
- 5.1.12 In November 2010, the Company formally commenced the communication of the Company Determinations to creditors, including creditors who were not financial trading clients. The first CDD was executed on 30 November 2010. By 20 November 2017, the Company had executed approximately 1,800 CDDs with creditors, with an aggregate claim value of approximately £10.96 billion.
- 5.1.13 By admittance letters unilaterally issued by the Administrators, a further 228 claims were admitted with an Admitted Claim value of £1.36 billion.

## 5.2 **Bilateral claims agreement and Project Alaska**

- 5.2.1 The Administrators understood that, given the complexities of creditors’ positions, a number of counterparties were likely to prefer to have their claims reviewed in detail on a bilateral basis, rather than to accept the Company Determination.
  - 5.2.2 In the period from 15 March 2012 to 14 September 2012, the Administrators commenced a process to bilaterally agree the claims of creditors who had rejected the Consensual Approach. This undertaking was referred to internally as “**Project Alaska**”. The focus of Project Alaska was to seek to agree, reconcile or cap claims in order to reduce the reserves required to make distributions from the unsecured estate.
  - 5.2.3 In most instances, the bilateral agreement process required substantial further evidentiary documentation. Consequently, the time to agree (and admit) claims under this approach depended on the level of additional documentation to be
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provided, the complexity of the claim and the number of creditors seeking claims agreement through this approach.

- 5.2.4 Where bilateral agreement could not be reached on the value of creditors' claims, the Company unilaterally determined the value for which these claims would be admitted, rejecting the creditor's claim, or part thereof, to the extent they had proved for a greater amount. Creditors were then given the opportunity to challenge this decision by applying to the High Court within the prescribed period. All claims which were dealt with in this fashion have since been determined.

## 6 Payment of unsecured claims

- 6.1 As noted above, on 2 December 2009 the Administrators obtained from the High Court an order to convert the Administration into a distributing administration.
- 6.2 On 26 November 2012, the Administrators declared a first and interim dividend of 25.2 pence in the pound (the "**First Interim Dividend**") to be paid to all unsecured creditors with outstanding Admitted Claims. Payment in respect of the First Interim Dividend was made on or around 30 November 2012, with further catch-up payments made between this date and 27 June 2013. In total, approximately £1.972 billion was distributed to creditors pursuant to the First Interim Dividend.
- 6.3 Following the First Interim Dividend payment, the estimated financial outcome published in the Administrators' six-monthly progress report to creditors, dated 12 April 2013, showed, for the first time, an indicative outcome whereby a surplus could be available to unsecured creditors. This reflected the ongoing progress in the Administration to secure improved realisations against forecast recoveries and to (where appropriate) settle claims, particularly relating to the Company's affiliates, at amounts well below the levels claimed in proofs of debt. The Company also noted the gradual rise in the price quoted in respect of the trading of claims in the Administration, which by this stage had reached a price of around par.
- 6.4 On 19 June 2013, the Administrators declared a second interim dividend of 43.3 pence in the pound (the "**Second Interim Dividend**") to be paid to all unsecured creditors with outstanding Admitted Claims. Payment in respect of the Second Interim Dividend was made on or around 28 June 2013, with further catch-up payments made between this date and 28 November 2013. At the same time, payment of the first and final dividend of 100 pence in the pound was made to all preferential creditors (principally relating to overseas branch employees) whose claims had been admitted for dividend purposes. In total, approximately £4.396 billion was distributed to creditors pursuant to the Second Interim Dividend.
- 6.5 On 21 November 2013, the Administrators declared a third interim dividend of 23.7 pence in the pound (the "**Third Interim Dividend**") to be paid to all unsecured creditors with outstanding Admitted Claims. Payment of the Third Interim Dividend was made on or around 29 November 2013, with further catch-up payments made between this date and 29 April 2014. In total, approximately £2.965 billion was distributed to creditors pursuant to the Third Interim Dividend.
- 6.6 Finally, on 23 April 2014 the Administrators declared a fourth interim dividend of 7.8 pence in the pound (the "**Fourth Interim Dividend**") to be paid to all unsecured creditors with outstanding Admitted Claims, bringing the total dividends to 100 pence in the pound.
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Payment of the Fourth Interim Dividend was made on or around 30 April 2014, with further catch-up payments continuing to be made after this date. In total, approximately £2.979 billion has been distributed to creditors pursuant to the Fourth Interim Dividend.

- 6.7** In aggregate, distributions to creditors with Admitted Claims total £12.6 billion. After the payment in full of all Admitted Claims (save for where payment cannot be made on account of a creditor's failure to provide required information, but for which payment reserves are maintained) a significant Surplus remains.
- 6.8** On 14 February 2013 the Administrators issued the Waterfall I Proceedings to determine certain issues relating to creditors' entitlements to the Surplus. Further proceedings, namely the Waterfall II Proceedings, were issued in June 2014 in respect of further questions that arose as regards such entitlements, and other litigation has since been commenced concerning other issues in respect of creditor entitlements which have also arisen. A description of the Waterfall Proceedings and such other litigation is set out in paragraphs 7 (*Waterfall Proceedings*) to 10 (*The WHT Proceedings*) of this Appendix 4 (*Background to the Company, the Administration and the Surplus*) below.

## **7 Waterfall Proceedings**

The below paragraphs describe, for each of the Waterfall Proceedings, the legal issues considered in these proceedings.

Please note that, for simplicity, consecutive numbering has been adopted in the below paragraphs for the purpose of organising the issues which were heard in each set of legal proceedings. The numbering used below for any particular issue therefore may not correspond to the numbering given to that issue within documents which were used in the original legal proceedings.

### **7.1 Waterfall I Proceedings**

#### **7.1.1 Summary of the issues heard in the Waterfall I proceedings**

- (i) The Waterfall I Proceedings involved contractual and statutory interpretation and insolvency law matters, including issues which arose because of the Company's status as an unlimited company.
- (ii) Seven broad issues have been considered by the High Court (in the decision of Richards J dated 19 March 2014), the Court of Appeal (in its decision dated 14 May 2015) and most recently by the Supreme Court (in its decision dated 17 May 2017). The treatment of each of these issues at the various stages of proceedings is described below.

#### *Issue 1 - The ranking of the Company's Subordinated Debt*

- (iii) The High Court held that (a) the Subordinated Debt ranked behind all Provable Claims, Statutory Interest and Non-Provable Claims and (b) those prior ranking liabilities would have to be paid in full before the holder of the Subordinated Debt at the relevant time could submit a proof for the Subordinated Debt. The Court of Appeal agreed with the decision on the ranking of the Subordinated Debt, but held that the holder of the Subordinated Debt at the relevant time would be entitled to prove its claim before all prior-ranking claims had been paid in full (but with such proof to be
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valued at nil until such time as all prior-ranking claims had been paid in full). The Supreme Court agreed with the Court of Appeal on (a), but disagreed with the Court of Appeal's decision on (b) and upheld the High Court's decision that the proof for the Subordinated Debt could not be submitted until all amounts ranking ahead of it had been paid in full (or it was clear that such amounts could be met in full).

*Issue 2 - The scope of rights of foreign currency creditors*

- (iv) The High Court held that creditors of the Company who held provable, contractual or other claims which were denominated in a foreign currency, but who had received payment of the claim in a GBP sum, could have a non-provable "**Currency Conversion Claim**" against the Company where the sum they received by way of GBP dividend was, when converted to the original contractual currency as at the date of payment, less than that original foreign currency amount of the debt. Rule 2.86 of the Insolvency Rules 1986 requires debts payable in foreign currencies to be converted into GBP for the purpose of proving, using exchange rates at the Administration Date. A Currency Conversion Claim would arise if, owing to a decline in the value of GBP as against the foreign currency between the Administration Date and the payment date, the sterling sum paid to the creditor was at the time of the payment less than the foreign currency sum to which the creditor has been entitled. The High Court held that currency conversion claims were Non-Provable Claims. The Court of Appeal upheld this decision. However, the Supreme Court overturned both the Court of Appeal and High Court's decisions and found that Currency Conversion Claims do not exist and consequently, foreign currency creditors cannot claim for such losses caused by the depreciation of GBP against foreign currencies.

*Issue 3(a) - Impact of liquidation on claims to Statutory Interest arising under Rule 2.88(7) of the Insolvency Rules 1986*

- (v) The High Court held that, if the Company moved from administration into liquidation, any Statutory Interest which had become payable under Rule 2.88(7) during the Administration (as a result of a Surplus arising in the course of the Administration), but had not been paid prior to the commencement of the liquidation, could not subsequently be proved for in the liquidation (the "**Lacuna Issue**"). The Court of Appeal overturned this decision, holding that any Surplus which passed from the Administrator to the liquidator should be used first to satisfy any unpaid Statutory Interest which had arisen under Rule 2.88(7). The Supreme Court disagreed and restored the High Court's decision.

*Issue 3(b) - Impact of liquidation on contractual interest rights*

- (vi) The High Court held that, if the Company moved from administration into liquidation, any contractual or other rights to interest unconnected with the Administration which had accrued during the Administration but were unpaid before liquidation could be claimed as Non-Provable Claims in the liquidation. This point was appealed. The Court of Appeal considered this issue and concluded that in light of its finding in respect of Issue 3(a) above (i.e. that unpaid Statutory Interest could be claimed in a liquidation) it was
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not necessary to consider whether a creditor could have a claim to contractual interest as an alternative to Statutory Interest. The Supreme Court did consider the issue (since it overturned the Court of Appeal's finding in respect of Issue 3(a) above) and concluded, disagreeing with the High Court Judge, that contractual interest rights could not be revived in the liquidation as a Non-Provable Claim.

*Issue 4 - The scope of the obligation of members to contribute under section 74(1) of the Insolvency Act*

- (vii) This issue arose because the Company is an unlimited company and so its shareholders can be called upon to make contributions under section 74 of the Insolvency Act to meet the Company's debts and liabilities if the Company is in liquidation. The High Court held that the obligation to contribute under section 74 of the Insolvency Act extended to (i) debts proved in the liquidation, (ii) Statutory Interest on such debts as would be payable under section 189 of the Insolvency Act, and (iii) Non-Provable Claims. The Court of Appeal agreed with this position. The Supreme Court reaffirmed the decision in respect of Provable Claims and Non-Provable Claims. However, the Supreme Court disagreed with respect to Statutory Interest. It held that members could not be required to contribute funds to create a surplus out of which Statutory Interest could be paid (since the liability to pay Statutory Interest would only arise if there were a Surplus).

*Issue 5 - Whether a future liability to contribute can be the subject of proof in the administration or liquidation of a corporate contributory*

- (viii) The High Court held (and the Court of Appeal agreed) that the Company's Administrators would be entitled to lodge proofs in the distributing administration or liquidation of any shareholders in respect of those shareholders' contingent liability to contribute funds to meet the Company's debts and liabilities under section 74(1) of the Insolvency Act in the event that the Company were to go into liquidation. The Supreme Court disagreed, finding that the liability to contribute was not a provable obligation for which the Administrators could submit proofs.

*Issue 6(a) - The effect of set-off in the Administration*

- (ix) The High Court held that insolvency set-off took effect in the Administration between the contingent liabilities of shareholders under section 74(1) of the Insolvency Act and those Provable Claims which the shareholders had in Administration, in effect reducing the value of the shareholders Provable Claims. The Court of Appeal did not deal directly with this issue since there was common ground that, if the Court of Appeal upheld the High Court's finding for Issue 5 above, set-off would be applicable as found by the High Court Judge. However, since the Supreme Court disagreed with the High Court and the Court of Appeal on Issue 5 above, it also considered the insolvency set-off question. The Supreme Court concluded that insolvency set-off did not take effect as held by the High Court. The Supreme Court noted that its decision on set-off was not reliant upon its finding that the liability to contribute was non-provable (see Issue 5 above), since non-provable liabilities generally speaking could be subject to set-off in an
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administration, though the reasons why the liability to contribute was non-provable were also reasons why set-off did not take effect.

*Issue 6(b) - The effect of set-off in an administration or liquidation of LBHI2/LBL*

- (x) The High Court also held that in a distributing administration or liquidation of LBHI2 or LBL (the shareholders of the Company at the relevant time), any claims held by LBHI2 or LBL as creditors of the Company would be set-off against any claims the Company held in respect of LBHI2 or LBL's liability to contribute to the Company's debts and liabilities in the event the Company went into liquidation. This issue was appealed to the Court of Appeal but was not addressed in its judgment as it was common ground among the parties that, if the contingent liability for future calls under Section 74 of the Insolvency Act was provable in the administration or liquidation of LBHI2/LBL, set-off would be applicable. This issue was also not discussed before the Supreme Court.

*Issue 7 - The contributory rule*

- (xi) The "contributory rule" is the rule that a contributory of a company in liquidation cannot recover anything in respect of any claims the contributory has as a creditor until the contributory has fully discharged its obligations as a contributory. The High Court held that the Administrators were not permitted to rely upon the contributory rule in the Administration in order to refuse to admit LBHI2 or LBL's claims or to refuse to pay dividends on those admitted proofs. The Court of Appeal agreed. The Supreme Court rejected this decision and found that the contributory rule could properly be extended to distributing administrations so that Administrators would be allowed to retain sums otherwise payable to contributories in their capacity as creditors until such time as it became clear whether any amounts would be payable by the contributories.

#### **7.1.2 Current status of proceedings**

Following the Supreme Court's decision on these issues, the Waterfall I Proceedings have been concluded and no further rights of appeal can be exercised in respect of the issues described above.

## **7.2 Waterfall II Proceedings - Tranche A**

### **7.2.1 Summary of the issues heard in the Waterfall II Tranche A proceedings**

- (i) Tranche A of the Waterfall II Proceedings primarily addressed issues surrounding the proper calculation, as a matter of insolvency law, of interest for the period since the Administration Date, and provided further guidance as to the proper distribution of the Surplus. The High Court decision on Tranche A was given on 31 July 2015 (with certain supplemental issues being decided on 24 August 2016 and 17 October 2016) and the Court of Appeal gave its judgment on 24 October 2017.
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*Issue 1 - How dividends paid in the Administration are to be applied to sums owed to creditors*

- (ii) The High Court found that dividends paid in the Administration are first applied towards paying down a creditor's proved debt and the proved debt must be repaid in full before any surplus should be applied under Rule 2.88(7) of the Insolvency Rules 1986 to paying Statutory Interest accrued for periods post-administration during which the proved debt was fully or partially outstanding. The High Court Judge rejected the rule, based on a case known as *Bower v Marris*, that interest should be calculated on the basis that dividend payments are applied first to interest and then to principal (the "**Bower v Marris Argument**"). The Court of Appeal upheld this decision and refused permission to appeal. Two parties to the litigation have applied for permission from the Supreme Court to appeal.

*Issue 2 - The date from which interest on admitted future and contingent claims is payable*

- (iii) The High Court held that (a) Statutory Interest arising under Rule 2.88(7) of the Insolvency Rules 1986 started to accrue on admitted contingent debts from the Administration Date (rather than any later date on which the relevant contingency occurred), since the interest was intended to compensate for a delay in payment of admitted debts from the Administration; (b) the same principle applied to admitted future debts; and (c) this right to Statutory Interest on admitted contingent/future debts was not affected by a creditor's accession to the CRA. Finding (a), relating to contingent debts, was appealed. The Court of Appeal dismissed this appeal and refused permission to appeal to the Supreme Court. A party to the litigation has applied for permission from the Supreme Court to appeal.

*Issue 3 - The entitlement of a creditor to interest on the late payment of Statutory Interest*

- (iv) The High Court held that creditors were not entitled to interest on Statutory Interest for the period between the Provable Claim being repaid and the payment of Statutory Interest on that Provable Claim, since the insolvency legislation did not provide a timeframe for when Statutory Interest must be paid, nor did it provide for interest on Statutory Interest. The Court of Appeal upheld this decision and rejected arguments that the court should recognise a common-law entitlement to compensation for late payment of a statutory entitlement. The Court of Appeal refused permission to appeal. No parties have applied to the Supreme Court for permission to appeal this point.

*Issue 4 - The scope of "the rate applicable to the debt apart from the administration" in Rule 2.88(9) of the Insolvency Rules 1986*

- (v) The High Court held that these words did not include either (a) a judgment rate of interest applicable to a judgment actually obtained after the administration commenced; or (b) a judgment rate of interest which would have been applicable to a judgment that could have been obtained before the start of administration but was not in fact actually obtained. Consequently, foreign judgment rates of interest higher than the English judgment rate of 8% could have no impact on the calculation of Statutory
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Interest under Rule 2.88(9) unless the foreign judgment was in fact obtained prior to commencement of the administration. The Court of Appeal upheld the decision and refused permission to appeal. None of the parties are seeking permission from the Supreme Court to appeal this point.

*Issue 5 - Compound interest under Rule 2.88(7) of the Insolvency Rules 1986*

- (vi) The High Court held that (a) a creditor entitled under Rule 2.88(7) to Statutory Interest at the 8% rate specified in the Judgments Act should receive interest on a simple (not compounding basis); (b) a creditor who was entitled to a contractual rate of compounding interest which would give rise to a higher amount of interest than the 8% judgment rate should receive that compound interest under Rule 2.88(7); (c) where Statutory Interest was payable on such a compounding basis, it would stop compounding once the principal debt had been paid in full, since Rule 2.88(7) makes interest payable only while all or a part of a Provable Claim is outstanding post-administration; and (d) any shortfall arising because interest stopped compounding upon full payment of the principal debt did not give rise to a Non-Provable Claim in respect of such shortfall. Point (c) was appealed but the Court of Appeal upheld the High Court's decision. A party to the litigation has applied to the Supreme Court for permission to appeal this point.

*Issue 6 - The correct approach to calculating which is "the greater of" the two interest options available under Rule 2.88(9) of the Insolvency Rules 1986*

- (vii) The High Court held that: (a) it was not correct to compare the numerical percentage rates of interest available under the judgment rate and a contractual rate, but instead the comparison must be between the total amounts of interest payable based on each method of calculation; (b) if different parts of a proved debt would attract different rates of interest, the proved debt must be broken down into its constituent parts so that the correct interest could be applied to each part accordingly; and (c) for the purpose of calculating the total amount of interest payable apart from the administration, the calculation is from the date of the administration. These decisions of the High Court were not appealed.

*Issue 7 - Non-provable claims for any shortfall in interest*

- (viii) The High Court held that, where a creditor does not recover as much interest on its provable claim under Rule 2.88(7) of the Insolvency Rules 1986 as it might have done absent the Administration (e.g. because, absent the Administration, the Bower v Marris Argument would have applied to that creditor's claim – see Issue 1 of Waterfall II Tranche A above), that creditor does not have the right to make a further Non-Provable Claim in respect of any such shortfall. This issue was appealed to the Court of Appeal. However, as a result of the finding of the Supreme Court in the Waterfall I Proceedings that Rule 2.88 provides a complete statutory code for calculation of post-administration interest and leaves no scope for Non-Provable Claims in relation to post-administration interest, this issue fell away and was not considered in the Court of Appeal's judgment in Tranche A.
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*Issue 8 - Calculation of interest in a Leap Year*

- (ix) The High Court held that where Statutory Interest must be calculated for a period falling partly or wholly within a Leap Year (i.e. a year starting on 15 September and including 29 February), the daily rate to be used for calculating that part of the period which fell within that year was the Judgments Act rate divided by 366. The decision of the High Court was not appealed.

*Issue 9 - Accounting for Statutory Interest for Non-Provable Claims*

- (x) The High Court held that if a creditor has a Non-Provable Claim (excluding Non-Provable Claims to interest, but including Currency Conversion Claims), the calculation of that Non-Provable Claim should not account for (i.e. be reduced by) any Statutory Interest paid to that creditor in respect of the principal claim from which the Currency Conversion Claim arises. This issue was appealed but the issue fell away prior to the Court of Appeal giving its judgment in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of Waterfall I Proceedings issues above).

*Issue 10 - Non-Provable Claims to interest on a Non-Provable Claim*

- (xi) The High Court held that, where a creditor's Non-Provable Claim (including a Currency Conversion Claim) would, apart from the administration, attract payment of contractual interest for a period after the Administration Date, then the creditor would have also a Non-Provable Claim in respect of such interest. This issue was appealed but the issue fell away prior to the Court of Appeal giving its judgment because of the Supreme Court's finding in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above) and its reasoning that Rule 2.88 of the Insolvency Rules 1986 does not leave scope for non-provable interest claims, i.e. there were no longer any potential Non-Provable Claims to which this issue could apply, therefore the parties did not require the Court of Appeal to decide the issue (although the parties reserved the right to raise this issue in the future if any other interest-bearing non-provable claim is found to arise).

*Issue 11 - Currency conversion interest claims*

- (xii) Although the High Court had earlier acknowledged the existence of non-provable Currency Conversion Claims in respect of principal debts denominated in a foreign currency (see Issue 2 of Waterfall I issues above), the High Court held that foreign currency creditors did not have a Non-Provable Claim to interest where sums of Statutory Interest paid on the Sterling Admitted Claim (either on the Judgments Act rate of 8% or on a rate "apart from the administration") were less than the amount of interest which they would have received in the original currency. This determination was without prejudice to the finding that non-provable interest claims in respect of Non-Provable Claims might arise on a different basis (see Issue 10 above). This issue was appealed but fell away prior to the Court of Appeal giving its judgment in light of the finding by the Supreme Court in the Waterfall I Proceedings that Rule 2.88 of the Insolvency Rules 1986 provides
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a complete statutory code for the calculation of post-Administration interest and did not include Non-Provable Claims in respect of interest.

- (xiii) In further decisions on 24 August 2016 and 17 October 2016, the High Court also determined a number of supplemental issues relating to the issues in the main Tranche A proceedings:

*Issue 12 - Statutory Interest on close-out sums*

- (xiv) The High Court held that, where a creditor had a Provable Claim in respect of a contractual close-out sum arising post-Administration (e.g. a creditor who had triggered close-out provisions under an ISDA Master Agreement), then the “rate applicable to the debt apart from the administration” under Rule 2.88(9) of the Insolvency Rules 1986 could be the contractual rate of interest which would, under the terms of the contract, accrue once the close-out sum became due and payable (interest at such rate being calculated from the date the entitlement to interest started under the contract). The Court of Appeal upheld this decision and refused permission to appeal to the Supreme Court. None of the parties to the litigation have applied to the Supreme Court for permission to appeal this point.

*Issue 13 - Timing for Statutory Interest determined on a contractual basis*

- (xv) The High Court held that: (a) where a creditor was entitled to Statutory Interest on a Provable Claim based on the “rate applicable to the debt apart from the administration” and the rate for that entitlement was a contractual rate which only started to run under the contract from a date after the Administration Date, then the “rate applicable to the debt apart from the administration” between the Administration Date and the date when the interest first started to run under the contract would be zero; and (b) for the purpose of determining under Rule 2.88(9) of the Insolvency Rules 1986 whether an entitlement to interest on this basis was greater or lower than an entitlement based on the Judgments Act rate, the interest for the periods before and after the date on which the contractual interest started to run should be taken together (since the Judgments Act rate was calculated from the Administration Date). The decision of the High Court was not appealed.

*Issue 14 - Contingent/future debts and currency conversion claims*

- (xvi) This supplemental issue arose from the finding described at Issue 10 above. The High Court determined that if a creditor (a) had a debt which was contingent or future at the Administration Date; (b) that debt arose under a contract which provided that interest would run on the debt upon an event or contingency occurring after the Administration Date; and (c) the creditor also had a non-provable Currency Conversion Claim in relation to the principal debt, then the rate of interest provided for under the contract in relation to the principal debt would also be payable on the non-provable Currency Conversion Claim, provided that the future event or contingency required under the contract in fact occurred (and such interest would only be payable according to the terms of the contract). This finding was not appealed and, in any event, no longer has any application following the decision of the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist.
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*Issue 15 - Currency conversion claims and set-off*

- (xvii) The High Court held that a creditor does not have a Currency Conversion Claim arising from the discharge of a debt by way of set-off under Rule 2.85(3) of the Insolvency Rules 1986 as a result of the depreciation of sterling between the Administration Date and the date when account is taken for the purpose of set-off. This was because set-off operated to discharge the creditor's claim (to the extent of the set-off) as at the Administration Date (with the balance after set-off being the creditor's Provable Claim) and any claims in a foreign currency were converted into sterling for the purpose of set-off at the exchange rate at the Administration Date. This issue was appealed, however the issue fell away prior to the Court of Appeal giving its judgment in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims did not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

*Issue 16 - Accounting for Statutory Interest on Non-Provable Claims to interest*

- (xviii) The High Court held that a creditor's Non-Provable Claim to contractual interest on its non-provable Currency Conversion Claim should not be reduced by the amount of any Statutory Interest paid on the Provable Claim (from which the Currency Conversion Claim arose), even if the effect of this was that the combined amount of Statutory Interest paid on the Provable Claim and the contractual interest paid on the Non-Provable Claim would exceed the contractual interest which the creditor would have been entitled to receive on its total foreign currency debt. This issue was appealed; however the issue fell away prior to the Court of Appeal giving its judgment in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

**7.2.2 Current status of the proceedings and impact of the Scheme on the proceedings**

- (i) Following the Court of Appeal's judgment (and owing to the Supreme Court's judgment in the Waterfall I Proceedings) several of the issues in Tranche A have fallen away. The only issues still live following the Court of Appeal's judgment are Issue 1 (the applicability of the Bower v Marris Argument), Issue 2 (finding (a) only – that Statutory Interest on contingent debts runs from the Administration Date) and Issue 5 (finding (c) only – that Statutory Interest calculated on a compounding basis stops compounding once the principal debt has been repaid). One or more parties have sought permission from the Supreme Court to appeal each of these three issues (the "**Appeal Applications**").
- (ii) Following the execution of the Lock-Up Agreement, the Administrators (with the agreement of the other parties to the appeals) contacted the Supreme Court on 10 January 2018 to ask for the Supreme Court's decision on the Appeal Applications to be deferred. As a result, the Supreme Court deferred its decisions in relation to the Appeal Applications until either the Scheme becomes effective or it becomes apparent that the Scheme will not be
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implemented. On 30 April 2018, the Administrators provided the Supreme Court with an update concerning the Scheme and asked the Supreme Court to confirm its willingness to continue to defer its decisions in relation to the Appeal Applications. On 1 May 2018, the Supreme Court confirmed that the stay of the Appeal Applications has been extended to 29 June 2018.

If the Scheme becomes effective, the Appeal Applications will be withdrawn as a result of the relevant litigation being settled.

### **7.3 Waterfall II Proceedings - Tranche B**

#### **7.3.1 Summary of the issues heard in the Waterfall II Tranche B proceedings**

- (i) Tranche B of the Waterfall II Proceedings deals with the construction and effect of certain agreements made between the Company and a large number of its creditors post-Administration, specifically matters concerning the effect on certain Non-Provable Claims of release clauses in these post-Administration contracts.

*Issue 1 - The effect of the CRA and CDDs on Currency Conversion Claims*

- (ii) The High Court held that neither the CRA nor any CDDs had, as a matter of construction, the effect of releasing creditors' rights to Currency Conversion Claims. The issue as it related to CDDs was appealed, however the issue fell away prior to the Court of Appeal giving its judgment, in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

*Issue 2 - The effect of the CRA or CDDs on rights to Statutory Interest*

- (iii) The High Court held that neither the CRA nor any CDDs had, as a matter of construction, the effect of releasing creditors' rights to Statutory Interest under Rule 2.88 of the Insolvency Rules 1986. This finding was not appealed.

*Issue 3 - Whether the CRA gives rise to Currency Conversion Claims*

- (iv) The High Court held that the CRA did not, as a matter of construction, give rise to Currency Conversion Claims. This finding was not appealed and in any event no longer has any application in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

*Issue 4 - The principle in ex parte James*

- (v) The High Court found that, if (contrary to the Court's findings) the CRA or any CDDs did have the effect of releasing any Currency Conversion Claims, the High Court would have directed the Administrators not to enforce such releases. The High Court would have done so either under the principle in *ex parte James* (1987) LR 9 Ch App 609 or under paragraph 74 of schedule B1 to the Insolvency Act. This issue was appealed but the issue fell away prior to the Court of Appeal giving its judgment in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion
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Claims did not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

- (vi) In a further hearing, the High Court also determined the following two supplemental issues relating to the issues in the main Tranche B proceedings.

*Issue 5 - Waiver of Non-Provable Claims to a shortfall in interest*

- (vii) The High Court held that, if the finding in Tranche A in respect of Non-Provable Claims for a shortfall in interest (see Issue 7 in the Waterfall II Proceedings Tranche A issues above) was wrong, and consequently a creditor could have a Non-Provable Claim for a shortfall of interest on a proved debt where its full entitlement to contractual interest was not satisfied, then such a Non-Provable Claim would fall within the scope of the releases/waivers provided by the CRA and CDDs, and the Administrators would not be directed to pay such a claim. This issue was appealed to the Court of Appeal. However, owing to the judgment of the Supreme Court in the Waterfall I Proceedings that Rule 2.88 of the Insolvency Rules 1986 provides a complete statutory code for the calculation of post-Administration interest, leaving no scope for Non-Provable Claims in respect of post-Administration interest, this issue fell away and was not considered in the Court of Appeal's judgment in Tranche A.

*Issue 6 - Waiver of Non-Provable Claim to interest on Currency Conversion Claims*

- (viii) The High Court found that (a) if a creditor had a Non-Provable Claim to interest on a Currency Conversion Claim (see Issue 10 in the Waterfall II Proceedings Tranche A issues above) then such a claim would be released by the CRA but not by the CDDs, and (b) if, on their true construction, the CDDs of a creditor who was not a party to the CRA did release such a claim, the Administrators would be directed to pay the claim on the same basis as the High Court would have directed the Administrators to pay the Currency Conversion Claims themselves, i.e. on the basis of unfairness (see Issue 4 above). This issue was appealed but the issue fell away prior to the Court of Appeal giving its judgment in light of the decision by the Supreme Court in the Waterfall I Proceedings that Currency Conversion Claims do not exist (see Issue 2 in the description of the Waterfall I Proceedings issues above).

**7.3.2 Current status of proceedings and impact of the Scheme on the proceedings**

All of the issues that were subject to appeal in the Tranche B proceedings have fallen away as a result of the Supreme Court decision in the Waterfall I Proceedings. Following that Supreme Court decision, the parties to the Tranche B proceedings confirmed to the Court of Appeal that the issues from Tranche B were no longer live, and as a result the Court of Appeal did not make findings in its judgment in respect of any Tranche B issues. The Scheme does not impact on the Tranche B proceedings, as the issues concerning Non-Provable Claims in the Tranche B proceedings are not being compromised by the Scheme.

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## 7.4 Waterfall II Proceedings - Tranche C

### 7.4.1 Summary of the issues heard in the Waterfall II Tranche C proceedings

- (i) Tranche C of the Waterfall II Proceedings deals with the construction of standard form interest provisions contained in English and New York law ISDA Master Agreements and other relevant financial contracts entered into between the Company and counterparties before the Administration. The interest provisions in these standard form contracts are relevant as they may give rise to an entitlement to interest at a rate other than the 8% Interest Rate, i.e. a rate higher than the judgment rate of 8% per annum. The issues fall into two broad categories:
  - (a) the construction of the definition of the “Default Rate” in the ISDA Master Agreements. The Default Rate is defined as “a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum”; and
  - (b) creditors’ entitlements to seek interest on the close-out amount under German Master Agreements following their termination as a result of the Administration.
- (ii) Initially, the proceedings also raised a set of issues concerning certain euro-denominated French agreements (the AFB Master Agreement, the AFTB French Master Agreement, the AFTI French Master Agreement and the FBF Master Agreement). However, the parties to the Tranche C litigation reached an agreed position on 11 September 2015 in respect of the AFB/FBF French Master Agreements ahead of the hearing and considered the issues of the AFTB/AFTI French Master Agreements to be *de minimis* and consequently the Administrators filed an amended application to withdraw all issues relating to French agreements from their application.
- (iii) The High Court decision on Tranche C was given on 5 October 2016.

#### ISDA issues

##### *Issue 1 - Whose cost of funding is relevant?*

- (i) The High Court held that, for all periods in respect of which interest was to be calculated, the “relevant payee” was the original counterparty and therefore it was necessary to identify the original counterparty’s cost of funding even for a period after which it had assigned/transferred the right to receive a close-out payment (and associated rights) under the ISDA Master Agreement to a third party. This issue is not being appealed.

##### *Issue 2 - What is meant by “cost of funding”?*

- (ii) The High Court held that the wording “the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount”: (a) referred to the cost which the relevant payee paid, or would have been required to pay, in borrowing the relevant amount under a loan transaction; and (b) did not include (i) any cost of equity funding, (ii) costs or financial consequences to the relevant payee of carrying a defaulted Company receivable on its balance sheet, nor (iii) an actual or
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asserted cost to the relevant payee to fund or of funding a claim against the Company. All these findings are being appealed except (b)(iii).

*Issue 3 - What is a relevant "cost"*

- (iii) The High Court held that the relevant "cost" must involve the incurring of a compulsory and non-discretionary obligation (actual or hypothetical) to pay a non-discretionary sum of money, and that the obligation was to be incurred in obtaining the funding (and as part of the bargain entered into to obtain such funding) which would have been required to address the cash short-fall caused by the non-payment of the relevant amount. The relevant "cost" did not include (i) any other kind of financial detriment, (ii) any loss of profits or consequential losses arising from the non-payment of the relevant amount; nor (iii) professional or arrangement fees incurred by the relevant payee except for fees paid to a lender as part of the price of borrowing the relevant amount. To be a relevant "cost" the rate of borrowing could not exceed the rate the borrower knew to be available to it (or could be available to it) in the circumstances pertaining to its business, having regard to the permitted object of the actual/hypothetical borrowing (to cover the relevant amount). All these findings are being appealed except the finding that "cost" does not include loss of profits or consequential losses.

*Issue 4 - How should any "cost of borrowing" be assessed*

- (iv) The High Court held that (a) the borrowing should be assumed to permit recourse to the relevant payee's unencumbered assets generally rather than just its claim against the Company; (b) on this basis, the cost of borrowing should reflect only the incremental cost of incurring the additional debt against the relevant payee's existing asset base (and should not include the weighted average cost of all its borrowings); and (c) the cost of borrowing should not take into account any impact which the additional borrowing might have on the entity's remaining borrowing and cost of equity. All of these findings are being appealed.

*Issue 5 - The relevant duration for calculating cost of borrowing*

- (v) The High Court held that, depending on the particular facts and circumstances, it may be rational and in good faith for the relevant payee to certify its cost of borrowing on the basis of either (i) overnight funding, (ii) term funding to match the period of duration of the relevant payee's claim against the Company, or (iii) some other duration. This finding is not being appealed.

*Issue 6 - The factors the relevant payee can consider*

- (vi) The High Court held that the cost of funding could be calculated: (a) by reference to the relevant payee's circumstances on a particular date (e.g. the time when the need to obtain the funding arose); (b) on a fluctuating basis across other points in time to take into account any changes in the relevant payee's circumstances; and (c) by reference to market conditions and other relevant facts and circumstances. The calculation must be made rationally and in good faith. This finding is not being appealed.
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*Issue 7 - The grounds for challenging a relevant payee's Certification*

- (vii) The High Court held that a relevant payee's Certification of its cost of borrowing for the purpose of applying the "Default Rate" was conclusive unless the Certification: (a) was made irrationally or otherwise than in good faith; (b) contained a numerical or mathematical error; or (c) did not comply with the Court's findings in respect of what cost of funding includes as set out in Issues 2 to 6 above. This finding is not being appealed.

*Issue 8 - Burden of proof when challenging a relevant payee's Certification*

- (viii) The High Court held that where the defaulting party (i.e. the Company) sought to challenge a relevant payee's Certification, the defaulting party would bear the burden of proving, on the balance of probabilities, that the Certification had not met the relevant requirements (i.e. the requirements set out in Issue 7 above). This finding is not being appealed.

*Issue 9 - Who can provide the Certification*

- (ix) The High Court confirmed the position agreed between the parties that anyone expressly or impliedly authorised by the relevant payee can certify the cost of funding on its behalf (such authorisation being a question of fact in each case). Where the payee was incapable of providing a Certification, the Court would determine what decision the relevant payee would have made had it determined its cost of funding properly. This finding is not being appealed.

*Issue 10 - The right to transfer amounts payable by the defaulting party*

- (x) The High Court confirmed the position agreed between the parties that the power of a non-defaulting party to transfer any amount payable to it from a defaulting party under section 7(b) of the 1992 ISDA Master Agreement without the prior written consent of the defaulting party included the power to transfer any contractual right to interest under that agreement. This finding is not being appealed.

*Issue 11 - Whether these findings apply to New York and English law-governed ISDA Master Agreements*

- (xi) The High Court held that the findings it had made in relation to cost of funding for the definition of Default Rate under the ISDA Master Agreement (i.e. the findings discussed in Issues 1 to 10 above) applied whether the underlying agreement was governed by New York or English law. This finding is being appealed to the extent that, while the parties agree on the principles of contractual construction under New York law, the party appealing this point contends that certain of the conclusions reached by the Judge do not reflect the true meaning and effect of the New York law governed ISDA Master Agreement.

**German Master Agreement Issues**

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*Issue 12 - Whether provisions of the German Civil Code permit claims for further damages for delayed payment*

- (xii) The High Court held that: (a) a creditor with a claim against the Company under a German Master Agreement (which did not provide for a specific interest rate on a close-out sum after termination) could not rely on section 288(4) of the German Civil Code to make a “further damages” claim for the delayed payment of the close-out amount; (b) even if such a claim were permitted, it would not be a right existing as at the Administration Date and therefore could not constitute a “rate applicable to the debt apart from the administration” for the purposes of Statutory Interest under Rule 2.88(9) of the Insolvency Rules 1980; (c) if (b) was wrong and such a claim existed and was a rate apart from the administration then, where a relevant claim had been transferred to a third party, the relevant damages claim (for the purposes of calculating a rate apart from the administration) would be that which could be asserted by the transferee only; and (d) if (c) was wrong and the relevant damages claim was that of the transferor, there would be no cap on the amount of further damage the assignee could claim. These findings are not being appealed.

**7.4.2 Current status of proceedings and impact of the Scheme on the proceedings**

- (i) As detailed above, a number of the High Court’s findings in the Tranche C proceedings are being appealed. An appeal hearing is scheduled to commence on 3 July 2018.
- (ii) The Scheme provides for the full and final settlement of those issues still subject to litigation in these proceedings, on terms that the existing High Court decision applies. If the Scheme becomes effective, the appeal currently in progress will be withdrawn.

**7.5 Waterfall III Proceedings**

**7.5.1 Summary of the issues heard in the Waterfall III Proceedings**

The Waterfall III Proceedings addressed certain questions concerning contributory claims and other affiliate issues. These proceedings were commenced in April 2016 further to an application issued by the Administrators. The proceedings were concerned with:

- (i) the scope of contribution claims the Company might make against LBHI2 and/or LBL as members of the Company at the relevant time;
- (ii) how insolvency set-off could operate between a contribution claim made by the Company against its members and the provable claims of those members against the Company;
- (iii) the rights of LBHI2/LBL (being the shareholders of the Company at the relevant time) as against each other in respect of any contribution they might be required to make to the Company’s assets;
- (iv) the existence and impact of any ability of LBL to recharge certain liabilities to the Company and/or LBEL; and
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- (v) issues concerning whether LBL was in fact a shareholder of the Company and consequently whether it in fact had any liability to the Company as a contributory.

#### **7.5.2 Current status of proceedings and impact of the Scheme on the proceedings**

The issues in the Waterfall III Proceedings were, for procedural purposes, divided into two parts:

- (i) Part A concerned primarily legal issues and was heard at a trial commencing on 30 January 2017; and
- (ii) Part B concerned issues of fact and was scheduled to be heard at a trial commencing on 11 September 2017.

A commercial settlement between the parties to these proceedings was reached following the Part A trial (but before judgment was given) and several months in advance of the date scheduled for the Part B trial, and the High Court gave directions in relation to the parties' entry into that settlement on 1 August 2017. The settlement became effective on 6 September 2017 and the Waterfall III Proceedings were dismissed by a court order sealed on 20 December 2017. Since the Waterfall III Proceedings have already been dismissed, the Scheme has no impact on these proceedings.

#### **7.5.3 Impact of settling the proceedings on creditors**

As explained above, these proceedings were settled prior to and independently of the Scheme.

## **8 The Lacuna Application**

### **8.1 Summary of the issues in the Lacuna Application**

**8.1.1** These proceedings arose out of the Supreme Court's finding in the Waterfall I Proceedings that any unpaid Statutory Interest arising from the Administration cannot be claimed in a subsequent liquidation (see issue 3(a) in the description of the Waterfall I Proceedings above). The impact of this finding is that, at the commencement of a liquidation, such sums that would otherwise be payable as Statutory Interest in the Administration would instead flow down to the holder of the Subordinated Debt (i.e. the Subordinated Creditor) and, depending on the amount of such sums, eventually to the Shareholder.

**8.1.2** On 24 October 2017, the Subordinated Creditor wrote to the Administrators, purportedly pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act, to seek a creditors' decision to bring about the termination of the Administration and the commencement of a liquidation (the "**Paragraph 56(1) Request**"). In response, the Administrators:

- (i) made clear that they would not accede to the Paragraph 56(1) Request without first seeking directions from the High Court;
  - (ii) stated that they consider there to be significant legal questions which arise in respect of the Paragraph 56(1) Request; and
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- (iii) invited an immediate withdrawal of the Paragraph 56(1) Request and, if the withdrawal was not forthcoming, indicated that they would seek the High Court's directions.

**8.1.3** The Paragraph 56(1) Request was not withdrawn, and so on 28 November 2017 the Administrators issued the Lacuna Application, which sought direction from the High Court including as to whether, taking into account all the circumstances, the Administrators are obliged to comply with the Paragraph 56(1) Request or whether the High Court should direct the Administrators not to seek a decision of the Company's creditors.

## **8.2 Current status of proceedings and impact of the Scheme on the proceedings**

Pursuant to the Lock-Up Agreement, the Administrators and the Subordinated Creditor contacted the High Court to seek a stay of these proceedings. Under a consent order sealed by the High Court on 12 January 2018, these proceedings are now stayed pending the Scheme becoming fully effective. In the event the Scheme does not become fully effective, the parties will apply to lift the stay and agree a revised procedural timetable.

If the Scheme becomes effective, steps will be taken to have the High Court dismiss the Lacuna Application.

## **9 Third party challenges to creditor proofs – the Olivant Application**

### **9.1 Summary of the issues in the Olivant Application**

**9.1.1** Under Rule 14.8(3) of the Insolvency Rules, a creditor is entitled to challenge an office-holder's decision to admit another creditor's proof, provided such challenge is made within 21 days of the third party creditor becoming aware of the office holder's decision. Only one challenge of this nature has been made in the Administration to date. On 19 September 2017, the Subordinated Creditor issued the Olivant Application, seeking to reverse or vary the Administrators' decision to admit a proof submitted by Olivant Investment Switzerland S.A. ("**Olivant**") for an agreed amount of £555,250,000 (the "**Olivant Proof**"), which is the largest Admitted Claim in the administration. This amount had been agreed by way of a CDD (the "**Olivant CDD**") between the Company and Olivant, following negotiations between the parties after Olivant submitted a proof for its claim in the sum of over £800 million.

**9.1.2** A number of issues have been identified by the Administrators as requiring determination in these proceedings as a preliminary matter. These are:

- (i) can a proof admitted pursuant to a CDD be subject to a third-party challenge under Rule 14.8(3);
  - (ii) if the Olivant CDD does not prevent a third-party challenge, should the High Court re-open the claim and conduct its own valuation, or take some other approach;
  - (iii) what directions could/would the High Court give were it to find that the claim should have been admitted for a different amount; and
  - (iv) whether the Wentworth Group have made the application within the 21-day window (or should otherwise be granted permission to bring the application out of time).
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9.1.3 Lehman Brothers Opportunity Holdings Inc (“**LBOH**”), has applied to be joined to the application but the High Court has not yet determined its application. The Wentworth Group have also applied to amend its application to introduce (a) an application under Rule 14.11 of the Insolvency Rules for the Olivant Proof to be reduced to an amount of £223.2 million and (b) an application under section 74 of Schedule B1 to the Insolvency Act for the Olivant CDD to be set aside. This application to amend has not yet been heard by the High Court.

## 9.2 Current status of proceedings and the impact of the Scheme on the Olivant Application

9.2.1 Following a case management hearing, the High Court decided that the issues set out in paragraphs 9.1.2(i) to 9.1.2(iii) of this Appendix 4 (*Background to the Company, the Administration and the Surplus*) above should be heard as preliminary issues, and that it would re-consider in early March 2018 whether the issue set out in paragraph 9.1.2(iv) of this Appendix 4 (*Background to the Company, the Administration and the Surplus*) above should also be a preliminary issue. The procedural timetable provided for a trial of preliminary issues in June 2018.

9.2.2 Pursuant to the Lock-Up Agreement, the Administrators and the Wentworth Group have taken steps to stay these proceedings. Under a consent order sealed by the High Court on 12 January 2018, these proceedings (including the joinder application of LBOH) are now stayed pending the Scheme becoming effective. In the event the Scheme does not become effective, the parties will apply to lift the stay and agree a revised procedural timetable.

9.2.3 If the Scheme becomes effective, further procedural steps will be taken to achieve the dismissal of the application.

## 10 The WHT Proceedings

### 10.1 Summary of the issues in the WHT Proceedings

10.1.1 The Company’s creditors are to be paid Statutory Interest pursuant to rule 2.88(7) of the Insolvency Rules 1986 (“**Rule 2.88(7)**”). If payments of Statutory Interest to creditors under Rule 2.88(7) constitute payments of “yearly interest” for the purposes of section 874 of the Income Tax Act 2007 (“**Section 874**”), the Administrators have an obligation to deduct income tax from such payments at the basic rate (currently 20%) subject to any applicable exemptions. If payments of Statutory Interest are not “yearly interest”, the obligation to deduct income tax does not apply.

10.1.2 Since the term “yearly interest” is not defined in legislation, an application was made by the Administrators to the High Court in December 2015, seeking guidance on whether Statutory Interest payments constitute “yearly interest” for the purposes of Section 874. In October 2016, the High Court found that Statutory Interest payments were not “yearly interest” since such payments did not have certain qualities which are features of “yearly interest”. Specifically:

- (i) **Accrual** - “yearly interest” must be capable of accruing from day to day. As the right to Statutory Interest only arises if and when a surplus in the administration of the company is established, it does not accrue from the date the company enters administration to when the admitted claim is paid: it is merely calculated by reference to this period;

- (ii) **Recurrence** – “yearly interest” is payable from year to year. The High Court found that, since a Statutory Interest payment is a one-off lump sum entitlement, it does not fulfil the requirement for recurrence; and
- (iii) **Underlying debt akin to a loan or an investment** – “yearly interest” accrues on an arrangement of a nature akin to a loan or an investment, where the parties intend the debt to accrue interest for more than one year. The High Court found that the statutory moratorium imposed on companies in administration suggested no such intention.

**10.1.3** Following the High Court’s judgment, there was no obligation on the Administrators to withhold income tax from payments of Statutory Interest.

**10.1.4** However, the Court of Appeal, on an appeal by HMRC, reversed the High Court’s judgment in a decision dated 19 December 2017. The Court of Appeal held that interest need not accrue prospectively to qualify as “yearly interest”; retrospective accrual was sufficient. Moreover, the obligation to pay interest was unlimited in terms of time, was calculated by reference to a per annum rate of interest and therefore had the necessary quality of recurrence (despite being calculated retrospectively and being paid in one lump sum) and contemplated a period of administration which could (and in fact did) last for over a year. Consequently, Statutory Interest met the requirements for “yearly interest” in that it is payable from year to year whilst accruing from day to day.

**10.1.5** Following the Court of Appeal’s judgment, the Company has an obligation to withhold amounts representing income tax from payments of Statutory Interest unless an exemption applies.

## **10.2 Current status of the WHT Proceedings and impact on the Scheme**

**10.2.1** The Court of Appeal refused the Administrators permission to appeal but an application for permission to appeal has now been made to the Supreme Court. The outcome of this application is, as yet, unknown. The amounts of Statutory Interest received by Scheme Creditors under the Scheme may be affected by the final outcome of this litigation.

**10.2.2** The possible outcomes of the WHT Proceedings are:

- (i) if the litigation is concluded in favour of HMRC, deductions of income tax pursuant to Section 874 will be required from payments of Statutory Interest unless an exemption applies; or
- (ii) if the litigation is concluded in favour of the Company, no obligation to deduct income tax pursuant to Section 874 will arise in relation to Statutory Interest payments under the Scheme.

**10.2.3** Pending the conclusion of the WHT Proceedings, the Company will withhold income tax from all Payments, unless a specific exemption applies. Should the litigation be concluded in favour of the Company in due course, and any amounts withheld and paid to HMRC are repaid (by HMRC) to the Company, then such amounts will be distributed to the Scheme Parties from whose Payments the amounts had been withheld. For more details see paragraph 22 (*Tax*) of Part II (*Summary of the terms of the Scheme of Arrangement*) of this Explanatory Statement.

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## 11 Claim resolution initiatives

As a result of the continuing challenges in resolving entitlements to, and distributions of, the Surplus, and on the basis that the Administrators could (prior to the development of the Scheme) see no reasonable prospect of either a judicial or consensual outcome that would enable a distribution of the Surplus in the near future, the Administrators felt that it was appropriate to develop alternative options to enable creditors with Admitted Claims to monetise their relationship with the Company in a manner which did not impede or cut across the Waterfall Proceedings. A summary of the various initiatives launched by the Administrators to achieve this aim are summarised below.

### 11.1 SCSO

11.1.1 On 4 May 2012, the Administrators announced on the Website an initiative, known as the “Small Claims Settlement Offer”, under which creditors with Admitted Claims valued at less than £150,000, or who were prepared to cap their Admitted Claims at this value, were offered a one-off payment of 90% of their Admitted Claim value in full and final settlement of all rights in respect of such Admitted Claims (the “**SCSO**”).

11.1.2 The SCSO was made available to all of the Company’s unsecured creditors (provided that they satisfied the eligibility criteria), including the Company’s affiliates, and payment was made to participating creditors at the same time as the First Interim Dividend being paid to other creditors (i.e. 30 November 2012). In total, 854 Admitted Claims with a combined value of around £34 million were settled as part of the SCSO.

### 11.2 LACA Series

11.2.1 Aside from the SCSO, creditors’ sole means of concluding their relationship with the Company was to individually sell their claims to third party investors. To provide a means for creditors to monetise their claims and conclude their relationship with the Company, the Administrators devised a series of auctions (the “**LACA Series**”) aimed at simplifying the third-party purchase of such claims (and the diligence required by third party purchasers in relation to such purchase) by aggregating participating Admitted Claims into claim pools, based on the value of each participating Admitted Claim. The Company provided certain information on the characteristics of the participating Admitted Claims in each claim pool to potential purchasers, with potential purchasers bidding on the entirety of one or more claim pools (or, in the case of the LACA III auction, as discussed below, on individual claims in a pool) (thus enabling potential purchasers to more efficiently analyse and purchase Admitted Claims).

11.2.2 The first Admitted Claims auction (“**LACA I**”) was announced on the Website on 4 April 2016 and provided all creditors who held Admitted Claims (provided that they met the prescribed eligibility criteria) valued at less than £10 million the option to participate in the auction process, pursuant to which they would sell their Admitted Claim to third party purchasers, thus enabling such eligible creditors to achieve a complete exit from their relationship with the Company in relation to such Admitted Claims (subject to the terms and conditions governing LACA I).

11.2.3 The LACA I auction was held on 12 May 2016 and 266 claims with an aggregated claim value of around £230 million were sold, allowing the relevant creditors to

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monetise their relationship with the Company without having to wait for Surplus entitlements to be determined.

**11.2.4** Building on the success of LACA I, a second Admitted Claims auction ("**LACA II**") was announced on the Website on 15 June 2016. The terms were different from LACA I in certain key respects and the population of eligible creditors was widened to include signatories to the CRA and creditors with individual Admitted Claim values of up to £18 million. The LACA II auction was held on 21 July 2016 and 95 claims with an aggregated value of around £130 million were sold.

**11.2.5** Finally, a third admitted claims auction ("**LACA III**") was announced on the Website on 17 October 2016.

**11.2.6** LACA III enabled a majority of the Company's remaining creditors at this time who were ineligible for LACA I and LACA II (or whose claims were not sold as part of LACA I and LACA II) to specify a price at which they would be willing to sell their Admitted Claims which, if accepted by an eligible bidder, would allow them to achieve a complete exit of their relationship with the Company in respect of such Admitted Claims. Pursuant to the LACA III auction, held on 1 December 2016, 92 claims with an aggregated value of around £190 million were sold.

### **11.3 Employee Offer**

Due to complexities with the nature of their claims, a small population of former overseas branch employees of the Company were deemed ineligible to participate in the LACA Series. Such former employees were instead made an offer (the "**EMP**"), via Lehman Brothers Nominees Limited ("**LBNL**"), to sell their Admitted Claims at an offered price in order to exit their relationship with the Administration. 40 of the former employees holding 51 unique Claim References accepted the offer, such that claims with a combined value of around £6 million were transferred to LBNL.

### **11.4 SDO I and SDO II**

**11.4.1** On 27 March 2017, the Administrators launched a new proposal pursuant to which a population of around 160 creditors with Admitted Claims valued at less than £500,000 were offered the opportunity to sell their claims to LBNL ("**SDO I**"). The same proposal was made again on 27 October 2017 to creditors with Admitted Claims up to a value of £6.8 million ("**SDO II**").

**11.4.2** In total, 48 claims with an aggregate value of around £35 million were transferred to LBNL pursuant to SDO I (24 Claim References) and SDO II (24 Claim References).

### **11.5 Overall summary of claim resolution initiatives**

The total number and aggregate value of claims settled and/or transferred by the various initiatives set out above is summarised in the table below.

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	Date	No of Deeds	Claim value £(m)	Claim resolution
SCSO	2012 onwards	854	34	Offer at 90% of claim
LACA I	May-16	266	228	Now owned by third parties
LACA II	Jul-16	95	129	Now owned by third parties
LACA III	Dec-16	92	194	Now owned by third parties
EMP	Jan-17	51	6	LBIE controlled
SDO I	Mar-17	24	4	LBIE controlled
SDO II	Oct-17	24	31	LBIE controlled

## 12 Unsecured Claim Certificates (UCCs)

- 12.1** In order to make payments from the Surplus (when outstanding issues are resolved, either judicially or consensually), it is necessary, where an Admitted Claim contains more than one underlying component, for the Administrators to identify and quantify the separate components of such Admitted Claims based on the rates at which they are entitled to Statutory Interest (being either: (i) 8% Interest Claims; (ii) Specified Interest Claims; or (iii) Higher Rate Claims).
- 12.2** Having carried out an exercise to seek to determine such disaggregation of Admitted Claims, in October 2015 the Company issued the first unsecured claim certificate (“**UCC1**”) to all creditors with Admitted Claims, which set out the Administrators’ views on the disaggregation of such creditors’ claims and invited feedback from them to the extent they disagreed with such disaggregation.
- 12.3** The UCC1s also set out the Administrators’ views on the components of creditors’ Admitted Claims which would give rise to a Currency Conversion Claim.
- 12.4** Building on (and supplementing the information contained in) the UCC1s in May/June 2016, the Company issued the second unsecured claim certificate (“**UCC2**”) dated 29 April 2016 to all creditors with Admitted Claims. Using the disaggregation of creditors’ Admitted Claims set out in the UCC1s (and/or as subsequently amended by the Administrators following feedback from creditors), the UCC2s set out, for indicative purposes only, an illustration of creditors’ potential entitlements to the Surplus in respect of: (i) Statutory Interest; and (ii) Currency Conversion Claims, based on the prevailing Waterfall Judgments at that time.
- 12.5** Given that the status of the law as regards entitlements to the Surplus has materially changed since the UCC2s were issued, these have now been removed from the Portal.
- 12.6** In October 2017 (and for certain creditors December 2017) the Company issued the third unsecured claim certificate (“**UCC3**”) to all creditors in respect of their Admitted Claims. The UCC3s were intended to provide an updated view of creditors’ entitlements to the Surplus, taking into account (among other things) the Court of Appeal decision in Tranche A and Tranche B as regards Higher Rate Claims and the Supreme Court judgment in Waterfall I, which found that creditors have no entitlements to the Surplus in respect of Currency Conversion Claims.
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- 12.7** On 22 December 2017, pursuant to the First Announcement, the Administrators confirmed to creditors that the details contained in the UCC3s would be used to determine the constitution of classes of creditors under the Scheme, calculate creditors' Voting Rights in respect of the Scheme and ultimately calculate creditors' entitlements to the Surplus, and would be definitive in each of these regards. Pursuant to the First Announcement, creditors were requested to confirm their agreement to the information set out in their UCC3s, or otherwise raise any dispute in respect of any element of their UCC3s, by no later than 5:00 pm GMT on 19 January 2018.
- 12.8** Using the information set out in the UCC3s (and/or as subsequently amended by the Administrators following feedback from creditors on their UCC3s), the Administrators have produced UCC4s which set out, in respect of a Scheme Creditor with Admitted Claims, among other things:
- 12.8.1** their Voting Rights;
  - 12.8.2** the allocation and composition of their Admitted Claims between any combination of 8% Interest Claims, Specified Interest Claims and/or Higher Rate Claims (as applicable);
  - 12.8.3** their 8% Payment entitlement and/or Specified Interest Payment (as applicable); and
  - 12.8.4** in respect of Higher Rate Creditors only, their potential Settlement Premium.

### **13 The House Estate**

- 13.1** As of the date of this Explanatory Statement the Company has Cash and Cash Equivalents of £6.582 billion in the House Estate.
- 13.2** The majority of these funds are held in short-dated UK government, quasi-government and supranational bonds with funds required for immediate liquidity held in short term money market deposits and interest-bearing bank accounts. These assets have a maturity profile which will allow sufficient cash to be available to make all payments contemplated by the Scheme.
- 13.3** The Nineteenth Progress Report forecast future House Estate recoveries of between £1.318 billion and £1.938 billion. £264 million has since been recovered, such that the Administrators now expect future House Estate recoveries of between £1.242 billion and £1.674 billion.
- 13.4** A substantial amount of the expected future House Estate recoveries relate to funds currently held in the Client Money Estate, as described in paragraphs 14.2.3 and 14.2.4 of this Appendix 4 (*Background to the Company, the Administration and the Surplus*) below.

### **14 The Client Money Estate**

#### **14.1 Client Money distributions**

To date, the Administrators have made two interim Client Money distributions: (i) in April 2013, a distribution rate of 23.2% of beneficiaries' admitted entitlements to Client Money was announced; and (ii) in June 2014, an incremental distribution rate of 25% was announced. No further Client Money distributions have been made, such that overall distributions to date remain at 48.2% of Client Money beneficiaries' entitlements. The Company currently holds US\$1.6 billion of Cash and Cash Equivalents in the Client Money Estate.

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## 14.2 Client Money Claimants

14.2.1 The Administrators currently understand there to be a very limited number of Client Money claimants, being:

- (i) Laurifer Limited ("**Laurifer**"), a special purpose entity established by the Company post-administration, which holds a large number of potential claims, including:
  - (a) approximately US\$1.4 billion of Client Money claims assigned to it by former clients of the Company (including some affiliates), in respect of which it has received distributions of 48.2 pence in the pound;
  - (b) a potential Client Money claim of approximately US\$300 million (net of previous third party receipts) assigned to it by Barclays Capital Inc. ("**BarCap**") pursuant to a settlement of BarCap's claims in the Administration (as described in paragraph 14.3 (*The BarCap Proceedings and settlement*) of this Appendix 4 (*Background to the Company, the Administration and the Surplus*) below); and
  - (c) a potential Client Money claim of approximately US\$1.4 billion assigned to Laurifer by Lehman Brothers Finance S.A. (Switzerland), in respect of which it has not received any distributions.

The Company has entered into a benefit transfer agreement with Laurifer pursuant to which the Company will receive amounts equal to Laurifer's recoveries under assigned claims (less certain agreed fees and expenses); and

- (ii) smaller Client Money claimants, with claims totalling approximately US\$10 million (some of which have received interim distributions and some of which have not).

14.2.2 As matters stand, there is a potential shortfall in the Client Money Estate. Specifically, the outstanding balances of the above claims (after distributions of \$0.7 billion) exceed by approximately US\$0.8 billion the US\$1.6 billion of Cash and Cash Equivalents held in the Client Money Estate.

14.2.3 However, notwithstanding that potential shortfall, the Administrators have concluded that there is a sum in the Client Money Estate which could, in the fullness of time and subject to the resolution of certain issues, flow to the House Estate, either by way of:

- (i) an increased Client Money distribution, a recipient of which would be Laurifer, which would be passed to the Company by Laurifer under the benefit transfer agreement; or
- (ii) a Client Money payment to the Company as remainderman (in the event that Laurifer waives some or all of its Client Money Entitlements and this results in a surplus in the Client Money Estate).

14.2.4 However, such sums cannot flow to the House Estate by either route until certain legal and factual issues are resolved. Some of these legal issues have, until recently, been before the High Court as a result of the BarCap Proceedings, discussed immediately below.

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### **14.3 The BarCap Proceedings and settlement**

**14.3.1** On 5 September 2016 the Administrators brought an application in respect of the legal nature of claims made by BarCap. The issues before the High Court in the BarCap Proceedings included:

- (i) whether, if BarCap has a Client Money Entitlement, it also has a parallel unsecured claim; and
- (ii) if it does have a parallel unsecured claim, whether BarCap can pursue such parallel unsecured claim to the exclusion of its Client Money Entitlement (including the effect of waiver or assignment of a Client Money Entitlement on the value of a parallel unsecured claim (if waiver is possible as a matter of law)).

**14.3.2** On 24 April 2018, the parties to the BarCap Proceedings agreed a settlement of the BarCap Proceedings which provided for:

- (i) a single payment of £250 million from the Company to BarCap in full and final settlement of all BarCap's claims as a general unsecured creditor (including to Statutory Interest); and
- (ii) the assignment to Laurifer of any Client Money Entitlement held by BarCap.

The settlement avoided the need for a trial of the issues in the BarCap Proceedings.

### **14.4 Client Money High Court application**

There are certain other issues that to date have not been put before the High Court, but in respect of which the Administrators may require the High Court's assistance before the Client Money estate can be finally resolved, including: (i) an order for a Client Money bar date; (ii) the full extent of Laurifer's Client Money claims; (iii) the resolution for Client Money claimants who can no longer be contacted; and (iv) the correct approach to calculating final payments to all Client Money claimants.

### **14.5 Relevance of the Client Money Estate to the Scheme**

**14.5.1** The distribution of Statutory Interest under the Scheme does not depend upon final resolution of, or further distributions to the Company from, the Client Money Estate. Any funds which, in due course, flow to the House Estate from the Client Money Estate will be available for distribution to the Company's creditors that remain unpaid in full at such time.

**14.5.2** The Scheme does not impact upon Client Money Entitlements which creditors may have in respect of the Client Money pool. However, to the extent that a creditor has an unsecured claim which is derived from its entitlement to the Client Money Estate (for example a Shortfall Claim), any such claim will be released under the Scheme unless proved for prior to the Bar Date.

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**Appendix 5**  
**Tranche C Order**

*[separately attached]*

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**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**

**No. 7942 of 2008**

**Before the Honourable Mr Justice Hildyard**

**Monday the 12<sup>th</sup> day of December 2016**



**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BETWEEN**

**(1) ANTHONY VICTOR LOMAS**

**(2) STEVEN ANTHONY PEARSON**

**(3) PAUL DAVID COPLEY**

**(4) RUSSELL DOWNS**

**(5) JULIAN GUY PARR**

**(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL  
(EUROPE) (IN ADMINISTRATION))**

**Applicants**

**-and-**

**(1) BURLINGTON LOAN MANAGEMENT LIMITED**

**(2) CVI GVF (LUX) MASTER S.À.R.L**

**(3) HUTCHINSON INVESTORS, LLC**

**(4) WENTWORTH SONS SUB-DEBT S.À.R.L**

**(5) YORK GLOBAL FINANCE BDH, LLC**

**(6) GOLDMAN SACHS INTERNATIONAL**

**Respondents**

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**ORDER**

**UPON THE TRIAL** of certain of the issues (as more fully particularised below) (“**Tranche C**”) in the Application of Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, the administrators of Lehman Brothers International (Europe) (“**LBIE**”) (the “**Administrators**”), dated 12 June 2014, amended on 13 May 2015 and re-amended on 30 October 2015 (the “**Application Notice**”)

**AND UPON READING** the written submissions filed on behalf of the Administrators, the First to Third Respondents (the “**Senior Creditor Group**”), the Fourth Respondent (“**Wentworth**”), the Fifth Respondent (“**York**”) and the Sixth Respondent (“**GSI**”)

**AND UPON HEARING** William Trower QC, Daniel Bayfield QC and Stephen Robins for the Administrators, Robin Dicker QC, Richard Fisher and Henry Phillips for the Senior Creditor Group, Antony Zacaroli QC, David Allison QC and Adam Al-Attar for Wentworth, Tom Smith QC and Robert Amey for York and David Foxton QC and Craig Morrison for GSI

**IT IS HEREBY DECLARED that:**

Issue 10 (paragraph 10 of the Application Notice)

- (i) On the true construction of the term “Default Rate” as it appears in the ISDA Master Agreement, the term “relevant payee” refers only to LBIE’s contractual counterparty and does not extend to a third party to whom LBIE’s counterparty has transferred (by assignment or otherwise) its rights under the ISDA Master Agreement.

Issue 11 (paragraph 11 of the Application Notice)

- (ii) The expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*” in the



ISDA Master Agreement is the cost which the relevant payee is or would be required to pay in borrowing the relevant amount under a loan transaction, whether an actual cost where the relevant payee does in fact enter into a loan or a hypothetical cost where it does not do so.

- (iii) The expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*” in the ISDA Master Agreement does not include any cost of equity funding.
- (iv) The expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*” in the ISDA Master Agreement does not include costs or financial consequences to the relevant payee of carrying a defaulted LBIE receivable on its balance sheet.
- (v) The expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*” in the ISDA Master Agreement does not include the actual or asserted cost to the relevant payee to fund or of funding a claim against LBIE.
- (vi) The relevant “*cost*” must involve the incurring of an obligation (whether actual or hypothetical) to pay a sum of money. It does not include any form of financial detriment.
- (vii) The relevant “*cost*” does not include any loss of profits or consequential losses arising from the non-payment of the relevant amount.
- (viii) A “*cost*” is not incurred if any payment obligation, or the amount of any payment obligation, is itself discretionary.
- (ix) The obligation (whether actual or hypothetical) to pay a sum of money must be incurred in obtaining the funding and as part of the bargain entered into to obtain such funding in order for it to be a relevant “*cost*”.

- (x) The relevant “cost” must be the cost of funding the relevant amount to address the cash shortfall caused by non-payment. It does not include the cost of funding some other amount for other or wider purposes.
- (xi) The relevant “cost” does not include any professional or arrangement fees incurred by the relevant payee, save for such fees paid to a lender as part of the price of borrowing the relevant amount.
- (xii) In order to constitute a relevant “cost”, a rate of borrowing must not exceed that which the borrower knows to be or which could be available to it in the circumstances pertaining to its business, having regard to the permitted object of the actual or hypothetical borrowing (to cover the relevant amount).

Issue 12 (paragraph 12 of the Application Notice)

- (xiii) For the purpose of establishing the “cost (*without proof or evidence of any actual cost to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*)”, which cost is a cost of borrowing, such borrowing should be assumed to have recourse to the relevant payee’s unencumbered assets generally and not solely to its claim against LBIE.
- (xiv) The certifiable cost is the price which the relevant payee has paid, or would have to pay, to a counterparty to a transaction to borrow a sum equivalent to the relevant amount taking into account all relevant circumstances, and is not the weighted average cost on all its borrowings.
- (xv) The relevant “cost” does not include any impact on the cost of the relevant payee’s equity capital attributable to borrowing a sum equivalent to the relevant amount.
- (xvi) Depending on the particular facts and circumstances, it may be rational and in good faith for a relevant payee to determine that it would have funded the relevant amount on the basis of overnight funding or funding for any other duration.

Issue 13 (paragraph 13 of the Application Notice)

(xvii) The “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*” may be calculated:

- a. by reference to the relevant payee’s circumstances on a particular date, or on a fluctuating basis taking into account any changes in the relevant circumstances, subject to the requirement to certify the cost of funding rationally and in good faith;
- b. in each case, taking into account relevant market conditions and any other relevant facts or circumstances; and
- c. in light of hindsight, insofar as any certification given by the relevant payee at the end of the relevant period will be based on what it actually did or could have done to fund the relevant amount throughout the relevant period.

Issue 14 (paragraph 14 of the Application Notice)

(xviii) A relevant payee’s certification of its cost of funding for the purposes of applying the “Default Rate” is conclusive unless such certification:

- a. is made irrationally;
- b. is made otherwise than in good faith;
- c. contains a manifest numerical or mathematical error; or
- d. does not fall within the scope of the expression “*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*”, as those words are construed in accordance with declarations (ii) to (xvii) above.

Issue 15 (paragraph 15 of the Application Notice)

(xix) Where the defaulting party seeks to challenge the relevant payee’s certification of its cost of funding, the defaulting party bears the burden of proving, on the balance of probabilities, that the relevant payee’s certification has not met the relevant requirements set out in declaration (xviii) above.

Issue 16 (paragraph 16 of the Application Notice)

- (xx) The relevant payee and any other party expressly or impliedly authorised by the relevant payee can provide certification of the relevant payee's cost of funding and, where such certification is not possible, the Court will put itself in the shoes of the relevant payee to determine what decision the relevant payee would have made had the relevant payee determined its cost of funding properly.

Issue 18 (paragraph 18 of the Application Notice)

- (xxi) The power of a party under section 7(b) of the 1992 form ISDA Master Agreement (the "1992 Form") to transfer any amount payable to it from a Defaulting Party under section 6(e) of the 1992 Form without the prior written consent of that party includes the power to transfer any contractual right to interest under that agreement.

Issue 19 (paragraph 19 of the Application Notice)

- (xxii) Declarations (i) to (xxi) above apply whether the underlying ISDA Master Agreement is governed by New York or English law.

Issue 20.1 (paragraph 20.1 of the Application Notice)

- (xxiii) A creditor under a German Master Agreement for any sum which is payable pursuant to clauses 7 to 9 thereof (the "GMA Close-Out Amount") is not entitled, following LBIE's administration, to make a "damages interest claim" within the meaning of section 288(4) of the German Civil Code.

Issue 20.2 (paragraph 20.2 of the Application Notice)

- (xxiv) If (contrary to declaration (xxiii) above) a "damages interest claim" in respect of a GMA Close-Out Amount were permissible following LBIE's administration, any interest or damages (howsoever described) payable on the GMA Close-Out Amount

pursuant to the German Civil Code would not constitute a “*rate apart from the administration*” for the purpose of Rule 2.88(9) of the Insolvency Rules 1986 (the “Rules”).

Issue 21 (paragraph 21 of the Application Notice)

(xxv) If (contrary to declarations (xxiii) and (xxiv) above) a “damages interest claim” in respect of the GMA Close-Out Amount could be made following LBIE’s administration and such a claim would constitute a “*rate apart from the administration*” for the purpose of Rule 2.88(9):

- a. in circumstances where the relevant claim under the German Master Agreement had been transferred (by assignment or otherwise) to a third party after the commencement of LBIE’s administration, the damages interest claim which could be asserted by the transferor, and not the transferee, is relevant for the purposes of Rule 2.88(9);
- b. if (contrary to declaration (xxv)(a) above) the damages interest claim that could be asserted by the transferee is relevant for the purposes of Rule 2.88(9), where the relevant claim under the German Master Agreement has been acquired by a third party, there is no cap or limitation on the amount of further damage that an assignee can claim; and
- c. as a matter of German civil procedure, the assessment of damages is in the discretion of the Court. The obligee bears the burden of proof and must establish both the causal connection for the damage and its amount on the balance of probabilities. In calculating damages for the late payment of a defaulted debt, banks are entitled to perform the calculation in the abstract by a simplified method of quantification; however, other investors, such as non-bank financial institutions and hedge funds, may not rely on such simplified method of quantification.

Issue 27 (paragraph 27 of the Application Notice)

(xxvi) Declarations (i) to (xxv) above apply whether the relevant payee is a credit institution, a financial institution, a fund entity, a corporate or other type of counterparty.

Supplemental Issue 1(A) (derived from Issue 4 (paragraph 4 of the Application Notice))

(xxvii) The words “*the rate applicable to the debt apart from the administration*” in Rule 2.88(9) of the Rules include, in the case of a provable debt that is a close-out sum under a contract, a contractual rate of interest that began to accrue only after the close-out sum became due and payable due to action taken by the creditor after the date of the commencement of LBIE’s administration.

**AND IT IS HEREBY ORDERED that:**

**Costs**

1. The Administrators’ costs of and occasioned by Tranche C and Supplemental Issue 1(A) be paid as an expense of the administration.
2. The Senior Creditor Group’s and York’s respective costs of and occasioned by Supplemental Issue 1(A) be paid as an expense of the administration, in the case of the Senior Creditor Group, limited to such costs as would have been incurred had the Senior Creditor Group retained one firm of solicitors only.
3. The costs applications made by Wentworth, the Senior Creditor Group and GSI in respect of Tranche C will be the subject of a reserved judgment and a further order consequent thereon.

**Permission to appeal**

4. The Senior Creditor Group has permission to appeal against declarations: (i) to (iv), (vi), (viii) to (xiv) and (xxii) to (xxv).
5. GSI has permission to appeal against declarations: (ii), (iii), (vi) and (viii) to (xv).
6. York has permission to appeal against declaration (xxvii).
7. Time be extended for the filing of Appellant's Notices: (i) by York, to 6 January 2017; and (ii) by the Senior Creditor Group and GSI, to 20 January 2017.

**Service of the order**

The court has provided a sealed copy of this order to the serving party:

Linklaters LLP, One Silk Street, London EC2Y 8HQ (ref: Patrick Robinson)

**Appendix 6**  
**AFB/FBF Agreed Position**

*[separately attached]*

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### **Agreed positions on French Law Questions<sup>1</sup>**

***Question 22: Whether default interest pursuant to clause 9.1 of the FBF Master Agreement and the AFB Master Agreement are capable of being a “rate applicable to the debt apart from the administration” for the purposes of Rule 2.88(9).***

Agreed answer: Default interest pursuant to clause 9.1 of the FBF Master Agreement and the AFB Master Agreement is capable of being a “rate applicable to the debt apart from the administration” for the purposes of Rule 2.88(9).

***Question 23: Whether the “party” that receives the interest referred to in question 22 above pursuant to the FBF Master Agreement and the AFB Master Agreement refers to LBIE’s original counterparty or to a third party to whom LBIE’s original counterparty has transferred (by assignment or otherwise) its rights under the relevant agreements.***

Agreed answer:

1. In the case of a *cession de contrat* (transfer of agreement) under French law (which would not be relevant following the termination of the agreement and cannot be used to transfer a close-out amount), the rate of interest payable under clause 9.1 of the FBF and AFB Master Agreement is calculated by reference to the overnight refinancing rate of the original contractual counterparty (compounded annually if overdue for at least one year) for the period before the date of the relevant transfer and by reference to the overnight refinancing rate of the third party (compounded annually if overdue for at least one year) for any period after the date of the relevant transfer.
2. In the case of a *cession de créance* (transfer of claim) under French law, the rate of interest payable under clause 9.1 of the FBF and AFB Master Agreement is calculated by reference to the overnight refinancing rate of the original contractual counterparty (compounded annually if overdue for at least one year) whether before or after the date of the relevant transfer.

***Question 24: Whether the terms “overnight refinancing rate of the Party” in clause 9.1 as it appears in the FBF Master Agreement and the AFB Master Agreement should only be ascertained with reference to the actual or asserted cost of the payee or may be ascertained in other ways.***

Agreed answer: The “overnight refinancing rate of the Party” in clause 9.1 as it appears in the FBF Master Agreement and the AFB Master Agreement is a question of fact to be determined objectively and by reference to the relevant overnight refinancing rates which would have been offered to the original contracting party by market participants at the relevant time if not specified by the parties in the schedule to the relevant AFB or FBF master agreement or otherwise.

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<sup>1</sup> Questions have been amended, as per the agreement between the parties, to remove references to the AFTB and AFTI Master Agreements.

***Question 25: Whether only the “party” pursuant to question 23 or another party authorised to act on behalf of the “party” can provide determination and notification of its [overnight refinancing rate]<sup>2</sup>.***

Agreed answer: The “overnight refinancing rate” in clause 9.1 of the FBF and AFB Master Agreements is a question of fact to be determined objectively and by reference to the relevant overnight refinancing rates which would have been offered to the original contracting party by market participants at the relevant time if not specified by the parties in the schedule to the relevant AFB or FBF master agreement or otherwise. The “party” pursuant to question 23 above or another entity expressly or impliedly authorised to act on behalf of the “party” can provide determination and notification of the same.

***Question 26: What is the applicable standard, if any, by reference to which any statement by the party as to its “overnight refinancing rate” is constrained?***

Agreed answer: The statement by the person identified pursuant to the answer to question 25 can be challenged by the defaulting party on the basis of manifest error, fraud or lack of good faith (which includes a duty of loyalty).”

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<sup>2</sup> Issue 25 uses the expression “cost of funding” but we think this was used in error given that the FBF and AFB Master Agreements do not use this expression.

**Appendix 7**  
**Adjudicator CVs**

*[separately attached]*

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## **Sir Bernard Rix**

### **Arbitrator and mediator**

Bernard Rix is a recently retired Lord Justice of Appeal with twenty years experience in the Commercial Court and the Court of Appeal, who now accepts appointments as an arbitrator and mediator, based at chambers at 20 Essex Street. He is a member of the HKIAC Panel of Arbitrators and has been appointed to the Cayman Islands Court of Appeal. In addition, he has recently been appointed as Professor of International Commercial Law at Queen Mary, University of London

His university education was at New College, Oxford and Harvard Law School. He was called to the Bar by the Inner Temple in 1970 and practised in commercial chambers at 3 Essex Court. He was appointed Queen's Counsel in 1981.

In 1993 he was appointed to the High Court and sat predominately in the Commercial Court of which he was judge in charge in 1998-99. In that year he was responsible for introducing to the Commercial Court the Woolf Reforms to civil procedure law (the CPR) and for redrafting the Commercial Court's Guide and Practice Directions. In 2000 he was appointed to the Court of Appeal, from which he retired in May 2013.

At the Bar he specialised in international commercial and arbitral disputes as a barrister and latterly as an arbitrator, and also appeared in the courts of Singapore and Hong Kong. He was counsel in *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509, the eponymous origin of the "Mareva injunction", now called a freezing order; in *I Congreso del Partido* [1983] 1 AC 244 (HL) which introduced the commercial exception to English law's previous absolute doctrine of sovereign immunity; and in *Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd* [1992] 1 QB 656 (CA, affirmed in the House of Lords) concerning the operation of the arbitration clause in the contract for construction of the Channel Tunnel.

In the Commercial Court, his judgments include *The Angelic Grace* [1994] 1 Lloyd's Rep 168, upheld by the Court of Appeal [1995] 1 Lloyd's Rep 87, which is the modern origin of the anti-suit injunction for breach of an arbitration clause or an exclusive jurisdiction clause.

As a member of the Court of Appeal, he has delivered a wide range of judgments on arbitration, aviation, banking, insurance and reinsurance, private and public international law, oil and gas, sale of goods and shipping disputes. They include significant judgments such as *Dallah v. Government of Pakistan* [2010] Bus LR 384 on international enforcement of arbitration awards (upheld by the Supreme Court), *Kuwait Airways v. Iraqi Airways (Nos 4 and 5)* [2002] 2 AC 883 (parts 22-35 and 43-54 of the Court of Appeal judgment, upheld by the House of Lords) on international law, and *R (Al-Skeini) v. Secretary of State for Defence* [2007] QB 140 (upheld by the House of Lords) on the jurisdictional scope of the European Convention of Human Rights, and *Yukos v. Rosneft (No 2)* [2013] 1 All ER (Comm) 327, on the act of state doctrine.

Other positions held now or in the past include:

FCIArb 1999

Chairman of COMBAR 1992-93

Treasurer of the Inner Temple 2005

Honorary Fellow, New College, Oxford

Honorary Fellow, Queen Mary's, University of London

President, Harvard Law School Association of the UK 2002-

Chairman, Advisory Council, Centre for Commercial Law Studies, QMUL 2003-

Trustee, BIICL (British Institute of International and Comparative Law) 2003-2012

President of BILA (British Insurance Law Association) 2007

Director, London Philharmonic Orchestra 1986-

Leading cases in which Sir Bernard was counsel at the Bar include:

- *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (CA) (the origin of the "Mareva injunction", now the freezing order)
- *The Nema, BTP Tioxide Ltd v. Pioneer Shipping SA* [1982] AC 724 (HL) (the leading case on arbitration appeals under the new Arbitration Acts 1979 and 1996)
- *I Congreso del Partido* [1983] 1 AC 244 (HL) (which confirmed the doctrine of the commercial exception to the English law's previous absolute doctrine of sovereign immunity)

- *Gill & Duffus Inc v. Berger and Co Inc* [1984] AC 382 (HL) (concerning certification clauses in international sale of goods contracts)
- *Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd* [1992] 1 QB 656 (CA, affirmed in HL) (concerning the operation of the arbitration clause in the contract for the building of the Channel Tunnel)

In the Commercial Court his judgments include:

- *Hill v. Mercantile and General Reinsurance Co plc* (1993, where his first instance judgment on the “follow the fortunes” clause in reinsurance was restored by the House of Lords, [1996] 1 WLR 1239)
- *The Angelic Grace, Aggeliki Charis Compania Maritima SA v. Pagnan SpA* [1994] 1 Lloyd’s Rep 168 (affirmed by the Court of Appeal [1995] 1 Lloyd’s Rep 87, the modern origins of the anti-suit injunction for breach of an arbitration clause or of an exclusive jurisdiction clause)
- *Kuwait Airways Corp v. Iraqi Airways Co* [1996] 1 Lloyd’s Rep 664 (deciding whether the conversion by Iraq of Kuwait’s civil air fleet was one or several events: see also [1997] 2 Lloyd’s Rep 687 (CA) and [1999] 1 Lloyd’s Rep 803 (HL))
- *Royal Boskalis Westminster NV v. Mountain* [1997] LRLR 523 (a leading decision on many aspects of marine insurance in the context of the trapping of a dredging fleet in Iraq)
- *The Laconian Confidence, Andre & Cie SA v. Quest Shpiping (Rotterdam) BV* [1997] 1 Lloyd’s Rep 139 (the leading modern authority on off-hire clauses)
- *Credit Suisse First Boston (Europe) Ltd v. MLC (Bermuda) Ltd* [1999] 1 Lloyd’s Rep 767 (an early derivatives dispute)
- *Dubai Aluminium Co Ltd v. Salaam* [1999] 1 Lloyd’s Rep 415 (concerning financial fraud against Dubai’s aluminium

plant business: see also [2000] 2 Lloyd's Rep 168 (CA) and [2003] 2 AC 366 (HL))

In the Court of Appeal his judgments include:

*Arbitration*

- *Internaut Shipping GmbH v. Fercometal SARL* [2003] EWCA Civ 812, [2003] 2 All ER (Comm) 760 (concerning the identification of parties to a charterparty and to an arbitration clause)
- *Dallah Estate & Tourism Holding Co v. Ministry of Religious Affairs of the Government of Pakistan* [2009] EWCA Civ 755, [2010] Bus LR 384 (concerning the enforcement of a French award in England, see also [2010] UKSC 46 [2011] 1 AC 763)
- *AES Ust-Kamenogorsk Hydropower Plant LLP v. Ust-Kamenogorsk Hydropower Plant JSC* [2011] EWCA Civ 647, [2012] Bus LR 336 (concerning the court's power to grant an anti-suit injunction and the arbitrators' powers of kompetenz-kompetenz)

*Aviation*

- *Gesner Investments Ltd v. Bombardier Inc* [2011] EWCA Civ 1118 (concerning interpretation of an aircraft sale contract)
- *Driver v. Air India* [2011] EWCA Civ 986, [2011] 1 RLR 992 (concerning employment)
- *Global 5000 Ltd v. Wadhawan* [2012] EWCA Civ 13, [2012] 2 All ER (Comm) 18 (concerning an alleged guarantee of an aircraft sale agreement, and service out of the jurisdiction)

*Banking*

- *Abou Rahmah v. Abacha* [2006] EWCA Civ 1492, [2007] 2 All ER (Comm) 445 (concerning a bank's potential liability for a fraudulently account)
- *Barbados Trust Co Ltd v. Bank of Zambia* [2007] EWCA Civ 148, [2007] 2 All ER (Comm) 445 (concerning non-assignability clauses in loan notes)
- *Socimer International Bank Ltd v. Standard Bank London Ltd (No 2)* [2008] EWCA Civ 116, [2008] Bus LR 1304 (concerning valuation of a portfolio, and banking discretion)
- *Haugesund Kommune v. Depfa ACS Bank* [2011] EWCA Civ 33, [2012] 1 All ER (Comm) 65 (concerning a solicitor's liability for negligent advice to a lender)
- *ING Bank NV v. Ros Roca SA* [2011] EWCA Civ 353, [2012] Bus LR 266 (concerning the interpretation of an investment banking contract, and estoppel)
- *Rubenstein v. HSBC plc* [2012] EWCA Civ 1184, [2013] 1 All ER (Comm) 915 (concerning a private customer's claim arising from negligent advice about investing safely)

### *Construction*

- *Stocznia Gdanska SA v. Latvian Shipping Co (No 3)* [2002] EWCA Civ 889, [2002] 2 All ER (Comm) 768 (concerning the repudiation of shipbuilding contracts, and economic torts)
- *Geldof Metaalconstructie NV v. Simon Carves Ltd* [2010] EWCA Civ 667, [2011] 1 Lloyd's Rep 517 (concerning the doctrine of set off)

### *Evidence and procedure*

- *Savings & Investment Bank Ltd v. Fincken* [2003] EWCA Civ 1630, [2004] 1 WLR 667 (concerning problems of without prejudice meetings and late amendments)



- *C v. D* [2011] EWCA Civ 646, [2012] 1 WLR 1962 (concerning offers to settle)

#### *Insurance and Reinsurance*

- *HIH Casualty & General Insurance Ltd v. New Hampshire Co* [2001] 2 Lloyd's Rep 161 (concerning the interpretation of a film finance insurance policy)
- *HIH Casualty & General Insurance Ltd v. Chase Manhattan Bank* [2001] EWCA Civ 1250, [2001] 2 Lloyd's Rep 483 (concerning film finance insurance and whether there can be an exception for an agent's fraud, see also [2003] UKHL 6, [2003] 2 Lloyd's Rep 61)
- *Scott v. Copenhagen Reinsurance Co* [2003] EWCA Civ 688, [2003] 2 All ER (Comm) 190 (concerning the loss of a British Airways jet in Iraq during Desert Storm, was it part of one or more events?)
- *Drake Insurance plc v. Provident Insurance plc* [2003] EWCA Civ 1834, [2004] QB 601 (concerning the right to avoid, and double insurance)
- *Kastor Navigation Co Ltd v. AGF MAT* [2004] EWCA Civ 926, [2005] 2 All ER (Comm) 720 (concerning the commercial total loss of a ship)
- *Kosmar Villa Holidays plc v. Trustees of Syndicate 1243* [2008] EWCA Civ 147, [2008] Bus LR 931 (concerning waiver of conditions precedent)
- *HLB Kidsons v. Lloyd's Underwriters* [2008] EWCA Civ 1206, [2009] Bus LR 759 (concerning "claims made" professional indemnity and liability insurance)
- *Masefield SG v. Amlin Corporate Member Ltd* [2011] EWCA Civ 24, [2011] Bus LR 1082 (concerning the legality of an insurance claim for the cost of a pirate ransom)

*International law, public and private*

- *Andrea Merzario Ltd v. Internationale Spedition Leitner Gesellschaft GmbH* [2001] EWCA Civ 61, [2001] 1 All ER (Comm) 883 (concerning *lis alibi pendens* under CMR)
- *Glencore Interantional AG v. Exter Shipping Ltd* [2002] EWCA Civ 528, [2002] 2 All ER (Comm) 1 (concerning anti-suit injunctions)
- *Kuwait Airways Corp v. Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 (Parts 22-35 and 43-54 of the Court of Appeal judgment, concerning the conversion of Kuwait's civil air fleet during Iraq's invasion of Kuwait, upheld by House of Lords)
- *R (Al-Skeini) v. Secretary of State for Defence* [2004] EWHC 2911 (Admin), [2007] QB 140 (DC) (concerning the international jurisdictional scope of the European Convention of Human Rights and the Human Rights Act 1998, upheld in the House of Lords [2007] UKHL 26, [2008] AC 153, but see also *Al-Skeini v. UK* (ECtHR, (2011) 53 EHRR 589)
- *FKI Engineering Ltd v. Stribog Ltd* [2011] EWCA Civ 622, [2011] Bus LR 1410 (concerning *lis alibi pendens* under Judgment Regulation)
- *SK (Zimbabwe) v. Secretary of State for the Home Department* [2012] EWCA Civ 807, [2012] 1 WLR 2809
- *Yukos Capital SARL v. OJSC Rosneft Oil Co (No 2)* [2012] EWCA Civ 855, [2013] 1 All ER Comm) 327 (concerning the act of state doctrine, and enforcement of awards)

*Oil and Gas*

- *Mamidoil-Jetoil Greek Petroleum Co Ltd v. Okta Crude Oil Refinery (No 1)* [2001] EWCA Civ 406, [2001] 2 Lloyd's Rep 76 (concerning the certainty of long-term contracts which allow for future agreement of terms)

- *Petromec Inc v. Petroleo Brasileiro SA (Petrobras)* [2013] EWCA Civ 150 (concerning the interpretation of an oil platform specification)

### *Shipping*

- *The Starsin, Homburg Houtimport BV v. Agrosin Private Ltd* [2001] EWCA Civ 56, [2001] 1 All ER (Comm) 455 (concerning the interpretation of a bill of lading and identity of a carrier: dissenting judgment in the Court of Appeal upheld in House of Lords, [2003] UKHL 12, [2004] 1 AC 715)
- *McWilliam Co Inc v. Mediterranean Shipping Co Ltd* [2003] EWCA Civ 556, [2004] QB 702 (concerning the interpretation of the Hague Rules and effect of “straight” bills of lading, upheld in House of Lords [2005] UKHL 11, [2005] 2 AC 423)
- *The Sea Angel, Edwinton Commercial Corpn v. Tsavliris Russ (Worldwide Salvage & Towage) Ltd* [2007] EWCA Civ 547, [2007] 2 All ER (Comm) 634 (concerning the alleged frustration of a time charter)
- *The Achilleas, Transfield Shipping Inc v. Mercator Shipping Inc* [2007] EWCA Civ 901, [2008] 1 All ER (Comm) 685 (concerning late redelivery of a time chartered vessel, controversially overturned in the House of Lords [2008] UKHL 48, [2009] AC 61)

### *Sale of Goods*

- *The Kriti Palm, AIC Ltd v. ITS Testing Services (UK) Ltd* [2006] EWCA Civ 1601, [2007] 1 All ER (Comm) 667 (concerning certification clauses, alleged fraud, and limitation of actions)
- *KG Bominflot v. Petroplus Marketing AG* [2010] EWCA Civ 1145, [2011] 2 All ER (Comm) 522 (concerning an oil shipment which was certified sound but arrived out of specification)



## Michael Brindle QC Call Date: 1975 | Silk Date: 1992

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The “**very impressive**” Michael Brindle QC is a highly regarded and hugely-experienced Silk with a considerable international and commercial practice. His broadly based practice encompasses commercial litigation, international arbitration, banking and finance, company law, professional negligence in financial and commercial matters, insurance and international trade. In this regard, Michael Brindle QC is currently listed by Chambers & Partners 2016 UK edition as a “Star at the Bar”, as well as previously being awarded “Barrister of the Year” as the Lawyer Awards 2010.

The “**brilliant heavyweight litigator**” Michael Brindle QC “**first-class lawyer**” has experience in City-related matters, including litigation arising out of audits, take-overs and rights issues.

Michael Brindle QC regularly provides expert evidence on English law to foreign courts or tribunals and has done so recently for cases before courts in the USA.

### AREAS OF EXPERTISE

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- Banking & finance
- Commercial dispute resolution
- Company
- Financial services
- Fraud: civil
- Insurance and reinsurance
- International arbitration
- Offshore
- Professional negligence
- Telecommunications
- Administrative & public law

### RECENT PRACTICE

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#### Banking & finance

Michael Brindle QC described as “*first-class advocate who has stunning legal insight*” and an

Recent practice includes:

- **Al-Khorafi v Bank Sarasin [2014-5]**; Instructed as lead counsel in a claim by a substantial investor against a leading Swiss private bank working in the Middle East, heard in the DIFC Courts.
- **Bank Mellat v. European Council (2012)**; by the general court of the ECJ review of closing down of Iranian Bank.
- **Bank Mellat v UK Treasury**; Supreme Court review to be heard March 2013.
- **Beresovzky v Hine & Others**: Instructed as lead counsel in the multi-billion dollar Russian oligarch action arising out of an alleged joint venture.
- **Renaissance Capital Ltd v African Minerals Ltd**: Instructed as lead counsel on an ongoing dispute involving claims in relation to success fees under investment banking engagement letters regarding an iron ore mine in Sierra Leone.
- Retained as an expert on English law in US proceedings arising out of a collective investment scheme.
- **Lehman Brothers Inc**: Acted for the US broker dealer in various applications in the administration of Lehman Brothers International Europe, including determination of ownership of dematerialised securities purchased by LBIE for LBI through European clearing systems.
- Instructed in 2 cases re: **Alba Plc** and re: **Grand Plc** as lead counsel on behalf of trustees in a substantial disputes arising out of a high value securitisation transaction.
- **Parabola v. MF Global (2009)**: equity and derivative trading
- **Springwell v JPMorgan Chase** – Emerging markets investment through banks.
- **Riyad Bank v. Ahli Bank** – dispute concerning Islamic finance

#### Commercial dispute resolution

Michael Brindle is regarded in the Commercial market as a **"Class act whose name and reputation speaks for themselves."** It is thought that he is both **"effective in litigation and arbitration"**.

Recent practice includes:

- **Fiona Trust Litigation**: Instructed as lead counsel in the Court of Appeal on behalf of Russian ship operators Sovcomflot and Novoship.
- **Bank Saras**: lead counsel in a claim by a substantial investor against a bank, heard in the DIFC Courts.
- Appointed as expert in substantial commercial litigation proceedings; providing expert evidence in the courts of Delaware.
- Appointed as an expert on English law in US proceedings on behalf of Morgan Stanley.
- **Spacel Limited [2011] Cayman Islands**: Instructed as lead Counsel in a claim in the Cayman Islands for more than US\$200m concerning a shareholder dispute regarding a mobile telecommunications project in the Middle East.
- **Re Leedon Limited**; contract, company and insolvency law in Mauritius
- **JP Morgan v Springwell**: Instructed as lead counsel in the claim arising out of investment advice on the sale of emerging market debt instruments to a private investment company; the case raised a number of important legal issues in the context of investment advice claims.
- **State of Brunei v Jefri** – Apparent or actual bias of judge. Breach of trust.
- **British Gas v Eastern Electricity** – Commercial contract – consent to assignment.
- **Marks & Spencer v William Baird** – Certainty in contract and estoppel by convention.

Appointed as an expert in US proceedings on behalf of Bank of New York

## Fraud: civil

Michael is not only known as a **“Very good practitioner, he is extremely clever and has a good tactical approach to litigation”** he is deemed **“Intellectually powerful in and an obvious choice for difficult and large frauds.”**

Recent practice includes:

- Acting for investors in relation to claims of fraudulent misrepresentation arising from the sale of shares in a Canadian resources company investing in Kazakh natural resources.
- For the defendants in claims brought in the Chancery division by shareholders alleging that the sale of their shares had been procured by fraudulent misrepresentation and conspiracy to injure.
- **Fairfield Sentry Limited** [2011] BVI Ponzi scheme and unjust enrichment.
- **Shah v HSBC** (2009-11) Money laundering.

## Insurance

Recent practice includes:

- Instructed as lead counsel in an insurance dispute arising out of a mortgage endowment misselling.
- Acted for insurers in connection with claims arising out of the collapse of Enron.
- **Morgan Grenfell v SACE** – *Export credit insurance and Italian law*
- **Credit Lyonnais v New Hampshire Insurance** – *Insurance contract – Governing law*
- **Capel-Cure Myers v McCarthy** – *Insurance policy construction Lloyd’s market*

## International arbitration

Michael Brindle QC described as **“Really at the top of his game”** both sits as an Arbitrator and as Counsel in arbitration disputes. He has experience in both capacities of a wide range of arbitral regimes, including those under the auspices of the International Chamber of Commerce, the London Court of International Arbitration, SIAC, UNCITRAL and the City Disputes Panel, as well as ad hoc references.

Recent cases that have reached court include:

- **Hashwani v Jivraj** (2010-11): successfully represented the claimant in the Court of Appeal, where the court made a ruling that to object to an arbitrator on the grounds of race or religion was illegal. The case concerned a multi-million pound dispute between two Pakistani businessmen who had entered in a JV agreement. The contract contained a clause that stated that any arbitration should be decided by an arbitrator who was an Ismaili Muslim.
- **Econet v. VEE Networks**: Instructed on behalf of the shareholders in a substantial Commercial Court application to set aside an injunction which had been obtained ex parte pursuant to s.44 of the Arbitration Act 1996 in support of an intended arbitration in Nigeria. The injunction was set aside on the grounds of lack of jurisdiction, misrepresentation and non-disclosure and costs were awarded on an indemnity basis.
- **Weissfisch v. Julius & Ors**: Appeared in the Court of Appeal which involved an application by a party to an arbitration agreement to remove the arbitrator or to enjoin him from continuing the reference.

- Currently acting as Arbitrator in several on-going SIAC arbitration; details of these cases cannot be given for reasons of confidentiality.
- Instructed as lead counsel for an Indian Oil Corporation, in 2009 under ICC Rules in relation to the effect of force majeure on fob contracts.
- Instructed as lead counsel in a dispute relating to the restrictions on US citizens doing business in Iran under the ICC rules.
- Acted in a major clearing bank in a LCIA arbitration over defects in processing systems for credit and debit card transactions.
- Defended a £50 million claim brought by arbitration by a major bank against insurers arising out of mortgage endowment mis-selling by the bank.
- Instructed as lead counsel in a major financial insurance arbitration matter. The team acted for the insurers under policies of financial insurance exposed to multi-million pound claims arising out of the collapse of Enron and advised extensively on legal issues and strategy concerning prospective arbitration proceedings.
- **Sheffield United FC v West Ham United FC:** Acted for West Ham United in arbitration proceedings under Football Association rules. The matter concerned a dispute originating with the signing of football players Carlos Tévez and Javier Mascherano, who joined West Ham in 2006, and the relegation of Sheffield United as a result of a disciplinary investigation concerning third-party agreements in the players' contracts.

#### Judicial review

- **British Bankers Association v FSA:** instructed for the Financial Services Authority in the British Bankers Association's claim for judicial review of rules and guidance for handling complaints about the sale of payment protection insurance.
- **The Queen on the application of C v Financial Services Authority:** Judicial Review of FSA disciplinary action in the Court of Appeal.

#### Professional negligence

Michael Brindle QC "*stands head and shoulders above the majority of the market*" his professional negligence experience extends to all areas of financial and commercial matters.

Recent practice includes:

- Acted for Close Brothers Corporate Finance in defending a claim for £180m by UGC.
- **Stone and Rolls v Moore Stephens** (2009) Auditors' negligence in the House of Lords
- **Barings v Coopers & Deloitte** – Auditors' negligence
- **Bank Austria v Price Waterhouse** – Auditors' negligence
- **Pointwest Litigation – BBL v Simmons & Simmons** Solicitors' negligence and banking practice
- **Morgan Crucible Co plc v Hill Samuel** Professional negligence and City institution.
- **Caparo v Dickman:** leading case on duties of auditors.

#### RECOMMENDATIONS

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Michael Brindle QC is currently ranked by Chambers & Partners 2016 UK edition as a 'Star at the Bar'.

*"An undisputed giant of the commercial litigation Bar, Michael Brindle QC has a wealth of experience in handling the most complex and high-value matters in courts around the world, with a particular focus on disputes involving the banking and financial services sector. "He is clear in his thinking," says one appreciative source, "and he has all the experience in the Stars at the Bar world, enabling him to decide with ease and clarity if a point is good or bad." His reputation is such that he is the first choice counsel for a large number of magic circle firms, and is regularly instructed in the most complex and high-profile of cases. "He holds the attention of the client and the court; he's simply a superb advocate."*

Michael Brindle QC is also ranked in Chambers & Partners (2016 UK edition) as a Star Individual in Commercial Dispute Resolution, Banking and Finance, Financial Services and a leading silk in International Arbitration as well Civil Fraud and Professional Negligence. He is ranked as a first tier silk by Legal 500 (2015 UK edition) for all of the areas listed in Chambers & Partners plus as a leading silk for Energy & Natural Resources and Insurance & reinsurance.

In the Chambers Global Guide (2015) Michael is ranked as a star individual for Commercial Dispute Resolution and as a leading silk for International Arbitration.

Comments include:

'An excellent and formidable silk, who is not afraid of arguing innovative points of law.' Legal 500 2016 – Banking and Finance

'Seen it all, done it all, and in large part knows it all – a market heavyweight.' Legal 500 2016 – Commercial Litigation

'A real class act.' Legal 500 2016 – Fraud: Civil

'He has a great way of cutting through others' hype and hot air and getting to the important point.' Legal 500 2016 – Professional Negligence

'An arbitrator and counsel with a long track record in Singapore.' Legal 500 2016 – Commercial

"Holds the attention of client and court; a superb advocate." "He's consummate and clear in his thinking and has got all the experience in the world to decide in no uncertain terms if a point is good or bad. That's what you'd expect but with Michael he makes his decisions with ease and clarity." Chambers UK 2016 – Banking & Finance: Star Individual

"He is consummate and clear in his thinking. He has all the experience in the world and can decide in no uncertain terms whether a point is good or bad." "A very, very heavyweight court performer." Chambers UK 2016 – Commercial Dispute Resolution: Star Individual

"He's hugely persuasive, has the ear of the tribunal and gets to the nub of the case extremely quickly." "A very, very impressive operator, he commands the respect of tribunals and courts he's in front of." Chambers UK 2016, Financial Services – Star Individual

"He's a great lawyer and a great advocate." Chambers UK 2016 – Fraud: Civil



“He takes a very commercial overview and tries to cut to the commercial heart of things.” “A lovely silk with a superb practice.” Chambers UK 2016 – International Arbitration: General Commercial & Insurance

“Very, very experienced, has a good sense of strategy and has command of the court.” “Maintains an excellent practice and is forceful and ruthless in analysing and making the key points.” Chambers UK 2016 – Professional Negligence

“Has an established reputation in the sector and is often appointed as arbitrator or instructed as counsel. He is experienced in bringing matters before the Supreme Court, and he has an active practice in both the London and Singapore markets”. Chambers Global 2015 – International Arbitration

“He’s an extremely experienced and eminent advocate. He is excellent and has a very assured touch in court.” “He is a leader in his field and is highly respected. In terms of his ability to think around the problem and present solutions, he’s very good.” Chambers Global 2015 – International Arbitration

“Highly experienced senior silk with a raft of big-ticket commercial cases under his belt. He is held in very high regard by peers and instructing solicitors alike for his assured advocacy, strategic awareness and reliability in handling high-stakes disputes”. Chambers Global 2015 – Commercial Dispute Resolution

“He’s a bulldog of a litigator. You can send him in safe in the knowledge that he’ll fight hard.” “He’s extremely bright and client-friendly, and provides good leadership.” Chambers Global 2015 – Commercial Dispute Resolution

“Holds the attention of client and court; a superb advocate.” Chambers UK 2014 Banking and Finance

Continues to be considered part of an elite group of commercial silks with the strength and experience to act in the most cutting-edge disputes for the most demanding of lay clients. “He’s the go-to person if you need your case forcefully put forward in court. He has the ear of the court.” Chambers UK 2014 Commercial Dispute Resolution

‘...marries the skills of a cunning fox with the panache of a respected legal statesman’. Legal 500 – Banking & Finance 2013

One of the most respected silks practising in the area of financial services. “He’s extraordinarily good and extremely bright, and he gets great results for his clients.” “He’s obviously hugely experienced and a very powerful advocate.” Chambers UK 2014 Financial Services

“A first port of call for the more serious cases.” Chambers UK 2014 Fraud: Civil

“Right there at the top of the tree,” he is an expert in professional negligence claims with a commercial or banking slant. “It is hard to think of anyone much better for financial services-related work.” Chambers UK 2014 Professional Negligence

Noted for his ‘good leadership’, and for his ‘presence both in and out of court, which gives confidence to clients’. Legal 500 – Commercial Litigation 2013

A leading silk when acting as arbitrator and counsel. He wins acclaim from commentators for his consistent excellence and deep expertise. "He is well recognised and is always top-notch." Chambers UK 2014 International Arbitration

"capable of beguiling the court" with his "tenacity and charm," and "brings incisive wisdom and great experience" to all manner of banking problems.' Chambers UK 2012 Banking and Finance

"totally stellar" Michael Brindle QC ascends in the rankings this year in reflection of his high profile at the Commercial Bar. He is "a true Olympian," sources say, "a man of immense seniority" and "fantastic judgement." Chambers UK 2012 Commercial Dispute Resolution

"one of the standout names in this area," and is hailed by both solicitors and peers as a "first-class lawyer" and a "great advocate." Chambers UK 2012 Financial Services

"exceptional" Michael Brindle QC is a "very impressive" civil fraud silk' Chambers UK 2012 Civil Fraud

"very practical and pragmatic" approach is particularly highlighted by sources, and he is experienced as both an advocate and an arbitrator.' Chambers UK 2012 International Arbitration

"stands head and shoulders above the majority of the market" Chambers UK 2012 Professional Negligence

"The 'eminent' Michael Brindle QC has 'real gravitas' Legal 500 – Banking and Finance 2012

"Extremely industrious but has a very natural style-despite the fact that he has prepared the case to the nth degree, he just stands and addresses the court as if he's in normal conversation." Chambers UK – Banking & Finance 2011

"Absolutely first-class" Chambers UK – Financial Services 2011

"A brilliant heavyweight litigator" Legal 500 2010 Commercial Litigation

"Silk that needs no introduction" "his consistency, efficiency & directness" have won him many admirers over the years & he is today as popular as he's ever been" (Financial Services)

## EDUCATION

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- Westminster School
- New College, Oxford MA
- Entrance Scholarship (Ella Stephens)
- 1972 First Class Hons Classics
- 1974 First Class Hons Jurisprudence

## APPOINTMENTS, MEMBERSHIPS, PRIZES

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- 1976-82 Part-Time Lecturer at New College, Oxford – Jurisprudence

- Member of Financial Markets Law Committee
- Chairman of Advisory Council of “Public concern at work”
- Deputy High Court Judge 1999
- Bencher of Lincoln’s Inn
- Chairman of Education & Training Committee of the Bar Council (2004).
- Chairman of International Committee of the Bar Council (2008).
- Director of Bar Mutual Indemnity Fund Ltd
- Member of Lawyers’ Advisory Committee of Peace Brigades
- Appointed to the SIAC, and Kuala Lumpur Panels of Arbitrators (Singapore and Malaysia)
- Appointed to the DIFC Courts Register of Practitioners (Dubai)
- Member, Panel of Advisors to the Attorney-General of Singapore, 2015 –
- President of the Appeals Panel of the Abu Dhabi Global Market

## NOTABLE CASES

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- *OMV v Zaver* [2015] Arbitration clash between Pakistan and ICC
- *Al-Khorafi v Bank Sarasin* [2014-5] Investment advice in Dubai
- *Kazakhstan Kaghazy v. Zhunus and Arip* [2014-5] Conspiracy to defraud
- *Peak Hotels v. Tarek and Sherway* [2014] Shareholder dispute relating to Aman Hotel group
- *Novoship v. Mikhaylyuk* [2014] Bribery and account of profits
- *Roadchef v Ingram Hill* [2014] Trustee powers and liabilities
- *Fiona Trust v Skarga and Nikitin* [2013] Bribery and foreign law
- *FSA v C* [2013] Judicial review of FSA
- *Bank Mellat v HM Treasury and European Council* [2012-13] Public law and Iranian sanctions in London and Luxembourg courts
- *British Bankers Association v FSA* [2011] Mis-selling as judicial review
- *Jivraj v Hashwani* [2010] Arbitrators as discrimination
- *Lehman Brothers Inc (Rascals)* [2010] Insolvency of associated companies
- *Berezovsky v Abramovich* [2009] Intimidation
- *Shah v HSBC* [2009] Money laundering
- *Parabola v MF Global* [2009] Fraud of stockbroker
- *Stone & Rolls v Moore Stephens* [2008] Auditor’s negligence
- *Riyadh Bank v AHLI Bank* [2006-7] Islamic financing
- *Charter PLC v City Index* [2007] Contribution of constructive trusts
- *Springwell v JP Morgan Chase* [2007] Emerging markets investment
- *IXIS v WestLB* (2008) Securitisation
- *R. v FSA ex parte Yukos* (2006) Regulation of foreign companies issuing in London
- *Customs & Excise v Barclays Bank* (2003-6) Freezing injunction and duty of care in the House of Lords
- *HSBC v Fortis* (2004) Mutual Funds in the Bahamas
- *Barclays Bank v Boulter* (1999) Banking and sureties in the House of Lords
- *Czarnikow-Rionda v Standard Bank* (1999) Letters of Credit and fraud
- *Northern Rock v Archer* (1998) Banking and sureties

- Explanatory Statement Pg. 266 of 282
- *KAFCO v Trans-ammonia* (1978) Arbitration - restraint of trade
  - *Nuova Safim Spa v The Sakura Bank Ltd* (1997) Derivatives
  - *BCCI v Price Waterhouse & Bank of England* (1997) Interpretation of Banking Act 1987 – Chancery
  - *Camdex v Bank of Zambia* (3) (1997) Garnishee orders and a central bank in the House of Lords
  - *Re Mid-East Trading Limited* (1997) Winding-up of foreign company – Chancery
  - *Central Bank of Trinidad & Republic Bank Limited* (1996) Bank regulation – Trinidad
  - *Camdex v Bank of Zambia* (1) & (2) (1996) Champerty and mareva injunctions involving a central bank
  - *Sunlife v Securities and Investment Board* (1995) judicial review – financial services
  - *Football Association v Graham* (1995) Sports Law
  - *Mellstrom v Bank of England* (1995) Banking regulation
  - *Cala Cristal v Al-Borno* (1994) Mareva injunction – costs
  - *Shah v Bank of England* (1994) Banking regulation
  - *Deposit Protection Board v Dalia* (1993) Depositor compensation in the House of Lords
  - *Re Bishopsgate Investment Management* (1993) Constructive trust

## OTHER EXPERIENCE

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- Former Chairman of the Commercial bar Association
- Former Chairman of Bar Council Education and Training Committee and International Committees
- Former Chairman of Trustees of “Public Concern at Work”.
- Former member of Financial Reporting Review Panel.
- Special advisor to Trade & Industry Select Committee re “Export Licensing and BMARC”.
- Head of Chambers 2003 – 2008.
- Former Recorder of the Crown Court 2001

## PUBLICATIONS

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- “Does Constructive knowledge make a constructive trustee?”, Published in Australian Law Journal and Trust Law and Practice in 1987
- “Money Laundering and the Criminal Justice Act 1988”: International Tax Report May 1995 and Tolley’s International Tax Planning (1996 and 2001)
- “Confidence, Public Interest and the Lawyer” published in Legal Ethics and Professional Responsibility by Ross Cranston (1996)
- “The Law of Bank Payments” with Raymond Cox QC: FT law and Tax (1996) (Fourth Edition 2010)
- “The Vienna Sales Convention and the capital markets” in Capital Markets Law Journal (2008)

## LANGUAGES

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Working knowledge of French, Italian and Greek

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## Timothy Howe QC Call Date: 1987 | Silk Date: 2008

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Timothy Howe QC is well-established and widely recognised as a leading practitioner in the field of commercial dispute resolution. He has been described by Chambers & Partners UK as having “a multi-faceted practice covering the whole range of commercial litigation and arbitration” and by Legal 500 as being among “the best at the Bar”.

His broadly-based practice encompasses commercial litigation and arbitration, international and domestic, and extends to disputes and proceedings in or involving overseas jurisdictions, including Hong Kong, Singapore, Dubai, the Channel Islands, the USA & the Caribbean.

### AREAS OF EXPERTISE

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- Banking & finance
- Commercial dispute resolution
- Company
- Energy & natural resources
- Financial services
- Fraud: civil
- Insurance and reinsurance
- International arbitration
- Offshore
- Professional negligence
- Tax
- Telecommunications

### RECENT PRACTICE

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Timothy Howe has extensive experience of acting as Lead Counsel in international and domestic commercial dispute resolution with particular expertise in the practice areas identified above. Recent examples of his practice are set out below:

#### Banking & finance

Recent practice includes:

- Acting for various companies within the State General Group in successfully defending a Euro 100m “credit crunch” dispute arising from the devaluation of a structured note programme relating to underlying investments in illiquid hedge funds, involving allegations of negligent asset management and related breaches of contract.
- Acting for Deutsche Bank AG and BNP Paribas in relation to multi-million dollar claims arising out of complex derivative transactions with Indian corporate counterparties.
- Acting for French global investment bank Natixis in high profile expedited Commercial Court proceedings against Goldman Sachs re disputed termination of Credit Default Swaps giving credit risk protection for US\$450 million in respect of a programme of defaulted Bonds (secured on mortgage backed securities and other subprime assets) structured by Goldman Sachs in the USA.
- Acting for a leading global investment bank in connection with a US70 million dispute concerning the impact of the Madoff Fraud and resulting investment losses on complex derivative transactions (put options geared by reference to Madoff feeder funds in the Cayman Islands).
- Acting for KfW, the German Federal Bank for Reconstruction, in multi-million dollar Commercial Court proceedings against Euroclear, the International Central Securities Depository, for alleged negligence and breach of contract by Euroclear in providing collateral and securities settlement and management services to KfW through the ‘Euroclear System’, resulting from Euroclear’s refusal to accept US Treasury bills as collateral under various derivative transactions from KfW’s counterparty, Lehman Brothers Special Financing Inc, immediately prior to the collapse of the Lehman Brothers group.
- Acting for the Bristol Port Company in connection with the landmark litigation relating to the £300 million funding deficit in respect of the Pilots National Pension Fund, including in respect of the appeal to the Court of Appeal against the judgment of Warren J in PNPFT rust Company Ltd v Taylor & Ors [2010] EWHC 1573 Ch.
- Acting for Goldman Sachs GSIP Master Company (Ireland) Limited (“GSIP”) in the complex, high profile Lehman Brothers administration proceedings in London. GSIP was appointed as a representative of a group of hedge-fund creditors pursuing high value claims to share in the distribution of the US\$3 billion pool of client money held by Lehman Brothers in London when the Lehman group went into administration in September 2008. An expedited trial of key legal issues concerning the entitlements of Lehman hedge fund creditors to share in the client money pool took place before Briggs J in November/December 2009, followed by an appeal to the Court of Appeal in 2010 and an appeal to the Supreme Court in October 2011.
- Acting for Deutsche Bank AG in respect of multi-jurisdictional proceedings against Italian regional and civic public authorities in connection with the enforcement of high value Credit Default Swaps in the English Commercial Court and parallel civil and administrative proceedings in the Italian Courts.
- Advising and acting for a leading global investment bank in relation to anticipated claims in the Channel Islands and the BVI arising out of the Madoff Fraud and US proceedings brought by the Liquidator of the Madoff corporate vehicles and Madoff’s Trustee in Bankruptcy.
- Acting for a leading Russian Bank, in high value Commercial Court proceedings arising out of the restructuring of an international bond issue in respect of an underlying Russian investment portfolio, in defending claims brought by note holders for alleged breach of contractual and fiduciary duty in relation to such restructuring.
- Acting for hedge fund managers and investment managers in connection with US\$350 million claims investors arising from the collapse of an offshore hedge fund.
- Acting for HBOS plc in the Bank Overdraft Charges Litigation between the Office of Fair Trading and eight of the largest UK retail banks, in the Commercial Court, Court of Appeal and culminating in an appeal to the Supreme Court.
- Advising and acting for market counterparties with regard to the consequences of the recent insolvency of Lehman Brothers.
- Acting in complex Commercial Court proceedings between IXIS-CDC, West LB, CIBC and Terra Firma arising out of the £1 billion securitisation of the Box Clever Group.

- Advising and acting for commercial companies affected by the Global Banking Crisis.
- Advising and acting for investors in relation to the Federal Reserve bail-out of the AIG Group.
- Acting for noteholders in a priority dispute arising from the administration and restructuring of a major SV.
- Acting for a major UK asset manager in connection with potential “credit crunch” claims in excess of £300 million arising from investments in a programme of Structured Notes.
- Acting for Merrill Lynch in Commercial Court proceedings in connection with the restructuring and administration of Eurotunnel.
- Advising a South East Asian fund against a European bank in connection with its financial exposure under complex CDOs arising from the “credit crunch”.
- Acting for Hypo Real Estate Bank International in connection with a multi-million pound dispute over broker-originated commercial property-backed lending business.
- Advising a number of leading UK banks and building societies in relation to complex UK-wide commercial mortgage frauds.
- Acting in UK litigation arising from US regulatory investigations and proceedings concerning Wall Street Investment banking practices in relation to IPO business.
- Acting for Barclays Bank plc in cross-border litigation in the UK, Spain and Dubai concerning a multi-million pound international fraud/conspiracy.
- Acting for the Man Group in litigation relating to foreign exchange trading/broking.
- Acting for Banco Santander in relation to litigation concerning ISDA swap transactions.
- Acting for the European Bank of Reconstruction and Development in multi-jurisdictional litigation concerning project finance transactions in Turkey & Uzbekistan
- Acting for the Nomura Group in relation to multi-jurisdictional litigation and arbitration proceedings arising from investments in the Czech banking and industrial sectors.
- Acting for Deutsche Bank (at 1st instance and in the Court of Appeal) in litigation concerning international export credit projects in Eastern Europe and Africa.

## Company

Recent practice includes:

- Acting for US investors in a start-up Joint Venture in connection with a US\$100 million dispute over the development and commercialization of cutting edge information technology, involving parallel proceedings in London, Ireland, Australia and the USA.
- Acting for shareholders in the world’s largest aluminium company in relation to a multi-billion dollar dispute in relation to the conduct and affairs of the joint venture and the disposition of its natural resources, involving multi-jurisdictional disputes in London, Jersey, Hong Kong and Switzerland.
- Acting for certain shareholders in Commercial Court proceedings as to the disputed ownership and control of a Joint Venture concerning high value Russian property investments.
- Acting for venture capital and related shareholder interests in litigation arising from the disposal of a major UK PLC
- Acting for the directors of a leading UK PLC (at 1st instance and in the Court of Appeal) in multi-million pound litigation arising from a recommended takeover bid
- Acting for Hutchison Whampoa in high value international litigation arising out of the dissolution of joint venture businesses in China
- Acting for a Hong Kong-based international logistics corporation in relation to shareholder and other disputes arising from the acquisition of a worldwide logistics and freight business from the Jardine Matheson Group



- Acting for Goldman Sachs in respect of Mannesmann's attempted injunctive proceedings in connection with Vodafone's successful takeover bid for Mannesmann
- Acting for BSkyB in a shareholders' dispute arising out of merger of BSB and Sky TV
- Acting for the Liquidator of a leading UK mutual insurer in connection with claims arising from its takeover by a leading French insurance group and its ensuing insolvency
- Acting for the Lincoln Group in multi-party litigation arising from the disposal of its UK financial services and life insurance businesses and assets
- Acting for a leading Hong Kong conglomerate in litigation arising out of its takeover of the worldwide Singer Group
- Acting for British Rail in proceedings arising out of the privatisation of the UK train operating companies

## Energy & natural resources

Recent practice includes:

- Acting for a major Russian institution in a complex, multi-jurisdictional dispute with a Russian Oligarch concerning the acquisition of a controlling stake in a leading Russian energy corporate and the dissipation of worldwide security interests.
- Advising Esso UK on aspects of the operation of the Milford Haven-Manchester Oil Pipeline and the conduct and disposal of joint venture interests in the Manchester Fuels Terminal.
- Acting for shareholders in an energy joint venture, in relation to a multi-million dollar dispute arising from the acquisition/disposal of controlling interests in and assets of a joint venture in respect of valuable Kazakh oil and gas resources, involving litigation in Cyprus and Russia as well as in England.
- Advising and acting for US investors in a major power station project in South Africa.
- Acting in proceedings involving Bechtel relating to the Dabhol Power Plant in India.
- Acting for the Petrofac Group in relation to a multi-million pound contractual dispute over the commissioning, installation and operation of a North Sea oil and gas platform
- Acting for a major Russian energy group in relation to a multi-jurisdictional dispute concerning a joint venture with European partners.
- Acting for a leading US energy group in LCIA arbitration proceedings concerning the financing of a major UK energy project.
- Acting for European reinsurers of a major oil pipeline system in Bolivia in multi-party litigation concerning environmental pollution claims resulting from a catastrophic oil spill.
- Acting for London reinsurers in litigation concerning the operations of a major power project in Thailand.
- Acting for the Overseas Private Investment Corporation (OPIC) in relation to litigation arising from the financing of petroleum-related trading enterprises in East Africa/Mauritius.
- Acting for a Canadian energy group in London arbitration proceedings concerning the construction of Korean nuclear power stations.
- Acting for a US energy exploration group in LCIA arbitration proceedings concerning the prospecting and development of oil and gas resources in West Africa.

## Fraud: civil

Recent practice includes:

- Acting for the Trustees of Guernsey Trust in international litigation – known as the King Litigation – arising from an alleged multi-million pound securities and tax fraud by the settlor of the Trust,

- Acting for a leading emerging markets investment manager in relation to the recovery of investments in respect of a high value M&A transaction in Russia.
- Representing a major international bank in relation to asset tracing and recovery proceedings in London, Singapore, Hong Kong, the BVI and the Bahamas
- Acting for a number of leading banks and building societies in relation to a complex UK-wide mortgage frauds
- Acting in complex Commercial Court proceedings between IXIS-CDC, West LB, CIBC and Terra Firma arising out of the £1 billion Box Clever group securitisation
- Acting for the minority shareholders/investors in relation to claims for fraudulent misrepresentation in litigation in Singapore, the Cayman Islands and the USA arising from a pan-Asian telecoms joint venture
- Acting in multi-jurisdictional litigation in the Cayman Islands and the USA relating to fraud on minority shareholders in an international aircraft leasing joint venture
- Acting for a leading international bank in cross-border litigation in England, Guernsey, Spain and Dubai in relation to a multi-million pound international fraud and conspiracy
- Acting for Barclays Bank (at 1st instance and in the Court of Appeal) in relation to complex litigation arising from a fraudulent offshore investment scheme in Guernsey
- Acting for the European Bank for Reconstruction and Development in Commercial Court litigation concerning project finance transactions in Turkey and Uzbekistan
- Acting for London market insurers of a leading Bermudian bank in relation to class action litigation in the USA and Cayman Islands arising out of a multi-million dollar fraudulent scheme

## Insurance

Recent practice includes:

- Acting for Morgan Stanley and associated companies in Commercial Court proceedings in respect of multi-million pound claims against Mitsui Sumitomo under commercial credit risk insurance policies in connection with funding shortfalls in relation to a failed US commercial real estate development project.
- Advising London market reinsurers on coverage issues relating to Sri Lankan political risk insurance/reinsurance programme in light of conclusion of hostilities with Tamil Tigers.
- Advising Amlin Group in relation to potential reinsurance exposures and anticipated arbitration proceedings in respect of WTC-related claims, and in respect of claims arising from recent civil unrest in Thailand.
- Acting for BNP Paribas in relation to US\$70m coverage issues arising from Madoff Fraud and the US proceedings being brought by the Liquidator of the Madoff corporate vehicles and Madoff's Trustee in Bankruptcy.
- Acting for a leading European reinsurer in international arbitration proceedings concerning the pool business of a Bermudian captive.
- Advising Equitas in connection with multi-million pound coverage and "bad faith" damages actions in the USA.
- Acting for London and European reinsurers (at 1st instance and in the Court of Appeal) in the Carvill litigation concerning brokerage disputes relating to London Market and international reinsurance placements.
- Acting for a leading US insurer in international arbitration and Commercial Court proceedings concerning the coverage of US asbestos and pollution losses.

- Acting for the Lloyds TSB Group in case proceedings in the Court of Appeal and House of Lords concerning aggregation of insured liabilities for pension mis-selling.
- Acting for Lloyd's of London against 6 major international insurance corporations in arbitration proceedings concerning the insurance of the New Central Fund and the incidence of WTC-related losses.
- Acting for Merrill Lynch in Commercial Court proceedings to enforce credit risk insurance cover in connection with the restructuring and administration of Eurotunnel
- Advising the fidelity insurers of a leading Japanese Bank in connection with a multi-million pound bond fraud.
- Acting for London market insurers in relation to a major business interruption claim by United Biscuits.
- Acting for international insurers in LCIA arbitration proceedings concerning claims for compensation by investors in Split Capital Trusts.
- Acting in the UK film finance litigation, including for film studios MGM and United Artists Corporation, in litigation concerning Heaths-brokered film finance insurance.
- Acting for US insurers in litigation with London market reinsurers concerning the coverage of the September 11 2001 World Trade Center losses.
- Acting for European reinsurers in international arbitration proceedings concerning (1) the financial collapse of the HIH Group, and (2) the Unicover Pool debacle.

## International arbitration

Recent practice includes:

- Acting for a leading international energy multi-national, Canadian Nexen in a US\$100 million multi-jurisdictional dispute involving offshore international arbitration proceedings, as well as related Jersey, English, Lebanese and other foreign Court proceedings, arising in connection with the ownership and operation of Yemen's largest oil and gas concession, to determine issues relating to the entitlement and disposal of substantial oil production from the concession and the attempted extension of the jurisdiction of an English Court-appointed Receiver to attach assets in foreign jurisdictions by means of international arbitration proceedings.
- Acting for hedge fund managers and investment managers in Bermuda-seated arbitration proceedings and related LCIA arbitration proceedings in connection with US\$350 million claims by liquidators and investors arising from the collapse of an offshore hedge fund.
- Acting for a major property investment consortium in LCIA arbitration proceedings arising in connection with a complex and high value dispute with a major multi-national corporation over the terms and effect of a £1 billion commercial transaction.
- Acting for certain shareholders in the world's largest aluminium company in relation to a multi-billion dollar dispute in relation to the conduct and affairs of the joint venture and the disposition of its natural resources, involving multi-jurisdictional multi-party commercial dispute resolution including LCIA arbitration proceedings.
- Acting for a leading global investment bank in LCIA arbitration proceedings seated in India and London (subject to English and Indian law) in respect of disputes concerning high value ISDA derivative transactions with various Indian corporations.
- Sitting as an arbitrator in an ongoing confidential Paris-seated ICC arbitration regarding a US\$100 million dispute between a sovereign government and a contracting group concerning a major Gulf natural resources infrastructure project.
- Acting for Asian investment funds in ICC arbitration proceedings, centred in Canada and New York, concerning an investment project in Vietnam.
- Acting for a leading European reinsurer in international arbitration proceedings concerning the pool

- Acting for a leading multi-national technology corporation in international arbitration proceedings in Hong Kong arising in connection with technology projects in China.
- Acting for a US insurance coverholder in London arbitration proceedings concerning the underwriting of binding authorities for the coverage of US fleet risks.
- Acting for a global investment bank in international arbitration, centred in Hong Kong, arising from a joint venture for property-backed lending in the Hong Kong market.
- Acting for a leading US insurer in arbitration proceedings concerning the coverage of US asbestos and other pollution losses under London market reinsurance treaties.
- Acting for a leading US energy group in LCIA arbitration proceedings concerning the financing of a major UK energy project.
- Acting for Lloyd's of London against 6 major international insurance corporations in arbitration proceedings concerning the insurance of the New Central Fund.
- Acting for Lloyd's of London against 6 major international insurance corporations in arbitration proceedings concerning the insurance of the New Central Fund.
- Acting for international insurers in LCIA arbitration proceedings concerning claims for compensation by investors in Split Capital Trusts.
- Acting for a Canadian energy group in London arbitration proceedings concerning the construction of Korean nuclear power stations.

#### **International cross-border and multi-jurisdictional disputes**

Recent practice includes:

- Acting for US investors in a Joint Venture with Australian partners in connection with a US\$100 million dispute over the development and commercialization of cutting edge information technology, involving multi-jurisdictional, multi-party parallel proceedings in London, Ireland, Australia and the USA.
- Acting for the Trustees of Guernsey Trust in international litigation – known as the King Litigation – involving parallel proceedings in the courts of England, Guernsey and South Africa – arising from an alleged multi-million pound securities and tax fraud by the settlor of the Trust.
- Acting in relation to multi-jurisdictional litigation in London, Brazil and New York arising from the refinancing of the leading Brazilian international telecoms corporation.
- Acting for the minority shareholders/investors in relation to litigation in Singapore, the Cayman Islands and the US arising from a pan-Asian telecoms joint venture.
- Acting for Hutchison Whampoa in cross-border litigation, centred in Hong Kong, about the dissolution of China joint venture businesses and related shareholder disputes.
- Acting for a US corporation specializing in the field of submarine telecommunications in multi-jurisdictional litigation with a Brazilian sub-contractor.
- Acting for London market insurers of a major Bermudian financial institution in connection with its exposure to class action litigation in the US and Cayman Islands.
- Acting for Irish creditor interests in relation to multi-jurisdictional litigation arising from the collapse of the Parmalat group.
- Acting for a leading international bank in cross-border litigation in the UK, Spain and Dubai concerning a multi-million pound international fraud/conspiracy.
- Acting for Cricket Sri Lanka in connection with multi-jurisdictional litigation and arbitration, in London, the British Virgin Islands, Malaysia, Singapore and Sri Lanka, concerning TV rights in respect of Sri Lankan international cricket matches.
- Acting for London and European reinsurers in relation to US/UK litigation concerning London Market

- Acting for the Trustees of the Thyssen-Bornemisza offshore family trusts in US \$2 billion litigation in Bermuda.

## Professional negligence

Recent practice includes:

- Acting for the Trustees of a major UK pension fund in respect of claims in excess of £100 million against a leading international investment manager for alleged mismanagement of substantial pension funds in connection with overconcentration in high risk investments before, during and after the “credit crunch”
- Acting for offshore investment managers in connection with US\$350 million claims for negligence and breach of contract, and third party claims against valuation agents arising from the collapse of a Bermudian investment fund
- Acting for KfW, the German Federal Bank for Reconstruction, in multi-million dollar Commercial Court proceedings against Euroclear, the International Central Securities Depository, for alleged negligence and breach of contract by Euroclear in providing collateral and securities settlement and management services to KfW through the ‘Euroclear System’.
- Acting for Deutsche Bank in defending claims for alleged negligence in connection with the conclusion of a US\$150 million loan facility and associated derivative transactions with Indian corporate counterparties
- Acting for E&O insurers of a major UK asset manager in connection with negligence claims arising from a £50 million investment in a programme of Structured Notes
- Acting in complex multi-party Commercial Court proceedings arising out of the £1 billion securitisation of the Box Clever group involving negligence claims against leading international investment banks as Arrangers and Joint Lead Managers
- Acting in relation to multi-million pound claims for negligent fund management between a Guernsey trust and a leading international fund manager
- Acting for Barclays Bank in relation to professional negligence claims against valuers and other professional advisers arising from a complex UK-wide mortgage fraud
- Acting for the Man Group in litigation concerning alleged negligence in relation to foreign exchange trading/broking and fund management business
- Acting for German film production companies in litigation against various UK brokers relating to film finance insurance
- Acting for Lloyd’s of London in multi-million pound negligence proceedings against leading international insurance/reinsurance brokers arising out of the placement of insurance of the Lloyd’s New Central Fund
- Acting for Sotheby’s in test-case litigation concerning the professional duties of international art auction houses
- Acting for former auditors of Atlantic Computers in complex multi-party litigation involving negligence claims against merchant banks, auditors and other professional advisers arising out of the takeover of Atlantic Computers by British & Commonwealth
- Acting for the auditors of Polly Peck, sued in connection with the activities of Asil Nadir and the ensuing financial collapse of the Polly Peck Group
- Acting for Banque Bruxelles Lambert in landmark litigation involving negligence claims against professional advisers relating to commercial property-backed lending

## Telecommunications

- Acting in Commercial Court proceedings concerning a cross border dispute arising from the commercial activities of Magyar Telecom and Deutsche Telecom, and involving parallel US regulatory investigation and English litigation.
- Acting for a group of start-up information technology companies and their US founder investors in connection with a US\$100 million dispute over the development and commercialization of cutting-edge information technology, involving parallel proceedings in London, Ireland, Australia and the USA.
- Advising and acting in relation to US proceedings in respect of a complex dispute governed by English law arising from a telecommunications technology joint venture between a US corporation and an Indonesian conglomerate.
- Acting for IBM in international arbitration proceedings seated in Hong Kong arising in connection with technology transfer projects in China.
- Acting for the leading Brazilian international telecoms corporation in relation to multi-jurisdictional litigation in London, Brazil and New York
- Acting for the minority shareholders/investors in relation to litigation in Singapore, the Cayman Islands and the US arising from a pan-Asian telecoms joint venture
- Acting for a leading multi-national technology corporation in international arbitration proceedings centred in Hong Kong arising in connection with cutting edge telecom technology transfer projects in China
- Acting for a US corporation specializing in the field of submarine telecommunications in multi-jurisdictional litigation with a Brazilian sub-contractor
- Acting for Hutchison Whampoa and another major Hong Kong corporation with substantial telecom interests in disputes concerning China joint venture businesses

## RECOMMENDATIONS

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Timothy is currently ranked by Chambers & Partners in no fewer than 8 practice areas, and has also consistently featured over the past 6 years as a highly recommended individual "Star at the Bar". Tim's recent high profile cases include the OFT UK Bank Charges Litigation acting for HBOS (culminating in the landmark judgment of the Supreme Court), the complex Lehman Administration proceedings in respect of the collapse of Lehman Brothers acting for Goldman Sachs hedge fund interests in pursuit of claims against the US\$3 billion pool of Client Money (also the subject of an appeal to the Supreme Court), a high profile dispute between two leading global investment banks (Goldman Sachs and Natixis) concerning the termination of a US\$450 million programme of credit risk protection in respect of a defaulted US Bonds issue secured on subprime assets, and a 'test case' action for the German Federal Bank for Reconstruction against the international securities depository Euroclear, as well as acting for and advising various leading global investment banks in connection with a range of disputed transactions and potential multi-million exposures including in relation to the Madoff Fraud.

**Recent work:** Acted for VTB Capital in a high-profile, multi-jurisdictional and multiparty dispute stemming from the EUR1 billion sale and purchase of a leading Bulgarian telecoms group.

### Recommendations in Legal Directories

*"A QC at the top of his game, whose incredible intellect is matched by his calm, considered approach to advice, and his terrific advocacy skills." "A real asset to any team." (Chambers and Partners 2018)*

*"One of the hardest-working silks at the Bar. A real asset to any team." "Hard-working and user-friendly."* (Banking & Finance, Chambers and Partners 2016)

*"A real joy to deal with. He is very thorough and his written advocacy is among the very best I have ever encountered." "He is very good on paper, very impressive and has a lot of gravitas."* (Commercial Dispute Resolution, Chambers and Partners 2016)

*"He does a lot of energy work and is really bright. He's a very strong advocate who is very good on his feet."* (Energy & Natural Resources, Chambers and Partners 2016)

*"He rolls his sleeves up and is always available to provide help and guidance. He is phenomenally bright and works incredibly hard."* (Fraud:Civil, Chambers and Partners 2016)

*"A very clever guy whose analysis is sound. He has a very deep understanding of the law." "He is formidable advocate. He is very fluid, and speaks naturally in understandable terms."* (International Arbitration: General Commercial & Insurance, Chambers and Partners 2016)

*"Very charming, extremely bright and clear in his advices."* (Professional Negligence, Chambers and Partners 2016)

*"He thinks through all facets of legal problems and anticipates the arguments his adversaries will advance. He's a good, creative thinker when it comes to case strategy." "He's very thorough and leaves no stone unturned."* (Telecommunications, Chambers and Partners 2016)

*"Tim gets to grips with complicated financial cases and is able to talk the same language as the clients."* (Banking & Finance, Chambers and Partners 2014)

*"An extremely bright, very able advocate."* (Commercial Dispute Resolution, Chambers and Partners 2014)

*"A superb team player, who is very personable."* (Commercial Dispute Resolution, Chambers and Partners 2014)

*"He rolls up his sleeves and gets stuck into every aspect of a case."* (Fraud: Civil, Chambers and Partners 2014)

*"He is very clear and deliberate, and has a very good manner. He is quick on his feet and very responsive. He's intelligent, smart and very practical."* (Insurance, Chambers and Partners 2014)

*"He's an extremely strong litigator who does a very good job."* (Telecommunications, Chambers and Partners 2014)

*"Always responsive, always on top of his game and always easy to work with."* (Energy & Natural Resources, Chambers and Partners 2014)

*"He has a great depth of knowledge and expertise in arbitration."* (International Arbitration, Chambers and Partners 2014)

"He is excellent at providing straightforward and pragmatic advice." (International Arbitration, Chambers and Partners 2014)

"He has excellent product knowledge of the financial sector." (Professional Negligence, Chambers and Partners 2014)

"Takes a hands-on approach to cases and gets stuck into every aspect of a matter." (Professional Negligence, Chambers and Partners 2014)

Timothy Howe QC is "a barrister possessed of *"fantastic intellect and an outstanding work ethic"*. (Chambers & Partners UK 2011) He is "*a seasoned performer and 'a real Renaissance man'* whose clients appreciate his *'terrier-like tenacity'*. Known for his expertise in financial products and derivatives, *he is much sought after due to his prodigious work rate and attention to detail"*. (Chambers & Partners UK 2012)

Timothy Howe QC "*proves extremely knowledgeable across a wide range of fields* including banking and insurance. Of late he has been seen in Madoff-related litigation and has been acting for Goldman Sachs Investment Partners in successfully pursuing claims against client money that was held by Lehman Brothers. Solicitors warm to him because "*he is not remotely stuffy or up himself in the way that some silks can be and he is prepared to field with patience any question however stupid it may be.*" Howe is one of the great hopes for the future of the set." (Chambers & Partners UK 2011)

"With such instructions under his belt as representing Goldman Sachs in the Lehman 'client money' case and acting for HBOS in the bank overdraft charges litigation, it is hard to believe that Timothy Howe QC has only been in silk since 2008. He has exceptional knowledge of banking matters and demonstrates an *'effortless grasp of complex financial products'*. He further impresses with his fraud, insurance, energy and natural resources, and professional negligence expertise. Very much a modern advocate, Howe's *'excellent attentiveness, easy-going style and down-to-earth advice'* are much appreciated by clients, while his determined advocacy and *'ability to soak up pressure'* make him yet more desirable to solicitors." (Chambers & Partners UK 2012)

Timothy Howe QC is hailed by commentators as "*fantastically hard-working, and very good at client handling.*" He is "*able to grapple with complex issues and work to tight timeframes.*" A protean figure, "*he reacts to changing scenarios at the drop of a hat,*" and does very well in the oil, power and mining industries." (Chambers & Partners UK 2011)

"Client favourite, Timothy Howe QC has a wide-ranging commercial practice that encompasses knowledge of banking and finance, insurance and professional negligence disputes. Interviewees emphasise his *'effortless grasp of complex financial products, his tactical and commercial nous and his appetite for hard work.'* (Chambers & Partners UK 2011)

"Timothy Howe QC is "*much in demand and has significant experience in financial institutions-related work.* He has recently handled cases arising from the economic turmoil and related frauds, including a case in which he represented BNP Paribas in a USD70 million Madoff fraud coverage matter. Howe has also acted in recent cases involving asbestos, credit risk insurance, and a political risk insurance and reinsurance case relating to political and military upheaval in Sri Lanka." "Timothy Howe QC continues to impress with his expert handling of professional negligence cases, particularly those relating to the collapse of Lehman Brothers." (Chambers and Partners UK 2011)



"Particularly user-friendly silk' Timothy Howe QC acted for Goldman Sachs pursuing claims against the \$3bn pool of client money in the Lehman Brothers insolvency". His "*multi-jurisdictional multi-party experience is invaluable*" and he "*has incisive intellect and indefatigable stamina*". (The Legal 500 2011)

"Timothy Howe QC was one of the most sought-after banking juniors in the OFT bank charges litigation, and continues to build on this reputation following his seamless transition to silk." Interviewees agreed: "*He is one of the stronger players in the commercial and banking space; he complements his effortless grasp of complex financial instruments with an affable and responsive client manner.*" For those searching for a professional who is "*clever, able to reduce problems to accessible solutions and ultra-accessible.*" (Chambers and Partners UK 2010)

"Timothy Howe QC is *extremely bright and grasps complex financial issues very quickly.*" He is "*never one to avoid getting stuck in and loves the challenge of tricky cases.*" (Chambers and Partners UK 2010)

"Able to "*remain firm without ruffling feathers*" and "*stay calm no matter how big the crisis is*", Timothy Howe is widely regarded as "*an advocate who can be relied on to turn things around*". His "*keen eye for detail*" ensures "*he never misses a trick*" and his hard-working and diligent attitude prompts sources to describe him as "*a team player who is willing to get stuck in and get his hands dirty.*" (Chambers and Partners UK 2009)

## EDUCATION

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- St Paul's School, London: First Foundation Scholar
- Magdalen College, Oxford: Open Scholar
- BA Lit. Hum. (1<sup>st</sup> Class Hons 1985); MA 1993
- City University, London: Diploma in Law with Distinction

## APPOINTMENTS, MEMBERSHIPS, PRIZES

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- Executive Committee & former Secretary, Commercial Bar Association (2000 to date)
- Chairman, Bar Council Member Services Management Board (2008)
- Harmsworth, Astbury and Inaugural Queen Mother's Fund Scholarships, Middle Temple

## OTHER EXPERIENCE

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CEDR-accredited mediator (2004)

He accepts appointments as an arbitrator in commercial arbitrations. He also has extensive experience of ADR and mediation, including acting as a mediator.

## PUBLICATIONS

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- Co-Editor "Commercial Court Procedure" (Sweet & Maxwell)
- Co-Author "Law of Bank Payments" (Longmans)

## LANGUAGES

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- French (fluent)
- Italian (working knowledge)

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**Appendix 8**  
**SCG Entities**

1. Burlington Loan Management DAC (formerly Burlington Loan Management Limited)
  2. Baupost Limited Partnership 1983 A-1
  3. Baupost Limited Partnership 1983 B-1
  4. Baupost Limited Partnership 1983 C-1
  5. Baupost Value Partners, L.P.-I
  6. Baupost Value Partners, L.P.-II
  7. Baupost Value Partners, L.P.-III
  8. Baupost Value Partners, L.P.-IV
  9. Baylore Place, L.L.C.
  10. Bickham Spring Partners, L.L.C.
  11. Birks Place, L.L.C.
  12. BKS Claims LLC
  13. Bolser Holdings, L.L.C.
  14. Bretton Notch Associates, L.L.C.
  15. BSP Partners, L.P.
  16. Bullock Place, L.L.C.
  17. Caturra Associates, L.L.C.
  18. Chester Square, L.L.C.
  19. Cooperman Partners, L.L.C.
  20. Cotton Brook Associates, Ltd.
  21. Dante Ridge Advisors, L.L.C.
  22. Dylan Creeik, L.L.C.
  23. Ellsworth Partners, L.L.C.
  24. Harrison Pastures, L.L.C.
  25. HB Institutional Limited Partnership
  26. Herraz Capital, L.L.C.
  27. Hickok Place, L.L.C.
  28. Hutchinson Investors, L.L.C.
  29. Jackson Canyon Partners, L.L.C.
  30. Lamorak Advisors, L.L.C.
  31. LBCCO-1, L.L.C.
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32. LCR Capital, L.L.C.
  33. Merrick Place, L.L.C.
  34. Moreno Place, L.L.C.
  35. Newtonville Partners, L.L.C.
  36. Overton Ravine, L.L.C.
  37. PB Institutional Limited Partnership
  38. Provence Way, L.L.C.
  39. Quillstem Partners, L.L.C.
  40. Sacamano Partners, L.L.C.
  41. Salti Way, L.L.C.
  42. Shafer Fund, L.L.C.
  43. Swearengen Place, L.L.C.
  44. Wooderson Partners, L.L.C.
  45. YB Institutional Limited Partnership
  46. Zombrano Capital, L.L.C
  47. CVI GVF (LUX) Master S.à r.l.
  48. CVI GVF Luxembourg Twelve S.à r.l.
  49. CVI GVF Luxembourg Fourteen S.à r.l.
  50. CVI GVF Luxembourg Ninety Nine S.à r.l.
  51. CVF LUX Master S.à r.l.
  52. CVI CVF II Lux Master S.à r.l.
  53. CVIC LUX Master S.à r.l.
  54. CVIC II LUX Master S.à r.l.
  55. CVI AA LUX Master S.à r.l.
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