
Lehman Brothers International (Europe) – In Administration

Joint Administrators' eleventh progress
report for the period from 15 September
2013 to 14 March 2014

11 April 2014

Important notice

Creditors will note that this report provides data relating to certain estimated future costs, recoveries and creditor claim amounts. Please note that there continue to be significant matters which remain unresolved that may materially impact any or all of these estimates and, in turn, the overall return for LBIE creditors.

Furthermore, for reasons of commercial sensitivity, confidentiality and/or legal privilege, the Administrators are unable to provide detailed commentary on certain of the matters referred to in this report, each of which could have a material bearing on the eventual outcome to creditors.

On page 8 of this report, the Administrators have set out an updated range of indicative financial outcomes for unsecured creditors, for illustrative purposes only.

It is now apparent that in all scenarios a surplus of funds will be available after payment in full of the ordinary unsecured claims of creditors. The precise amount of that surplus is unknown at this stage, albeit the range of likely outcomes is narrowing as progressively more matters in the Administration are resolved, as too is the prospect of an eventual outcome outside of the range. The rights of creditors (including Shareholders) to share in the eventual surplus remain to be determined, albeit a number of issues in that regard were the subject of the Waterfall Application.

The Administrators reserve all rights concerning the relevance and calculation of Post-Administration Interest, Subordinated Debt and other non-provable claims against the LBIE estate that might eventually share in the surplus. No conclusion should be drawn or inferred from this report as to the way in which such claims will eventually be assessed.

The Administrators continue to caution creditors against using data in this report as a basis of estimating the value of their claims or the likely eventual dividend. **LBIE, the Administrators, their firm, its members, partners and staff and advisers accept no liability to any party for any reliance placed upon this report.**

LBIE also expressly reserves all of its rights against third parties on all matters and no conclusion should be drawn by third parties as to LBIE's position or legal arguments on any such matters from references made in this report.

Whilst amounts included in this report are stated in sterling, certain elements of LBIE's assets continue to be denominated in currencies other than sterling.

This report includes various defined terms as set out in the updated glossary of terms in Appendix F.

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Section 1:

Purpose of the Administrators' report

Introduction

This report has been prepared by the Administrators of Lehman Brothers International (Europe) under Rule 2.47(3) of the Insolvency Rules.

This is the eleventh such formal update to unsecured creditors and it provides details of progress made in the 6-month period 15 September 2013 to 14 March 2014. The statutory receipts and payments accounts for the same period are attached at Appendix A.

Wherever possible, again the Administrators have sought not to duplicate information disclosed to creditors in previous updates and reports. A copy of previous progress reports and other important announcements can be found at www.pwc.co.uk/lehman.

The Administrators will host a one-hour webinar on 6 May 2014, giving creditors an opportunity to hear a summary of the current circumstances of the Administration and to participate in a question and answer session. Details of the webinar will be posted on the above LBIE website in the near future.

Objective of the Administration

The Administrators continue to pursue the statutory objective and specific aims as set out in previous reports and which are summarised at Appendix E.

Creditors' Committee

The Administrators continue to meet with the Committee to review progress and consult on major issues by way of physical meetings, telepresence or audio conference calls.

During the period, GLG European Long Short Fund resigned from the Committee.

The Administrators remain grateful to the members of the Committee for their significant continuing efforts in support of the Administration.

Details of the Committee members are listed in Appendix E.

Future report and updates

The next formal progress report to creditors will be in 6 months' time.

In the interim, we will provide ad hoc updates in the event of any material developments concerning entitlements to the surplus or other significant matters, through the LBIE website, or by other means as appropriate.

Signed:



AV Lomas
Joint Administrator
Lehman Brothers International (Europe)
In Administration

Section 2:

Executive summary

Introduction

Good progress has been made over the past 6 months enabling the Administrators to declare a fourth distribution that will take unsecured creditors to the significant milestone of a 100p/£1 dividend on ordinary unsecured claims.

Anticipating the need for the Administrators to deal with a surplus after payment of ordinary unsecured claims in full, much work has been done examining the different entitlements to it, their calculation and their respective priorities. Certain of these matters were addressed in the Waterfall Application. That judgment was handed down in the period and has informed our thinking. A number of creditors have been consulted by the Administrators, as has the Committee, and extensive further legal advice has been taken.

It has become clear to the Administrators that further directions of the UK High Court will be needed to resolve the legal uncertainty as to the full extent of the rights of creditors to Post-Administration Interest and non-provable Currency Conversion Claims, unless a compromise can be agreed between the major creditors (and thereafter supported by a requisite majority creditor vote). In pursuit of consensus, the Administrators developed a Surplus Entitlement Proposal, which was discussed with a number of LBIE's major creditors who signed a non-disclosure agreement for the Consultation Period ending 28 March 2014. Signatories agreed not to trade in LBIE claims until being 'cleansed' by the public disclosure of the Surplus Entitlement Proposal and certain related data and information on the LBIE website on 28 March 2014.

The Administrators are considering the feedback received from participants during the consultation process and will update creditors on their next steps in due course. The Administrators will continue to discuss the Surplus Entitlement Proposal with creditors but, at the same time, preparation is being made to seek permission to appeal certain aspects of the Waterfall Application judgment and to commence separate proceedings on a number of related matters concerning Post-Administration Interest and Currency Conversion Claims that are not addressed by the Waterfall Application proceedings, such as:

- the interpretation of the definition of 'Default Rate' in the ISDA master agreement in order to determine the entitlement of creditors to recover a compound rate of interest in excess of the rate prescribed by Rule 2.88(6) of the Insolvency Rules;
- the effect of Post-Administration Interest on the calculation and adjustment of Currency Conversion Claims; and
- the impact of the release and discharge clauses included in post-administration documentation, such as the CRA and Claims Determination Deeds, on Post-Administration Interest and Currency Conversion Claims.

Resolution of at least some of the most significant complexities surrounding entitlements to the surplus is a prerequisite to distributions to unsecured creditors in excess of 100p/£1.

The Administrators will use the LBIE website to update creditors as matters progress.

Significant achievements in the period

Set out below is a summary of key achievements in the period.

Affiliates (Section 5)

A Hong Kong court ruling on LBHK extended liens has enabled asset exchanges between LBIE and LBHK, including House recoveries of £0.50bn to 14 March 2014.

The LBB settlement became effective on 14 March 2014, resulting in expected recoveries of at least £0.16bn and reduced inbound claim reserves of £0.58bn.

The Waterfall Application judgment in March 2014 decided that the Subordinated Debt is subordinate to provable claims, Post-Administration Interest and non-provable claims of other creditors, although the judgment is likely to be appealed.

Claims agreement (Section 6.1)

A third interim unsecured dividend (at a rate of 23.7p/£1) totalling £1.85bn, was paid on 29 November 2013 to 1,217 non-Affiliate claimants.

A fourth interim unsecured dividend (at a rate of 7.8p/£1), bringing the cumulative rate to 100p/£1, was announced on 28 February 2014, with a cut-off date for proving of 28 March 2014. Payment will be made on or around 30 April 2014.

Admitted/agreed claims have increased by 279 to 2,366, with the total admitted/agreed claim value increasing by £1.43bn to £9.92bn (including SCSO and CME claims). This reflects greater engagement by creditors following increases in the dividend rate.

House receivables (Section 6.2)

A total of £1.60bn was recovered in the period from debtors who were also Client Assets claimants, principally from appropriations out of the Omnibus Trust.

There has been an increased use of litigation to safeguard claims against debtors or prosecute recovery actions across debtor counterparties.

Omnibus Trust (Section 7.1)

A first distribution of \$7.81bn was paid from the trust on 26 September 2013, representing 100% of beneficiaries' Best Claim values. \$4.83bn was paid to beneficiaries, net of appropriations for House debtors, reserves for US withholding tax and other permitted deductions.

A second gross distribution of \$0.46bn (6% of Best Claim values) was paid on 30 January 2014.

LBIE, its withholding agent and the IRS have now agreed the treatment of the first distribution for US withholding tax and reporting purposes. Further agreements will be required on US withholding tax for the second and any subsequent distributions in order to distribute the funds remaining in the Omnibus Trust and bring it to a conclusion.

Other Client Assets (Section 7.2)

Progress has been made on returning the remaining securities held and preparatory steps were put in place to facilitate the onward transmission to clients of their Hong Kong custodied assets, most of which were received by LBIE on 14 March 2014.

Client Money estate (Section 8)

A further 194 CME counterparties (1,003 to date) have been agreed and resolved.

A Client Money settlement offer (at 100% of claim value) was made by the House Estate to all 55 counterparties who had signed a Claims Determination Deed which retained their CME, in order to fully resolve all of their positions. To date, offers have been accepted by 54 of these counterparties.

One of the most significant obstacles to resolution of the Client Money estate has been the LBB Client Money claim, and this obstacle was removed in the period, also enabling receipts by LBIE of \$0.21bn from LBHI under its related guarantee since the period end.

Court update

Judgments have been received in the period on the Waterfall Application and the Lehman Brothers Pension Scheme deficit issue. There remain frequent and regular UK High Court hearings on various bilateral counterparty issues, including appeals against rejections of Proofs of Debt, with less frequent hearings in other jurisdictions.

Overall progress since commencement of the Administration

Across the House Estate and the Trust Estates of Client Assets and Client Money, the key cumulative returns to date and total High case forecast returns are as follows.

	Mar 14 (to date) £bn	Total forecast £bn
House Estate returns		
Unsecured claims distributions to date/ High case final outcome	8.90	19.80
Overseas creditor settlements	0.21	0.21
Trust Estate returns – third party (excluding appropriations)		
Client Assets	14.00	14.10
Omnibus Trust	3.33	4.20
Pre-Administration Client Money (including payments in lieu thereof)	0.01	0.07
Post-Administration Client Money	1.82	1.91
Trust Estate returns – Affiliates (excluding appropriations)		
Client Assets	0.73	1.04
Post-Administration Client Money	1.32	1.77
Total returns to date/forecast	30.32	43.10

The forecast returns are indicative only.

Investment and currency policies

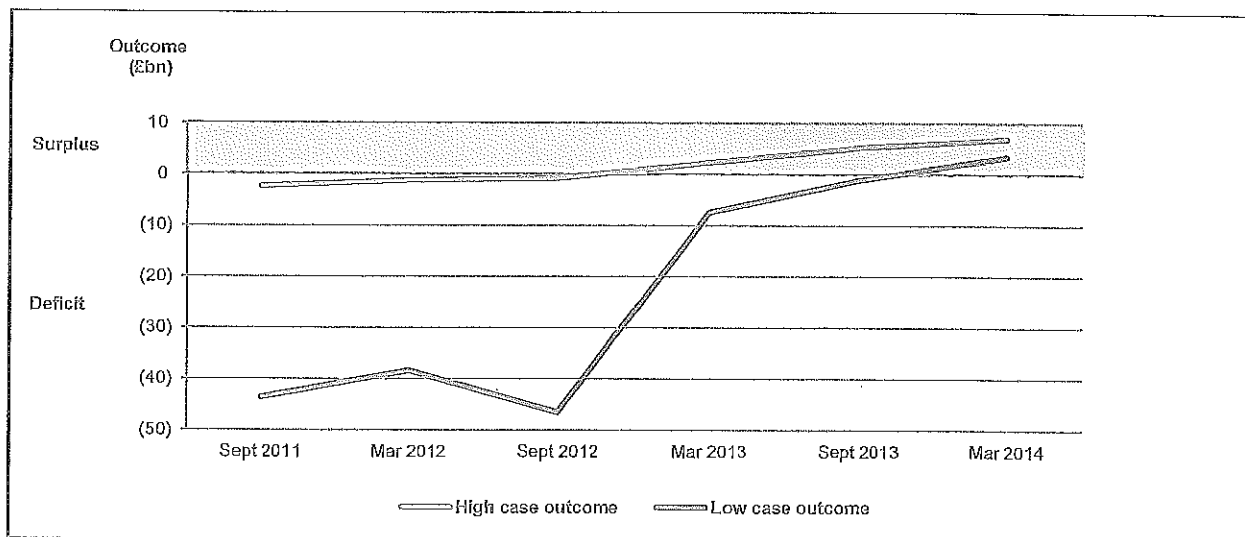
Our investment policies continue to focus on keeping the estates' funds secure, utilising a combination of money market deposits and securities where appropriate. During the period, the Administrators extended their hedging strategy to cover House assets at LBHK and the US dollar/sterling currency risk represented by the expected pre-Administration Client Money surplus which will transfer into the House Estate.

Human resources

As at 14 March 2014, the LBIE staff and contractor headcount had reduced to 330 (425 at 14 September 2013), reflecting the progress achieved and an ongoing review of resource requirements in the Administration going forward.

Indicative financial outcome

The updated indicative financial outcome range for unsecured creditors (before Subordinated Debt) that is set out in Section 3 of this report and in the graph below, now shows a surplus in both the Low and High case scenarios for the first time.



As the difference between the Low and High case scenarios has reduced, so too has the scope for the eventual outcome to be materially outside of this range.

Subject to a number of important assumptions, the potential value range of the House surplus before Post-Administration Interest, Currency Conversion Claims and the Subordinated Debt is estimated to be between £3.50bn and £6.99bn.

The key sensitivities to the eventual outcome that will be achieved are:

- the amount at which the remaining creditor claims are finally determined;
- the outcome of the litigation with AGR;
- the future recoveries from larger Affiliates and other debtors;
- the ability of the Administrators to mitigate or eliminate priority claims; and
- the level of future costs in the Administration.

Creditors should note that their individual entitlement to share in any surplus is likely to depend upon the timing of distributions made to them, the nature of their underlying contracts and the terms of any agreements with LBIE entered into by them post-Administration.

Priorities in 2014

The Administrators' priorities for 2014 are:

- the agreement and implementation of a solution for dealing with the entitlements to the surplus;
- dealing with the expected appeal of the Waterfall Application judgment to the UK Appeal Court;
- the agreement and admittance of unsecured claims;
- the progression of litigation, both in respect of debt recovery and unsecured claims;
- the resolution of outstanding US withholding tax issues for the affected Omnibus Trust and unsecured claimant populations;
- the progression of the Client Assets and Client Money estates by the finalisation and distribution of remaining entitlements followed by appropriate court processes, as required, to wind up the Trust Estates; and
- the ongoing operational simplification and associated cost reduction aligned with the evolving needs of the Administration.

Section 3:

Financial update

Indicative financial outcome

Set out in the table below is an updated summary of the Low and High case financial outcome scenarios for unsecured creditors. It should be read in conjunction with the notes attached and with the narrative and assumptions set out below and elsewhere in this report.

The Low case outcome has materially improved since our previous report, largely due to settlements reached with certain Affiliates and to the favourable progress in unsecured claims agreement at amounts below their originally claimed Proof of Debt values. The High case outcome has also improved, principally due to reductions in the value of unsecured claims.

Page	House Estate	Notes	Low £bn	High £bn	Difference £bn
32	Cash deposits and short-dated government bonds		6.42	6.42	-
32/35	Add back: Interim dividends paid (£8.90bn) and accrued (£0.94bn) to date		9.84	9.84	-
27	Net Client Money benefit to the House Estate	1	1.17	1.22	0.05
	Projected future recoveries				
20	House third party debtors	2	0.43	1.37	0.94
11	Affiliate debtors	3	0.70	0.94	0.24
	House securities	4	0.63	0.74	0.11
22	Client Assets claimant debtors	5	0.19	0.31	0.12
	Other		0.02	0.03	0.01
	Total current and projected recoveries		19.40	20.87	1.47
	Priority claimants	6	(0.50)	(0.12)	0.38
	Future estimated costs	7	(0.95)	(0.95)	-
	Funds available for unsecured creditors		17.95	19.80	1.85
	Unsecured creditors				
16	Non-Affiliate creditors	8	(13.19)	(11.61)	1.58
11	Affiliate creditors	9	(1.26)	(1.20)	0.06
	Total unsecured creditors		(14.45)	(12.81)	1.64
	Surplus before Post-Administration Interest, Subordinated Debt and other non-provable claims	10	3.50	6.99	3.49

Notes

1. Net Client Money benefit to the House Estate

The amounts included in the outcome now assume that all remaining Client Money claims are assigned to LBIE's nominee in satisfaction of indebtedness to the House Estate or in exchange for unsecured claims.

The difference between the High and Low case benefits accruing to the House largely relates to different assumed dividend rates payable by LBB.

The major unresolved matter delaying resolution of the Client Money estate is the litigation between LBI and BarCap.

2. House third party debtors

The main variance between the Low and High case future recoveries relates to debts expected to be pursued using litigation.

The biggest single debtor that is subject to litigation is AGR. The Low case assumes that the AGR litigation is unsuccessful, and the High case assumes full recovery of the £0.55bn debt claim.

3. Affiliate debtors

The majority of anticipated future recoveries relate to LBIE's agreed claims against MCF and LBB and recoveries in relation to LB Lux. The increasing convergence of the Low and High case for future Affiliate recoveries reflects the recent settlements of remaining major Affiliate claims and the preservation of the value of the LBHK custodied assets by a hedge. The majority of these assets have recently been recovered.

The variance between the High and Low case reflects different assumed recovery rates payable by MCF and the exclusion in the Low case of LBHK custodied assets that are subject to competing claims.

4. House securities

Future recoveries relate to 'available for sale' securities (£0.08bn) and securities recovered from LBHK subject to forward sale (£0.47bn) held in the House depot. In addition, efforts continue to recover securities and derived cash held in Taiwan. Due to the complexity of negotiations in Taiwan, different recovery rates have been assumed in the High and Low cases. The High case also assumes further recoveries are made from potential excess segregated Client Assets.

5. Client Assets claimant debtors

Settlements have been reached with the majority, by value, of the remaining Client Assets claimant debtors, which include Omnibus Trust Non-Consenting beneficiaries and ineligible consenting beneficiaries. The next distribution from the Omnibus Trust will allow further recoveries to occur.

The difference in outcome scenarios reflects the increasing challenge of collecting debts on a consensual basis and the inherent litigation risk of pursuing debts through legal recourse.

6. Priority claimants

Priority claims comprise indemnities given post-Administration and certain other claims (including tax provisions) that could crystallise in certain circumstances. The Low case increase of £0.03bn since our previous report reflects a tax reserve relating to potential US withholding tax, offset in part by the expiry of certain indemnities and the removal of a specific reserve related to LBB following the recent settlement. In the High case scenario it is assumed that all but the tax-related contingencies either expire or are managed away.

7. Future estimated costs

The estimate of future costs has reduced by £0.25bn in both the Low and High case scenarios. Operational simplification plans continue to be developed and implemented, one of the results of which has been a reduction in headcount at 31 December 2013 with further reductions likely over the course of the remainder of this year. Costs continue to be kept under constant control and review.

8. Non-Affiliate creditors

The range of assumed total non-Affiliate unsecured creditors between the Low and High case outcomes has narrowed by £0.92bn since our previous report and the range is now estimated to be £1.58bn.

The Low case outcome assumes pending claims are agreed at the value of the claimed Proofs of Debt in most cases, whilst the High case assumes a proportion of these are ultimately admitted at lower values. The extent to which claims are agreed at lower values will depend on the outcome of negotiations and/or litigation.

9. Affiliate creditors

Following agreements in the period with a number of Affiliates, notably LBB, the difference between the Low and High case outcomes has narrowed significantly to £0.06bn. The variance principally arises from claims relating to pre-Administration structured transactions which are under negotiation.

Remaining unresolved claims relate to 18 Affiliates with a total Low case reserve of £0.18bn. Discussions to conclude these remaining claims are ongoing.

10. Surplus

Creditors should be aware that the methodology to calculate entitlements to the surplus is yet to be determined.

An assessment of the Subordinated Debt and LBIE's potential contribution claims against its Shareholders is excluded from the indicative financial outcome at present due to the complexity and potential impact of the uncertainties remaining to be resolved.

Section 4:

Surplus project

Introduction

As noted in the tenth progress report to creditors dated 11 October 2013, there are a number of factors affecting creditors' rights to participate in the surplus remaining after payment of ordinary unsecured claims in full. During the period, the Administrators have been working towards development of a simplifying methodology to determine creditors' entitlements to Post-Administration Interest and to claim for currency conversion losses arising on their admitted claims.

The judgment in relation to the Waterfall Application was handed down on 14 March 2014. In addition to other matters covered by those proceedings, the decision of Mr Justice David Richards confirmed the views of the Administrators that:

- both Post-Administration Interest on ordinary unsecured creditors' claims and any non-provable claims are payable in priority to the Subordinated Debt; and
- Currency Conversion Claims exist as non-provable claims to be paid after ordinary unsecured claims and Post-Administration Interest thereon.

Progress

The Administrators have engaged with a number of creditors over the past 6 months to understand further the different views in relation to claims to Post-Administration Interest and Currency Conversion Claims. As a result of this process, it has become clear that the opinions of LBIE's major creditors diverge widely in relation to a number of areas, particularly:

- the interpretation of the definition of 'Default Rate' in the ISDA master agreement used to determine the contractual interest rate applicable to ISDA claims;
- the impact of release and discharge clauses included in post-Administration contracts including the CRA and Claims Determination Deeds, on Post-Administration Interest and Currency Conversion Claims; and
- the effect of Post-Administration Interest on the calculation and adjustment of Currency Conversion Claims.

The legal issues in relation to these and other complex issues have been considered at length by the Administrators and their legal advisers, and the financial impact of different outcomes on creditors with different profiles have been modelled by the Administrators.

In view of the amount of time that it would be expected to take to obtain a determination of these issues from the UK High Court, the relative uncertainty of the final outcome and the risk of appeals, the Administrators consider that resolution by way of a compromise would best serve the interests of creditors overall. However, it is by no means certain that this will be achievable given the potential quantum of the surplus and the range of amounts recoverable by different creditors depending on the principles applied to determine entitlements and the apparent divergence of opinion on the various legal issues.

In order to inform their view regarding the feasibility of achieving a compromise, on 10 March 2014, the Administrators presented the Surplus Entitlement Proposal to a small number of LBIE's major creditors pursuant to a non-disclosure agreement. Between 10 March and 28 March 2014 the Administrators met with such creditors to discuss the Proposal and gather feedback.

The Surplus Entitlement Proposal and additional information shared during the Consultation Period, along with a list of frequently asked questions, were published on the LBIE website on 28 March 2014.

Planned resolution

The gap between the views of different creditors did not reduce significantly during the Consultation Period, and, in the Administrators' view, there was no immediate prospect of formulating a compromise for allocating the surplus that would be acceptable to all of the relevant majority of creditors.

The Administrators will engage further with creditors as they reflect on the Proposal and on the updated financial information included in this report, and will continue to evaluate the potential for a compromise. In this regard, LBIE is considering the development of a narrower plan that addresses the interest component of the surplus only. Such a plan might also include limited applications to the UK High Court on discrete issues, subject also to any appeal in relation to the priority of the Subordinated Debt.

In parallel with these steps, LBIE has also commenced preparations for a comprehensive application to the UK High Court for directions on all issues that impact upon the rights of creditors to an interest in the surplus and the distribution of that surplus in a timely manner. This reflects the real possibility that, ultimately, a consensual solution may not be achievable.

The Administrators will use the LBIE website to update creditors as matters progress.

Section 5:

House Estate – Affiliates

Introduction

This reporting period has seen LBIE conclude its remaining major Affiliate settlements, notably including LBB and Storm.

Sustained progress has also been made on finalising less material balances of inbound and outbound claims, together with realisation of value exceeding £0.70bn.

Shortly after the period end, £0.15bn was received as a first distribution share from LBHI with respect to LB Lux. £0.12bn was also released from segregated cash held for LBB since the period end.

Indicative financial outcome from Affiliate relationships

Debtors

The table below shows the movements of the estimated recoveries from Affiliate estates since our last report and the recoveries made in the period.

As a result of progress in the period, principally in respect of LBB, LBHK and MCF, the estimated recoveries in both the Low and High case scenarios have been revalued upwards, and significant cash recoveries have also been made in the same period.

Affiliate recoveries	Mar 14	
	Low £bn	High £bn
Future estimated recoveries as at 14 September 2013	0.90	1.35
Revaluations in the period		
LBB	0.16	0.01
LBHK	0.11	0.02
MCF	0.19	0.24
Others	0.06	0.04
Total revaluations	0.52	0.31
Less: recoveries in the period		
LBHK ¹	(0.50)	(0.50)
MCF	(0.10)	(0.10)
LBJ	(0.06)	(0.06)
Others	(0.06)	(0.06)
Total recoveries	(0.72)	(0.72)
Future estimated recoveries at 14 March 2014	0.70	0.94

1. Recoveries comprised £0.47bn of securities subject to forward sale contracts, £0.02bn of other securities and £0.01bn of cash.

Future recoveries by Affiliate are detailed below.

Affiliate recoveries	Mar 14	
	Low £bn	High £bn
LB Lux ¹	0.21	0.22
LBB ²	0.16	0.16
LBHK	0.10	0.15
MCF ³	0.15	0.25
Others ⁴	0.08	0.16
Future estimated recoveries at 14 March 2014	0.70	0.94

- LBIE has no direct claim against LB Lux but recovers value indirectly through LBIE's separate settlement agreement with LBHI.
- Recovery estimates reflect different assumptions for dividend rates paid by LBB on an agreed outbound claim of £65m and the release to the House Estate of ring-fenced cash held by LBIE.
- The range of recovery estimates reflects the current uncertainty regarding future distribution rates.
- No recoveries are included from LBHI2 and LBL. The estimated recoveries principally relate to LBSF and LBF.

Creditors

Affiliate creditors comprise both settled and unresolved relationships, with an indicative range of outcomes as summarised below.

Inbound claims	Mar 14	
	Low £bn	High £bn
Unresolved relationships		
Various	(0.18)	(0.12)
Settled relationships		
LBB	-	-
LBJ	(0.29)	(0.29)
Storm	(0.16)	(0.16)
LBHK	(0.15)	(0.15)
LB Lux	(0.06)	(0.06)
LBEF	(0.06)	(0.06)
LBS	(0.05)	(0.05)
LBHI and its US affiliates	(0.06)	(0.06)
Others	(0.25)	(0.25)
Total claims	(1.26)	(1.20)

Expected aggregate inbound claims are £0.86bn and £0.17bn lower, on a Low and High case basis, respectively, than previously estimated, with the most significant improvements summarised below.

Affiliate	Progress in the period	Mar 14	
		Low £bn	High £bn
LBB	Settlement executed	0.58	-
Storm	Settlement executed	0.10	0.07
LBHK	Supplemental settlement	0.05	0.03
Others		0.13	0.07
Improvement		0.86	0.17

Debtor and creditor relationships progress

Unresolved relationships

Various

Inbound claims from 18 Affiliates remain pending. LBIE continues to engage with these Affiliates with the objective of resolving their claims in a timely manner.

The Subordinated Debt and LBIE's potential contribution claims against its Shareholders are discussed separately below and are not included in the estimates in the tables above.

Settled relationships

LBB

Efforts continued to negotiate a settlement with LBB, with material progress achieved in the period. There has been considerable engagement between LBIE and LBB to finalise their respective positions and to achieve a compromise of the litigation surrounding the Client Money position. LBB has further developed its own insolvency plan to finalise matters within its estate and this has provided a platform to conclude a settlement. To this end, agreement has been reached, containing resolution of the following key issues:

- admittance of a net LBIE House claim against LBB of €65m;
- withdrawal of LBB's inbound counter-claim of £0.58bn and certain other claims; and
- admittance of an ordinary unsecured claim against LBB of £0.40bn and a further £0.40bn subordinated claim, both derived from LBIE's Client Money claim against LBB.

The settlement became effective on 14 March 2014 and the proceedings in the German Supreme Court relating to LBB's counter-claim have now been withdrawn by mutual consent.

In due course, LBIE will sign a document in support of LBB's plan which will enable LBIE to receive cash distributions on its claim and the recovery estimates (both in this section and Section 8) assume LBB's insolvency plan is finalised in its current form.

LBHK

The final Hong Kong court hearing regarding third party security interests was held in January 2014. The court ruled that LBHK should distribute to LBIE certain House and Client Assets previously held subject to extended liens.

Asset exchanges between LBIE and LBHK for assets not subject to competing claims began in the period and were completed shortly after the reporting period end. Asset returns which remain subject to competing claims (c.£40m) continue to be worked upon by both sides to resolve.

The majority of the House securities that have been returned were subject to forward sale contracts to remove market risk.

Significant engagement has taken place in the period to close out all other remaining issues with LBHK. This resulted in a supplemental settlement deed being executed which has finalised inbound claims for LBHK entities at £0.15bn.

LBF

There has been only limited progress to finalise outstanding matters in this relationship during the period.

Discussions have recently resumed (but so far inconclusively) regarding LBIE's assertion that it has deferred consideration due from LBF under the settlement agreement.

MCF

A first dividend from MCF of £0.10bn was received by LBIE in November 2013. LBIE is liaising with MCF regarding the timing and quantum of further recoveries, but the estimated future recoveries have increased significantly, reflecting a more optimistic outcome.

LBJ

Remaining matters have advanced considerably with 'catch up' dividends being paid to LBJ during the period and final LBIE recoveries from LBJ being received. No material issues remain.

Storm

Settlement negotiations have recently been concluded, resulting in an inbound claim of £0.16bn being agreed. A settlement deed was executed on 17 March 2014 after considerable negotiation as the parties sought to close out a number of complexities created by the absence of any governing documentation between the parties.

LB Lux

A supplemental settlement agreement was executed in October 2013. As a result, LBIE has admitted an inbound LB Lux claim for £0.06bn and paid 'catch up' dividends to LB Lux in the period.

LBIE's principal recoveries from LB Lux are derived from LBIE's own earlier settlement with LBHI. LBIE continues to work with the LB Lux liquidators and LBHI to maximise the value that will accrue to LBIE from the Luxembourg estate under this separate settlement. An initial £0.15bn was received by LBIE on 25 March 2014.

LBEF

The process for cancellation of unfunded LBEF warrants within LBIE's control is proving complex, although completion is anticipated later this year.

LBS

Final resolution of the LBS inbound claim, agreed in outline under the previous settlement agreement, has been further delayed, but is expected to be finalised shortly.

Others

Dividends of £0.05bn were received by LBIE during the period from the US affiliates of LBHI. A further £0.01bn was recovered from other Affiliates.

LBIE continues to liaise with LBI over a limited number of post-completion matters. A number of disputed client accounts have been resolved in the period, with transfers of funds between LBI and LBIE.

In addition to the above, a further 15 Affiliate claims have been resolved in the period, including 2 Australian Affiliates reducing their inbound claims from £0.05bn to £0.02bn and agreeing a small outbound claim.

Affiliate securities and cash ring-fencing

Assets held in the House and Trust Estates, which are still subject to Affiliate claims at 14 March 2014, have continued to reduce in the period following the resolution of Extended Liens.

A summary of these remaining assets and expected outcome is set out as follows.

	Securities £bn	Cash £bn	Total £bn
Reported as at 14 September 2013	0.46	0.69	1.15
Sales, redemptions and derived income ¹	(0.07)	0.12	0.05
Revaluations/other ²	(0.05)	(0.02)	(0.07)
Returns to Affiliates ³	-	(0.19)	(0.19)
Ring-fencing releases to House ⁴	(0.01)	(0.01)	(0.02)
Ring-fenced at 14 March 2014	0.33	0.59	0.92

1. Receipts comprise the proceeds of sale, redemption or related derived income of securities segregated for Affiliates of £0.09bn (principally Storm and LBF), and transfers from House of £0.03bn (principally relating to LBHI and LBF) and clients of Affiliates.
2. Revaluations include re-translation of non-sterling cash balances.
3. Principally returns to Storm, LBHK and LB Lux.
4. Releases following resolution by settlement agreements.

The remaining ring-fenced securities and cash are summarised below.

	Securities £bn	Cash £bn	Total £bn
Assets to be returned			
LBFI ¹	0.20	0.30	0.50
LBHK ²	0.06	0.03	0.09
Storm	0.01	0.01	0.02
	0.27	0.34	0.61
Assets to be retained by LBIE³			
LBB-related	-	0.12	0.12
LBFI-related	-	0.02	0.02
	-	0.14	0.14
Assets pending resolution	0.06	0.11	0.17
Assets at 14 March 2014	0.33	0.59	0.92

1. LBF's assets will not be returned until its dispute with LBIE is resolved.
2. LBHK returns have occurred post-period end as part of the asset exchanges noted above.
3. The indicative financial outcome on page 8 includes this recovery in both the Low and High case scenarios.

The remaining ring-fenced assets are currently held in the Administration as detailed below.

	Securities £bn	Cash £bn	Total £bn
House depot – securities held subject to Affiliate disputes	0.06	-	0.06
Client depot – segregated for Affiliates ¹	0.27	-	0.27
Post-Administration Client Money – segregated Affiliate funds ²	-	0.59	0.59
Assets at 14 March 2014	0.33	0.59	0.92

1. To comply with FCA Client Assets sourcebook ('CASS') requirements.
2. Funds principally held in US dollars which will be returned to House or to the relevant Affiliates, following resolution of disputes, legal proceedings or conditions in settlement agreements being satisfied.

Litigation

The current status of legal proceedings relating to Affiliates is set out below.

Subordinated Debt and contribution claims against Shareholders

There has been considerable activity concerning the Subordinated Debt and LBIE's potential contribution claims against its Shareholders during the period. Many relevant issues were included in the Waterfall Application to the UK High Court which was heard in November 2013. A summary of conclusions was issued on 21 February 2014 and a full judgment on 14 March 2014.

The judgment is supportive of the position adopted by the Administrators on behalf of LBIE's unsecured creditors, with the following key conclusions:

- Subordinated Debt is subordinate to provable, Post-Administration Interest and non-provable claims of other creditors; and
- the obligation of Shareholders to contribute under section 74(1) of the Insolvency Act extends not only to provide for proved debts but also for Post-Administration Interest on those debts and non-provable liabilities.

The LBIE website includes a copy of the full judgment and other background material on the Waterfall Application.

LBIE is continuing to work through the consequences of the judgment and how resolution may be reached with LBIE's Shareholders. Considerable complexities remain to be navigated and permission to appeal in respect of some or all aspects of the judgment is expected to be sought.

In the period, LBIE received notification that the economic interest in LBHI2 has changed in light of its participation in a joint venture arrangement with other parties.

The Administrators have engaged with both Shareholders to seek to agree the quantum of their claims, without prejudice to their standing, and this work remains ongoing.

LBIE continues to maintain that the claim submitted by LBL is significantly overstated and is not expected to exceed £0.10bn.

The Administrators have further considered the scope and potential value of their contingent claims against the Shareholders. Clarity in some areas has been brought by the recent judgment but uncertainties still remain in several key areas which will affect both the quantum of the claims and their realisable value.

Lehman Brothers Pension Scheme deficit

As previously reported, LBIE is 1 of 6 Affiliates that the Pensions Regulator's Determinations Panel decided should receive an FSD, in connection with the Lehman Brothers Pension Scheme deficit.

Following the UK Supreme Court judgment in July 2013, which decided that a liability derived from any FSD issued by the Pensions Regulator should be treated as a provable unsecured claim in the Administration, the stay which had been in force for the Upper Tribunal proceedings came to an end. The Upper Tribunal has the role of deciding whether an FSD should be made, and against which entities, in respect of the Lehman Brothers Pension Scheme. The decision of the Determinations Panel is subject to a re-hearing by the Upper Tribunal.

In accordance with directions from the Upper Tribunal, written claims have been produced by the Pensions Regulator and the Lehman Brothers Pension Scheme trustees. The Upper Tribunal has also issued a timetable for the FSD targets, including LBIE, to file their written replies and has set a date in February 2015 for a 15-day substantive hearing. The Upper Tribunal is expected to issue further directions in July 2014.

LBIE participated, with 13 other Affiliates, in a UK High Court application relating to the maximum quantum of a contribution notice if this were to be issued by the Pensions Regulator in the event of non-compliance with an FSD. The UK High Court held that the aggregate liability under contribution notices issued to more than 1 target company could exceed the amount of £0.12bn claimed as a statutory debt due from the Lehman Brothers Pension Scheme employer, LBL. LBIE is continuing to hold a reserve for £0.12bn in respect of any liability that may arise in connection with an FSD.

Section 6: House Estate – non-Affiliates

Section 6.1:

Claims agreement

Introduction

There has been significant progress made in the period, resulting in non-Affiliate claims totalling £1.43bn being admitted/agreed (£9.84bn to date excluding SCSO and CME claims). This has been driven by the following factors:

- increased creditor engagement tracking the rising rate of distributions; and
- increased impetus created by the rejection/partial rejection of claims coupled with an emphasis on bilateral negotiations.

200 claims made erroneously against LBIE were consensually withdrawn in the period and a further 42 claims were responded to with full rejection notices which were not subject to appeal. To date, 531 claims have been withdrawn or fully rejected with a Proof of Debt value of £0.91bn.

A review of US withholding tax issues caused a delay in payment of the third interim dividend on a small number of claims (£0.06bn) and a postponement of payment to a small number of others (£0.09bn) pending greater clarification on how the Administrators are able to discharge their US withholding tax responsibilities. This work is ongoing and this issue may reduce or delay future interim dividends to the affected small number of creditors.

Third interim dividends and monthly 'catch up' dividends

On 9 October 2013, creditors were formally notified of the 31 October 2013 deadline for admission of claims for inclusion in the third interim distribution. As required by the Insolvency Rules, a notice of declaration of a dividend was sent on 21 November 2013 to all creditors that had proved their debt. For all claims yet to be admitted, the Administrators made a reserve of £7.60bn in determining the third interim dividend rate of 23.7p/£1 (cumulative dividend rate of 92.2p/£1).

On 29 November 2013, the third interim distribution (£1.85bn) was paid to 1,217 unsecured non-Affiliate creditors. Monthly 'catch up' dividends were also paid in the period, as further claims were admitted. In total, £0.69bn of 'catch up' interim dividends was paid to non-Affiliate creditors in the period (cumulative dividends to date of £8.04bn).

Fourth and future interim distributions

On 28 February 2014, the Administrators notified creditors of their intention to pay a fourth interim distribution on or around 30 April 2014, with a cut-off date for qualifying for the distribution of 28 March 2014.

The rate of the proposed fourth interim dividend is 7.8p/£1, which will allow the Administrators to reach the milestone of a 100p/£1 cumulative dividend.

As explained elsewhere in this report, further distributions can only be made when some of the issues concerning creditors' rights to the surplus beyond 100p/£1 are resolved.

Appendix C includes a timetable for future 'catch up' dividends, including associated deadlines for the execution of transfer notices.

Indicative outcome

As at 14 March 2014, the estimated range of values for LBIE's liabilities is shown below (excluding claims from Affiliates).

	Admitted /agreed to date ¹ £bn	Pending ²		Indicative outcome ³	
		Low ⁴ £bn	High ⁵ £bn	Low £bn	High £bn
Unsecured creditors					
Where Proofs of Debt have been filed					
Street Creditors	(6.16)	(2.35)	(1.15)	(8.51)	(7.31)
Client Assets claimants ⁶	(3.65)	(0.77)	(0.45)	(4.42)	(4.10)
Other third party creditors	(0.03)	(0.15)	(0.14)	(0.18)	(0.17)
Total non-Affiliate creditors	(9.84)	(3.27)	(1.74)	(13.11)	(11.58)
SCSO settled claims	(0.03)	-	-	(0.03)	(0.03)
Other reserves ⁷	-	(0.05)	-	(0.05)	-
Total	(9.87)	(3.32)	(1.74)	(13.19)	(11.61)

- Admitted/agreed to date includes claims agreed by Claims Determination Deeds and admittance letters where in certain cases legal challenge has been initiated by creditors on the balance of their Proof of Debt. The balance is included as pending claims.
- Proofs of Debt relating to pending claims total £3.07bn.
- The indicative outcome includes the total value of the claims admitted to date and the Low/High case value of pending claims.
- The Low case outcome assumes the aggregate of the higher of the values of (a) filed Proofs of Debt and (b) LBIE's assessment of the pending claims, combined with certain specific adjustments.
- The High case outcome assumes:
 - claims below a £6m Proof of Debt value will be agreed at £0.41bn in aggregate based on a high level analysis. It assumes CME is assigned and a 50% reduction in the excess of the counterparty's Proof of Debt value over LBIE's value. This population comprises 634 claims with a total Proof of Debt value of £0.35bn together with contingent and other claims which have a nil Proof of Debt value.
 - 100 separate pending claims with individual Proof of Debt values in excess of £6m (£2.72bn in aggregate) have been subject to a detailed review with:
 - specific assumptions made on 90 claims not subject to litigation, leading to an estimated outcome of £0.95bn compared to a total Proof of Debt value of £1.91bn; and
 - 10 claims subject to litigation, including damages or compensation claims, reserved at £0.38bn on an overall basis compared to a total Proof of Debt value of £0.81bn. This is based on a specific assessment or an assumed average settlement rate of 25% of the Proof of Debt value for certain claims.
- Client Assets claimants include pending unsecured claims arising from Client Assets shortfalls.
- Reserve for potential LBI-related unsecured and trust claims of £0.04bn and £0.01bn of other claims reserves.

Claims agreement: status as at 14 March 2014

In order to facilitate a more straightforward comparison to the data provided within the Surplus Entitlement Proposal, the claims status summary below now excludes 860 claims settled via the SCSO and certain claims with CME, which were included in previous reports.

	No offers made			Offers made not agreed			Admitted/ agreed claims ^{2,3}			In litigation ⁴		Total		
	No. of PODs	Proof of Debt £bn	LBIE view ¹ £bn	No. of offers	Proof of Debt £bn	LBIE offer £bn	No. of deeds	Proof of Debt £bn	Agreed claim £bn	No.	Proof of Debt £bn	No. of PODs/deeds	Proof of Debt £bn	LBIE view/ offer/ agreed £bn
Where Proofs of Debt have been filed														
Street Creditors	232	(0.90)	(0.11)	259	(0.89)	(0.40)	1,054	(8.64)	(6.16)	9	(0.52)	1,554	(10.95)	(6.67)
Client Assets claimants	74	(0.14)	(0.01)	101	(0.31)	(0.33)	356	(4.75)	(3.65)	3	(0.17)	534	(5.37)	(3.99)
Other third party creditors ⁵	44	(0.02)	(0.01)	11	-	-	66	(0.03)	(0.03)	1	(0.12)	122	(0.17)	(0.04)
Total non-Affiliate creditors	350	(1.06)	(0.13)	371	(1.20)	(0.73)	1,476	(13.42)	(9.84)	13	(0.81)	2,210	(16.49)	(10.70)
Client Assets claimant shortfalls reserve	-	-	(0.02)	-	-	-	-	-	-	-	-	-	-	(0.02)
Total	350	(1.06)	(0.15)	371	(1.20)	(0.73)	1,476	(13.42)	(9.84)	13	(0.81)	2,210	(16.49)	(10.72)

1. There is an additional £0.04bn of potential CME, not in the LBIE view, that may result in future assignments to the unsecured claim pool.
2. The admitted population excludes 30 creditors that also have an unassigned/retained CME (£0.05bn aggregate CME) and 860 creditors (£0.03bn aggregate value) that have accepted the SCSO. It includes 7 agreed claims where CME has yet to be finalised (£0.03bn aggregate value).
3. \$1.25bn of non-Affiliate Client Money claims have been waived or assigned to LBIE's nominee in exchange for admission as an unsecured claim.
4. Claims 'in litigation' were previously reported in 'no offers made', except for a Client Assets claimant (Proof of Debt of £0.08bn) previously reported in 'offers made not agreed'. The third party claim relates to the Lehman Brothers Pension Scheme deficit. An unsecured claim of £0.10bn from BarCap is also included which represents the difference between BarCap's Proof of Debt value and an indemnity for \$0.78bn provided by LBI in respect of this claim.
5. Includes 33 admitted preferential creditor claims (totalling <£1m) paid in full relating to certain former branch employees.

The table below summarises the key improvements in outcome as compared to 14 September 2013.

Movements in the period	Indicative outcome		
	Proof of Debt £bn	Low £bn	High £bn
Unsecured creditors as at September 2013 ¹	(17.38)	(14.64)	(12.14)
Adjustments			
New claims submitted	(0.08)	(0.02)	(0.01)
Rejections/withdrawals	0.66	0.45	0.11
Proof of Debt value reduced by claimant	0.30	0.29	0.07
Admitted claims and updated reserves ²	(0.05)	0.43	0.31
Omitted SCSO and CME claims	0.06	0.05	0.05
Potential claims – no Proof of Debt filed	-	0.25	-
	0.89	1.45	0.53
Unsecured creditors as at March 2014 ¹	(16.49)	(13.19)	(11.61)

1. Admitted claims totalled £8.45bn at September 2013 and £9.84bn at March 2014, the latter excluding SCSO and CME claims.
2. The High and Low case movements in LBIE's reserves reflect the application of the assumptions set out on page 16.

Progress

Claims agreement

The Administrators have agreed/admitted 1,476 claims against the House Estate totalling £9.84bn, £3.58bn less than the associated submitted Proof of Debt values.

371 offers totalling £0.73bn have been made to, but not yet accepted by, claimants. The principal reason for non-acceptance is differences in valuation methodology/approach.

350 creditors have submitted Proofs of Debt totalling £1.06bn in respect of which, due to specific legal, commercial and/or valuation issues, LBIE has not made offers. These include 19 claims with Proofs of Debt totalling £0.18bn which relate to damages.

Street Creditors

Progress has continued in the period across both the bilateral and Consensual Approach claims agreement process populations. There has been increasing focus on the bilateral agreement process with 222 claims currently subject to it. In particular:

- 157 Street claims have been transferred to the bilateral process where either an offer made under the Consensual Approach was rejected by the claimant or where claimants were previously considered to be debtors;
- 142 claims have had no bilateral offer made to date. Of these, further information has been received from 80 claimants and is subject to review. Information is still awaited from the remaining 62 claimants;
- 136 offers under the bilateral process were issued in the period for £0.79bn (Proofs of Debt of £1.39bn); and
- 159 claims (totalling £0.90bn), including claims with a CME, were admitted/agreed under either the bilateral process or Consensual Approach, resulting in a release of reserves totalling £0.51bn.

Street Creditors that are yet to receive offers, besides damages claims, include 22 claims (Proofs of Debt of £0.10bn) viewed by LBIE as debtors. In these instances, LBIE is pursuing the monies it considers due to it and/or is requesting evidence from counterparties in support of their claims.

Client Assets claimants

In the period, 56 offers totalling £0.16bn were made to Client Assets claimants, with 93 claims totalling £0.52bn, including those with CME, being admitted/agreed.

The LBI settlement in mid-2013 has continued to allow progress to be made in the period to resolve outstanding contingent shortfall claims, with reserve reductions on a Low and High case of £0.16bn and £0.04bn, respectively, as shown below.

	Low £bn	High £bn
Reported as at 14 September 2013	(0.24)	(0.06)
Shortfalls admitted in the period ¹	0.04	0.04
Reduced provisions following LBI settlement ²	0.02	-
Impact of resolution of Over-Claims ³	0.10	-
Net reduction in the period	0.16	0.04
Client Assets claimant shortfalls at 14 March 2014	(0.08)	(0.04)
Reserved within unsecured creditors		
Offers made not agreed claims	(0.02)	(0.02)
No offers made claims reserve	(0.02)	(0.02)
LBI Over-Claims in other reserves	(0.04)	-
Client Assets claimant shortfalls at 14 March 2014	(0.08)	(0.04)

1. Shortfall claims admitted in the period are included as part of Client Assets claimants' unsecured claims.
2. Reflects a 100% 'catch up' distribution in the period to Omnibus Trust beneficiaries eliminating potential shortfalls.
3. Withdrawals of Over-Claims principally from agreements reached as part of the Consensual Proposal.

£0.04bn of the remaining potential Client Assets shortfalls relates to assets within LBIE's control. The remainder relates to potential shortfalls in the Omnibus Trust for Non-Consenting beneficiaries, who have not compromised their rights to a shortfall claim with respect to the Omnibus Trust. LBIE believes the actual asset shortfalls in due course will be a small proportion of the claimed amount.

The focus in the next 6 months will be to agree and admit the remaining Client Assets shortfall claims or to agree the withdrawal of Proofs of Debt where Client Assets have been returned in full.

Other third party creditors

These claims relate to non-financial trading creditors and former overseas branch employees.

The remaining 44 other third party creditor claims where no offer has been made typically relate to offers being drafted or where further information is required in order to agree a claim, but there is a lack of engagement by claimants. Absent a claimant providing substantive evidence in support of its claim, it is likely that the Administrators will seek to issue partial admittance/rejection letters, based on the documentary evidence available, for such remaining claims in the next 6 months.

The Lehman Brothers Pension Scheme deficit Proof of Debt of £0.12bn remains reserved as an unsecured claim, in full, in both the High and Low case scenarios pending the decision of the Upper Tribunal, as discussed in Section 5.

Outstanding claims and reserving

For all compliant Proofs of Debt received by the Administrators and where the claim has not been admitted, the Administrators continue to make an appropriate reserve, unless the claim has been formally rejected and the rejection appeal period has passed. Reserves are also made for certain other contingencies.

The Administrators caution against creditors assuming that the correlation between actual claims admittance values and their associated original Proof of Debt amount will equally apply to claims that have not yet been admitted.

Withdrawals, rejections and litigation

Claims 'in litigation' currently subject to UK or overseas based legal proceedings are summarised below.

Type of claim ¹	Jurisdiction	No.	Proof of Debt £bn
Damages/compensation ²	UK	4	(0.40)
Pension	UK	1	(0.12)
LB/BarCap ³	US	1	(0.10)
Debtor recovery	US/Germany	3	(0.11)
Other	UK	4	(0.08)
Total		13	(0.01)

- Of the 13 litigation claims, 7 arise from appeals to rejections of claims by LBIE.
- Alleged fraudulent misrepresentation, negligent/false misstatements, indemnification and other issues.
- See note 4 to the table on page 17.

The focus on seeking consensual withdrawals of invalid claims or, if necessary, formally rejecting claims has increased. Over the past 6 months, 200 claims (Proofs of Debt totalling £0.48bn) were withdrawn. Accordingly, as at 14 March 2014, a total of 364 claims had been withdrawn (Proofs of Debt totalling £0.69bn).

In addition, 42 full rejection notices (Proofs of Debt totalling £0.18bn) were issued in the period, with no rejection appeal being made, to claimants that had been unresponsive to withdrawal requests or that had failed to supply requested supporting evidence. Consequently, as at 14 March 2014, a total of 167 claims (Proofs of Debt totalling £0.22bn) had been rejected and the related rejection appeal period had passed with no appeal being made.

During the period, LBIE began issuing partial admittance/rejection letters in circumstances where full rejection was not appropriate. Over the past 6 months, 4 such letters (Proofs of Debt rejected totalling £0.08bn) were issued, with 1 subject to an appeal as at 14 March 2014.

6 creditors with Proofs of Debt totalling £0.25bn have appealed the Administrators' rejection of their claims to the UK High Court in the period, resulting in a total of 7 ongoing appeals relating to Proofs of Debt totalling £0.37bn. This includes 3 damages-related claims. Court proceedings are ongoing but may be subject to lengthy timelines for resolution if subjected to appeal.

Other ongoing litigation includes debts being pursued against 2 Client Assets claimants that are subject to litigation in Germany and a single Street claimant that is subject to litigation in the US, each of which had submitted Proofs of Debt against LBIE.

The claims process to finalise all remaining unresolved claims may ultimately require further court adjudication where the remaining unresolved parties cannot negotiate mutually agreeable resolutions.

Section 6.2:

House receivables

Introduction

In this section information on all outstanding receivables (other than Affiliates) has been consolidated, including Client Assets claimant debtors previously disclosed in 'Other Client Assets'.

Good progress has been made in resolving the large number of smaller Street counterparty balances. Larger balances have received proportionate attention and, with the statutory limitation deadline for initiating recovery action approaching, litigation strategies have been developed for a number of cases.

Client Assets claimant debtor recoveries in the period have exceeded expectations as a result of progress made from distributions to beneficiaries from the Omnibus Trust.

Progress

Recoveries from House third party and Client Assets claimant debtors, together with their respective indicative future recoveries are shown below.

	Indicative future recoveries	
	Low £bn	High £bn
Reported as at 14 September 2013	1.78	3.08
In the period		
Recoveries	(1.69)	(1.69)
Revisions ¹	0.55	0.32
Debtors at 14 March 2014	0.64	1.71
Comprising		
House third party debtors	0.43	1.37
Client Assets claimants	0.19	0.31
Other receivables ²	0.02	0.03
Debtors at 14 March 2014	0.64	1.71

1. Revisions in the period relate to updated estimates for indicative future recoveries since September 2013.
2. Other receivables relate to prospective tax recoveries.

Significant progress was made in the period as the Administrators continued to recover and negotiate debts owed to LBIE. A total of £1.69bn has been recovered from these counterparties in the period and total indicative future recoveries of £0.64bn and £1.71bn remain in the Low and High cases, respectively.

The collection strategy has concentrated on those counterparties with the majority of the remaining value. This includes establishing detailed escalation plans for a number of the remaining debtor groups to progress them towards settlement, or, where necessary, litigation. The Administrators expect a significant majority of the low value counterparties to be resolved over the next 6 months, with debts being collected where possible.

High case indicative future recoveries of £1.37bn relating to House third party debtors are significantly reliant on realisations from the AGR litigation and the LBIE Seoul Branch liquidation.

Future recoveries attributable to Client Assets claimants (much reduced after substantial collections in the current and previous periods) relate to a more even spread of recoveries across the remaining population. Amounts due from Client Assets claimants in excess of any collateral held by LBIE are dealt with at the end of this section.

House third party debtors

Debtors within the House Estate are set out below.

	Cpty No.	Group No.	Mid- market LBIE value £bn	Rec'd to date £bn	Indicative future recoveries	
					Low £bn	High £bn
Street counterparties						
Completed	1,382	879	6.96	5.54	0.01	0.01
Not completed ¹						
AGR	1	1	0.84	-	-	0.55
LBIE Seoul Branch	3	3	0.23	-	0.16	0.19
Other recoveries:						
Over £1m	50	27	0.94	0.26	0.17	0.40
Under £1m	316	254	0.89	0.42	-	0.01
Not completed	370	285	2.90	0.68	0.33	1.15
Total Street	1,752	1,164	9.86	6.22	0.34	1.16
Exchanges ¹	37	19	1.65	1.45	0.09	0.21
Total	1,789	1,183	11.51	7.67	0.43	1.37

1. During the period 2 counterparties were reallocated from Street 'not completed' to 'Exchanges', resulting in a reallocation of £0.20bn cash.

At 14 March 2014, £5.54bn had been recovered from completed Street counterparties and £0.68bn received on account where final settlement negotiations or litigation is ongoing. In total, £0.09bn was recovered from House third party debtors during the reporting period.

Significant activity has resulted in closing out many incomplete Street debtors reducing those outstanding from over 680 in the last report to 370 counterparties now.

The Exchanges population includes 9 completed groups, 8 of which have settled in the period with total Exchange recoveries of less than £10m.

Completed Street counterparties

Total recoveries from completed Street counterparties, together with the movements since the previous progress report, are summarised below.

	Cpty No.	Group No.	Mid- market LBIE value £bn	Rec'd in the period ¹ £bn	Rec'd to date ² £bn
Total completed at 14 September 2013	1,052	657	6.61	-	5.40
New completions	313	222	0.34	0.07	0.10
Further recoveries from previously completed groups and other movements ²	17	-	0.01	0.01	0.04
Total completed at 14 March 2014	1,382	879	6.96	0.08	5.54

1. The amount received in the period represents cash collected since 15 September 2013. The amount received to date comprises the amount received since 15 September 2013 plus any cash collected previously on account (i.e. before the counterparties were classified as completed).
2. Other movements include the reallocation of cash balances to the appropriate counterparties, revisions to the counterparty composition of existing debtor groups and reclassifications.

During the last 6 months, a total of 222 debtor groups were completed. Of the groups that settled, highlights include:

- settlement with a US hedge fund realising cash receipts of c.£20m;
- partial completion of a complex group of special purpose vehicles, realising cash receipts of c.£20m;
- settlement with a large European bank producing a total recovery of c.£10m; and
- settlement with a European telecom operator producing a cash recovery of c.£10m.

The Administrators are mindful that the complete debtor population needs to be resolved as soon as possible given the impact of the Limitation Act 1980 later this year and have therefore sought to accelerate resolution of the remaining population of smaller debtors. This has resulted in a significant number of completions albeit with relatively small cash realisations.

The recovery rate (received to date/mid-market LBIE value) has deteriorated slightly, highlighting the more challenging counterparties that remain. The Administrators caution against using the mid-market LBIE value as the sole basis for assessing remaining House receivables.

Not completed Street counterparties

The majority of recoveries left to collect from the remaining population of 285 Street debtor groups are expected to be realised from 31 key debtor groups.

For a number of the remaining Street debtor groups which are yet to settle, significant and/or complex issues remain to be addressed and further progress is expected in the next period.

AGR

An oral argument was heard recently by the Special Referee assigned to rule on LBIE's motion to compel disclosure of certain documents withheld from discovery by AGR. The motion is still pending, and the ultimate determination of the motion, its impact on the completion of discovery and the timing of a trial in the matter remain uncertain. LBIE continues to devote considerable effort to meeting the requirements of other aspects of the discovery process which remain ongoing.

The indicative financial outcome High case scenario, set out on page 8 of this report, reflects the full recovery of £0.55bn from the litigation with AGR.

LBIE Seoul Branch

LBIE Seoul Branch commenced its solvent liquidation on 30 August 2013. Pursuant to Korean regulations, LBIE Seoul Branch was allowed to return client funds to LBIE from December 2013 onwards. Since then, a total of c.£20m has been returned to LBIE and the liquidators continue to work to expedite the return of the remaining client funds. The surplus funds will be repatriated to LBIE upon completion of the liquidation, the timing and quantum of which is dependent upon the resolution of local tax matters, claims settlement and regulatory compliance.

Other recoveries

There is considerable focus on the 27 debtor groups with expected recoveries of over £1m. Where there is likely economic benefit to the Administration, the Administrators are also continuing to progress the remaining population of debtors with anticipated recoveries of less than £1m individually and not exceeding c.£10m in total. These positions are being negotiated to settlement, whilst implementing escalation strategies and considering litigation where necessary.

A small number of other disputes remain in litigation across various jurisdictions and the Administrators have commenced further legal proceedings in the period for debts totalling £0.16bn. In addition, the Administrators have issued 3 letters before action in the period in anticipation of commencing legal proceedings to recover other debts. This has assisted in negotiating settlement with a number of debtor groups, reducing the number of groups in litigation or moving to litigation from 7 to 4. Certain of the counterparties have also submitted a Proof of Debt, which further complicates resolution.

The Administrators remain mindful that litigation can become protracted and costly, but if settlements cannot be reached with counterparties, legal proceedings will be commenced to recover amounts due where appropriate.

Exchanges

The Exchanges population continues to progress to completion, with increased indicative future recoveries expected from 2 of the 10 outstanding debtor groups.

Client Assets claimant debtors

A number of Client Assets claimants in the Trust Estate are also debtors of the House Estate. The Administrators have continued to progress the agreement and collection of debtor balances through the indebtedness determination deed programme and through the simplified letter process for smaller debtors. As a result, the estimated recoveries from Client Assets claimant debtors have improved by £0.32bn and £0.14bn in the Low and High case scenarios, respectively.

The increase in actual recoveries and the estimated future recoveries of Client Assets claimant indebtedness is shown below.

	Low £bn	High £bn
Target recoveries		
Debtor balances agreed to date ¹	2.00	2.00
Forecast future agreed balances ²	0.32	0.44
As at 14 March 2014	2.32	2.44
Previous estimate as at 14 September 2013	(2.00)	(2.30)
Increase in the period	0.32	0.14
Target recoveries as at 14 March 2014	2.32	2.44
Less: recoveries and set-offs to date		
Receipts on account (including appropriations of Client Assets and derived income) in prior periods	(0.30)	(0.30)
Receipts on account (including appropriations of Client Assets and derived income) in the current period	(1.60)	(1.60)
Assignments of pre-Administration Client Money	(0.19)	(0.19)
Client Assets claimant shortfalls agreed	(0.04)	(0.04)
Recoveries and set-offs to 14 March 2014	(2.13)	(2.13)
Estimated future House recoveries from Client Assets claimant debtors at 14 March 2014	0.19	0.31

1. Includes £0.03bn of realised gains on the US dollar to sterling hedge.

2. Includes estimates of unrealised gains on the US dollar to sterling hedge.

In the period, total recoveries of £1.60bn comprised appropriations of:

- £1.39bn from the Omnibus Trust distributions;
- £0.17bn of cash receipts; and
- £0.04bn of Client Assets.

The majority of the remaining Client Assets claimant debtors comprise Omnibus Trust Non-Consenting beneficiaries and ineligible consenting beneficiaries that are expected to settle once the US withholding tax situation is resolved with the IRS. This is expected to be materially resolved within the next 9 months.

Section 7: Client Assets estate

Section 7.1: Omnibus Trust

Introduction

2 separate interim distributions were paid in the period, providing a cumulative gross interim distribution rate of 106% of total Best Claim value to consenting beneficiaries, which in turn facilitated collection of significant House debtor recoveries. An IRS closing agreement on the US withholding tax treatment in relation to the first interim distribution has now been agreed. Further agreements will be required on US withholding tax for second and subsequent distributions.

Progress

Claims

As previously reported, the total claims in the Omnibus Trust at Best Claim value as at 14 September 2013 comprised \$8.42bn of agreed claims value and \$0.25bn of claims value (representing 20 counterparties) relating to Non-Consenting beneficiaries.

In the period, a small claims offer by the House Estate of 100% of Best Claim value was made to Non-Consenting beneficiaries with a Best Claim value below \$1m, in return for assignment of the claims to the House. The offer was made to expedite progress and reduce the risk that the House would be exposed to extended costs and litigation from small beneficiaries. To date, 5 beneficiaries have accepted the offer resulting in a total payment of less than \$1m. In addition, 3 Non-Consenting beneficiaries with a total Best Claim value of \$0.12bn have also become consenting beneficiaries.

Of the remaining 12 unresolved Non-Consenting beneficiaries (\$0.14bn Best Claim value, \$0.27bn reserved value), 2 were agreed in principle shortly after the period end (\$0.13bn Best Claim value, \$0.25bn reserved value), 7 are involved in ongoing negotiations and 3 have claims for zero-valued securities.

Recoveries

Following reaching agreement with certain Non-Consenting beneficiaries, the majority of remaining liquid securities were realised in the period for \$0.19bn.

Securities reserved for Non-Consenting beneficiaries are valued at c.\$1m. In addition, a small number of mainly illiquid securities remain to be realised for which nominal further value is expected.

First interim distribution

A first gross distribution of \$7.81bn at 100% of Best Claim values of beneficiaries was paid on 26 September 2013. \$4.83bn was distributed to beneficiaries, net of appropriations for House debtors, reserves for US withholding tax purposes and other permitted deductions totalling \$2.98bn.

Second interim distribution and indicative estimated final outcome

On 2 December 2013, the Administrators confirmed their intention to make a second interim distribution under the Common Terms on 30 January 2014 at a gross value equal to 6% of the Best Claim value of beneficiaries.

The basis used for calculating the second distribution rate and the High case final outcome estimate is summarised below.

Omnibus Trust	Second interim distribution basis \$bn	High case final outcome \$bn
Recoveries		
Cash in hand ¹	9.44	9.47
Securities held	-	-
Future recoveries from LBI ²	-	0.04
	9.44	9.51
Less:		
General provision ³	(0.11)	-
Reserves for Non-Consenting beneficiaries ⁴	(0.39)	-
Bilateral settlement ⁵	(0.22)	(0.22)
	(0.72)	(0.22)
Available for consenting beneficiaries	0.72	9.29
Total of consenting beneficiaries' Best Claim values	(8.22)	(8.45)
Gross distribution as a % of claims	106%	109.9%

- Cash in hand includes earlier distributions.
- Future recoveries from LBI remain subject to final diligence and agreement.
- The general provision was reduced due to further progress with HMRC regarding potential UK tax liabilities.
- Reserves for Non-Consenting beneficiaries are in excess of Best Claim value and reflect a conservative view of the specific issues relating to each beneficiary.
- A bilateral settlement was agreed with a counterparty resulting in the claim return being restricted to 100% of the agreed value.

The High case final outcome assumes Non-Consenting beneficiaries' claims are agreed at Best Claim values and no general provision is utilised relating to tax or other liabilities.

A 'catch up' first gross distribution of \$0.44bn was paid to 19 eligible consenting beneficiaries on 30 January 2014, who had been ineligible or Non-Consenting beneficiaries at the date of the first distribution.

In total, \$0.49bn was distributed to 240 eligible consenting beneficiaries on 30 January 2014, net of appropriations for House debtors, reserves for US withholding tax purposes and other permitted deductions totalling \$0.41bn.

The 'catch up' first distribution and concurrent second interim distribution were paid to eligible consenting beneficiaries on 30 January 2014 as set out below.

Distribution on 30 January 2014	Cpty No.	\$bn	\$bn
Gross first distribution 'catch up'	19		0.44
Gross second distribution	273	0.49	
Less: non-eligible consenting beneficiaries ¹	(33)	(0.03)	
Gross second distribution paid	240		0.46
Adjusted distribution to eligible consenting beneficiaries before deductions and appropriations	240		0.90
Less:			
US withholding tax reserve ²			(0.13)
Recovered by House Estate			
House debtor appropriations		(0.27)	
Assigned claims and fees recovered		(0.01)	
Total recoveries to House Estate			(0.28)
Net cash distribution to beneficiaries			0.49

1. Non-eligible consenting beneficiaries relate to counterparties with unresolved House debts or House claims.
2. Distributions were again subject to a 30% tax deposit reserve for US withholding tax purposes, unless the distribution was paid or attributable to a validly documented US person on a form W-9.

The final (third) distribution is only likely to be made after the US withholding tax treatment of distributions is finally agreed by the IRS, claims of all Non-Consenting beneficiaries are concluded and remaining reserves are settled.

Tax developments

US withholding tax

In order to facilitate a timely and substantial return of value to clients, and in lieu of a final determination, LBIE reserved up to 30% of the Best Claim value of each beneficiary, dependent upon tax status, for potential US withholding tax for the first and second distributions. In total, the IRS currently holds \$0.95bn in respect of these distributions.

LBIE, its withholding agent and the IRS have now reached agreement on LBIE's and its withholding agent's US federal income tax withholding and reporting obligations in respect of the first interim distribution. LBIE has signed the agreement and expects the document to be fully executed shortly.

LBIE now expects to be in a position to release back to beneficiaries some or all of the excess reserves made in respect of US withholding tax on the first distribution, net of the appropriate tax.

LBIE will continue to work with the IRS and its withholding agent in respect of additional guidance required on other subsequent distributions.

UK tax issues

LBIE is in the final stages of working with HMRC to agree the status of the Omnibus Trust for UK tax purposes. HMRC has agreed that no inheritance tax will arise on the trust as long as certain conditions are met by LBIE, which LBIE expects to meet. HMRC has also agreed that no capital gains tax liabilities will arise in respect of transactions entered into by the trust up to mid-December 2013. LBIE is in the process of agreeing the income tax position on income earned since LBIE received the funds from LBI. Accordingly, LBIE currently considers the risk of material UK tax liabilities arising to be low.

Section 7.2: Other Client Assets

Introduction

The resolution of outstanding key issues has accelerated in the period as a consequence of the earlier LBI settlement and the removal of associated uncertainties. As a result, the ultimate range of potential outcomes has continued to narrow.

Focus on the outstanding issues in the next period is expected to result in resolution of the majority of the remaining material Client Assets matters by the end of 2014. At that time, it is anticipated that any open issues will relate to litigation or non-responsive counterparties for low value assets.

Progress

Client Assets analysis

Movements in the client depot during the period (excluding Omnibus Trust and segregated Affiliate assets) are summarised below.

	£bn
Reported as at 14 September 2013	0.48
Returns to clients, redemptions and appropriations in the period	(0.34)
Revaluation, exchange rate and other adjustments ¹	0.03
Client Assets at 14 March 2014 ²	0.17

1. Relates to mark-to-market adjustments and security reconciliations.
2. Includes securities previously controlled by LBHK of £0.08bn now recovered by LBIE (valued and recovered as at 14 March 2014), remaining excess segregated Client Assets and is net of claims for Client Assets shortfalls.

Client Assets returns

In the period, 1,348 individual Client Assets holdings were returned and an additional 164 holdings were partially returned to counterparties, with a total value of £0.30bn. To date, a total of c.8,800 individual holdings have now been fully returned to counterparties representing a total value of c.£14.0bn.

In respect of resolving the LBI competing claims issue, in the period LBIE received assets with nominal value from LBI which have been, or will be, returned to clients in due course. Under the reciprocal arrangement, LBIE has to date transferred assets valued at c.£30m to LBI for onward distribution.

The exercise to agree allocations of Client Assets that are in partial shortfall amongst non-CRA counterparties were substantially concluded in the period. As a result, 220 adjusted entitlements have now been agreed with counterparties and have been incorporated into shortfall claims against the House Estate.

Excess segregated Client Assets

The ongoing identification of securities held in the client depot that had been over-segregated at the date of Administration has resulted in further transfers to the House Estate of £0.05bn in the period (£0.51bn to date).

Over-Claims and ring-fencing

For certain Client Assets, LBIE has received duplicate claims for the same security and until resolved or expunged, this prevents the affected Client Assets being returned. An analysis of continuing Over-Claims is set out below.

	£bn
Over-Claims at 14 September 2013	0.23
Over-Claims resolved or reconciled in the period	(0.16)
Total Over-Claims remaining at 14 March 2014	0.07
Comprising	
Over-Claims asserted for assets within LBIE's control	0.04
Over-Claims asserted for assets outside of LBIE's control	0.03
Total Over-Claims remaining at 14 March 2014	0.07

Remaining Over-Claims predominantly relate to entitlements connected to LBHK-linked securities. These issues are expected to be materially resolved in the next 6 months.

LBHK

Following resolution of the extended liens litigation in Hong Kong, as set out in Section 5, Client Assets held by LBHK on behalf of LBIE's clients were released to LBIE in mid-March 2014. A significant amount of preparatory work as regards the return of those assets to counterparties was done in the period. Accordingly, LBIE expects to commence the return of these Client Assets to counterparties shortly.

Where clients have claimed Client Assets from both LBHK and LBIE, the duplicate claim will need to be resolved before assets can be recovered.

Section 8:

Client Money estate

Introduction

There has been notable progress in advancing the resolution of the Client Money estate with the ongoing resolution of CME either by assignment to the House, which includes many material claimants, or by client waiver of CME. This has enabled the Administrators to bring forward plans for final resolution of the estate subject to finding a solution to the BarCap Client Money claim.

With the House unsecured creditor dividend rate shortly to reach 100p/£1 and following the recent LBB settlement, the Administrators are focused on ensuring:

- the remaining CME is settled expeditiously; and
- the duties and responsibilities of LBIE, as Client Money trustee, are properly fulfilled and completed, including the remittance of surplus funds to the House.

The Administrators set out in the table below a high-level analysis showing illustrative Low and High case outcomes for the net Client Money impact on the House Estate.

Pre-Administration Client Money estate	Low \$bn	High \$bn
Projected Client Money to distribute		
Funds held at 14 March 2014	1.29	1.29
LBB future recoveries ¹	0.39	0.48
LBHI future recoveries ²	0.25	0.25
Other recoveries	0.02	0.02
Projected Client Money to distribute ³	1.95	2.04
Less: estimated funds to be paid to the UK High Court	(0.03)	(0.03)
Projected future distributions to LBIE's nominee (House Estate) (\$bn)	1.92	2.01
- The Low and High case assume that LBB pays a total dividend of 70%/85% respectively on LBIE's £0.40bn (\$0.56bn) unsecured claim. - This represents dividends on LBIE's LBHI guarantee claim of \$1.01bn. - The illustration assumes that the Administrators will not be required to trace and recover assets from the House Estate for the benefit of the Client Money pool (see resolution of the Client Money estate on page 28).		
Projected House impact of Client Money estate	Low £bn	High £bn
Projected House receipts from the Client Money estate	1.21	1.26
Less: future distributions by the House under the Client Money settlement offer	(0.04)	(0.04)
Estimated net future House recovery (£bn)	1.17	1.22

The Administrators expect the majority of further outstanding CME to be assigned to LBIE's nominee in satisfaction of indebtedness due to the House or in exchange for the admission of an unsecured claim, with only \$0.03bn remaining to be paid into the UK High Court for 'orphaned' type claims/obligations. Future estimated House third party debtor recoveries and unsecured creditors, included in the indicative financial outcome in Section 3, have been compiled on a consistent basis.

Progress

Pre-Administration Client Money

'Catch up' first interim Client Money distribution

In total, 7 Client Money creditors (including LBIE's nominee) received monthly 'catch up' interim distributions in the period at the rate of 23.2%. Total distributions of \$0.14bn have been paid to date.

Client Money settlement offer

There remain a number of issues still to be dealt with prior to submitting an application to the UK High Court to finally resolve the Client Money estate. Accordingly, the Administrators developed and recently presented a proposal to counterparties that had retained CME, to settle their remaining entitlements at 100% of their CME (plus, where applicable, a currency allowance) in exchange for an assignment of their CME to LBIE's nominee. The proposal was presented to all 55 such counterparties. As at 14 March 2014, the number of counterparties accepting the offer was 54, with discussions continuing with the remaining counterparty.

CM Determinations agreement

Significant progress has been made in engaging with counterparties with unresolved CME. The majority of counterparties continue to elect to take an unsecured claim and assign their CME to LBIE's nominee. CME has now been agreed and resolved for 76% (by number) of counterparties with CME and work has been completed on a further 11%, for which court directions are expected to be required.

CME population	Sep 13		Mar 14	
	Cpty No.	CME \$bn	Cpty No.	CME \$bn
Third parties	1,316	1.65	1,302	1.65
Affiliates	9	0.04	11	0.04
LBIE/LBF ¹	2	2.81	2	2.81
Total	1,327	4.50	1,315	4.50
Comprising				
Resolved				
Resolved – assigned/waived ¹	765	3.38	948	4.10
Resolved – CME retained	44	0.09	55	0.09
	809	3.47	1,003	4.19
Outstanding				
In progress ²	438	0.49	148	0.24
Court directions required ³	41	0.01	140	0.03
Roadblocked ⁴	39	0.53	24	0.04
	518	1.03	312	0.31
Total	1,327	4.50	1,315	4.50

1. The LBI and LBF claims included in the table continue to be LBIE estimates, based on a review of accounting records only. A number of complex legal questions would need to be resolved before these claims could finally be determined, if that eventually needs to be done.
2. LBIE has engaged with this population, which includes a significant number of clients where options relating to the resolution of their CME are actively being explored.
3. This group includes counterparties with CME where LBIE has been unable to establish contact, counterparties who refuse to engage and counterparties who are dissolved. UK High Court approval of the Administrators' proposals concerning this group will be sought in due course but the work on these counterparties is now complete.
4. There remain a number of clients whose CME is contingent upon the outcome of matters which have not been resolved (e.g. depot breaks/litigation). Resolution depends on litigation or other issues outside of the Administrators' control.

LBI

BarCap has asserted that it acquired LBI's CME in accordance with the terms of a sale and purchase agreement entered into in September 2008. Discussions to resolve this issue resumed temporarily with BarCap and LBI in January 2014, but have now stalled. LBIE does not currently anticipate that this issue will be resolved before the related US-based litigation between LBI and BarCap is concluded.

Resolution of the Client Money estate

Previously, it was considered possible that there may be a need to carry out a Tracing and recovery exercise to augment the Client Money pool for the benefit of CME counterparties. The Administrators now consider that there is unlikely to be any good or economic reason, in the interests of Client Money beneficiaries, and in particular, given the asset position of the Client Money pool and limited claims against it (LBIE's nominee for assignments aside) in undertaking a Tracing exercise. Accordingly, the Administrators intend to make an application to the UK High Court for directions including:

- guidance on their options for calculation of the final payments to the counterparties referred to above, in order that reserves and payments to them or, as appropriate, into the UK High Court may be made;
- whether they are obliged to undertake a Tracing exercise;
- how to deal with CME of a small number of non-responsive, uncontactable or legally dissolved counterparties; and
- other formalities for the closure of the Client Money estate including a bar date for CME claims.

Recoveries

The pre-Administration Client Money pool at 14 March 2014 was \$1.29bn. This includes both recoveries and interest on funds held, including in the period:

- a balance of \$0.17bn previously held in the post-Administration Client Money account which was transferred to the pre-Administration Client Money account on 16 January 2014, following agreement with a single counterparty; and
- \$0.03bn of Client Money which was recovered from LBIE Seoul Branch on 3 March 2014.

Future recoveries will arise from:

LBB

A settlement agreement with LBB was signed on 14 March 2014 which dealt with all outstanding Client Money issues between LBIE and LBB. Under the terms of the agreement, 50% of LBIE's €0.81bn Client Money claim has been admitted as an unsecured claim, with the balance having subordinated status. The agreement requires LBIE to complete a number of formalities before receiving a 'catch up' dividend at the rate of 39.5% on its unsecured claim. This is expected to be completed in the coming months with further distributions being received in due course.

LBHI

LBIE has an agreed guarantee claim against LBHI to the extent that it is unable to recover all of the Client Money placed with LBB pre-Administration. The payment under the guarantee is conditional upon reaching definitive agreement with LBB. Following the settlement referred to above, dividends from LBHI of \$0.21bn were received after the period end. Further distributions are expected in due course.

Post-Administration Client Money recoveries and returns

Progress has continued in the period, with \$0.56bn, representing 90% of the post-Administration Client Money pool at 14 September 2013, either being returned to clients, or being transferred to the pre-Administration Client Money pool or to the House Estate.

The table below provides a breakdown of the post-Administration Client Money movements during the period.

	\$bn	\$bn
Balance as at 14 September 2013		0.62
Returns ¹	(0.56)	
Receipts	0.08	
Foreign exchange gain in the period	0.01	
Movement in the period		(0.47)
Balance as at 14 March 2014 ²		0.15

1. The funds have been distributed as follows: \$0.27bn has been returned to clients, \$0.17bn was transferred to the pre-Administration Client Money pool and \$0.12bn has been transferred to the House Estate following the resolution of issues.
2. The balance comprises \$0.13bn of client funds and \$0.02bn relating to House and segregated Affiliate funds.

Appendices

Appendix A:

Receipts and payments: cumulative and 6 months to 14 March 2014

House Estate receipts and payments: cumulative and 6 months to 14 March 2014

House Estate	Notes	Cumulative - 15 September 2008 to 14 September 2013 (GBP equivalent) £m	Period - 6 months to 14 March 2014 (GBP equivalent) £m	Cumulative - 15 September 2008 to 14 March 2014 (GBP equivalent) £m
Receipts				
Counterparties	1	8,705	1,813	10,518
Depot securities	2	8,734	387	9,101
Affiliate-related transfers from post-Administration Client Money	3	686	14	700
Post-Administration Client Money and collateral for onward distribution	4	436	71	507
Other income	5	1,051	129	1,180
Total receipts for the period/to date		19,612	2,394	22,006
Payments				
Dividends paid	6	(5,917)	(2,984)	(8,901)
Affiliate-related transfers to post-Administration Client Money	7	(1,323)	(27)	(1,350)
Affiliate settlements	8	(866)	(62)	(928)
Distribution of post-Administration Client Money and collateral	9	(436)	(74)	(510)
Administrators' remuneration	10	(714)	(82)	(796)
Payroll and employee costs	11	(472)	(52)	(524)
Legal costs	12	(295)	(16)	(311)
Building and occupancy costs	13	(237)	(11)	(248)
Other payments	14	(794)	(89)	(883)
Total payments for the period/to date		(11,054)	(3,397)	(14,451)
Net movement in the period/to date		8,558	(1,003)	7,555
Foreign exchange translation differences		(132) [^]	(6) [^]	(138) [^]
Total balances	15	8,426	(1,009)	7,417
Less: Funds held subject to potential third party claims	16	(509)	(488)	(997)
Total House Estate cash and bonds (see Section 3)		7,917[~]	(1,497)	6,420[#]

[^] At this stage in the Administration, material receipts and payments in foreign currencies are converted to sterling as soon as practicable after receipt. Where small currency sums are held for a short period or where currency collateral is held for a counterparty, small translation differences can arise.

[~] Balances held in foreign currencies at 14 September 2013 were €4m, \$1m and various currencies £5m (equivalent).

[#] Balances held in foreign currencies at 14 March 2014 were €6m, \$4m and various currencies £12m (equivalent).

Notes to House Estate receipts and payments account

General

Foreign currency transactions are reported in sterling at the rate prevailing on the relevant transaction date.

The transactions within the LBIE estate in the period:

- are reported on a cash receipts and payments basis in accordance with the Insolvency Act and Insolvency Rules; and
- were completed in accounts established and controlled by the Administrators.

Separate bank accounts are held for realisations from the House Estate and the Trust Estate.

1. Counterparties

Receipts in the period comprise:

- £1,357m of House debtor appropriations from the Omnibus Trust estate;
- £168m of distributions from debtor Affiliates;
- £88m of House debt appropriations of collateral received from clients, including £40m of collateral transferred from post-Administration Client Money and £48m shown as other income in prior periods (see note 5);
- £88m related to House third party debtors;
- £34m recovered through the termination of part of a hedge against US dollar exposure (as previously reported);
- £30m of House assignments from the Omnibus Trust estate;
- £26m of Client Assets claimant debtor appropriations; and
- £23m of Client Assets claimant debtor appropriations transferred from post-Administration Client Money.

The above amounts are offset by a net £1m reclassification in the period (£18m reclassification to depot securities (see note 2) net of £17m reclassified from other income (see note 5)).

2. Depot securities – sales and related income

Realisations of £367m (including £18m reclassified from counterparties) relate to the disposal or redemption of securities and derived income from depot holdings for the benefit of the House Estate or third parties.

3. Affiliate-related transfers from post-Administration Client Money

£14m of funds previously held in post-Administration Client Money, segregated for potential Affiliate claims, was transferred to the House Estate following settlement with Affiliates.

4. Post-Administration Client Money and collateral for onward distribution

Under certain client agreements, Client Money is transferred from the post-Administration Client Money account to LBIE's nominee. Under a separate agreement, funds are transferred from LBIE's nominee to the House account. The House makes a separate payment to the client to give value for its Client Money under the client agreements (see note 9). In addition, certain client collateral held in House was reclassified from other income in the period (see note 5).

5. Other income

Other income comprises:

- £72m of pre-Administration Client Money interim distributions received via LBIE's nominee;
- £54m retained from Client Assets returns as a cost contribution, including £42m from the Omnibus Trust estate;
- £31m of recovered or redirected funds which were mistakenly paid (by third parties) into House accounts;
- £25m of VAT repayments received from HMRC;
- £12m of bank and bond interest received;
- £8m of collateral pledged by clients; and
- £5m of other realisations.

The above amounts are offset by:

- £48m of collateral received from clients in prior periods that has been appropriated to the House Estate in the current period (see note 1);
- £17m under investigation in the prior period that has been reclassified as counterparties receipts in the current period; and
- £13m of collateral received from clients in prior periods that has been reclassified to post-Administration Client Money and collateral for onward distribution (see note 4).

6. Dividends paid

£2,984m of interim unsecured dividends were paid in the period.

7. Affiliate-related transfers to post-Administration Client Money

£27m of funds were transferred to the post-Administration segregated Affiliate accounts, relating to the disposal or redemption of securities and derived income received into the House account identified as belonging to Affiliates.

8. Affiliate settlements

The payments relate to Affiliate settlement and asset return agreements.

9. Distribution of post-Administration Client Money and collateral

This relates to returns to clients of collateral and funds under the Client Money return scheme (see note 4).

10. Administrators' remuneration and expenses

Payment deferral terms, as agreed with the Committee and referred to on page 42 of this report, account for differences between costs incurred and payments made in the period.

Out-of-pocket expenses of £2m were paid in the period.

11. Payroll and employee costs

Payments relate to salary and employee-related benefits for UK-based employees and third party contractors. This includes costs incurred on behalf of Affiliates, which are recovered by LBIE and included as other income.

12. Legal costs

Legal costs relate to advice given, and to court proceedings and litigation conducted, in numerous jurisdictions by a number of legal firms in connection with a range of issues across the Administration.

13. Building and occupancy costs

This relates to occupancy and infrastructure costs, primarily related to the Canary Wharf offices occupied by LBIE. This includes costs incurred on behalf of Affiliates, which are recovered by LBIE and included as other income.

14. Other payments

Other payments comprise:

- repayment of £35m of recovered or redirected funds which were mistakenly paid (by third parties) into House accounts (see note 5 on other income);
- £25m of counterparty settlements;
- £21m of VAT paid on invoices; and
- £8m of other sundry payments.

15. Investment profile

Current investment strategy

For short-term liquidity requirements, LBIE invests in short-dated money market deposits. For longer term requirements, investments are made in short-dated government securities.

Total balances

House Estate	Notes	GBP equivalent £m
Short-dated government bonds		7,062
Short-term deposits	1	149
Interest-bearing accounts		206
Total		7,417

1. Average rate of return for 6 months ending 14 March 2014: sterling 0.32% and US dollars 0.08%.

Cash management and investment policies

Subject to meeting regulatory requirements, the continuing objectives of the policies are to provide:

- security for Administration funds;
- liquidity as required by the Administration; and
- appropriate returns (positive yield net of fees).

The primary objective continues to be ensuring the security of Administration funds. To meet this objective, a comprehensive counterparty credit risk policy is in place with clear limits on counterparties, instruments, amounts and duration. Compliance with policy is measured on at least a daily basis using live indicators, and any breaches arising from market movements are reported immediately to the Administrators.

The cash is managed by a team of treasury professionals which meets with the Administrators on a regular basis.

Instruments used in the period

- interest-bearing accounts;
- short-term bank deposits; and
- government and quasi-government bonds.

Policy for interest-bearing accounts and short-term deposits

Permitted banks must meet 5 key criteria:

- be headquartered in a sovereign state where the average long-term ratings from S&P, Moody's and Fitch are in the top 4 available tiers (AAA to AA-);
- have a blended average long-term rating from S&P, Moody's and Fitch within the top 4 available tiers (AA- to A-);
- be a Prudential Regulation Authority approved counterparty;
- have a 5-year CDS price below a specified (prudent) threshold; and
- have a minimum market capitalisation above a specified (prudent) threshold.

To ensure diversification, the counterparty limits for monies invested are based on the credit rating, CDS price and market capitalisation of each of the banks used.

Short-term deposits are placed for a maximum duration of 12 weeks with only those banks that meet strict criteria – currently only 2 out of our 12 dealing counterparties.

Policy for government bonds

Eligible investments for the bond portfolios are short-dated government debt issued by the UK and quasi-government debt securities benefiting from an explicit, unconditional and irrevocable guarantee from the UK government.

The bond portfolio is managed on a day-to-day basis by an independent fund manager.

16. Funds held subject to potential third party claims

House Estate	£m
Reserve for unpaid dividends	941
Cash collateral from Client Assets claimant debtors	34
Ring-fenced for Trust Property claimants	22
Total	997

**Post-Administration Client Money receipts and payments:
cumulative and 6 months to 14 March 2014**

Post-Administration Client Money	Notes	Cumulative - 15 September 2008 to 14 September 2013 (USD equivalent) USD \$m	Period - 6 months to 14 March 2014 (USD equivalent) USD \$m	Cumulative - 15 September 2008 to 14 March 2014 (USD equivalent) USD \$m
Receipts				
Affiliate-related	1	415	158	573
Collateral received from clients		258	63	321
Affiliate-related transfers from the House	2	2,075	44	2,119
Redemptions, coupons, dividends and investment income	3	4,283	12	4,295
Funds received in error		113	1	114
Total receipts for the period/to date		7,144	278	7,422
Payments				
Affiliate settlements	4	(311)	(306)	(617)
Transfers to pre-Administration Client Money	5	-	(167)	(167)
Transfers to clients via LBIE's nominee	6	(571)	(138)	(709)
Transfers to clients direct	7	(1,901)	(114)	(2,015)
Other transfers to the House	8	(1,237)	(77)	(1,314)
Return of collateral received from clients	9	(258)	(65)	(323)
Affiliate-related transfers to the House	10	(1,066)	(23)	(1,089)
Return of funds received in error		(113)	(1)	(114)
Other		(7)	3	(4)
Total payments for the period/to date		(5,464)	(388)	(6,352)
Net movement in the period/to date		1,680	(610)	1,070
Foreign exchange translation differences		33 ^A	27 ^A	60 ^A
Total balances	11	1,713	(503)	1,130[#]
Comprising				
Segregated Affiliate post-Administration Client Money balance		1,097	(113)	984
Other third party post-Administration Client Money balance		616	(470)	146
Total balances		1,713	(503)	1,130

^A The translation differences set out above principally arise from translating other currencies into US dollars, for reporting purposes only.

^B Balances held in currencies other than US dollars at 14 September 2013 were €329m, £57m and various currencies \$419m (equivalent).

[#] Balances held in currencies other than US dollars at 14 March 2014 were €256m, £10m and various currencies \$81m (equivalent). In the period, \$12m was transferred from 'Other third party post-Administration Client Money' to 'Segregated Affiliate post-Administration Client Money'.

Notes to post-Administration Client Money receipts and payments account

1. Affiliate-related

Amounts relating to the disposal or redemption of securities and to derived income received directly into the segregated Affiliate accounts.

2. Affiliate-related transfers from the House

Transfer of cash originally received in the House account, relating to the disposal or redemption of securities and to derived income identified as belonging to Affiliates.

3. Redemptions, coupons, dividends and investment income

Following investigation, \$62m of funds received in prior periods now determined to be collateral received from clients has been reclassified as such in the period.

4. Affiliate settlements

Return of funds to Affiliates under the terms of settlement agreements with those Affiliates.

5. Transfers to pre-Administration Client Money

Transfer of a balance held in the post-Administration Client Money account, which, following further investigation was identified as relating to the pre-Administration Client Money pool.

6. Transfers to clients via LBIE's nominee

Return of post-Administration Client Money via LBIE's nominee, where funds are transferred for onward distribution to clients from the House Estate. Certain returns are retained by the House in respect of fees payable, debtor appropriations and releases following a waiver of client rights in consideration for an unsecured claim into the House.

7. Transfers to clients direct

Return of post-Administration Client Money direct to clients including debtor appropriations to the House. Following investigation, \$15m of payments in prior periods now determined to be fees paid to the House has been reclassified as other transfers to the House in the period.

8. Other transfers to the House

Transfers relate to either funds determined not to be post-Administration Client Money following investigation, fees payable to the House, or releases following a waiver of client rights in consideration for an unsecured claim into the House.

9. Return of collateral received from clients

All returns in the period were appropriated by the House Estate in respect of debts owed by clients to the House, rather than paid to the clients.

10. Affiliate-related transfers to the House

Funds previously held subject to potential Affiliate claims were transferred to the House Estate following settlements with Affiliates.

11. Investment profile

Total balances

Post-Administration Client Money	USD equivalent \$m
Short-term deposits	1,000
Interest-bearing accounts	130
Total	1,130

Cash management and investment policies for client funds

The Client Money cash management policies for short-term deposits and interest-bearing accounts are based on those used for the House Estate, modified to comply with the additional Client Money regulatory requirements.

Client Money is not eligible for investment in government bonds. Client monies can be placed on money market deposits for a maximum duration of 4 weeks.

***Pre-Administration Client Money receipts and payments:
cumulative and 6 months to 14 March 2014***

Pre-Administration Client Money	Notes	Cumulative - 15 September 2008 to 14 September 2013 (USD equivalent) USD \$m	Period - 6 months to 14 March 2014 (USD equivalent) USD \$m	Cumulative - 15 September 2008 to 14 March 2014 (USD equivalent) USD \$m
Receipts				
Client Money pool recoveries	1	1,216	209	1,425
Interest		6	1	7
Total receipts for the period/to date		1,222	210	1,432
Payments				
Client Money interim distribution	2	(21)	(116)	(137)
Legal costs		(10)	-	(10)
Total payments for the period/to date		(31)	(116)	(147)
Net movement in the period/to date		1,191	94	1,285
Foreign exchange translation differences		7 [^]	2 [^]	9 [^]
Total balances	3	1,198[~]	96	1,294[#]

[^] The translation differences principally arise from translating other currencies into US dollars, for reporting purposes only.

[~] Balances held in currencies other than US dollars at 14 September 2013 were €27m, £9m and various currencies \$11m (equivalent).

[#] Balances held in currencies other than US dollars at 14 March 2014 were £139m and various currencies \$1m (equivalent).

Notes to pre-Administration Client Money receipts and payments account

1. Client Money pool recoveries

Client Money recovered in the period principally relates to a transfer of certain funds held in the post-Administration Client Money account following further investigation.

2. Client Money interim distribution

A Client Money first interim 'catch up' distribution at a rate of 23.2% was paid in the period.

3. Investment profile

Pre-Administration Client Money	USD equivalent \$m
Short-term deposits	1,293
Interest-bearing accounts	1
Total	1,294

***Omnibus Trust receipts and payments:
cumulative and 6 months to 14 March 2014***

Omnibus Trust	Notes	Cumulative - 15 September 2008 to 14 September 2013 (USD equivalent) USD \$m	Period - 6 months to 14 March 2014 (USD equivalent) USD \$m	Cumulative - 15 September 2008 to 14 March 2014 (USD equivalent) USD \$m
Receipts				
Sale of equity securities returned by LBI	1	3,828	149	3,977
Sale of fixed income securities returned by LBI	1	643	48	691
Funds received in error	2	34	6	40
Cash transferred from LBI		4,795	1	4,796
Interest		1	1	2
Total receipts		9,301	205	9,506
Payments				
Distributions to beneficiaries	3	-	(5,323)	(5,323)
House debtor appropriations	4	-	(2,184)	(2,184)
US withholding tax reserve	5	-	(950)	(950)
Fees recovered	4	-	(68)	(68)
House assigned claims	4	-	(48)	(48)
Return of funds received in error	2	(34)	(6)	(40)
Costs relating to disposal of securities		(1)	-	(1)
Total payments		(35)	(8,579)	(8,614)
Period end balance	6	9,266	(8,374)	892

Notes to Omnibus Trust receipts and payments account

1. Sale of equity and fixed income securities returned by LBI

Realisations in the period relate to the disposal or redemption of securities (\$195m) and derived income (\$2m) from securities held by LBIE not reserved for Non-Consenting beneficiaries.

2. Funds received in error

Funds received into the Omnibus Trust account in error subsequently transferred to the House account.

3. Distributions to beneficiaries

A first interim distribution at a rate of 100% of Best Claim values was paid on 26 September 2013. A 'catch up' first distribution and a second distribution at a rate of 6% were paid on 30 January 2014.

4. House debtor appropriations/ fees recovered / House assigned claims

Under the Common Terms, certain deductions against gross distributions to beneficiaries were allowed for onward payment to the House.

5. US withholding tax reserve

Pending the US withholding tax treatment being agreed with the IRS, each distribution was subject to a 30% tax reserve, except where the distribution was paid or attributable to a validly documented US person on a form W-9 at both a counterparty and beneficiary level. Of these tax reserves, \$0.95bn has been deposited with the IRS to be held on account pending agreement of tax liabilities.

6. Investment profile

	USD equivalent \$m
Omnibus Trust	
Short-term deposits	753
Interest-bearing accounts	139
Total	892

Cash management and investment policies for Omnibus Trust funds

The investment policies for short-term deposits and interest-bearing accounts are focused on preserving the security of the funds. This is achieved by the application of a comprehensive credit risk model as used in the House Estate, subject to consideration of any other regulatory requirements.

Appendix B:

Administrators' remuneration

Background

Details of the statutory framework for the approval of the Administrators' remuneration, the role of the Adviser and the level and detail of disclosure provided by the Administrators are set out in the Administrators' earlier reports.

The Administrators continue to provide the Committee and its Adviser with detailed information relating to their remuneration and to Category 2 disbursements, in accordance with SIP 9, on a quarterly basis.

The remuneration information contained in this report is extracted from the Q3 and Q4 2013 data packs which have been provided to the Committee and its Adviser.

Approvals by the Creditors' Committee

The Committee has reviewed and approved all time costs for the period to 31 December 2013, including the deferred element relating to 2013 that was subject to Committee review in early 2014.

The Committee has also approved remuneration arrangements for 2014, which again require deferral of a significant proportion of the Administrators' time costs that will be incurred in the calendar year. Approval of the deferred element will be considered in early 2015, enabling the Committee to judge the Administrators' performance against medium-term as well as short-term objectives during 2014.

The Committee has been provided with Category 2 disbursement information relating to the 6-month period to 31 December 2013 amounting to £881,215. Disbursements of £1,342,370 were approved for payment in the period, including disbursements in respect of earlier periods.

Analysis of time costs

In the 6 months to 31 December 2013, time costs of £68,159,013 have accrued, totalling 197,606 hours at an average hourly rate of £345 (previously £335).

The Administrators' total time costs reduced by 4.6% in the period compared with the previous 6 months. This reduction reflected the net effect of:

- reduced activity in Trust and Affiliates work streams following the Omnibus Trust distributions and the reduced number of outstanding Affiliate issues; and
- reduced activity on the initial processing tasks undertaken by more junior staff in validating and valuing unsecured claims; offset in part by:

- increased activity in support functions, in large part, related to operational simplification initiatives to simplify infrastructure and reduce costs to match the changing needs of the Administration, whilst maintaining effective data retrieval and storage capabilities.

No further taxation refunds have been received by LBIE in the period via LBL, against which deductions for PwC time costs are ordinarily made by LBL.

Cumulative time costs accrued to 31 December 2014 are £761m. Total Administrators' remuneration and disbursements paid to 14 March 2014 are £796m.

The continuing complexity of the issues facing the Administration has required the continued engagement of specialists. During the 6-month period, some 603 (c.193 full-time equivalents) different UK and overseas staff members have been involved in the Administration to assist with the key work stream activities.

Analysis of Administrators' remuneration

The table below provides an analysis of the Administrators' total hours incurred and the associated cost by staff grade, in respect of the period 1 July 2013 to 31 December 2013.

Grade	Period 1 July 2013 to 31 December 2013	
	Hours	£'000
Partner	6,496	5,339
Director	11,217	6,941
Senior Manager	36,922	17,731
Manager	49,562	17,943
Senior Associate	65,438	15,052
Associate	27,971	4,353
Total	197,606	68,159

The following table allocates hours and associated costs by work activity in the same period.

Activity		Period 1 July 2013 to 31 December 2013	
		Hours	£'000
Counterparties	Street	37,390	12,587
	Trust	17,664	5,610
	Affiliates	4,391	1,612
	Valuations	13,787	4,843
	Branches	3,155	1,436
Middle Office	Middle Office	23,418	8,335
Transaction Processing and Control	Transaction Processing and Control	24,681	8,222
COO	Administrators	6,771	3,211
	Chief operating officers	10,581	4,073
	Performance improvement and control	18,345	5,773
	Treasury	7,368	2,474
Other support functions	Tax	4,817	3,153
	Regulatory and compliance	3,303	1,133
	Information technology	19,732	5,091
	Shared activities (see below)	2,203	606
Total		197,606	68,159

Shared activities		Period 1 July 2013 to 31 December 2013	
		Hours	£'000
Employees		595	188
Estate accounting		116	42
Group services management		1,492	376
Total		2,203	606

Appendix C:

Future dividend payment dates

The timetable for future 'catch up' dividends for unsecured creditors, including the date for the execution of transfer notices, is set out below.

Cut-off date for claims agreement / transfer notice deadline	Payment date (on or around)
28-Mar-14	30-Apr-14
30-Apr-14	30-May-14
30-May-14	27-Jun-14
27-Jun-14	31-Jul-14
31-Jul-14	29-Aug-14
29-Aug-14	30-Sep-14
30-Sep-14	31-Oct-14
31-Oct-14	28-Nov-14

Please note that the 30 April 2014 payment date will coincide with the fourth unsecured interim distribution.

Appendix D:

Court update

Summary of major court proceedings involving LBIE and its Affiliates in the reporting period.

<i>Q4 2013</i>	<i>UK High Court</i>	Substantive hearing of the Waterfall Application
		Substantive hearing of Administrators' application for directions regarding the extent of liabilities connected with the Lehman Brothers Pension Scheme. Judgment handed down on 18 December 2013
	<i>Hong Kong High Court</i>	Hearing for the Third Party Security Interest application made on behalf of the Liquidators of LBHK
<i>Q1 2014</i>	<i>UK High Court</i>	Judgment in the Waterfall Application (as mentioned above)
	<i>UK Upper Tribunal (Tax and Chancery)</i>	Case Management Conference for the reference by LBIE and others to the Upper Tribunal of a determination by the Pensions Regulator to issue an FSD against them
	<i>Hong Kong High Court</i>	Judgment handed down on 23 January 2014 (following the hearing mentioned above)

Summary of major court proceedings involving LBIE and its Affiliates in future reporting periods.

<i>Q2/Q3 2014</i>	<i>UK High Court</i>	Various specific Street counterparty litigation which is actual or potential, relating to either the recovery of debts due to LBIE or creditor claims. This is referred to in more detail in Section 6
	<i>UK Appeal Court</i>	Hearing in the appeal of the Administrators' application for directions regarding the extent of liabilities connected with the Lehman Brothers Pension Scheme (following the UK High Court proceedings mentioned above)
	<i>UK Upper Tribunal (Tax and Chancery)</i>	Case Management Conference for the reference by LBIE and others to the Upper Tribunal of a determination by the Pensions Regulator to issue an FSD against them

Appendix E:

Statutory and other information

Court details for the Administration:	High Court of Justice, Chancery Division, Companies Court Court case number 7942 of 2008
Full name:	Lehman Brothers International (Europe)
Trading name:	Lehman Brothers International (Europe)
Registered number:	02538254
Registered address:	Level 23, 25 Canada Square, London E14 5LQ
Date of the Administration appointment:	15 September 2008
Administrators' names and addresses:	AV Lomas, SA Pearson (both appointed 15 September 2008), PD Copley and R Downs (both appointed 2 November 2011) and JG Parr (appointed on 22 March 2013) of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT. MJA Jervis and DY Schwarzmann ceased to act on 2 November 2011. DA Howell ceased to act on 22 March 2013
Appointor's name and address:	High Court of Justice, Chancery Division, Companies Court on the application of LBIE's directors
Objective being pursued by the Administrators:	Achieving a better result for LBIE's creditors as a whole than would be likely if LBIE were wound up (without first being in Administration)
Aims of the Administration:	Recover and/or realise all House assets, including cash, securities and in-the-money financial contracts, on a managed basis Admit unsecured creditors' claims and make distributions to creditors Recover Client Assets and Client Money, assess the claims to such property and return all such property to its rightful owners on a systematic basis
Division of the Administrators' responsibilities:	In relation to paragraph 100(2) of Schedule B1 to the Insolvency Act, during the period for which the Administration is in force, any act required or authorised under any enactment to be done by either or all of the Administrators may be done by any one or more of the persons for the time being holding that office
Details of any extensions for the initial period of appointment:	The UK High Court on 2 November 2011 granted an extension of the Administration to 30 November 2016
Proposed end of the Administration:	The Administrators have yet to determine the most appropriate exit
Estimated dividend for unsecured creditors:	Interim dividends announced to date at a cumulative rate of 100p/£1. Creditors are referred to Section 3 for the illustrative range of outcomes
Estimated values of the prescribed part and LBIE's net property:	The estimated value of LBIE's net property remains uncertain
Whether and why the Administrators intend to apply to court under Section 176A(5) of the Insolvency Act:	Such an application is considered unlikely
The European Regulation on Insolvency Proceedings (Council Regulation (EC) No. 1346/2000 of 29 May 2000):	The European Regulation on Insolvency Proceedings does not apply to this Administration as LBIE is an investment undertaking
Creditors' Committee members:	Lehman Commercial Paper Inc. Ramius LLC Lehman Brothers Asia Holdings Ltd

Appendix F:

Glossary of terms

Abbreviation	Term	Definition
Administration	Administration	UK corporate insolvency process governed by the Insolvency Act 1986 applicable to LBIE following the granting of an administration order dated 15 September 2008
Administrators	Joint Administrators	AV Lomas and SA Pearson were appointed as Joint Administrators of LBIE on 15 September 2008. PD Copley and R Downs were appointed on 2 November 2011. JG Parr was appointed on 22 March 2013. All are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales and are partners of PricewaterhouseCoopers LLP
Adviser	Adviser	An adviser retained to assist the Committee in considering the Administrators' remuneration requests
Affiliates	Affiliate entities	Various subsidiaries and affiliates of Lehman Brothers Holdings Inc.
AGR	AG Financial Products Inc.	A US-based affiliate of Assured Guaranty Corp. which provided credit protection to counterparties under credit default swaps
BarCap	Barclays Capital Inc.	Investment banking business of Barclays Bank PLC
Best Claim value	Best Claim value	A customer's claim for the purposes of the Consensual Proposal is the higher of either: the value of the accepting customer's claim on 19 September 2008 (and, for the avoidance of doubt, excluding income accruing after 19 September 2008); and the market value of an accepting customer's claim, including income, on 30 November 2012
Category 2 disbursements	Administrators' Category 2 disbursements	Costs that are directly referable to the Administration but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the Administration on a proper and reasonable basis
Citibank	Citibank, N.A.	Subsidiary of Citigroup Inc. LBIE counterparty with significant business relationships governed by various trading and custody agreements
Claims Determination Deed	Claims Determination Deed	A standardised legal document for agreeing claims under the Consensual Approach
Client Assets	Client Assets	Client securities which LBIE should have held as at 15 September 2008
Client Money	Client Money	Client cash balances held by LBIE as at 15 September 2008 or received thereafter by LBIE and which are in each case subject to the UK FCA's client money rules and/or applicable client money distribution rules
CM Determination	Client Money Determination	The Administrators' assessments of the quantum of Client Money Entitlement of a financial trading counterparty based on published principles
CME	Client Money Entitlement	The entitlement to receive a distribution from the pre-Administration Client Money pool
Committee	Creditors' Committee	Creditors voted to represent the general body of creditors of LBIE to assist the Administrators in discharging their functions set out in the Insolvency Act 1986
Common Terms	Common Terms	Common terms between LBIE and consenting beneficiaries to the Consensual Proposal
Consensual Approach	Consensual Approach	A framework developed for the expedient resolution of the unsecured claims of financial trading counterparties
Consensual Proposal	Consensual Proposal	Proposal to LBI Omnibus claimants to settle on a consensual basis their claims in respect of securities and/or cash positions under the Common Terms. In settlement of the claims, each customer which is a party to the Common Terms is entitled to have allocated to it a share of the proceeds of the securities and cash received by LBIE from LBI
Consultation Period	Consultation Period	In the context of the Proposal, the period between 10 March 2014 and 28 March 2014 during which the Administrators discussed the Proposal with certain of LBIE's creditors on a confidential basis
COO	Chief Operating Officers	Functions responsible for managing the operations of the organisation, allocating resources and supporting the other teams within the operating model
CRA	Claim Resolution Agreement	The claim resolution framework which governs the return of Client Assets. The CRA was proposed by the Administrators to clients in November 2009 and was accepted by over 90% of eligible Client Assets claimants
Currency Conversion Claims	Currency Conversion Claims	Non-provable claims derived from contractual rights to be paid in a currency other than sterling, where the value of sterling has declined as against the currency of the claim between the date of Administration and the date(s) of payment of distributions in respect of the claim
Customer Property	Customer Property as defined in SIPA	A combination of claims to securities and certain cash amounts relating to securities, as defined in SIPA

Abbreviation	Term	Definition
Extended Liens	Extended Liens	Assertion by certain Affiliate claimants to benefit from the rights conferred on LBIE to assert lien and other security entitlements over securities held by LBIE on behalf of other Affiliates, in order for the Affiliate claimants to recover debts owed to them by other Affiliates
FCA	Financial Conduct Authority (previously the Financial Services Authority)	Regulator of providers of certain financial services in the UK - name change with effect from 1 April 2013
FSD	Financial Support Direction	Direction determined by the Pensions Regulator requiring financial support to be put in place for the purpose of maintaining the solvency of a defined benefit scheme in accordance with the Pensions Act 2004
HMRC	HM Revenue & Customs	Organisation of the UK government primarily responsible for the collection of taxes
House Estate (also referred to as House)	House Estate	Dealings that relate to LBIE's general unsecured estate
Insolvency Act	Insolvency Act 1986	Statutory legislation that provides the legal platform for matters relating to personal and corporate insolvency in the UK
Insolvency Rules	Insolvency Rules 1986	Statutory rules that provide the legal platform for matters relating to personal and corporate insolvency in the UK
IRS	Internal Revenue Service	A bureau of the Department of the Treasury of the United States federal government with responsibility for collecting taxes and the interpretation and enforcement of the internal revenue code
ISDA	International Swaps and Derivatives Association	Global trade association for OTC derivatives and maintainers of the industry standard ISDA documentation
LB Lux	Lehman Brothers (Luxembourg) S.A.	Affiliate entity subject to insolvency proceedings in Luxembourg
LBB (also referred to as Bankhaus)	Lehman Brothers Bankhaus A.G.	Affiliate entity subject to insolvency proceedings in Germany
LBEF	Lehman Brothers (Luxembourg) Equity Finance S.A.	Affiliate entity subject to insolvency proceedings in Luxembourg
LBF	Lehman Brothers Finance S.A. (Switzerland)	Affiliate entity subject to insolvency proceedings in Switzerland
LBHI	Lehman Brothers Holdings Inc.	Ultimate parent of the Lehman group, incorporated in the US and formerly subject to Chapter 11 bankruptcy protection from 15 September 2008. The Plan of Reorganisation became effective on 6 March 2012
LBHI2	LB Holdings Intermediate 2 Limited	Affiliate entity subject to insolvency proceedings in the UK
LBHK	Lehman Brothers Hong Kong	Collective group of affiliate entities subject to insolvency proceedings in Hong Kong: Lehman Brothers Asia Holdings Ltd, Lehman Brothers Commercial Corporation Asia Ltd, Lehman Brothers Asia Capital Company Ltd, Lehman Brothers Securities Asia Ltd, Lehman Brothers Futures Asia Ltd, Lehman Brothers Asia Ltd and Lehman Brothers Nominees (H.K.) Ltd
LBI	Lehman Brothers Inc.	US broker-dealer affiliate entity, incorporated in the US which entered SIPA trusteeship on 19 September 2008
LBIE	Lehman Brothers International (Europe) – In Administration	Private unlimited UK subsidiary of LBHI, acting as its main European broker dealer, subject to an administration order dated 15 September 2008
LBJ	Lehman Brothers Japan Inc.	Affiliate entity subject to insolvency proceedings in Japan
LBL	Lehman Brothers Limited	UK service entity for the Lehman Administration Companies. LBL was placed into Administration on 15 September 2008
LBS	Lehman Brothers Securities N.V.	Affiliate subject to insolvency proceedings in Curaçao, Kingdom of the Netherlands
LBSF	Lehman Brothers Special Financing Inc.	Affiliate entity subject to insolvency proceedings in the US
MCF	Meble Commercial Funding Limited	Affiliate entity subject to insolvency proceedings in the UK
Non-Consenting beneficiaries	Non-Consenting beneficiaries	Potential beneficiary under the Omnibus Settlement Agreement that did not make an offer to LBIE and therefore is not a party to the Common Terms

Abbreviation	Term	Definition
Omnibus Trust	Omnibus Trust	Trust under which the asset returns to LBIE by LBI of SIPA Customer Property relating to LBIE client positions are held and the assets constituting the Trust Property thereof
OTC	Over-the-counter	A market in which securities, or other financial products, are traded by direct dealer-to-dealer communications
Over-Claims	Over-Claims	Proprietary claims made for or in respect of securities in an amount which exceeds the amount which appears as the claim entitlement to securities of that type as documented in LBIE's books and records
Post-Administration Interest	Post-Administration Interest	Statutory interest payable pursuant to Rule 2.88(7) of the Insolvency Rules
Proof of Debt (also referred to as POD)	Proof of Debt or Statement of Claim	A formal document prescribed by the Insolvency Rules 1986 submitted to the Administrators by a creditor wishing to prove their claim. The form is made in writing or electronically under the responsibility of a creditor and signed by an authorised person
SCSO	Small Claims Settlement Offer	An initiative under which creditors with agreed claims up to £150,000 were offered a one-off payment of 90% of their agreed claim in full and final settlement
Shareholder(s)	Shareholder(s) of LBIE	LBL and/or LBHI2
SIP 9	Statement of Insolvency Practice 9	Rules issued by the Joint Insolvency Committee which provide guidance to insolvency practitioners and creditors' committees in relation to the remuneration of, <i>inter alios</i> , administrators
SIPA	Securities Investor Protection Act 1970	A US legal proceeding for handling the liquidation of a broker-dealer
Storm	Storm Funding Limited	Affiliate entity subject to insolvency proceedings in the UK
Street	Street counterparties	Third party counterparties consisting of financial institutions, including asset managers, custodians and banks; and non-banking financial institutions, including pension funds and corporate entities
Street Creditors	Street Creditors	Unsecured creditors with financial trading claims without Client Assets
Subordinated Debt	Subordinated Debt	The subordinated liabilities arising pursuant to 3 intercompany loan agreements entered into between LBIE and LBHI2, each dated 1 November 2006, and which have been assigned by LBHI2 to the Wentworth joint venture companies
Surplus Entitlement Proposal (also referred to as the Proposal)	Surplus Entitlement Proposal	Draft proposed solution for determination of creditors' entitlements to participate in the surplus arising after the payment of ordinary unsecured claims in full, published by LBIE on 28 March 2014
Tracing	Tracing	Identification of unsegregated Client Money (or its substitute) within the House Estate
Trust Estate	Trust Estate	Refers to both Client Assets and Client Money
Trust Property	Trust Property	Refers to both Client Assets and Client Money
UK Appeal Court	Court of Appeal of England and Wales	The second most senior court in the English legal system for civil cases. Permission to appeal is required, either from the lower court or the Court of Appeal itself
UK High Court	High Court of England and Wales	Court of England and Wales which deals with all high value and high importance cases, and also has a supervisory jurisdiction over all subordinate courts
UK Supreme Court	Supreme Court of the United Kingdom	This is the court of last resort and highest appellate court in the United Kingdom for civil cases
VAT	Value Added Tax	A consumption tax levied on the sale of goods and services in the UK
Waterfall Application	Waterfall Application	A joint application by LBIE, LBL and LBHI2 to the UK High Court issued on 14 February 2013 seeking a determination on statutory interest priority, contribution rights and other issues relating to LBIE and its Shareholders

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Neutral Citation Number: [2014] EWHC 704 (Ch)

Case No: Nos 7942 and 7945 of 2008 and No. 429 of 2009

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 14/03/2014

Before :

MR JUSTICE DAVID RICHARDS

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

AND IN THE MATTER OF LEHMAN BROTHERS LIMITED (IN
ADMINISTRATION)

AND IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN
ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

William Trower QC and Daniel Bayfield (instructed by Linklaters LLP) for the Joint
Administrators of Lehman Brothers International (Europe)
David Wolfson QC and Nehali Shah (instructed by DLA Piper UK LLP) for the Joint
Administrators of Lehman Brothers Limited
Anthony Trace QC, Louise Hutton and Rosanna Foskett (instructed by Dentons UKMEA
LLP) for the Joint Administrators of LB Holdings Intermediate 2 Limited
Barry Isaacs QC and Mark Arnold QC (instructed by Weil, Gotshal & Manges) for
Lehman Brothers Holdings, Inc
Antony Zacaroli QC and David Allison (instructed by Allen & Overy LLP) for Lydian
Overseas Partners Master Fund Limited

Hearing dates: 12-15, 18-20 November 2013

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE DAVID RICHARDS

Mr Justice David Richards :

Introduction

1. This is an application by the joint administrators of three companies in the Lehman Brothers group. The circumstances which give rise to the application are both unexpected and unusual.
2. The circumstances are unexpected because when the Lehman Brothers group collapsed in September 2008, it was not anticipated that there would be any surplus of assets once the general body of unsecured creditors of any of the principal companies had been paid. The principal trading company within the group in the United Kingdom and Europe was Lehman Brothers International (Europe) (LBIE) and it is now anticipated that it is likely to have a significant surplus once all unsubordinated proved debts have been paid in full.
3. The circumstances are unusual because LBIE is an unlimited company. It has two members, both other companies in the group. Both have ordinary unsecured claims against LBIE and one of them has a very large claim as a subordinated loan creditor. Issues arise as to the potential liability of the members for the liabilities of LBIE, and in particular its subordinated liabilities, and the relationship between their liability, if any, as members and their claims as creditors.
4. The purpose of the application is to determine the claims which may be made against the surplus before any return to members and the order in which such claims rank for payment, and to resolve the existence and extent of the potential liability of the members. These broadly stated issues involve a number of novel and important questions.
5. The applicants are the respective joint administrators of LBIE and of its two members, Lehman Brothers Limited (LBL) and Lehman Brothers Holdings Intermediate 2 Limited (LBHI2). LBIE and LBL have been in administration since September 2008 and LBHI2 since January 2009.
6. Lehman Brothers Holdings, Inc (LBHI) and Lydian Overseas Partners Master Fund Limited (Lydian) were joined as respondents. LBHI is the ultimate parent of the Lehman Brothers group. On 15 September 2008, it commenced Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York, from which it emerged on 6 March 2012. It is an indirect creditor of many companies in the group and the ultimate shareholder of all of them. Its primary interest on this application relates to LBHI2's right to recover subordinated loans made by it to LBIE and issues relating to such subordinated loans. Although there are in some respects important differences between the positions adopted by LBL, LBHI2 and LBHI, they have made common cause on most issues, while in some instances advancing different submissions in support of the same conclusions. For convenience, I will call them "the other Lehman companies" when referring to them collectively.
7. Lydian is an unsecured unsubordinated creditor of LBIE and its position is aligned with the submissions which have been advanced on behalf of the administrators of

LBIE. They have avoided duplication of submissions and Lydian has concentrated on issues relating to foreign currency conversion claims.

8. The parties have agreed a statement of facts and there have been no contested issues of fact. The entire argument has been directed to legal issues.
9. The parties cooperated to produce an agreed list of issues, divided into 22 questions, some of which are further subdivided. The oral and written submissions of the parties were not primarily directed to each of those questions, but rather were made by reference to a number of principal issues. I have adopted the same course in this judgment and do not attempt to provide answers to each of the questions in the list of issues.

Background

10. LBIE was incorporated on 10 September 1990 under the Companies Act 1985 as a company limited by shares. On 21 December 1992, it was re-registered as an unlimited company. It appears that this step was taken for US tax reasons. Re-registration of LBIE as an unlimited company enabled it to be treated as a branch of its then parent company for US tax purposes, thereby enabling losses in LBIE to be set off against profits in the parent.
11. The share capital of LBIE comprises 6,273,113,999 ordinary shares of \$1 each, 2 million 5% redeemable Class A preference shares of \$1000 each, and 5.1 million 5% redeemable Class B shares of £1000 each. All these shares, except for 1 ordinary share, are held by LBHI2. The two classes of preference shares result from capital restructurings of LBIE in 2006 and 2007, to which I shall refer below. The remaining ordinary share is held by LBL.
12. The sole function of LBHI2 was to act as the immediate holding company of LBIE.
13. LBL was the service company for the operations of the group in the UK, Europe and the Middle East, and as regards companies based in the UK, was the principal employer, seconding employees to other companies within the group, maintained the IT systems and was the lessee of many of the group's premises. It became a shareholder in November 1994, holding a single ordinary share denominated in sterling. In May 1997 all the sterling shares were cancelled and replaced by shares denominated in US dollars and LBL has at all times since then been the holder of a single ordinary share of \$1. There is no documentary evidence that LBL held the dollar share as nominee for the other shareholder. This judgment does not deal with the relationship between LBL and LBHI2 as members of LBIE, and whether LBL has any right of indemnity against LBHI2.
14. The administrations of these companies have involved the realisation of their assets to best advantage, rather than the preservation of the companies as going concerns. Paragraph 65 of schedule B1 to the Insolvency Act 1986 (IA 1986) permits the administrator of a company to make distributions to creditors of the company, with the permission of the court where the creditors are neither secured nor preferential. Once an administrator gives notice of an intention to make a distribution, the administration is commonly referred to as a distributing administration. Detailed provisions related to the making of distributions to creditors by administrators are

contained in rules 2.68-2.105 of the Insolvency Rules 1986 (the Insolvency Rules), which for the most part reflect the equivalent provisions in rules 4.73-4.99 applicable in a winding up. With the permission of the court, the administrators of LBIE declared and paid a first interim dividend of 25.2 pence in the pound in November 2012, totalling some £1.611 billion.

Ranking of claims

15. Central to many of the issues arising on this application are the claims which may be made against the available assets of LBIE after payment of all its general unsecured unsubordinated creditors and the ranking of those claims. In *In re Nortel GmbH* [2013] UKSC 52, [2013] 3 WLR 504 (*Re Nortel*) Lord Neuberger of Abbotsbury PSC said at [39]:

“In a liquidation of a company and in an administration (where there is no question of trying to save the company or its business), the effect of the insolvency legislation..., as interpreted and extended by the courts, is that the order of priority for payment out of the company’s assets is, in summary terms, as follows:

- (1) Fixed charge creditors;*
- (2) Expenses of the insolvency proceedings;*
- (3) Preferential creditors;*
- (4) Floating charge creditors;*
- (5) Unsecured provable debts;*
- (6) Statutory interest;*
- (7) Non-provable liabilities; and*
- (8) Shareholders.”*

The categories relevant to the issues on this application are, principally, statutory interest and non-provable liabilities.

16. Provable debts rank equally between themselves and are paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions between themselves: rule 2.69. Rules 2.72-2.80 provide the machinery for proving debts, including the submission of a proof, its admission or rejection by the administrator and appeals against the administrator’s decision. Rule 2.81 provides for the administrator to estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value and provides that he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to any information becoming available to him. The amount provable in the administration in such a case is the estimate for the time being. Rule 2.85 provides for set-off. Rule 2.86 provides for the conversion of foreign currency debts into sterling, a rule to which I shall later return. Rule 2.89 provides that

a creditor may prove for a debt of which payment was not yet due on the date when the company entered administration, but subject to rule 2.105 which adjusts the dividend where payment is not due at the date of the declaration of dividend.

17. The claims of creditors which are provable as debts in an administration, as well as in a liquidation, are governed by rules 12.3 and 13.12.
18. The sixth category, statutory interest, in the order of priority set out in Lord Neuberger's judgment, is governed in the case of an administration by rule 2.88. Provisions in very similar terms apply in a liquidation and are contained in section 189 IA 1986 and in rule 4.93. Rule 2.88 was amended with effect from 6 April 2010 so as to apply to administrations commencing on or after that date. LBIE entered administration in September 2008, so that rule 2.88, as amended in 2005, applies to it. Rule 2.88(1) in the form applicable to the administration of LBIE provides that where a debt proved in the administration bears interest, the interest is provable as part of the debt except insofar as it is payable in respect of any period after it entered administration or, if the administration was immediately preceded by a winding-up, any period after the date of liquidation. Rule 2.88(3)-(4) in the form applicable to LBIE provides for the payment of interest in respect of periods before the relevant date in certain circumstances which are not directly material to the issues on this application. The provisions of rule 2.88(7)-(9) for the payment of interest in respect of periods after the relevant date are critical to some of the issues and, in the form applicable to LBIE, are as follows:

"(7) ... any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company entered administration.

(8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) or the rate applicable to the debt apart from the administration."

The rate specified under rule 2.88(6) is the rate specified in section 17 of the Judgments Act 1838 on the date on which the company entered administration. The rate at the commencement of the administration of LBIE was 8%. It is relevant to note that this rate is significantly in excess of market rates since 2008, which explains why unsecured claims against LBIE have been trading at a substantial premium to par since it became apparent that there may be a surplus of assets available after the payment of all unsubordinated proved debts.

19. The effect of rule 2.88 is that contractual interest for periods up to the commencement of the administration is provable but post-administration contractual interest is not. Instead, interest is payable on all proved debts, whether or not they carried any entitlement to interest, from the commencement of administration to the date of payment or payments of the proved debts. It is this latter category of interest which is

termed “statutory interest” and it is payable out of the surplus remaining after payment of the debts proved before such surplus is applied for any purpose.

Non-provable liabilities

20. The seventh category in the order of priority, non-provable liabilities, requires some explanation and is indeed the subject of some controversy on this application. In *Re Nortel*, the issue was whether liabilities arising under contribution notices issued under the Pensions Act 2004 against companies after they had gone into administration ranked as expenses of the administration or provable debts or neither. At first instance and in the Court of Appeal it was held that they ranked as expenses. Reversing these decisions, the Supreme Court held that they were provable debts. The possibility that the liability created by a contribution notice issued in these circumstances could be neither an expense nor a provable debt was explicitly contemplated by the Supreme Court. In those circumstances it would fall within category (7): see *Re Nortel* at [54] and [115].
21. Although the clear trend of insolvency legislation since the nineteenth century has been to expand the category of debts which may be the subject of proof, there have until very recently been some well-recognised categories of debt which were not capable of proof in an administration or liquidation. First, claims in tort could not be proved unless the cause of action had accrued by the commencement of the administration or liquidation, until rule 13.12 was amended to reverse the effect of the decision in *In re T&N Ltd* [2005] EWHC 2870 (Ch), [2006] 1 WLR 1728. By virtue of the amendment, such claims may be proved provided that “all the elements necessary to establish the cause of action exist at [the commencement of the administration or liquidation] except for actionable damage.” Secondly, costs awarded against a company in administration, albeit in proceedings commenced before the administration and in respect of costs incurred prior to the commencement of the administration, were held not to be provable debts in a long line of cases, which were overruled by the Supreme Court in *Re Nortel*.
22. Mr Isaacs QC, on behalf of LBHI, submitted that following the decision of the Supreme Court in *Re Nortel*, it is no longer possible for any claims to fall within category (7) except as expressly provided by provisions in the legislation. Rule 12.3(2)(b) provides that obligations arising under confiscation orders made under certain legislation relating to criminal offences and any obligation arising from a payment out of the social fund under social security legislation by way of crisis loan or budgeting loan are not provable in an administration or liquidation. Mr Isaacs submits that these are the claims to which category (7) is confined, together with any other claims which by future legislation may not be provable.
23. I do not accept this submission. In the context of the issue under consideration in *Re Nortel*, I feel no doubt that Lord Neuberger intended the category to include such claims of creditors as could not, by virtue of the relevant legislation, constitute provable debts but which would remain as liabilities of the company, payable in the event that there were sufficient assets available for the purpose. Given that the other items in the order of priority achieve their respective rankings by reason of express provisions in the legislation, it appears to me that when Lord Neuberger referred to the legislation “as interpreted and extended by the courts” he was referring, if not solely then primarily, to “non-provable liabilities” falling within category (7). The

Supreme Court did not decide that there could be no such non-provable liabilities. On the contrary, Lord Neuberger stated at [77] that the mere fact that a company could become under a liability pursuant to a provision in a statute which was in force before the insolvency event could not mean that, where the liability arises after the insolvency event, it falls within rule 13.12(1)(b) and is therefore provable. Lord Sumption made the same point at [130]. Lord Neuberger noted at [90] the submission of counsel that the legislature had progressively widened the definition of provable debts and *narrowed* the class of non-provable liabilities and referred at [93] to the “notion that all possible liabilities *within reason* should be provable” (emphasis added).

24. It may also be noted that certain provable debts are postponed to all other liabilities. Rule 12.3(2A) so provides in respect of certain claims arising by virtue of section 382 of the Financial Services and Markets Act 2000. Section 74(2)(f) of the IA 1986 provides for the postponement of any “sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise”. It is common ground that no issue arises under these provisions on this application.

Issues irrespective of LBIE’s status as an unlimited company

25. The issues which arise, irrespective of the status of LBIE as an unlimited company, are:
- i) Does the claim of LBHI2 as the holder of the subordinated loan debt rank ahead of or behind statutory interest?
 - ii) Does LBHI2’s claim as the subordinated debt holder rank ahead of or behind the claims, if they exist as a matter of law, of those foreign currency creditors who have suffered a currency loss as a result of conversion of their debts into sterling as at the date of the commencement of the administration for the purposes of proof?
 - iii) Are such foreign currency conversion claims capable, as a matter of law, of being asserted against LBIE so as to be payable out of available assets?
 - iv) Is contractual interest provable, or statutory interest payable, for the period of an administration if it is immediately followed by a liquidation?
26. Before addressing these issues directly, I will set out the circumstances in which the subordinated loan debt was created, the regulatory background against which it was created and its material terms.

Subordinated loan debt

27. LBHI2 was at the date of the commencement of LBIE’s administration and continues to be the holder of \$2.225 billion of subordinated loan debt, in respect of which it has lodged a claim in the administration for £1,254,165,598.48. LBHI2 accepts that its claim ranks behind provable debts, but it contends that it ranks ahead of all other claims, including the claims of unsecured creditors for statutory interest.

28. Prior to a capital restructuring of LBIE in 2006, LBIE had three subordinated loan facilities: a €3 billion long term facility, a \$4.5 billion long term facility and a \$8 billion short term loan facility. Each of the facilities was provided by its then immediate parent company.
29. In 2006, in order to utilise LBIE's foreign tax credits for US tax purposes, it was decided to improve its profitability, in part by restructuring its regulatory capital base so as to replace some subordinated debt with share capital and so reduce its interest payments. LBHI2 was interposed as the immediate holding company of LBIE and \$2 billion of existing subordinated debt was replaced with \$2 billion of preference shares issued to LBHI2. The existing subordinated loan facility agreements were cancelled and replaced with similar facility agreements with LBHI2 and \$4.7 billion of subordinated debt was drawn down by LBIE.
30. As part of a further restructuring in May 2007, \$5.1 billion of subordinated debt was converted into \$5.1 billion of preference shares.
31. The amount outstanding under the subordinated facilities fluctuated, with both drawdowns and repayments. Drawdowns in the course of 2007 led to a peak balance of \$4.775 billion, reducing to \$2.225 billion at the commencement of the administration.
32. Considerable work has been undertaken to determine whether that balance represents drawings under the long term or short term dollar facilities but no firm conclusion has been reached by the administrators of LBIE and I am not asked to determine that issue. For present purposes at least, it is not significant because the subordination provisions in the agreements are materially the same.
33. The subordinated loans formed part of LBIE's regulatory capital. Under capital adequacy rules made by regulators, banks and other financial institutions are required to hold capital of a certain amount, which depends in broad terms on the extent of their business and their risk exposures. The purpose of capital adequacy rules is so far as possible to ensure that firms provide financial resources to protect their customers and other stakeholders against failure and enable them to withstand some level of loss.
34. There is a significant international background to the capital adequacy rules applicable in the UK. Mr Isaacs QC on behalf of LBHI took me carefully through some of its principal elements.

Capital adequacy rules

35. In July 1988, the Basel Committee on Banking Supervision, comprising representatives of the central banks and supervisory authorities of the Group of Ten countries, published the first Basel Accord, entitled International Convergence of Capital Measurement and Capital Standards (Basel I). It was agreed by all its members and endorsed by the central bank governors of the Group of Ten countries. It set out the details of the agreed framework for measuring capital adequacy and the minimum standard to be achieved which the national supervisory authorities represented on the Committee intended to implement in their respective countries. The fundamental objectives, as stated in Basel I, were, first, that the new framework should serve to strengthen the soundness and stability of the international banking

system and, secondly, that the framework should have a high degree of consistency in its application to banks in different countries. While the framework established by Basel I was mainly directed towards assessing capital in relation to credit risk (the risk of counterparty failure), it emphasised that other risks, such as interest rate risk and investment risk, needed to be taken into account by supervisors in assessing overall capital adequacy.

36. Basel I addressed subordinated term debt in paragraph 23:

“The Committee is agreed that subordinated term debt instruments have significant deficiencies as constituents of capital in view of their fixed maturity and inability to absorb losses except in a liquidation. These deficiencies justify an additional restriction on the amount of such debt capital which is eligible for inclusion within the capital base.”

37. Effect was given to Basel I within the EC by the Council Directive of 17 April 1989 on the own funds of credit institutions (89/299/EEC). Article 2.1 provided that the unconsolidated own funds of credit institutions could consist of a number of items, including equity share capital and “fixed-term cumulative preferential shares and subordinated loan capital as referred to in article 4(3).” Article 4(3) provided that member states could include fixed-term cumulative preferential shares and subordinated loan capital in own funds,

“if binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.”

Article 4(3) went on to provide that subordinated loan capital had to fulfil certain further criteria, including that the loans had an original maturity of at least 5 years and were repaid early only if “the solvency of the credit institution in question [was] not affected”.

38. Of direct relevance to LBIE was Council Directive of 15 March 1993 on the capital adequacy of investment firms and credit institutions (93/6/EEC), which provided for capital adequacy requirements for investment firms and capital adequacy rules for credit institutions related to market risk. Annex V provided that the own funds of investment firms and credit institutions were defined in accordance with Directive 89/299/EEC, subject to certain modifications.
39. In June 2006, the Basel Committee on Banking Supervision published a revised Accord (Basel II). Paragraph 49(xii) repeated what had been said about subordinated term debt in Basel I, but an additional tier of capital was introduced (tier 3) consisting of short-term subordinated debt for the sole purpose of meeting a proportion of the capital requirements for market risks. The minimum original maturity of such short-term subordinated debt was 2 years but to be eligible as tier 3 capital, it needed “if circumstances demand, to be capable of becoming part of a bank’s permanent capital and thus be available to absorb losses in the event of insolvency.”

40. Effect was given to Basel II in the EU by the Directives of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (2006/48/EC) and on the capital adequacy of investment firms and credit institutions (2006/49/EC). So far as relevant, the first of these Directives repeated the definition of own funds contained in Directive 89/299/EEC and repeated the requirement that subordinated loan capital could be included only if “binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled”: article 64(3).
41. The financial regulator for LBIE at all relevant times was the Financial Services Authority (FSA), which has since been replaced for these purposes by the Prudential Regulation Authority.
42. On 31 December 2006, the FSA introduced the General Prudential Sourcebook (GENPRU) which set out the capital adequacy requirements applicable to LBIE from that date until it went into administration. The purpose of these rules, as stated in paragraph 1.2.26, was to ensure that a regulated firm would “at all times maintain overall financial resources, including capital resources and liquidity resources, which are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due.” Based on Basel II and the relevant Directives, three tiers of capital were specified, which a firm was required to identify separately in its regulatory capital reporting to the FSA.
43. The characteristics of tier 1 capital were that it was able to absorb losses, it was permanent, it ranked for repayment upon winding up, administration or similar procedures after all other debts and liabilities and it had no fixed costs, such as an obligation to pay dividends or interest. The most common example of tier 1 capital is ordinary share capital.
44. Tier 2 capital was capital which did not meet the requirements of permanency and lack of fixed costs which were required for tier 1 capital. There were two types of tier 2 capital. Upper tier 2 capital was capital which was perpetual but which carried servicing costs which could not be waived at the firm’s option. It specifically included cumulative preference shares. Lower tier 2 capital was capital which was either not perpetual or had fixed servicing costs that could not generally be waived or deferred. It was required generally to have an original maturity of at least 5 years and specifically included medium to long-term subordinated debt.
45. Tier 3 capital was described by GENPRU as forms of capital conforming less well to the characteristics of tier 1 capital. It specifically included subordinated debt of short maturity.
46. Subordination was a characteristic of all three tiers of capital.
47. The amount of capital that a firm could designate as tier 2 capital was restricted to a value no greater than 50% of its tier 1 capital, with any excess capital being designated as tier 3 capital. The \$2 billion of preference shares issued by LBIE in 2006 constituted lower tier 2 capital. Because of the limits on the amount of capital which could be held as tier 2 capital, a substantial amount of the preference shares

was classified as tier 3 capital. All the subordinated debt was classified as tier 3 capital.

Subordinated debt agreements

48. As mentioned above, all the subordinated debt agreements contain essentially the same subordination provision. Each agreement, including in particular the subordination provisions, was based heavily on templates provided by the FSA. There is no evidence to suggest that anyone in the Lehman Brothers group gave any consideration to how these provisions would operate in the event of an insolvency of LBIE and indeed the recollection of several witnesses in interviews which have been conducted suggests that it is highly unlikely that any such consideration was given.
49. Each agreement contains schedule 1, setting out variable terms, and schedule 2, setting out standard terms. Clause 8 of the variable terms provides for the payment of interest on a monthly basis. Clause 9 provides for repayment, with a specified repayment date and provisions for prepayment. The entire clause is expressed to be "subject always to 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms".
50. Clause 1(1) of the Standard Terms contains a number of definitions. "Financial Resources Requirement" is defined as having the meaning given to it in the FSA Handbook. "Insolvency" is defined to mean and include liquidation, administration and other similar procedures. "Liabilities" means "all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever)". "Senior Liabilities" means "all liabilities except the Subordinated Liabilities and Excluded Liabilities." "Subordinated Liabilities" is defined to mean "all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon." "Excluded Liabilities" is defined to mean "Liabilities which are expressed to be, and in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower."
51. Clause 4 provides for repayment, but "subject in all respects to the provisions of paragraph 5 (subordination)": clause 4(1). Clause 4(3) contains restrictions on the ability of LBIE to effect early repayment of any loan or to pay interest by reference to its Financial Resources Requirement.
52. The effect of clause 4(4)-(7) is that the only remedy available to the lender for repayment of any advances or enforcement of the terms of the loan facility agreements is to institute proceedings for the Insolvency of LBIE. This is a standard term of subordinated loan agreements and precludes the lender from obtaining judgment and executing or otherwise enforcing the judgment, thereby avoiding the subordination provisions.
53. Clause 5 contains the subordination provisions:

"(1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment

of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon –

(a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that –

(i) paragraph 4(3) has been complied with; and

(ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and

(b) the Borrower being “solvent” at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be “solvent”.

(2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be “solvent” if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding –

(a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and

(b) the Excluded Liabilities.

(3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.

(4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FSA, shall in the absence of proven error be treated as accepted by the FSA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency or Insolvency.

(5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities –

(a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or

(b) where such payment is prohibited under paragraph 4(3),

(6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.

(7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.

(8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer."

54. Clause 7 contains undertakings by LBHI2 as Lender not to take any of the steps specified in clause 7 without the prior written consent of the FSA. These undertakings are designed to prevent any action which might subvert the subordinated status of the Liabilities. In particular, in sub-clauses (d) and (e), the Lender undertook not without the prior written consent of the FSA to:

"(d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

(e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected."

Submissions on the subordinated debt agreements

55. It is the submission of the administrators of LBIE, supported by Lydian and the administrators of LBL, that the subordinated debt ranks after statutory interest and non-provable debts. They rely on what they submit is a straightforward application of the express terms of the subordinated loan facility agreements. Clause 5(1) of the Standard Terms provides that "the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities" and provides further (in clause 5(1)(b)) that payment of any amount of the Subordinated Liabilities is conditional upon "the Borrower" being solvent at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be "solvent". Clause 5(2) defines what is meant by the borrower being "solvent". It means that LBIE is "able to pay its liabilities (other than the Subordinated Liabilities)" in full disregarding the obligations and liabilities referred to in subparagraphs (a) and (b).

56. "Senior Liabilities" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities. "Liabilities" are defined to mean "all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever)".
57. The administrators of LBIE submit that the obligation to pay statutory interest is a liability or obligation of LBIE within the meaning of "Liabilities" in the subordinated debt agreements. It follows, they submit, that the subordinated loan debts rank behind statutory interest as being "subordinated to the Senior Liabilities". The only exclusions, whether under the definition of "Senior Liabilities" or under clause 5(2) are, first, "obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower" and, secondly, the Excluded Liabilities (as defined). The obligation to pay interest is, they submit, clearly payable in the Insolvency of LBIE and does not therefore fall within the first of those exclusions. "Excluded Liabilities" are defined as "liabilities which are expressed to be and, in the opinion of the Insolvency Officer of [LBIE], do, rank junior to the Subordinated Liabilities in any Insolvency of [LBIE]." They submit that this definition refers most obviously to other subordinated loans or other debts which are expressly, by their terms, subordinated to the subordinated claims arising under the Subordinated Facility Agreements to which LBHI2 was a party. The right to statutory interest is not expressed to rank junior to those subordinated loan debts.
58. The administrators of LBHI2, and LBHI, seek to meet these submissions in a number of ways in support of their case that the subordinated loan debts rank ahead of statutory interest.
59. Mr Trace QC on behalf of LBHI2 and Mr Isaacs QC on behalf of LBHI submit that the subordinated loan facility agreements must be construed in the context of their regulatory purpose and of the insolvency regime which applies to LBIE in the event that it goes into administration or liquidation. The latter follows, they submit, from the many references in the agreements to the insolvency of the Borrower and the clear contemplation that the subordination provisions should apply in an insolvency. The relevant provisions of the applicable insolvency regime are, for present purposes, the provisions in the Insolvency Rules for the proof of debts and the provisions of rule 2.88 as they apply to statutory interest. They submit that "Liabilities" means all provable and proved liabilities. As it is not in doubt that LBHI2 is entitled to prove for its claim under the subordinated facility agreements, the purpose of the subordinated provisions is to rank the subordinated debt within the general class of provable unsecured claims and to rank the subordinated debt behind the unsubordinated unsecured debts. This construction is consistent with rule 2.88(7), providing that "Any surplus remaining *after payment of the debts proved* shall, before being applied for any purpose, be applied in paying interest on those debts...". As LBHI2 is entitled to prove and has lodged a proof for its subordinated loan debts, they are "debts proved" which must be paid before there arises any surplus out of which statutory interest is to be paid. Moreover, the language of rule 2.88(7) shows that it does not create a liability or obligation in favour of the creditors whose debts have been proved and paid but constitutes only a direction to the administrator as to how he is to apply the surplus in those circumstances. It is a direction, not a liability or obligation "payable or owing by the Borrower".

Issues on the subordinated debt agreements: discussion

60. In approaching the issues of construction of the subordinated facility agreements, it is clearly right to have regard to their regulatory context. It is common ground that they are largely based on templates provided by the FSA and that the subordination and other provisions contained in the Standard Terms are not tailor-made to LBIE or the particular facilities into which it entered but are generally applicable to all subordinated loans which are relied on by institutions to meet their capital adequacy requirements. Although subordinated loans may rank only as lower tier 2 or even tier 3 capital, they are nonetheless to be treated as part of the capital or own funds of the institution for the purposes of providing protection to those dealing with the institutions and for the purpose of absorbing losses.
61. I do not accept the submissions made by Mr Isaacs QC that the capital adequacy regime is concerned to protect only particular categories of creditor, including in particular trading counterparties. The requirement contained in the various Directives earlier referred to is that there should exist binding agreements under which in the event of the liquidation of the institution subordinated loan capital is to “rank after the claims of all other creditors and are not be repaid until all other debts outstanding at the time have been settled”. There is nothing there to suggest any limit on the categories of creditors to which the loan capital is subordinated. On the contrary the references are to “all other creditors” and “all other debts”. Nor do I accept the submission made that the absorption of losses is a purpose of subordinated debt only where the institution is a going concern. Both Basel I (paragraph 23) and Basel II (paragraphs 49(xii) and 49(xiv)) refer expressly to the absorption of losses by subordinated debt in a liquidation.
62. The wording of the requirements contained in the Directives for binding agreements whereby subordinated loan capital ranks “after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled” militates strongly against the suggested restriction of the meaning of “Liabilities” in the subordinated facility agreements to provable debts. The reference to “the claims of all other creditors” would suggest that the definition of “Liabilities” is to be given the widest meaning, which is indeed consistent with the express terms of the definition. The requirement that subordinated loan capital is not to be repaid “until all other debts outstanding at the time have been settled” is in my judgment equally consistent with the widest possible interpretation. To be consistent with the construction put forward on behalf of LBHI2 and LBHI, the words “outstanding at the time” would have to refer to the commencement of the liquidation. In my judgment they refer not to that time but to the time when the subordinated loan capital might otherwise be repaid.
63. All of this is consistent with the concept that subordinated loan capital qualifying as part of the institution’s regulatory capital is, as against creditors, to be treated as part of the “capital” of the institution. It is not of course part of the share capital of the company and it ranks ahead of any share capital in terms of repayment.
64. In any event, there seems no reason as a matter of construction, looking only at the terms of the agreements, to restrict “Liabilities” to provable debts. There is nothing in the definition or in the rest of the agreement which, in my view, suggests that any such restriction is to apply.

65. Mr Trace and Mr Isaacs submit that the subordination provisions must be read in the context of the English statutory provisions applicable to an insolvency of LBIE. The precise wording of rule 2.88(7), and the counterpart provision applicable to a liquidation in section 189(2), is an important part of this submission.
66. Before looking at the detailed wording of rule 2.88(7), it is right to sound a note of caution about too detailed a recourse to UK insolvency legislation. As earlier observed, "Insolvency" is defined for the purposes of the subordinated loan agreements to include not only insolvency proceedings in the UK but "the equivalent in any other jurisdiction to which the Borrower may be subject". The Standard Terms are intended to apply in the context of insolvency proceedings in any jurisdiction. It is almost certainly the case that formal insolvency proceedings in all jurisdictions likely to be relevant involve a realisation and distribution of assets, on a largely *pari passu* basis, among creditors and a procedure for establishing the claims to be admitted for the purposes of such distribution.
67. There can, however, be no such confidence that the precise terms of the insolvency laws of different countries relating to the debts and liabilities which are to be admitted to this process and the date as at which they are to be assessed or valued are the same as those contained in UK legislation. For example, it would not be an irrational insolvency law which provided that the available assets should be distributed amongst creditors proportionately to their claims including interest from the commencement of the insolvency process to the date of payment. Nor would it be an irrational insolvency law which made provision for the payment of foreign currency losses, whether or not on a subordinated basis. An insolvency law could well provide that all claims arising after the commencement of the insolvency process, and not qualifying as expenses, should be the subject of proof or its equivalent, again payable on a subordinated or unsubordinated basis. These considerations support the view that it is not appropriate to construe the subordination provisions in the agreements strictly by reference to the relevant provisions of the UK insolvency legislation.
68. In any event, I do not consider that the terms of rule 2.88(7) and section 189(2) provide the support for which Mr Trace and Mr Isaacs contend. Rule 2.88(7) provides that "Any surplus remaining *after payment of the debts proved* shall, before being applied for any purpose, be applied in paying interest..." (emphasis added). The phrase "the debts proved" must mean all the debts proved, and so Mr Trace submits those debts include LBHI2's proof for its subordinated debt. Accordingly, he submits, it follows that any statutory interest is payable only after the debts proved, including the subordinated claim, have been paid.
69. The answer to this point lies in my judgment, as Mr Trower for the administrators of LBIE submits, in the provisions of clause 7(d) and (e). I have earlier quoted these provisions. The expression "the debts proved" means all of those debts admitted to proof by the administrator, because it is only those debts which will be paid out of the available assets. In my judgment, the lodging of a proof in respect of the subordinated loan debts coupled with an attempt to require the administrator to admit the proof would be both an attempt to obtain repayment of subordinated liabilities otherwise than in accordance with the terms of the agreement, within the meaning of clause 7(d), and the taking of action whereby the subordination of those liabilities to the Senior Liabilities might be impaired or adversely affected, within the meaning of clause 7(e). In my view, an attempt to rely on provisions of the applicable insolvency

law to advance the subordinated liabilities above Senior Liabilities is well within the intended scope of paragraphs (d) and (e) of clause 7.

70. A further point made by Mr Trace and Mr Isaacs was that the language of rule 2.88(7) and section 189(2) sets out a mechanism directing the office holder how to apply the surplus in his hands, and does not impose any obligation or liability on the company. Accordingly those provisions do not create a liability falling within the meaning of Liabilities in the subordinated loan agreements. They further submitted in this connection that rule 2.88(7) presupposes a surplus and it is impossible for a direction as to the application of a surplus to constitute a debt or liability.
71. I do not accept this submission. First, the surplus to which rule 2.88(7) applies is a surplus of assets over proved debts. It is not and does not purport to be a surplus after the discharge of all liabilities. As to whether rule 2.88(7) creates a debt or liability, it is no doubt true to say that it constitutes a direction to the administrator. It does not follow that it does not create a debt or liability of the company for the purposes of the subordination agreement. The assets constituting the surplus to which rule 2.88(7) applies are assets of the company in administration, albeit that their beneficial ownership is or may well be in suspense: *HMRC v The Football League Ltd* [2012] EWHC 1372 (Ch), [2012] Bus LR 1539 at [101]-[102]. The effect of the direction in rule 2.88(7) is to create a right in favour of creditors to have the relevant surplus applied in the payment of statutory interest. It does not create a proprietary or equitable interest in the surplus in favour of those creditors. It is in my judgment in no sense a misuse of language to say that it creates a concomitant liability or obligation. The definition of Liabilities includes liabilities and obligations “payable or owing by the Borrower”. If the rule creates a liability or obligation, it is in my judgment rightly characterised as a right or obligation of the borrower for the purposes of this agreement.
72. In this connection, reliance was placed on statements made by Mervyn Davies J in *In re Lines Bros Ltd* [1984] BCLC 215. The issue in that case was quite different from the question of construction of the subordinated loan agreements which I am presently considering. The issue was whether the provisions then contained in the Bankruptcy Act 1914 for the payment of interest on debts proved in a bankruptcy were applicable to the winding up of the company in that case, by reason of the provisions of section 317 of the Companies Act 1948 which applied only in “the winding-up of an insolvent company”. The question was whether the company was for these purposes insolvent in circumstances where there was a surplus of assets over all proved debts. In the light of previous authorities to the same effect, the judge held that the company was not insolvent for the purposes of section 317 once its debts and liabilities as existing at the date of the commencement of the winding up had been paid or met in full: see p.225h-i.
73. In reaching that decision, the judge went further back into the relevant statutory history to section 10 of the Supreme Court of Judicature Act 1875, as judges in previous cases had done. The question was whether post-liquidation interest, statutory or contractual, constituted “debts and liabilities” for the purposes of that section. The judge concluded that neither statutory nor contractual post-liquidation interest fell within that expression for the purposes of section 10. In reaching this conclusion, Mervyn Davies J gave two reasons, the first of which is the passage on which reliance is placed by Mr Isaacs:

“This is not a debt or liability within s10 for two reasons:

(1) the section speaks of “its” debts and liabilities. At no stage can statutory interest be regarded as a debt or liability of the company. A liquidator’s obligation under s33(8) to pay interest out of a surplus is pursuant to a statutory direction to him, being an obligation which is part of the statutory scheme for dealing with a company’s assets which comes into operation at the outset of the winding up.”

This is but one of the reasons given by Mervyn Davies J for his overall conclusion and it is not one which featured in the earlier cases, for example the judgment of Pennycuik V-C in *In re Rolls-Royce Co Ltd* [1974] 1 WLR 1584. More importantly, the context of the decision in *Re Lines Bros Ltd* is so different from the present context that it is not in my judgment of assistance in the construction of the subordination provisions in the subordinated loan agreements.

74. Mr Trace, but not Mr Isaacs, submitted that if, contrary to his submission, statutory interest fell within the definition of Liabilities in the subordinated debt agreements, it constituted an “Excluded Liability” and did not therefore rank ahead of the subordinated debt, by reason of clause 5(2)(b) of the agreements. Mr Trace submitted that, given that the definition of Excluded Liabilities is based on the ranking of claims in an Insolvency of the Borrower, the reference to “Liabilities which are expressed to... rank junior to the Senior Liabilities” must mean, or at least include, liabilities which rank junior by operation of express provisions of the applicable insolvency legislation. As rule 2.88(7) expressly provides for statutory interest to be payable only after payment of the proved debts, which include the subordinated debts, it follows that statutory interest is expressed to rank junior to the Subordinated Liabilities.
75. I do not accept this submission. Statutory interest is not expressed to rank junior to the Subordinated Liabilities, but only to the debts proved. It seems to me that the obvious purpose of the exclusion of such Liabilities is to cater for the situation in which a borrower issues further debt on terms that it is expressed to rank junior to the subordinated liabilities created by these subordinated debt agreements. It is, and was at the date of these agreements, a real possibility that a Borrower might wish to issue such debt and the purpose of this provision is simply to ensure that such junior subordination is effective. It is relevant in this context also to bear in mind that different insolvency regimes could well treat interest accruing after the commencement of the insolvency process in different ways, and not necessarily in terms which could even arguably suggest that it was subordinated. The purpose of the template agreements, giving effect as they do to EU Directives, is to provide a uniform system of subordination. No inconsistency with that purpose arises if particular debts are created on express terms that they rank junior to the Subordinated Liabilities under these agreements.
76. Mr Isaacs advanced a number of additional arguments in support of the overall submission that the subordinated loan debt ranked ahead of statutory interest. He submitted that the definition of “Liabilities” could not carry an all-embracing meaning. Applied literally, it would mean that the full amount of future debts and the maximum possible amount of contingent debts would have to be paid in an administration or in a liquidation, notwithstanding the provisions of the Insolvency

Rules providing for an estimation of the value of contingent debts and a discounting of future debts. Further, he submitted that a broad construction of Liabilities would include the return of any surplus to shareholders, and it was clear that it could not possibly extend that far.

77. As to these points, it is in my view clear that the payment of the estimated value of contingent debts and the discounted value of future debts in an administration or liquidation is payment of those debts in full. The contractual right of a contingent creditor is not to a payment of the maximum amount which may become payable but is a right to payment if but only if the contingency occurs. The rules provide a mechanism for placing a present value on that right. Likewise, the contractual right of a creditor with a future debt is to payment on the due date, but not before it. In order to bring administrations and liquidations to a conclusion as quickly as practicable, future debts are discounted. The creditor receives the full present value of the debt, calculated as provided by the Insolvency Rules. The contractual rights of contingent and future creditors are clearly compromised by the insolvency process but their claims are, for the reasons I have given, properly regarded as paid in full. As to the return of any surplus to shareholders, the obligation on the administrator or liquidator to make such a return is in my view clearly not a liability or obligation payable or owing by the Borrower for the purposes of the subordinated debt agreements. None of these points suggests that statutory interest is not to fall within the meaning of Liabilities.
78. Mr Isaacs submitted that it was significant that the word “solvent” was used in clause 5(1)(b). Relying on what Lord Hoffmann said in *Charitbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101 at [17], Mr Isaacs submitted that the use of the word “solvent” as the defined expression was indicative of its intended meaning. Although the term is defined in clause 5(2), the choice of that term shows that it was not intended to include statutory interest within Liabilities because the obligation to pay statutory interest arises only when the company is solvent and there is a surplus. With respect, I do not think that there is anything in this point. The existence of the surplus out of which statutory interest is payable does not mean that the company is solvent, it means only that the company has been able to pay its proved debts in full. If a company is under an obligation to pay statutory interest to its creditors but has insufficient assets to do so in full, so there is in any event no surplus available for a return to shareholders, it is in no sense a misuse of language to say that the company is not solvent.
79. If, contrary to his principal submissions, “Liabilities” do include statutory interest, Mr Isaacs submitted that statutory interest was excluded by reason of clause 5(2)(a). Mr Isaacs submitted that the words “not payable or capable of being established or determined in the Insolvency of the Borrower” referred to the process of paying proved debts or establishing the status and amount of a debt for the purpose of deciding whether it was capable of proof, and if so, in what amount. This process of construction would have the effect of restricting Liabilities to provable debts, even though its definition was wider. I see no reason to restrict the ordinary meaning of clause 5(2)(a) in the way suggested by Mr Isaacs. Statutory interest is payable in the administration or liquidation of LBIE and is not therefore, in my view, excluded by paragraph (a).

80. Finally, Mr Trace submitted that if the effect of the subordination provisions was indeed to subordinate the relevant debts to statutory interest and non-provable debts, such an agreement was not as a matter of law permissible and was therefore void. The agreement would be an impermissible attempt to contract out of the mandatory effect of rule 2.88(7) and section 189(2). Mr Isaacs did not support this submission.
81. It was once widely considered that a purely contractual subordination of a debt intended to take effect in an insolvency was void as being an attempt to contract out of the mandatory requirement for a pari passu distribution among all creditors admitted to proof. The mandatory character of this provision formed a basis of the decision of the House of Lords in *British Eagle International Airlines Ltd v Cie National Air France* [1975] 1 WLR 758. For this reason, subordination was usually effected by the creation of a trust, whereby the subordinated creditors agreed to hold distributions received by them in respect of their subordinated debts on trust for the other creditors: see, for example, *In re British & Commonwealth Holdings plc (No.3)* [1992] BCC 58.
82. The validity of a purely contractual subordination provision arose for consideration in *In re Maxwell Communication Corporation plc* [1993] 1 WLR 1402 (*Re Maxwell*). Vinelott J held that there were no principles of insolvency legislation or public policy which precluded the making of a contract between a company and a creditor whereby, in the event of the company's insolvency, the debt was to be subordinated to the payment of debts owed to other unsecured creditors.
83. Mr Trace did not question the correctness of Vinelott J's decision. He submitted, however, that it was authority only for the proposition that within the overall class of provable claims it was permissible for one creditor to agree with the company on a purely contractual basis to subordinate its debt to other unsecured debts. He submitted that it did not follow that it was permissible for a creditor with a provable debt to agree to a subordination lower down the order of priority, for example after statutory interest. This would run counter to the express mandatory terms of rule 2.88(7) and section 189(2).
84. I cannot see why, if the mandatory statutory provisions for a pari passu distribution do not prevent a contractual subordination of one debt to other proved debts, rule 2.88(7) and section 189(2) should prevent a contractual subordination of a provable debt to a ranking below statutory interest. Since such a subordination could be achieved through the use of a trust, as was done in *In re British & Commonwealth Holdings plc (No 3)* (see p.65D), a prohibition of a contractual subordination would "represent a triumph of form over substance" just as much as Vinelott J thought it did in the circumstances of *Re Maxwell*: see p.1417A. Further, in *Re Maxwell*, Vinelott J expressly contemplated that a preferential creditor could agree that his debt would rank equally with the unsecured non-preferential debts, notwithstanding that the payment of preferential debts in priority to the general body of unsecured debts is itself the subject of provisions expressed in mandatory terms: section 175(1) IA 1986 (liquidation), which applies also in an administration: para.65(2) of schedule B1 to the IA 1986.
85. My overall conclusion on this issue is, therefore, that the subordinated debt ranks below statutory interest in the order of priority of distribution of assets of LBIE. This conclusion involves no contortions in the construction of the express terms of the

subordinated debt agreements and appears to me to be consistent with the regulatory background to the agreements.

86. The policy behind statutory interest is to compensate creditors for the delay in payment to them of their debts on account of the insolvency process, even where they had no contractual or other legal right to interest. If it were not for the insolvency process, creditors would be entitled to seek to enforce their debts against the debtor company and its property. If the subordinated debts are, as it is accepted, subordinated to the principal amounts of such unsecured debts, there is nothing surprising in their subordination to the payment of statutory interest on those debts. It would be a greater cause of surprise if they were not so subordinated. Moreover the contrary view is capable of some significantly inconsistent results. It was accepted by Mr Trace and Mr Isaacs that while a Borrower was a going concern, a subordinated debt could not be paid unless the Borrower could pay all its debts in full including any contractual or other enforceable interest. Such interest ceases to be payable from the date of the commencement of the insolvency process, and is in effect replaced by the right to the payment of statutory interest out of the surplus remaining after the payment in full of proved debts. The result would be somewhat inconsistent if the subordinated debts did not rank junior to such statutory interest. Unsubordinated creditors with a contractual or other entitlement to interest would find that the subordination provisions worked to their disadvantage once the Borrower entered an insolvency process.
87. All or almost all of the arguments addressed above appear to me to support the conclusion also that the effect of the subordination provisions is to subordinate the relevant debts to rank junior to any non-provable debts, as well as statutory interest. Such liabilities are as much liabilities of the Borrower as provable liabilities. Subordinated debt forming part of the regulatory capital of the Borrower would, consistently with the requirements of the Directives, rank behind such non-provable liabilities as much as behind provable liabilities. Just as in the case of statutory interest, a contrary conclusion would produce surprising results. If, as was entirely possible, the Supreme Court had held in *Re Nortel* that the liability created by a contribution notice issued after the commencement of an administration or liquidation was neither an expense nor a provable debt, it would have constituted a non-provable debt payable after statutory interest in the order of priority set out in the judgment of Lord Neuberger. If a contribution notice were served before the commencement of an administration or liquidation, it is clear that the subordinated debt would rank junior to the liability so created and could not be paid under the terms of the subordinated debt agreements unless the Borrower was able to pay such liability under the contribution notice in full. It is hard to see why the subordination provisions should not have the same effect in the event of the issue of a contribution notice after the commencement of an administration or liquidation.

Currency conversion claims

88. Until the decision of the House of Lords in *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443, the established position in English law was that a creditor with a debt contractually payable in a foreign currency could not obtain judgment in an English court in the foreign currency but only a judgment in sterling converted as at the date when payment was due under the contract. The same position applied as regards proofs of debt in a liquidation: see *In re United Railways of Havana and Regla Warehouses Ltd* [1961] AC 1007. The power of the English courts to give judgment

in a foreign currency established by *Miliangos* quickly led to a reconsideration of the position in a liquidation. The particular difficulty is that in order to undertake a *pari passu* distribution of assets among creditors it is necessary to convert all claims to a single currency. The issue was the date at which such conversion should take place. The question came before Oliver J in *In re Dynamics Corporation of America* [1976] 1 WLR 757. He held that in a compulsory winding up of an insolvent company, a creditor's claim for a debt in a foreign currency, and any set-off in a foreign currency against such a debt, must be converted into sterling as at the date of the winding up order.

89. The question arose again in *In re Lines Bros Ltd* [1983] Ch 1. The Court of Appeal approved the decision of Oliver J in *In re Dynamics Corporation of America* and held that, in the case of a voluntary liquidation, the foreign currency debts should be proved according to their sterling value as at the date of the commencement of the winding up. In that case, there was a surplus of assets available after paying all the proved debts. There was an insufficiency of assets to pay all claims to post-liquidation interest in full and the issue effectively before the court was whether the available surplus should be applied in the payment of interest or, as the foreign currency claimants asserted, in payment of their claims converted as at a date later than the commencement of the winding up. It was held that the foreign currency creditors had no claim to *prove* for more than the sterling equivalent of their debts as at the date of the commencement of the liquidation and that the right of creditors with contractual claims to interest ranked next in the distribution of the available assets.
90. The foreign currency creditors relied on the injustice, recognised by the House of Lords in *Miliangos*, of the creditor, not the debtor, taking the risk of changes adverse to him in the exchange rate between the contractual currency and sterling. In considering this submission and its application in an insolvent liquidation, Brightman LJ said at p.16:

"The policy behind the decision [in Miliangos]...was that the foreign currency debtor should not be entitled to impose on the foreign currency creditor the risk of a fall in the value of sterling. Justice demands that the risk shall be borne by the debtor, who is the party in default. Hence the justice of the reinterpretation of the law, that the debtor in default is not to be excused from his contractual obligation by payment of anything less than the sterling equivalent of the money contractually due at the date of payment."

If this statement of the reasoning behind the Miliangos decision is correct, clearly it has no role to play in the distribution of the assets of an insolvent company. The sterling creditors are not in default vis à vis the foreign currency creditors. Therefore, there is no obvious reason why the risk of depreciation in the value of sterling pending distribution of the assets should be borne by the sterling creditors. The company is the wrongdoer towards both the sterling creditors and the foreign currency creditors. There is no particular reason, in the field of abstract justice, why the currency risk should be borne by one description of creditor rather than by another description of

creditor when they are all directed to rank pari passu. They do not rank pari passu if the sterling creditors are required to underwrite the exchange rate of the pound for the benefit of the foreign currency creditors. The just course, as it seems to me, is to value the foreign debt once and for all at an appropriate date, and to keep to that rate of conversion throughout the liquidation until all debts have been paid in full."

This underlying rationale loses its force once all the proved debts and post-liquidation interest have been paid. If there remains a surplus, any competition lies not with other creditors but with the company as the debtor, or rather the shareholders who stand behind it. In this situation, the claims of justice underpinning the decision in *Miliangos* re-assert themselves.

91. Because there would be no funds available after the payment of post-liquidation interest on proved debts, the issue whether foreign currency creditors would then have a further claim against the assets of the company in respect of currency losses suffered between the date of liquidation and the date of payment of the dividend in full on their proved claims, did not arise for decision. It was nonetheless a matter which was the subject of argument and Brightman LJ commented on it at pp 20-21 in a passage which I should set out in full:

"We were much pressed in argument by the bank with the injustice which might arise, on the liquidators' submission, in the case of a wholly solvent company. Take a simple example. A company has English assets of £1m. and has borrowed 100,000 Swiss francs from a Swiss bank in Switzerland repayable on demand under a Swiss contract in the same currency. If the company for some reason declined to repay on demand, judgment could be recovered against it in Swiss francs in England, and could be executed against the assets in an equivalent sum of sterling converted as at the date when execution is authorised. Suppose, however, that the company goes into voluntary liquidation. Suppose that sterling is devalued by 10 per cent. before the liquidator can discharge the debt. The Swiss creditor, it is said, would on the liquidators' argument receive less than his due entitlement in Swiss francs, and the profit on the exchange caused by the company's default would enure for the benefit of the undeserving shareholders. Per contra, if sterling had been revalued upwards, it would (it is said) be open to the liquidator, like any other foreign currency debtor, to discharge the company's obligation in the currency of the contract. So, in the end, the foreign currency creditor will get the worst of both worlds; he will gain nothing if the exchange rate moves against the currency of the contract, and he will lose if it moves in favour of the currency of the contract.

This is not a problem with which we are directly concerned, and I wish to guard against expressing any concluded view upon it. But when the problem arises for decision, it may be

*relevant to observe that the view has been repeatedly expressed in relation to interest that, once the provable debts have been satisfied in full, so that the company has in that sense a surplus of assets, the duty of the liquidator is to discharge the contractual indebtedness of the company in respect of such debts to the extent that the contractual indebtedness exceeds the provable indebtedness. "[A]s soon as it is ascertained that there is a surplus, the creditor whose debt carries interest is remitted to his rights under his contract;..." per Giffard L.J. in *In re Humber Ironworks and Shipbuilding Co*, L.R. 4 Ch.App. 643, 647; and Selwyn L.J. to the same effect, at p. 645.*

It is on that principle that a creditor may claim post-liquidation interest. He does this on the basis that obligations under the contract are not necessarily discharged despite the fact that all provable debts have been paid at 100 pence in the pound. It may be the duty of the liquidator, in the case of a wholly solvent liquidation, if a foreign currency creditor has been paid less than his full contractual foreign currency debt, to make good the shortfall before he pays anything to the shareholders. I do not say that this is necessarily the solution to the problem posed, but I have not heard any convincing objection to that solution."

92. Oliver LJ, who was also a member of the Court, said as regards this issue at p.26:

"We are not, however, here concerned with a solvent company and the point must be left for decision when it arises. Certainly for my part I do not dissent from the proposition that the answer to Mr Stubbs' criticism may well be found in the way suggested in the judgment of Brightman LJ."

93. At this time there was no express provision in the legislation dealing with foreign currency claims. With the reform of insolvency law undertaken in the IA 1986 and the Insolvency Rules, it was clear that some provision would need to be made. Rule 4.91(1) provided:

"For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company went into liquidation [or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration]."

The words in square brackets were added with effect from 1 April 2005 following the introduction in 2003 of the power of administrators to make distributions to creditors. Similar provision was made for administrations in 2003, and amended in 2005, in rule 2.86(1):

"For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be

converted into sterling at the official exchange rate prevailing on the date when the company entered administration or, if the administration was immediately preceded by a winding up, on the date that the company went into liquidation.”

94. In submitting that foreign currency creditors who have suffered an exchange loss as a result of their debt being paid in sterling as at the rate prevailing at the date of the commencement of the liquidation or administration have a non-provable claim for such currency losses, Mr Zacaroli QC lays emphasis on the words included in both rules “for the purpose of proving a debt...”. He submits, supported by Mr Trower, that these words make clear that currency conversion is effected solely for the purposes of proving debts and therefore for the purpose of achieving the *pari passu* distribution amongst proved debts required by the legislation. It gives effect to the position established by the Court of Appeal in *In re Lines Bros Ltd*. But it does no more than that and it does not suggest or imply that, in circumstances where assets are otherwise available for distribution among shareholders, foreign currency creditors are not entitled to make claims for their exchange losses. They submit that the arguments in favour of allowing such claims, acknowledged as valid by Brightman LJ with some support from Oliver LJ, establish the case for allowing such claims. Relying on *In re Humber Ironworks and Shipbuilding Co* (1869) LR 4 Ch App 643 and *Wight v Eckhardt Marine GmbH* [2004] 1 AC 147 per Lord Hoffmann at [26]-[27], they submit that the process of proof and distribution amongst creditors with admitted proofs does not extinguish the underlying contractual obligation.
95. In opposing these submissions, Mr Wolfson submitted, first, that there could be no non-provable currency conversion claim because there was no provision for it in the legislation. He at first submitted that rule 12.3(2) is an exhaustive statement of non-provable claims, but later accepted that it could not be treated as comprehensive. I have already dealt with this issue and held that there is no legislative or other bar on the making of non-provable claims against a company in liquidation, once all provable claims have been dealt with (subject to the application of the contributory rule and any contractual or other subordination of provable claims).
96. Secondly, Mr Wolfson drew attention to the position which would exist in the following circumstances. A foreign currency debt is payable on 1 January but is not paid. The company goes into liquidation on 1 March. The debt is converted into sterling at the rate prevailing on 1 March, which is more favourable to the creditor than the rate prevailing on 1 January. When the liquidator later makes a distribution among the creditors with proved claims, say 1 July, sterling has depreciated against the contractual currency and the amount that the creditor receives in sterling is then worth less than his foreign currency debt. As it seems to me, the creditor has suffered a loss. He was entitled to be paid in the foreign currency and, when finally he was paid albeit in sterling, he received less than the foreign currency amount to which he was entitled. Accordingly, he has not received his full contractual entitlement.
97. Mr Wolfson did not dispute that in these circumstances the foreign currency creditor would not have received his full contractual entitlement, but he contrasted that with a situation where sterling appreciates against the relevant foreign currency between 1 March and 1 July, so that the creditor receives in sterling an amount which when converted at the prevailing exchange rate is greater than the amount to which he was contractually entitled. There is no suggestion by anyone that in those circumstances

the foreign currency creditor must refund the amount of the excess to the company in liquidation. It followed, Mr Wolfson submitted, that the claim to a non-provable currency conversion loss was in effect a one-way bet.

98. This leads on to the submission made by Mr Wolfson and other counsel that in a liquidation there are in a number of circumstances winners and losers. The purpose of a liquidation is to achieve a broad justice, and in achieving that some creditors may find themselves in a worse position but equally other creditors may find themselves in a better position than their strict contractual rights. I accept that this is so, and that it is necessary in order to achieve the *pari passu* distribution of assets amongst creditors with proved claims. But I do not understand why it should prevent those creditors who have not received their contractual entitlement from pressing their claims against the company once the statutory regime for *pari passu* distributions has run its course. It is no answer to a creditor with a contractual claim which has not been met to say either that, in other circumstances, he might have done better, or that other creditors have in fact done better. As Brightman LJ made clear in *In re Lines Bros Ltd*, individual creditors may not achieve their full contractual rights when they are in competition with other creditors, but there is no justice in them not doing so when they are in competition only with the debtor.
99. Mr Wolfson further took the example of a foreign currency creditor with a contractual payment due in the future and carrying a low contractual rate of interest. His foreign currency claim would be converted for the purposes of proof at the exchange rate prevailing at the date of commencement of the liquidation or administration, and he would then benefit from the statutory 5% discount rate on the amount of his provable debt on which he would receive dividends, which may be a significantly more advantageous discount rate to him than the real market discount rate calculated by reference to the contractual interest rate. Added to that, he would benefit from statutory interest at a rate of 8% on the full amount of his provable debt. I do not doubt that, as in many cases, there may be some difficulties in working out the consequences of allowing particular claims. It may well be that in asserting a non-provable currency conversion claim the creditor in this example might have to give credit for the benefits which he has received under the insolvency regime. The existence of these possible difficulties, and I do not accept that they are any more than that, does not in my judgment provide a sound basis for saying that there can be no currency conversion claims arising out of the contractual rights of creditors.
100. In addition to supporting the submissions of Mr Wolfson, Mr Isaacs advanced further reasons why in his submission the currency conversion claims could not exist.
101. First, he submitted that because the foreign currency debt was converted into sterling at the prevailing rate of exchange as at the date of the commencement of the liquidation, any currency conversion claim was by definition contingent as at that date. The contingency is, of course, a movement in the exchange rate adverse to the position of the creditor. Accordingly, Mr Isaacs submitted, if a currency conversion claim exists at all, it is a contingent debt which could be the subject of proof. Mr Isaacs is of course right that any currency conversion claim is, as at the date of the commencement of the liquidation, contingent. It is however clearly not a provable contingent claim. The scheme of the legislation is, as set out in the relevant rules, to convert foreign currency debts into sterling for the purposes of proof as at the date of the commencement of the liquidation. That is the full extent of any provable claim in

respect of the foreign currency debt. It cannot in my judgment follow that there can be no claim against the company based on the creditor's contractual rights, capable of being advanced after the payment in full of all provable debts and statutory interest. The point is that the contingent claim which Mr Isaacs identifies is not provable.

102. Secondly, Mr Isaacs submitted that the availability of a currency conversion claim would render unworkable the provisions for set-off where there is a foreign currency creditor. In an administration, the account necessary for set-off is taken between what is due between the company and a creditor as at the date of the notice by the administrator of an intention to make a distribution: rule 2.85(3). Rule 2.85(6) applies, so far as concerns set-off involving one or more foreign currency debts, the conversion required by rule 2.86(1). Accordingly the foreign currency debt is converted into sterling at the official exchange rate prevailing on the date when the company went into administration.
103. On that basis, Mr Isaacs gave the example of a debt of £100 million owed by a creditor to the company. The creditor is owed \$100 million by the company which as at the administration date converts into £70 million. The effect of the set-off would be to leave the creditor owing £30 million to the company. The creditor would be treated as having paid £70 million to the company. If changes occur in the exchange rates between the date of the commencement of the administration and the date as at which the set-off is effected, such that the £70 million paid by way of set-off would convert to \$90 million, the creditor would continue to have an obligation to pay £30 million to the company but, if currency conversion claims are permitted, would have a currency conversion claim for \$10 million. Mr Isaacs submitted that there would then need to be a second conversion and a second set-off, neither of which is recognised by the rules, thus demonstrating that no such currency conversion claim may lie.
104. In answer to this, Mr Zacaroli submitted that there would need to be no such second conversion or second set-off. He accepts that there is no set-off of the currency conversion claim and he accepts that set-off is applicable only in relation to provable claims. If the creditor sought to rely on set-off against the currency conversion claim, he would be interfering with the rights of other creditors and with the pari passu distribution of assets. Mr Zacaroli accepts that this is not permitted but submits that that is no reason why a currency conversion claim should not lie as a non-provable claim once all provable debts and statutory interest have been paid. In my judgment Mr Zacaroli provides a complete answer to the submission made by Mr Isaacs.
105. Mr Isaacs further submitted that the existence of currency conversion claims could create significant difficulties for the officeholder in determining the time at which to make distributions. The precise choice of date of distributions would affect the currency conversion claims, if any, which could be made by different groups of creditors depending on the contractual currency of payment. At the same time, delays in the date of distribution to mitigate the effect of such claims would have the effect of increasing the amount of statutory interest payable. As it seems to me, it is the duty of the office holder to proceed to make distributions as soon as he reasonably can. If he is otherwise in a position to make a distribution, it could not be right to delay doing so in the hope that it would mitigate the effect of currency conversion claims. In any event, as conversion rates often fluctuate unpredictably, any attempt by an officeholder to time distributions by reference to the currency markets is liable to back-fire.

106. I was referred to reports published by the Law Commission and the Review Committee on Insolvency Law and Practice chaired by Sir Kenneth Cork (the Cork Report) between 1981 and 1983. In 1981, the Law Commission published its Working Paper No 80 on Private International Law Foreign Money Liabilities, in the wake of the *Miliangos* decision. In paras 3.39-3.47, the Law Commission addressed the issue as it affected the liquidation of companies and the bankruptcy of individuals. This followed the decision of Oliver J in *In re Dynamics Corporation of America*, but before the decisions at first instance and in the Court of Appeal in *In re Lines Bros Ltd*. The Law Commission endorsed the approach adopted by Oliver J of fixing the date of the winding up order as the date on which foreign currency debts should be converted into sterling for the purposes of proof. In paragraph 33.46, the Law Commission considered the position in the "small minority of cases" where the company is found to be solvent. The report identified that this raised a third question, "whether in such cases foreign currency creditors should be compensated from the assets of the company or the bankrupt for adverse exchange fluctuations between the date of the relevant order and the date of actual payment." This, the working paper stated, would involve a second, later, conversion of these debts as at the date of actual payment, or as close thereto as is practicable. The paper expressed a view against a later conversion date where a change in the relative value had been adverse to the creditor in question on the grounds that "it would involve a discrimination between foreign currency debts depending on whether the exchange rates have moved to the advantage or disadvantage of the creditors."
107. The Cork Report was published in 1982. The question of foreign currency liabilities was considered in paragraphs 1306-1309. In para 1308, the report referred to two decisions in which it had been held that conversion should be effected as at the date of the winding up. These were presumably *In re Dynamics Corporation of America* and *In re Lines Bros Ltd* at first instance. The report supported this conclusion and recommended that any future Insolvency Act should expressly provide that the conversion of debts in foreign currencies should be effected as at the date of the commencement of the relevant insolvency proceedings. The report continued:

"Furthermore, we take the same view as the Law Commission (Working Paper No.80) that conversion as at that date should continue to apply, even if the debtor is subsequently found to be solvent. To apply a later conversion date only in the case where the exchange rate has moved to the advantage of the creditor, but (necessarily) not where it had moved against him, would, in our view, be discriminatory and unacceptable."

Although the judgment of the Court of Appeal in *In re Lines Bros Ltd* was given in February 1982, the Cork Report does not appear to have taken account of it in relation to claims for currency losses. If the Committee had been aware of the views expressed by Brightman LJ on this topic, with some support from Oliver LJ, they would be almost certain to have considered and addressed them.

108. In the Law Commission's final Report published in October 1983, reference was made to the position in a liquidation or bankruptcy in paras 2.22-2.23 and 3.34-3.37. The decision of the Court of Appeal was by then reported and reference was made in para 2.23 to the discussion in that case concerning the position if the company is solvent. The conclusion expressed in para 3.37 was:

“The present law relating to the conversion into sterling of foreign-currency claims in relation to solvent and insolvent companies and to bankruptcy is satisfactory.”

109. This conclusion rather neatly leaves the point open. The Report endorses the conversion of foreign currency debts into sterling as at the date of liquidation for the purposes of proof. As the Court of Appeal had left open the question whether creditors could advance currency conversion claims in the event of a surplus of assets after the payment of all proved debts and interest, the effect of the Report is also to leave open that issue.
110. In any event, I do not consider that these reports take the matter very far. The first two take no account of the discussion in the judgment of Brightman LJ and express concern based on the possibility of discrimination. However, as Brightman LJ makes clear in his judgment in passages which I have earlier cited, the issue of discrimination arises between different creditors, all of whom are innocent for these purposes. Once all proved debts and interest on them have been paid, issues of discrimination as between creditors do not arise. The question then, as Brightman LJ observed, is whether the debtor should take the advantage or the benefit of the decline in the value of sterling. In my judgment, it would be contrary to principle and justice that the debtor, or the shareholders receiving the surplus, should be able to deny the foreign currency claimants their full contractual rights. Those contractual rights are compromised by the insolvency regime only for the purpose of achieving justice among creditors through a *pari passu* distribution.
111. Accordingly, I hold that currency conversion claims can be advanced as non-provable claims against a company which has paid in full all proved claims and statutory interest on those claims, except only those proved claims which by contract or otherwise are subordinated or which, in a liquidation, are subject to the contributory rule.

Is interest accruing during an administration provable or payable in a subsequent liquidation?

112. The amount of statutory interest payable on the debts proved in the administration of LBIE is very substantial. LBIE has been in administration since September 2008 and statutory interest has been accruing at the rate of 8% or the contractual rate of interest, whichever is the higher, since then. The administrators of LBIE may take steps to place LBIE into liquidation, particularly with a view to making calls on its members and with a view to invoking the contributory rule, which I deal with later in this judgment. One of the issues which I later consider is whether the members are liable, in a liquidation, to make contributions for the purposes of funding the payment of statutory interest pursuant to their liability under section 74(1) of the IA 1986. I conclude that they are. It is accordingly an issue of some significance whether statutory interest accruing during the period of the administration is provable or payable in a subsequent liquidation.
113. Provisions relating to interest as they apply to an administration and to a liquidation are largely the same, except in one important respect. As regards administration, rule 2.88(1) provides:

“Where a debt proved in the administration bears interest, that interest is provable as part of the debt except insofar as it is payable in respect of any period after the company entered administration or, if the administration was immediately preceded by a winding up, any period after the date that the company went into liquidation.”

This is the version of the rule in force between 1 April 2005 and 5 April 2010 and, by virtue of the transitional arrangements, applies to the administration of LBIE because it commenced during that period. Where, therefore, a debt bears interest before the commencement of the administration by reason of contractual terms, the Judgments Act or otherwise, the interest is provable for the period up to the commencement of the administration or the commencement of an earlier liquidation.

114. In respect of the period following the commencement of the administration, rule 2.88(7) provided during the period 1 April 2005 to 5 April 2010 as follows:

“Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company entered administration.”

This entitlement to statutory interest ranks immediately after the proved debts. The provision for statutory interest in rule 2.88(7) did not completely dovetail with the provision in rule 2.88(1) because, if there were an earlier liquidation, interest during the period of that earlier liquidation fell within neither rule. The same was, to an extent, true in respect of some other provisions of rule 2.88 which it is not necessary to detail. These inconsistencies were cured by amendments made to rule 2.88 with effect from 6 April 2010. The position is now that interest is provable up to the date when the company went into administration or, if earlier, liquidation and statutory interest is payable in respect of the period since the earlier of those two dates.

115. The provisions applicable to interest in a liquidation are contained in both the IA 1986 and the Insolvency Rules. As regards proving for interest, rule 4.93 in the form in force between 1 April 2005 and 5 April 2010 provided:

“Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except insofar as it is payable in respect of any period after the company went into liquidation or, if the liquidation was immediately preceded by an administration, any period after the date that the company entered administration.”

The terms of rule 4.93 have been amended consistently with the amendments to rule 2.88 but not in a way which has altered their effect.

116. The provision for statutory interest is contained in section 189 of the IA 1986, which has not been amended. Section 189 includes the following:

“(1) In a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.”

In the provisions applicable both in an administration and in a liquidation, all such interest ranks equally, whether or not the debts on which it is payable rank equally, and the rate of interest payable is the greater of the rate payable on judgments (8% at all material times) and the rate applicable apart from the administration or winding up (normally the contractual rate).

117. The provisions are therefore broadly the same. Interest on interest-bearing debts may be proved for any period before the company enters either administration or liquidation, whichever is the earlier. Until the amendments made with effect from 6 April 2010, statutory interest was payable out of any surplus remaining after the payment in full of proved debts from the date that the company entered administration, or from the date that it went into liquidation, but without in either case provision for the period of an earlier liquidation or administration respectively. By reason of the amendments made to rule 2.88 with effect from 6 April 2010, it is clear that statutory interest is payable out of any surplus with effect from the commencement of an earlier liquidation. No similar amendment was made to section 189.
118. On the basis of the terms of these provisions, the other Lehman companies submit that where an administration is followed by a liquidation, interest on interest-bearing debts is provable in respect of the period down to the commencement of the administration, but statutory interest is payable out of a surplus only from the date of the liquidation. On this basis, if LBIE were to go into liquidation, creditors would not receive interest in respect of the period from September 2008 when it went into administration until the date it goes into liquidation.
119. On a straightforward reading of the relevant provisions, this appears to be their effect. It is, however, very difficult indeed to understand what policy could have justified this result. It has always been clear that in the case of either a distributing administration or a liquidation, not preceded by an earlier liquidation or administration (as the case may be), interest is provable on interest-bearing debts for the period up to the commencement of the relevant insolvency proceeding and statutory interest is payable out of the surplus on all debts for the period from the commencement of the relevant insolvency proceeding. There would seem to be no purpose served in a denial of any interest during the period of an immediately preceding administration or liquidation. That there was no policy justifying such denial would appear to be demonstrated by the amendments made to rule 2.88 with effect from 6 April 2010 which ensure that in an administration which has been immediately preceded by a liquidation, statutory interest is payable in respect of the period since the commencement of the earlier liquidation.

120. Mr Trace rose to the challenge of suggesting some policy justifications. First he suggested that it achieved simplicity. Secondly he suggested that the possibility of a distributing administration being followed by a liquidation was sufficiently unlikely to make it unnecessary to make provision for statutory interest dating back to the start of the earlier administration. He suggested that a distributing administration was seen as an alternative, rather than a precursor, to a liquidation. These do not appear to me to be convincing reasons. Rule 4.73(8) provides that where a winding up is immediately preceded by an administration, a creditor proving in the administration shall be deemed to have proved in the winding up and therefore demonstrates that a move from a distributing administration to a liquidation is contemplated. More importantly, the lack of any provision for interest during the period of a preceding administration applies to all administrations which are immediately followed by a liquidation, whether or not the administrator has given notice of an intention to make distributions.
121. It is, I think, significant that changes were made in 2005 and 2010 to the Rules, but not to section 189 of the IA 1986, the only relevant provision to be contained in primary legislation. The Rules are made and may be amended by statutory instrument made by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules affecting court procedure, with the concurrence of the Lord Chief Justice or a judicial officeholder nominated by him. Any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament. The rules and their amendments are not therefore made by Parliament and may obviously be made very much more easily than amendments to the primary legislation contained in the IA 1986. Given that there is no rational justification for providing that interest for the period of an administration which is immediately followed by a liquidation is neither provable or payable as statutory interest, I can only conclude that either the terms of section 189 were overlooked or, more probably, it was thought that in some way the amendments to the Rules avoided the need to amend the primary legislation.
122. The question is therefore whether the amended rules can be construed in a way which allows interest for the period of the administration to be proved or paid as statutory interest in the later liquidation. Or are their terms such that this conclusion is impossible?
123. Mr Trower and Mr Zacaroli did not submit that there was any means by which the rules could be construed so as to provide that in the event of a liquidation immediately preceded by an administration, interest on interest-bearing debts could be proved for the period up to the commencement of the liquidation. It is, I think, common ground that in such circumstances interest is not capable of proof for the period of the earlier administration.
124. Mr Trower submitted that, on a proper construction of rule 2.88(7), the right to the payment of statutory interest out of a surplus remaining after the payment of the proved debts survives the conversion of the administration into a liquidation and entitles those who proved their debts in the administration to interest out of such surplus for the period from the commencement of the administration. Any creditor proving for the first time in the liquidation would not be so entitled, nor would it be entitled to prove for interest during the period of the administration.

125. There are, as I see it, a number of serious difficulties with this submission. First, on a natural reading of 2.88(7) it applies to a surplus in the hands of the administrator rather than in the hands of a subsequent liquidator. Read in its context, it seems to direct the administrator as to the application of the surplus which he holds. Secondly, if it were to bear the meaning for which Mr Trower contends, it could I think apply only to a surplus in the hands of the administrator which he transferred to the liquidator. I do not see how it could apply to a surplus which arises for the first time in the hands of the liquidator. Rule 2.88(7) requires the surplus remaining after the payment of debts proved to be applied in payment of interest on those debts in respect of the periods during which they have been outstanding since the company entered administration “before being applied for any purpose”. That is impossible to reconcile with the equivalent provision in section 189(2) which requires the surplus remaining in the hands of the liquidator to be applied in paying interest on proved debts in respect of the periods during which they have been outstanding since the company went into liquidation “before being applied for any other purpose”. Thirdly, if rule 2.88(7) is restricted to the surplus in the hands of the administrator, its effect is limited, first, to the amount of that surplus and, secondly, to the creditors who have lodged a proof in the administration. It therefore only goes a limited way to meeting the problem. Fourthly, in any event, it is a construction which provides no assistance in the case of an administration which has not become a distributing administration. It may be thought more likely that it is in such circumstances that a company will go into liquidation following an administration and the absence of any provision which could deal with interest for the period of an administration in such a case is in my view very telling.
126. I am driven to the conclusion that the effect of the relevant legislation is that, in a case where an administration is immediately followed by a liquidation, interest for the period of the administration is neither provable nor payable as statutory interest in the liquidation. This result would be avoided only if and to the extent that the administrator was able to pay statutory interest under rule 2.88(7) before the company went into liquidation.
127. In those circumstances, consistently with what I have earlier held as regards non-provable liabilities, I see no reason why creditors whose debts carried interest prior to the administration, whether by way of contract, judgment interest or otherwise, should not in the liquidation be entitled to claim interest at such rate for the period of the administration as a non-provable liability. In my judgment, the reasoning in *In re Humber Ironworks & Shipbuilding Co* applies and, as Giffard LJ put it, “the creditor whose debt carries interest is remitted to his rights under his contract” or, as I would add, any other rights to interest which he may enjoy.

LBIE as an unlimited company

128. The remaining issues arise out of the status of LBIE as an unlimited company.
129. Modern company law began with the Companies Act 1862, a statute described by Sir Francis Palmer as the “magna carta of co-operative enterprise.” Among the many reforms which the Companies Act 1862 introduced or consolidated was a simple process of registration of companies. It provided for the three types of registered company, which remain today with little amendment. They are companies limited by shares, companies limited by guarantee and unlimited companies.

130. These three types of registered company are distinguished by the differences in the liabilities of their members. In no case, do the members have any direct liability to creditors of the company. In this respect, they are importantly different from partnerships, unincorporated joint stock companies (usually formed by a deed of settlement), companies incorporated under the Joint Stock Companies Act 1844 (which provided for the registration and incorporation of companies but made the members liable without limit to creditors as if they were partners) and Scottish partnerships, where the partners are secondarily liable to creditors. The liability of members of a registered company, whether limited or unlimited, is exclusively to provide funds to the company or to its liquidator. In the case of companies limited by shares, the liability of a member is limited to the amount unpaid on the shares registered in the name of the member. In the case of a company limited by guarantee, the liability of the member is limited to the amount stated in the memorandum of association of the company. There is no stated limit on the liability of the members of unlimited companies.
131. It is now very unusual for companies limited by shares to have shares in issue which are not fully paid. Almost invariably, shares are fully paid up on their issue. This was not, however, the case in the second half of the nineteenth century and the first twenty or so years of the twentieth century. There are many reported cases dealing with the issues that arise when calls are made on shares, whether by the directors while the company is a going concern or by the liquidator in a winding up. The last of these cases to which I have been referred was decided in 1917. The only subsequent cases giving any consideration to these issues are *In re White Star Line Ltd* [1938] 1 Ch 458, and *In re Kaupthing, Singer and Friedlander Ltd (in administration)* (No.2) [2012] 1 AC 804 (*Re Kaupthing*), in which Lord Walker of Gestingthorpe considered an important aspect of the liability of members by way of analogy with the issue in that case.
132. As the limited liability of members, together with a simple process of registration and incorporation, were the principal advantages of the mid-nineteenth century reforms, it is not surprising that there has been only a sparse use of unlimited companies. It appears that their introduction by the Companies Act 1862 was to compensate for the prohibition of partnerships or joint stock companies with more than twenty members or, in the case of banks, ten members. If members wished to have an association which most closely resembled the old joint stock company, the unlimited company was introduced for that purpose. There remained in some circles some stigma attached to limited liability and there were a number of businesses, including banks and building societies, which were incorporated as unlimited companies. A number of cases, though far fewer than those concerned with limited companies, dealt with issues arising out of the liability of members of unlimited companies. The use of unlimited companies, never great, declined during the nineteenth century. In the twentieth century, their principal advantage was an exemption from ad valorem stamp duty, and later capital duty, payable on the issue of new capital by a company. For this reason, their principal use for many years was as estate or investment companies, where estates or other property were transferred to companies in exchange for shares issued to or owned for the benefit of the families owning them. For the same reason, they were sometimes used in complex corporate restructurings and transactions. As appears from the facts of the present case, unlimited companies have found a place in corporate planning for US tax purposes.

133. An unlimited company may, but is not required to, have a share capital. At the date of the appointment of the administrators, the issued share capital of LBIE was \$13,273,114,000 divided into 6,273,114,000 ordinary shares of \$1 each, 2 million class A preference shares of \$1000 each and 5.1 million class B shares of \$1000 each. LBHI2 is the registered holder of all the shares except for one ordinary share registered in the name of LBL. All the shares were fully paid up at the date of the appointment of the administrators.
134. The liability of members arises in two distinct ways, which it is important to differentiate. First, the holders of shares, whether in a limited or unlimited company, are liable to pay up their shares either in accordance with the terms of issue or when made the subject of calls by the company. It is the liability to meet calls for unpaid capital which has a bearing on the issues in this case. The provisions governing calls are contained in the articles of association of the company and apply to calls made by the company before it goes into liquidation.
135. By way of example, the last version of Table A articles applying to companies limited by shares (contained in the schedule to the Companies (Tables A to F) Regulations 1985), reflecting or repeating provisions contained in earlier versions of Table A, provided in regulation 12 that subject to the terms of allotment, directors were empowered to make calls upon the members in respect of any moneys unpaid on their shares, whether in respect of nominal value or premium, and each member was, subject to receiving at least 14 days' notice, required to pay to the company as required by the notice the amount called on his shares. Regulations 13 to 22 contained further provisions relating to calls and to the remedies in respect of a failure to pay calls, including the final sanction of forfeiture of the shares. The standard form articles for an unlimited company contained in Table E incorporated by reference the relevant provisions of Table A, as do the articles of LBIE.
136. In a winding up of a company, a separate regime applies to both calling up unpaid capital on shares and making other calls on the members of unlimited companies and of companies limited by guarantee. The relevant provisions are now contained in the IA 1986 and the Insolvency Rules (as amended), but it should be noted that before 1986 the relevant provisions were contained in successive Companies Acts and the Winding-up Rules. The relevant provisions, even those contained in the Companies Act 1862, have not changed radically over the years. All the authorities to which I shall refer are dealing with provisions contained in the Companies Acts but I shall endeavour to indicate also their counterpart in the present legislation. The provisions applicable to the making of calls in a liquidation replace the provisions in the articles of companies for making calls on shares.
137. For convenience, in this judgment, I shall refer to the liabilities of members arising before a liquidation as contractual and those arising in a liquidation as statutory. Being statutory, it is not possible to contract out of the latter provisions.

Liability of members in a liquidation

138. Section 74 of the IA 1986 sets out the liability of present and past members in a liquidation. It provides:

"(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

(a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;

(b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member is not liable to contribute, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them;

(d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;

(e) nothing in the Companies Acts or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him."

139. The scheme of section 74 is, in sub-section (1), to impose a general liability on every present and past member and then in sub-sections (2) and (3) to qualify the liability. The liability of past members is qualified by the terms of sub-section (2)(a), (b) and (c). The limitation on the liability of members of a company limited by shares is provided by sub-section (2)(d), which limits a member's liability to the amount unpaid, if any, on the shares in respect of which the member is liable. The equivalent qualification for members of a company limited by guarantee is provided by sub-section (3). Sub-section (2)(f) is somewhat misplaced. It is not concerned with the liability of members but provides for the postponement of debts due to members in their character as such. The unlimited liability of the members of an unlimited company is achieved by the absence of any qualification in sub-sections (2) or (3) to the general provision in sub-section (1).
140. Throughout the remaining provisions of IA 1986, the term "contributory" is used to describe those past and present members on whom a liability is placed by section 74, and other persons liable to contribute under section 76: see section 79 for the definition of "contributory".
141. Sections 80-83 contain further provisions in relation to contributories and their liability, two of which are relevant to the issues in this case.
142. Section 80 provides:

"The liability of a contributory creates a debt (in England and Wales in the nature of an ordinary contract debt) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability."

The words "an ordinary contract debt" replaced the words "a specialty" with effect from 1 October 2009. This is not material to the issues in this case.

143. Material to this case are the words in section 80 "accruing due from him at the time when his liability commenced." It has been held that the liability of a member as a contributory commences for the purposes of this section when he becomes a member: *Ex parte Canwell* (1864) 4 De G, J & S 539, *Williams v Harding* (1866) LR 1 HL 9 at 29, and see *Buckley on the Companies Acts* (14th ed 1981) p.507. The liability of a member to pay calls made before a winding up and in a winding up are therefore both created at the same time.
144. Section 82 deals with the effect of the bankruptcy of a contributory. It provides:
- "(1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.*
- (2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.*
- (3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the*

bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made."

145. It was submitted by Mr Wolfson that the presence of the provisions permitting proof in sub-sections (3) and (4), without any corresponding provisions relating to proof in the administration or liquidation of a corporate contributory, demonstrated that there could be no proof in the latter case in respect of a liability as a contributory. This submission misunderstands the purpose of those sub-sections. Sub-section (2) makes the trustee in bankruptcy the contributory in respect of the shares registered in the name of the bankrupt. Without further provision any claim in respect of calls would therefore lie against the trustee in bankruptcy. Sub-sections (3) and (4) provide that claims in respect of future calls are not to be made against the trustee personally but are to be admitted to proof in the bankrupt's estate. Without those provisions, the bankrupt's estate would have no liability in respect of future calls and therefore no proof in respect of them could be made. In the case of an administration or liquidation of a corporate contributory, the shares remain registered in the name of the company and there is therefore no need for any provision to the effect that proofs in respect of future calls may be made in the administration or liquidation.
146. Section 148 of the IA 1986 provides that the court shall as soon as may be after the making of a winding up order settle a list of contributories, unless it appears that it will not be necessary to make calls on or adjust the rights of contributories. By section 150, the court may, either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories to the extent of their liability "for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made." Section 154 provides that the court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it. Section 160 provides that provision may be made by rules for enabling or requiring the powers and duties of the court in respect of settling the list of contributories and the making of calls to be exercised or performed by the liquidator as an officer of the court and subject to the court's control. Provision is so made in the Insolvency Rules, to which I refer below. As regards a voluntary winding up, section 165(4) provides that a liquidator may exercise the court's powers of settling a list of contributories and making calls.
147. The provisions in the Insolvency Rules delegating the duties and powers of the court with regard to settling the list of contributories and making calls to the liquidator as an officer of the court, subject to the court's control, are contained in rules 4.195-4.201 and 4.202-4.205 respectively. None of them calls for special comment for the purposes of the present case.
148. There are other provisions of the IA 1986 and the Insolvency Rules which are relevant, such as provisions dealing with the proof of debts and set-off, but I shall refer to those provisions when dealing with the particular issues to which they relate.

Issues

149. The issues which arise in connection with the liability of the contributories of LBIE are:
- i) The extent of the liability arising under section 74 of the IA 1986.
 - ii) The application of the “contributory rule” and the equitable rule in *Cherry v Boulton* (1838) 2 Keen 319, (1839) 4 My&Co 442.
 - iii) Whether and, if so, when can a liability for future calls be the subject of proof in the administration or liquidation of a corporate contributory.
 - iv) The effect of set-off in the administration or liquidation of a corporate contributory.
 - v) The effect of set-off in the administration or liquidation of the company.

The extent of liability under section 74 IA 1986.

150. The issue is whether the liability to contribute to the assets of a company in liquidation under section 74(1) extends to providing the funds needed to pay statutory interest and any non-provable liabilities or, whether as the other Lehman companies submit, it is limited to the funds required to pay the debts and liabilities proved in the liquidation. On either basis, the liability also extends to the provision of funds for the payment of the expenses of the winding up and for the adjustment of the rights of contributories among themselves.
151. The issue turns on the proper construction of section 74(1) and of the provisions creating the liability to pay statutory interest – section 189 in the case of a liquidation and rule 2.88(7) in the case of an administration. Before coming to the detailed points of drafting on which the case of the contributories is largely based, there are some general points to make.
152. First, the purpose of a liquidation is to realise to best advantage all the assets of the company and to distribute the proceeds of sale among those entitled to them in the order of priority in which they are entitled to receive them. As the liquidation of a company ends with its dissolution, nothing as a matter of principle should be left unresolved for the future. This is in contrast to individuals, who are discharged from bankruptcy and who can therefore, for example, continue to be liable for such pre-bankruptcy liabilities as the law may prescribe. It is the purpose of a liquidation to pay all the liabilities of the company, including those which are not capable of proof. The payment or compromise of non-provable tort claims in *In re T&N Ltd* [2006] 1 WLR 1728 was as much a purpose of the administrations of the T&N companies as the payment of their provable debts. In *In re R-R Realisations Ltd* [1980] 1 WLR 805, the final distribution to members was delayed while provision was made for tort claims made by the estates of persons killed in the crash of an aircraft powered by Rolls Royce engines which occurred well into the liquidation. It is clear from the waterfall

set out in Lord Neuberger's judgment in *Re Nortel* that a liquidation, or in that case a distributing administration, has this comprehensive purpose.

153. Secondly, while acknowledging that of course the extent of any liability is a matter of construction of the relevant statutory provisions, one might suppose that if a member of an unlimited company is to be liable to contribute to the assets of the company for the payment of its debts and liabilities without limit, such liability would extend to all its debts and liabilities, whether or not they were capable of proof. Many un-provable liabilities are, or at least until the decision in *Re Nortel* were, incapable of proof not by virtue of their very nature but by virtue of when the liability arose. Until rule 13.12 was amended in 2010, tort claims were provable only if the cause of action were complete by the time of the liquidation. Following the amendment, the cause of action must by then be complete save for the occurrence of actionable damage. Obligations to make payments pursuant to the exercise of discretionary powers, for example orders for costs in litigation or the issue of contribution notices in respect of pension fund deficits, were before the decision of the Supreme Court in *Re Nortel* provable only if the power had been exercised before the commencement of the liquidation but not otherwise.
154. The obligation to pay statutory interest in a liquidation is of a different character, because it can arise only in the event of a liquidation. It is worth bearing in mind the position which exists prior to the liquidation. The company, particularly for example a bank, may have many liabilities which carry interest. To the extent that such interest accrued due for payment after the commencement of the liquidation, it was never provable but, under the law as it existed before the IA 1986, it was payable once all provable debts had been paid: see *In re Humber Ironworks & Shipbuilding Co* (1869) LR 4 Ch App 643. It is difficult to see the policy which would make members of an unlimited company liable to contribute for the purposes of paying the principal amount of such contractual debts but not require them also to provide funds for the payment of contractual interest, all the more so when on any basis they had to do so for contractual interest accruing due before the commencement of the liquidation. It might be thought surprising if the substitution under the insolvency legislation of statutory interest for non-provable contractual interest reduced the liability of members.
155. Turning to the express terms of section 74(1), the liability is to contribute "to any amount sufficient for payment of its debts and liabilities." Nowhere in section 74, or in any other provision, is there any express provision that the liability is restricted to amounts sufficient for the payment of *provable* debts and liabilities.
156. Mr Trower submitted that, while the defined meaning of "debts" is restricted to provable debts, the defined meaning of "liabilities" is not so restricted. Rule 12.3 makes provision for "provable debts":

"(1) Subject as follows, in administration, winding up and bankruptcy, all claims by creditors are provable as debts against the company or, as the case may be, the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages."

Part 13 of the Insolvency Rules (Interpretation and Application) contains in rule 13.12 definitions of “debt” and “liability” for the purposes of a liquidation and administration. “Debt” is defined in rule 13.12(1), a provision which was subject to close scrutiny in *Re Nortel*. It sets out the pre-conditions which must be satisfied for a debt to be the subject of proof. Rule 13.12(2) is concerned with the circumstances in which a liability in tort is “a debt provable in the winding up”. These provisions, in my view, make good Mr Trower’s submission that the word “debt” is used to mean provable debt.

157. Rule 13.12(4) defines “liability”:

“In any provision of the Act or the Rules about winding up, except insofar as the context otherwise requires, “liabilities” means (subject to paragraph (3) above) a liability to pay money or moneys worth including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.”

As Mr Trower emphasised, this sub-rule is not linked to the status of a liability as a provable debt. In terms it applies “in any provision of the Act or the Rules about winding up”, which by virtue of sub-rule (5) applies also to an administration.

158. Section 74 requires members to contribute sums sufficient not only for the payment of the debts and liabilities of the company but also “for the adjustment of the rights of the contributories among themselves.” Mr Trower relies on this as support for his submission that “debts and liabilities” are to be given a broad meaning, encompassing all the liabilities of the company, whether provable or not. As the adjustment of the rights of the contributories among themselves lies almost at the bottom of the waterfall, above only a return of capital to members, it suggests that the contributions required from contributories are to be applied in discharge of the liabilities which rank below provable debts but above the adjustment of rights among contributories. Counsel for the other Lehman companies submitted that this did not follow and that there was no difficulty in the liquidator either ringfencing out of a larger call the amount required for the adjustment of rights among contributories after provable debts had been paid in full, or making a further call specifically for the purpose of the adjustment of the rights of contributories.
159. There is, however, no provision in the IA 1986 or the Insolvency Rules for any such segregation or separate call. The legislation proceeds on the basis that funds received by the liquidator will be applied in accordance with the order of priority established by the legislation and case-law. If it had been intended that sums from calls after the discharge of provable debts should be held by the liquidator on, in effect, a purpose trust, it is to be expected that the legislation would have made appropriate provision. It is no answer to say that such provision is implicit, because this presupposes the question to be answered, whether the obligation of contributories is limited to making contributions for the payment of provable debts.
160. Mr Trower derived further support for his submission from the provisions of two other sections in the IA 1986. First, section 89(1) provides for a statutory declaration of solvency to be made by the directors of a company if its voluntary winding up is to

proceed as a members' voluntary winding up, not a creditors' voluntary winding up. The principal difference between the two types of voluntary winding up is that in the former the members have powers of control, while in the latter it is the creditors who have such powers. The declaration requires the directors to state that they have formed the opinion that "the company will be able to pay its debts in full, together with interest at the official rate" within a period not exceeding 12 months from the commencement of the winding up. Secondly, section 149(3) is more closely linked to the liability under section 74:

"In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call."

While not decisive, this provision is more consonant with the liability under section 74 extending to statutory interest, rather than excluding it.

161. The principal submissions on behalf of the other Lehman companies, were, first, that rule 2.88(7) and section 189(2) which provide for the payment of statutory interest do not create liabilities of the company and, secondly, that the meaning of "its debts and liabilities" in section 74(1) is restricted to provable debts and liabilities.
162. The submission that the right of creditors to receive statutory interest is not a liability of the company in liquidation is substantially the same argument as was made on behalf of LBHI2 and LBHI in respect of the construction of the subordinated loan agreements, a submission which I have earlier rejected. It is, however, necessary to consider this submission in the different context of section 74. The same points are made that section 189(2) is not a provision that creates a liability, but is an instruction or direction to the liquidator as to how to apply a surplus remaining in his hands after payment of the debts proved. The obligation arises only if there is such a surplus. Unless a call is made, there is no such surplus and it is no part of the function of the liquidator to make calls for the purpose of creating the surplus which is the necessary pre-condition to the obligation to pay statutory interest. Reliance is again placed on the decision of Mervyn Davies J in *In re Lines Brothers Ltd* [1984] BCLC 215.
163. The issue is whether, as a matter of construction of section 74(1), the obligation created by section 189(2) is a liability of the company. I see the linguistic argument for saying that the terms of section 189(2) constitute a direction to the liquidator, rather than creating a liability of the company. I do not, however, accept that the way in which section 189(2) is expressed has the effect, or is intended to have the effect, of excluding statutory interest from the obligations of contributories under section 74. I find it impossible to discern the policy reason for saying that members are liable to contribute assets for the payment of the principal amount of provable debts, but are not liable for the interest on those debts which is payable to compensate the creditors for being kept out of their money until a distribution is made in the liquidation. The justification for statutory interest, even in those cases where the debts do not already carry a right to interest, is that the creditors are prevented by the liquidation regime from obtaining judgment against the company which would then carry interest at judgment rate. If a judgment were obtained before the commencement of the liquidation, interest at the judgment rate is provable down to the commencement of

the liquidation. Members are liable to contribute in respect of such interest. There is no plausible policy reason why they should cease to be so liable in respect of interest accruing due after the commencement of the liquidation. The fact that such interest, at the same rate, becomes payable under section 189(2) rather than under the Judgments Act provides no sound reason for distinguishing between them.

164. There is, moreover, the point which I have already made, that until the introduction of section 189(2) contractual interest was payable in a liquidation but was not provable in competition with other debts. I do not find it plausible that the use of language in section 189(2) was intended to have the effect that what was previously clearly a liability of the company should cease to be so for the purposes of section 74(1). Further, the non-provable liabilities which rank behind statutory interest are, on any footing, liabilities of the company, although not provable debts. If section 74(1) extends to making calls for the payment of non-provable liabilities, ranking behind statutory interest, it makes no sense at all that calls cannot be made in order to fund the payment of statutory interest. The submission that statutory interest is excluded from section 74(1) because of the wording of section 189(2) can make sense only if the meaning of "its debts and liabilities" is restricted to provable debts.
165. A further point arising out of the terms of section 189(2) was made on behalf of the other Lehman companies. Payment of statutory interest under that provision is to be made out of "any surplus remaining after the payment of the debts proved in a winding up". There must be a surplus of assets available for distribution before any statutory interest becomes payable. It was submitted that the surplus would arise only if and to the extent that the liquidator made calls and the contributories had made payments in response to those calls. In my judgment, this submission is misconceived. The assets available to a liquidator to meet the claims of creditors, including statutory interest and non-provable debts, includes the right to make calls. Clearly no distribution can in fact be made except to the extent that, so far as calls are concerned, payments are made in response to those calls. If, on its proper construction, the liability of contributories under section 74 extends to providing funds for the payment of statutory interest and non-provable debts, the liquidator by making calls for that purpose is not creating a surplus, and so causing the obligation to pay statutory interest to arise, but is making calls in response to the requirement to pay statutory interest.
166. A number of submissions were made in support of the proposition that, on its proper construction, the phrase "its debts and liabilities" in section 74(1) was restricted to provable debts.
167. First, no right to statutory interest exists outside a liquidation or administration. All other liabilities, including non-provable liabilities, exist or may exist independently of the liquidation. While true, this does not seem to me to advance the position of the other Lehman companies. Like the obligation to pay statutory interest, the obligation of contributories under section 74(1) arises only in a liquidation. I see no good reason why an obligation to contribute which arises only in a liquidation should not extend to obligations to make payments to creditors which arise only in a liquidation. The submission seeks to put a gloss on section 74(1) which is not present either in the wording of the section or in the definition of "liabilities".

168. Secondly, it was submitted that where the expression "debts and liabilities" or similar expressions are used elsewhere in the IA 1986, they do not include statutory interest. In this context, Mr Isaacs gave a number of examples.
169. The first examples were sections 95(4), 99 and 131(2) which make provision for statements of affairs in a members' voluntary liquidation, a creditors' voluntary liquidation and a compulsory liquidation respectively. The statements of affairs required by sections 95 and 99 must show, amongst other things, "particulars of the company's assets, debts and liabilities". The first point to note is that there is no express provision restricting these particulars to provable debts. The requirement is to make a statement as to the affairs of the company, and in principle its affairs will extend to its debts and liabilities which are not provable as well as to those which are provable. Even though not provable, they are liabilities of the company and are payable if there are funds available to do so. Mr Isaacs submitted that statutory interest could not be included in these statements of affairs, for two reasons. First, it would require an assumption that a company which is insolvent would be able to pay its proved debts in full and, secondly, it would require matters to be known which could not possibly be known, such as the amount of the surplus and the length of time before proved debts were paid. I am bound to say that I do not consider that much light will be shed on section 74 by whether or not statutory interest is usually or can be included in these statements of affairs. Having said that, I cannot see that the fact that there may not be funds available to pay any statutory interest means that no provision for it could or should be made. Provision will be made for the full amount of provable debts, and I would suggest non-provable liabilities, notwithstanding that there may be insufficient funds to pay all of the former or any of the latter. As to the amount of statutory interest being incapable of calculation, while this is true, it is not impossible to make a provision, just as provisions would need to be made for contingent liabilities. It may further be noted that the requirement imposed by section 95 to prepare a statement of affairs arises "where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate)" within the year after the commencement of a members' voluntary winding up. It may be the inability to pay statutory interest in full which triggers the requirement for a statement of affairs.
170. The second provision relied on was section 123 which deals with the inability of a company to pay its debts for the purposes of the jurisdiction of the court to wind up the company. Mr Isaacs relied in particular on section 123(2) which provides that a company is deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities. He accepted that future contractual interest might be included for these purposes, but he submitted that it could not include statutory interest. I entirely agree with this proposition. A creditor clearly cannot rely on the inability of the company to pay a liability which arises only in a liquidation for asserting the insolvency of the company for the purposes of obtaining an order to wind up the company. This does not, however, shed light on the extent of the obligation imposed by section 74(1) which itself only arises in the liquidation.
171. Thirdly, Mr Isaacs relied on section 214(6). Section 214 imposes liability on directors and others for wrongful trading. It applies where a company has gone into insolvent liquidation and the respondent knew or ought to have concluded that there was no

reasonable prospect that it would avoid going into insolvent liquidation. Section 214(6) provides that for the purposes of the section a company goes into insolvent liquidation if it does so “at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.” I do not think that this assists Mr Isaacs’ submission. First, as Mr Trower submitted, the reference to “its debts and other liabilities” suggests that it is intended to include non-provable liabilities. In any event, I can see no good reason why non-provable liabilities should not be taken into account for the purposes of applying this sub-section. Further, a company will avoid going into creditors’ voluntary winding up, rather than members’ voluntary winding up, only if the directors are able to declare that the company will be able to pay its debts in full together with statutory interest.

172. Fourthly, Mr Isaacs relied on section 272 which sets out the grounds on which a debtor may present his own bankruptcy petition. The only grounds are inability to pay debts and the petition must be accompanied by a statement of the debtor’s affairs containing, amongst other things, prescribed particulars of “his debts and other liabilities”. However, there is no reason to consider that “other liabilities” is restricted to provable debts. On the contrary, a debtor’s inability to pay his debts is as much established when he can show that he is unable to pay his debts, whether provable or un-provable, as well as in those circumstances where he is unable to pay only his provable debts.
173. Reference to these various statutory provisions does not, in my judgment, establish or suggest that the liability under section 74(1) is restricted to provable debts. In some instances, these sections tend to suggest the contrary.
174. Mr Isaacs relied on four provisions as showing that, where it was intended to include statutory interest, express reference was made. The provisions in question are section 89(1), section 149(3), section 215(4) and rule 12.3(2A). In none of these provisions, however, is reference made to interest or statutory interest in addition to the phrase “debts and liabilities”. They are all cases where the reference is either to “debts” or to what are clearly claims by creditors in respect of provable debts.
175. Overall, I consider that Mr Trower is correct in his submission that where the legislation refers to “liabilities” instead of or in addition to “debts”, it does so because a reference only to provable debts would not be appropriate.
176. Mr Isaacs repeated in this context the submissions he had made in the context of the subordinated loan agreements that the expression “debts and liabilities” could not be read literally, because of the provisions relating to future debts, contingent liabilities and non-provable liabilities. I reject these submissions for the same reasons as earlier given in relation to the subordinated loan agreements.
177. As a final submission, assuming his prior submissions were wrong, Mr Isaacs submitted that LBIE could not claim against LBHI2 for statutory interest in respect of any period after the commencement of LBHI2’s administration. He submitted that it would be contrary to rule 2.88(1) which has the effect that, where a debt proved in an administration bears interest, the interest is not provable as part of the debt in respect of any period after the commencement of the administration. I do not accept this submission. Rule 2.88(1) is concerned with claims for principal plus interest. A claim for a contribution under section 74 is not such a claim but is a single claim for the

amount due under section 74. It is nothing to the point that a constituent element of the claim is statutory interest payable in the liquidation of LBIE. Mr Isaacs relied on the decision in *In re International Contract Company, Hughes' Claim* (1872) LR 13 Eq 623. A nominee shareholder lodged a proof in the liquidation of the beneficial owner of the shares for an indemnity against calls on the shares and interest on those calls. The interest had accrued due since the commencement of the winding up of the beneficial owner, and the indemnity was held not to be provable to the extent of such interest by reason of what was then the common law rule that post-liquidation interest was not provable but only payable out of any available surplus. The issue, as Wickens VC saw it, was whether that rule should be extended to the case before him on the grounds that it was analogous to cases falling within the rule but was not actually one of them. He concluded that the rule should be extended to include this analogous case. Now that the rule is enacted in rule 2.88(1), it is the terms of the rule and nothing else which governs the circumstances in which a sum representing interest may be proved. A claim under section 74 is not a claim for interest on a proved debt.

178. Accordingly, I conclude that members are liable to contribute to the assets for the payment of not only provable debts but also statutory interest and non-provable liabilities.

The contributory rule

179. A series of cases in the nineteenth century, beginning with *In re Overend Gurney & Co; Grissell's Case* (1866) LR 1 Ch App 528 (*Grissell's Case*), established the principle that a person could recover nothing as a creditor of a company until he had discharged all his liability as a contributory. A classic statement of this principle was given by Buckley J in *In re West Coast Gold Fields Ltd* [1905] Ch 597 at 602:

"The right view is that the person liable as contributory must discharge himself in that character before he can set up that, as a creditor, he is entitled to receive anything and a fortiori, as it seems to me, before he can set up that, as a contributory, he is entitled to receive anything."

His decision was upheld by the Court of Appeal: [1906] 1 Ch 1.

180. This principle was conveniently referred to in the course of submissions as "the contributory rule" and I will use the same description in this judgment.
181. The passage from the judgment of Buckley J was cited by Lord Walker in *Re Kaupthing* at [20], in his discussion of this principle by way of analogy with the issue arising for decision in that case. Referring further to this principle, Lord Walker said at [52]:

"The situation in this line of authority is that a shareholder is a creditor of an insolvent company, but his shares are not fully paid up, so that he is liable as a contributory. Suppose he has 10,000 £1 shares, 10p paid, and is owed £15,000, but the dividend prospectively payable is only 30p in the pound. If the liquidator calls on him for £9,000 to make his shares fully paid up, he has no right of set-off; and to that extent he is

disadvantaged (that is In re Auriferous Properties Ltd [1898] 1 Ch 691). If he seeks to prove in the liquidation, the liquidator can rely on the equitable rule as it applies in a case of this sort – that is, that he can receive nothing until he has paid everything that he owes as a contributory. That is In re Auriferous Properties Ltd (No 2) [1898] 2 Ch 428. The rule is also very clearly stated by Buckley J in In re West Coast Gold Fields Ltd [1905] 1 Ch 597, 602 (affirmed [1906] 1 Ch 1, and cited in paragraph 20 above). Payment of the call is a condition precedent to the shareholder's participation in any distribution, and again the shareholder is to that extent disadvantaged."

182. The issue in *Re Kaupthing* was whether the rule against double proof took priority over and excluded the equitable rule, commonly known as the rule in *Cherry v Boulton*. The Supreme Court held that, just as the principle established in *Grissell's Case* takes priority over the rule in *Cherry v Boulton*, so too does the rule against double proof. The contributory rule was developed by the courts on the basis of the statutory provisions relating to the liability of contributories. It is a rule dictated by the nature and the purpose of the obligation imposed on contributories by the legislation in a winding up. It may bear some relation to the rule in *Cherry v Boulton* but, as the decision in *Re Kaupthing* makes clear, it is in important respects distinct from it.

183. In *Re Kaupthing*, Lord Walker described the rule in *Cherry v Boulton* at [8] as:

"...basically a simple technique of netting-off reciprocal monetary obligations, even where there is no room for legal set-off, developed and used by masters in the Court of Chancery giving directions for the administration of the estates of deceased persons."

It produces a netting-off effect that is similar to set-off and applies in circumstances where set-off itself is not applicable, because there is not the necessary similarity in claims. The rule applies to net off a person's claim as a beneficiary of an estate against the estate's claim against him as a debtor. Lord Walker cited at [13] the statement of the rule by Kekewich J in *In re Akerman* [1891] 3 Ch 212 at 219:

"A person who owes an estate money, that is to say, who is bound to increase the general mass of the estate by a contribution of his own, cannot claim an aliquot share given to him out of that mass without first making the contribution which completes it. Nothing is in truth retained by the representative of the estate; nothing is in strict language set-off; but the contributor is paid by holding in his own hand a part of the mass, which, if the mass were completed, he would receive back."

184. It is common ground that if LBIE went into liquidation and if the liquidator were to make calls on LBHI2 and LBL, those companies would be unable to make any claim as creditors in the liquidation, whether in respect of unsubordinated or subordinated

claims, until they had discharged in full their liability as contributories. The issue in this case is whether the same principle applies before a call is made and, specifically, while a company is in administration but after the administrators have given notice of an intention to make distributions.

185. Mr Trower submits that the contributory rule is a firmly established rule to protect the position of those entitled as creditors to a distribution out of a company's assets. It prevents a contributory from claiming or proving in competition with them, until such time as he has discharged his obligations to contribute to the full extent of his liability. He points out that a distributing administration, as much as a liquidation, involves a *pari passu* distribution among creditors and involves the protection of the interests of all creditors, including those whose debts may not be provable. A distributing administration, like a liquidation, may end with the dissolution of the company. In these circumstances, it is, he says, entirely adventitious from the perspective of the members of LBIE that it happens to be in administration, rather than liquidation. It is in administration, rather than liquidation, because the joint administrators consider that it continues to be in the best interests of the estate as a whole that it should remain in administration, and the court has endorsed that view. In these circumstances, he submits that it is very difficult to see any sensible policy reason why the contributory should be able to prove in an administration but not in a liquidation. The mischief which the rule prevents, that of removing from the creditors all or part of the fund which should be available to pay their debts, is present equally in an administration and a liquidation.
186. Mr Trower submits therefore that the contributory rule applies once an administrator gives notice of an intended distribution. It applies to any member who is subject to a potential liability under section 74 if the company were wound up and who seeks to prove in the administration. If the company is limited by shares and there is unpaid capital on shares, the company in most cases has its contractual right to make calls while still a going concern. An administrator succeeds to the authority of the directors to make such calls. Whether the contributory could in those circumstances set off his liability to pay the calls against any liability of the company to him as a creditor is a question which does not arise for decision on this application. The issue on this application arises in circumstances where the liability of the member is exclusively the statutory liability imposed on a member as a contributory in a liquidation.
187. Mr Trower of course accepts that no call can be made on LBHI2 or LBL while LBIE remains in administration. The power arises only in a liquidation. He submits that the absence of any provision for calls in an administration should not prevent the courts from developing the contributory rule so as to apply in an administration, in order to protect the very interests which it exists to protect in a liquidation. The rule should be developed to meet the changes in insolvency procedures made by the introduction of administrations, and in particular the power to wind up the affairs of the company and to distribute the proceeds of realisations of assets among creditors in an administration.
188. The fundamental difficulty in applying the contributory rule in an administration is precisely because there is no statutory mechanism for making calls on contributories in an administration. While LBIE remains in administration, there can be no calls and therefore nothing that LBHI2 and LBL as members could do to put themselves in a position where they could prove as creditors in respect of their subordinated and

unsubordinated claims. Yet this would be the result of applying the contributory rule to a company in administration. It is no answer to say, as Mr Trower does, that in this case LBHI2 and LBL would be unable by virtue of their own insolvency to meet any calls. The rule, if it is to apply, must apply equally to solvent and insolvent contributories. If the affairs of LBIE are fully wound up in the course of its distributing administration, culminating in the dissolution of the company without a liquidation, LBHI2 and LBL, even if they were fully solvent, would have no opportunity of participating as creditors in any distribution. It might be that this effect could be mitigated by a retention by the administrators of sufficient funds to pay dividends on the proofs by LBHI2 and LBL as creditors, and to pay such dividends to them as and when it became clear that no liquidation would follow. There is however no legislative mechanism or justification for adopting such a procedure. In my judgment, if it was contemplated or intended that the contributory rule should apply in a distributing administration, either administrators would have been given the same power to make calls as liquidators or provisions of the sort just mentioned would have been spelt out in the legislation.

189. Mr Zacaroli submitted that the absence of an equivalent provision to section 74 for a company in administration appeared to be the result of an oversight rather than a deliberate policy decision. It is not particularly useful to speculate why no provision has been made for calls in an administration, but I would be surprised if it were an oversight. It may be that it was considered that there were so few companies where calls on members could be called only in a liquidation that it was not thought worthwhile to include the elaborate provisions which apply in a liquidation. The view may have been taken that, for those few cases where this was a live issue, the company could proceed to liquidation, rather than remaining in a distributing administration. This is simply speculation on my part. The important point is that there is no provision for calls to be made by administrators of the sort provided in section 74(1).
190. There is no case in which the contributory rule has been invoked except in relation to calls already made by the liquidator. If Mr Trower's submissions were well-founded, it would follow that the rule could be relied on in the period between the commencement of the liquidation and the making of any call. In *Grissell's Case*, the issue was whether, in the case of a contributory who was also a creditor, there should be set-off for "so much of his debt as is equal to the amount of calls which have been made upon, but not paid by, him" (p.534). Lord Chelmsford LC, sitting with Knight Bruce LJ and Turner LJ, held that there could be no such set-off. Lord Chelmsford said at p.536:

"Taking the Act as a whole, the call is to come into the assets of the company, to be applied with the other assets in payment of debts. To allow a set-off against the call would be contrary to the whole scope of the Act. In support of this view it will be sufficient to refer again to the 133rd section as to the satisfaction of the liabilities of the company pari passu. And the argument against the allowance of a set-off, addressed to the Court on behalf of the official liquidators, is extremely strong – that if a debt due from the company to one of its members should happen to be exactly equal to the call made upon him,

he would in this way be paid 20 shillings in the pound upon his debt, while the other creditors might, perhaps, receive a small dividend, or even nothing at all."

Lord Chelmsford added that it necessarily followed that "the amount of such call must be paid before there can be any right to receive a dividend with the other creditors."

191. The shares in *Grissell's Case* had a nominal value of £50 each, on each of which £15 had been paid up before the commencement of the liquidation. The liquidators made a call of £10 per share and this was the call which was in issue. This left £25 uncalled on each share. There was no issue whether payment of a dividend on the contributory's claim as a creditor should be deferred until either a call was made in respect of the uncalled capital or until it became clear that no such call would be made. Lord Chelmsford did however address this issue at p.535:

"In the first place, I think that they cannot be required to pay up the full amount remaining unpaid upon their shares. The 75th section of the Act enacts, that the liability of any person to contribute to the assets of a company, in the event of it being wound up, "shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as herein after mentioned for enforcing such liability." Until the call is made, there is nothing more than a liability to contribute. This, indeed, creates a debt, but the debt does not accrue due until the call is made. The power to make calls is only to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves. But if the whole of the amount unpaid upon the shares were required to be paid up, more might be raised than would be requisite for these purposes, and it might be that a contributory thus paying in advance might lose all that he had so paid in the event any of his own contributories becoming insolvent."

In the concluding paragraph of his judgment at pp.536-537 he said:

"The amount of the call being paid, the member of the company stands exactly on the footing of the other creditors with respect to a dividend upon the debt due to him from the company. The dividend will be of course on the whole debt, and the member of the company will from time to time, when dividends are declared, receive them in like manner when either no call has been made, or, having been made, when he has paid the amount of it."

192. It is clear from the judgment of Buckley J in *In re West Coast Gold Fields Ltd* that he understood the effect of *Grissell's Case* to be that a contributory could not receive any payment out of the estate as a creditor until he had satisfied "all his obligations as a

shareholder and contributory, by paying into the common fund all sums due from him in respect of calls” (p.600).

193. The position as regards the rule in *Cherry v Boulton* is the same. It is well-established that the rule does not apply where the debt to the estate is not presently payable, even if it is a future debt that will become payable. It was held in *In re Abrahams* [1908] 2 Ch 69 that a beneficiary who owed a debt payable by instalments to the estate was entitled to receive his share of the residue immediately and that the executors were not entitled to retain it as against the future instalments. Mr Trower placed some reliance on the decision of Swinfen Eady J in *In re Rhodesia Goldfields Ltd* [1910] 1 Ch 239. The decision and reasoning in that case is, however, consistent with *In re Abrahams*. The amount of the debt due from the beneficiary to the fund had not been established or ascertained but there was no dispute that, if an amount was due, it was presently payable. In those circumstances it was held that, pending ascertainment of the amount if any due, the share of the fund for which payment was sought should be retained. The decision in *In re Abrahams* was stated to be correct by Lord Walker in *Re Kaupthing* at [45].
194. I conclude therefore that neither the contributory rule nor the rule in *Cherry v Boulton* has any application in an administration of an insolvent company. The administrator is not permitted to refuse to admit a proof of debt by a member or to refuse to pay dividends on such proof on the grounds that, if the company went into liquidation, the member would or might become liable to calls under section 74(1).

Proof in the administration or liquidation of a member in respect of a contingent liability for calls

195. It is not in dispute that, if a liquidator has made calls in respect of the liability under section 74(1), he may prove for the amount of such calls in the liquidation, administration or bankruptcy of the contributory. The call creates a presently payable debt and there is no reason why it should not form the subject of a proof. Paragraph 8 of schedule 4 to the IA 1986 expressly gives power to a liquidator to prove in the bankruptcy or insolvency of any contributory for any balance against his estate. The issue is whether a proof may be lodged by an administrator of a company in the insolvency of a member in respect of a contingent liability under section 74(1), which is contingent on the company going into liquidation and on calls being made by the liquidator. The administrators of neither LBHI2 nor LBL have yet given notice of an intention to declare dividends, but the issue will become live if the administrators of either or both of those companies give such notices.
196. It is, in my judgment, clear that the contingent liability of a member to pay calls which may be made in a future winding up of the company satisfies the general characteristics necessary for a provable debt in the insolvency of the member. I have earlier referred to the authorities which establish that such liability commences with the contract by which he became a member. In the case of a corporate member, there is no difficulty in applying the definition of “debts” in rule 13.12(1) to this liability. It is a “debt or liability to which the company may become subject after [the date on which the company went into liquidation or prior administration] by reason of any obligation incurred before that date”: rule 13.12(1)(b). In view of the contractual basis of the obligation, giving rise to the statutory liability, this would be the case even before the decision of the Supreme Court in *Re Nortel*. There can be no room for

doubt on this conclusion, given the very broad meaning given to that provision by the Supreme Court.

197. In *Re Nortel*, Lord Neuberger said at [75]:

“Where a liability arises after the insolvency event as a result of a contract entered into by a company, there is no real problem. The contract, insofar as it imposes any actual or contingent liabilities on the company, can fairly be said to impose the incurred obligation. Accordingly, in such a case the question whether the liability falls within paragraph (b) will depend on whether the contract was entered into before or after the insolvency event.”

This paragraph largely, but not completely, covers the present case. The statutory liability commences with the contract of membership but the liability is not imposed by the contract, but by the statute.

198. Lord Neuberger went on to consider the case of obligations arising other than under a contract. He said at [76]:

“Where the liability arises other than under a contract, the position is not necessarily so straightforward. There can be no doubt but that an arrangement other than a contractual one can give rise to an “obligation” for the purposes of paragraph (b). That seems to follow from rule 13.12(4).”

199. At [77] Lord Neuberger specifically considered statutory liabilities:

“However, the mere fact that a company could become under a liability pursuant to a provision in a statute which was enforced before the insolvency event, cannot mean that, where the liability arises after the insolvency event, it falls within rule 13.12(1)(b). It would be dangerous to try and suggest a universally applicable formula, given the many different statutory and other liabilities and obligations which could exist. However, I would suggest that, at least normally, in order for a company to have incurred a relevant “obligation” under rule 13.12(1)(b), it must have taken, or been subjected to, some step or combination of steps which (a) had some legal effect (such as putting it under some legal duty or into some legal relationship), and which (b) resulted in it being vulnerable to the specific liability in question, such that there would be a real prospect of that liability being incurred. If these two requirements are satisfied, it is also, I think, relevant to consider (c) whether it would be consistent with the regime under which the liability is imposed to conclude that the step or combination of steps gave rise to an obligation under rule 13.12(1)(b).”

200. There can in my view be no doubt at all that the liability of a member to calls under the statute in a winding up satisfies requirements (a) and (b) set out by Lord Neuberger. The issue is therefore whether the requirement in (c) is satisfied.
201. Mr Wolfson submitted that for two reasons the administrators of LBIE cannot seek to prove in an administration or liquidation of LBL.
202. First, Mr Wolfson relied on the provisions of section 82 of the IA 1986, expressly permitting a proof in respect of future calls in the bankruptcy of an individual debtor. He submitted that the presence of these express provisions and the absence of any equivalent provisions permitting proof in the administration or liquidation of a corporate member showed that proof for a liability to future calls was incapable of proof in the latter. I reject this submission for the reasons already given when earlier discussing this section. The particular incidents of personal bankruptcy made it necessary to introduce these express provisions. Their purpose is not to create a right of proof in a personal bankruptcy which is not present in a corporate insolvency.
203. Secondly, Mr Wolfson submitted that administrators have no power to prove in respect of a contingent liability for calls. He relied on paragraph 8 of schedule 4 to the IA 1986 to which I have already referred, conferring an express power on a liquidator to prove in the bankruptcy or insolvency of a contributory, and the absence of any equivalent power for an administrator, as showing that administrators had no such power and as further showing that there was no provable liability until a call was made.
204. This submission appears to involve two points. The first, more general, point is that only calls which have been made can be the subject of a proof. It follows that even in a liquidation, the liquidator could not lodge a proof in the insolvency of a contributory until a call had been made and then only for the amount of the call. I do not see how this point can be spelt out of the power conferred expressly by paragraph 8 of schedule 4. It cannot, by an implication which is not by any means necessary, displace the effect of rule 13.12, as interpreted by the Supreme Court in *Re Nortel*. Support for the proposition that a contingent liability to pay calls is not capable of proof must be found elsewhere.
205. The second, narrower, point is that an administrator lacks power to submit a proof in the insolvency of a contributory, by reason of the absence of an express power, in contrast to the power expressly conferred on a liquidator. The first point to make here is that, if a contingent liability for calls is a provable debt, it is open to a company which is not in administration or liquidation to prove for such liability. It is true that in many cases the only estimate which could be given of such contingent liability is nil, but there would be cases of companies whose solvency was in doubt where it might be appropriate to put an estimate, even a substantial estimate, on the contingent liability. The company, acting by its directors, would not need express statutory authority to lodge a proof in the insolvency of a member.
206. If that is right of the company before it is in administration, it must also be right of a company in administration. There can be no sense in a regime which deprives the company of this right just at the moment when it is likely to acquire a substantial value. Even in an administration, the power of the company could be exercised by the directors, if necessary with the consent of the administrator under paragraph 64(1) of

schedule B1 to the IA 1986. In my view, the administrator has the necessary power under paragraph 59(1), as being something which is “necessary or expedient for the management of the affairs, business and property of the company.” Further, paragraph 20 of schedule 1 to the IA 1986 confers power on an administrator to “rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company.” Mr Wolfson submitted that there was no indebtedness in respect of a call until the call was made, but this simply restates the first proposition that only an actual call can give rise to a provable debt. There can be no doubt that paragraph 20 enables an administrator to claim in the insolvency of any person, which must include a member, for any provable debt, including contingent debts.

207. Mr Isaacs submitted, supported by Mr Wolfson, that there could be no provable debt before the company went into liquidation because the liability was owed not to the company but to its liquidator. The company therefore had no status as a creditor to submit a proof in respect of calls, whether contingent, future or present. As the creditor was the liquidator, only the liquidator had such status. It was in that sense that paragraph 8 of schedule 4 to the IA 1986 was consistent with there being no provable debt prior to the liquidation of the company.
208. Mr Isaacs relied on the decision of Sir George Jessel MR in *In re Whitehouse & Co* (1878) 9 Ch D 595. The issue was whether a contributory was entitled to set off a debt due to him from the company against calls made against him both by the company before the commencement of its liquidation and by the liquidator after the commencement of its liquidation. Speaking of the statutory liability to calls made by a liquidator for the purpose of enforcing the liability under section 38 of the Companies Act 1862 (now section 74 of the IA 1986), Sir George Jessel said at pp 599-600:

“That is a new liability; he is to contribute; it is a new contribution. It is a mistake to call that a debt due to the company. It is no such thing. It is not, as has been supposed, in any shape or way a debt due to the company, but it is a liability to contribute to the assets of the company; and when we look further into the Act, it will be seen that it is a liability to contribution to be enforced by the liquidator. It is quite true that a call made before the winding up – and in the case before me a call was made before the winding up – is a debt due to the company, but that does not affect this new liability to contribution.”

He had earlier described the section as giving rise to a “debt due to the liquidator” which could not therefore be the subject of set-off against a debt due from the company.

209. These observations were disapproved by Cotton LJ and Lindley LJ in *In re Pyle Works* (1889) 44 Ch D 534. The case concerned a mortgage of the uncalled amounts on some partly paid shares and all the present and future property of the company. The issue was whether the mortgages extended to the calls to be made by the liquidator in the winding up of the company, so giving the mortgagees priority over the unsecured creditors. The Court of Appeal, affirming the decision at first instance, held that the calls to be made by the liquidator were subject to the mortgages. As regards *In re Whitehouse & Co*, Cotton LJ said at p.575:

“Although the decision of the Master of the Rolls was right, yet in my opinion his observations upon the position of the liquidator, as regards a call made in the winding up upon a shareholder who is also a creditor of the company and claims a right to set-off his debt against the call, were, though unintentionally, erroneous; for he disallowed the set-off in that case, not on the true ground put by the Court of Appeal in Black & Co’s Case, but on the ground that a call is something that accrues to the liquidator, and is not a sum which is really due to the company, and that the shareholder’s debt is a debt due to him from the company and not from the liquidator.”

The same view was expressed by Lindley LJ at pp 585-586.

210. Mr Isaacs invited me to say that the views of Sir George Jessel should be preferred. Even if it were open to me to do so, I would not prefer his views to those of Cotton LJ and Lindley LJ, which have not subsequently been doubted.
211. *In re Pyle Works*, like *In re Whitehouse & Co*, was concerned with a call by a liquidator of amounts unpaid on shares in a limited company. They were therefore calls which could have been made by the directors before the company went into liquidation, but were instead made by the liquidator under his statutory powers. This was remarked on by Cotton LJ and Lindley LJ as relevant to the issue whether the uncalled capital could be the subject of a mortgage created by the company prior to its liquidation. There is in this respect a distinction between such calls and calls which can only be made in a winding up. At p.574, Cotton LJ said:

“But it was said that calls which are made after the winding up has commenced are not to be considered as part of the capital of this company. I cannot agree to that. It was argued that the liability to “contribute to the assets of the company”, in the 38th section of the Act, is something entirely different from a call made by the directors before the winding up, and that a call made after the winding up has commenced is not to be considered as a call of part of the capital of the company. In my opinion, that view is wrong as regards a case like this. We are considering the case of a call made in the winding up of a limited company – not of a company limited by guarantee nor of an unlimited company. In the case of an unlimited or of a guarantee company, what can be called for in the winding up, may not be, I think is not, considered as part of the capital of the company; but in the case of a limited company, although there is a special provision in section 38, sub-s.4 as to what is to be done when there is a winding up, yet that is merely giving the power to call for that part of the capital of the company which has not been called up.”

A similar distinction was made by Lindley LJ at p.584. He referred to the moneys which are payable only on a winding up as forming “a statutory fund which only comes into existence when the company is in liquidation”.

212. I do not consider that this distinction can justify the conclusion that, for the purposes of proof in the insolvency of a member, a distinction should be drawn between a liability under section 74(1) of the IA 1986 to pay uncalled capital on shares and a liability under that section of a member of a company limited by guarantee or of an unlimited company. In all cases, the liability stems from the contract of membership and commences with that contract and, in all cases, it constitutes a liability under the section to contribute to the assets of the company in order to fund the payment of its liabilities.
213. To say that the company is not a creditor in respect of such a contingent liability under section 74, is to say that although there is a liability, before a liquidation, there is no creditor. The consequence would be that the bankruptcy or liquidation of a member could proceed to a conclusion without the possibility of any proof in respect of this liability already undertaken by the member. It would in my view be extraordinary if a liability could be avoided in this way. To suggest, as some counsel did, that this result could be avoided by a company placing itself in liquidation, even though that was both unnecessary and undesirable, does not strike me as an adequate response.
214. Mr Isaacs relied on Fry J in *Ex parte Branwhite* (1879) 40 LT 652 at 653:

"It appears to me to be clear that the liability to contribute to the assets of the company while it is a going concern, and the liability to contribute to the assets of the company when it is being wound up, are separate and distinct liabilities – the one created in effect by the articles of association of the company and the deed of settlement and its registration under the 16th section of the Act; the other arising only in the event of the company being wound up. Those two liabilities appear to me to be very different in their nature. The one requires payment of the amount of the calls to the company, the other requires payment of the amount of the calls to the liquidator or officer of the court; if a voluntary winding up to the liquidator. In the one case the payment must be made according to the discretion of the directors, and in the other not, but under the direction of the court or the voluntary liquidator. One is for the general purposes of the company, and the other is to meet the special demands of the fund created by the statute."

In *In re White Star Line Ltd*, the Court of Appeal said that they could see no flaw in the reasoning in this judgment. While obviously accepting the distinct characters of the two liabilities, this passage does not in my judgment justify a conclusion that prior to the liquidation of a company there can be no proof in the insolvency of a member of the contingent liability to meet calls which can only be made in a liquidation.

215. Mr Isaacs found it difficult to reconcile his submissions with the authorities that establish that the statutory liability, even for calls which can be made only in a winding up, commence with the contract of membership. He submitted that until there is a winding up, the statutory liability has no existence whatsoever, but once there is a winding up "it springs back and it originates from the time when the member becomes a member." He did not accept that there was a statutory liability that existed "in any

meaningful sense” before the commencement of the liquidation. I do not find that a convincing explanation.

216. Mr Isaacs submitted that, even if conditions (a) and (b) stated in *Re Nortel* at [77] were satisfied, the precondition in (c) would not be satisfied. He submitted that it would not be consistent with the regime under which the liability in section 74(1) is imposed to conclude that an obligation under rule 13.12(1)(b) arises, at any rate prior to the commencement of the liquidation of the company and probably not until a call is actually made. Mr Isaacs relied on three grounds for this submission.
217. First, he relied on the many provisions to the effect that a call can be made and enforced only by a liquidator under the powers of the court delegated to him by the legislation. Unlike the liability arising on the issue of a contribution notice which was in issue in *Re Nortel*, the liability in issue in this case can arise only in the liquidation of the company. I have addressed this submission when concluding above that the company can properly be regarded as the creditor for the purposes of proof in the insolvency of a member prior to the liquidation of the company.
218. Secondly, Mr Isaacs relied on the provisions which exist for the protection of contributories when the liquidator settles a list of contributories and makes calls: see rules 4.196, 4.198, 4.199 and 4.202. These protections are not operable in circumstances where the company, whether acting by its directors or an administrator, lodges a proof in the insolvency of a member. I am not persuaded by this. It is true that rule 4.198 enables a person entered on a list of contributories to object, but the trustee or liquidator or administrator of an insolvent member would be entitled to reject a proof. Likewise, I do not follow why any other objections which could arise in the event of a liquidation could not also be taken in considering a proof of debt. Insofar as the member would be entitled to look to other members to share in the liability in the event of calls made in a liquidation, this can be factored into the estimate of the member’s contingent liability for the purposes of proof.
219. Thirdly, Mr Isaacs submitted that there would be some surprising results if a proof for a contingent liability was possible before the company went into liquidation.
220. It was said, first, that it could involve the imposition of a greater liability than that provided by section 74, because the administrator of the company would use the proceeds of proof in the payment of the costs and expenses of the administration and the payment of its debts and, if the company were then to go into liquidation, further calls could be made by reference to the amount of the costs of the liquidation and the debts requiring payment. As an administrator is the agent of the company, most if not all expenses of the administration are also liabilities of the company, for which a member with unlimited liability will be liable.
221. Secondly, a past member has no liability to contribute under section 74 if he ceases to be a member for one year or more before the commencement of the winding up. This, it seems to me, would be one of the factors taken into account in estimating the amount of the liability.
222. Thirdly, if a company in administration could prove in the insolvency of a member, it should also be able to do so before it goes into administration but, said Mr Isaacs, this is an odd result for a company which is not even in any insolvency regime. This no

doubt would mean in many cases that the contingent liability would be estimated to have a value of nil but it does not mean that in principle the liability is incapable of proof.

223. Fourthly, the member would not be able to take advantage of the rights conferred on it by the legislation in the event of a call in a liquidation, in particular the right to share in any adjustment of the rights as between contributories. Again, this appears to me to be a matter which can be taken account of in estimating the value of the claim, having regard to the amount which the company would be likely to be able to recover from other contributories.
224. Fifthly, Mr Isaacs relied on the effects of section 82 of the IA 1986, when read with *Martin's Patent Anchor Co Ltd v Morton* (1868) LR 3 QB 306. In that case, a former bankrupt who had received his discharge but retained partly paid shares sought to rely on section 75 of the Companies Act 1862, the predecessor to section 82(4), to argue that he was released from any liability to pay up the shares because a proof could have been lodged in his bankruptcy in respect of future calls. Such a result would, in the words of Blackburn J at p.311 be "a monstrous injustice". It was avoided because what is now section 82(4) applies only where the bankruptcy is still pending when the winding up takes place. Mr Isaacs submitted that it would be strange if there were a different result if the member were a company in administration or liquidation. I do not consider that it would be strange if there were different consequences, in view of the very different circumstances of a distributing administration or liquidation of a company, as opposed to the bankruptcy of an individual. It is the fact that an individual may be discharged from bankruptcy, still holding his partly paid shares, which creates a real difference in circumstances. No such possibility exists in relation to an insolvent company in a distributing administration or liquidation.
225. In any event, section 82 applies only where the company is itself in liquidation. It has no bearing on whether a company which is not in liquidation may prove for a contingent liability in respect of future calls in the administration or liquidation of a corporate member. It was held in *In re McMahon* [1900] 1 Ch 173 that a company, while a going concern, was entitled to prove in the administration of the insolvent estate of a deceased shareholder for the estimated value of the liability to future calls in respect of the shares registered in the name of the deceased. Accepting that the proof was in respect of a liability in respect of calls which could be made before the company was in liquidation, it nonetheless establishes that there is no restriction on a proof for future calls to those cases where the insolvency of the company and of the contributory are concurrent. It is also worth observing, as did Stirling J in his judgment at p.178, that at the time when section 75 of the Companies Act 1862 was enacted and when *Martin's Patent Anchor Co Ltd v Morton* was decided, the right of proof in a bankruptcy did not generally extend to contingent liabilities. Stirling J regarded section 75 of the Companies Act 1862 as a step by the Legislature towards the widening of the circumstances in which contingent liabilities could be proved, rather than as providing an inference that companies, while going concerns, did not enjoy a right of proof within the terms of the later bankruptcy legislation.
226. I conclude, therefore, that LBIE, acting by its administrators, is entitled to prove in an administration or liquidation of LBL or LBHI2 for their contingent liability arising in a liquidation of LBIE under section 74(1).

Set-off in the administration or liquidation of the members

227. If, as I have held, the administrators or subsequent liquidators of LBIE are entitled to prove in the administration or subsequent liquidation of LBL and LBHI2, the question arises whether, by reason of the mandatory application of insolvency set-off in the administrations or liquidations of LBL and LBHI2, the claims of those companies against LBIE as creditors should be set off against LBIE's claim against them as contributories.
228. Free from any authority, I would conclude that mandatory insolvency set-off applied in these circumstances. It is displaced in the liquidation of the company whose liquidator is making the calls because of the contributory rule. As discussed earlier, the contributory rule prevents a contributory from sharing in a distribution of the estate as a creditor until he contributes the amount which he is liable to pay. This flows from the statutory regime applying to the company in liquidation. The contributory rule, as applied to the liquidation of the company whose liquidator is making calls, has no obvious application in the administrations or liquidations of the contributories. So far as the other persons interested in the winding up of their estates, the creditors, LBIE is simply another creditor.
229. This has long been established as the position in the bankruptcy of a contributory. The point arose in *In re Duckworth* (1867) LR 2 Ch App 578. The debtor was the holder of 100 shares in a company and was also a creditor of that company. The company was ordered to be wound up and six months later the debtor executed a deed of assignment to trustees for the benefit of his creditors which was duly registered under the relevant legislation. The liquidator made a call on the shares and applied to the Court of Bankruptcy for an order that the trustees pay the dividend on this claim due under the deed of assignment. Giving a judgment with which Turner LJ agreed, Lord Cairns LJ held that the bankruptcy of the contributory was subject to the bankruptcy statutes. The contributory rule, as laid down in *Grissell's Case* decided only nine months earlier, had no application. *Grissell's Case* would, of course, apply in the liquidation of the company if the debtor's trustees had sought to prove his debt in that liquidation. This decision was taken as correct by the Court of Appeal in *In re G.E.B, a Debtor* [1903] 2 KB 340 (see, for example, Romer LJ at p.352) and it has never been doubted. I find it difficult to see why the same reasoning would not apply in the liquidation of a corporate contributory.
230. However, Wright J held in *In re Auriferous Properties Ltd (No 1)* [1898] 1 Ch 691 (*Re Auriferous (No 1)*) that the liquidator of the company was entitled to prove in the winding up of a corporate contributory for the whole amount due by way of calls on the shares without set-off. The liquidator of the corporate contributory could prove in the winding up of the company for a debt due to the corporate contributory, but could receive no dividends in respect of such proof until the full amount of the calls had been paid. The requirement to pay calls in full before receiving a dividend on the proof in the liquidation of the company was decided by Wright J in *In re Auriferous Properties Ltd (No 2)* [1898] 2 Ch 428, on a straightforward application of *Grissell's Case*. Mr Wolfson submitted that *Re Auriferous (No 1)* was wrongly decided and should not be followed. Mr Trower submitted that it was correctly decided and that it is *In re Duckworth* which is anomalous. Mr Trower pointed out that *Re Auriferous (No 1)* was cited by Lord Walker in the passage at [52] in *Re Kaupthing* which I have earlier set out.

231. It is necessary therefore to look with some care at the judgment of Wright J in *Re Auriferous (No 1)*. The facts were that African Gold Properties Ltd (the Gold Company) held shares in Auriferous Properties Ltd (the Auriferous Company). In January 1896, the Auriferous Company became indebted to the Gold Company in the sum of £2,775. Two calls were made by the directors of the Auriferous Company in January and June 1896, making the Gold Company liable in the sum of £1,250. In December 1896, the Auriferous Company was wound up by order of the court. In January 1898 the Gold Company went into creditors' voluntary winding up. The Gold Company lodged a proof for its debt in the winding up of the Auriferous Company. Acting by its liquidator, it issued a summons in the winding up of the Auriferous Company, raising for decision the question whether the debt owing to it by the Auriferous Company could be set off by the calls due by it to the Auriferous Company. The summons was subsequently amended by also being entitled in the matter of the winding up of the Gold Company.
232. When reading the report, I was initially puzzled as to whether the issue raised by the liquidator of the Gold Company related to the winding up of the Auriferous Company, rather than the winding up of the Gold Company. Taking out the summons in the winding up of the Auriferous Company suggested that it was this question which was being raised. Although much of the argument of counsel for both parties is at least ambiguous on this, it is clear from the last sentence of the report of the argument of counsel for the Gold Company and from the terms of the judgment of Wright J, particularly at p. 697, that the question did indeed relate to the winding up of the Gold Company.
233. At the start of his judgment at p. 696, Wright J observed that if the Gold Company had not been in liquidation it could not have set off its claim for money lent against its liability for the amount of the call. He referred to *Grissell's Case* and continued:

"The ground of the rule is that all contributions from shareholders enforceable in the liquidation are by the Companies Acts made applicable for the payment of the company's creditors pari passu...and that a person who is a creditor and also a contributory cannot be allowed to do what might amount to paying his own claim in full out of a fund which ought to be distributed rateably..."

He continued by observing that the amount due in respect of the calls was enforceable by the liquidator of the Auriferous Company by a balance order as a contribution to be made in the winding up of the Auriferous Company and could not be the subject of set-off. The judgment thus far focused on what would happen in the winding up of the Auriferous Company.

234. Wright J continued by saying that "in the present case it happens that the Gold Company is also in liquidation, and the question is, What is the effect of this?" He then summarised the effect of *In re Duckworth*:

"If the Gold Company had been a bankrupt individual instead of being a company in liquidation, the liquidator of the Auriferous Company must have enforced his claim in the bankruptcy and according to bankruptcy law, which even

before and apart from the Judicature Act would have allowed the set-off."

235. He continued that in the case before him the creditor-contributory was not a bankrupt individual but a company in liquidation and "therefore, the particular ground on which *In re Duckworth* was decided is not applicable." He said that it was not therefore the bankruptcy legislation which applied, but the Companies Acts as administered in the Chancery Division. He continued:

"And the simple question is whether s. 10 of the Judicature Act, 1875, has introduced into the law of the winding-up of companies the bankruptcy rules as to set-off, so as to allow a set-off against liability for the amount of unpaid calls in the case of a company constituted with limited liability. It seems to me that this question is decided in effect in the negative by Gill's Case, which was cited with approval in the Court of Appeal in In re Washington Diamond Mining Co.; and that the liquidator of the Auriferous Company is entitled to prove in the winding-up of the Gold Company for the whole amount still due upon the shares, leaving the liquidator of the Gold Company to his right of proof in the winding-up of the Auriferous Company for the money lent. It is true that in Gill's Case the creditor-contributory was not a company in liquidation, but that circumstance does not prevent it from being in point as a decision that the bankruptcy law of set-off is not imported by the Judicature Act into the law of companies so as to allow a set-off against calls; though for other purposes there may be the same right as in bankruptcy (see in Ex parte Theys) to a set-off of cross-claims as existing at the time of the bankruptcy. In re Duckworth has, therefore, no application."

236. As appears from that passage, it was reliance on the decision in *In re General Works Co, Gill's Case* (1879) 12 Ch D 755 which led Wright J to hold that there could be no set-off, not only in the liquidation of the company but also in the liquidation of the corporate contributory. In this way he distinguished the position of an individual contributory in bankruptcy.
237. In *Gill's Case*, Mr Gill had obtained a judgment for £501 against the General Works Company Limited before it was wound up by order of the court. Mr Gill was the holder of unpaid shares, on which a call was made by the liquidator giving rise to a liability on his part of £220. Mr Gill claimed the right to set off his debt of £501 against the call and to prove in the winding up for the balance. The liquidator issued a summons to enforce payment of the call which Mr Gill defended on the basis of the right to set-off which he claimed. Bacon V.C. decided the case on a straightforward application of *Grissell's Case*. He said at p.757:

"The law vests in the liquidator the control of all the assets of the company, and the assets of the company in this case consist of, amongst others, a sum which Mr. Gill undertook to contribute to the assets of the company, whatever might happen. Though he has become a creditor, he must permit the

assets to be realised, including the calls on him. Even if he has obtained a judgment against the company, he can not levy any execution under it so as to get at assets in the hands of the official liquidator....Mr. Gill is nothing better than a partner in a concern which has become insolvent, and if I were to adopt his contention, the result would be to allow one creditor only to recover 20s. in the pound, while all the other creditors had to be satisfied with little or nothing."

238. I do not see how the decision in *Gill's Case* can assist in the conclusion that there is no set-off in the liquidation of a corporate contributory. It was concerned with the winding up of the company, not the corporate contributory. After the passage in his judgment at p.697 which I have cited above, Wright J continued that the view which he took "seems to be consistent with all the decisions on section 101 of the Act of 1862 since the Judicature Act" and he cited *Ex parte Pelly* (1882) 21 Ch D 492 at 509 and *In re Pyle Works* per Lindley LJ. Those cases support the application of *Grissell's Case* to the liquidation of the company making the calls. Neither case is concerned with the position as regards set-off in the liquidation of a corporate contributory and I am not aware of any other case before *Re Auriferous (No 1)* which dealt with that point.
239. What is the effect of the citation of *Re Auriferous (No 1)* by Lord Walker at [52] in *Re Kaupthing*? The first point to note is that Lord Walker was not concerned to examine the position which would apply in the liquidation of a corporate contributory. He was concerned with the application of the contributory rule in the liquidation of the company in which the calls were made. At the start of [52], Lord Walker instanced the case of a shareholder with partly paid shares who is also a creditor of the insolvent company. He cited *Re Auriferous (No 1)* as authority for this proposition:

"Suppose he has 10,000 £1 shares, 10p paid, and is owed £15,000, but the dividend prospectively payable is only 30p in the pound. If the liquidator calls on him for £9,000 to make his shares fully paid up, he has no right of set-off, and to that extent he is disadvantaged."

He went on to cite *Re Auriferous (No 2)* as authority for the proposition that if the creditor-contributory seeks to prove in the liquidation, the liquidator can rely on the contributory rule so that the creditor-contributory can receive nothing until he has paid everything that he owes as a contributory.

240. It seems to me clear that Lord Walker is dealing with two closely related but separate issues. The first is the unavailability of set-off, and the second is the requirement for the creditor-contributory to pay everything he owes as a contributory before he can receive anything as a creditor. Both issues relate to the position in the liquidation of the company, not the contributory. The entire first page of the judgment of Wright J in *Re Auriferous (No 1)* supports that first proposition as it applies to the liquidation of the company making the calls. Lord Walker was not concerned with the position in the liquidation of a corporate contributory and there is certainly no indication that any argument was advanced to the Supreme Court as to the position in those circumstances and as to whether *Re Auriferous (No 1)* was correctly decided. I

conclude that the citation by Lord Walker of *Re Auriferous (No 1)* does not amount to an endorsement of the actual decision in that case.

241. My clear view is that *Re Auriferous (No 1)* was wrongly decided. In my judgment, it seeks to apply the principle in *Grissell's Case* to the wrong liquidation and it wrongly seeks to distinguish the position in the bankruptcy of an individual contributory, as held by the Court of Appeal in *In re Duckworth*. I note that the view is taken in *Derham on the Law of Set-off* (4th ed) that *Re Auriferous (No 1)* is questionable: see paras 8.74 and 11.09 (fn 36). I appreciate of course that the decision is 114 years old, but it is in an area of the law which has lain dormant for all but 20 years of that period. It has never been approved by a higher court nor, so far as I am aware, applied in any other case.
242. My conclusion is, therefore, that in the administration or liquidation of LBHI2 or LBL set-off will apply between any claim by LBIE for an actual or contingent liability under section 74(1) and those companies' claims against LBIE.

Set-off in the administration of LBIE

243. If, as I have held, the contributory rule does not apply outside a liquidation and therefore does not apply in the administration of LBIE, the question arises whether insolvency set-off applies in the administration of LBIE between the claims of LBL and LBHI2 admitted to proof and the contingent claim of LBIE to calls which may be made in a subsequent liquidation of LBIE. I have held that such contingent claims exist and may be the subject of proof and set-off in the administrations or liquidations of LBL and LBHI2. As there are therefore cross-claims between LBIE on the one hand and its members on the other, it would follow that the mandatory insolvency set-off applicable in a distributing administration by virtue of rule 2.85 would apply.
244. The question is therefore whether, given the particular characteristics of a liability to pay calls, there are reasons of principle or policy to displace the application of set-off, just as the contributory rule displaces set-off in a liquidation. Mr Wolfson submits that, as there can be no set-off in a liquidation of an actual liability to pay calls against a debt due to the company to the contributory, it follows that there cannot in an administration be a set-off of the contingent claim in respect of a possible call in a future liquidation against debts due by the company to the member. He submitted that the effect of set-off was to discharge the relevant liabilities to the extent of the set-off, so reducing or eliminating the liability of the member to pay calls in a future liquidation. He submitted that such a reduction or elimination would be contrary to the contributory rule as set out in *Grissell's Case* and subsequent cases, because it would mean that the members received either full payment or a greater payment in respect of their debts than other creditors and that the company was deprived, in a subsequent liquidation, of its right to obtain contributions for the purposes of making distributions among creditors.
245. These submissions have a number of notable features. First, as Mr Wolfson I think later accepted, the effect of a set-off of a contingent liability is not to discharge the actual liability should the contingency occur. A contingent claim is admitted to proof in an estimated amount. To the extent of that amount, a payment or set-off will discharge the underlying liability. But if the chances of the contingency occurring subsequently increase or if the contingency in fact occurs, the rules provide for the

estimate to be increased, if appropriate to the full amount. Set-off against a contingent claim in respect of future calls may therefore reduce the amount which may be recovered in respect of those calls but it will not eliminate it. Secondly, this takes no account of the particular circumstance in this case that the liability of the members is unlimited. I return to this point below. Thirdly, as Mr Trower submitted, the effect of Mr Wolfson's reliance on the contributory rule was to turn it on its head. The purpose of the contributory rule is to protect creditors, so that contributories must pay the amount due from them to constitute the fund for distribution among creditors before they are entitled to participate in the distribution themselves as creditors. Reliance on this principle to enable a member with a potential liability to pay calls to prove for the full amount of his claim as a creditor in an administration without set-off is a curious application of the rule and a curious way in which to protect the interests of the other creditors.

246. The only basis on which it might be argued that mandatory set-off in an administration should be displaced would be that the set-off reduced or extinguished the value of the right to make calls in a subsequent liquidation, were it to occur. This is not a result which could follow in the case of an unlimited company. However large the amount of set-off allowed against the member's claim as a creditor in the administration, the member, or his successor in title, would be liable without limit to calls in a subsequent liquidation.
247. The position as regards a company limited by shares may be more complicated. The liability of the member is limited to the amount unpaid on his shares. Allowing a set-off of a contingent claim in respect of a future call would therefore reduce the amount recoverable on a subsequent call made by a liquidator exercising his statutory powers. There is, however, some unreality about this. The liability of a member to pay up his shares is enforceable by the company under the powers contained in its articles of association before the company goes into liquidation. As I have earlier held, those powers are exercisable directly or indirectly by an administrator, as much as by directors when the company is under their control. The administrator of such a company would therefore be able to call up the amount unpaid on issued shares. Whether a set-off would then be permissible against sums due to the relevant members as creditors is not a matter which I am required to decide on this application. Mr Trower submitted that set-off would not be permissible in those circumstances. If that is right, the concern on which Mr Wolfson based his argument would be met. If, however, set-off were permitted, Mr Wolfson's concerns lack legal foundation. If a set-off is permitted against a present liability to pay calls whether before an administration or in an administration, there can be no obvious objection to permitting a set-off against a contingent liability to pay calls.
248. Mr Wolfson sought to meet this point by submitting that, in the case of a contributory which goes into administration before the company goes into distributing administration or liquidation, what falls to be brought into account in a set-off is not the full value of the proof against the contributory but rather only the dividend payable in the administration or liquidation of the contributory. LBIE would not therefore be able to claim against LBL for more than the dividend payable in the latter's insolvency on a proof by LBIE in respect of the contingent liability to calls. In support of this submission, Mr Wolfson relied on the authorities cited by Lord Walker at [15]-[19] in *Re Kaupthing* and Lord Walker's analysis of them. Those were all

cases involving individuals who were either liable to a fund to which the rule in *Cherry v Boulton* applied or were contributories in a company. The right to receive no more than the dividend arose where the individual had died or become bankrupt before the relevant fund was constituted by either a will taking effect or a company going into liquidation. In those circumstances, the person entitled to the benefit of a share in the fund or a share in the company was not the individual but his executor or trustee in bankruptcy and the amount due from them was no more than the dividend payable from the estate of the deceased or bankrupt. No such principle can apply where the contributory or member is a company. In those circumstances there is no change in the ownership of the right to participate in the fund or the share in the company. The set-off which is required is a set-off of the full value of the debts between the relevant parties.

249. I therefore conclude that in the administration of LBIE, insolvency set-off will apply as between the claims of LBL and LBHI2 as creditors and the contingent claim by LBIE in respect of calls in a possible future liquidation of LBIE. It is, of course, only if the value of such contingent claims are estimated at more than nil that any set-off will occur.

Summary of conclusions

250. My conclusions on the issues dealt with in this judgment are:

- i) The claims of LBHI2 under its subordinated loan agreements with LBIE are subordinated not only to provable debts but also to statutory interest and unprovable liabilities.
- ii) Creditors of LBIE whose contractual or other claims are denominated in a foreign currency are entitled to claim against LBIE for any currency losses suffered by them as a result of a decline in the value of sterling as against the currency of the claim between the date of the commencement of the administration of LBIE and the date or dates of payment or payments of distributions to them in respect of their claims. Such currency conversion claims rank as unprovable liabilities, payable only after the payment in full of all proved debts and statutory interest on those debts.
- iii) If the administration of LBIE is immediately followed by a liquidation, any interest in respect of the period of the administration which has not been paid before the commencement of the liquidation will not be provable as a debt in the liquidation nor will it be payable as statutory interest under either rule 2.88 of the Insolvency Rules or section 189 of the IA 1986.
- iv) Those creditors of LBIE with debts which carry interest by reason of contract, judgment or other reasons unconnected with the administration or liquidation of LBIE will be entitled to claim in a liquidation of LBIE, which immediately follows the administration, for interest which accrued due during the period of the administration, as an unprovable claim against LBIE, payable after the payment in full of all proved debts and statutory interest on such debts.

- v) The obligation of members to contribute under section 74(1) of the IA 1986 extends not only to provide for proved debts but also for statutory interest on those debts and un-provable liabilities.
 - vi) The contributory rule (that is, the rule that a contributory of a company in liquidation cannot recover anything in respect of any claims he may have as a creditor until he has fully discharged his obligations as a contributory) applies only in a liquidation. It does not apply in an administration, including the administration of LBIE. The equitable rule in *Cherry v Boulton* also does not apply.
 - vii) LBIE, acting by its administrators, will be entitled to lodge a proof in a distributing administration or a liquidation of either LBL or LBHI2 in respect of those companies' contingent liabilities under section 74(1) of the IA 1986 which may arise if LBIE were to go into liquidation. The valuation of such claims would be a matter of estimation under the provisions of the Insolvency Rules.
 - viii) In a distributing administration or liquidation of LBL or LBHI2, the claims of those companies respectively as creditors of LBIE would be the subject of mandatory set-off against the claims of LBIE in respect of those companies' contingent liabilities as contributories. I have reached the conclusion that the decision in *In re Auriferous Properties Limited (No 1)* [1898] 1 Ch 691 was wrong and should not be followed.
 - ix) In the administration of LBIE the contingent liabilities of LBL and LBHI2 as contributories will be the subject of mandatory set-off against the admitted proofs of debt of those companies as creditors of LBIE.
251. I must end by recording my thanks to counsel and their instructing solicitors for the quality of their written and oral submissions and the diligence of their research into important legal issues of complexity and, in some instances, obscurity. I will invite the parties to agree, if possible, a form of order which gives effect to this judgment.

SUMMARY OF CERTAIN MATERIAL COMMERCIAL TERMS OF ECONOMICS, FUNDING AND TRANSFERS¹

Defined terms have the meaning in the Schedule.

1.	Parties	LBHI2 Administrators, LBHI2, LBHI, Elliott and KS
2.	Other entities	LBL, LBIE
3.	Cash Consideration	The Funds shall pay (a) the LBHI Consideration to LBHI and (b) the LBHI2 Suh Debt Consideration plus the LBHI2 Senior Claims Consideration plus the LBHI2 Equity Claims Consideration to LBHI2 on the Effective Date by way of a capital contribution to be made to the Cayman LP, being approximately GBP 650 million in total.
4.	Recovery Pool	The Parties shall contribute into the Recovery Pool: (a) the KS Contribution; (b) the Elliott Contribution; and (c) the LBHI2 Contribution.
5.	Distributions (and Repayments)	Distributions shall be made quarterly, and, in the case of LBHI2 only, deferred consideration payable, (subject to certain adjustments, based on certain contingencies and outstanding disputes, payment of interest to LBHI2 in certain circumstances, and the retention of amounts to meet certain payment obligations, by way of distributions on various classes of interests in the Cayman LP, and payments in respect of other contractual obligations between the Parties and their Affiliates), in the order set out below: (a) 100% to the Funds until the Funds receive the Tier 1 Pool Threshold Amount; (b) 70% to the Funds and 30% to LBHI2 until the Funds and LBHI2 have received, in aggregate, the Tier 2 Pool Threshold Amount; (c) 50% to the Funds and 50% to LBHI2 until the Funds and LBHI2 have received, in aggregate, the Tier 3 Pool Threshold Amount; and (d) all surplus above the Tier 3 Pool Threshold Amount to be paid 75% to LBHI2 and 25% to the Funds. Proceeds from the portion of economic interests represented by the Preferred Equity sub-participated to the Equity Claims SPV will be distributed to the Funds. Proceeds from recoveries in respect of Future Claims will be distributed to

¹ This summary is qualified in its entirety by the terms and conditions of the Material Commercial Terms of Economic Interests, Funding and Transfers (the "Term Sheet") and is intended to be used for information purposes only and shall not in any way affect the meaning or interpretation of Term Sheet. The terms of the Term Sheet control to the extent that there is any conflict or inconsistency between the summary and said terms. This summary is published for information purposes only and should not be relied upon for any purpose. This summary shall be inadmissible as parole evidence in any suit, action or proceeding that may arise out of or in connection with the Term Sheet.

		participating Parties by reference to their interests in those Future Claims.
6.	Funding	Expenses in respect of matters other than Future Claims will be funded by loans from the partners of the Cayman LP based on the voting interests held (e.g., initially 1/3, 1/3, 1/3 for each of Elliott, KS and LBHI2). These loans will be required to fund expenses in an amount equal to GBP 10 million in the first year of operations, GBP 5 million in the second and third years of operations and GBP 2.5 million in each of the fourth and fifth years of operations. These loans will be contributed equally by LBHI2 and the Funds. Usage of these amounts will be pre-agreed between the partners. The majority of Voting Shareholders may cause the Cayman LP to enter into loans with interest at 3 month Libor + 3 year HY CDX spread plus 1% p.a. not to exceed GBP 25 million in the aggregate for the purpose of funding expenses, provided that loans with parties other than partners or LBHI will require unanimous consent of the Voting Shareholders. Additional funding (including the terms of interest thereon) above GBP 25 million in aggregate for the expenses of the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) shall be subject to the unanimous consent of the Voting Shareholders. If any partner determines that it shall not make a loan, the other Voting Shareholders can choose to lend in an amount equal to the deficit on a pro rata basis, provided that in the event that LBHI2 declines to lend, LBHI may assume LBHI2's rights and responsibilities with respect to such additional funding, and shall be entitled to lend as if it were a Voting Shareholder for that purpose on the same terms as would otherwise have applied to LBHI2. For the avoidance of doubt, no shareholder or LBHI shall be required to provide any loan to the Cayman LP (other than the loans described in the first paragraph of this Section 6). Loan Amounts shall first be repaid out of proceeds from the Recovery Pool, and may only be repaid out of other Loan Amounts if all Voting Shareholders agree that there is sufficient funding remaining in the Cayman LP, the Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs). All proceeds received in the Recovery Pool on and after such time as any partnership loan is made shall first be used to discharge the Loan Amounts before distributions are made to the partners pursuant to Sections 5(a), (b), (c), and (d). For the avoidance of doubt, payments in respect of the Loan Amounts shall not count towards the amount of distributions payable to partners pursuant to Section 5(a) – (d) (or the determination of the Tier 1 Pool Threshold Amount, the Tier 2 Pool Threshold Amount or Tier 3 Pool Threshold Amount or payment of amounts in respect thereof or otherwise). A form of the loan agreement shall be attached as an exhibit to the Partnership Agreement. All loans to the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) shall be limited recourse loans. All loans down the corporate chain shall also be limited recourse. This is to ensure that the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) are insolvency remote. Each Party shall have full visibility into reserve accounts, which accounts shall be established with a third party custodian. Until Cause has occurred, the administrator of the Cayman LP, Cayman GP, and/or a direct or indirect subsidiary of the Cayman LP and Cayman GP (including the

		applicable Recovery SPV) shall be entitled to withdraw from such account to fund pre-agreed expenses incurred by the relevant Recovery SPV. Upon Cause, no withdrawals may occur from any account without the unanimous written consent of the Voting Shareholders.
7.	Future Claims	The Funds and LBHI2² shall economically participate 100% of Future Claims which are acquired by them to the Future Claims SPV. Each of the Parties may participate (subject to eligibility) in the purchase and economics of such Future Claims. To the extent that LBHI2 declines to participate but is otherwise eligible to participate, LBHI may participate instead of LBHI2 to the same extent LBHI2 could have so participated. Participation by the Parties shall be determined as follows: (a) If at such time LBHI2 is a Voting Shareholder and wishes to participate in respect of that Future Claim, it must fund 25% of the purchase price (and 75% of the purchase price will be split among the other Voting Shareholders who elect to participate in such Future Claim based on the proportion of the voting interests in the Cayman GP held by such Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2), subject to adjustment based on the Option; or (b) if either (x) LBHI2 declines to participate in respect of that Future Claim (and LBHI declines to participate in that Future Claim to the extent LBHI was entitled to participate in the amount of that Future Claim which LBHI2 declined to participate in) or (y) LBHI2 is not at such time a Voting Shareholder, 100% of the purchase price will be funded by the other participating Voting Shareholders, split among them based on the proportion of the voting interests in the Cayman GP held by such participating Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2 or a non-participating Voting Shareholders, subject to adjustment based on the Option. If an entity offering its Future Claim is a Voting Shareholder, it shall have the right to exercise the Option, in which case all the interests of the other participating Voting Shareholders (other than LBHI2, if then a participating Voting Shareholder or, as the case may be, LBHI) shall in respect of such Future Claim be reduced based on the voting interests in the Cayman GP held by such Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2 and the offeror. Partners with an interest in a Future Claim will receive a new class of interests (the Future Claim Interests) in the Cayman LP representing such interest. Recoveries in respect of such Future Claims shall be distributed to participating partners by reference to the Future Claim Interests held by them. For the avoidance of doubt, loans made to fund the acquisition and expenses of a Future Claim and the Future Claims SPV shall be repaid from proceeds of the applicable Future Claim and distributions to holders of the Future Claim Interests in the Cayman LP representing a Future Claim will be made solely with respect to distributions received in respect of such Future Claim, and not from distributions received from the Recovery Pool.

² The LBHI2 Administrators have indicated that they do not propose to participate in Future Claims.

		A form of the loan agreement in respect of Future Claims, which form shall be substantially similar for loans in respect of the expenses associated with the Recovery Pool, shall be attached as an exhibit to the Partnership Agreement. Any loan made to the Cayman LP in order to fund the acquisition of Future Claims shall be limited recourse with recourse being limited to the amount of any proceeds received by the Cayman LP in relation to such Future Claims.
8.	LBHI2 Contribution	On the Effective Date, LBHI2 will in each case with no title guarantee: (a) assign to the Senior Claims SPV its right, title and interest in the LBHI2 Senior Claims pursuant to the Senior Claims Assignment Agreement; (b) assign its right, title and interest in the LBHI2 Sub Debt to the Sub Debt SPV pursuant to the Sub Debt Assignment Agreement; and (c) transfer by a sub-participation a portion of the economic interests represented by the Preferred Equity directly to the Equity Claims SPV, with the contractual payment obligations of LBHI2 being an expense of its administration, For the avoidance of doubt, other than as expressly set out in the transaction documentation, no claims or rights of LBHI2 including (i) under any guarantee given by LBHI and (ii) in respect of sums owed by LBL to LBHI2 will be assigned, transferred, conveyed or otherwise participated under any of the agreements listed above.
9.	Synthetic Conveyances	On the Effective Date, LBHI, LBHI2, the Funds, and certain of their Affiliates intend that contractual arrangements will be entered into by certain of those Parties in order that, combined with distributions from the Recovery Pool, the Parties receive the distributions to which they are entitled pursuant to section 5 hereof.
10.	Elliott Contribution and KS Contribution	On the Effective Date, each of Elliott and KS will enter into a swap or other agreement to grant a contractual interest to the Claims SPV in the Elliott Contribution or the KS Contribution, as the case may be, in respect of the Elliott Pooled Claims or the KS Pooled Claims, as the case may be. The Elliott Pooled Claims and the KS Pooled Claims represent all of the non-preferential unsecured claims held by Elliott or KS, as the case may be, against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims. The Estimated Allowed Claims Amount (on an aggregate basis) of the claims comprising the Elliott Pooled Claims and the KS Pooled Claims as of September 30, 2013 was approximately GBP 2.6 billion.
11.	Guarantee and Indemnity	Each of the Funds shall arrange for a payment guarantee and a performance guarantee to be provided by certain of its Affiliates (the "Guarantors"), on a several but not joint basis, for the benefit of the Cayman LP, Cayman GP, the Future Claims SPV and the Claims SPV, which guarantee shall be in form and substance reasonably acceptable to the other Parties, in respect of its and its Affiliates' obligations and liabilities pursuant to the applicable transaction agreements and to the transactions to which it and its Affiliates are a party.

		In addition, the Guarantors will agree to indemnify, on a several but not joint basis, the other Fund and its Affiliates, LBHI and its Affiliates that become a party to the transaction documents and LBHI2 for any losses suffered by such party or parties arising from the non-performance by it and its Affiliates of the relevant Fund of their obligations, including, for the avoidance of doubt, all payment and non-payment obligations, pursuant to the applicable transaction agreements and the transactions to which it or any of its Affiliates are a party. For the avoidance of doubt, notwithstanding any guarantee or indemnity obligations of the Guarantors (a) no Fund (or Affiliate thereof) shall be liable to fund expenses or costs of the Cayman LP or Cayman GP or any SPV without its consent save for the partnership loans referred to in the first paragraph of Section 6 (<i>Funding</i>), (b) enforcement of the indemnity is subject to the provisions of the Partnership Agreement, and (c) no Fund (including its Affiliates) shall be liable for the same loss more than once.
12.	Side Agreements	Save as otherwise agreed between the Parties, the Parties and their respective Affiliates agree that they have not entered into and will not enter into any side agreements or arrangements that (a) are intended, or are reasonably likely, to provide any Party with any economic advantage with respect to the transactions over any other Party who is not a party to such agreement or arrangement; (b) are not consistent with the Underlying Principle and the arrangements referred to in Section 16; (c) affect the terms of the participation agreements, assignment agreement or other agreements between any partner (or its Affiliate) and any of the SPVs; or (d) other than in the case of LBHI2, provide for any benefit, advantage or other collateral interest to any party (beyond the terms offered to the majority of creditors), in relation to any settlement between LBIE's creditors and (as necessary) the administrators of LBIE, including in connection with the formulation of any plan with LBIE to effect such settlement (whether by way of a scheme of arrangement, voluntary arrangement, consensual deal, court application or otherwise). Notwithstanding the foregoing, the partners that hold Future Claim Interests (and, if applicable, LBHI) may enter into loans, as described in Sections 6 (<i>Funding</i>) and 7 (<i>Future Claims</i>), and may enter into transfers, assignments or participations of the relevant assets with their Affiliates so long as the relevant transferee or assignee accedes to the transaction agreements (such as the Claims Participation Agreement) as appropriate.
13.	Transfer Restrictions	There are restrictions on transfer by the partners of their interests in or obligations to the Cayman LP, Cayman GP and any interests in the partnership loans made by them, subject to limited exceptions. These restrictions include limitations on disclosure to prospective transferees of information relating to the Transaction. In addition, each of Elliott, KS and LBHI2 have a tag-along right to participate in any proposed sale by one of the others of its interests in the Cayman LP and the Cayman GP.
14.	Taxes	In connection with the assignment, transfer, participation of or contractual obligation to fund equivalent amounts in respect of the Elliott Contribution and the KS Contribution, it is expected that the parties transferring, assigning or participating such assets or undertaking such payment obligations, as the case may be, shall remit amounts received (whether directly or indirectly) in respect of distributions and other amounts as if no deduction or withholding is required to be made in respect of any such receipt (whether direct or indirect) or remittance.

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		In the event that any deduction or withholding is required to be made in respect of any payments to be made by LBHI2 to the Equity Claims SPV, Sub Debt SPV or Senior Claims SPV in respect of the Preferred Equity, LBHI2 Sub Debt or LBHI2 Senior Claims, then such payments shall be made net of such withholding tax or deduction and LBHI2 shall be under no obligation to gross up such payments, except that adjustment shall be made to the distributions received by LBHI2 in certain circumstances to reflect such withholding or deductions (subject to certain exceptions).
15.	Corporate Governance	LBHI, LBHI2, the LBHI2 Administrators, Elliott and KS (or their respective Affiliates) will enter into a Partnership Agreement with such governance arrangements as may be mutually agreed among the parties. Voting rights in relation to the Cayman LP shall be held by each of LBHI2, Elliott and KS on a 1/3:1/3:1/3 basis initially. The Partnership Agreement shall contain market standard provisions for transactions of this type, and will contain a covenant by the parties thereto to comply with the Underlying Principle (provided that LBHI and/or LBHI2 may be released from such covenant to comply with the Underlying Principle in certain circumstances). LBHI will have a non-voting interest in the Cayman GP (the Class H Share) which will not convey any economic interest in the Cayman LP or Cayman GP, but will give LBHI the right to attend and speak at meetings and information rights.
16.	Conduct Regarding Recovery Pool	The power and authority of the relevant SPVs to deal with the Recovery Pool and related matters shall be set out in various protocols. The Parties have agreed to assist and co-operate fully with the SPVs and each other in the above actions, to act in good faith in their dealings with each other and to conduct themselves on terms that are consistent with the Underlying Principle (save, in the case of LBHI and LBHI2 only, to the extent agreed otherwise by the Funds).
17.	Governing law and Jurisdiction	The Term Sheet, the Senior Claims Assignment Agreement, Equity Claims Participation Agreement, Sub Debt Assignment Agreement and Partnership Agreement shall be governed by English law. A person who is not a party to such agreements shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of such agreements. The Claims Participation Agreement, the Future Claims Participation Agreement shall be governed by New York law. Each agreement shall have a jurisdiction clause which provides for the exclusive jurisdiction of the English courts where the governing law is English or the non-exclusive jurisdiction of the English courts where another law is the governing law.. The governing law and jurisdiction provisions will provide that all English law governed agreements will be subject to the exclusive jurisdiction of the English courts and all New York law governed agreements will be subject to the non-exclusive jurisdiction of New York courts and English courts, and that any dispute which involves agreements with different governing laws can only be resolved before the English courts.
18.	Cleansing	Each of Elliott, KS, LBHI and LBHI2 agree that, on the Effective Date, LBHI and/or LBHI2 will make public the material non-public information in respect of the transactions contemplated in the Term Sheet by way of a public statement or announcement and the form of such announcement will be subject to reasonable review and agreement by the Funds prior to it

		being made.

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SCHEDULE – DEFINITIONS

Admitted Claim	A non-preferential unsecured claim of a creditor of LBIE in respect of which the LBIE Administrators or, as the case may be, liquidators of LBIE have admitted such creditor's proof of debt for dividend, either for the whole amount claimed or for part of that amount, payable from the estate of LBIE available to its unsecured creditors pursuant to the Insolvency Rules or the Insolvency Act (or, if applicable, as amended, compromised, satisfied or discharged pursuant to the terms of, inter alia, a scheme of arrangement pursuant to the U.K. Companies Act of 2006 (as amended) or a company voluntary arrangement pursuant to the Insolvency Act or other binding arrangement or compromise of an Admitted Claim by the LBIE Administrators or the liquidators of LBIE pursuant to their powers under the Insolvency Act.
Admitted Claim Amount	The amount for which any proved debt is admitted in the LBIE Administration or, as the case may be, a subsequent liquidation of LBIE.
Affiliates	(i) A "parent undertaking" or "subsidiary undertaking" (as defined in section 1162 of the Companies Act 2006 (as amended)) of a person together with any other subsidiary undertakings of the parent undertaking of that person, or (ii) an "Affiliate" as defined in Rule 405(1) of the Securities Act of 1933 (as amended); provided that, in the case of LBHI2, "Affiliate" shall not include LBIE.
Cause	To include a material breach by the administrator of any administration agreement, any insolvency or bankruptcy or similar proceeding or procedure in any jurisdiction of the administrator or a termination of the administrator pursuant to the Partnership Agreement and such other terms to be agreed between the Parties.
Cayman GP	An exempted company formed in the Cayman Islands acting as general partner of the Cayman LP.
Cayman LP	An exempted limited partnership formed in the Cayman Islands acting as sole shareholder of the Cayman Company.
Cayman Company	The proposed exempted company to be formed in the Cayman Islands, which company shall be the sole shareholder of the Cayman Holding Company and limited partner of the Luxembourg Holding Company.
Cayman Holding Company	The proposed exempted company to be formed in the Cayman Islands, which company shall be the sole shareholder and 100% direct owner of the general partner of the Luxembourg Holding Company.
Claims Participation Agreement	The agreement to be entered into between the Claims SPV and KS or Elliott (and any relevant affiliates) relating to the participation in the Elliott Contribution and the KS Contribution.
Claims SPV	A Luxembourg securitisation vehicle that will enter into the Claims Participation Agreement.
Future Claim Interests	Interests in the Cayman LP to be issued on the acquisition of a Future Claim, representing the right to receive distributions from recoveries in respect of such Future Claim. Future Claim Interests will be issued to participating partners.

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Currency Loss Payments	The aggregate of all payments made by LBIE from the LBIE Assets to a creditor in relation to the difference between (i) the sum for which LBIE is liable to the creditor under or in respect of the contracts and agreements underlying a provable claim in the relevant contractual currency; and (ii) the aggregate sum received by the creditor in respect of its Admitted Claim Amount in relation to such claim, converted into the relevant contractual currency in (i) above as at the date of payment from LBIE.
Effective Date	The date on which all the transaction agreements have been executed and all conditions precedent to each such agreement satisfied or effectively waived.
Elliott	Certain funds controlled or managed by Elliott Management Corporation which have or acquire an interest in non-preferential unsecured claims against LBIE.
Elliott Contribution	The aggregate amount of all distributions paid by LBIE in respect of the Elliott Pooled Claims in excess of the Funds Contribution Threshold, without deductions for any Elliott Excluded Risks.
Elliott Excluded Risks	With respect to the Elliott Pooled Claims, any matter that results in Elliott, or its Affiliates, failing to receive any amount in respect of any distribution on the Elliott Pooled Claims (whether from LBIE, any intermediate seller and/or any other counterparty).
Elliott Pooled Claims	All rights (whether actual or contingent or held directly or indirectly) of Elliott to receive distributions from LBIE in respect of the claims to be listed in a schedule to the Claims Participation Agreement to be entered into by Elliott (which claims represent all of the non-preferential unsecured claims held by Elliott against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims, including the right to receive distributions in respect of Provable Sums, Post Administration Interest and/or Currency Loss Payments in relation to such claims.
Equity Claims SPV	A Luxembourg securitisation vehicle that will enter into the Equity Claims Participation Agreement.
Equity Claims Participation Agreement	The agreement to be entered into between the Equity Claims SPV and LBHI2 relating to the proceeds of the Preferred Equity.
Estimated Allowed Claims Amount	Means, in respect of the KS Pooled Claims or Elliott Pooled Claims (a) which are Admitted Claims, the aggregate Admitted Claim Amounts in respect of such Admitted Claims in the LBIE Administration and (b) which are not Admitted Claims, the aggregate offer amount (if applicable) in respect of such claims, or, if no offer amount is applicable, the claim amount in respect of such claims.
Funds	KS and Elliott
Funds Contribution Threshold	For the KS Pooled Claims and the Elliott Pooled Claims, as the case may be, an amount equal to the aggregate of: (a) the Admitted Claim Amounts in respect of all of the claims, and (b) interest on the amounts of those Admitted Claim Amounts which are outstanding from time to time from 15 September 2008, calculated at the simple rate of 8% p.a., up to a limit of 5.375 years average weighted distribution life (for the avoidance of doubt, total interest is limited to 43% of each Admitted Claim Amount).

Future Claims	Any non-preferential unsecured claim against LBIE to be acquired after September 30, 2013 by KS, Elliott or LBHI2.
Future Claims Participation Agreement	The agreement to be entered into between the Future Claims SPV and the contributing partner relating to a Future Claim, in a form substantially similar to the Claims Participation Agreement.
Future Claims SPV	A Luxembourg securitisation vehicle that will enter into a Future Claims Participation Agreement.
Insolvency Act	The U.K. Insolvency Act of 1986 (as amended).
Insolvency Rules	The U.K. Insolvency Rules 1986 (as amended).
KS	Certain funds controlled or managed by King Street Capital Management, L.P. which have or acquire an interest in non-preferential unsecured claims against LBIE.
KS Contribution	The aggregate amount of all distributions paid by LBIE in respect of the KS Pooled Claims in excess of the Funds Contribution Threshold, without deductions for any KS Excluded Risks.
KS Excluded Risks	With respect to the KS Pooled Claims, any matter that results in KS, or its Affiliates, failing to receive any amount in respect of any distribution on the KS Pooled Claims (whether from LBIE, any intermediate seller and/or any other counterparty).
KS Pooled Claims	All rights (whether actual or contingent or held directly or indirectly) of KS to receive distributions from LBIE in respect of the claims to be listed in a schedule to the Claims Participation Agreement to be entered into by KS (which claims represent all of the non-preferential unsecured claims held by KS against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims, including the right to receive distributions in respect of Provable Sums, Post Administration Interest and/or Currency Loss Payments in relation to such claims.
LBHI	Lehman Brothers Holdings Inc.
LBHI Consideration	The amount of consideration paid to LBHI or any of its affiliates in respect of any conveyance of the Preferred Equity (including by way of a Synthetic Conveyance referred to in Section 9 (<i>Synthetic Conveyances</i>)).
LBHI Contribution	An amount equal to all proceeds, distributions, interest, expenses, penalties and other amounts received (or receivable by it but for its actions or omissions or the actions or omissions of any of its subsidiaries controlled (directly or indirectly) by it), (directly or indirectly) by LBHI from LBHI2 to the extent such amounts have not been otherwise contributed to the Recovery Pool.
LBHI2	LB Holdings Intermediate 2 Limited
LBHI2 Administrators	The joint administrators appointed in respect of LBHI2 pursuant to the U.K. Insolvency Act 1986 (as amended) from time to time, being (at the date of the Term Sheet), Derek Anthony Howell, Anthony Victor Lomas, Julian Guy Parr, Steven Anthony Pearson and Gillian Eleanor Bruce, together with any persons appointed as additional or replacement administrators.

LBHI2 Contribution	The aggregate of all amounts contributed by LBHI2 to the Sub Debt SPV, Equity Claims SPV or Senior Claims SPV in respect of (a) the LBHI2 Sub Debt, (b) the Preferred Equity and (c) the LBHI2 Senior Claims.
LBHI2 Equity Claims Consideration	The amount (if any) of the GBP 627,082,799.24 cash element of part of the Purchase Price which the Parties shall have allocated in respect of the Preferred Equity as adjusted to reflect any Synthetic Conveyances referred to in Section 9 (<i>Synthetic Conveyances</i>).
LBHI2 Scheduled Creditors	Lehman Brothers Holdings PLC Lehman Brothers Holdings Scottish LP 3 Luxembourg Finance SARL
LBHI2 Senior Claims	The unsecured claim of LBHI2 against LBIE for the amount of GBP 38,089,911.30.
LBHI2 Senior Claims Consideration	The amount equal to GBP 22,917,200.76.
LBHI2 Sub Debt	The sum of GBP 1,254,165,598.48 plus interest due from LBIE to LBHI2 pursuant to 3 subordinated loan facility agreements each dated 1 November 2006 in the amounts of €3 billion, \$4.5 billion and \$8 billion, respectively, together with such rights and benefits of LBHI2 (but not obligations of LBHI2 in connection with such facility agreements) as further set out in the Sub Debt Assignment Agreement.
LBHI2 Sub Debt Consideration	The amount of the GBP 627,082,799.24 cash element of part of the Purchase Price which the parties shall have allocated in respect of the LBHI2 Sub Debt.
LBIE	Lehman Brothers International (Europe) (in administration).
LBIE Administration	The administration of LBIE commenced on 15 September 2008 pursuant to the Insolvency Act.
LBIE Administrators	The joint administrators appointed in respect of LBIE pursuant to the Insolvency Act from time to time, being (at the date of the Term Sheet), Anthony Victor Lomas, Paul David Copley, Russell Downs, Steven Anthony Pearson and Julian Guy Parr, each a licensed insolvency practitioner of PricewaterhouseCoopers LLP, 7 More London, Riverside, London SE1 2RT, together with any persons appointed as additional or replacement administrators.
LBIE Assets	The assets of LBIE.
LBL	Lehman Brothers Limited.
Loan Amounts	The principal amount of any loan made by a Voting Shareholder or LBHI to fund expenses of the Cayman LP, Cayman GP or any other subsidiary of the Cayman LP (other than the Future Claims SPV) and the Recovery SPVs, plus interest on such loan and reasonable legal fees, if any, in connection with obtaining the loans and shall exclude any partnership loans made to fund the acquisition of any Future Claims.
Luxembourg Holding Company	The proposed Luxembourg holding company of the SPVs.

Option	An option exercisable by a Voting Shareholder that is offering its Future Claim to the Future Claims SPV to increase its participation in the Future Claim (which will be reflected by increasing the Future Claim Interests issued by the Cayman LP to such Voting Shareholders in respect of such Future Claim) by up to 10% of such Future Claim.
Partnership Agreement	(i) the shareholders' agreement by and among the Cayman GP and the shareholders in the Cayman GP, which shall initially be LBHI, LBHI2, KS, and Elliott, setting forth the corporate governance amongst the parties, in the form to be agreed by each of Elliott, KS, LBHI2 and LBHI, in their reasonable discretion; and (ii) the limited partnership agreement by and among the Cayman GP, LBHI and the limited partners of the Cayman LP, which shall initially be LBHI, LBHI2, KS and Elliott, setting forth the corporate governance amongst the parties, in the form to be agreed by each of Elliott, KS, LBHI2 and LBHI, in their reasonable discretion.
Post Administration Interest	Interest payable on proved debts pursuant to Rule 2.88(7) of the Insolvency Rules (and, if applicable, section 189(2) of the Insolvency Act.
Preferred Equity	All preferred equity held by LBHI2 in LBIE.
Provable Sums	The elements of claims against LBIE which are (or would be) provable in the administration or a subsequent liquidation of LBIE pursuant to Chapter 10 of Part 2 or Chapter 9 of Part 4 of the Insolvency Rule 1986, respectively or finally determined pursuant to a settlement agreement, scheme, voluntary arrangement or a consensual deal in relation to LBIE.
Purchase Price	The aggregate of the LBHI2 Sub Debt Consideration, the LBHI2 Equity Claims Consideration and the LBHI2 Senior Claims Consideration.
Recovery Pool	The recovery pool consisting of all the assets in, or deriving from, the LBHI2 Contribution, the KS Contribution and the Elliott Contribution (as adjusted to include the LBHI Contribution, to the extent required).
Recovery SPVs	Sub Debt SPV, Equity Claims SPV, Senior Claims SPV and Claims SPV (or any of them).
Senior Claims Assignment Agreement	The agreement to be entered into between the Senior Claims SPV and LBHI2 relating to the LBHI2 Senior Claims.
Senior Claims SPV	A Luxembourg securitisation vehicle that will enter into the Senior Claims Assignment Agreement.
SPVs	Any of (or all, as the case may be) of the Cayman GP, the Cayman LP and the subsidiaries of the Cayman LP including the Cayman Company, Cayman Holding Company, the general partner of the Luxembourg Holding Company, Luxembourg Holding Company, the Recovery SPVs and Future Claims SPV.
Sub Debt Assignment Agreement	The agreement to be entered into between the Sub Debt SPV and LBHI2 relating to the LBHI2 Sub Debt.
Sub Debt SPV	A Luxembourg securitisation vehicle that will enter into the Sub Debt Assignment Agreement.

Term Sheet	The Material Commercial Terms of Economics, Funding and Transfers setting out the key terms of the Transaction.
Tier 1 Pool Threshold Amount	An amount equal to the GBP 650 million cash element of the Purchase Price.
Tier 2 Pool Balance	The Tier 2 Pool Threshold Amount minus the distributions received prior to distributions equaling the Tier 2 Pool Threshold Amount.
Tier 2 Pool Threshold Amount	GBP 1.3 billion plus interest calculated at the simple rate of 2.25% p.a. applied to the Tier 2 Pool Balance on and after the earlier of the Effective Date and 30 November 2013.
Tier 3 Pool Balance	The Tier 3 Pool Threshold Amount minus distributions received by the parties prior to distributions equaling the Tier 3 Pool Threshold Amount.
Tier 3 Pool Threshold Amount	Means, on any date, GBP 2.2 billion plus interest accrued on the Tier 3 Pool Balance calculated daily on the basis of a year of 365 days and at the simple rate of 4.25% p.a. for the period from and including the earlier of the Effective Date and 30 November 2013 until such date.
Transaction	Means the Transaction as contemplated by the Term Sheet.
Underlying Principle	The parties (i) shall act or, to their knowledge, omit to act in accordance with the underlying principle of enhancing the recoveries for the Recovery Pool and the Preferred Equity and (ii) shall not act in a manner adverse to the economic interests of the LBHI2 Scheduled Creditors (in their capacity as such), in each case in light of the circumstances and facts at such time, PROVIDED THAT this underlying principle shall not: (a) apply to actions or omissions of Lydian Overseas Partners Master Fund, Ltd. (or the investment manager of the liquidator of the Lydian Overseas Partners Master Fund, Ltd. vehicle and to the extent that the liquidator is not approved by the applicable court, any alternative liquidator) in connection with Lydian Overseas Partners Master Fund, Ltd.'s position as a party to the Waterfall Application; (b) apply to actions or omissions of LBHI in connection with matters not the subject matter of the Transaction and the Waterfall Application; or (c) prevent a party from taking any action to enhance the recoveries for the Recovery Pool by reducing the level of claims against LBIE of parties other than those of LBHI2, LBHI, Elliott or KS against LBIE (save insofar as such actions might indirectly increase claims against LBHI2).
Voting Shareholder	Each of KS, Elliott and LBHI2, to the extent that such parties are not subject to an event of default (as described and determined in accordance with the Cayman GP shareholders' agreement).
Waterfall Application	The joint application dated 14 February 2013 by the joint administrators of LBIE, the LBHI2 Administrators and the joint administrators of LBL for directions in relation to various issues concerning the respective rights and obligations of LBIE, LBHI2 and LBL.

10 March 2014

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Important Notices

This document is provided for the purpose of discussion pursuant to non-disclosure agreements dated on or around 10 March 2014 ("NDA") entered into between the recipients of this document (the "Recipients") and Lehman Brothers International (Europe) (in administration) ("LBIE"). This document and the matters contained herein (the "Proposed Terms") should not be disclosed to any party or used for any purpose except in accordance with the NDA.

The Proposed Terms do not constitute a legally binding offer and LBIE shall be under no obligation to implement a transaction on the terms contained herein or upon any other terms which may be discussed between LBIE and the Recipients.

The Proposed Terms do not constitute an indication by LBIE as to the likely outcome of any litigation in relation to any of the issues which are the subject of proposed compromises. The Proposed Terms are without prejudice to any claims, rights, defences or positions which LBIE may assert in the future, including in any litigation, and LBIE reserves and retains all claims, rights, defences and positions.

This document does not purport to be comprehensive, or contain all the terms which it may be appropriate to include in any eventual compromise between LBIE and its creditors in relation to the issues which are the subject matter of the Proposed Terms.

The Proposed Terms are not an indication of any distribution that a creditor may receive from LBIE in the event that the Proposed Terms are implemented.

Recipients should make their own independent decision as to whether to support any proposal to creditors made by LBIE which is based on the Proposed Terms and as to whether the Proposed Terms are acceptable to them based upon their own judgement and upon advice from their advisers, as they deem necessary. Recipients should not rely on any information provided by LBIE as a recommendation or an inducement to approve the Proposed Terms, and any information and explanations relating to the Proposed Terms provided by LBIE during discussions with Recipients will be provided by LBIE on the understanding that they are not to be relied upon or treated as a recommendation or an inducement to approve any proposal which implements the Proposed Terms.

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Introduction

There is uncertainty regarding the entitlements of Creditors to any surplus remaining in the LBIE estate after payment of debts proved in its administration. The purpose of this document is to set out LBIE's proposal for a compromise of the various issues which the Joint Administrators are considering implementing by means of a scheme of arrangement or a company voluntary arrangement, which LBIE expects to present to Creditors in Q2/Q3 2014.

Proposed Terms

1 Payment waterfall

1.1 The Surplus shall be applied by LBIE in the following order of priority:

- 1.1.1 first, in payment of simple interest at a rate of eight per cent. per annum (the "Statutory Rate") in respect of all Admitted Claims (including any Qualifying OTC Portions), *pari passu* and rateably amongst Ordinary Creditors until all Statutory Rate Entitlements have been paid in full;
- 1.1.2 second, in payment of the following, *pari passu* and rateably amongst each other:
 - (i) further simple interest at the rate of two per cent. per annum (the "Standard Rate") on the Qualifying OTC Portions of Qualifying OTC Creditors who have not sought to assert a Higher Rate Claim; and
 - (ii) further simple interest on the Qualifying OTC Portions of Qualifying OTC Creditors who have successfully asserted, or accepted a Higher Rate Offer from LBIE, each in accordance with paragraph 3, in respect of an entitlement to interest at a rate that is higher than the Standard Rate,until all Additional Entitlements have been paid in full;
- 1.1.3 third, in part payment of the Subordinated Debt to the Subordinated Creditor until the Priority Subordinated Debt Amount has been paid in full;
- 1.1.4 fourth, in the ratio of 70:30, respectively, until all Currency Conversion Entitlements are paid in full:
 - (i) in payment of Currency Conversion Entitlements, *pari passu* and rateably amongst Ordinary Creditors with a Currency Conversion Claim; and
 - (ii) in payment of the remainder of the Subordinated Debt to the Subordinated Creditor;
- 1.1.5 fifth, in payment of the balance (if any) of the Subordinated Debt to the Subordinated Creditor until the Subordinated Debt has been paid in full;
- 1.1.6 sixth, in payment of interest in respect of the Subordinated Debt; and
- 1.1.7 seventh, in payment of the Subordinated Creditor's Currency Conversion Entitlement to the Subordinated Creditor until the Subordinated Creditor's Currency Conversion Entitlement has been paid in full.

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2 Interest

2.1 Interest Entitlements in respect of each Admitted Claim shall be calculated at the relevant rate for the period commencing on the Date of Administration:

- (i) on the full amount of the Admitted Claim up to the date of payment by LBIE of the first distribution (including, where relevant, any catch-up distribution) in relation to the principal amount of the relevant Admitted Claim;
- (ii) thereafter, on the respective portion(s) of the relevant Admitted Claim remaining unpaid (if any) following the date(s) of payment of any further interim distribution(s) in relation to the principal amount of the relevant Admitted Claim; and
- (iii) ending on the date that the Admitted Claim is paid in full.

2.2 Each Ordinary Creditor shall be entitled to simple interest upon its Admitted Claim at the Statutory Rate.

2.3 Each Qualifying OTC Creditor and each Unagreed OTC Creditor shall have the following options in respect of its Qualifying OTC Portion:

2.3.1 to receive a further payment of simple interest at the Standard Rate on its Qualifying OTC Portion, in addition to its entitlement to interest at the Statutory Rate, such that the total rate of interest payable on its Qualifying OTC Portion shall be 10 per cent. simple per annum; or

2.3.2 to reject the Standard Rate and instead assert that it is entitled to a further payment of simple interest on its Qualifying OTC Portion or Unagreed OTC Portion (as relevant), in addition to its entitlement to interest at the Statutory Rate, at a rate that is higher than the Standard Rate, subject to a cap of 10 per cent. per annum (a "Claimed Higher Rate"). If a Higher Rate Claimant successfully asserts a Claimed Higher Rate, or accepts a Higher Rate Offer, each in accordance with the provisions of paragraph 3, it shall receive a right to further payment of interest in respect of its Qualifying OTC Portion at the Determined Rate. The Determined Rate shall be subject to a cap of 10 per cent. per annum such that the total interest payable to the Higher Rate Claimant in respect of its Qualifying OTC Portion shall never exceed 18 per cent. per annum.

2.4 If a Higher Rate Claimant does not successfully assert a Claimed Higher Rate or accept a Higher Rate Offer, each in accordance with the provisions of paragraph 3, it shall only be entitled to interest on its Qualifying OTC Portion at the Statutory Rate and shall not receive an Additional Entitlement.

2.5 All Additional Entitlements shall be paid *pari passu*:

2.5.1 after payment of (or reserving for) interest at the Statutory Rate to all Ordinary Creditors; and

2.5.2 in priority to other Claims to the Surplus.

3 Determination and Adjudication

3.1 For the purposes of this section the following definitions shall apply:

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"Annual Cost of Funding" means, in respect of each Cost of Funding Assessment Year, a rate per annum (expressed as a pounds sterling rate) equal to the lowest post-tax cost to the Original Counterparty of funding the amount of the Qualifying OTC Portion or the Unagreed OTC Portion, as relevant, from a Source of Funding;

"Cost of Funding Assessment Date" means, in respect of each Cost of Funding Assessment Year, 15 September;

"Cost of Funding Assessment Period" means the period commencing on the Date of Administration and ending on 14 September 2013;

"Cost of Funding Assessment Year" means each year during the Cost of Funding Assessment Period, commencing on the Cost of Funding Assessment Date;

"Default Cost of Funding" means the arithmetic mean of the Annual Costs of Funding during the Cost of Funding Assessment Period;

"Original Counterparty" means the counterparty as at the Date of Administration to a Qualifying OTC Agreement to which a Qualifying OTC Portion or an Unagreed OTC Portion (as relevant) relates;

"Original Default Rate" means the Default Cost of Funding plus 100 basis points (1 per cent.), expressed as a daily compounded rate; and

"Source of Funding" means a type of funding, with a minimum term of one year that was, or could have been, utilised by an Original Counterparty from its capital structure for the general funding of its business at the relevant Cost of Funding Assessment Date.

- 3.2 A Higher Rate Claim may be asserted by a Qualifying OTC Creditor or an Unagreed OTC Creditor no later than the date that is 90 days after the Plan Effective Date, by service upon LBIE of a Higher Rate Notice.
- 3.3 Any Qualifying OTC Creditor or Unagreed OTC Creditor who does not submit a Higher Rate Notice in accordance with paragraph 3.2 shall receive a Statutory Rate Entitlement and a Standard Rate Entitlement in full and final settlement of its Claims to statutory interest in respect of its Qualifying OTC Portion.
- 3.4 Higher Rate Claimants will be required to prove to the satisfaction of LBIE that the Original Counterparty's Original Default Rate exceeded the Statutory Rate by at least the amount of the Claimed Higher Rate, and will be required to provide LBIE, when serving its Higher Rate Notice, with substantiating evidence supporting such claim. Such evidence must include details and evidence of the basis on which the Higher Rate Claimant has identified the lowest post-tax Source of Funding available to the Original Counterparty and may include additional evidence, such as the following:
 - 3.4.1 the terms of any executed transactions used as the basis of the determination of the Claimed Higher Rate;
 - 3.4.2 details (including the sources of) any pricing information or market data used in its calculations in the determination of its Claimed Higher Rate, including that provided by third parties;
 - 3.4.3 copies of any loan documentation or other agreements used in the determination of the Claimed Higher Rate;

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- 3.4.4 details and evidence of any models used (including details of the model provider) and a mechanism to explain how the model has determined the figures used in the calculation of its Claimed Higher Rate;
 - 3.4.5 details and evidence of the tax rate applied to calculate the Annual Cost of Funding used in the determination of its Claimed Higher Rate; and
 - 3.4.6 investor letters, financial statements, internal management reports, comparables, correspondence with potential funders and minutes of management meetings used in the determination of its Claimed Higher Rate.
- 3.5 The validity of a Higher Rate Claim shall be determined in the first instance by LBIE. If LBIE determines that the Original Counterparty's Original Default Rate exceeded the Statutory Rate by at least the amount of the Claimed Higher Rate, it shall issue to the Higher Rate Claimant a Higher Rate Determination Notice confirming (as relevant) that:
- 3.5.1 the Qualifying OTC Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the Claimed Higher Rate; or
 - 3.5.2 subject to the Unagreed OTC Creditor having a Qualifying OTC Portion, the Unagreed Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the Claimed Higher Rate.
- 3.6 If LBIE determines that the Original Counterparty's Original Default Rate did not exceed the Statutory Rate by at least the amount of the Claimed Higher Rate, the following shall apply:
- 3.6.1 if LBIE is satisfied that the Higher Rate Claimant is entitled to a rate of interest which is higher than the Standard Rate but lower than the Claimed Higher Rate, LBIE may offer the Higher Rate Claimant a rate of interest which is equal to such rate (a "Higher Rate Offer"). If the Higher Rate Offer is accepted by the Higher Rate Claimant within 14 days of issuance by LBIE of the Higher Rate Offer, LBIE shall issue to the Higher Rate Claimant a Higher Rate Determination Notice confirming (as relevant) that:
 - (i) the Qualifying OTC Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the rate stipulated in the Higher Rate Offer; or
 - (ii) subject to the Unagreed OTC Creditor having a Qualifying OTC Portion, the Unagreed Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the rate stipulated in the Higher Rate Offer; and
 - 3.6.2 if LBIE does not make a Higher Rate Offer to the Higher Rate Claimant, or if a Higher Rate Offer is not accepted by the Higher Rate Claimant in accordance with paragraph 3.6.1, LBIE shall issue to the Higher Rate Claimant a Higher Rate Rejection Notice which shall include a statement of its reasons for rejecting the Claimed Higher Rate.
- 3.7 If LBIE issues a Higher Rate Rejection Notice to the Higher Rate Claimant, the following shall apply:
- 3.7.1 if the Higher Rate Claimant does not serve an Adjudication Notice upon LBIE within 14 days of the date of the Higher Rate Rejection Notice, the Higher Rate

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Claimant shall only receive interest on its Qualifying OTC Portion (if any) at the Statutory Rate and shall not receive an Additional Entitlement; or

- 3.7.2 if the Higher Rate Claimant serves an Adjudication Notice upon LBIE within 14 days of the date of the Higher Rate Rejection Notice, LBIE shall, within a reasonable period of time following receipt of the Adjudication Notice, provide in writing to the Higher Rate Claimant the names of two Experts willing to act in relation to the Higher Rate Claimant's Higher Rate Claim.
- 3.8 Within seven days of receipt of the names of two Experts in accordance with paragraph 3.7.2, the Higher Rate Claimant shall notify LBIE as to which of the two Experts it has selected to determine its Higher Rate Claim (the "Selected Adjudicator").
- 3.9 Within 14 days of the selection of the Selected Adjudicator, LBIE shall submit to the Selected Adjudicator (with a copy to the Higher Rate Claimant):
 - 3.9.1 a copy of the Adjudication Notice;
 - 3.9.2 a copy of the Plan Documents;
 - 3.9.3 a copy of the Higher Rate Rejection Notice; and
 - 3.9.4 any other evidence that LBIE considers may be necessary in order for the Selected Adjudicator to understand the reasons for its rejection of the Higher Rate Claim.
- 3.10 As soon as reasonably practicable following receipt of the information provided in accordance with paragraph 3.9, the Selected Adjudicator shall determine whether the Original Counterparty's Original Default Rate exceeded the Statutory Rate by at least the amount of the Claimed Higher Rate, and shall inform LBIE and the Higher Rate Claimant in writing of his decision.
- 3.11 The Selected Adjudicator shall make the determination set out at paragraph 3.10 above solely on the basis of the information provided in accordance with paragraph 3.9, save that the Selected Adjudicator may, in his sole discretion (i) request that the Higher Rate Claimant and/or LBIE submit further documents and/or evidence; or (ii) engage, and rely on the advice or services of, an adviser or expert of his choosing.
- 3.12 If the Selected Adjudicator determines that the Original Counterparty's Original Default Rate exceeded the Statutory Rate by at least the amount of the Claimed Higher Rate, LBIE shall issue to the Higher Rate Claimant a Higher Rate Determination Notice confirming (as relevant) that:
 - 3.12.1 the Qualifying OTC Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the Claimed Higher Rate; or
 - 3.12.2 subject to the Unagreed OTC Creditor having a Qualifying OTC Portion, the Unagreed Creditor shall have a Determined Rate Entitlement at the Determined Rate, being the Claimed Higher Rate.
- 3.13 If the Selected Adjudicator determines that the Original Counterparty's Original Default Rate did not exceed the Statutory Rate by at least the amount of the Claimed Higher Rate, LBIE shall issue to the Higher Rate Claimant a Final Higher Rate Rejection Notice, in

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which case the Higher Rate Claimant shall only be entitled to interest on its Qualifying OTC Portion (if any) at the Statutory Rate and shall not receive an Additional Entitlement.

3.14 The Selected Adjudicator's decision on the Higher Rate Claim shall be final and binding on the Higher Rate Claimant, the Joint Administrators and LBIE and there shall be no appeal against such decision.

3.15 The Selected Adjudicator's costs of determining a Higher Rate Claim (and the costs of any expert engaged by the Selected Adjudicator in accordance with paragraph 3.11) shall be paid by:

3.15.1 LBIE in the event that the Selected Adjudicator determines that the Higher Rate Claimant has a valid Higher Rate Claim; or

3.15.2 the Higher Rate Claimant in the event that the Selected Adjudicator determines that the Higher Rate Claimant does not have a valid Higher Rate Claim.

3.16 Before payment of any additional amounts, an Additional Interest Reserve will be established by LBIE in respect of potential Additional Entitlements arising from Higher Rate Claims that have not yet been determined or adjudicated. The Additional Interest Reserve shall be used to pay any Additional Entitlements as and when they are determined. Any amounts not required to be reserved following determination or adjudication of a Higher Rate Claim asserted by a Higher Rate Claimant will be released for application in accordance with the payment waterfall referred to at paragraph 1.

4 Subordinated Debt

4.1 The Subordinated Creditor will receive payment of the Priority Subordinated Debt Amount after payment of (or reserving for) Interest Entitlements in full and provided sufficient funds are available.

4.2 The balance of the Subordinated Debt will be payable in accordance with paragraph 1.1.

5 Currency Conversion Claims

5.1 After payment of (or reserving for) Interest Entitlements and the Priority Subordinated Debt Amount, Currency Conversion Entitlements shall be paid in accordance with paragraph 1.1 provided sufficient funds are available.

5.2 LBIE shall inform Creditors of the quantum of their Currency Conversion Entitlements (if any):

5.2.1 in the case of Creditors whose Admitted Claims are paid in full prior to the Plan Effective Date, within 30 days of the Plan Effective Date;

5.2.2 in the case of Creditors whose Admitted Claims are paid in full between the Plan Effective Date and the Record Date, within 14 days of their Admitted Claims being paid in full; and

5.2.3 in all other cases, within 14 days of Creditors' Unagreed Claims becoming (in whole or part) Admitted Claims.

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6 Calculation Statements

- 6.1** LBIE shall provide a calculation statement (an “**Original Calculation Statement**”) to Creditors:
- 6.1.1** on or around the Plan Launch Date, in the case of Creditors who at the Plan Launch Date have an Admitted Claim that has been paid in full; or
 - 6.1.2** in all other cases, within 14 days of the Creditor's Admitted Claim being paid in full.
- 6.2** An Original Calculation Statement shall set out the following in respect of each Creditor:
- 6.2.1** the amount of its Admitted Claim;
 - 6.2.2** where the Admitted Claim is comprised of Claims arising under multiple master agreements (or multiple balance types, where trades were undocumented), the apportionment of the amount of the Admitted Claim between such master agreements (or balance types as the case may be);
 - 6.2.3** its Qualifying OTC Portion;
 - 6.2.4** the amount of its Statutory Rate Entitlement;
 - 6.2.5** the amount of its Standard Rate Entitlement (if any); and
 - 6.2.6** its Currency Conversion Amount (if any).
- 6.3** In calculating the amounts set out at paragraph 6.2 above, the effect of any releases and exchange of Claims pursuant to Post Administration Contracts entered into by Creditors shall be disregarded insofar as they may relate to entitlements to statutory interest and Currency Conversion Claims.
- 6.4** When calculating the amounts set out in paragraph 6.2, in circumstances where the Creditor's Admitted Claim is a net balance arising as a result of the netting of debts due from and to LBIE, amounts due to LBIE from the Creditor shall be applied rateably against separate Claims under master agreements, or balance types as the case may be (as recorded in LBIE's books and records).
- 6.5** The amounts referred to at paragraph 6.2 will be calculated by LBIE by reference to its books and records and shall be binding, save that LBIE shall retain a discretion to amend an Original Calculation Statement pursuant to paragraphs 6.6 and 6.7, if it is, in its opinion, satisfied that the amounts set out in the Original Calculation Statement were incorrect due to (i) administrative error or (ii) error in application of the netting principles set out in paragraph 6.4.
- 6.6** Within 14 days of receiving an Original Calculation Statement, a Creditor may serve a Calculation Query Notice in writing upon LBIE. The Calculation Query Notice shall set out in reasonable detail an explanation of why the relevant Creditor has reason to believe that the amounts set out in the Original Calculation Statement are incorrectly stated or not calculated in accordance with the netting principles set out in paragraph 6.4 and request that LBIE reviews its books and records to ascertain whether the amounts set out in the Original Calculation Statement have been correctly stated or calculated in accordance with such netting principles.

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- 6.7** Within a reasonable period of receipt of a Calculation Query Notice, LBIE shall review its books and records to verify the amounts set out in the relevant Calculation Query Notice and shall either (i) provide the Creditor with a revised Calculation Statement (a **"Revised Calculation Statement"**) if the amounts set out in the Original Calculation Statement were incorrectly stated or not calculated in accordance with the netting principles set out in paragraph 6.4, in which case the amounts set out in the Revised Calculation Statement shall be binding upon the Creditor and LBIE; or (ii) notify the Creditor in writing that the amounts referred to in the Original Calculation Statement are in accordance with LBIE's books and records and the netting principles set out in paragraph 6.4, in which case, LBIE's determination shall be binding upon the Creditor and LBIE.

7 Other terms

7.1 Distribution mechanics

LBIE shall determine the amount payable to each Creditor in accordance with the provisions of the Plan, aggregating where convenient the amounts to be distributed in respect of several Claims of one Creditor. All payments shall be made in pounds sterling. The timing and method of payment is to be at the discretion of LBIE.

7.2 Bar Date

Any person who has not submitted a proof of debt in respect of its Claims before 5pm (London time) on the date falling 30 days after the Plan Effective Date shall not be entitled to any distribution from the estate of LBIE which is available to its unsecured creditors or from the Surplus in respect of those Claims.

7.3 Interest accrual cut-off date

7.3.1 Where LBIE has made an offer in partial satisfaction of an Unagreed Claim on or prior to the Plan Launch Date (the amount of such offer being the **"Unagreed Claim Offer Amount"**); Interest Entitlements shall cease to accrue on the Unagreed Claim Offer Amount from (and including) the Plan Effective Date.

7.3.2 In respect of the balance of Unagreed Claims (if any) and all other Claims, Interest Entitlements (if any) shall cease to accrue from (and including) the earlier of:

- (i) the dates of the respective distributions of principal in respect of such Claims which are accepted as Admitted Claims; and
- (ii) the date which is two years from the Plan Effective Date.

7.4 Releases

The Released Parties shall be released and discharged from any liability (whether present, future, prospective or contingent) arising in connection with (i) their acts, omissions or defaults as Joint Administrators or advisers and (ii) the preparation, negotiation and implementation of the Plan or any matter ancillary to the Plan.

8 Implementation

It is anticipated that the proposal contemplated by this term sheet will be implemented via a company voluntary arrangement under sections 1-7B of the Act or a scheme of

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arrangement under Part 26 of the Companies Act 2006 pursuant to which Creditors shall compromise their respective Claims, in exchange for rights granted under the Plan.

9 Definitions

"Act" means the Insolvency Act 1986 in the form as at the Date of Administration;

"Additional Entitlement" means a Standard Rate Entitlement or a Determined Rate Entitlement;

"Additional Interest Reserve" means the reserve established by LBIE in accordance with paragraph 3.16;

"Adjudication Notice" means a notice served by a Higher Rate Claimant in accordance with paragraph 3.7 and including a copy of:

- (i) the Higher Rate Notice; and
- (ii) the evidence provided to LBIE in support of its Higher Rate Claim.

"Admitted Claim" means an unsecured Claim which has been admitted for dividend from the estate of LBIE, available to its unsecured Creditors pursuant to the Rules and the Act, except for any Claims of the Subordinated Creditor or Member Claimants;

"AFB" means the 1994 French Master Agreement relating to Transactions on Forward Financial Instruments;

"Calculation Statement" means an Original Calculation Statement or a Revised Calculation Statement;

"Calculation Query Notice" means a notice served by a Creditor to LBIE in respect of its Original Calculation Statement in accordance with paragraph 6.6;

"Claim" means a claim in law, in equity or otherwise and of whatsoever in nature, present or future, and whether presently known or unknown:

- (i) including any and all claims, actions, liabilities, rights and obligations for breach of contract, tort, statute, restitutionary claims and breach of trust; and
- (ii) whether arising by reason of, amongst other things, insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise or through the application of any close-out, set off, netting, withholding, combination of accounts or retentions or similar rights;

"Claimed Higher Rate" has the meaning given to it in paragraph 2.3.2;

"CRA" means the Claim Resolution Agreement between LBIE and certain counterparties of LBIE which became effective on 29 December 2009;

"Creditor" means a person with an unsecured Claim against LBIE or a person who has an Admitted Claim;

"Currency Conversion Amount" means the entitlement to payment of an amount in a Foreign Currency as a result of having a Currency Conversion Claim or a Deemed

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Currency Conversion Claim, determined by LBIE with reference to the relevant Creditor's Original Foreign Currency Amount as follows:

- (i) in the case of an Admitted Claim paid in full on or before the Record Date, the relevant Exchange Rate(s) on the date(s) of the respective distribution(s) in respect of the relevant Creditor's Admitted Claim; or
- (ii) in the case of a Claim which becomes an Admitted Claim and is paid in full after the Record Date, the relevant Exchange Rate on the Record Date;

"Currency Conversion Claim" means a Claim which arises where:

- (i) a Creditor's Admitted Claim has been paid in full;
- (ii) the Creditor had, at the Date of Administration, a contractual right to be paid part or all of the principal amount of its Admitted Claim in a Foreign Currency; and
- (iii) the total amount received by the Creditor in respect of payments of principal relating to such part (or all) of its Admitted Claim relating to the Original Foreign Currency Amount, when converted into the relevant Foreign Currency at the relevant Exchange Rate upon the dates of distribution is less than the Original Foreign Currency Amount;

"Currency Conversion Entitlement" means, in respect of a Currency Conversion Amount, the entitlement to payment of such amount converted into pounds sterling using the relevant Exchange Rate as follows:

- (i) in the case of an Admitted Claim paid in full before the Plan Effective Date, the relevant Exchange Rate on the Plan Effective Date;
- (ii) in the case of an Admitted Claim paid in full between the Plan Effective Date and the Record Date, the relevant Exchange Rate on the date of the final distribution in respect of the Admitted Claim; and
- (iii) in the case of a Claim which becomes an Admitted Claim and is paid in full after the Record Date, the relevant Exchange Rate on the Record Date;

"Date of Administration" means 15 September 2008;

"Deemed Currency Conversion Claim" means, in the case of a Claim which becomes an Admitted Claim and is paid in full after the Record Date, a Claim which shall arise upon the Claim becoming an Admitted Claim:

- (i) where the Creditor had, at the Date of Administration, a contractual right to be paid part of all of the principal amount of its Admitted Claim in a Foreign Currency; and
- (ii) the total amount to be received by the Creditor in respect of payments of principal relating to such part (or all) of its Admitted Claim relating to the Original Foreign Currency Amount, when converted into the relevant Foreign Currency at the relevant Exchange Rate on the Record Date, is less than the Original Foreign Currency Amount;

"Determined Rate" means, as relevant (i) the Claimed Higher Rate which is successfully asserted by a Higher Rate Claimant in accordance with paragraphs 3.5 or 3.12; (ii) or such rate (which is higher than the Standard Rate but lower than the Claimed Higher Rate) as

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set out in a Higher Rate Offer from LBIE and accepted by the Higher Rate Claimant in accordance with paragraph 3.6;

"Determined Rate Entitlement" means an entitlement to interest on a Qualifying OTC Portion at a Determined Rate;

"Exchange Rate" means the middle exchange rate on the London foreign exchange market at the close of business on the date in question for a relevant Foreign Currency and pounds sterling;

"Expert" means an individual who in the reasonable opinion of LBIE has the appropriate financial, legal or other expertise in relation to the subject matter of the Higher Rate Claim and is capable of discharging the functions and powers of the Selected Adjudicator;

"FBF" means the French Master Agreements relating to Transactions on Forward Financial Instruments (2001 and 2007 versions);

"Final Higher Rate Rejection Notice" means a notice served by LBIE in accordance with paragraph 3.13;

"Foreign Currency" means a currency other than pounds sterling;

"Higher Rate Claim" means a Claim to a Claimed Higher Rate;

"Higher Rate Claimant" means a Qualifying OTC Creditor or an Unagreed OTC Creditor who has asserted a Higher Rate Claim;

"Higher Rate Determination Notice" means a notice served by LBIE in accordance with paragraphs 3.5, 3.6.1 or 3.12;

"Higher Rate Notice" means a notice confirming that a Qualifying OTC Creditor or an Unagreed OTC Creditor wishes to assert a Higher Rate Claim and specifying its Claimed Higher Rate;

"Higher Rate Offer" has the meaning given to it in paragraph 3.6.1;

"Higher Rate Rejection Notice" means a notice served by LBIE in accordance with paragraph 3.6.2;

"Interest Entitlements" means together the Statutory Rate Entitlements and the Additional Entitlements;

"ISDA" means the 1992 ISDA Master Agreement and the 2002 ISDA Master Agreement;

"Joint Administrators" means Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr, each a partner of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT;

"LBIE" means Lehman Brothers International (Europe) (in administration);

"LFC" means the ISDA Long Form Confirmation;

"Member Claimant" means any Creditor, other than the Subordinated Creditor, asserting a Claim against LBIE in respect of amounts owed by LBIE to its members;

"Ordinary Creditors" means all Creditors except for the Subordinated Creditor and Member Claimants, and **"Ordinary Creditor"** shall mean any one of them;

Strictly confidential and without prejudice. Subject to contract; this proposal does not form the basis of any binding contract between LBIE and any Creditor.

"Original Calculation Statement" has the meaning given to it in paragraph 6.1;

"Original Foreign Currency Amount" means the sum arising from a contractual right, at the Date of Administration, to be paid part or all of the principal amount of an Admitted Claim in a Foreign Currency;

"Plan" means a scheme of arrangement under Part 26 of the Companies Act 2006 or a company voluntary arrangement under sections 1-7B of the Act which implements the proposal contemplated by the Proposed Terms;

"Plan Documents" means the documents setting out the terms of the Plan which are required to be sent to Creditors;

"Plan Effective Date" means the date upon which the Plan becomes binding upon LBIE and its Creditors, and if relevant, its members;

"Plan Launch Date" means the date that the Plan Documents are sent to Creditors;

"Post Administration Contract" means the CRA, a claims determination deed or any other analogous agreement;

"Priority Subordinated Debt Amount" means £150,000,000;

"Qualifying OTC Agreement" means the ISDA, LFC, FBF or AFB;

"Qualifying OTC Claim" means a claim arising out of a Qualifying OTC Agreement;

"Qualifying OTC Creditor" means an Ordinary Creditor with a Qualifying OTC Portion;

"Qualifying OTC Portion" means in respect of a Qualifying OTC Creditor, such proportion of its Admitted Claim as is derived from a Qualifying OTC Claim as determined by LBIE and stated in an Original Calculation Statement or a Revised Calculation Statement;

"Record Date" means a date in advance of the first date that Currency Conversion Entitlements are paid, to be determined by LBIE in its sole discretion, expected to be approximately 30 days prior to the first date such Currency Conversion Entitlements are paid;

"Released Parties" means the Joint Administrators, their firm, its members, partners, directors, officers, employees, agents and representatives and the Joint Administrators' legal and other professional advisers, their respective firms, and their members, partners and employees;

"Revised Calculation Statement" has the meaning given to it in paragraph 6.7;

"Rules" means the Insolvency Rules 1986 as at the Date of Administration;

"Selected Adjudicator" has the meaning given to it in paragraph 3.8;

"Standard Rate" has the meaning given to it in paragraph 1.1.2(i);

"Standard Rate Entitlement" means an entitlement to interest on a Qualifying OTC Portion at the Standard Rate;

"Statutory Rate" has the meaning given to it in paragraph 1.1.1;

Strictly confidential and without prejudice. Subject to contract; this proposal does not form the basis of any binding contract between LBIE and any Creditor.

"Statutory Rate Entitlement" means in respect of an Ordinary Creditor, an entitlement to interest at the Statutory Rate;

"Subordinated Creditor" means Tonnara Investments S.a.r.l. (to be renamed Wentworth Sons Sub-Debt S.a.r.l.);

"Subordinated Debt" means an amount of £1,240,452,696 owing to the Subordinated Creditor pursuant to three subordinated loan agreements each dated 1 November 2006 between LB Holdings Intermediate 2 Limited and LBIE;

"Surplus" means any surplus remaining after payment of the unsubordinated debts proved in LBIE's administration;

"Unagreed Claim" means an unsecured Claim against LBIE in respect of which a proof of debt has been filed, but which has not been admitted for dividend from the estate of LBIE;

"Unagreed Claim Offer Amount" has the meaning given to it in paragraph 7.3.1;

"Unagreed OTC Creditor" means an Ordinary Creditor with an Unagreed OTC Portion; and

"Unagreed OTC Portion" means in respect of an Unagreed OTC Creditor, such proportion of its Unagreed Claim that is asserted by the Unagreed OTC Creditor in its proof of debt as deriving from a Qualifying OTC Claim.



International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of

..... and

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability.* If: —

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) *Basic Representations.*

- (i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply with Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) *Breach of Agreement.* Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross Default.* If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) *Bankruptcy*. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

- (i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —
- (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
 - (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;
- (ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));
- (iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);
- (iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or
- (v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).
- (c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default: —

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

- (a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) *Counterparts and Confirmations.*
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means 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.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of: —

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....
(Name of Party)

.....
(Name of Party)

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

(Multicurrency — Cross Border)



International Swap Dealers Association, Inc.

SCHEDULE
to the
Master Agreement

dated as of

between and
("Party A") ("Party B")

Part 1. Termination Provisions.

(a) "*Specified Entity*" means in relation to Party A for the purpose of: —

Section 5(a)(v), ...
Section 5(a)(vi), ...
Section 5(a)(vii), ...
Section 5(b)(iv), ...

and in relation to Party B for the purpose of:—

Section 5(a)(v), ...
Section 5(a)(vi), ...
Section 5(a)(vii), ...
Section 5(b)(iv), ...

(b) "*Specified Transaction*" will have the meaning specified in Section 14 of this Agreement unless
another meaning is specified here
.....
.....

(c) The "*Cross Default*" provisions of Section 5(a)(vi) will/will not * apply to Party A
will/will not * apply to Party B

If such provisions apply:—

"*Specified Indebtedness*" will have the meaning specified in Section 14 of this Agreement unless
another meaning is specified here
.....

* Delete as applicable.

"Threshold Amount" means

- (d) The *"Credit Event Upon Merger"* provisions of Section 5(b)(iv) will/will not * apply to Party A
will/will not * apply to Party B
- (e) The *"Automatic Early Termination"* provision of Section 6(a) will/will not * apply to Party A
will/will not * apply to Party B
- (f) *Payments on Early Termination*. For the purpose of Section 6(e) of this Agreement: —
(i) Market Quotation/Loss * will apply.
(ii) The First Method/The Second Method * will apply.
- (g) *"Termination Currency"* means, if such currency is specified and
freely available, and otherwise United States Dollars.
- (h) *Additional Termination Event* will/will not apply*. The following shall constitute an Additional
Termination Event: —

For the purpose of the foregoing Termination Event, the Affected Party or Affected Parties shall be: — ...

Part 2. Tax Representations.

- (a) *Payer Representations*. For the purpose of Section 3(e) of this Agreement, Party A will/will not* make the following representation and Party B will/will not* make the following representation: —
It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, *provided* that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.
- (b) *Payee Representations*. For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:
(i) The following representation will/will not* apply to Party A and will/will not apply to Party B: —
It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received

* Delete as applicable.

by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then: —

"Specified Treaty" means with respect to Party A

"Specified Jurisdiction" means with respect to Party A

"Specified Treaty" means with respect to Party B

"Specified Jurisdiction" means with respect to Party B

(ii) The following representation will/will not* apply to Party A and will/will not* apply to Party B: —

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

If such representation applies, then: —

"Specified Jurisdiction" means with respect to Party A

"Specified Jurisdiction" means with respect to Party B

(iii) The following representation will/will not* apply to Party A and will/will not* apply to Party B: —

(A) It is entering into each Transaction in the ordinary course of its trade as, and is, either (1) a recognised U.K. bank or (2) a recognised U.K. swaps dealer (in either case (1) or (2), for purposes of the United Kingdom Inland Revenue extra statutory concession C17 on interest and currency swaps dated March 14, 1989), and (B) it will bring into account payments made and received in respect of each Transaction in computing its income for United Kingdom tax purposes.

(iv) Other Payee Representations: —

.....
.....
.....

N.B. The above representations may need modification if either party is a Multibranch Party.

* Delete as applicable.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable: —

(a) Tax forms, documents or certificates to be delivered are: —

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
.....		
.....		
.....		
.....		
.....		

(b) Other documents to be delivered are: —

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
.....			Yes/No*
.....			Yes/No*
.....			Yes/No*
.....			Yes/No*
.....			Yes/No*

Part 4. Miscellaneous.

(a) *Addresses for Notices.* For the purpose of Section 12(a) of this Agreement: —

Address for notices or communications to Party A: —

Address:

Attention:

Telex No.: Answerback:

Facsimile No.: Telephone No:

Electronic Messaging System Details:

Address for notices or communications to Party B: —

Address:

Attention:

Telex No.: Answerback:

* Delete as applicable.

Facsimile No.: Telephone No.:

Electronic Messaging System Details:

- (b) *Process Agent*. For the purpose of Section 13(c) of this Agreement: —

Party A appoints as its Process Agent

Party B appoints as its Process Agent

- (c) *Offices*. The provisions of Section 10(a) will/will not* apply to this Agreement.

- (d) *Multibranch Party*. For the purpose of Section 10(c) of this Agreement: —

Party A is/is not* a Multibranch Party and, if so, may act through the following Offices: —

.....
.....

Party B is/is not* a Multibranch Party and, if so, may act through the following Offices: —

.....
.....

- (e) *Calculation Agent*. The Calculation Agent is, unless otherwise specified in a Confirmation in relation to the relevant Transaction.

- (f) *Credit Support Document*. Details of any Credit Support Document: —

.....
.....
.....

- (g) *Credit Support Provider*. Credit Support Provider means in relation to Party A, ...

.....
.....

Credit Support Provider means in relation to Party B, ...

.....
.....

- (h) *Governing Law*. This Agreement will be governed by and construed in accordance with English law/the laws of the State of New York (without reference to choice of law doctrine) *.

* Delete as applicable.

(i) *Netting of Payments*. Subparagraph (ii) of Section 2(c) of this Agreement will not apply to the following Transactions or groups of Transactions (in each case starting from the date of this Agreement/in each case starting from *)
.....
.....

(j) *"Affiliate"* will have the meaning specified in Section 14 of this Agreement unless another meaning is specified here
.....
.....

Part 5. Other Provisions.

* Delete as applicable.



International Swaps and Derivatives Association, Inc.

2002 MASTER AGREEMENT

dated as of

..... and

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting of Payments.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) *No Agency.* It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default Under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If "Cross-Default" is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption.* The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) *Illegality.* After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) *Force Majeure Event.* After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) *Tax Event.* Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Hierarchy of Events.***

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) ***Deferral of Payments and Deliveries During Waiting Period.*** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) ***Inability of Head or Home Office to Perform Obligations of Branch.*** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(h)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

6. Early Termination; Close-Out Netting

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) *Right to Terminate.*

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) ***Calculations; Payment Date.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (i) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) ***Payment Date.*** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) ***Termination Events.*** If the Early Termination Date results from a Termination Event:—

(1) ***One Affected Party.*** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) ***Two Affected Parties.*** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) *Separate Indemnities.* To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) *Amendments.* An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) *Interest and Compensation.*

(i) *Prior to Early Termination.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) *Interest on Defaulted Payments.* If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) *Compensation for Defaulted Deliveries.* If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) *Interest on Deferred Payments.* If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

“Additional Representation” has the meaning specified in Section 3.

“Additional Termination Event” has the meaning specified in Section 5(b).

“Affected Party” has the meaning specified in Section 5(b).

“Affected Transactions” means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Agreement” has the meaning specified in Section 1(c).

“Applicable Close-out Rate” means:—

- (a) in respect of the determination of an Unpaid Amount:—
 - (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
 - (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
 - (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
 - (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount:—
 - (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
 - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
 - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
 - (3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

“Applicable Deferral Rate” means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and 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.

“Automatic Early Termination” has the meaning specified in Section 6(a).

“Burdened Party” has the meaning specified in Section 5(b)(iv).

“Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

“Close-out Amount” means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

"Confirmation" has the meaning specified in the preamble.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Contractual Currency" has the meaning specified in Section 8(a).

"Convention Court" means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Cross-Default" means the event specified in Section 5(a)(vi).

"Default Rate" means 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.

"Defaulting Party" has the meaning specified in Section 6(a).

"Designated Event" has the meaning specified in Section 5(b)(v).

"Determining Party" means the party determining a Close-out Amount.

"Early Termination Amount" has the meaning specified in Section 6(e).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"electronic messages" does not include e-mails but does include documents expressed in markup languages, and *"electronic messaging system"* will be construed accordingly.

"English law" means the law of England and Wales, and *"English"* will be construed accordingly.

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Force Majeure Event" has the meaning specified in Section 5(b).

"General Business Day" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **"unlawful"** will be construed accordingly.

"Local Business Day" means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

"Local Delivery Day" means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

"Master Agreement" has the meaning specified in the preamble.

"Merger Without Assumption" means the event specified in Section 5(a)(viii).

"Multiple Transaction Payment Netting" has the meaning specified in Section 2(c).

"Non-affected Party" means, so long as there is only one Affected Party, the other party.

"Non-default Rate" means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Other Amounts" has the meaning specified in Section 6(f).

"Payee" has the meaning specified in Section 6(f).

"Payer" has the meaning specified in Section 6(f).

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Proceedings" has the meaning specified in Section 13(b).

"Process Agent" has the meaning specified in the Schedule.

"rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Schedule" has the meaning specified in the preamble.

"Scheduled Settlement Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Stamp Tax Jurisdiction" has the meaning specified in Section 4(e).

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

"Termination Currency" means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Threshold Amount" means the amount, if any, specified as such in the Schedule.

"Transaction" has the meaning specified in the preamble.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

"Waiting Period" means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....
(Name of Party)

.....
(Name of Party)

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:



International Swaps and Derivatives Association, Inc.

SCHEDULE
to the
2002 Master Agreement

dated as of

between and
("Party A") ("Party B")
[established as a [COUNTERPARTY TYPE]] [established as a [COUNTERPARTY TYPE]]
[with company number [NUMBER]] [with company number [NUMBER]]
[under the laws of [JURISDICTION]] [under the laws of [JURISDICTION]]
[acting through its [BRANCH]]* [acting through its [BRANCH]]*

Part 1. Termination Provisions.

(a) "Specified Entity" means in relation to Party A for the purpose of:—

Section 5(a)(v), ...
Section 5(a)(vi), ...
Section 5(a)(vii), ...
Section 5(b)(v), ...

and in relation to Party B for the purpose of:—

Section 5(a)(v), ...
Section 5(a)(vi), ...
Section 5(a)(vii), ...
Section 5(b)(v), ...

* Include if applicable.

be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.]*

[[(ii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]:—

]]*

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement[, Party A and Party B do not make any representations.]:—

[[(i)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is fully eligible for the benefits of the “Business Profits” or “Industrial and Commercial Profits” provision, as the case may be, the “interest” provision or the “Other Income” provision, if any, of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

“*Specified Treaty*” means with respect to Party A

“*Specified Jurisdiction*” means with respect to Party A

“*Specified Treaty*” means with respect to Party B

“*Specified Jurisdiction*” means with respect to Party B]*

[[(ii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

“*Specified Jurisdiction*” means with respect to Party A

“*Specified Jurisdiction*” means with respect to Party B]*

[[(iii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

* Delete as applicable.

[[iv)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a “non-U.S. branch of a foreign person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[v)] [Party A] [and] [Party B] [each] make[s] the following representation:—

With respect to payments made to an address outside the United States or made by a transfer of funds to an account outside the United States, it is a “non-U.S. branch of a foreign person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[vi)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a “foreign person” (as that term is used in section 1.6041-4(a)(4) of United States Treasury Regulations) for United States federal income tax purposes.]*

[[vii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]:—

.....
.....
.....]]*

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable:—

(a) Tax forms, documents or certificates to be delivered are[: none][:—

Party required to deliver document	Form/Document/ Certificate	Date by which to be delivered
.....		
.....		
.....		
.....		
.....		]]*

* Delete as applicable.

(b) Other documents to be delivered are[: none][:—

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
.....			[Yes][No]
.....			[Yes][No]
.....			[Yes][No]
.....			[Yes][No]
.....			[Yes][No]]*

Part 4. **Miscellaneous.**

(a) *Addresses for Notices.* For the purpose of Section 12(a) of this Agreement:—

Address for notices or communications to Party A:—

Address:

Attention:

Telex No.: Answerback:

Facsimile No.: Telephone No.:

E-mail:

Electronic Messaging System Details:

Specific Instructions:

Address for notices or communications to Party B:—

Address:

Attention:

Telex No.: Answerback:

Facsimile No.: Telephone No.:

E-mail:

Electronic Messaging System Details:

Specific Instructions:

* Delete as applicable.

(b) *Process Agent.* For the purpose of Section 13(c) of this Agreement:—

Party A appoints as its Process Agent: [not applicable][.....]*

Party B appoints as its Process Agent: [not applicable][.....]*

(c) *Offices.* The provisions of Section 10(a) [will][will not]* apply to this Agreement.

(d) *Multibranch Party.* For the purpose of Section 10(b) of this Agreement:—

Party A [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.....
.....]*

Party B [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.....
.....]*

[(e)] *Calculation Agent.* The Calculation Agent is , unless otherwise specified in a Confirmation in relation to the relevant Transaction.]*

[(f)] *Credit Support Document.* Details of any Credit Support Document:— [none][.....
.....
.....]*

[(g)] *Credit Support Provider.* Credit Support Provider means in relation to Party A, [none][.....
.....]*

Credit Support Provider means in relation to Party B, [none][.....
.....]*

[(h)] *Governing Law.* This Agreement will be governed by and construed in accordance with [English law][the laws of the State of New York (without reference to choice of law doctrine)]*.

* Delete as applicable.

** Include if applicable.

- [(i)] *Netting of Payments.* "Multiple Transaction Payment Netting" [will not apply for the purpose of Section 2(c) of this Agreement.][will apply for the purpose of Section 2(c) of this Agreement to [all Transactions][the following Transactions or groups of Transactions:—]
]
 (in each case starting from [the date of this Agreement][.....])*
- [(j)] *"Affiliate"* [will have the meaning specified in Section 14 of this Agreement.][means]*
- [(k)] *Absence of Litigation.* For the purpose of Section 3(c):—
"Specified Entity" means in relation to Party A, ...
"Specified Entity" means in relation to Party B, ...
- [(l)] *No Agency.* The provisions of Section 3(g) [will][will not]* apply to this Agreement.
- [(m)] *Additional Representation* [will][will not]* apply. [For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:—
 [(i)] *Relationship Between Parties.* Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—
 [(1)] *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.
 [(2)] *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
 [(3)] *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.]]*
- [[n)] *Recording of Conversations.* Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.]]**

* Delete as applicable.
 ** Include if applicable.

Part 5. Other Provisions.

.....
(Name of Party)

.....
(Name of Party)

By:
Name:
Title:
Date:

By:
Name:
Title:
Date:

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.

If you are in any doubt as to the action you should take, you are recommended to seek advice immediately from your own professional adviser.

If you have sold or otherwise transferred all of your interests as an Eligible Offeree (as defined in the proposed Claim Resolution Agreement contained in Part III of this document (the "Agreement")), please forward this document as soon as possible to the purchaser or transferee, or to the stockbroker, bank or other agent through whom the sale or transfer was effected for onward transmission to the purchaser or transferee. However, this document should not be forwarded or transmitted in or into any jurisdiction outside the United Kingdom if to do so would constitute a violation of the relevant laws in such jurisdiction.

The information in this document does not constitute nor does it form part of any offer to sell or to purchase or to subscribe for, or the solicitation of an offer to sell or purchase or subscribe for, any securities in any jurisdiction or territory.

Certain of the securities which are the subject of the Agreement may have been issued by Affiliates of the Company (the "Affiliate Securities"). No offer or sale of Affiliate Securities may have been registered under the United States Securities Act of 1933, as amended (the "Securities Act"). Any Affiliate Securities that may be delivered under the Agreement may not be offered or sold to other investors except as part of a transaction that is registered under the Securities Act or that is exempt from registration.

This document should be read in conjunction with the accompanying Form of Acceptance which sets out the procedure for acceptance of the Offer. The information used by or relied upon by the Company for the purpose of determining the level of acceptances in relation to the Offer is not determinative of any rights or claims of any person and should not be used or relied upon for this or any other purpose. This information is not an indication of any allocation or distribution of assets or calculation of claims or liabilities that a person may receive or have under the Agreement. Please refer to the Agreement for further information regarding allocations and distributions of assets and calculations of claims and liabilities.

Further copies of this document may be downloaded from the PricewaterhouseCoopers website at http://www.pwc.co.uk/eng/issues/lehman_updates.html.

Circular in relation to a proposed

CLAIM RESOLUTION AGREEMENT

between

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

(in administration)

and

ELIGIBLE OFFEREEES

Your attention is drawn to the Letter from the Administrators which is set out in Part I on pages I-1 to I-30 of this document and to the Important Notices set out on page 2 of this document.

The procedure for acceptance of the Offer is set out in Schedule 1 to the Agreement in Part III on pages III-159 to III-169 of this document and in the accompanying Form of Acceptance.

If you wish to accept the Offer to enter into the Agreement, you must complete, sign and submit your Form of Acceptance to the Company by sending a scanned copy by email to claimresolutionagreement@lbia-eu.com or by faxing a copy to +44 (0)20 7067 8542 as soon as possible and in any event so as to be received by the Company no later than 5.00 p.m. (London time) on Tuesday 29 December 2009.

After you submit your Form of Acceptance by email or facsimile, you must send the original as soon as possible by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).

Important Notices

This document has been prepared solely in connection with the Agreement.

The information contained in this document has been prepared by the Company and the Administrators based upon information available to them.

The statements contained in this document are made as at the date of this document, unless some other time is specified in relation to them, and delivery or service of this document shall not give rise to any implication that there has been no change in the facts set out in this document since such date or that the information in this document is correct as at any time subsequent to such date.

Nothing contained in this document 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 person may be entitled or any claim against it, them or any person.

The summary of the principal provisions and effect of the Agreement set out in Part II of this document and the information and explanations set out in Part I of this document are qualified in their entirety by reference to the Agreement, the full text of which is set out at Part III of this document. In the event of any discrepancy or inconsistency between the provisions of the Agreement and any information or statement set out elsewhere in this document, the provisions of the Agreement shall prevail. Each recipient of this document is advised to read and consider carefully the text of the Agreement and to make its own independent decision in relation to the Agreement. Nothing in this document should be relied upon or treated as a recommendation or an inducement to enter into the Agreement.

This document has been prepared solely to assist Eligible Offerees in relation to the proposal of the Agreement. Nothing in this document should be relied upon for any purpose, including, without limitation, for the purchase or in connection with the purchase of any asset or liability of the Company.

No person has been authorised by the Company or any of the Administrators to make any representations or give any information other than the statements contained herein, and, if given or made, such representations or information must not be relied upon as having been authorised by the Company or any of the Administrators.

The Administrators are acting as agents for and on behalf of the Company and none of the Administrators, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatever in respect of any of the obligations undertaken or assumed by the Company or in respect of any failure on the part of the Company in relation to the Agreement. The exclusion of liability set out in this paragraph shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any claims in tort as well as under the laws of contract. The Administrators, their firm, partners, employees, agents, advisers or representatives shall be entitled to rely on, enforce and enjoy the benefit of this paragraph as if they were a party to this document.

Recipients of this document should not construe the contents of this document as legal, tax or financial advice. Recipients of this document should consider consulting their own professional advisers as to legal, tax, financial or other relevant matters before taking any action in connection with the Agreement.

Capitalised terms used in this document have the meanings ascribed to them in the section in which they appear or in Part 18 of the Agreement which is set out at Part III of this document.

NEITHER THIS CIRCULAR NOR THE CLAIM RESOLUTION AGREEMENT NOR ANY OTHER DOCUMENT RELATING TO THE CLAIM RESOLUTION AGREEMENT HAS BEEN PREPARED FOR THE PURPOSES OF ANY SOLICITATION OR OFFER TO THE PUBLIC IN ANY JURISDICTION OR TERRITORY AND THIS CIRCULAR AND SUCH OTHER DOCUMENTS MAY NOT BE DISTRIBUTED OR MADE AVAILABLE FOR SUCH PURPOSE. NONE OF THIS CIRCULAR, THE CLAIM RESOLUTION AGREEMENT AND ANY OTHER DOCUMENT RELATING TO THE CLAIM RESOLUTION AGREEMENT HAS BEEN SUBMITTED FOR CLEARANCE TO ANY REGULATORY AUTHORITY.

IF YOU ARE IN ANY DOUBT ABOUT ANY OF THE CONTENTS OF THIS DOCUMENT, YOU SHOULD OBTAIN INDEPENDENT PROFESSIONAL ADVICE.

Dated 24 November 2009

Administrators of the Company:

Mr. Anthony Victor Lomas
PricewaterhouseCoopers LLP
Plumtree Court
London EC4A 4HT

Mr. Steven Anthony Pearson
PricewaterhouseCoopers LLP
Plumtree Court
London EC4A 4HT

Mr. Dan Yoram Schwarzmann
PricewaterhouseCoopers LLP
Plumtree Court
London EC4A 4HT

Mr. Michael John Andrew Jervis
PricewaterhouseCoopers LLP
Plumtree Court
London EC4A 4HT

Legal Advisers to the Company and the Administrators:

Linklaters LLP
One Silk Street
London EC2Y 8HQ

IF YOU WISH TO ACCEPT THE OFFER

If you wish to accept the Offer to enter into the Agreement with the Company, you must complete and sign a Form of Acceptance and submit it to the Company:

- by sending a scanned copy by email to claimresolutionagreement@lbia-eu.com

or

- by faxing a copy to +44 (0)20 7067 8542

as soon as possible and so as to be received by the Company no later than

5.00 p.m. (London time) on Tuesday 29 December 2009.

After you submit your Form of Acceptance by email or facsimile, you must send the original to the Company as soon as possible:

by pre-paid post or air mail to:

Lehman Brothers International (Europe)
(in administration)
Trust Property 24th Floor, PO Box 62492
London E14 1JX
United Kingdom

or by courier only to:

Lehman Brothers International (Europe)
(in administration)
Trust Property 24th Floor, 25 Bank Street
London E14 5LE
United Kingdom
(marked for the attention of E. Levy)

Detailed instructions on how to complete the Form of Acceptance are set out in the notes on page 4 of the Form of Acceptance (also found on page III-173 of this document).

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PART I
LETTER FROM THE ADMINISTRATORS

Lehman Brothers International (Europe) (in administration)

Lehman Brothers
International (Europe) (in
administration)
25 Bank Street
London
E14 5LE

To: The Eligible Offerees

Date: 24 November 2009

Dear Sirs,

The Claim Resolution Agreement (the "Agreement") and the return of Assets

1 Introduction

The purpose of this letter is to introduce and provide a brief explanation of the Administrators' proposals contained within the Circular (of which this letter forms part) for the basis of returning segregated trust assets held by Lehman Brothers International (Europe) (in administration) (the "**Company**") to its clients.

The Company is making an offer, subject to certain terms and conditions, to certain persons (referred to in the Agreement as "**Eligible Offerees**") to enter into and be bound by the Agreement set out at Part III of the Circular (the "**Offer**"). The Agreement is proposed by the Company for the determination of ownership claims to certain assets and other non-proprietary claims against and liabilities to the Company, as applicable, in accordance with certain contractual mechanisms. These contractual mechanisms are set out in the Agreement at Part III of the Circular. You are advised to read the Agreement in full, including the terms and conditions of the Offer at Schedule 1 to the Agreement, as only those with full particulars of their position are likely to be able to assess the full impact of accepting the Offer.

Further background history on the effect of the Company's entry into administration on segregated trust assets held by the Company can be found at Schedule 1 to this letter. A brief "readers' guide" to the Offer and the Agreement is set out at Schedule 2 to this letter. Part II of the Circular contains a more detailed summary of the key terms of the Agreement.

Unless the context requires otherwise, capitalised terms used in this letter have the same meaning as given to them in the Agreement and any descriptions of such capitalised terms in this letter are merely summaries of these terms.

In order to benefit from the terms of the Agreement it is essential that you submit a duly completed Form of Acceptance. Failure to submit a Form of Acceptance will mean you will not be treated in accordance with the terms of the Agreement.

2 Why is the Offer being made?

On 15 September 2008 the Company was placed into administration and, according to its records, over US\$35 billion of assets belonging to clients were held by the Company in various sub-custodians and depots. Since that date the Administrators have been seeking

Lehman Brothers International (Europe) (in administration)

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PART I
LETTER FROM THE ADMINISTRATORS

to return property to clients, but have faced numerous challenges and issues. The proposed arrangements seek to address these challenges.

The process of returning assets has been slow and costly and is not attractive to clients, as it requires clients to provide indemnification and credit support to the Company in exchange for the return of assets. In many cases, it is not possible to return assets held on trust to clients for whom they are being held due to, amongst other things, uncertainty over competing claims or counterparties being unwilling or unable to comply with the indemnification requirements.

One of the primary objectives of the Administrators has been to develop a standard methodology to expedite the return of trust property held by the Company to its rightful owners. The Administrators initially proposed to launch a scheme of arrangement under Part 26 of the Companies Act 2006 to assist with this. However, the Court of Appeal ruled that the English courts do not have jurisdiction to sanction a scheme of arrangement which varies proprietary rights in the manner proposed by the Company.

The Administrators have worked with a sub-committee of the Creditors' Committee of the Company (referred to as the **"Claim Resolution Agreement Working Group"**) to develop an approach, which incorporates a number of key provisions in order to return assets to clients. This approach is set out in the Agreement and, subject to certain acceptance thresholds, will bind those clients who pro-actively elect to sign up to its terms by accepting the Offer.

The Administrators believe that, for those clients who become party to the Agreement, the Agreement establishes the most efficient available method of determining the return of segregated client assets which the Company holds on trust.

3 Are you eligible for the Offer?

The Offer is being made to all Eligible Offerees. There are two categories of Eligible Offerees.

The first category (referred to in the Agreement as **"TA Offerees"**) are clients of the Company who, as at the date of the Circular, have ownership claims to assets which were recorded in the books and records of the Company and the relevant sub-custodian or depot as being held in a segregated manner for clients, separately from the Company's own assets, as at the time the Company entered into administration.

The second category (referred to in the Agreement as **"NTA Offerees"**) are clients of the Company who do not have ownership claims to segregated assets but who, at the date of the Circular, are party to Financial Contracts with the Company as at the time the Company entered into administration. The term **"Financial Contract"** encompasses any bilateral or multilateral contract entered into before 15 September 2008 (whether evidenced in writing or not) relating to one or more transactions or positions of a financial nature, including contracts for the delivery and/or custody of Assets, entered into with the Company. Contracts which are purely administrative or service contracts do not constitute Financial Contracts.

4 What does the Agreement do?

The objective of the Agreement is to establish standard methods for the termination and valuation of Financial Contracts and to expedite the process of asset distribution in order to bring finality to Signatories in respect of these positions.

4.1 Signatories

If it becomes effective, the Agreement will be made between the Company and Eligible Offerees who agree to be bound by it (referred to in the Agreement as "**Signatories**").

There are two types of Signatories, referred to in the Agreement as "**TA Signatories**" and "**NTA Signatories**". TA Signatories are those Signatories who assert, or who the Company believes have, an "**Asset Claim**" as at the time the Company entered into administration. In summary, an Asset Claim is an ownership claim to "**Trust Assets**", which include assets held in a segregated manner for clients separately from the Company's own securities and assets derived from them, such as dividends and coupons. TA Signatories may also have non-proprietary claims against the Company pursuant to Financial Contracts. NTA Signatories are those Signatories who do not have or assert Asset Claims but who are party to Financial Contracts with the Company as at the time the Company entered into administration. Due to the conditionality of the Offer, the Agreement is likely to become effective for NTA Signatories at a later date than for TA Signatories. You are referred to Schedule 1 to the Agreement for further details.

4.2 Asset Claims

The Agreement establishes methods to assist the Company in determining TA Signatories' Asset Claims. In particular, TA Signatories are requested to submit their Asset Claims by the "**Bar Date**", which is 26 February 2010 or such later date as the Company may notify to Signatories. If a Signatory fails to submit an Asset Claim before the Bar Date, the Company will determine that Signatory's entitlement to Trust Assets on the basis of the information available to the Company at the time it makes the determination.

Under the Agreement, each Signatory will be released by all other Signatories from all Asset Claims to Trust Assets distributed to it in accordance with the Agreement. This will lessen the risk of competing claims being brought against a Signatory who receives Trust Assets from the Company and means that TA Signatories will not be required to provide the form of indemnity currently required upon the distribution of Trust Assets.

The Agreement does not compromise Signatories' proprietary rights, if any, to Securities which the Company rehypothecated but which remain identifiable within the accounts of the Company that hold the Company's own Securities because the Company did not complete the transfer or other disposal of those Securities.

The Agreement sets out structured procedures for the return of Trust Assets. In some circumstances, these procedures may compromise certain contractual rights of Signatories; for example, rights to potential consequential losses (if any). It is not possible to predict how the application of these procedures may affect individual Signatories at this stage because of the highly fact-dependent nature of an individual's circumstances. It is within this context that the Administrators believe the Agreement is in the overall interests of creditors as a whole.

The Agreement cannot bind people who do not sign up to the Agreement (referred to in the Agreement as "**Non-Signatories**") and so, if the Agreement method of allocation or distribution of Trust Assets is subject to challenge by a Non-Signatory, court directions or other court determination may be necessary before distribution of those Trust Assets. The Agreement also cannot give TA Signatories protection from any ownership claims which Non-Signatories may seek to assert against Trust Assets in the hands of TA Signatories.

4.3 Other claims under Financial Contracts

The Agreement establishes a mechanism for the termination and close-out of all Financial Contracts between a Signatory and the Company. The claims or liabilities under each such contract are netted off under the Agreement to determine a single net claim against or liability to the Company. In the event that the net figure is a claim against the Company, this will be an ascertained unsecured claim against the Company for the purposes of any future distribution from the general estate of the Company.

In respect of TA Signatories, any such net liabilities due to the Company will be applied against a TA Signatory's entitlement to available Trust Assets, thereby establishing an amount of Trust Assets to be distributed to that TA Signatory after taking into account such TA Signatory's net liabilities to the Company.

TA Signatories may be able to reduce the amount of Trust Assets appropriated by the Company in satisfaction of their net liabilities by requesting that these liabilities are applied first against any shortfall claims they may have in respect of Trust Assets. The Agreement also contains a mechanism whereby Signatories are able to collateralise their net financial liabilities under the Agreement with their admitted claims to Pre-Administration Client Money, thereby enabling Signatories to gain the full value of their admitted claims to Pre-Administration Client Money at the earliest opportunity.

5 Advantages of accepting the Offer

The Administrators have worked closely with the Claim Resolution Agreement Working Group to develop the Agreement in a form that balances the requirement to return certain Assets held on trust by the Company to their rightful owners quickly and efficiently with the need to ensure that the unsecured estate is not disadvantaged. The Claim Resolution Agreement Working Group includes both unsecured creditors and clients of the Company who have Asset Claims to Trust Assets.

In the Administrators' view, the Agreement provides the most efficient solution for the return of Trust Assets, in terms of both time and cost to the Company and its clients. In particular, the Administrators are of the view that the Agreement will benefit Signatories and should be implemented on the basis that it is expected to:

- (i) expedite the return of Trust Assets to Signatories;
- (ii) provide finality and certainty regarding the financial position between Signatories and the Company;
- (iii) reduce costs and mitigate risks of competing claims to Trust Assets to which the Company and TA Signatories might otherwise be exposed; and
- (iv) expedite the release of Assets which are not held on trust and enable subsequent distributions to clients of the Company, on the basis that the Agreement will not only deal with claims to Trust Assets but also establish Signatories' unsecured claims, if any, against the Company.

In seeking to achieve an effective multilateral solution to the determination of Signatories' positions, the implementation of the Agreement will progress the Administration of the Company, enabling further advances to be made in the management of the unsecured estate. For this and other reasons outlined in this letter, the Administrators are also of the opinion that the Agreement is in the best interests of the creditors of the Company as a whole.

In particular, the Administrators also believe that the Agreement will benefit the unsecured clients of the Company since it is expected to:

- (i) speed up the agreement of unsecured claims because all unsecured claims of Signatories are determined by operation of the Agreement as described in (ii) above;
- (ii) expedite the distribution process for unsecured clients on the basis that the unsecured claims can be determined more quickly; and
- (iii) reduce the level of unsecured claims as certain claims of Signatories for consequential and indirect losses are compromised by the Agreement.

6 Position of Eligible Offerees who do not accept the Offer

Eligible Offerees who do not become party to the Agreement will be Non-Signatories and will not have the right to have their claims against the Company determined in accordance with the terms of the Agreement.

Non-Signatories' claims are likely to take longer to finalise outside the processes and mechanisms to be put in place by the Agreement. For Non-Signatories who have ownership claims to Trust Assets, this may delay the return of those Assets as no Trust Assets can be returned to a client before its net financial position has been calculated and an appropriate amount of Trust Assets have been retained to satisfy that client's liabilities to the Company.

The concessions and compromises contained in the Agreement which operate to the benefit of Signatories are unlikely to be available to clients of the Company who choose not to accept the Offer and who attempt to negotiate bilateral arrangements for the return of Assets held on trust by the Company.

Under the Agreement, each Signatory will release all other Signatories from all Asset Claims to Trust Assets distributed to those other Signatories in accordance with the Agreement. Non-Signatories will not benefit from such mutual releases and so they may face a greater risk of challenge by claimants with competing claims to any Assets returned to them by the Company.

In addition, Non-Signatories are likely to be subject to higher costs than Signatories in respect of the return of Trust Assets. The level of costs charged on the return of Trust Assets under the Agreement has been set on the basis that, in general, determining clients' claims to Trust Assets and distributing Trust Assets in accordance with the Agreement should be more efficient than doing so on a bilateral basis. The Administrators' experience to date has identified that significant time and effort is required to determine a Non-Signatory's claim to Trust Assets outside the framework of the Agreement and that the costs borne by a Non-Signatory for the return of Trust Assets are likely, therefore, to be higher.

7 Consequences of failure to fulfil the conditions to the Offer

The Agreement will only become effective if certain conditions to the Offer are met, including the condition that the Offer must be accepted by at least 90 per cent. of TA Offerees with ownership claims to Trust Assets within the control of the Company subject only to limited exceptions. If the conditions to the Offer are not met or waived and the Offer lapses, the Administrators will continue to distribute Trust Assets on a case-by-case basis in accordance with the prioritisation principles set out in the Trust Property Order. There

are certain disadvantages to this method of return compared to the distribution mechanisms under the Agreement:

- (i) the mutual releases of Asset Claims to Trust Assets contained in the Agreement will not come into effect and therefore clients may be more vulnerable to claims from other clients in respect of Trust Assets returned to them by the Company on a bilateral basis;
- (ii) In the immediate term, clients will be required to give indemnities, in most cases backed by third-party credit support, to protect the Company and clients who have received distributions of Trust Assets against the risk of later competing claims to the Trust Assets which were distributed to those clients. These indemnity and credit support requirements will be onerous;
- (iii) clients' net unsecured claims against or liabilities to the Company may not be determined at the time of return of the Trust Assets, leaving clients facing uncertainty as to the value of their unsecured claims, if any; and
- (iv) the Administrators expect that distributions of Trust Assets will be more complex, potentially requiring numerous court applications, and will therefore take much longer to complete on a bilateral basis than if the Agreement were effective to govern Asset Claims of Signatories.

8 Conclusion

The Administrators are of the opinion that the Agreement represents the most efficient method of returning Trust Assets to those clients with ownership claims to them for the reasons set out in this letter. The members of the Claim Resolution Agreement Working Group have also expressed their unanimous support for the Agreement.

You are strongly advised to review and consider carefully the Agreement and the Offer. You are reminded that failure to gain sufficient support for the Agreement before 5.00 p.m. (London time) on 29 December 2009 will result in the Offer lapsing and the bilateral return process will remain the primary mechanism for the return of Trust Assets to clients of the Company.

By supporting the Agreement and Offer you will help ensure that the threshold condition is met and maximise the prospect of recovering your Trust Assets held by the Company in the shortest timeframe. The Joint Administrators look forward to receiving your Form of Acceptance.

Yours faithfully,



SA Pearson

Joint Administrator

Lehman Brothers International (Europe) (in administration)

as agent and without personal liability

AV Lomas, SA Pearson, DY Schwarzmann and MJA Jervis were appointed as Joint Administrators of Lehman Brothers International (Europe) on 15 September 2008 to manage its affairs, business and property as agents without personal liability. AV Lomas, SA Pearson, DY Schwarzmann and MJA Jervis are licensed to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales. Lehman Brothers International (Europe) registered in England and Wales with registered no. 02538254. VAT registration no. 446 9315 28

SCHEDULE 1

BACKGROUND HISTORY

1 Introduction

The Administrators were appointed on 15 September 2008 pursuant to an order of the Court dated 15 September 2008 made under Paragraph 12 of Schedule B1 of the Insolvency Act under which the Administrators were appointed joint administrators of the Company.

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 in administration).

This Schedule 1 contains background information on the Administration of the Company as it relates to the management of Trust Assets. Creditors of the Company can find further details of the Administration to date in the progress reports produced by the Administrators and sent to all known creditors and counterparties of the Company. The first progress report covers the period from 15 September 2008 to 14 March 2009 and the second progress report covers the period from 15 March 2009 to 14 September 2009.

2 Corporate history

2.1 Business activities

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. The Company was the Lehman group's main European broker-dealer. It provided investment banking services to clients (including corporate clients, institutions, governments, hedge funds and private clients) on a global basis.

2.2 Prime services and custody

One of the Company's major business areas was prime services, which related to the Company acting as prime broker to institutional clients, mostly hedge funds. As prime broker, the Company provided a broad range of services, including execution of securities and derivatives trades, clearing and settlement of trades (whether executed by the Company or by other executing brokers), custody, financing, foreign exchange, stocklending, and valuation and reporting for the client's portfolio. The Company's clients would often actively trade in securities and derivatives on many markets globally, taking both long and short positions, and would also require stock borrowing, financing facilities and foreign exchange services.

Entering into a relationship with the Company as prime broker enabled a client to engage in active trading on markets worldwide, to take long and short positions for arbitrage or other purposes, and to trade on a leveraged basis (through financing provided by the Company and through derivatives transactions). It also enabled the client to operate its business without itself having membership of exchanges, clearing systems etc., and without having substantial back-office systems and personnel.

Other persons with interests in Trust Assets include clients who placed securities with the Company by way of safe custody, private individuals whose accounts were dealt with by

the Company's private investment management division, market counterparties who posted collateral with the Company pursuant to derivatives trades otherwise than on a total title transfer basis (such as other investment banks) and the Company's Affiliates within the Lehman group.

3 Effect of the Administration on Trust Assets

The control and management of Trust Assets has been a key focus for the Administrators since the Company entered administration. Some of the issues facing the Administrators in dealing with Trust Assets are described below.

3.1 Intermediaries and Sub-Intermediaries

The Company did not generally hold assets itself but did so through depositories, exchanges, clearing systems and sub-custodians (referred to in the Agreement as "Intermediaries", being the entities with whom the Company had a direct contractual or fiduciary relationship, and "Sub-Intermediaries", being such entities below that level). The method used depended on the types of assets being held, the jurisdictions and markets in which they were held, the systems through which they were traded, the currencies involved and applicable regulatory requirements. The Company operated 42 custodian relationships through 80 markets operating 738 real-world securities accounts.

Following their appointment, the Administrators identified and contacted the network of these Intermediaries and Sub-Intermediaries in order to bring Trust Assets under the direct and unfettered control of the Administrators. A summary of the status of Trust Assets is set out below (figures as at 30 September 2009):

Status	US\$ billion
Trust Assets at 15 September 2008	35.0
Trust Assets returned (value as at 15 September 2008)	13.3
Trust Assets excluding Derived Assets	9.4
Trust Assets yet to be in the control of the Administrators (including LBI, LBJ and closed depots)	7.5
Balance (including mark to market movement from 15 September 2008 to 30 September 2009 (gross of redemptions))	4.8
Total	35.0
Derived Assets under the Administrators' control	2.0

3.2 Affiliates as Intermediaries

In some jurisdictions, the Intermediaries holding Trust Assets on behalf of the Company are Affiliates. Some of these Affiliates are now in insolvency proceedings themselves and the Administrators are working with the insolvency office holders of those Affiliates to obtain control over Trust Assets held by those Affiliates. Where necessary, the Administrators have filed claims in the estates of these Affiliates for the return of Trust Assets.

3.3 Affiliate lien claims over Trust Assets

In many cases, the agreements under which Trust Assets are held by the Company for a client purport to create security interests, liens and/or set-off rights over those Trust Assets in respect of the liabilities owed by the client to the Company and any of its Affiliates. Potential claims by Affiliates pursuant to such security arrangements cannot be established from the Books and Records of the Company and the Company can only definitively establish these if and when Affiliates assert these claims. In the meantime, the Company cannot safely return Trust Assets to clients without incurring a liability where there is a possibility that an Affiliate may have a security interest or similar interest in those Trust Assets.

The Administrators have written to certain key Affiliates requesting details of any claims these Affiliates have against Trust Assets belonging to clients of the Company for indebtedness owed to them by the client of the Company and inviting them to participate in mutual arrangements for the confidential exchange of information in relation to such indebtedness and such Trust Assets. Not all Affiliates have responded to these letters. A lack of response from an Affiliate as at the date of the Circular does not mean that an Affiliate has relinquished any claim for indebtedness against a client of the Company. TA Signatories are required either to warrant that they do not have any indebtedness to any Affiliate or to disclose details of such indebtedness as part of the process prescribed by the Agreement for submitting claims.

3.4 Failed trades

Upon the appointment of the Administrators, the Company failed to settle trades with certain counterparties, clearing systems and exchanges. The Administrators have undertaken very considerable work to ascertain the population of failed trades across depots under the Administrators' control and to establish their impact, including in relation to Trust Assets. Under this workstream, the Administrators are reconciling the Company's Books and Records to revise book entries to reflect real-world settlements so far as they are able. However, a significant proportion of these failed trades impacted stock lines held in depots over which the Company currently does not have control, including stock lines held by the Company through LBI.

3.5 Stock Shortfalls

The Administrators have reconciled the Company's Books and Records against those depots under its control on a stock line-by-stock line basis. This reconciliation has identified a small amount of shortfalls (approximately US\$300m). This reconciliation exercise has not been possible for Trust Assets held through Intermediaries in depots which are not under the Administrators' control, including stock lines held by the Company through LBI and certain other Affiliates, as the necessary information is still in the process of being provided to the Administrators.

4 Identifying claims to Trust Assets

The Administrators have written to account holders thought potentially to have claims against the Company for the return of, or in respect of, Trust Assets, in order to obtain from them full details of such claims, rights or other interests which the clients purport to have in relation to Trust Assets. The Administrators also issued a notice on the Website inviting those clients and counterparties to whom such letters were not sent, but who nonetheless believe that they might have such interests, to supply details of claims, rights or interests

which they believe they have in relation to Trust Assets. However, the Administrators have not received responses to these letters from all clients or counterparties.

5 Difficulties in returning Trust Assets

In many cases, it has not been possible to return Trust Assets as requested due to the complexities and difficulties in establishing a client's entitlement to Trust Assets and actual and potential competing client claims to such assets.

First, the Administrators have to try to establish, based on the information available to them, whether any other person could assert a claim to the same Trust Assets. The removal of such uncertainty depends upon the Administrators having the necessary degree of assurance that the Books and Records of the Company are complete and accurate. However, the Administrators cannot rely entirely on the accuracy of the Books and Records of the Company and they have not yet received all the information requested from Intermediaries and Sub-Intermediaries, in particular from Affiliates who are Intermediaries or Sub-Intermediaries. Also, as described in section 4 (*Identifying claims to Trust Assets*), the Administrators have not received responses from all clients to the enquiries they have made.

Secondly, there is a degree of uncertainty as to potential claims by Affiliates in respect of Trust Assets. Potential claims by Affiliates pursuant to security arrangements cannot be established from the Books and Records of the Company and the Company can only definitively establish these if and when Affiliates assert the claims, as described in section 3.3 (*Affiliate lien claims over Trust Assets*).

In addition, there are a number of client-specific issues that the Administrators have to determine on a case-by-case basis before returning Trust Assets to a client. An examination of the contractual documentation with that client needs to be performed to determine whether the client has a proprietary claim to the Trust Assets in question. The Administrators also have to address the termination of open contracts to crystallise a client's overall financial position with the Company, and agree valuations for derivatives and other financial transactions before determining, *inter alia*, how set-off is applied in any given case. Each client's liabilities (if any) to the Company must be calculated and it must be determined whether they should be deducted from the Trust Assets that the Company holds for that client. The Administrators must also confirm whether Trust Assets are available to them for distribution.

The Administrators recognised the difficulties faced by clients as a result of uncertainty regarding whether and when they would receive their property and a process for implementing the return of Trust Assets was established as described in section 6 (*Return of Trust Assets so far*).

6 Return of Trust Assets so far

Pursuant to an order of the Court dated 7 October 2008, the Administrators are authorised to implement and/or give effect to certain processes regarding the management of proprietary claims to Trust Assets. A list of the processes approved by this order can be viewed on the Website at:

http://www.pwc.co.uk/eng/issues/lehman_client_money_assets_update_071008.html.

Pursuant to the terms of the order, a Hardship and Prioritisation Committee was set up by the Administrators to consider the return of Trust Assets to clients who have made requests

for such returns and whose claims are suitable for prioritisation in accordance with the principles set out in the order.

In this manner, the Company has returned an estimated US\$13.3 billion of Trust Assets to some 81 clients since the Administration Date. However, due to the complexities and difficulties in returning Trust Assets described in sections 3 (*Effect of the Administration on Trust Assets*) and 5 (*Difficulties in returning Trust Assets*), an asset can only be returned by the Administrators in limited circumstances and in many cases the conditions associated with returning Trust Assets, including requiring undertakings and indemnities from clients are unacceptably onerous for the vast majority of clients.

7 Development of the Agreement and the Offer

7.1 The “bar date” concept

Given the drawbacks of returning Trust Assets to clients as described in section 6 (*Return of Trust Assets so far*), the Administrators considered seeking to establish a final claims submission date, or “bar date”, for claims to Trust Assets.

A bar date would serve to limit the information to which the Administrators would be required to have regard when determining claims to Trust Assets and would therefore assist the Company in making distributions of Trust Assets with protection from the risks of subsequent competing claims and without the need for continuing undertakings from clients who received distributions of Trust Assets.

The English administration procedure itself does not provide for the setting of a bar date for such claims. Therefore, the Administrators explored the possibilities of setting a bar date in respect of claims to Trust Assets either through a scheme of arrangement under Part 26 of the Companies Act or through an application to the Court to set a bar date through the Court’s inherent jurisdiction to give directions in respect of the execution and administration of trusts.

7.2 Development of a proposed scheme of arrangement

The Administrators initially proposed to launch a scheme of arrangement under Part 26 of the Companies Act to assist with the distribution of Trust Assets and the determination of affected clients’ financial positions in respect of the Company. However, the Court of Appeal upheld the first instance ruling that the English courts do not have jurisdiction to sanction a scheme of arrangement which varies proprietary rights in the manner proposed by the Company.

7.3 Development of the Agreement

In order to avoid unnecessary delay to the return of Trust Assets to clients of the Company, the Administrators have developed the Agreement and the Offer in parallel with the appeal process regarding the scheme of arrangement described in section 7.2 (*Development of a proposed scheme of arrangement*).

Further detail on the terms of the Offer and the provisions of the Agreement can be found in the “readers’ guide” at Schedule 2 to the Letter from the Administrators and at Part II of the Circular.

The Administrators have worked closely with the Claim Resolution Working Group to establish the terms of the Agreement and the members of the Claim Resolution Working Group have expressed their unanimous support for the Agreement. In addition,

representatives of the FSA have been invited to the various meetings and conference calls between the Administrators and the Claim Resolution Agreement Working Group in relation to the development of the Agreement. The FSA has been kept fully informed at each stage of the evolution of the Offer and has been provided with a copy of the Circular.

8 Lehman Brothers Holdings Inc. as guarantor of certain obligations of the Company

On 15 September 2008, Lehman Brothers Holdings Inc. ("LBHI") filed a petition in the United States Bankruptcy Court for the Southern District of New York seeking relief under Chapter 11 of the United States Bankruptcy Code.

LBHI issued various forms of guarantees relating to, amongst others, contracts and financing transactions, derivative contracts and other performance guarantees entered into by various members of the Lehman group.

In particular, the executive committee of the board of directors of LBHI issued a unanimous written consent on 9 June 2005 in which the executive committee resolved that LBHI thereby fully guaranteed the payment of all liabilities, obligations and commitments of certain subsidiaries of LBHI, including those of the Company.

LBHI has its own procedure for filing proofs of claim against LBHI (including those claims based on guarantees and other promises made by LBHI), which included a bar date of 22 September 2009 for the filing of proofs of guarantee claims against LBHI and a deadline of 22 October 2009 for the provision of supporting evidence.

The Agreement does not purport to affect the effectiveness of any guarantee between LBHI and a Signatory.

No representations, whether express or implied, are made in the Circular as to the nature or effectiveness of any guarantee or other obligation of LBHI. Neither the Administrators nor the Company express any view as to whether any creditor of the Company does or may have a claim against LBHI on this basis and creditors should take their own legal advice on this matter.

9 CAPCO as insurer of certain obligations of the Company

CAPCO is an insurance company licensed by the state of Vermont. It was established by a number of securities investment firms, including the Company, who were seeking to provide net equity excess account protection over the protection limits currently provided by the Securities Investor Protection Corporation in the United States and the FSA in the United Kingdom.

The excess protection is provided to the securities affiliates of the participants in the form of bonding coverage. This protection is triggered only in the event of the financial failure and liquidation of a participating securities affiliate. The protection is intended only to cover lost assets and it will not meet any other types of claims, for example, claims for negligence. The protection is also not triggered unless the client's account exceeds the limits of account protection provided by the FSA. Other restrictions apply as contained in the relevant bond.

No representations, whether express or implied, are made in the Circular as to the nature or effectiveness of any guarantee or other obligation of CAPCO. In particular, not every Signatory may be eligible for insurance protection by CAPCO and not every element of a

creditor's claim against the Company (including claims of Signatories within the Agreement) may be covered by the surety bond issued by CAPCO.

The Agreement does not purport to affect the effectiveness of any surety bond issued by CAPCO of which a Signatory has the benefit. The Agreement provides that the Company may disclose information regarding a Signatory to CAPCO to the extent that CAPCO requests or requires such information.

No representations, whether express or implied, are made in the Circular as to the nature or effectiveness of any surety bond issued by CAPCO in respect of the Company's liabilities. Neither the Administrators nor the Company express any view as to whether any creditor of the Company does or may have a claim against CAPCO on this basis and creditors should take their own legal advice on this matter.

SCHEDULE 2

READER'S GUIDE TO THE CLAIM RESOLUTION AGREEMENT

1 Introduction

This guide provides a "plain English" summary of the Claim Resolution Agreement (the "**Agreement**") provided to you by the Administrators of Lehman Brothers International (Europe) (in Administration) (the "**Company**").

The Agreement represents a proposed contractual arrangement between the Administrators and those parties that agree to be bound by it (referred to as "**Signatories**").

The purpose of the Agreement is to allow the Company and Signatories to compromise and agree on the treatment of all of the Signatories' claims relating to trust assets (i.e. securities) and financial contracts. While the principal focus of the Agreement is to facilitate the return of trust assets to those Signatories with ownership claims ("**TA Signatories**"), it also contains mechanisms to determine the claims of those Signatories with purely unsecured financial claims (for example, those with derivative positions or repurchase agreements) ("**NTA Signatories**"). Because of the complex issues that are being dealt with under the Agreement, it is, by necessity, a very complicated document.

The purpose of this guide is to provide you with an easier to read, easier to understand summary of the material provisions in the Agreement as well as some of the commercial rationale for those provisions. A more technical, detailed description of the Agreement can be found at Part II of the Circular and a copy of the Agreement itself is included at Part III of the Circular.

Before making your decision, you should review the actual Agreement and remaining parts of the Circular in consultation with your legal advisers. It is the Agreement and not this summary that will govern the disposition of your claims against the Company.

The Agreement includes a number of notices that are to be provided by the Company to the Signatory and by the Signatory to the Company. The Company has set up an internet portal to which all potential TA Signatories should now have access. TA Signatories will be able to receive and provide information in relation to their trust asset claims through the portal.

As the Administrators have discussed with trust creditors on numerous occasions, the issues relating to the assets that were held by the Company at Lehman Brothers Inc. ("**LBI**") are particularly complex. The return of assets held at LBI will work differently than the return of assets that are within the Company's control. Accordingly, this summary contains a separate section (see section 5 (*Lehman Brothers Inc.*)) that deals specifically with LBI and how the Agreement will affect trust creditors with securities that were held by the Company at LBI.

2 Overview of the Agreement

The Agreement has been structured to determine the following with respect to each Signatory:

2.1 Trust Assets

The Company will determine, based on its books and records and other relevant information it receives from each Signatory, the trust assets it holds (or are shown to be

held in the books and records) on behalf of that Signatory. Under the Agreement, trust assets also include assets subsequently derived from those segregated assets (e.g. dividends and coupons received post-administration) but rehypothecated securities and certain other assets have been excluded.

Signatories will also be requested to submit information related to their trust asset claims against the Company prior to a "bar date" which is expected to be 26 February 2010. If a Signatory does not submit a claim before the bar date, the Company will be free to distribute assets after that date based on the information available to it at that time of distribution which may result in the Signatory receiving fewer assets than would otherwise be the case.

The Company is, in general, going to be returning trust assets on a stock line by stock line basis. To the extent there is a shortfall in the amount of a particular stock line available to be returned to a Signatory, that Signatory would have an unsecured claim against the Company for the deficiency (referred to as an "**Asset Shortfall Claim**"). This Asset Shortfall Claim, if used to offset liabilities owed to the Company as described below, would be based on the value of that stock line at the time the assets then held by the Company are returned to clients (which would include assets derived from such stock line up to such time). If the Asset Shortfall Claim is to be used as part of the Signatory's general unsecured claim against the Company, it will be valued based on the value of the relevant stock line as of the last business day prior to the date of administration (i.e., 12 September 2008).

2.2 Unsecured Claims

The Company will determine the value of any unsecured claims each Signatory has against the Company (which claims will principally arise from: (i) the value of the Signatory's rehypothecated long positions; (ii) the Signatory's cash balances (for those clients that were not entitled to client money protection under FSA rules); and (iii) amounts owed to the Signatory under financial contracts, such as derivatives). The Agreement provides for rehypothecated long positions to be valued as of the last business day prior to the date of administration (i.e., 12 September 2008) (based on the rationale that the Company used the value of the rehypothecated long positions to obtain financing that was then provided to clients as margin debt). Financial contracts that have been closed out will be valued based on the close-out amounts determined in the manner set out in the contracts. Open financial contracts will be automatically closed out on the last business day of the month in which the Signatory enters into the Agreement. The Agreement sets out different methodologies to be used in determining the value of the close-out amounts under these financial contracts.

2.3 Liabilities

The Company will determine the amount of any liabilities that the Signatory owes to the Company (which liabilities will principally arise from: (i) the value of the Signatory's short positions; (ii) the Signatory's margin debt balances; and (iii) amounts owed by the Signatory to the Company under financial contracts). The Agreement provides for short positions to be valued as of the last business day prior to the date of administration (i.e., 12 September 2008). Financial contracts will be valued as described above.

2.4 Net Contractual Position

All unsecured claims and liabilities of each Signatory arising out of the close-out amounts of their financial contracts with the Company (which, for the avoidance of doubt, includes the rehypothecated longs, shorts and cash balances other than client money) will be netted against each other to determine that Signatory's net contractual position. If the Signatory has more claims than liabilities, it will have a net financial claim against the Company (that will ultimately entitle the Signatory to a portion of the dividend to be paid by the Company to its unsecured creditors). If the Signatory has more liabilities than claims, it will owe a net financial liability to the Company. The Company will only distribute trust assets to a Signatory once that Signatory has satisfied any net financial liability owed to the Company.

The Agreement describes the various methods a Signatory will have to satisfy its net financial liability, some of which are described below. In addition to making sure a Signatory's net financial liability has been satisfied, the Company also intends to appropriate assets that would otherwise be distributable to a Signatory if a third party (which, in most instances, will be an affiliate of the Company) has a lien interest in the assets of that Signatory (these were common for clients who had cross margin and netting agreements in place with various Lehman entities). All assets appropriated in this respect will be subsequently liquidated, though the relevant Signatory will first be given the option to purchase such assets. Any proceeds received by the Company for these appropriated assets which have not been used to settle the Signatory's indebtedness to the third party will be released to the Signatory once the lien has been released or the indebtedness to the third party has been satisfied.

2.5 Pre-Administration Client Money

The Company will determine the amount of any pre-administration client money (for those clients who were entitled to client money protection under FSA rules) owed to the Signatory. This amount is referred to as a Signatory's "**Pre-Administration Admitted Client Money Claim**". While distributions of pre-administration client money will not be made under the Agreement, to the extent there is a shortfall in the amount of money that is returned to the Signatory (which could occur, for example, in the event the Company does not receive back all or a portion of the cash that the Company had on deposit with Lehman Brothers Bankhaus AG), that Signatory would have an unsecured claim for the amount of the deficiency.

2.6 Collateralisation Elections

The timing of the resolution of outstanding legal issues surrounding pre-administration client money claims is uncertain but it appears unlikely they will be resolved until some time after the Company is ready to make a substantial distribution of trust assets. As discussed above in section 2.4 (*Net Contractual Position*), the Company will not be able to distribute trust assets to a Signatory without that Signatory satisfying its net financial liability to the Company. The Company understands, however, that Signatories will want to use claims against the Company as a set off for any liabilities owed and, depending on their particular circumstance, may want to determine which claims should be used for purposes of set off and which claims should be used for the basis of recovery against the Company (whether through the unsecured dividend or through a return of assets or pre-administration client money).

The Agreement includes a mechanism which the Company believes provides TA Signatories with the greatest amount of flexibility in terms of using their set off rights without delaying the return of trust assets. A TA Signatory may decide to make one or more

of the Collateralisation Elections available under the Agreement. By making such election(s), a TA Signatory will collateralise its net financial liability owed to the Company with: (i) its Pre-Administration Client Money; (ii) a cash amount (which the TA Signatory will need to provide itself) equivalent to the value of any of its trust assets that would otherwise have been appropriated by the Company in respect of such net financial liability; and/or (iii) its Affected Intermediary Admitted Claim Amount (as described in section 5.3 (*Collateralisation Election*)). To the extent that a net financial liability owed to the Company is collateralised, the TA Signatory will effectively be able to suspend the set-off between such amount of the net financial liability and any assets allocated to the TA Signatory. When the amount of: (x) any shortfall claim for a Pre-Administration Admitted Client Money Amount or (y) any Asset Shortfall Claim is ascertained, the shortfall will first be set-off against the then remaining net financial liability before the posted collateral is set-off against any remaining net financial liability.

As a result, in exchange of posting the relevant collateral, a TA Signatory will be able to:

- (i) obtain full value (by way of set-off) for any shortfall claim for pre-administration client money, any Asset Shortfall Claim and/or Affected Intermediary Admitted Claim Amount up to the amount of its net financial liability as opposed to having an unsecured claim against the Company for the same amount; and
- (ii) reduce the amount of assets appropriated by the Company.

An NTA Signatory may also decide to collateralise its net financial liability with its Pre-Administration Client Money Claim. If it does so, it will also be able to obtain full value (by way of set-off) for any shortfall claim for pre-administration client money up to the amount of its net financial liability, as opposed to having an unsecured claim against the Company for the same amount.

2.7 Position Statement

Concurrently with the distribution of the Circular (including the Agreement), the Company is providing potential TA Signatories with an updated position and balance statement through the internet portal. The statement is an update to the positions statement provided in early September 2009 and contains the following information regarding your account at the Company:

- (i) list of rehypothecated securities and their value as of the date prior to administration as determined by the Company;
- (ii) list of non-hypothecated long positions and their value as of 30 September 2009 (this is the date being used for purposes of determining whether the conditions under the Agreement have been satisfied);
- (iii) list of short positions and their value as of the date prior to administration as determined by the Company;
- (iv) summary of cash balances and margin debt;
- (v) close-out amounts with respect to financial contracts to the extent the financial contracts have been closed out and fair market value of open financial contracts as determined by the Company; and
- (vi) value of the positions held at LBI based on their value as of 19 September 2008.

The statement should provide an indication of what may be received under the Agreement and the amount of any residual unsecured claim against the Company but it is not final and

binding. TA Signatories are invited to submit any further information or proposed revisions to the Company through the portal in order to ultimately agree on the final position with the Company.

3 The Offer

3.1 How do you accept?

The offer is open for acceptance until **5.00 p.m. (London time) on 29 December 2009**.

If you wish to accept and become a Signatory, you should complete, sign and submit a Form of Acceptance by this date.

The Company may, but is not obliged to, extend the offer period beyond 29 December 2009 or keep the offer open for acceptance. If extended, anyone who submits a form during the extended period will be subject to higher costs.

Full details of the action required to accept the Offer are set out in Schedules 1 and 2 to the Agreement at Part III of the Circular.

3.2 Conditions of the Offer

The Agreement will only become effective once all the conditions have been satisfied or waived. These conditions are:

- 3.2.1** holders of at least 90 per cent. (by value) of trust assets now under the Company's control (i.e. excluding those assets held by LBI) signing up to the Agreement. In Schedule I to the Agreement, this is referred to as the "**Acceptance Condition**";
- 3.2.2** the Company obtaining an acceptable court order regarding the distribution of trust assets (see section 4.2 (*Part 2 – Asset Claims and Bar Date*) for further details); and
- 3.2.3** no regulator or court makes a ruling making the Agreement unenforceable, illegal or difficult to implement.

The Offer will lapse if:

- (i) the Acceptance Condition is not satisfied or waived by 29 December 2009 (unless the Company chooses to extend the initial offer period); or
- (ii) all the other conditions are not satisfied or waived by 30 June 2010.

For NTA Signatories, the Offer is also conditional on the Company not promoting, or there not being effective, a scheme of arrangement under the Companies Act or a company voluntary arrangement under the Insolvency Act for the purpose of dealing with the claims of general unsecured creditors.

3.3 Agreement becomes effective

Once effective, the Company will notify you by email and confirm whether or not you are a Signatory. The Company will then determine the date or dates on which distributions of trust assets will be made. A Signatory's aggregate distributions will be made in full and final settlement of that Signatory's claims to trust assets.

If the Company determines a Signatory has an unsecured claim against it, that claim will be an ascertained unsecured claim in the winding-up of the Company or in any other distribution of assets to unsecured clients.

3.4 Modifications

While the Company will have the ability to make minor or technical changes it thinks are not prejudicial to Signatories, material changes to the Agreement (including a change to or waiver of the Acceptance Condition) will require the approval of a substantial majority of Signatories.

4 Summary of Agreement

4.1 Part 1 – General Provisions

This part contains some of the general provisions relating to the Agreement. These provisions cover the following:

- (i) the Agreement will become effective once the conditions have been satisfied or waived (as outlined above);
- (ii) if a creditor is acting as an agent, custodian or trustee on behalf of its clients, this must be disclosed in the form of acceptance. These creditors will also need to enter into a bilateral arrangement to tailor the terms of the Agreement to their circumstances;
- (iii) the Company will have the unilateral right to exclude a party from the Agreement. As a practical matter, the Company only intends to use this right in very limited circumstances where permitting a party to sign the Agreement would, in the Company's view, be detrimental to the estate of the Company. If Signatories suffer a loss as a result of anyone being excluded, they will be compensated;
- (iv) the Company has entered a number of bilateral arrangements with certain trust creditors. Those trust creditors will still be given the opportunity to sign up to the Agreement. The Company may need to amend or vary the terms of the Agreement as it applies to such Signatories but will only do so to ensure consistency with those arrangements;
- (v) one of the main purposes of the Agreement from the Company's perspective is to obtain a release from the Signatories to claims they might otherwise have against the Company and the Administrators, including any claims for consequential damages. The Agreement includes this release, but also includes a release whereby each Signatory will release all other Signatories from any ownership claims to assets distributed under the Agreement. The Signatories will not, however, release any claims it may have against Lehman Brothers Holdings Inc. ("LBHI"), LBI or CAPCO in respect of any claims (including, but not limited to, guarantee or insurance claims). In exchange for the release being provided by the Signatories, the Signatories receive new claims against the Company;
- (vi) the Agreement also provides that the Company will, subject to certain exceptions, release claims it may have against Signatories under financial contracts. In exchange for the release provided by the Company, the Company receives the right to determine claims in accordance with the Agreement;
- (vii) in order to protect the Company's ability to return any cash received post-administration that is entitled to client money protection, the Agreement contemplates an assignment of those claims to an independent third party to be nominated by the Company for the purpose of holding client money claims so that such claims do not become a part of the Company's estate;

- (viii) the Agreement does not restrict any Signatory from transferring their entire position to another Signatory; the transferee will then be treated as a Signatory for the purposes of the transferred position. However, once a Signatory agrees to be bound by the Agreement, it will not be able to transfer its position to a non-Signatory unless the non-Signatory agrees to be bound by the Agreement. The Agreement does restrict the benefit of set off arising from pre-Agreement transfers; a Signatory cannot set off liabilities and assets transferred to it against its original position or liabilities and assets transferred to it by different people;
- (ix) the Agreement does not restrict the transfer of assets to the Company for value as agreed between the relevant Signatory and the Company;
- (x) the Agreement includes a general provision that provides that a Signatory can not recover more than once with respect to the same asset claims (other than recoveries made under a guarantee);
- (xi) a moratorium will be imposed on the ability of Signatories to bring claims against the Company, the creditors' committee and the Administrators unless in accordance with the Agreement; and
- (xii) the Agreement allows the Company to first deal with the claims and disputes of TA Signatories before dealing with the claims and disputes of NTA Signatories. While the Company will have discretion in terms of the order in which it returns assets to clients, its actions in this regard and with respect to all other actions under the Agreement must be taken in good faith.

4.2 Part 2 – Asset Claims and Bar Date

The Administrators intend to apply to the court for directions that a bar date be set for the submission of all claims to trust assets (whether by Signatories or others). This bar date is expected to be around 26 February 2010 and will be communicated to trust creditors. Trust creditors will be requested to submit information about their claims to the Company before the bar date.

The Company has set up a portal (as noted in section 1 (*Introduction*) above) that is available on the internet. TA Signatories will be able to submit their claims via this internet portal. As described in section 2.7 (*Position Statement*), concurrently with the distribution of the Agreement, the Company has distributed to you statements that show the information in the Company's books and records regarding your claims.

If you do not provide information by the bar date, the Company will be entitled to distribute assets using the information then available to it with respect to your claims.

4.3 Part 3 – Relevant Information

The Company is going to use all relevant information available to it in order to evaluate your claims.

The Company's books and records recorded some trades as having settled even though they did not actually settle. These are referred to as "Failed Trade Entries". The Company intends, in general, to reverse Failed Trade Entries and adjust its books and records to reflect known settlements. The Company will credit or debit each Signatory for an amount equal to the difference in value that would have resulted had the trades settled on the relevant settlement date.

The Company will keep information regarding each client's positions confidential and will not disclose this information unless it is required to do so by law or legal process. If the Company must disclose information regarding a client's positions, it will, subject to certain exceptions, do so without specifically identifying the relevant client by name.

To the extent a trust creditor has incomplete documentation regarding its relationship with the Company, the Company will do its best to take into account all relevant information available to it and, if insufficient information is available, it will apply the Company's standard terms of the applicable agreements.

4.4 Part 4 – Management of Assets Prior to Distribution

The Company's ability to process corporate actions was seriously impaired following the insolvency and the sale of LBI's operations to Barclays Capital Inc. However, the Administrators have now set up procedures for dealing with corporate actions with respect to securities it is holding on behalf of the trust creditors and, where possible, will generally try to accommodate the requests of the trust creditors with respect to corporate actions. The Company will charge a modest fee (US\$3,000) to effect corporate actions, will require it is indemnified for any actions taken and will not take action with respect to de minimis corporate actions. The Company generally will not take any action if a payment is required. The Company will, however, act commercially and, if a corporate action that the Company is aware of is clearly in the interests of the Company or the trust creditor, the Company is likely to take it.

In this part, the Company reiterates that it will act in accordance with the standard of care imposed on a fiduciary in respect of the trust assets and the trust creditors. The Company also agrees not to appropriate any trust assets claimed by Signatories for the estate except as specifically set forth in the Agreement.

4.5 Part 5 – Asset Valuation Methodology

The Agreement includes a detailed process for valuing assets. Generally speaking, the Company will seek to use market prices to value assets. If market prices are not available, the Company will look to other observable prices in order to value the assets. To the extent pricing information is not available, the Company will take into account other relevant information in order to determine the value of the assets. The Company will also take into account the size of the assets being valued when determining their values. Values will be determined in US dollars.

4.6 Part 6 – Overview of Distribution

In order for the Company to make distributions to the trust creditors, it must first determine the following items with respect to each trust creditor:

- (i) Net Contractual Position – this is described above in section 2.4 (*Net Contractual Position*) and below in section 4.7 (*Part 7 – Net Contractual Position*) in more detail;
- (ii) Retention Amount – any amount that the Company must retain in order to reserve against claims that third parties may be able to assert with respect to a trust creditor's assets by virtue of a lien. The most common example of this would be claims that an affiliate of the Company might have to a trust creditor's assets because of a cross margin and netting agreement entered into by the trust creditor;

- (iii) Ascertained Non-Financial Contract Liabilities – these would be liabilities not related to financial contracts that a trust creditor might have to the Company. In general, these are liabilities that would arise outside of the ordinary course of business (primarily relating to actions taken in violation of UK insolvency laws) and are unlikely to be an issue for most trust creditors who had a typical prime brokerage relationship with LBIE; and
- (iv) Distributable Trust Assets and Asset Shortfalls – the Company will only be able to return to clients trust property that is within its control. Ultimately, the Company will need to determine how much of a shortfall exists with respect to the return of a specific asset (i.e., stock line) once it has identified all of the assets that are likely to be available within a specific stock line.

The Company will determine the above amounts on a trust creditor by trust creditor basis and, except with respect to assets held by LBI or any other intermediaries that return trust creditors' assets to the Company on a similar basis as LBI (which mechanisms are discussed below in section 5 (*Lehman Brothers Inc.*)), assets will be returned on a stock line-by-stock line basis.

To the extent a trust creditor has a liability to the Company, it will have several options (described below) for satisfying those obligations.

4.7 Part 7 – Net Contractual Position

In general, a trust creditor's net contractual position will be determined by netting the unsecured claims that client has against the Company against the liabilities owed by that trust creditor to the Company arising out of the close-out amount of each of the financial contracts. In order to determine the net contractual position, the Company needs to be able to value each of the trust creditor's claims against and liabilities to the Company under its financial contracts with the Company.

Under the Agreement, all open financial contracts (for example, derivatives, repurchase agreements, etc.) will have to be terminated in order for the Company to determine that client's net contractual position. The Company will have the right to treat any seemingly defective termination notices with respect to open financial contracts as effective terminations of the financial contract. In addition, any remaining open financial contracts will be deemed terminated as of the last business day of the month in which the Signatory enters into the Agreement.

The close-out amounts under the terminated open financial contracts will be determined in accordance with the financial contract valuation methodology described in this part of the Agreement. The principal goal is to have the valuation methodology set forth in the financial contract determine the close-out amount subject to certain overriding valuation principles, including that the value of rehypothecated securities and short positions is to be valued as at the date prior to administration.

If the open contracts cannot be valued in accordance with the contract valuation methodology or the Company determines that it is not reasonably practicable to do so, the Agreement sets forth other mechanisms for valuing the open financial contracts. If the trust creditor is the party that is supposed to determine the close-out amount under the financial contract, then the trust creditor will be required to submit a valuation statement to the Company setting forth the close-out amount calculated by it under the financial contract.

Close-out amounts will all be converted to US dollars as at the date of administration.

In accordance with standard insolvency rules, trust creditors will not be entitled to any interest in respect of their claims against the Company, including with respect to close-out amounts under open financial contracts.

The Company will notify a Signatory of its net contractual position once all positions have been closed out. If the net amount is positive, the Signatory will have a net financial claim against the Company. If the net amount is negative, the Signatory will have a net financial liability to the Company.

Signatories will be responsible for paying interest to the Company from the date of administration at Libor + 100 basis points with respect to their net financial liability (i.e., the net amount after setting off all unsecured claims against the Company, including the value of rehypothecated longs, cash and close-out amounts against all liabilities owed to the Company, including debit balances, short positions and close-out amounts). Signatories will be able to reduce their net financial liabilities (and, accordingly, the accrual of this interest) by making Collateralisation Elections as described in section 4.11 (*Part 11 – Appropriation and Distribution*).

The amount of interest to be attributed to a net financial liability will be determined on each date that a Signatory's distributions and appropriations are valued, and is the amount of interest described above which has accrued over the period since the previous such date (or if none, since the date of administration). If the value of the net financial liability has changed, and not as a result of interest accrual since that time (for example, because the Company has admitted a greater liability for pre-administration client money that has been collateralised than previously), then a balancing adjustment shall be made to recognise that the previous reduction for an appropriation was made for a greater amount of interest than is now the case. To the extent this implies a negative interest value, the net financial liability shall be reduced accordingly. Interest on the net financial liability is calculated as a simple (not compounded) amount. When a Signatory chooses to collateralise, the interest bearing portion of the net financial liability shall first be attributed to the uncollateralised portion of the Signatory's net financial liability.

4.8 Part 8 – Retention Amount

Because many Signatories will also have relationships with affiliates of the Company who may be able to assert liens or other security interests over those Signatories' assets held at the Company, the Company will need to take these security interests into account before being able to distribute assets to any particular Signatory.

The Agreement includes various mechanisms for the Company to determine the amount that must be appropriated with respect to any Signatory for these security interests. In due course, the Company may establish a bar date for affiliates to claim a security interest in the assets held at the Company for the benefit of the Signatories.

Once sufficient assets have been appropriated by the Company to cover those claims (even if those claims have not been resolved), the Company will proceed to make distributions to the Signatory in accordance with the terms of the Agreement.

4.9 Part 9 – Non-Financial Contract Liabilities

The Company will have to determine whether a Signatory has any non-financial contract liabilities to the Company. These could include, for example, preference claims relating to actions that occurred in the period of time right before the administration. To the extent a Signatory has a non-financial contract liability, the liability must be satisfied by the

Signatory before the Company can make a distribution to them. As discussed above in section 4.6 (*Part 6 – Overview of Distribution*), this is unlikely to be an issue for most trust creditors who had a typical prime brokerage relationship with the Company.

4.10 Part 10 – Allocation of Assets and Asset Shortfall Claim

This part of the Agreement deals with how the Company will allocate trust assets that are under its control. At the date of this Circular, this principally relates to European and some Asian securities that are now held by a new custodian on behalf of the Company but excludes the US securities that were held at LBI as these have not been returned to the Company.

The Company will determine allocations of these trust assets on a stock line by stock line basis. What this means is that the Company will look at how much of a particular stock they are holding and compare that to the total amount of client claims with respect to that specific stock line and will make distributions pro rata on that basis. Determining how much each Signatory owns with respect to a specific stock line will be determined based on all of the relevant information available to the Company. If a Signatory alleges that they are entitled to a different amount of an asset compared to what is in the Company's records, no distribution of that asset will be made to that Signatory until the dispute is resolved.

If a Signatory receives a distribution of assets from another intermediary, the Signatory will be required to notify the Company of this distribution so that the Company can take that into account when making future distributions to that Signatory and others.

Once the Company has received all of the individual claims to a particular stock line (including those claims of non-Signatories) and compared it to the amount of that stock line that the Company controls, the Company will determine whether there is a shortfall in that particular stock line. The Company is entitled to disregard a claim made by non-Signatories: (i) if it determines the claim to be false; or (ii) to the extent it determines it is overstated.

If a stock line does not have a potential shortfall, Signatories who have a claim to that stock line will be allocated an amount equal to the agreed claim amount for that stock line.

If there is a shortfall with respect to a particular stock line, the Company will further divide the claims with respect to that stock line into four asset pools. The first two pools are for: (i) claims which constitute custody securities (meaning that these securities were credited to a specifically designated custody account according to the books and records of the Company); and (ii) claims which constitute non-custody securities (this will include most of the traditional prime broker clients). The remaining two pools are for claims over assets which constitute part of the affected asset pool (which essentially relates to a pool where an intermediary such as LBI will return assets on an aggregate rather than stock line by stock line basis); these assets will fall into either: (i) a group of single customer pools; or (ii) a multiple stock line pool. These pools are explained in section 5.2 (*Pooling*) below.

Under the Agreement, the Company will allocate assets in each pool independently from any allocation of assets in respect of another pool, even if the assets are from the same stock line.

Shortfalls will be applied pro rata among each separate asset pool based on the claim amount of the individual Signatory in the relevant asset pool compared to the total claim amounts of all Signatories in that respective asset pool. The Company will reserve an amount of assets from each asset pool to be used to satisfy the claims of parties that have not signed the Agreement.

Amounts of assets that are not set aside will be allocated to Signatories pro rata to their claims, but no amounts will be allocated to non-Signatories unless: (i) Signatories and non-Signatories agree how the shortfall should be allocated; or (ii) a court has approved or directed how the shortfall should be allocated.

The Company will only determine the Asset Shortfall Claims of Signatories once it has resolved all disputes with both Signatories and non-Signatories relating to their claim amounts. Signatories will be able to use Asset Shortfall Claims: (i) to offset other liabilities to the Company; or (ii) as the basis of an unsecured claim against the Company.

4.11 Part 11 – Appropriation and Distribution

When the Company is ready to make distributions of assets to the Signatories, it will be entitled to recover from those assets an amount sufficient to satisfy any liabilities the trust creditor owes to the Company.

At this point in time, there are several categories of potential distribution assets. These include:

- (i) the Signatory's allocation of long positions that are under the Company's control;
- (ii) any amounts previously retained by the Company in respect of the security claims of third parties (which, for the most part, would be lien claims of affiliates of the Company who had contractual relationships with the Signatory) but which have not been used to settle the relevant trust creditor's indebtedness to such third parties;
- (iii) amounts of collateral whether actually posted by the Signatory or deemed posted by the Signatory by virtue of: (a) the collateral assignment of pre-administration client money claims to the Company; (b) the making of what is referred to as an appropriation deferral election by depositing cash collateral with the Company in an amount equal to the lesser of (x) the value of trust assets proposed to be returned to that Signatory (that might otherwise be appropriated by the Company to satisfy liabilities owed to it by that Signatory) or (y) that Signatory's net financial liability; or (c) the collateral assignment of the Affected Intermediary Admitted Claim Amount (as described in section 5.3 (*Collateralisation Election*));
- (iv) any pre-administration client money shortfall claim that a Signatory may have;
- (v) any shortfall claim arising with respect to an Affected Intermediary Admitted Claim Amount (as described in section 5.3 (*Collateralisation Election*));
- (vi) the net financial claim of a Signatory that results after offsetting all of that Signatory's claims and liabilities; and
- (vii) any Asset Shortfall Claim that a Signatory may have.

There are also several categories of distribution liabilities. These include:

- (i) costs relating to the Agreement that are going to be charged to each Signatory;
- (ii) non-financial contract liabilities of a Signatory;
- (iii) any amounts that are required to be retained by the Company in respect of the security claims of third parties; and
- (iv) the net financial liability of a Signatory that results after offsetting all of that Signatory's close-out amounts of each of the financial contracts with the Company.

This liability will include both the collateralised and uncollateralised portion of the liability.

These liabilities will have to be satisfied before the Company can make a net distribution of assets to a Signatory. The costs to be assessed under the Agreement will be based on the value of trust assets returned and will be 75 basis points with respect to pure custody clients and 100 basis points with respect to other trust creditors. A higher cost amount will apply to trust creditors who enter into the Agreement after the end of the initial offer period. The Administrators' experience to date is that considerable time and effort is required to determine a non-Signatory's claims to assets under bilateral arrangements; costs borne by non-Signatories are therefore expected to be significantly higher.

A Signatory's liabilities to the Company can be settled in several ways, including:

- (i) the Company may use assets that would otherwise be distributed to the Signatory to reduce the liabilities;
- (ii) Signatories will be permitted to make payments to the Company to pay the amount of any liabilities (so that the Signatory can receive the assets back in full rather than have a portion kept by the Company);
- (iii) if an intermediary has retained assets belonging to a Signatory in respect of claims against that Signatory and subsequently transfers those assets to the Company; and
- (iv) the application towards satisfaction of its liabilities to the Company of any collateral amount posted by a Signatory with respect to: (a) their pre-administration client money claims; (b) an appropriation deferral election; or (c) their Affected Intermediary Admitted Claim Amount (as described in section 5.3 (*Collateralisation Election*)).

The Company will be able to make distributions and appropriations with respect to a Signatory once the following conditions have been satisfied:

- (i) the Signatory's net contractual position has been determined and all disputes relating to the net contractual position have been resolved;
- (ii) the Company is satisfied that it does not expect to identify any further security claims to that Signatory's trust assets or the relevant deadline has passed for third parties with security claims to assert claims over the assets that would otherwise be distributable to the Signatory; and
- (iii) any of the non-financial contract liabilities required to be ascertained before distribution and appropriation have been ascertained.

Once the above conditions have been satisfied, the Company will be in a position to make distributions to Signatories. The Company will make distributions on a stock line by stock line basis and will be able to determine in its sole discretion the order of distributions, though as with all other provisions in the Agreement, the Company has agreed to act in good faith.

Distributions and appropriations by the Company will be determined using the value of the relevant assets and liabilities as of a day falling on the twenty-fifth business day prior to the latest date on which the Company intends to give instructions for distribution of the relevant assets.

A Signatory's net financial liabilities to the Company will have to either be satisfied or collateralised (as described in more detail below) in order for the Company to distribute assets to that Signatory.

Under the Agreement, Signatories will be entitled to use the value of their pre-administration client money claims, any Asset Shortfall Claims and any Affected Intermediary Admitted Claim Amounts (described in section 5.3 (*Collateralisation Election*)) to offset any financial liabilities to the Company. However, the amount of these claims for a particular Signatory may not be determined until after the Company is otherwise ready to make a distribution of assets to that Signatory. Because the Company can only make distributions of assets once it has provided for any liabilities owed to it by the Signatory, a Signatory will be allowed to collateralise its net financial liability owed to the Company with: (i) its pre-administration client money claim; (ii) cash in an amount equal to the value of assets that would otherwise be appropriated by the Company (instead of being returned to the Signatory) by making an appropriation deferral election; and/or (iii) any Affected Intermediary Admitted Claim Amount (described in section 5.3 (*Collateralisation Election*)). Assuming these claims exceed the amount of the Signatory's net financial liability, the assets would be distributed to the Signatory by the Company in lieu of the Company appropriating those assets to satisfy the net financial liability to the Company. The remaining net financial liability will ultimately have to be satisfied, but the Signatory will be able to satisfy that net financial liability either by: (i) applying part of the collateral amount to the Company (or effectively making a payment to the Company); or (ii) using its pre-administration client money claim, Asset Shortfall Claim or Affected Intermediary Admitted Claim Amount once each are determined to offset the net financial liability. By collateralising the net financial liability, a Signatory will, in addition to receiving asset distributions earlier than would otherwise have been the case, reduce the accrual of interest payable to the Company with respect to those net financial liabilities.

The mechanisms described above are intended to give the Signatory flexibility in determining the order in which its assets (including its pre-administration client money claims and shortfall claims) are applied to reduce its liabilities to the Company and should allow the Signatory to do so in a way to maximise its recovery against the Company.

Asset Shortfall Claims will, to the extent they are used to reduce net financial liabilities, be valued as at the date of distribution of the other assets in that stock line. Once a Signatory has reduced its net financial liabilities to zero (whether by using Asset Shortfall Claims to reduce net financial liabilities or by using other claims against the Company to reduce net financial liabilities), the excess Asset Shortfall Claims will be valued as of the date before administration (or 12 September 2008).

4.12 Part 12 – Delivery of Distributions

This part covers the manner in which assets will be distributed to the Signatories. A Signatory who fails to claim a distribution within 12 months of being provided with notice of the distribution will waive its rights to that distribution. Any surplus assets relating to a particular stock line will belong to the estate of the Company (except where they relate to excess assets distributed for any Signatories by LBI).

4.13 Part 13 – Closing

Under this part the Company agrees to deliver closing statements to the Signatories; those with trust claims will receive this statement at the time of their final distribution and/or appropriation.

4.14 Part 14 – Representations and Warranties, and certain Undertakings by a Signatory

Signatories will be required to provide the Company with a standard set of representations and warranties and to agree to notify the Company when it receives any distribution from an intermediary.

4.15 Part 15 – Tax

This part provides the Company with the right to withhold any tax payable or required to be withheld in connection with a distribution to a Signatory and allows the Company to make any disclosures required by any tax authority.

4.16 Part 16 – Dispute Resolution Mechanism

The Agreement includes a dispute resolution mechanism to resolve disputes relating to:

- (i) the net contractual position;
- (ii) a claim amount;
- (iii) the value of an intermediary distribution; or
- (iv) distributions and appropriations by the Company.

If the issue cannot be resolved between the relevant Signatory and the Company, the Company will determine whether the issue should be referred to a valuation expert, adjudicator or the court. If the Signatory disagrees with the Company's decision, the issue will be referred to the court. The valuation expert or adjudicator will apportion the costs of resolving the dispute between the Company and the Signatory.

4.17 Part 17 – Other Provisions

This part includes other miscellaneous provisions.

In particular, this part sets out the powers of the Company to modify the Agreement. Substantive amendments will require the approval of a substantial majority of the Signatories.

This part also includes a provision that reiterates that all actions and determinations by the Company under the Agreement will be made in good faith.

4.18 Part 18 – Definitions and Interpretations

This part includes a listing of all of the capitalised terms used throughout the Agreement and the definitions for those terms.

5 Lehman Brothers Inc.

5.1 SIPA

LBI is the subject of a liquidation proceeding under the Securities Investor Protection Act of 1970 ("SIPA"). SIPA includes a specific set of rules governing the return of assets to customers. While these are US and not UK laws, the Company generally understands that under SIPA all securities held by customers are considered "customer property" and in the SIPA proceeding the trustee will seek to make a pro rata distribution to all customers based on total assets that are in an omnibus fund of customer property. This means that LBI is not required to return assets on a stock line by stock line basis and is not expected to do

so. Rather, there will be one pool of property which will be used to satisfy all customer claims (which will include the claims of the Company on behalf of its clients). Further, we understand that under SIPA the obligation is to return either the securities held by the customer at the time of the commencement of the SIPA proceeding or the net equity of the customer as of the date of the commencement of the SIPA proceeding (in our case, 19 September 2008). Therefore, to determine the value of allocation of assets held by LBI and the value of any shortfall claims, that date will be used. In addition, before returning customers' assets, the Company understands that LBI may first deduct liabilities of those customers to LBI. The value of the asset claims less these liabilities is referred to as a customer's net equity.

5.2 Pooling

Under the Agreement, if the Company has enough information to identify all the Signatories to which all the assets returned, or to be returned, by LBI relate, those assets will fall into a single pool for each such Signatory. The Company will then pass through distributions to each such Signatory (subject to making provision for any liabilities owed to the Company). If the Company does not have enough information, all of the assets returned, or to be returned, from LBI will fall into a multiple stock line pool to be liquidated for cash and shared between all affected Signatories according to their net equity claims against LBI.

5.3 Collateralisation Election

Signatories will be entitled, at their option, to collateralise their net financial liabilities with the value of the lesser of: (i) their aggregate claim against the Company for assets custodied at LBI (based on their value as of 19 September 2008); and (ii) the value of their net equity claim to "customer property" as described in section 5.1 (*SIPA*) above (again based on the value as of 19 September 2008). This amount is referred to as the "**Affected Intermediary Admitted Claim Amount**". If a Signatory elects to make this collateralisation election, that Signatory will have to give up its right to receive any of the derived assets received with respect to that Signatory's assets held by LBI for the period after 19 September 2008. As a Signatory would obtain a full set off by effectively using its assets to pay its liabilities as of 19 September 2008, the Company does not think it is appropriate for the Signatory to receive derived assets that relate to the period after 19 September 2008.

The collateralisation will operate under the Agreement in a similar way to the pre-administration client money election described in section 2.6 (*Collateralisation Elections*), except that when assets are delivered by LBI to the Company, the Company will appropriate them against collateralised net financial liabilities; under the pre-administration client money election, only surplus cash may be appropriated and/or distributed.

5.4 Shortfalls

In addition, the Company will agree to be responsible for any shortfalls in the return of assets by LBI to the Company in respect of customer claims, but deficiencies will only be considered "shortfalls" if they would be viewed as shortfalls under SIPA (because as a matter of fairness to the Company's unsecured creditors, the Company cannot agree to give Signatories claims against the Company's estate for matters where the Company does not have a corresponding claim against LBI).

If Signatories do not collateralise their net financial liability, they may therefore be entitled to a shortfall claim as well as to allocations of assets returned by LBI in accordance with the Agreement. This Asset Shortfall Claim would be an amount equal to the lesser of: (i)

the amount admitted by LBI as the shortfall between the Signatory's net equity "customer claim" and the amount actually delivered to the Signatory in respect of its LBI positions; and (ii) the amount by which the claim against the Company for the value of the Signatory's assets at LBI (valued as of 19 September 2008) exceeds the value of the assets returned by LBI (again valued as of 19 September 2008).

If a Signatory collateralises its net financial liability as described in section 5.3 (*Collateralisation Election*), once LBI has finally distributed all assets to customers, the Signatory will be entitled to an Asset Shortfall Claim (for set off purposes only) equal to the amount by which the value of the assets returned to that Signatory (valued as at each delivery and/or appropriation date) is less than the Affected Intermediary Admitted Claim Amount. This ensures a Signatory making the Collateralisation Election described in section 5.3 (*Collateralisation Election*) receives the full value for set off purposes of the Affected Intermediary Admitted Claim Amount. To the extent that this asset shortfall exceeds the net financial liability of the Signatory, the Signatory will be entitled to a residual asset shortfall claim equal to the amount (if any) by which the net financial liability set off against the asset shortfall claim following collateralisation is less than the asset shortfall claim that would have arisen if the Signatory had chosen to collateralise its Affected Intermediary Admitted Claim Amount.

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PART II
SUMMARY OF THE PRINCIPAL PROVISIONS AND EFFECT OF THE CLAIM
RESOLUTION AGREEMENT

THE FULL TEXT OF THE CLAIM RESOLUTION AGREEMENT IS SET OUT IN PART III. A SUMMARY OF THE PRINCIPAL PROVISIONS OF THE AGREEMENT AND RELATED MATTERS IS SET OUT BELOW. THIS SUMMARY OF THE AGREEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE AGREEMENT. YOU ARE ADVISED TO READ AND CONSIDER CAREFULLY THE TEXT OF THE AGREEMENT ITSELF. UNLESS THE CONTEXT REQUIRES OTHERWISE, CAPITALISED TERMS USED IN THIS SUMMARY HAVE THE SAME MEANING AS GIVEN TO THEM IN THE AGREEMENT AND ANY DESCRIPTIONS OF SUCH CAPITALISED TERMS IN THIS SUMMARY ARE THEMSELVES MERELY SUMMARIES OF THESE TERMS.

1 Purpose of the Agreement

The purpose of the Agreement is to allow the Company and Signatories to compromise and agree all claims of the Signatories relating to Trust Assets and Financial Contracts, other than certain specified Excluded Claims (the concept of Excluded Claims is described more fully in section 10.3 (*Excluded Claims*)), in exchange for mechanisms to:

- (i) determine Asset Claims and to effect Distributions and Appropriations of Distributable Trust Assets of TA Signatories. The concept of Asset Claims is described more fully in section 8 (*Asset Claims made under the Agreement*) and the concepts underlying the making of Distributions are described in section 26 (*Distributions and Appropriations under the Agreement*);
- (ii) allocate and make provision for the costs of managing Trust Assets and Allocating Distributable Trust Assets to TA Signatories;
- (iii) retain any Retention Amount of TA Signatories. This concept is described in section 26.13 (*Retention Claim and Retention Amount*);
- (iv) determine, quantify and crystallise the value of unsecured claims (including any Asset Shortfall Claim, Pre-Administration Client Money Shortfall Claim and Net Financial Claim) of all Signatories;
- (v) determine the Net Financial Liability and Net Financial Claim of all Signatories. This concept is described more fully in section 22 (*A Signatory's contractual position*); and
- (vi) determine certain other liabilities owed to the Company by the Signatories, including Ascertained Non-Financial Contract Liabilities.

2 TA Signatories and NTA Signatories

A "**TA Signatory**" is any person who enters into the Agreement and has an ownership claim to Segregated Assets as at the Time of Administration. TA Signatories may also have non-proprietary claims against the Company pursuant to Financial Contracts.

All other persons (other than the Company) who enter into the Agreement and who do not have or assert ownership claims to Segregated Assets but are parties to Financial Contracts with the Company as at the Time of Administration are "**NTA Signatories**".

TA Signatories will have different rights and obligations under the Agreement from NTA Signatories.

In addition, the Company may prioritise dealing with TA Signatories over dealing with the NTA Signatories under the Agreement.

A person may become, or cease to be, a party to the Agreement as a result of transfers of rights and liabilities being claimed. These are subject to restrictions - see section 3 (*Transfer of Position*) below.

3 Transfer of Position

A Signatory may transfer to any other Signatory its entire package of claims and liabilities with respect to the Company (referred to as its "**Entire Position**"). A Signatory may not transfer parts of its Entire Position, for example transactions under Financial Contracts that are master agreements (each such part referred to as a "**Position**"). It is also not permitted to transfer any Positions whatsoever to a Non-Signatory, unless that Non-Signatory becomes a Signatory (i.e., its Accession Date falls) before the transfer is effective. If that is the case, it must have transferred its Entire Position. Once a transfer is effective, a transferring Signatory will no longer be a party to the Agreement. Instead, the relevant transferee will step into its shoes. Both transferor and transferee must notify the Company of a transfer, giving sufficient details.

Where a Signatory has previously had some Positions transferred to it, those Positions will be grouped according to the person from whom they were transferred. With regard to each such group of Positions (and any original set of Positions that a Signatory may have had, which were not transferred to it), the Signatory shall be treated as if it were a separate party to the Agreement; its claims and liabilities, calculations and determinations will be made in respect of each group separately. It will not be allowed to aggregate rights or liabilities from different groups; nor will it be able to set off (by Appropriation or otherwise) assets and liabilities from different groups against each other; only when they derive from the same transferee group. This applies with regard to Financial Contracts (and associated Close-Out Amounts) as well as in relation to Assets. All Positions, regardless as to how they were acquired by a Signatory, may, however, be Appropriated in reduction of Costs Amount, Ascertained Non-Financial Contract Liabilities, Limited Ascertained Non-Financial Contract Liabilities, and Unfunded Retention Amounts.

4 Shortfalls in particular circumstances

If the Company determines that a Signatory (a "**Shortfall Signatory**") has a greater Asset Shortfall Claim than would otherwise have been the case owing to the Company:

- (i) having excluded a person from entering into the Agreement by exercising its right of exclusion under the terms of the Offer; or
- (ii) having entered into a bilateral agreement with a Non-Signatory,

then the Company will compensate the Shortfall Signatory by paying it a cash amount equal to the amount of Assets (represented by that portion of the difference in the two Asset Shortfall Claims) which would have been available for Appropriation against the Shortfall Signatory's liabilities had either (i) or (ii) above not occurred.

5 Trust Assets

5.1 Components of Trust Assets

The main subject matter of the Agreement relating to the return of assets is Trust Assets. These comprise Segregated Assets, Derived Assets and Recovered Assets but do not include anything which is Excluded Property.

"Segregated Assets" are any Securities which at the Time of Administration were held on a segregated basis. That means that they were recorded as being held separately from the Company's own Securities in both the Books and Records of the Company and also held separately from the Company's own Securities at the Company's custodian or depository (the **"Intermediary"**). If, in fact, the Intermediary only has a single unsegregated account for the Company, then Securities held with the Intermediary will still be treated as being Segregated Assets up to the maximum of the Asset Claims to such Securities. Securities will be Segregated Assets if they were the subject of a purchase with a trade date before the Time of Administration, even if the trade actually settled after that time, provided the Securities were in fact delivered into the relevant segregated account.

"Derived Assets" are securities or money received by the Company after the Time of Administration arising out of, or derived from, any Security which was itself a Trust Asset at or immediately before the time of receipt. They include Assets generated from Derived Assets. In some cases, where the previous Trust Assets have ceased to exist, they may entirely replace the previous Trust Assets (such Trust Assets which have ceased to exist, **"Converted Assets"**).

"Recovered Assets" are Assets recovered from any Pre-Agreement Provisionally Returned Asset Recipients pursuant to the terms of their relevant bilateral agreements with the Company (see section 11 (*Pre-Agreement Asset Contracts*)).

5.2 Excluded Property and Non-Trust Assets

Excluded Property consists of Non-Trust Assets and Security Interests over Trust Assets.

Non-Trust Assets comprise anything held by the Company other than Segregated Assets, Derived Assets and Recovered Assets. They include securities that have been rehypothecated by the Company (**"Rehypothecated Securities"**), Converted Assets, Assets distributed under the Agreement (defined in the Agreement as **"Returned Assets"**), Pre-Agreement Provisionally Returned Assets that are not Recovered Assets (defined in the Agreement as **"Pre-Agreement Returned Assets"**), Assets appropriated by the Company under the Agreement (defined in the Agreement as **"Appropriated Assets"**), Pre-Administration Client Money and any Assets beneficially owned by the Company.

A Security Interest is any proprietary interest in a Trust Asset arising by way of lien or security.

6 Clients with terminated charge version International Prime Brokerage Agreements

The Company acted as prime broker to clients under the prime brokerage agreement in respect of acquisitions and disposals of securities for the clients, lending securities and advancing cash. Most prime brokerage agreements entered into by the Company provide for all securities to be held by the Company as custodian subject to a security interest or lien in favour of the Company and subject to the Company having a right to use the securities (the **"IPBA (Charge)"**).

The Company's entry into Administration entitled a client to serve a default notice on the Company under the standard IPBA (Charge) and terminate the IPBA (Charge). Upon termination of the IPBA (Charge), all outstanding obligations of the Company and the client to deliver securities or pay cash under the IPBA (Charge) become due immediately, the market values of all such cash and securities are established and an account is taken of

what is due from each party to the other. The sums due from one party are set off against the sums due from the other and the balance of the account is payable by the party having the claims valued at the lower amount. The Administrators have been advised that an effect of these termination and close-out provisions of the IPBA (Charge) appears to be to convert the client's ownership rights to securities held by the Company into monetary obligations owed to the client by the Company. This effect is contested by the affected clients.

However, under the terms and conditions of the Agreement, a termination of an IPBA (Charge) following the Time of Administration will not in itself prevent a Signatory's claim to the relevant Securities held under the terminated IPBA (Charge) from being an Asset Claim under the Agreement.

The Administrators considered carefully the effect of including claims to securities held under the IPBA (Charge) of clients who terminated their IPBA (Charge) after the Time of Administration as Asset Claims in the Agreement. Any attempt to exclude these claims as Asset Claims could result in a legal challenge from such clients seeking to argue that termination of the IPBA (Charge) does not convert ownership rights into monetary sums. Based on analysis of the Books and Records of the Company, these clients would have potential ownership claims upon a large number of stock lines. The Company would lack the certainty in respect of competing claims necessary for the Company to distribute any of these stock lines to Signatories whilst any such challenge by these clients was continuing. In addition, the costs of defending such a challenge would have to be borne by the Company, at least initially. Even if the Court were to order ultimately that the clients bringing such a challenge should pay costs, it is unlikely that such an order would cover all of the Company's defence costs.

The Administrators analysed the number of clients with a terminated IPBA (Charge), the value of their existing claims which would be released under the Agreement and the value of the new claims which they would receive under the Agreement. Clients with IPBA (Charge) agreements terminated after the Time of Administration benefit from having their claims to the relevant Securities being treated as Asset Claims, rather than by merely having unsecured claims against the Company. In addition, it is likely to be more beneficial to the general unsecured estate to include the relevant claims to Securities of those clients with IPBA (Charge) agreements terminated after the Time of Administration as Asset Claims than for the entirety of their claims to rank with the remaining unsecured creditors for a Distribution out of the unsecured estate. In particular, this reflects all claims of these clients for consequential loss being compromised under the Agreement, whereas, if they were not Signatories (as they may be disincentivised to accept the Agreement if they were to lose their ownership rights to those Securities under the Agreement), any successful claims for consequential loss would dilute the return to the remaining unsecured creditors. The Administrators are of the view that it is in the best interests of the creditors as a whole to include Signatories' claims to Securities under a terminated IPBA (Charge) as Asset Claims in the Agreement.

7 Lien or other security over Trust Assets

In some cases, the Trust Assets held by the Company are subject to a lien or other security right in favour of a person other than the client who placed those Trust Assets with the Company. From the Company's Books and Records to date, the Administrators have identified a number of accounts that have Trust Assets pledged to Affiliates. Although it is

not always clear from the Books and Records, the Administrators are aware of other security rights over a number of accounts.

In particular, certain documentation under which the Company holds Trust Assets on behalf of its clients creates a lien or other security right over these Trust Assets which secures the discharge of liabilities owed by the Company's clients to Affiliates of the Company.

These liens or other security rights are not compromised by the Agreement. However, if you are an Affiliate or other person and you believe that you have the benefit of such a lien or other security right, you should contact the Administrators as soon as practicable.

As described in paragraph 3.3 (*Affiliate lien claims over Trust Assets*) of Schedule 1 to Part I of the Circular, the Company has written to certain key Affiliates requesting details of any security or lien interests they believe they have over Trust Assets. As at the date of this document, Affiliates have not responded to these letters. However, a lack of response from an Affiliate as at the date of this document does not mean that an Affiliate has relinquished any claim for indebtedness against a TA Signatory. TA Signatories are required either to warrant that they do not have any indebtedness to any Affiliate of the Company or to disclose details of such indebtedness as part of the process for submitting claims under the Agreement.

Please refer to section 26.13 (*Retention Claim and Retention Amount*) for further details on how Trust Assets which are the subject of a lien or other security interests will be dealt with under the Agreement.

8 Asset Claims made under the Agreement

8.1 Asset Claims

All ownership claims of a TA Signatory against the Company for the return of Trust Assets will be dealt with under the Agreement. A TA Signatory's claims to Assets which are or should have been Trust Assets ("**Asset Claims**") form the basis of determination of its entitlement to participate in Distributions of Assets under the Agreement.

The agreed Asset Claims of the Pre-Agreement Provisionally Returned Asset Recipients under the relevant Pre-Agreement Contracts are also treated as Asset Claims under the Agreement for the purposes set out in section 11 (*Pre-Agreement Asset Contracts*).

8.2 Custody Asset Claims and Non-Custody Asset Claims

Asset Claims are divided into claims for Assets held on a custody basis (a "**Custody Asset Claim**") and claims for other types of Assets (a "**Non-Custody Asset Claim**").

It should be noted that Derived Assets include monies arising from or in respect of Segregated Assets and/or other Derived Assets that are Securities, so an Asset Claim will also include a claim for money received after the Time of Administration and which is a Derived Asset.

There are a number of points to note about Asset Claims:

- 8.2.1** the claim should be an ownership claim (other than a claim for a Derived Asset which is money);
- 8.2.2** the Assets must be Trust Assets; in particular, they cannot be Excluded Property;

- 8.2.3 the claim extends to property which the Company should have held even if in fact it did not. However, if the reason that the Company did not hold the Security was because it was a Rehypothecated Security or, if such Security is a Security Covered By Client Money (see section 9.5 (*Money segregated by the Company to cover depot breaks*) below), no Asset Claim can be made for it. The Signatory would instead have a Pre-Administration Client Money Claim in relation to the Securities Covered By Client Money, and it may have an unsecured claim in respect of the failure of the Company to redeliver equivalent securities in respect of any Rehypothecated Securities. However, if these are the only claims the Signatory has against the Company in respect of Assets, it will not have an Asset Claim under the Agreement at all and will be treated as an NTA Signatory;
- 8.2.4 unless otherwise required by law or regulation, the obligation of the Company in respect of the claim will not exceed its obligation under the terms of the agreement or arrangement that gives rise to such claim. The Company is not assuming any additional liability in respect of the claim under the Agreement; and
- 8.2.5 it is intended that an Asset Claim be made notwithstanding any provision of any contract which would or might result in a person not having that claim if: (i) that person had such a claim immediately prior to the Time of Administration; and (ii) that person would have had such a claim on the Effective Date but for the application of such provision. This is the mechanism described in the third paragraph of section 6 (*Clients with terminated charge version International Prime Brokerage Agreements*) above.

The concepts of Custody Security and Non-Custody Security are described more fully in the description of the various pools of Assets provided for under the Agreement in section 23 (*Allocations and shortfalls*). A diagram representing these concepts is set out at Appendix 3.

9 Money and the treatment of money under the Agreement

9.1 Pre-Administration Client Money

Pre-Administration Client Money is not dealt with under the Agreement, in the sense that Distributions of such money will not be made through the Agreement (except in the limited circumstances as described in section 26.8 (*Collateral Allocation*)) and any claims in respect of such money will not be released under the Agreement. Signatories will, however, be able to elect to have such claims taken into account as part of the calculation of their Distribution (see section 26.6 (*Client Money Collateralisation Election*) below). A Signatory who elects to take into account their Pre-Administration Client Money as part of the calculation of their Distribution may do so at any time.

A Signatory who does not elect to take into account their Pre-Administration Client Money Claim in a Client Money Collateralisation Election will have an unsecured claim admitted against the Company which is equal to any shortfall in the Pre-Administration Client Money Claim outstanding at that time.

9.2 Post-Administration Client Money which is a Derived Asset

The Agreement contains a provision pursuant to which each Signatory assigns to AssignCo its claim to, and its right in respect of, any Post-Administration Client Money received by or on behalf of the Company after the Time of Administration and which is a

Derived Asset. The Company will, however, account in full for this Post-Administration Client Money to the Signatories as part of their claim to the Securities from which the Post-Administration Client Money was derived. This is a liability to be met by the Company in priority to the Company's obligations to its general unsecured creditors because it will be treated by the Company as an expense of the Administration and will rank in priority to claims of unsecured creditors. If the Company receives any Derived Assets arising from a Corporate Action or a Corporate Event, such Derived Assets will be accounted for as part of the Trust Assets from which they are derived. The Company will identify Securities and/or their Derived Assets on a Stock Line-by-Stock Line basis into one of four kinds of Asset Pool. Any Derived Assets will be allocated into one of the four kinds of Asset Pool in accordance with the Securities from which such Derived Assets arise.

9.3 Post Administration Client Money which is not a Derived Asset

Only Post-Administration Client Money which is a Derived Asset is covered by this Agreement. Any Post-Administration Client Money that is not a Derived Asset will be dealt with outside of the Agreement.

9.4 Non-client and non-trust money

Money that does not fall within any of the above categories (whether arising prior to or after the Time of Administration) will form part of the Company's assets. Signatories may have claims against the Company in respect of such sums. To the extent that they do, these will be taken into account as part of the calculation of a Signatory's Net Contractual Position.

9.5 Money segregated by the Company to cover depot breaks

Before the Company entered into Administration, where the Company was aware that insufficient assets had been segregated for a client, it customarily segregated an amount of cash of the same value as the under-segregated assets as Client Money for such client until such under-segregation of assets has been rectified. Under the Agreement, such Client Money is treated equally with any other Pre-Administration Client Money. In order to avoid double counting under the Agreement, a Signatory will not have an Asset Claim in respect of those under-segregated assets for which the Company had segregated an equivalent amount of Client Money for such Signatory. Such assets are referred to in the Agreement as "**Securities Covered By Client Money**" and are excluded from Securities which can be the subject of an Asset Claim.

10 Modified Claims, Released Claims and New Claims

Under the Agreement, each Signatory's Asset Claims (save to the extent that they are Excluded Claims) in respect of Trust Assets will continue to exist, but will be modified (described as "**Modified Claims**"), so that upon:

- (i) Distribution, each Signatory shall receive full (to the extent the Company can give that), unencumbered title to the distributed Assets, and all other Signatories shall each waive and release all their ownership claims to those Assets against the Released Parties;
- (ii) Appropriation, the Company shall receive full (to the extent the Signatories can give that), unencumbered title to the appropriated Assets, and all other Signatories shall each waive and release all their ownership claims to those Assets against the Released Parties; and

- (iii) retention, transfer or disposition of Surplus Assets, the Company shall receive full (to the extent the Signatories can give that), unencumbered title to the Surplus Assets, and all other Signatories shall each waive and release all their ownership claims to those Surplus Assets against the Released Parties.

In addition, they will waive and release their Claims (save to the extent that they are Excluded Claims) against the Released Parties (referred to as "**Released Claims**") under Financial Contracts (apart from claims modified as described above); in respect of payment for or on account of any Asset; and for consequential or economic loss in respect of any Asset. These are exchanged for new rights: to have their Net Contractual Position, Allocations and Distributions determined on the basis set out in the Agreement; to claim as a new obligation of the Company their Net Financial Claim; and to have an Ascertained Claim (if any) for such amount as is determined under the Agreement - see section 10.1 (*Ascertained Claim*) below.

Signatories will not, however, release any Excluded Claims (see section 10.3 (*Excluded Claims*) below); claims against people other than Released Parties; and, claims to Post-Administration Client Money (which must be assigned to AssignCo, and as a result continue to exist once assigned) - see section 9.2 (*Post-Administration Client Money which is a Derived Asset*).

The "**Third Party Obligations**" provisions of Clause 4.6 of the Agreement provide that certain rights will survive where guarantees, indemnities or other obligations given by third parties in respect of that claim would otherwise be affected, but then only to the extent for such third party rights to remain effective. However, for the purpose of determining a Signatory's new rights under the Agreement, such surviving claims shall be treated, as released claims, and not surviving claims. There is no assurance that rights, which this Agreement purports to preserve, will survive for the benefit of Signatories as against third parties.

Further, Signatories will be subject to a moratorium under the Agreement. Please see section 13 (*Stay of proceedings*) for more information.

No Signatory will be entitled to recover more than once in respect of the same Asset or claim, whether under the Agreement or otherwise.

10.1 Ascertained Claim

An Ascertained Claim is an unsecured claim in the Company's winding-up or any other Distribution of the Company's assets generally to its unsecured creditors for an amount determined under the Agreement.

10.2 Released Parties

Released Parties are the Company, the Administrators, and their firms, members, agents, partners or employees, and all Signatories. The Agreement does not release claims (if any) which a Signatory may have against Lehman Brothers Holdings Inc. as guarantor of the Company or LBI, or against CAPCO or Lehman Brothers Bankhaus AG.

10.3 Excluded Claims

Excluded Claims include: Retention Claims - see section 26.13 (*Retention Claim and Retention Amount*); claims for Excluded Property (other than Appropriated Assets) - see section 5.2 (*Excluded Property and Non-Trust Assets*) and any loss or damage consequent

on the Company not performing any of its obligations in relation to Excluded Property; claims against the Company for breach of the Agreement; and contractual claims, but not under a Financial Contract, which the Company determines it is not in the interests of the Company's unsecured creditors to resolve via the Agreement.

In particular, the Signatory does not compromise its ownership rights, if any, to Securities which are not Segregated Assets because the Company rehypothecated them, but which remain identifiable within the accounts of the Company that record or hold the Company's own Securities because the Company did not complete a transfer or other disposal of those Securities.

10.4 Further releases and waivers by Signatories

Under the Agreement, each Signatory also waives and releases (amongst other things):

- 10.4.1** all ownership claims it may have in respect of any Pre-Agreement Provisionally Returned Assets and Pre-Agreement Returned Assets, and all claims in respect of such Assets against any person to whom these have already been returned by the Company. The Company does, however, retain the right to request the return of Pre-Agreement Provisionally Returned Assets under the Pre-Agreement Contract, in which case they will become Recovered Assets. See section 11 (*Pre-Agreement Asset Contracts*);
- 10.4.2** the members of the Creditors' Committee Group from any liability to any Signatory or the Company arising in connection with the preparation, negotiation and operation of the Agreement; and
- 10.4.3** the Administrators, the Advisers and their firms, members, agents, partners and employees from any liability that they may have to any Signatory arising in connection with the preparation, negotiation and operation of the Agreement.

The "**Creditors' Committee Group**" comprises the members of the Creditors' Committee, including any sub-committees thereof, and their investment managers and investment managers' affiliates, and each of their respective advisers, firms, members, agents, partners, officers, directors and employees, but at all times only in their respective capacities described in this definition, which ultimately derive from the role of the Creditors' Committee and, where the context requires, means them individually or collectively.

10.5 Application of the Agreement to prior agreements

The Agreement does not affect the terms of any bilateral agreements made between the Company and any Signatory prior to the Signatory's Accession Date, save as otherwise agreed between the Company and that Signatory. The Company has the right to vary or amend the terms of the Agreement as they apply to any such Signatory prior to entering into the Agreement for the sole purpose of rendering the application of this Agreement to such Signatory consistent with such other agreements.

11 Pre-Agreement Asset Contracts

The Company has entered into bilateral agreements (each a "**Pre-Agreement Asset Contract**") with certain persons ("**Pre-Agreement Provisionally Returned Asset Recipients**") pursuant to which: (i) each such person's Asset Claim was agreed; and (ii) Assets ("**Pre-Agreement Provisionally Returned Assets**") have been delivered by the Company to such person towards the satisfaction of such agreed Asset Claim. Such

bilateral agreements contain an obligation for the Pre-Agreement Provisionally Returned Asset Recipient to redeliver Securities, or assets equivalent to such Securities, to the Company if it is determined that too great an amount of Pre-Agreement Provisionally Returned Assets was delivered to such person.

By treating: (i) the previously agreed Asset Claim of the Pre-Agreement Provisionally Returned Asset Recipient as an "Asset Claim" for the purposes of the Agreement, and (ii) the Pre-Agreement Provisionally Returned Assets as "Distributable Trust Assets", the Company will be able to determine, on the basis of the Allocation determined under the Agreement, whether any Pre-Agreement Provisionally Returned Assets ought to be returned to the Company as Recovered Assets and, where the relevant Pre-Agreement Provisionally Returned Asset Recipient is also a Signatory, whether any additional Distributable Trust Assets should be Allocated to such Pre-Agreement Provisionally Returned Asset Recipient in respect of its agreed Asset Claim.

12 Claims released by the Company

12.1 Released Claims

12.1.1 Under the Agreement, the Company will waive and release the Claims against the Signatories in respect of all rights under any Financial Contracts.

12.1.2 Such claims do not include:

- (i) any claim that the Company may have against any person, other than the Signatories, to do with any Trust Assets, any other Assets, or any other contract;
- (ii) claims against the Signatories for breach of the Agreement; and
- (iii) any Antecedent Transaction Liabilities.

12.2 New Claims

The Company will have such released claims exchanged for the following:

12.2.1 the right to determine the Net Contractual Position, Allocations, Appropriations and Distributions of each Signatory on the basis set out in the Agreement;

12.2.2 the right to claim as a new obligation of the Signatory the Distribution Liabilities, as calculated under the Agreement, from the Signatory; and

12.2.3 the right to appropriate such part of the Distributable Trust Assets as are Allocated to a Signatory in or towards the discharge of that Signatory's Distribution Liabilities to the Company, as provided for in the Agreement.

13 Stay of proceedings

The Agreement prevents Signatories from taking any action against the Company for the purpose of obtaining payment of any claim. If, notwithstanding the prohibition, a Signatory obtains any judgment, decision or award and takes any enforcement step after the Effective Date in respect of a claim, the Signatory will be treated as having received on account of its claim an advance Distribution under the Agreement equal to the amount or gross value of any money, property or advantage obtained by it at the expense of the Company as a result of such action.

14 Bar Date and Asset Claim

14.1 The Bar Date under the Agreement

Under the Agreement, Signatories will agree to submit their Asset Claims against the Company by 26 February 2010 or such other date as the Company notifies to Signatories under the Agreement. This date is referred to in the Agreement as the "**Bar Date**". If a Signatory fails to submit an Asset Claim before the Bar Date, the Company will determine such Signatory's entitlements to Trust Assets on the basis of information available to the Company at the time of such determination.

The Bar Date does not apply to NTA Signatories, nor does it apply to the claims of TA Signatories which are not Asset Claims. Signatories' close-out amounts in respect of each Financial Contract should be determined in accordance with the procedures set out in Part 7 of the Agreement.

After the Bar Date, any information received from Non-Signatories concerning claims they may assert which possibly affect Distributions will not affect the Distribution of any Trust Assets for which the Company has already given associated instructions for settlement. If such claims are received before this date, any preparations for Distribution may be suspended whilst the matter is investigated.

Eligible Offerees should note that neither the Bar Date in the Agreement nor any bar date set by the Court (described in section 14.2) (*Court application for a bar date*) will prevent a Non-Signatory from taking action against a Signatory to recover Trust Assets distributed to that Signatory before the Company had become aware of the Non-Signatory's proprietary claims. However, it is expected that a Non-Signatory would face considerable practical difficulties in establishing such a claim to Trust Assets in the hands of a Signatory.

14.2 Court application for a bar date

The Administrators intend to apply to the Court for directions that a bar date be set for the submission of all claims to beneficial ownership of Trust Assets, whether by Signatories or others. If the Court application in respect of this bar date is successful, a client will not be entitled to take any action for breach of trust against the Company in respect of Trust Assets distributed to other clients of the Company after the bar date based on the knowledge of the Company on the day of giving the settlement instructions for the Distribution in question.

If the Court sets a bar date as described above, it is likely that the same date will be used as the Bar Date in the Agreement and notified to Signatories in accordance with the Agreement.

14.3 Procedures for TA Signatories to provide information in relation to Asset Claims

Each TA Signatory may submit any information in relation to its Asset Claims by amending or confirming such information via the Portal on or before 5.00 p.m. (London time) on the Bar Date in accordance with the terms of the Agreement and where necessary provide any supplementary information, in order for the Company to determine its Asset Claims. TA Signatories should have received a User ID and Password for the Portal from the Company. Any TA Signatory who has not received a User ID and Password for the Portal should contact the Company as soon as possible after its Accession Date in order to submit its Asset Claims.

14.4 Failure to submit Asset Claims

If a Signatory does not submit any information in relation to its Asset Claims to the Company by 5.00 p.m. (London time) on the Bar Date, the Company will determine such Signatory's entitlements under the Agreement at any time after the Bar Date using its Relevant Information that is available to the Company at the time of such determination. This puts Signatories who do not provide such information on a timely basis at risk that the Company may distribute Trust Assets without regard to such Signatories' full Asset Claims.

14.5 Withdrawal of Asset Claims

At any time, a TA Signatory may withdraw its Asset Claims and any related information by giving a Notice to the Company.

15 Relevant Information and Incompletely Documented Agreements

15.1 Relevant Information

The Company will only be required to have regard to Relevant Information in determining matters under the Agreement.

Relevant Information is, at the time of the determination in question:

- 15.1.1 information capable of being ascertained by the Company from its Books and Records;
- 15.1.2 information made available to the Company by a TA Signatory in relation to its Asset Claims validly submitted in accordance with the terms of the Agreement;
- 15.1.3 any information made available by a Signatory or Non-Signatory to the Company before or after the Bar Date;
- 15.1.4 information contained in Notices received by the Company under the Agreement;
- 15.1.5 information made available to the Company by Intermediaries, Sub-Intermediaries and by the Company's affiliates;
- 15.1.6 information made available to the Company by any relevant exchanges; and
- 15.1.7 information which may be taken into account when determining any Close-Out Amount of any Financial Contract and any value of any Relevant Asset in accordance with the methodologies provided in the Agreement.

The Company may take into account: (i) any information which is not Relevant Information for the purpose of making determinations; or (ii) any information which comes into its possession after making such determinations, in respect of a Signatory pursuant to the Agreement.

15.2 Incompletely Documented Agreements

If the relevant terms of a contract cannot be ascertained solely from the Company's Books and Records (an "**Incompletely Documented Agreement**"), then the Company will use its reasonable endeavours to ascertain the terms of such Incompletely Documented Agreement, and, if that Signatory provides Relevant Information, the Company and the Signatory will use their reasonable endeavours to agree the terms which apply to such Incompletely Documented Agreement.

15.3 Standard Terms

If no, or no further, information is available and provided by the relevant Signatory or if the Company and the relevant Signatory are unable to agree on the terms and conditions that apply to an Incompletely Documented Agreement, then the terms and conditions of such Incompletely Documented Agreement will be determined by the Company, based on any information it then has in its possession, as supplemented by those terms and conditions which customarily applied at the relevant time to substantially similar contracts which the Company entered into with other comparable counterparties.

15.4 Incomplete or missing information

Each Signatory shall be solely responsible for the cost of providing any information to the Company, including any information in relation to its Asset Claims, which shall be submitted at the Signatory's risk. The Company will have no obligation, responsibility or liability for incomplete or missing information or any errors in information, including information relating to any Asset Claims.

If any information provided by a Signatory is ambiguous, unclear or insufficient, the Company may request by Notice that the relevant Signatory provides supplementary information, at the cost of such Signatory. In the absence of a satisfactory response to such a request within 20 Business Days of the Notice, the Company may disregard such unclear or ambiguous information or may, acting in a commercially reasonable manner, attribute a clarificatory meaning. Where the information provided by the Signatory is insufficient, the Company may use its Relevant Information.

16 Disclosure and confidentiality

Signatories waive, to the maximum extent permitted by law, any breach of confidentiality arising from the operation of the Agreement and authorise the Company to disclose any information which the Company is required to disclose or which the Company considers to be necessary or desirable to enable the Agreement to be administered effectively or for the purposes of any disclosures required by law, any court or the rules of any regulatory body.

Where the Company discloses any Relevant Information to any other person, the Company shall have all references to the identity of a Signatory deleted unless the Company determines that references to the identity of a Signatory are necessary to assist the purpose of disclosure. The Company will be free to disclose information: (i) to CAPCO; or (ii) to a Signatory against whom proceedings in court have been brought in order to ascertain whether the person bringing such proceedings is also a Signatory.

17 Reversal of entries for Failed Trades

Transactions for the purchase, sale or delivery of Securities which have not in fact settled ("Failed Trades") may be represented in the Books and Records of the Company as having settled. To address this, any such incorrect entry will be reversed, unless it is related to a Connected Trade, in which case it will be replaced with a new entry in the Company's Books and Records to reflect the status of such Connected Trade without regard to the Failed Trade.

18 Representations, Warranties and Undertakings by the Signatories

The representations and/or warranties by a Signatory:

- (i) upon the relevant Accession Date;
- (ii) upon provision/submission of information (including by the Portal); and
- (iii) on each Delivery Instruction Date,

are set out in Part 14 (*Representations and Warranties, and certain Undertakings by a Signatory*) of the Agreement. Part 14 of the Agreement also sets out the Undertakings provided by each Signatory in relation to Intermediary Distributions, as well the claims by the Company in respect of any breach of Warranty or Undertaking by a Signatory.

19 Management of Assets prior to Distribution

19.1 Corporate Actions

The Company will deal with discretionary events occurring in relation to Securities which are Trust Assets (each, a **"Corporate Action"**). Corporate Actions include a subscription rights issue, a tender offer, a security split, a bonus issue, an exercise of voting rights, an exercise of conversion rights, a merger, an election in relation to dividends and any other analogous or similar action.

If a Corporate Action arises in respect of Trust Assets and the matter is either: (i) where no Instructions have been received and the relevant Corporate Action is (a) the grant of tradable subscription rights to holders of the Relevant Securities, then, if not otherwise automatically sold in the relevant market, such rights will be sold; or (b) the grant of bonus rights to holders of the Relevant Securities which require no payment to be made, then such rights will be taken up; or (ii) where a TA Signatory has notified the Company in writing of an instruction regarding a Corporate Action, then the Company will attempt to identify the relevant Security, the nature of the Corporate Action, the amounts of the relevant Security held, the identity of TA Signatories and TA Non-Signatories to which such holdings appear to be attributable and the amounts of the Relevant Security attributable thereto.

Where paragraph (ii) above is applicable, the Company will not take any action in relation to a Corporate Action unless:

- 19.1.1 the Company has received clear and unambiguous instructions from a TA Signatory in relation to such action (**"Instructions"**);
- 19.1.2 the relevant TA Signatory has agreed to pay a fee (the **"Fee"**) to the Company;
- 19.1.3 the Company considers that there are reasonable grounds to believe that such TA Signatory may be Allocated the relevant amount of the Securities (the **"Relevant Securities"**). Any view as to this matter is without prejudice to any final determination under the Agreement as to whether the Relevant Securities are ultimately Allocated to the relevant TA Signatory;
- 19.1.4 the Company has been indemnified to its satisfaction against any loss, cost, claim, action, demand or expense which may be incurred or made against it in connection with such action; and
- 19.1.5 the Company has determined that it is reasonably practicable for the Company to effect the Instructions in the time available.

The Fee referred to above will be US\$3,000 (plus any applicable VAT). The Company reserves the right to increase the Fee if its costs relating to the Instructions will be materially higher than US\$3,000.

The Company will not be required to take any action regarding Trust Assets in respect of Corporate Actions to the extent that it requires a payment to be made by the Company. The Company will be under no obligation to take any steps with regard to any Corporate Action save as provided in section 20 (*Undertakings by the Company with regard to Trust Assets*).

19.2 Indemnity given by Signatory

Under the Agreement, the relevant TA Signatory will be required to:

- 19.2.1 indemnify the Company and all of the Company Released Parties from and against any liabilities which it may incur as a result of attempting to effect the Instruction, and waive any right of action it may have against the Company Released Parties as a result of attempting to effect the Instruction;
- 19.2.2 acknowledge and agree, amongst other things, that the Company will be entitled to deal with any proceeds realised as a result of carrying out the Instructions (the "Realisation") as the Company sees fit, that by carrying out the Instructions the Company does not accept that the relevant TA Signatory has any entitlement to the Realisation or the Securities, that the Fee will be payable without set-off, deduction, counterclaim or the exercise of any liens and that the Company Released Parties will not be responsible for any failure on the part of any person to comply with any instruction the Company may give to it contemplated in the Instructions; and
- 19.2.3 if the Securities are held through a custodian or depository over which the Company has no or restricted access, it may not be possible to effect the Instruction or to ascertain if the Instruction has been effected.

19.3 Corporate Events, Derived Assets and Failed Trades

A Corporate Event includes a payment of a dividend, coupon, redemption amount, exchange or analogous event. If a Corporate Action or a Corporate Event occurs, then, to the extent that any Derived Assets are actually received by the Company as a result, such Derived Assets will (unless the Court otherwise orders) be accounted for as part of the Trust Assets from which they are derived.

If any Failed Trades are outstanding in relation to the relevant Trust Assets, no action will be taken in respect of any Corporate Action unless each party to such Failed Trade gives its written consent to the proposed Corporate Action and waives any right of action against the Company and the Company Released Parties arising out of, in connection with or as a result of the carrying out of the Instructions.

20 Undertakings by the Company with regard to Trust Assets

- 20.1 The Company will act as fiduciary in respect of Trust Assets and, consistent with that standard of care, will not:

- 20.1.1 take, or (to the extent that, in its capacity as fiduciary, it has power to control) permit another person to take, any action which would result in any Distributable Trust Assets ceasing to be Distributable Trust Assets; or

- 20.1.2 omit to take, or (to the extent that, in its capacity as fiduciary, it has power to control) permit another person to omit to take, any action, the omission of which would result in Distributable Trust Assets ceasing to be Distributable Trust Assets.
- 20.2 Save as otherwise provided under the Agreement, nothing under the Agreement will impose on the Company any more extensive obligations than its obligations prior to 15 September 2008 (the "**Administration Date**"). In any case, the Company will not be required to take any step that would result in expense or liability to the Company for which it considers it will not be indemnified.
- 20.3 The Company, to the extent that it is able to do so in its capacity as trustee, will use all reasonable endeavours to gather in Trust Assets and to remove any impediment on Assets being Distributable Trust Assets. The Company will not be required to transfer any asset to which it is absolutely entitled nor to expend any amount on discharging any liability unless and to the extent that it will be indemnified for the expense of so doing or where the net value of its assets will not be decreased as a result.
- 20.4 From the Effective Date, the Company will not appropriate for itself any Trust Assets save in accordance with, and to the extent of, its rights to appropriate Assets or as otherwise permitted by the Agreement.

21 Asset Valuation Methodology

- 21.1 The value of any Security or the obligation to deliver Securities as at the relevant valuation date will be an amount in US dollars determined by the Company using a specified valuation methodology (the "**Asset Valuation Methodology**"). The value will be:
- 21.1.1 if the Company has sold Securities of that type on that date, the proceeds of sale; or
- 21.1.2 otherwise: (i) the mid-market price for that Asset that is reported by a recognised pricing source; (ii) failing which, the arithmetic mean of the bid and offer prices that are published on a recognised pricing source; (iii) failing which, the mid-point between firm bid and offer quotations; or (iv) failing which, the mid-point between indicative bid and offer quotations or, if one or more bid prices and offer prices are both provided, the arithmetic mean of the bid prices and the offer prices; or
- 21.1.3 otherwise, the fair market value (which will be based on mid-market pricing and may be zero) for the Asset, as determined by the Company. The Company may take into account any Relevant Information, including, without limitation, one or more of the following types of information:
- (i) any bid or offer prices, customary bid-offer spreads and any historical trading prices in respect of Assets which are comparable as published by any exchange or quotation system or other generally recognised price source;
 - (ii) market data in respect of the relevant market supplied by one or more third parties or derived from internal sources, including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations; and

- (iii) the results of the operation of any models or other pricing methodologies, including manual or automated calculations performed by the Company or the proprietary pricing models of, or information supplied by, one or more third parties, selected by the Company,

provided that, in all cases:

- (a) the Company has no obligation to solicit or obtain a specific number of quotations, values or prices and may seek any number of quotations, values or prices that it considers appropriate;
- (b) the Company may discard quotations, values or prices that it has obtained where it determines this to be appropriate in the circumstances, in particular, where the Company believes that the discarded quotations, values or prices would have a distorting effect on any arithmetic mean;
- (c) the time as at which quotations are to be obtained will be selected by the Company;
- (d) if only bid quotations, values or prices or only offer quotations, values or prices are made available, then the Company may determine the Mid-Market Value by reference to the historical or customary bid-offer spreads for the Asset or comparable Assets; and
- (e) in any event, if the Company determines that the value that would otherwise have been determined (based on sale price or by reference to a reported price or mid-market prices based on quotes) does not represent the fair market value of the Asset, then the Company may determine the value based on paragraph 21.1.3 above.

21.2 The Company may adjust any quotation, value or price to reflect the fact that the amount of the Asset being valued is unusually large or small for such Asset in the relevant market or where different quotations have been received in smaller amounts to produce an aggregate equivalent to the amount of the Relevant Asset. The Company's determinations, valuations and calculations of value will be performed in a commercially reasonable manner.

22 A Signatory's contractual position

The Agreement compromises all claims relating to Financial Contracts between the Company and the Signatories. In order to do this, the Agreement provides a regime for ascertaining claims other than Asset Claims. The key concepts are Financial Contract, Open Contract, Close-Out Amount and Net Contractual Position. A series of diagrams representing these concepts is set out at Appendix 2.

22.1 Financial Contracts

A Financial Contract is a contract between the Company and a Signatory entered into before the Administration Date relating to transactions or positions of a financial nature (and which is not a purely administrative or non-financial services contract), including contracts for the delivery and/or custody of Assets. It includes Master Agreements.

22.2 Open Contracts and automatic termination

With respect to each Signatory, any Financial Contract which has not been terminated before its Accession Date will be automatically terminated on the last Business Day of the month in which the Accession Date in respect of such Signatory falls (the "**Open Contract Termination Date**"). Following an Accession Date, any voluntary early termination right will be ineffective. Automatic termination will not prejudice any pre-existing ownership rights or claims. A diagram representing this concept is set out at Appendix 1.

22.3 Close-Out Amount

The Close-Out Amount is the amount payable by either the Company or the relevant Signatory to the other as a result of termination of a Financial Contract. The Close-Out Amount will be expressed in US dollars. If the Financial Contract provides for some other currency, the amount will be converted to US dollars using the exchange rate as at the close of business on the Administration Date. Close-Out Amounts will be determined in accordance with the applicable Financial Contract Valuation Methodology, in each case incorporating certain Overriding Valuation Provisions.

22.4 Financial Contract Valuation Methodologies

The Financial Contract Valuation Methodology will be:

- 22.4.1 first, in accordance with the methodology for calculating termination payments provided for in the Financial Contract (the "**Contractual Valuation Methodology**");
- 22.4.2 secondly, in certain circumstances as agreed between the Company and the Signatory (the "**Agreed Valuation Methodology**"); and
- 22.4.3 thirdly, if neither the Contractual Valuation Methodology nor the Agreed Valuation Methodology is applicable, then a fallback methodology (the "**Fallback Valuation Methodology**").

22.5 Determining Party

The determination of the Close-Out Amount will be made by the person described under the Agreement as the Determining Party. In the case where the Contractual Valuation Methodology is used, the Determining Party will generally be the party entitled or required under the relevant provisions of the Financial Contract to determine the Close-Out Amount. In the case where the Agreed Valuation Methodology or the Fallback Valuation Methodology is used, the Company will be the Determining Party. A diagram representing the valuation methodologies and the rules for deciding who should act as the Determining Party is set out in Appendix 2.

22.6 Contractual Valuation Methodology

The Contractual Valuation Methodology follows the valuation provisions of the relevant Financial Contract as modified by the Overriding Valuation Provisions. Where the Determining Party is the Signatory, the determination of the Close-Out Amount must be evidenced by a statement (the "**Valuation Statement**") showing the calculation in reasonable detail.

22.7 Agreed Valuation Methodology

The Agreed Valuation Methodology applies where the Company is the Determining Party under the Contractual Valuation Provisions and it is not reasonably practicable to use the Contractual Valuation Provisions. In this case, a methodology will be agreed between the Company and the Signatory.

22.8 Fallback Valuation Methodology

22.8.1 The Fallback Valuation Methodology will apply if:

- (i) a Financial Contract does not contain any Contractual Valuation Provisions;
- (ii) the relevant terms of a Financial Contract cannot be ascertained;
- (iii) the relevant Contractual Valuation Provision is unclear or ambiguous or incapable of strict compliance due to a technicality, and the parties are unable to agree to the required modifications to such Contractual Valuation Provision; or
- (iv) the Agreed Valuation Methodology applies but the parties are unable to agree an Agreed Valuation Methodology.

22.8.2 The Fallback Valuation Methodology is based upon:

- (i) the Mid-Market Value; plus
- (ii) the Unpaid Amounts owing to the Signatory; less
- (iii) the Unpaid Amounts owing to the Company.

22.8.3 Mid-Market Value is the arithmetic mean of (which may be a zero value):

- (i) an amount, if any, that would be paid by or to the Company in consideration for the entry into of a transaction similar to the Financial Contract; and
- (ii) an amount, if any, that would be paid by or to the Signatory for the entry into such a similar transaction,

provided that, for the purpose of determining the Mid-Market Value, both the Company and the Signatory will be assumed to have a prime credit quality.

22.8.4 Unpaid Amounts owing to any party mean the aggregate of:

- (i) any amounts that became payable (or that would have become payable but for any Flawed Asset Provision) to such party under the terms of the Financial Contract and which remain unpaid; and
- (ii) for each obligation which was (or would have been but for any Flawed Asset Provision) required to be settled by delivery of assets (the "**Unpaid Amount Deliverables**") to such party and which has not been so settled, an amount equal to the value of such Unpaid Amount Deliverables.

22.9 Overriding Valuation Provisions

22.9.1 The Overriding Valuation Provisions are:

- (i) any Asset Claim which is the subject of a Financial Contract will be disregarded in the valuation of the Close-Out Amount. This is to avoid the same claim being counted twice;

- (ii) for any contract automatically terminated under the Agreement, the Close-Out Amount (except to the extent that it relates to Short Positions and Rehypothecated Securities) will be determined as at the Open Contract Termination Date. A Short Position is an obligation of the Signatory to deliver equivalent Securities (or pay an amount equal to their value) to the Company arising in connection with a Short Sale. A Short Sale is a transaction which involves a sale or other transfer for value of Securities by a Signatory where the Signatory is required to borrow such Securities from the Company at the time of sale or transfer, and in connection with which the Signatory assumes an obligation to deliver equivalent Securities (or to pay an amount equal to their value) to the Company at a future date;
- (iii) the value of:
 - (a) any Security which is the subject of a Short Position; and
 - (b) any Rehypothecated Security,
 will generally be the market closing price on the last Business Day immediately before the Time of Administration. Any other obligation which arises after the Time of Administration will be disregarded from this calculation;
- (iv) any term of a Financial Contract which provides that an obligation of a party is subject to a condition precedent that an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event has not occurred and/or is not continuing with respect to the other party will be disregarded in the calculation of the Close-Out Amount;
- (v) any term of a Financial Contract which:
 - (a) provides that an amount which, but for such term, would be payable by one party to the other party as a result of termination of such Financial Contract, would not be payable to such other party as a result of an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event having occurred with respect to such other party; or
 - (b) provides that only the party which is not subject to an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event is entitled to receive a payment following the termination of such Financial Contract,
 will be disregarded in the calculation of the Close-Out Amount;
- (vi) any Pre-Administration Client Money Claim will be disregarded in the valuation of any Close-Out Amount;
- (vii) no interest will accrue on any unpaid liability of the Company from the Administration Date, save to the extent that such interest would accrue under Rule 2.88 of the Insolvency Rules;
- (viii) no account will be taken of any obligations owing to or from third parties in the valuation of any Close-Out Amount; and

- (ix) no account will be taken of any amounts which might be, or in due course become, due from a Signatory to the Company under Sections 238 to 245 of the Insolvency Act (adjustment of prior transactions), Sections 423 to 425 of the Insolvency Act (provisions against debt avoidance) or Sections 213 to 215 of the Insolvency Act (fraudulent or wrongful trading), or as a result of any misfeasance, breach of duty or breach of contract owed by the Signatory to the Company ("**Antecedent Transaction Liabilities**").

The Company may disregard any of the Overriding Valuation Provisions in its absolute discretion provided that this does not prejudice a Signatory's Net Contractual Position.

22.10 Net Contractual Position

The Net Contractual Position is the sum of all the Close-Out Amounts as between the Company and a Signatory. This may be a net sum due from the Signatory to the Company (which amount shall bear interest as described in section 22.11 (*Interest*) below, together a "**Net Financial Liability**") or a net sum due from the Company to the Signatory (a "**Net Financial Claim**", on which amount interest is not payable).

The Net Contractual Position will be determined finally under the Agreement. A Signatory may challenge the determination under the dispute resolution mechanism (the "**Dispute Resolution Mechanism**") provided for under the Agreement and described more fully in section 31 (*Dispute Resolution Mechanism*).

The determination of the Net Contractual Position by the Company in respect of a Signatory will be evidenced by a statement (the "**Net Contractual Position Statement**") showing the calculation in reasonable detail.

22.11 Interest

Interest will accrue on the outstanding Gross Uncollateralised Liability on a daily basis at the Applicable Rate from the Administration Date. The "**Gross Uncollateralised Liability**" of a Signatory is the amount by which a Signatory's Net Financial Liability exceeds: (i) the value of any Deferral Cash Amounts (if it has made an Appropriation Deferral Election); (ii) the greatest value of a Signatory's shortfall on Pre-Administration Client Money that is admitted from time to time (if it has made a Client Money Collateralisation Election); and (iii) the value of any Affected Intermediary Admitted Claim Amount (if it has made an Affected Intermediary Collateralisation Election).

The Applicable Rate means a simple rate of interest equal to the lesser of: (i) USD-LIBOR plus 1 per cent.; and (ii) the highest rate of interest applicable to any sum due from that Signatory to the Company in any Financial Contract. No interest will accrue on any Net Financial Claim, save to the extent provided in Rule 2.88 of the Insolvency Rules.

The amount of interest to be attributed to a Net Financial Liability will be determined on a Distribution Value Date as the amount of interest specified above which has accrued over the period since the previous Distribution Value Date or, if the first Distribution Value Date, since the Administration Date. If the Gross Uncollateralised Liability has changed since that time, then a balancing adjustment shall be made to recognise that a reduction was made for a greater amount of interest than is now the case. To the extent this implies a negative interest value, the Net Financial Liability shall be reduced accordingly. Interest on the Net Financial Liability is calculated as a simple (not compounded) amount. When a Signatory

exercises its Collateralisation Election, the interest bearing portion of the Net Financial Liability shall first be attributed to the uncollateralised portion of the Net Financial Liability.

23 Allocations and shortfalls

23.1 Allocation is the process by which the Company identifies Distributable Trust Assets and records the entitlements of TA Signatories to those Assets in its Books and Records.

23.2 A series of diagrams representing the concepts described below is set out at Appendix 3.

23.3 Allocation on a Stock Line-by-Stock Line basis

The Company will determine the Allocation of Distributable Trust Assets following the Bar Date on a Stock Line-by-Stock Line basis. Stock Lines shall be chosen by the Company in its absolute discretion in such order as it sees fit.

23.4 Stock Lines

A "**Stock Line**" refers to a group of fungible Securities often identified by a unique ISIN or CUSIP number and it also includes all the Derived Assets of such fungible Securities. However, if a group of fungible Securities are held through more than one Intermediary and at least one of them is an Affected Intermediary (see section 23.5 (*Affected Intermediaries and Affected Stock Lines*)), the Securities that are held through each such Affected Intermediary shall form a separate Stock Line.

23.5 Affected Intermediaries and Affected Stock Lines

An "**Affected Intermediary**" is an Intermediary that returns Trust Assets of more than one Stock Line to the Company on the basis that any shortfall on each of those Stock Lines (an "**Affected Stock Line**") would be shared amongst every claimant to all of the Affected Stock Lines. If any shortfall is to be shared amongst the claimants in proportion to the aggregate of their respective Asset Claims to all of the Affected Stock Lines, such an Affected Intermediary is an "**Asset Claim Intermediary**". If any shortfall is to be shared amongst the claimants in proportion to any other of their Claims against the Affected Intermediary as determined by such Affected Intermediary, then such an Affected Intermediary is a "**Net Equity Intermediary**".

LB1 is an Affected Intermediary. See section 24 (*Allocation of Assets held through LB1*) for further information.

23.6 Identification of Distributable Trust Assets

The Trust Assets which can be distributed under the Agreement ("**Distributable Trust Assets**") must be identifiable, within the control of the Company and not subject to any order or restriction affecting dealings in it. The quantity of Distributable Trust Assets may increase over the duration of the Agreement if further Trust Assets come under the Company's control during the term of the Agreement.

Pre-Agreement Provisionally Returned Assets which are subject to claw-back under the terms of the relevant bilateral agreements between the Company and the Pre-Agreement Provisionally Returned Asset Recipients are also treated as Distributable Trust Assets for the purposes set out in section 5.1 (*Components of Trust Assets*).

23.7 Individual Claim Amount

Except for Trust Assets held by a Net Equity Intermediary (see section 23.8 (*Net Equity Amount*)), a Signatory's entitlement to an Allocation and the amount of Distributable Trust Assets to be Allocated to it will be based on its Asset Claim. The amount of Assets in a Stock Line which are the subject of an Asset Claim of any person (whether such person is a Signatory or a Non-Signatory) is that person's "**Individual Claim Amount**". This will be determined by the Company based on the Relevant Information. The concept of Relevant Information is discussed more fully in section 15 (*Relevant Information and Incompletely Documented Agreements*).

23.8 Net Equity Amount

A Signatory's entitlement to an Allocation and the amount of Distributable Trust Assets to be Allocated to it with respect to Trust Assets held through a Net Equity Intermediary will be based on its Net Equity Amount. The "**Net Equity Amount**" is determined by the Company, using information received from the Net Equity Intermediary, as the amount of Claim which the Net Equity Intermediary recognises or acknowledges in quantifying the Asset Claim of each TA Claimant to the Trust Assets held by the Net Equity Intermediary. A "**TA Claimant**" is someone with a claim to Trust Assets, whether or not they are a Signatory.

The Company will use reasonable endeavours to pass onto a Signatory such information received from a Net Equity Intermediary which the Company uses in determining that Signatory's Net Equity Amount. If a Signatory wishes to challenge the Net Equity Intermediary on the accuracy of such information, the Company will, subject to certain requirements being met (including receiving a satisfactory indemnity from the Signatory on costs and other liabilities), use reasonable endeavours to help the Signatory engage the Net Equity Intermediary in order to resolve their differences directly.

23.9 TA Claimant Amount

The "**TA Claimant Amount**" of a TA Claimant means its Individual Claim Amount or (where a Net Equity Intermediary is involved) its Net Equity Amount. A Signatory may challenge the Company's determination of its TA Claimant Amount through the Dispute Resolution Mechanism provided that it submits to the Company the amount which it alleges to be the correct TA Claimant Amount (the "**Alleged TA Claimant Amount**").

23.10 Reallocation following the receipt of new Relevant Information

If the Company receives or otherwise becomes aware of any new Relevant Information on any day that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) after any determination in relation to Allocation has been made by the Company in respect of such Stock Line or Asset Pool and the Company believes that the new Relevant Information would have resulted in a different determination of Allocation had it been available at the time, then the Company will take into account such new Relevant Information and will re-determine the Allocation in respect of such Stock Line or Asset Pool again. However, when the Company re-determines the Allocation, it will not take into account as Distributable Trust Assets any Assets for which instructions for settlement in respect of their Appropriation or Distribution have already been given.

23.11 Identification of Stock Lines with potential shortfall

For each Stock Line other than an Affected Stock Line, the Company will commence the Allocation process by first determining whether there is a potential shortfall for such Stock

Line. This is determined by comparing the amount of all the Distributable Trust Assets that have been Identified by the Company for that Stock Line against the total Individual Claim Amounts of all persons with an Asset Claim to that Stock Line.

23.12 Allocation for Stock Line without potential shortfall

If the Company determines that a Stock Line (other than an Affected Stock Line) does not have a potential shortfall, each Signatory who has an Asset Claim to that Stock Line will be Allocated an amount of Distributable Trust Assets by the Company equal to its Individual Claim Amount for that Stock Line.

23.13 Four types of Asset Pools

A diagram representing the concepts described below is set out at Appendix 2.

If the Company determines that a Stock Line: (i) has a potential shortfall; or (ii) is an Affected Stock Line, the Company shall divide the Distributable Trust Assets in respect of that Stock Line into the relevant asset pool(s) and determine the TA Claimant Amounts in respect of each Asset Pool based on the Relevant Information.

23.13.1 Each Stock Line that is not held by an Affected Intermediary but has a potential shortfall, will be divided into one of two pools:

- (i) a **"Custody Securities Pool"** for Custody Securities and their Derived Assets; and
- (ii) a **"Non-Custody Securities Pool"** for Non-Custody Securities and their Derived Assets.

"Custody Securities" are those Securities which are Trust Assets credited to a custody account in the Books and Records of the Company and its Intermediary and which are capable of being the subject of a Custody Asset Claim. **"Non-Custody Securities"** are all other Securities which are Trust Assets. Securities credited to custody accounts generally relate to those Securities delivered to the Company by its clients under a specific custody arrangement.

23.13.2 All Affected Stock Lines held by the same Affected Intermediary will either fall into:

- (i) one of a group of Single Customer Pools; or
- (ii) a single Multiple Stock Line Pool,

each as further described in section 23.14 (*Single Customer Pool and Multiple Stock Line Pool*).

Under the Agreement, the Company will Allocate the Assets in each Asset Pool independently of any Allocation of Assets in respect of another Asset Pool, including where such Assets of such other Asset Pool are of the same Stock Line.

23.14 Single Customer Pool and Multiple Stock Line Pool

If the Company determines that an Affected Intermediary will identify to the Company all the TA Claimants who own all the Assets that it returns to the Company, then all Distributable Trust Assets of a specific TA Claimant (a **"Single Customer"**) will fall into one pool (a **"Single Customer Pool"**) for that Single Customer. Otherwise, all of the Distributable Trust Assets returned, or to be returned, from that Affected Intermediary shall

fall into a single pool (a "**Multiple Stock Line Pool**") for all of the TA Claimants with respect to that Affected Intermediary.

The Company will determine, before any Allocation is made in respect of any Distributable Trust Assets from an Affected Intermediary, whether all the Distributable Trust Assets from that Affected Intermediary will fall into: (i) a number of Single Customer Pools; or (ii) one Multiple Stock Line Pool.

23.15 Realisation of Assets

The Company will endeavour to liquidate all Distributable Trust Assets of a Multiple Stock Line Pool in a commercially reasonable manner within six months following the return of such Distributable Trust Assets.

23.16 Custody Securities Pool, Non-Custody Securities Pool and Multiple Stock Line Pool – Reservation of Assets for TA Non-Signatories

Before any Allocation is made in respect of: (i) a Custody Securities Pool or a Non-Custody Securities Pool where there is a potential shortfall; or (ii) a Multiple Stock Line Pool, the Company will first notionally set aside an amount of Distributable Trust Assets from the relevant Asset Pool; by designating them as "**Reserved Assets**", equal to the TA Claimant Amounts of all the TA Non-Signatories making Asset Claims in respect of the relevant Stock Line(s). Reserved Assets will not form part of the Distributable Trust Assets that can be Allocated under the Agreement.

Reserved Assets in respect of a TA Non-Signatory's Asset Claim will cease to be Reserved Assets if, and to the extent that, they are in excess of the amount of Distributable Trust Assets which would be required to satisfy such TA Non-Signatory's Asset Claim.

If a TA Non-Signatory enters into the Agreement after Reserved Assets have been designated in respect of an Asset Claim, then all of the Distributable Trust Assets which have been designated as Reserved Assets in respect of its Asset Claim will cease to be Reserved Assets.

23.17 Allocation in respect of Custody Securities Pool, Non-Custody Securities Pool or Multiple Stock Line Pool

Distributable Trust Assets that are not Reserved Assets are Allocated to each TA Signatory in proportion to its TA Claimant Amount in respect of the relevant Asset Pool. Accordingly, the amount of shortfall is also shared amongst the relevant TA Signatories in proportion to their relevant TA Claimant Amounts.

The Allocation provisions in the Agreement also provide for various adjustments to be made upon the occurrence of certain events, for example, upon:

- (i) the resolution of a dispute by a TA Signatory over its TA Claimant Amount;
- (ii) further Distributable Trust Assets being Identified by the Company;
- (iii) Distributable Trust Assets ceasing to be designated as Reserved Assets; and
- (iv) the Company becoming aware that a particular TA Signatory has received a direct Distribution of Trust Assets from an Intermediary or has obtained Distributable Trust Assets from the Company in breach of the moratorium under the Agreement (see section 23.19 (*Intermediary Distribution and Recoverable Delivery Value*) for further detail).

These adjustments allow Allocations to be made pending resolution of all disputes, or further Identification of Distributable Trust Assets. They also seek to ensure that Distributable Trust Assets are Allocated to TA Signatories in proportion to their respective Asset Claim to the relevant Asset Pool that is known to the Company and remains outstanding at such time.

No Signatory can receive an Allocation of Assets in respect of an Asset Pool greater than its Asset Claim.

23.18 Allocation in respect of Single Customer Pool

The Company will Allocate all the Distributable Trust Assets in a Single Customer Pool to the Single Customer.

However, if the Company determines at any time that it can no longer Identify the Distributable Trust Assets that relate to a Single Customer, then all Allocations with respect to the related Affected Intermediary will cease, unless:

- (i) the Court so requires or permits (for a particular Allocation);
- (ii) the Company and all the Single Customers of that Affected Intermediary agree; or
- (iii) the Agreement is modified to provide for an alternative method of Allocation.

23.19 Intermediary Distribution and Recoverable Delivery Value

Where a Signatory receives any Assets or value in respect of an Asset Claim to Trust Assets in a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool, not from the Company but directly from an Intermediary or its Sub-Intermediary (an "**Intermediary Distribution**"), then it will be required to notify the Company and the Company will take this into account for the purpose of reducing such Signatory's subsequent Allocation of the relevant Asset Pool, unless the relevant Intermediary is a Net Equity Intermediary and the relevant Intermediary Distribution has already been taken into account in the relevant Net Equity Amount. An Intermediary Distribution will be valued as at the date the benefit of it is received by the Signatory.

Where a Signatory has made a successful claim against the Distributable Trust Assets in a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool in breach of the moratorium described in section 13 (*Stay of proceedings*), the Company will also take into account the value of any Distributable Trust Assets so delivered to such Signatory ("**Recoverable Delivery Value**") for the purpose of reducing such Signatory's subsequent Allocation of the relevant Asset Pool. The Distributable Trust Assets received by the Signatory in breach of the moratorium will be valued as at the date on which such Distributable Trust Assets are delivered by or on behalf of the Company.

The Intermediary Distribution Value (unless the relevant Intermediary is a Net Equity Intermediary and such Intermediary Distribution has already been taken into account in the relevant Net Equity Amount) and the Recoverable Delivery Value will also be deducted from the TA Signatory's Asset Shortfall Claims.

23.20 Shortfalls with respect to a Custody Securities Pool or a Non-Custody Securities Pool

If, at the time of the Last Allocation of a Custody Securities Pool or Non-Custody Securities Pool, the aggregate amount of the Allocations made to a Signatory is less than its

Individual Claim Amount to that Asset Pool, then that Signatory will have an Asset Shortfall Claim equal to the difference. The Asset Shortfall Claim is an unsecured claim against the Company.

The value of an Asset Shortfall Claim will be taken as at the date of the Last Allocation unless and to the extent that a Signatory's claim remains unsatisfied when all Distributions have been made to it, in which case it will be valued as at the close of business on the last Business Day before the Time of Administration. The Company's obligation in respect of Asset Shortfall Claims will, unless otherwise required by law or regulation, not exceed its obligations under the terms of the agreement or arrangement that gave rise to the relevant Asset Claim.

23.21 Shortfalls with respect to an Affected TA Signatory

An "Affected TA Signatory" is a TA Signatory who has an Asset Claim to Securities in an Affected Stock Line. Any Asset Shortfall Claim of an Affected TA Signatory will be determined with respect to all of its Asset Claims to Affected Stock Lines held through the same Affected Intermediary

The Asset Shortfall Claim of an Affected TA Signatory will be the lesser of:

- (i) the shortfall admitted by the Affected TA Signatory in respect of its liabilities owed to the Affected TA Signatory in connection with the TA's Signatory's Trust Assets that are held by it (after taking into account: (a) that the relevant Affected Intermediary may be permitted to discharge its liability to return Trust Assets by returning an amount of cash which is equal to the value of such Trust Assets as at a time later than the relevant Provisional Valuation Date; and/or (b) any rights of set-off available to such Affected Intermediary); and
- (ii) the shortfall as determined by the Company, being the value of the difference between the Affected TA Signatory's TA Claimant Amount and the value of the Allocations made to the Affected TA Signatory in respect of the related Asset Claims.

The Asset Shortfall Claim will be determined on the basis of the value of the relevant Securities as at the date on which the Affected Intermediary values the Assets in the Affected Stock Line in order to determine the proportional sharing of shortfall by all of the Affected TA Signatories.

24 Allocation of Assets held through LBI

A significant element of the Trust Assets was held through LBI. LBI itself is subject to insolvency proceedings under the US Securities Investor Protection Act ("SIPA"). Under SIPA, the Company understands that LBI will meet Customer Claims as defined in SIPA with Customer Property as defined in SIPA. If there is insufficient Customer Property to meet all Customer Claims, then LBI will apportion the available Customer Property pro rata to the Customer Claims. In effect, this means that all claims in respect of Trust Assets held by LBI will share equally in the total amount of Customer Property. Therefore, LBI is an Affected Intermediary and, more specifically, a Net Equity Intermediary.

If LBI provides the Company with sufficient information to enable the Company to identify all the particular TA Claimants to which all Distributable Trust Assets should be returned, then all Assets held by LBI will fall into Single Customer Pools. Otherwise, all of the Assets held by LBI will fall into a Multiple Stock Line Pool.

The Company understands that LBI will value Customer Claims as at 19 September 2008 (the date that the proceeding under SIPA was commenced against LBI). Therefore, the value of any Asset Claim made in respect of any Affected Stock Line held by LBI for the purpose of determining the: (i) Allocation in respect of such Affected Stock Line; and (ii) the value of any Asset Shortfall Claim will be based on the value and quantities as at that date.

25 No Distribution of Distributable Trust Assets to TA Non-Signatories unless certain conditions are met

For Affected Stock Lines or other Stock Lines with a potential shortfall, the Company will not return any Distributable Trust Assets to a TA Non-Signatory unless:

- 25.1.1 the proposed application of Distributable Trust Assets has been agreed between the Company and all TA Claimants with respect to that Stock Line;
- 25.1.2 the Company is compelled by the Court to do so; or
- 25.1.3 the proposed application of Distributable Trust Assets is in accordance with the methodology prescribed in the Agreement (which is based on the concept that Allocation will be made to each TA Signatory and TA Non-Signatory pro rata to its TA Claimant Amounts in respect of the relevant Asset Pool) and such proposed application has been: (a) agreed between the Company and all TA Signatories having an Asset Claim to such Stock Line; or (b) permitted by the Court.

26 Distributions and Appropriations under the Agreement

This section focuses on the process of Distribution and Appropriation of Distributable Trust Assets of TA Signatories. This includes certain Collateralisation Elections which TA Signatories can make in order to potentially obtain full value for some or all the shortfall (if any) on their claims against the Company to redelivery of Trust Assets held by the Company or Affected Intermediaries and/or Pre-Administration Client Money. A series of diagrams representing the concepts outlined below is set out at Appendix 4.

NTA Signatories who owe a Net Financial Liability to the Company may also make a Collateralisation Election to potentially obtain full value for some or all of the shortfall (if any) on their Pre-Administration Client Money. This is further set out in section 26.6 (*Client Money Collateralisation Election*).

26.1 Distribution process

Following an Allocation to a TA Signatory of Distributable Trust Assets and the determination of the Net Contractual Position of that TA Signatory, the process of determining a Distribution to that TA Signatory under the Agreement can begin, subject to the following conditions being satisfied:

- 26.1.1 the Company has ascertained if there is any Retention Claim in respect of that TA Signatory, such that the Company is required to account to a Retention Creditor in respect of liabilities secured on such Distributable Trust Assets. The process of dealing with Retention Claims is described more fully in section 26.13 (*Retention Claim and Retention Amount*);
- 26.1.2 that TA Signatory does not have certain unascertained or unquantified Non-Financial Contract Liabilities to the Company. Non-Financial Contract Liabilities are described more fully in section 26.12 (*Non-Financial Contract Liabilities*); and

26.1.3 the Allocation is not of a very small amount or value unless it is the final Allocation of a Stock Line.

Once these conditions are met, the Company shall in its absolute discretion choose to deliver Distributions on a Stock Line-by-Stock Line basis or on a TA Signatory-by-TA Signatory basis or on both bases in such order as the Company sees fit. This is to allow the Company to effect the Distributions in the most cost effective manner by combining the Distributions to TA Signatories and reducing any administrative costs.

26.2 Appropriation

The Company will be entitled to appropriate a TA Signatory's Distributable Trust Assets (as well as other amounts the Company owes that TA Signatory) to discharge any liabilities of that TA Signatory to the Company. This process is called Appropriation. Appropriation involves a full transfer of title of the relevant Securities to the Company or an absolute entitlement of the Company to retain money or any cash amounts. Any remaining Assets after the Appropriation process are then available for Distribution to that TA Signatory.

26.3 Distribution Assets and Distribution Liabilities

The assets available for Appropriation are called Distribution Assets, comprising the relevant Allocation together with a number of other assets or claims for which the Company may be accountable to the TA Signatory. The liabilities that can be reduced by Appropriation are called Distribution Liabilities, comprising that TA Signatory's Net Financial Liability (if any) together with any amount which the Company is required to withhold in respect of Retention Claims relating to such TA Signatory, such TA Signatory's liability for costs and any other Ascertained Non-Financial Contract Liabilities. The reduction of Distribution Liabilities has specific legal effects, namely that it discharges the obligation of the TA Signatory to pay or account to the Company for such amount of liability that has been reduced.

TA Signatories may also discharge their Distribution Liabilities by payment in cash to the Company at any time or by instructing the Company to apply its Collateral Amount in discharge of its Net Financial Liability (if it has made a Collateralisation Election). Distribution Liabilities may also be discharged by way of an Intermediary Retention.

26.4 Waterfall provisions

A TA Signatory may make certain elections, which could affect whether certain assets will be applied as Distribution Assets and whether certain liabilities will be applied as Distribution Liabilities in the waterfall provisions. These elections are described in section 26.5 (*Collateralisation Elections*). Appropriations and Distributions will be determined in accordance with the waterfall provision that applies to each of the following circumstances:

- (i) an Allocation to a TA Signatory with a Net Financial Claim;
- (ii) an interim Allocation to a TA Signatory with a Net Financial Liability;
- (iii) a Last Allocation of an Asset for a Stock Line to a TA Signatory with a Net Financial Liability;
- (iv) an Asset Allocation to a TA Signatory with a Net Financial Liability with a Collateralisation Election (other than an Affected Intermediary Collateralisation Election);

- (v) an Asset Allocation to an Affected TA Signatory with a Net Financial Liability with an Affected Intermediary Collateralisation Election;
- (vi) a Last Allocation of Pre-Administration Client Money to a TA Signatory with a Net Financial Liability (only if a Client Money Collateralisation Election is made);
- (vii) a final Distribution of Collateral Amount (only if a Client Money Collateralisation Election or an Appropriation Deferral Election is made); and
- (viii) an Appropriation of Shortfall For Appropriation (only if an Affected Intermediary Collateralisation Election is made).

Appendix 4 describes some of these waterfall provisions, including the applicable Distribution Assets to reduce or discharge applicable Distribution Liabilities, including the priority of application of Distribution Assets towards the reduction of Distribution Liabilities.

The Company will, as soon as reasonably practicable following the determination of a Distribution or Appropriation and in any case within five Business Days of the relevant Distribution Value Date, give a notice to the relevant TA Signatory (a "**Distribution and Appropriation Notice**"). A Distribution and Appropriation Notice will contain certain information, including a list of relevant Distribution Assets and Distribution Liabilities and their value as at the relevant Distribution Value Date, the amount and value of any Distribution Asset which the Company intends to appropriate to reduce the Distribution Liabilities, the number or amount of any Distribution Asset which the Company intends to deliver as a Distribution to such TA Signatory (if any), whether any Collateralisation Election may be made (and the relevant Deferral Cash Amount and Deferral Cash Payment Date), the Deferral Election Deadline (if an Appropriation Deferral Election has not already been made) and the Delivery Instruction Date (if any Distribution falls due to be made to the TA Signatory).

26.5 Collateralisation Elections

There are three kinds of Collateralisation Election available to Signatories under the Agreement, depending on whether the Signatory is an NTA Signatory or a TA Signatory, and whether it has an Asset Claim to Stock Lines that are held by a Net Equity Intermediary, such as LBI.

By making such election(s), a Signatory will collateralise its Net Financial Liability owed to the Company with:

- (i) its claim to Pre-Administration Client Money (a "**Client Money Collateralisation Election**", see section 26.6 (*Client Money Collateralisation Election*));
- (ii) its Deferral Cash Amount (an "**Appropriation Deferral Election**", see section 26.7 (*Appropriation Deferral Election for a TA Signatory*)); and/or
- (iii) its Affected Intermediary Claim Amount (an "**Affected Intermediary Collateralisation Election**", see section 26.9 (*Affected Intermediary Collateralisation Election*)).

Any of the elections has the effect of collateralising an amount of the Net Financial Liability ("**Collateralised Net Financial Liability**") with the Signatory's Total Collateralisation Amount. The "**Total Collateralisation Amount**" comprises: (i) the Collateral Amount; (ii) the Collateral Claim Amount; and (iii) the Affected Intermediary Claim Amount of the Signatory.

The "**Collateral Amount**" is the total of all Distributions of Pre-Administration Client Money that have been made by the Company from time to time (but have been retained as collateral) as well as all Deferral Cash Amounts (applicable to TA Signatories only) paid to the Company. The "**Collateral Claim Amount**" is the amount of Pre-Administration Admitted Client Money Claim that remains unsatisfied from time to time. The "**Affected Intermediary Claim Amount**" is the amount admitted by the Company to be the value of the TA Signatory's claim against the relevant Net Equity Intermediary as reduced by the value of any Asset Allocation that has been Appropriated from time to time under the terms of the Affected Intermediary Collateralisation Election.

For the Client Money Collateralisation Election and the Appropriation Deferral Election, to the extent that an amount of Net Financial Liability owed to the Company is collateralised, the TA Signatory will effectively be able to suspend the set-off between such amount of the Net Financial Liability and any Assets Allocated to the TA Signatory (to the extent that those Assets do not relate to any Affected Intermediary Collateralisation Election). When the amount of: (a) any shortfall claim for a Pre-Administration Admitted Client Money Amount; or (b) any Asset Shortfall Claim is ascertained, such shortfall will first be set-off against the then remaining Net Financial Liability before the posted collateral is set-off against any remaining Net Financial Liability.

As a result, in exchange for posting the relevant collateral, a TA Signatory making the Client Money Collateralisation Election or the Appropriation Deferral Election will be able to:

- (i) obtain full value (by way of set-off) of any shortfall claim for its Pre-Administration Admitted Client Money Amount and/or its Asset Shortfall Claim to the extent that there is sufficient Net Financial Liability to set off against them as opposed to having an unsecured claim against the Company to the same amount; and
- (ii) reduce the amount of its Trust Assets appropriated by the Company.

The Affected Intermediary Collateralisation Election works differently to the other two kinds of Collateralisation Election and is described separately in section 26.9 (*Affected Intermediary Collateralisation Election*).

26.6 Client Money Collateralisation Election

A Signatory may elect to collateralise its Net Financial Liability with its Pre-Administration Client Money Claim that is admitted by the Company (a "**Pre-Administration Admitted Client Money Amount**"). The Pre-Administration Admitted Client Money Amount is subject to increase by an agreement between the Company and the Signatory or a judgment by a court of competent jurisdiction. When this election is made, Allocations of Assets cannot be Appropriated to reduce the Collateralised Net Financial Liability until such time as any shortfall claim for Pre-Administration Admitted Client Money Amount in respect of that TA Signatory is determined (Appropriations can still be made to discharge Uncollateralised Net Financial Liability). The Signatory will also not receive any Distributions of Pre-Administration Client Money in the interim, which collateralises part of the Net Financial Liability (but the Signatory may use this collateral to reduce its Net Financial Liability at any time and will receive any Collateral Allocations (see section 26.8)).

If no Client Money Collateralisation Election is made, any shortfall claim for a Pre-Administration Admitted Client Money Amount is dealt with outside the Agreement and

cannot be applied as a Distribution Asset in the Appropriation process; however, such shortfall claim will become an unsecured claim against the Company.

A Signatory making a Client Money Collateralisation Election is required to effect a transfer to AssignCo of all of its Pre-Administration Client Money Claims. The purpose of this is to enable the Company to realise the benefit of the Client Money Collateralisation Election in compliance with the FSA's client money rules.

26.7 Appropriation Deferral Election for a TA Signatory

A TA Signatory may elect to defer the Appropriation of Assets in respect of Allocations. This election gives the TA Signatory the benefit of receiving Distributions of Allocations without regard to its Net Financial Liability at that time (if and to the extent that such Allocations are not Appropriated to reduce the other Distribution Liabilities). This election can only be made on the first Allocation of a Stock Line. For the first Allocation and each subsequent Allocation of that Stock Line, the TA Signatory must deliver to the Company a cash amount ("**Deferral Cash Amount**") equal to the value of the Allocation (or, if less, its Net Financial Liabilities) which will increase the Collateral Amount. For further description on timing of an Appropriation Deferral Election, see Appendix 4.

26.8 Collateral Allocation

If the Total Collateralisation Amount exceeds the Net Financial Liability at any time, then an amount equal to the lesser of: (i) the surplus of Total Collateralisation Amount over the Net Financial Liability; and (ii) the Collateral Amount will be paid to the Signatory (a "**Collateral Allocation**"). The Collateral Amount and Total Collateralisation Amount will be correspondingly reduced. A Collateral Allocation is only applicable under a Client Money Collateralisation Election or an Appropriation Deferral Election.

26.9 Affected Intermediary Collateralisation Election

An Affected TA Signatory who has an Asset Claim to securities held by a Net Equity Intermediary, such as LBI, may elect to collateralise its Net Financial Liability initially with its Affected Intermediary Admitted Claim Amount before any Distribution or Appropriation has been made with respect to such Asset Claim; and subsequently with its Affected Intermediary Claim Amount. The "**Affected Intermediary Admitted Claim Amount**" is determined by the Company to be the lesser of: (i) the Affected TA Signatory's relevant Net Equity Amount; and (ii) its total Individual Claim Amounts in respect of the relevant Affected Stock Lines.

The Affected Intermediary Claim Amount will form part of the Total Collateralisation Amount. Any Asset Allocation which relates to the relevant Net Equity Intermediary will be Appropriated by the Company to Reduce the Collateralised Net Financial Liability (as well as other applicable Distribution Liabilities).

If the total value of all such Asset Allocation is less than the Affected Intermediary Admitted Claim Amount, then such deficit (the "**Shortfall For Appropriation**") will be Appropriated by the Company to reduce further any remaining Collateralised Net Financial Liability. Therefore, a TA Signatory will be able to obtain full value of such Shortfall For Appropriation to the extent that there is sufficient Collateralised Net Financial Liability to set off against it.

However, unlike an Asset Shortfall Claim, any remaining Shortfall For Appropriation after all the Collateralised Net Financial Liability has been Reduced will not become an Ascertained

Claim. Instead, a different amount determined by the Company (which may be zero) (the "**Ascertained Shortfall Amount**") will become an Ascertained Claim. The Ascertained Shortfall Amount is the amount of the TA Signatory's Asset Shortfall Claim in respect of the relevant Affected Stock Lines (see section 23.21 (*Shortfalls with respect to an Affected TA Signatory*)) over and above the amount of Collateralised Net Financial Liability which has been Reduced by the Shortfall For Appropriation. The effect of this is that the Company allows the TA Signatory, by setting off against Collateralised Net Financial Liability, to obtain full value of its recognised claim against an Affected Intermediary as at the value date for claims against the Net Equity Intermediary (19 September 2008 in the case of LBI) without having to wait to see what the value of any actual shortfall may be. However, for the purpose of determining any residual shortfall that would become an unsecured claim against the Company, the Company will only take into account any lower amount of shortfall that is admitted by the relevant Net Equity Intermediary. This reflects the complexity and uncertainty around what amount a Net Equity Intermediary may ultimately acknowledge as a shortfall. The determination of Ascertained Shortfall Amount is further described in Appendix 4.

There are a few additional consequences in making an Affected Intermediary Collateralisation Election which an Affected TA Signatory should be aware of:

- (i) any Appropriation Deferral Election (whether made before or after the Affected Intermediary Collateralisation Election) will not apply to the Trust Assets of the relevant Affected Stock Lines;
- (ii) the TA Signatory will incur an additional liability (an "**Affected Intermediary Derived Asset Liability**") to the Company equal to an amount of Derived Assets relating to any Assets Allocated to such TA Signatory and such liability will be discharged by the Appropriation of the relevant Derived Assets (in effect, the TA Signatory will no longer receive the benefit of any Derived Assets from the relevant Affected Stock Lines); and
- (iii) as the Company has collateralised the Net Financial Liability equal to the TA Signatory's Claim in respect of the relevant Affected Stock Lines, the TA Signatory will be obliged to pay to the Company an amount equal to the value of any benefits which the TA Signatory received directly from the Net Equity Intermediary Claim in respect of the relevant Affected Stock Lines. Such payment will be applied by the Company to Reduce the applicable Distribution Liabilities as if it were an Asset Allocation.

26.10 Ascertained unsecured claims

Following all Appropriations and Distributions, to the extent that there is any excess Asset Shortfall Claim, Net Financial Claim or shortfall claim in Pre-Administration Client Money (whether or not a Client Money Collateralisation Election has been made) remaining or any Ascertained Shortfall Amounts, they will be Ascertained Claims, as described in section 10.1 (*Ascertained Claim*), of the relevant TA Signatory in the insolvency of the Company.

26.11 Set-off on winding-up or Distribution

In the winding-up or any Distribution in administration of the Company, which will take place outside the Agreement, the Company may, in accordance with applicable insolvency law, be entitled to set off against a Signatory's Ascertained Claims any amounts due from

that Signatory to the Company, thereby potentially reducing the value of that Signatory's Ascertained Claims.

26.12 Non-Financial Contract Liabilities

Non-Financial Contract Liabilities of a TA Signatory are all its outstanding Liabilities to the Company, whether arising under the Agreement or otherwise, but excluding its Net Financial Liability and its liability in respect of the Costs Amount and Unfunded Retention Amount. For the purposes of the Agreement, Non-Financial Contract Liabilities will be calculated in US dollars and, if they are not denominated in US dollars, the Company will convert such Non-Financial Contract Liabilities into US dollars using the rate of exchange on the Administration Date. This notional conversion will not prejudice the Company's rights to take any action outside of the Agreement in respect of any Non-Financial Contract Liabilities denominated in their original currency.

26.13 Retention Claim and Retention Amount

Where the Company is under a fiduciary obligation to account to a person (a "**Retention Creditor**") out of Trust Assets for the liabilities of a TA Signatory to that Retention Creditor and the Company is aware of such fact and of a claim (the "**Retention Claim**") of a Retention Creditor prior to making any Distribution, then the Company will be entitled to retain from that Distribution an amount (the "**Retention Amount**") in respect of that Retention Claim.

The Retention Amount will be the amount (if any) of the Retention Claim determined by a court ("**Judgment Amount**") and/or the amount (if any) agreed between the TA Signatory and the Retention Creditor ("**Agreed Amount**") and/or the amount (if any) alleged by the Retention Creditor to be the Retention Claim ("**Alleged Amount**").

The aggregate of the Retention Amounts will be a Distribution Liability. Whenever a Distribution is made, it will be applied in accordance with the applicable waterfall provisions towards discharging any Judgment Amounts or Agreed Amounts. Distribution Assets will be Appropriated to fund a Funded Retention Amount, which is a notional ledger. Amounts credited to the ledger will be available for discharging Judgment Amounts and Agreed Amounts provided that there is an adequate reserve for Alleged Amounts.

All Securities retained in respect of Retention Amounts will be liquidated. The relevant TA Signatory will be first given the option to purchase such Securities.

The Company will not be responsible to the TA Signatories for the application by the Retention Creditors of any payments made to them by the Company.

Whether or not any Retention Amount is retained, each TA Signatory will remain obliged to the Retention Creditors and will take any Distribution made by the Company to it subject to any equities which may exist in favour of the Retention Creditor or any other third party.

26.14 Delivery mechanics

The Agreement contains delivery mechanics to effect Distributions. If a TA Signatory fails to deliver appropriate notifications to enable delivery within 12 months of the proposed Distribution, then it will forfeit its rights to receive the Distribution.

If, after having made all Distributions in respect of any particular type of Asset which are required to be made under the Agreement, there remains Distributable Trust Assets of that

type which could still be available for delivery, then the Company will retain, transfer or dispose of such Assets.

26.15 No double counting

The Agreement does not compromise ownership claims to assets held by the Company which are not Trust Assets (other than Appropriated Assets). This includes assets wrongfully rehypothecated which are still held by the Company on an unsegregated basis. Non-Trust Assets will be disregarded in calculating Allocations, Asset Claims and Asset Shortfall Claims. However, the monetary value of a claim in respect of a Non-Trust Asset may be taken into account in calculating a Close-Out Amount under a Financial Contract. If this is the case and a Signatory has received a benefit in respect of the amount so claimed, then the Signatory must account to the Company for any recovery it makes in respect of such Non-Trust Asset, whether such recovery is by way of delivery of securities, payment of cash, set-off or otherwise.

27 Effect of winding-up (liquidation)

The Agreement is intended to continue if the Company goes into an insolvent liquidation. If the Company goes into an insolvent liquidation, the Agreement would not be binding on a liquidator of the Company. However, the English courts are unlikely to permit a liquidator of the Company to act in contravention of the terms of the Agreement.

28 Currency

The Agreement will operate in US dollars. All calculations and valuations between the Signatory and the Company under it will be made in US dollars. If any amount is determined in a currency other than US dollars, such amount will be converted to US dollars at the exchange rate on the date of valuation or when such amount falls to be determined. Where the Company has converted money into a currency different from that of receipt (the "Initial Conversion"), the Signatory's claim will be converted into that different currency at the actual rate of exchange used to effect such Initial Conversion.

29 Tax

The Company may withhold any Tax payable or required to be withheld or accounted for in relation to either any Appropriation, Distribution or any other payment which, as a result of the implementation and operation of the Agreement, the Company is treated as making for Tax purposes.

The Company may also make any disclosures or reports to any Tax Authorities in respect of any matters which are the subject of, or arise as a result of the implementation and operation of, the Agreement.

The Company is not obliged to provide any Tax certificates in respect of any dividends or other payments made or received in respect of Securities forming the basis of a Signatory's Asset Claim.

Any stamp duty, stamp duty reserve tax, transfer taxes, VAT or other Tax liabilities or costs arising out of the implementation and operation of the Agreement (including, but not limited to, any Tax costs arising from the making of the Distributions or Appropriations in cash or kind) will be borne by the Signatories.

A Signatory is required under the Agreement to deliver to the Company any form or document that may be required or reasonably requested in writing in order to allow the Company to make a payment in accordance with the Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, with any such form or document to be accurate and completed in a manner reasonably satisfactory to Company and to be executed and to be delivered with any reasonably required certification, as soon as reasonably practicable.

30 Costs

30.1 Costs Amount

The Company will withhold for its own benefit from Distributions an amount in respect of the costs associated with the conduct and operation of the Agreement (the "**Costs Amount**").

The Costs Amount is:

- (i) 0.75 per cent. of the value of the Asset Claims of Signatories whose Asset Claims are for Custody Securities only and who do not have any outstanding claim or liability in respect of any Financing and Derivatives Contract; or
- (ii) 1.00 per cent. of the value of the Asset Claims of any other Signatories,

in either case, the Costs Amount will not exceed US\$2.5 million for any TA Signatory.

30.2 Costs Amount will increase for TA Signatories who accept the Agreement after the end of Initial Offer Period

If clients do not accept the Offer by the end of the Initial Offer Period, the costs for managing the trust property will double and there will be no maximum cap on such costs. The Costs Amount will be:

- (i) 1.50 per cent. of the value of the Asset Claims of Signatories whose Asset Claims are for Custody Securities only and who do not have any outstanding claim or liability in respect of any Financing and Derivatives Contract; or
- (ii) 2.00 per cent. of the value of the Asset Claims of any other Signatories.

The Company may in its absolute discretion waive the Costs Amount in part for such TA Signatory, subject to a minimum of the Costs Amount that would have applied had such TA Signatory accepted the Offer before the end of the Initial Offer Period.

30.3 Costs Rebate Amount

On the determination of the final Distribution and Appropriation with respect to a Signatory, the Company will pay to that Signatory, if relevant, the Costs Rebate Amount.

The Costs Rebate Amount is the excess (if any) of:

- (i) the Costs Amount; over
- (ii) the same percentage used by the Company in determining the Costs Amount of the relevant Signatory multiplied by the sum of:
 - (a) the value of each Allocation to such Signatory; and

- (b) the value of any Intermediary Distribution or Intermediary Retention.

In each case, if the Costs Rebate Amount is less than a de minimis amount, it will be reduced to zero.

31 Dispute Resolution Mechanism

31.1 Subject matter of Dispute

The Dispute Resolution Mechanism exclusively governs the resolution of any and all disputes between the Company and Signatories relating to certain notices issued by the Company under the Agreement. These are:

- (i) a Net Contractual Position Statement;
- (ii) a Claim Amount Notice;
- (iii) a Distribution and Appropriation Notice; and
- (iv) an Intermediary Distribution Value Notice.

The Dispute Resolution Mechanism does not prevent the parties from entering into a compromise, arrangement or settlement.

31.2 Procedures applicable if a Signatory wishes to raise a Dispute

If a Signatory wishes to raise a Dispute, it must notify the Company in a specified form on or before 5.00 p.m. (London time) on: (i) the twenty-fifth Business Day after the date the Claim Amount Notice, an Intermediary Distribution Value Notice or Net Contractual Position Statement is given by the Company; or (ii) the tenth Business Day after the date the Distribution and Appropriation Notice is given by the Company (the "**Notice Dispute Deadline**"). The notice must include reasonable details of the nature and basis of the challenge. Where appropriate, details of an agent to accept service of process in England and Wales must be included. If a Signatory fails to serve such notice within the time period specified, then the Signatory will be deemed to have accepted as final and binding the relevant notice issued by the Company.

There will be a period of 20 Business Days during which the parties will endeavour to resolve the Dispute amicably.

If the issue cannot be resolved amicably, then the Company will determine in good faith but otherwise in their absolute discretion whether the issue should be referred for determination to the Valuation Expert, to the Adjudicator or to the Court.

If the Signatory disagrees with the Company's decision to have the Dispute resolved by the Valuation Expert, it may contest the decision, in which case the Company will, in good faith but otherwise in its absolute discretion, refer the issue to the Adjudicator, or to the Court.

If a Signatory disagrees with the Company's decision to have the issue resolved by the Adjudicator, the issue will be resolved by the Court.

No amount awarded may exceed the amount of a Signatory's claim under the Agreement.

31.3 The Valuation Expert and Adjudicator

Matters relating to any valuation where there are no related questions of law to be determined will generally be referred to the Valuation Expert. He acts as an expert and not as an arbitrator.

The Valuation Expert will be an individual who has at least five years' experience in dealing with financial products of the relevant type, be duly qualified to discharge his functions and powers under the Agreement, possess the appropriate expertise having regard to the nature of the matter and have no conflicts of interest.

The Adjudicator will be an individual who has been appointed a Queen's Counsel for at least five years, be duly qualified to discharge his functions and powers under the Agreement, possess the appropriate expertise having regard to the nature of the matter and have no conflicts of interest. He acts as an expert and not as an arbitrator.

The Company will provide the Signatory with the names of two candidates to act as Adjudicator or Valuation Expert, from which the Signatory will choose its preferred individual.

The Signatory will provide a deposit on account of fees of the lesser of (i) US\$50,000; and (ii) subject to a minimum of US\$25,000, 10 per cent. of the value of the Signatory's Asset Claim.

In the case of the Valuation Expert, the parties will provide him with details of their respective valuations and assumptions behind those valuations, together with any additional documentation or information that they wish to be taken into account by the Valuation Expert in reaching his decision. The disputing parties may (but are not obliged to) submit written representations to the Valuation Expert.

In the case of the Adjudicator, the parties will present their cases in writing to him within a prescribed period.

The Valuation Expert or Adjudicator will (subject to certain limitations as to timing) decide the information he requires and the procedure and timetable he wishes to adopt. Where a Signatory fails to respond in a timely manner to requests for information, it will be deemed to have abandoned the Dispute. The Valuation Expert or Adjudicator may require the parties to appear before him.

The Valuation Expert or Adjudicator will, in his absolute discretion, consider such matters as he thinks fit in making his determination. He will be entitled to consult with such advisers, including legal advisers and experts, and to take into account such information or evidence obtained from these sources, as he may deem appropriate.

If the Valuation Expert considers that the issue gives rise to issues of law or other matters outside his area of expertise, he will notify the parties that he no longer considers himself capable of determining the matter and the Company will determine in good faith but otherwise in its absolute discretion whether the matter should be referred to the Adjudicator or to the Court.

Upon reaching a decision, the Valuation Expert or Adjudicator will inform the parties in writing of his decision. He will not be obliged to give reasons for his decision.

31.4 Costs, appeals, indemnities and insurance

The decision of the Valuation Expert or the Adjudicator will, insofar as the law allows, be final and binding.

The Valuation Expert or the Adjudicator will be remunerated at such reasonable rate as may be agreed by the Company, and will be reimbursed his reasonable costs and expenses.

Any remuneration, costs, charges and expenses incurred by the Valuation Expert or the Adjudicator or by the parties themselves will be apportioned between the parties in such proportions as the Valuation Expert or Adjudicator may determine. If a Signatory defaults in its liability, then that Signatory's share of the Valuation Expert's or Adjudicator's remuneration, costs, charges and expenses (plus any applicable VAT) will be deducted from the deposit paid by that Signatory and/or taken into account when calculating the Signatory's Distribution.

The Company will provide an indemnity to the Valuation Expert or the Adjudicator and may obtain insurance against the indemnity.

31.5 Disputes outside the Dispute Resolution Mechanism

Nothing under the Agreement will prevent the Court from having jurisdiction to hear applications from the Company, the Administrators or any Signatory with respect to the operation or implementation of the Agreement, to the extent that such matters fall outside the scope of the Dispute Resolution Mechanism. However, save for those disputes that are subject to the Dispute Resolution Mechanism, the Company reserves its right to rely on the statutory moratorium on legal proceedings.

A diagram representing the Dispute Resolution Mechanism is set out at Appendix 5.

31.6 Court procedure

Where the Court is required to determine a Dispute, proceedings must be commenced within a prescribed period of the Dispute arising. If the Signatory fails to do so, it will be deemed to have abandoned the Dispute.

32 Signatories to co-operate

The Signatories will co-operate with and render such assistance to the Company as it may reasonably require and will provide such assistance as the Company may reasonably require in connection with gathering in any Trust Assets, removing any impediments upon Assets being Distributable Trust Assets or enforcing obligations owed to the Company.

33 Modifications

Other than for minor or technical amendments or for those that the Company determines are not prejudicial to Signatories' interests, no amendment, modification or waiver in respect of the Agreement will be effective unless in writing and previously approved by: (i) the Company; and (ii) an Extraordinary Resolution.

The Company may certify that it has determined that any such amendment, modification or waiver will materially affect some (but not all) of the Signatories, or will materially affect different classes or groups of Signatories in different ways.

The Company is authorised under the Agreement to agree for and on behalf of the relevant Signatories, all amendments, modifications or waivers, if so directed by an Extraordinary Resolution of the relevant Signatories.

Schedule 4 to the Agreement sets out the regulations governing the meeting of Signatories and the passing of resolutions (including written resolutions) by Signatories.

The Company will not be responsible for having acted in good faith on a resolution purporting to have been passed by the Signatories even if it is later found that there was a defect in the constitution of the meeting or the passing of the resolution or that the resolution was not valid or binding on the Signatories.

34 Conflict

In the event of a conflict or inconsistency between the provisions of the Agreement, the Companies Act, the Insolvency Act, the Insolvency Rules and the FSA Rules, for the purposes of the Agreement, and to the extent such acts and/or rules permit, the terms of the Agreement will prevail.

If the Company is wound up (a "**Liquidation Event**"), the Agreement will not terminate and will continue in full force and effect. In the event of any inconsistency between the terms of the Agreement and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event, for the purposes of the Agreement, the terms of the Agreement will prevail.

35 Act in good faith

All actions and determinations by the Company under the Agreement will be made in good faith. Subject to any applicable provision of the Insolvency Act, no Signatory will be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company and it will not be liable for any loss whatsoever and howsoever arising unless such loss is attributable to wilful default, fraud, dishonesty or negligence.

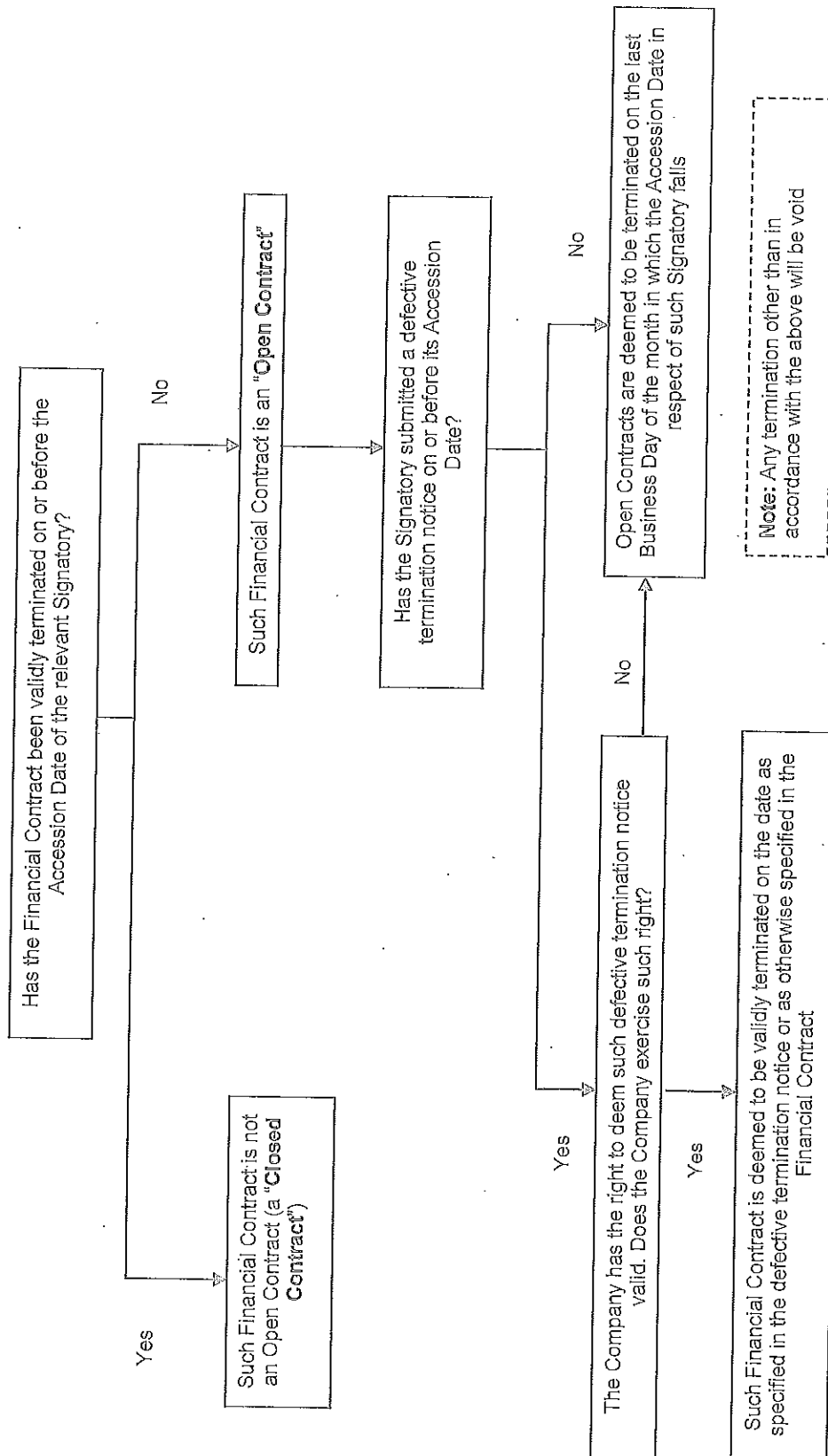
36 Modification of foreign law contracts

Where the Agreement 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. Each Signatory undertakes to the Company under the Agreement to take all actions that the Company requests to perfect any modifications to such contracts in order to ensure that such modifications are effective to the fullest extent possible under such governing law.

37 Governing law and jurisdiction

The Agreement will be governed by, and construed in accordance with, English law and the parties will be subject to the exclusive jurisdiction of the courts of England in respect of the Agreement. The Company will retain the right to bring proceedings elsewhere, and may seek to have the Agreement recognised in other jurisdictions.

Appendix 1 Termination of Financial Contracts



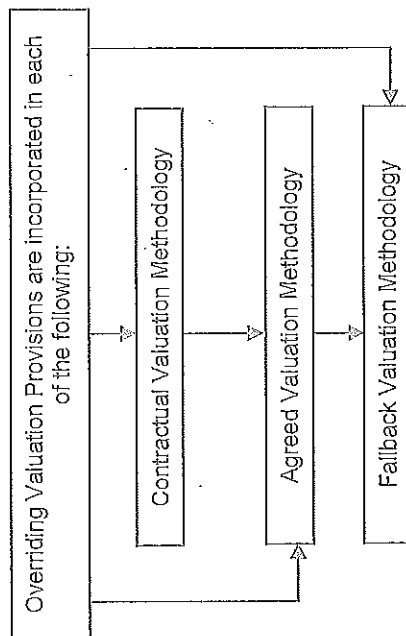
(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

Appendix 2

1 Determination of Close-Out Amount and Valuation Methodologies

There will be one Close-Out Amount for each Financial Contract.

The Close-Out Amount in respect of each Financial Contract will be determined by the relevant Determining Party in accordance with the applicable Financial Contract Valuation Methodology. There are three alternative Financial Contract Valuation Methodologies. The Overriding Valuation Provisions form part of each Financial Contract Valuation Methodology.

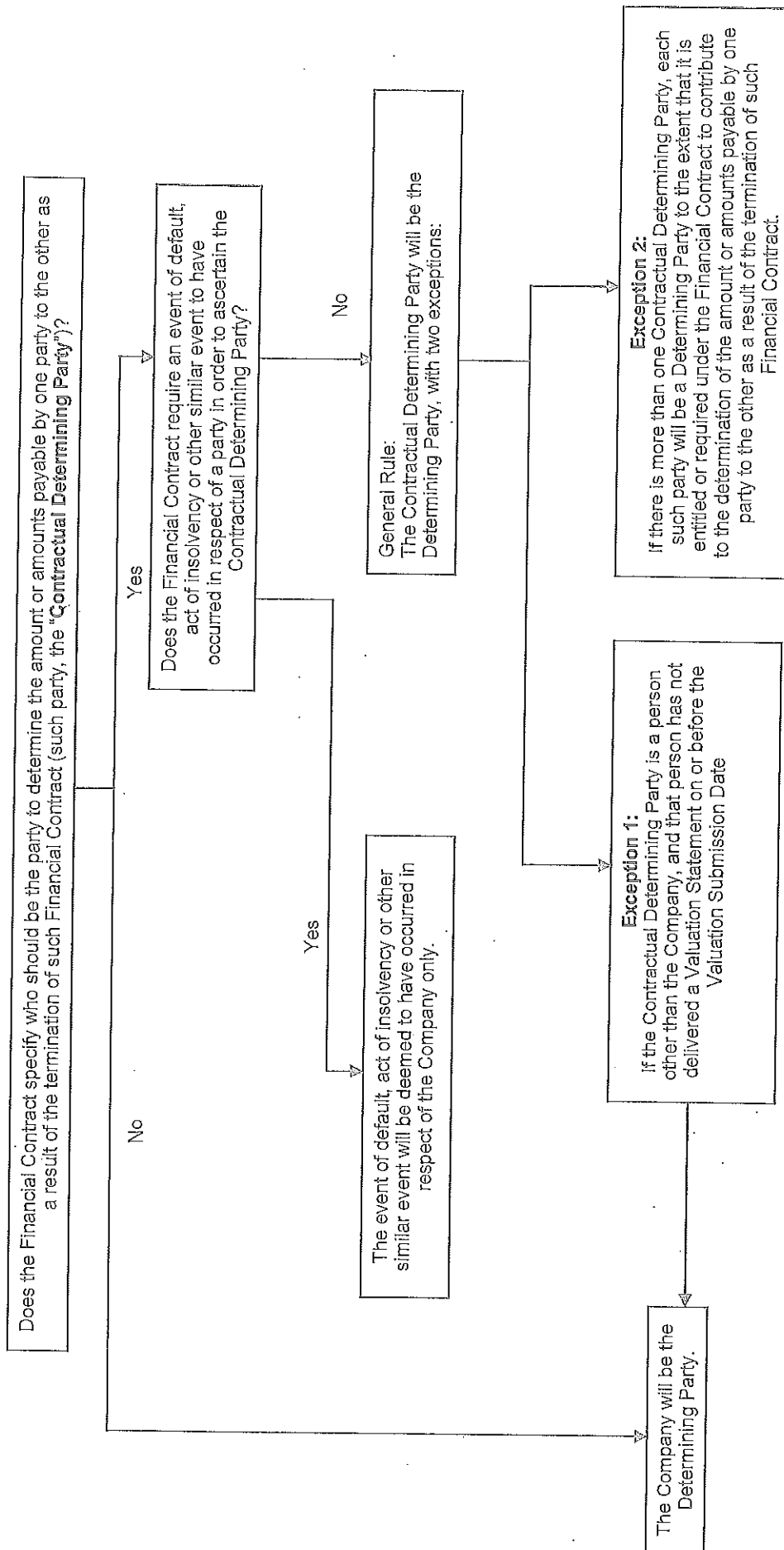


The Determining Party:

- for the Contractual Valuation Methodology, will be the party as determined on page II-43; and
- for the Agreed Valuation Methodology and the Fallback Valuation Methodology, will be the Company.

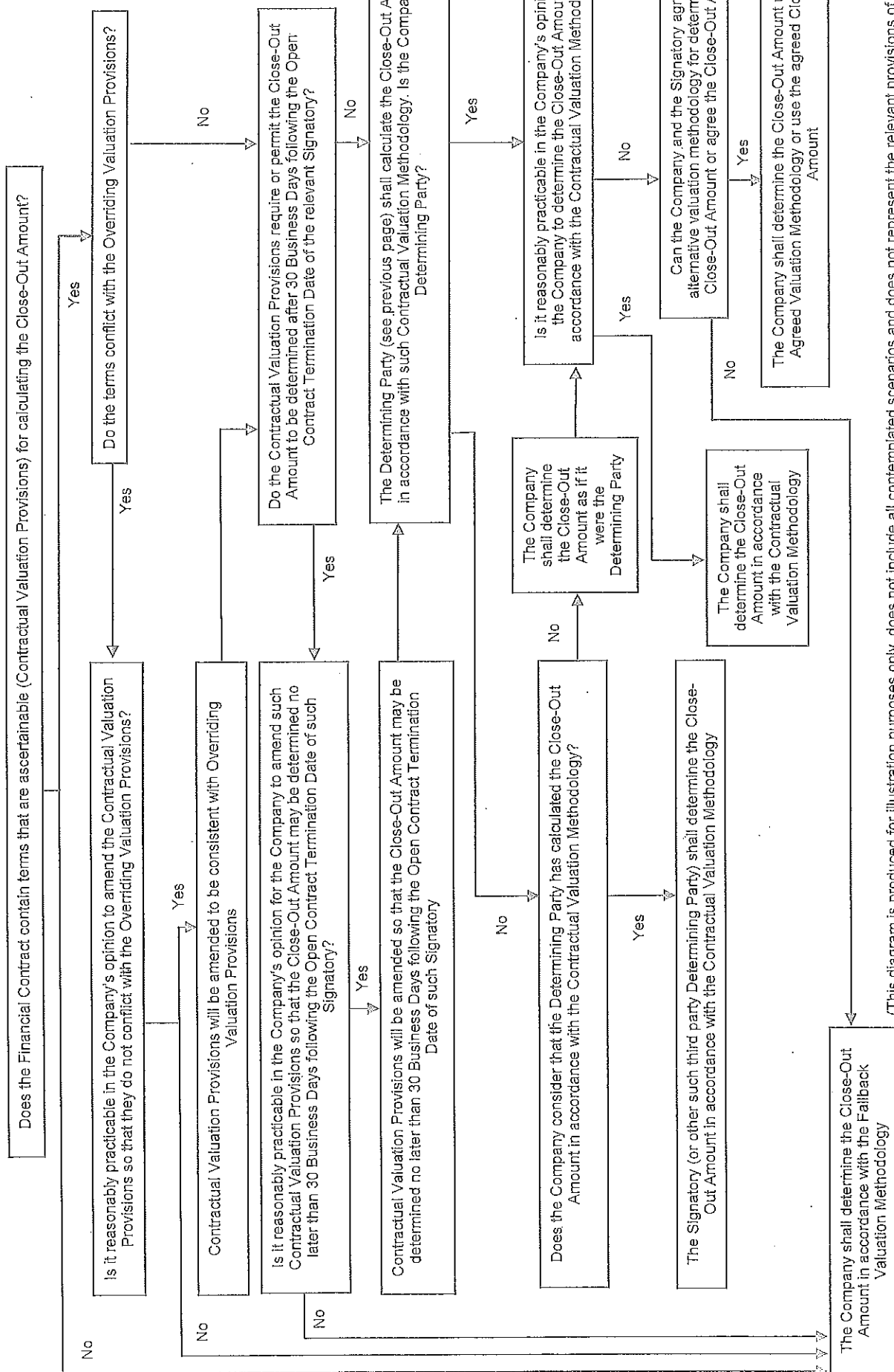
(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

2A Determining Party under Contractual Valuation Methodology



(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

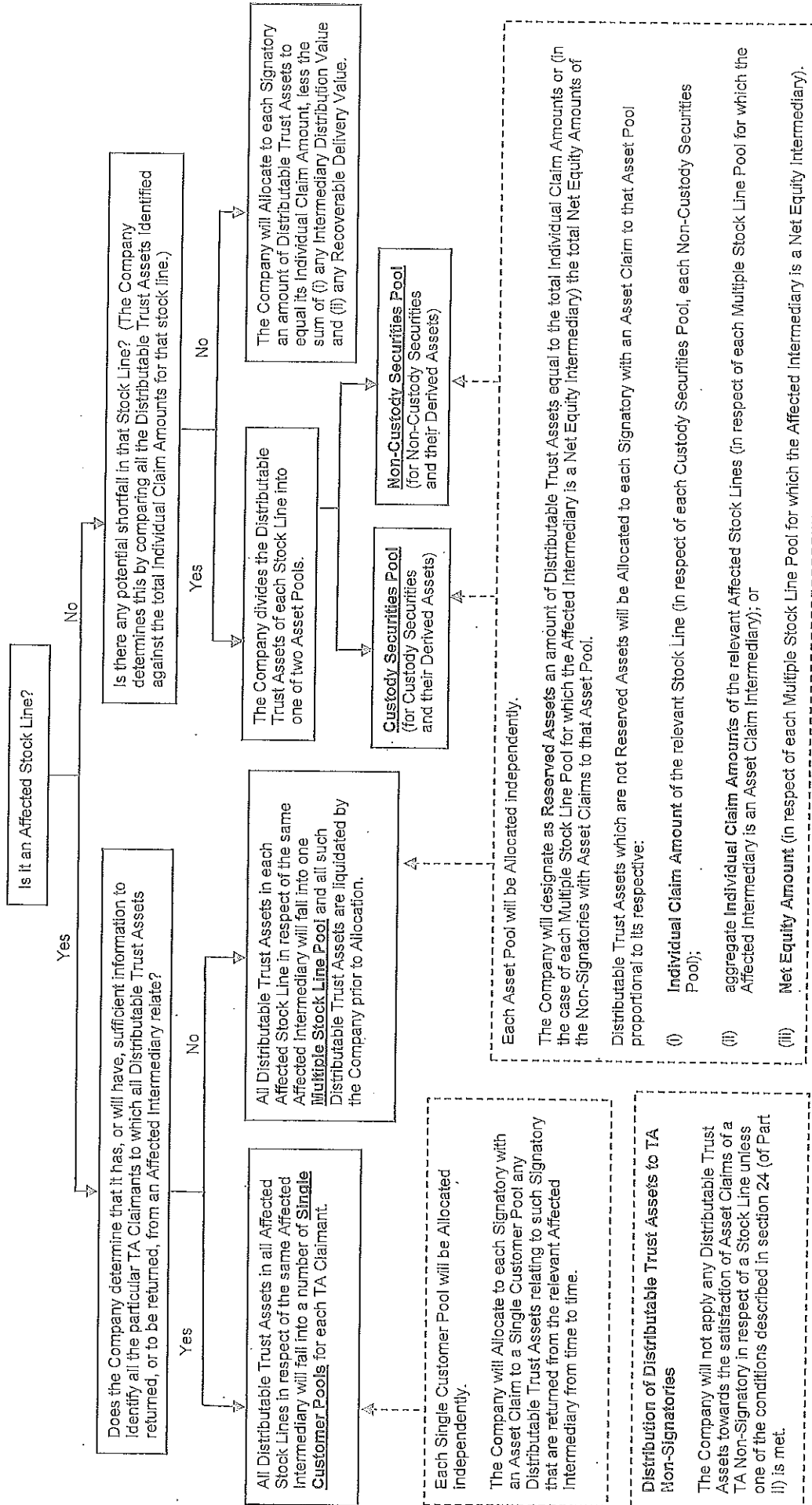
Financial Contract Valuation Methodologies



(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

Notes: (1) If the Contractual Valuation Provisions differ depending upon the event of termination, then the Contractual Valuation Provisions relating to the election made by the Signatory will be followed, unless no such election is made, in which case the Contractual Valuation Provisions relating to an event of default which most closely corresponds to an act of insolvency of the Company will be followed. (2) If the Company has determined that the Contractual Valuation methodology is unclear or ambiguous or incapable of strict compliance due to technicality or (where the Determining Party is not the Company) is unable to determine whether the Determining Party has calculated the Close-Out Amount in accordance with the Contractual Valuation Methodology due to a technicality which makes the Contractual Valuation Methodology unclear, ambiguous or incapable of strict compliance, then the Company and the Signatory will agree modifications to the Contractual Valuation Methodology proposed by the Company to eliminate the technicality, failing which the Fallback Valuation Methodology will apply.

Appendix 3 Allocation Overview



(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

Appendix 4

Distribution and Appropriation

1 Distribution Assets and Distribution Liabilities

The Company will appropriate Distribution Assets available to a Signatory to reduce the Distribution Liabilities applicable to such Signatory, subject to the general rules set out below and the specific circumstance (each specific circumstance is illustrated by a waterfall in paragraph 3 below).

Certain Distribution Assets cannot be used to reduce certain Distribution Liabilities. Whether a certain Distribution Asset can be used to reduce a certain Distribution Liability will depend on the specific circumstance, including whether certain elections are made by the Signatory.

Distribution Assets		Distribution Liabilities	
Type A	Type B	Type A	Type B
◦ Allocations of Assets ("Asset Allocation")¹ ◦ Collateral Allocations* ◦ Collateral Amount* ◦ Net Financial Claim	◦ Asset Shortfall Claim ◦ Any shortfall claim for Pre-Administration Client Money ("Pre-Administration Client Money Shortfall Claim")* ◦ Shortfall For Appropriation*	◦ Costs Amount ◦ Ascertained Non-Financial Contract Liabilities ◦ Limited Ascertained Non-Financial Contract Liabilities ◦ Unfunded Retention Amount ◦ Affected Intermediary Derived Asset Liability*	◦ Uncollateralised Net Financial Liability ◦ Collateralised Net Financial Liability*

¹ Note that this may also apply to a Retention Allocation

* denotes items that only become a Distribution Asset or Distribution Liability if certain elections are made. See paragraph 2 below.

General Rules

- (i) For a TA Signatory, Type A Distribution Assets (other than Net Financial Claim) may be used to reduce Type A or Type B Distribution Liabilities.
- (ii) For a TA Signatory, Asset Shortfall Claim, Pre-Administration Client Money Shortfall Claim and Shortfall For Appropriation can only be applied to reduce Net Financial Liability and not any of the other Distribution Liabilities. For an NTA Signatory, Pre-Administration Client Money Shortfall Claim can only be applied to reduce Net Financial Liability.

- (iii) For a TA Signatory, Net Financial Claim can only be used to reduce Limited Ascertained Non-Financial Contract Liabilities.
- (iv) For all Signatories, Distribution Assets and Distribution Liabilities are valued on the Distribution Value Date for the purpose of Appropriation and Distribution.
- (v) Any remaining Type A Distribution Assets after Appropriation (other than Net Financial Claim) will be distributed to the relevant TA Signatory.
- (vi) For a TA Signatory, any remaining Type B Distribution Assets (other than any Shortfall For Appropriation) and Net Financial Claim after Appropriation will become Ascertained Claims against the Company. An Ascertained Claim (other than an Ascertained Shortfall Amount) in respect of an Asset Shortfall Claim will be valued as at the Date Before Administration. For an NTA Signatory, any remaining Pre-Administration Client Money Shortfall Claim will become Ascertained Claim against the Company.
- (vii) For all Signatories, any Distribution Liabilities not reduced after Appropriation will remain unsatisfied.

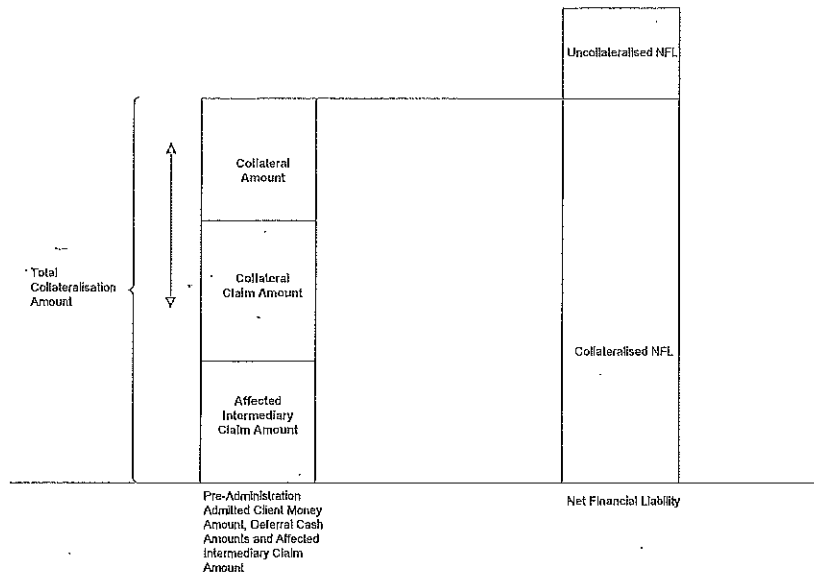
The Distribution Value Date is the date that falls 25 business days prior to the latest date on which the Company intends to give instructions for settlement of such Distribution Assets.

2 Collateralisation Election

2.1 Total Collateralisation Amount and Net Financial Liability

When a Collateralisation Election is made, a notional ledger will be established to record the Total Collateralisation Amount, comprising the Collateral Claim Amount. The Collateral Amount is the total of all interim Distributions of Pre-Administration Client Money and all Deferral Cash Amounts paid to the Company from time to time. The Collateral Claim Amount is essentially the shortfall on the claim on Pre-Administration Client Money. Over time, any interim Distributions of Pre-Administration Client Money will increase the Collateral Amount and correspondingly reduce the Collateral Claim Amount. Any payment of Deferral Cash Amounts will also increase the Collateral Amount (for TA Signatories only), which in turn increases the Total Collateralisation Amount. Any Asset Allocation Appropriated under the Affected Intermediary Collateralisation Election will reduce the Affected Intermediary Admitted Claim Amount, which in turn decreases the Total Collateralisation Amount. The concept of the Total Collateralisation Amount collateralising part of Net Financial Liability is represented in diagram 1 below.

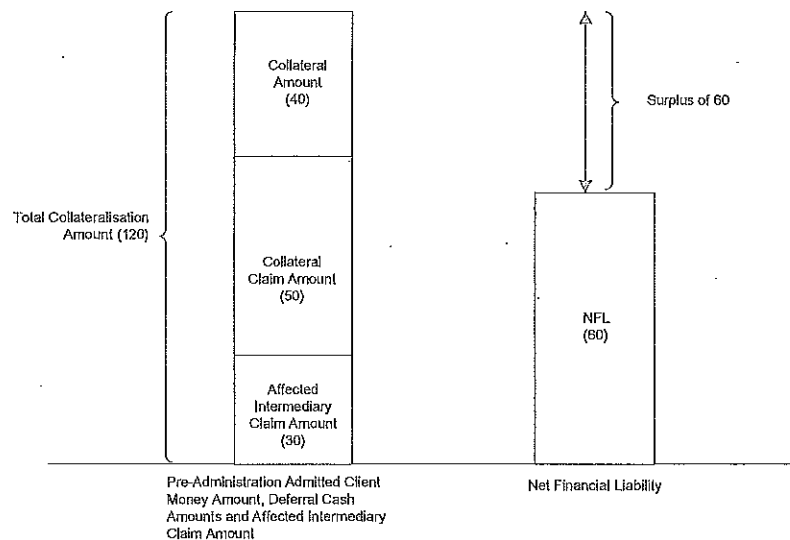
Diagram 1 – Total Collateralisation Amount



2.2 Collateral Allocation

There is one exceptional circumstance when a Signatory may receive its interim Distribution of Pre-Administration Client Money. If, at any time, the Total Collateralisation Amount exceeds the Net Financial Liability (an “NFL”), then an amount equal to the lesser of: (i) the surplus of Total Collateralisation Amount over the NFL; and (ii) the Collateral Amount will be an Asset Allocation (each, a “**Collateral Allocation**”) to such Signatory and the Collateral Amount shall be correspondingly reduced. A Collateral Allocation will be an interim Asset Allocation and may be Appropriated to reduce the Signatory’s Distribution Liabilities under Waterfall 3d in paragraph 3 below. The concept of a Collateral Allocation is illustrated in diagram 2 below.

Diagram 2 – Collateral Allocation

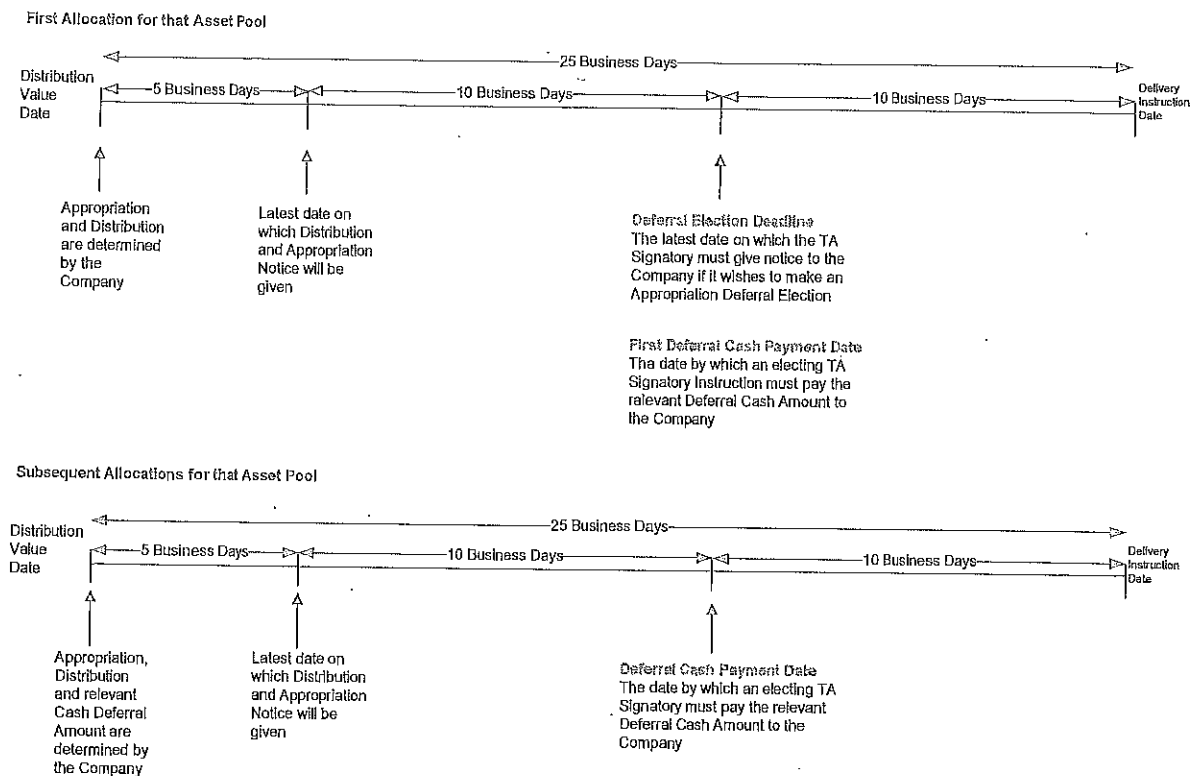


2.3 Timing for Appropriation Deferral Election

A TA Signatory may only make an Appropriation Deferral Election at the time when the Company notifies the TA Signatory of its first interim Asset Allocation in respect of that Asset Allocation.

The timing for making an Appropriation Deferral Election and paying the Deferral Cash Amount is illustrated in diagram 3 below.

Diagram 3 – Timing for Appropriation Deferral Election



The main benefit of Collateralisation Election in respect of a Pre-Administration Client Money Claim is that when the Pre-Administration Client Money Shortfall Claim (i.e. the shortfall claim in the Distribution of Pre-Administration Admitted Client Money Amount for which the Company is liable) is determined, the Collateral Claim Amount will be equal to such Pre-Administration Client Money Shortfall Claim and then applied as a Distribution Asset to first reduce the NFL of the Signatory before any other Distribution Asset is applied to reduce the NFL (see Waterfall 3c in paragraph 3 below).

3 Distribution and Appropriation Waterfalls

The diagrams below are only included for the purpose of illustrating how the waterfalls would operate given a certain set of facts and they do not cover every case that may apply to or result from such waterfall. Whether all Distribution Assets will be Appropriated and whether any Distribution will fall due to be made to a Signatory depends on the facts of each case, which is specific to each Signatory. All Distribution Assets and Distribution Liabilities are valued as at the Distribution Value Date.

3.1 TA Signatory with a Net Financial Claim

Waterfall 1a – Asset Allocation to a TA Signatory with a Net Financial Claim

Facts

In this first waterfall, the TA Signatory has a Net Financial Claim against the Company (so the TA Signatory does not have an NFL). The TA Signatory has not made any Collateralisation Election. The Company determines an Asset Allocation to such TA Signatory.

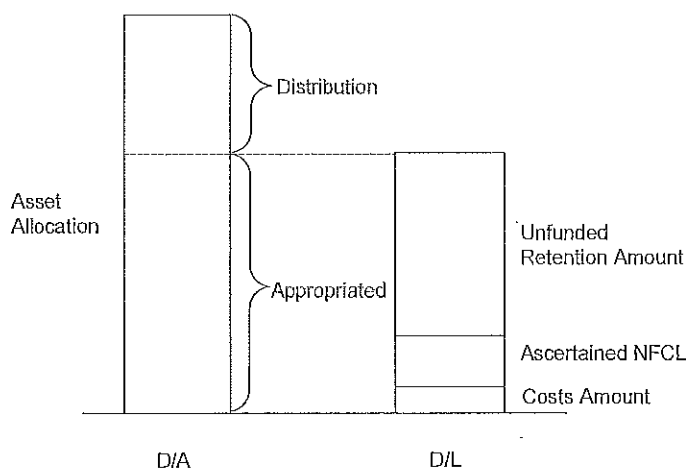
Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
- Asset Allocation - Net Financial Claim	Asset Shortfall Claim	- Costs Amount - Ascertained NFCL - Unfunded Retention Amount	

Analysis and Examples

Asset Allocations will be Appropriated to reduce, first, Costs Amount, secondly, Ascertained Non-Financial Contract Liabilities and, thirdly, Unfunded Retention Amount in that order.

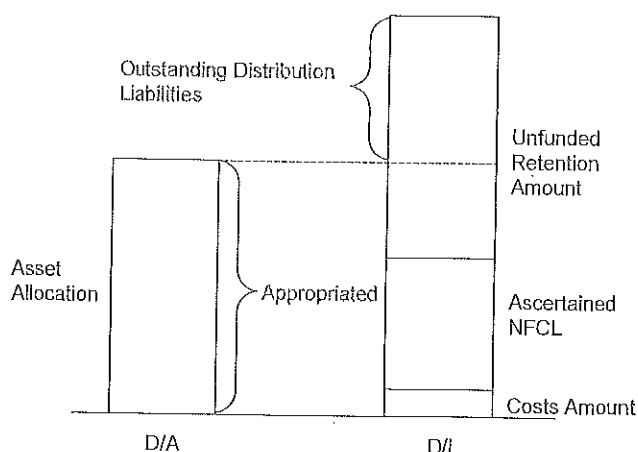
If Asset Allocation is greater than Distribution Liabilities, then any remaining Asset Allocation will be a Distribution to the TA Signatory. All Distribution Liabilities will be discharged and reduced to zero. See diagram 4.1 below which illustrates an example.

Diagram 4.1 – Allocation to TA Signatory with a Net Financial Claim (Case 1)



If Asset Allocation is smaller than Distribution Liabilities, then no Distribution will be made to the TA Signatory. Each Distribution Liability that is not reduced by the Asset Allocation will remain unsatisfied. See diagram 4.2 below which illustrates an example. In that example, Costs Amount, Ascertained Non-Financial Contract Liabilities ("Ascertained NFCL") and part of the Unfunded Retention Amount are discharged in full. The remaining portion of the Unfunded Retention Amount remains unsatisfied.

Diagram 4.2 – Allocation to TA Signatory with a Net Financial Claim (Case 2)



Waterfall 1b – Net Financial Claim against Ascertained NFCL

Facts

The TA Signatory has a Net Financial Claim against the Company and the Company has some remaining Limited Ascertained NFCL against the TA Signatory.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
Net Financial Claim		Limited Ascertained NFCL (if any)	

Analysis and Examples

Net Financial Claim will be Appropriated to reduce any remaining Limited Ascertained NFCL (if any). If the Net Financial Claim exceeds the Limited Ascertained NFCL, then the Limited Ascertained NFCL will be reduced in full and any remaining amount of Net Financial Claim after Appropriation will become an Ascertained Claim. If the Net Financial Claim is less than the Limited Ascertained NFCL, then the Net Financial Claim will be Appropriated in full and any remaining Limited Ascertained NFCL that are not reduced will remain outstanding.

In addition, the TA Signatory will have an Ascertained Claim for an amount equal to its Asset Shortfall Claim (if any).

3.2 TA Signatory with an NFL

Waterfall 2 – Asset Allocation to a TA Signatory with a NFL

Facts

A TA Signatory has an NFL to the Company. The Company determines an Asset Allocation to such TA Signatory. The TA Signatory has not made any Collateralisation Election, so all of its NFL is Uncollateralised NFL. As the TA Signatory has not made an Appropriation Deferral Election, an Asset Allocation can be Appropriated to reduce its Uncollateralised NFL (as shown by Uncollateralised NFL being an applicable Distribution Liability in this

circumstance). As the Company is not expecting to make any further Asset Allocations in respect of a Stock Line and assuming that there is a shortfall in Assets for such Stock Line, the Company has determined an Asset Shortfall Claim in respect of such Stock Line. Such Asset Shortfall Claim can only be Appropriated to reduce Uncollateralised NFL and not any other Distribution Liability.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
Asset Allocation	Asset Shortfall Claim	- Costs Amount - Ascertained NFCL - Unfunded Retention Amount	Uncollateralised NFL

Analysis and Examples

Asset Shortfall Claim

Asset Shortfall Claim will be Appropriated to reduce Uncollateralised NFL. If Asset Shortfall Claim is greater than Uncollateralised NFL, then any remaining Asset Shortfall Claim (Valued as at the close of business on the last Business Day before the Time of Administration) will be an Ascertained Claim of the TA Signatory. If Asset Shortfall Claim is less than Uncollateralised NFL, then the Asset Shortfall Claim will be Appropriated in full.

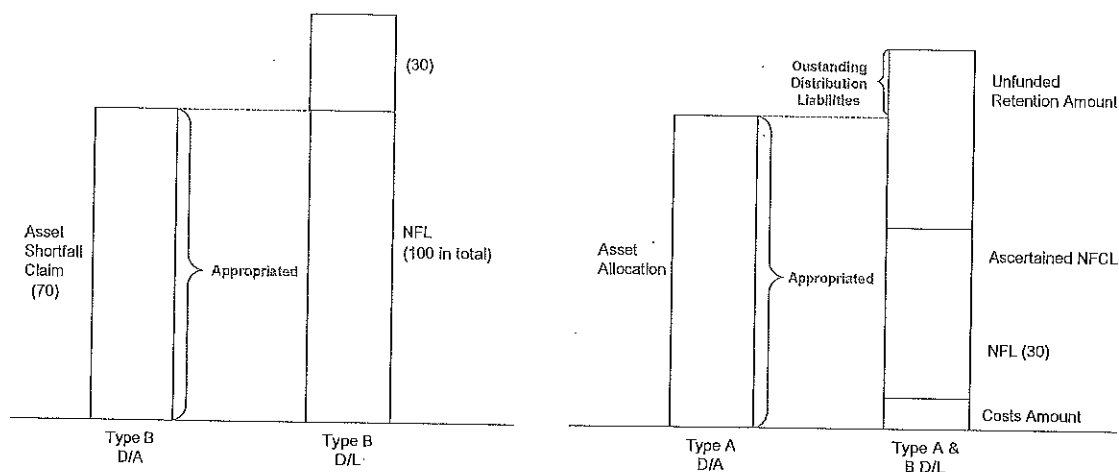
Asset Allocation

Asset Allocation will then be Appropriated to reduce, first, Costs Amount, secondly, Uncollateralised NFL (any left after being reduced by Asset Shortfall Claim), thirdly, Ascertained NFCL, and, fourthly, Unfunded Retention Amount in that order. If Asset Allocation is greater than Distribution Liabilities, then any remaining Asset Allocation will be a Distribution to the TA Signatory. Distribution Liabilities are reduced to zero. If Asset Allocation is less than Distribution Liabilities, then no Distribution will be made to the TA Signatory. Each Distribution Liability that is not reduced by the Asset Allocation will remain unsatisfied.

Diagram 5 below illustrates an example. In that example, the Asset Shortfall Claim with a Value of 70 discharged a portion of the Uncollateralised NFL equal to 70. The portion of the Uncollateralised NFL equal to 30 is then discharged in full by Appropriation of the Asset Allocation. The Asset Allocation also discharges in full the Costs Amount, the Ascertained NFCL and part of the Unfunded Retention Amount, leaving the other part Unfunded Retention Amount as an unsatisfied Distribution Liability.

Analysis and Examples

Diagram 5 – Last Asset Allocation to TA Signatory with an NFL



3.3 Client Money Collateralisation Election and Appropriation Deferral Election

Waterfall 3a – Interim Asset Allocation to TA Signatory with a NFL and a Client Money Collateralisation Election and/or Appropriation Deferral Election

Facts

A TA Signatory has an NFL to the Company. The Company determines an interim Asset Allocation to such TA Signatory. The TA Signatory has made a Client Money Collateralisation Election and an Appropriation Deferral Election (but not an Affected Intermediary Collateralisation Election), so its NFL comprises a Collateralised NFL and an Uncollateralised NFL.

Since the TA Signatory has made an Appropriation Deferral Election for this Asset Allocation, an interim Asset Allocation cannot be Appropriated to reduce its Uncollateralised NFL. This is evident from Uncollateralised NFL not being an applicable Distribution Liability in this circumstance. The effect is that the Uncollateralised NFL of the TA Signatory is disregarded for the purpose of determining a Distribution of such interim Asset Allocation (resulting in the applicable Distribution Liabilities being broadly the same as if the TA Signatory does not have any NFL to the Company: see Waterfall 1a). If the TA Signatory has not made an Appropriation Deferral Election, the Uncollateralised NFL will form a Distribution Liability.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
Asset Allocation		- Costs Amount - Ascertained NFCL - Unfunded Retention Amount	

Analysis and Examples

Asset Allocation will be used to reduce, first, Costs Amount, secondly, Ascertained NFCL and, thirdly, Unfunded Retention Amount in that order.

If the Asset Allocation is greater than Distribution Liabilities, then Distribution Liabilities will be discharged in full. Any remaining Asset Allocation will be a Distribution to the TA Signatory (see diagram 4.1 under Waterfall 1a).

If the Asset Allocation is less than Distribution Liabilities, then the Asset Allocation will be Appropriated in full. Each Distribution Liability that is not reduced by the Asset Allocation will remain unsatisfied (see diagram 4.2 under Waterfall 1a).

Waterfall 3b – Last Asset Allocation to TA Signatory with a NFL and a Client Money Collateralisation Election and/or Appropriation Deferral Election

Facts

A TA Signatory has an NFL to the Company. The Company determines a last Asset Allocation in respect of an Asset Pool to this TA Signatory. The TA Signatory has made a Client Money Collateralisation Election and an Appropriation Deferral Election (but not an Affected Intermediary Collateralisation Election), so the NFL comprises a Collateralised NFL and an Uncollateralised NFL.

Upon the last Asset Allocation of that Asset Pool and upon determination of an Asset Shortfall Claim, the Asset Shortfall Claim can be Appropriated to reduce, first, the Uncollateralised NFL and, secondly, the Collateralised NFL. The Asset Shortfall Claim can only be Appropriated to reduce the NFL and not any other Distribution Liabilities.

The last Asset Allocation can be Appropriated to reduce the Uncollateralised NFL, which is shown by the Uncollateralised NFL being an applicable Distribution Liability in this circumstance but the Collateralised NFL will not be an applicable Distribution Liability by virtue of the Collateralisation Election in respect of the Pre-Administration Client Money (the Collateralised NFL is only an applicable Distribution Liability upon the last Distribution of Pre-Administration Client Money: see Waterfall 3c).

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
◦ Asset Allocation	◦ Asset Shortfall Claim	◦ Costs Amount ◦ Ascertained NFCL ◦ Unfunded Retention Amount	◦ Uncollateralised NFL ◦ Collateralised NFL

Analysis and Examples

Asset Shortfall Claim will be Appropriated to reduce NFL. If Asset Shortfall Claim is greater than NFL, then NFL will be discharged in full and any remaining Asset Shortfall Claim (Valued as at the close of business on the last Business Day before the Time of Administration) will be an Ascertained Claim of the TA Signatory. If Asset Shortfall Claim is less than NFL, then the Asset Shortfall Claim will be Appropriated in full.

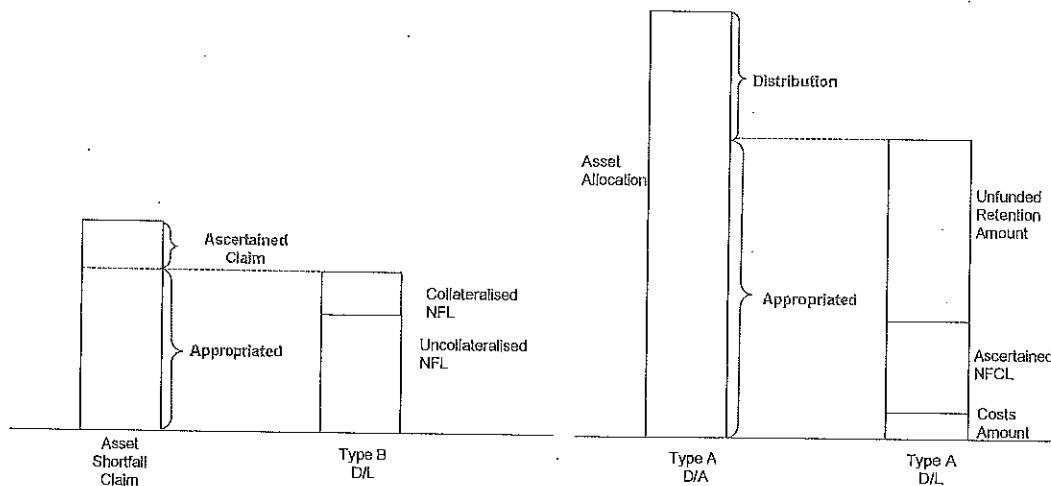
Then the Asset Allocation will be Appropriated to reduce, first, Costs Amount, secondly, Uncollateralised NFL (to the extent there is any after being first reduced by Asset Shortfall Claim), thirdly, Ascertained NFCL and, fourthly, Unfunded Retention Amount in that order.

If Asset Allocation is greater than Distribution Liabilities, then all Distribution Liabilities will be discharged. Any remaining Asset Allocation will be a Distribution to the TA Signatory and will be delivered to the TA Signatory.

If Asset Allocation is less than Distribution Liabilities, then no Distribution will be made to the TA Signatory. Each Distribution Liability that is not reduced by the Asset Allocation will remain unsatisfied.

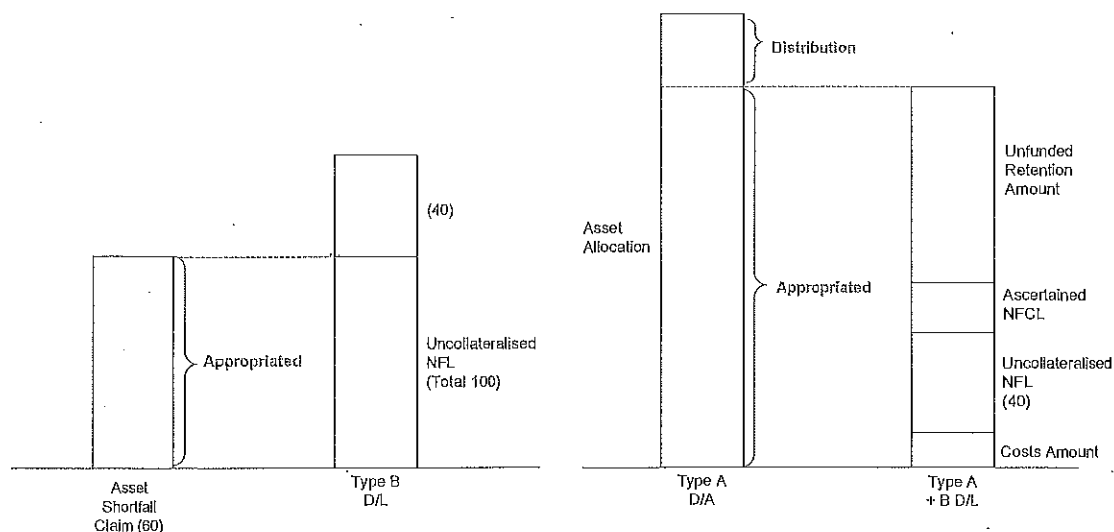
In the example illustrated by diagram 6.1 below, the Asset Shortfall Claim fully discharges the NFL and any remaining Asset Shortfall Claim is an Ascertained Claim to the TA Signatory. Asset Allocation is then Appropriated to reduce the remaining Distribution Liabilities, including the Costs Amount, Ascertained NFCL and Unfunded Retention Amount. Any remaining Asset Allocation will be a Distribution to the TA Signatory.

Diagram 6.1 – Last Allocation to TA Signatory with NFL (Case 1)



In the example illustrated by diagram 6.2 below, the Asset Shortfall Claim is Appropriated in full but is only sufficient to discharge a portion of the Uncollateralised NFL equal to 60. Uncollateralised NFL of 40 remains outstanding. The Asset Allocation is then applied as the next Distribution Asset and Appropriated to discharge Distribution Liabilities, including the Uncollateralised NFL of 40 in full. A portion of the remaining Asset Allocation is a Distribution to the TA Signatory.

Diagram 6.2 – Last Allocation to TA Signatory with Appropriation Deferral Election (Case 2)



Waterfall 3c – Last Distribution of Pre-Administration Client Money to a TA Signatory with an NFL and Client Money Collateralisation Election

Facts

A TA Signatory has an NFL to the Company. The TA Signatory has made a Client Money Collateralisation Election. The Company determines the Pre-Administration Client Money Shortfall Claim of that TA Signatory.

This Waterfall 3c applies in a very limited circumstance, i.e. when the Company determines the Pre-Administration Client Money Shortfall Claim of a TA Signatory who has made the Client Money Collateralisation Election. This determination can happen at any time, whether before or after the last Asset Allocation of a particular Asset Pool. This waterfall deals solely with such Pre-Administration Client Money Shortfall Claim and is not affected by any Asset Allocation for any particular Asset Pool.

As mentioned above, Pre-Administration Client Money Shortfall Claim can only be Appropriated to reduce NFL and not any other Distribution Liabilities.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
	Pre-Administration Client Money Shortfall Claim		- Uncollateralised NFL - Collateralised NFL

Analysis and Examples

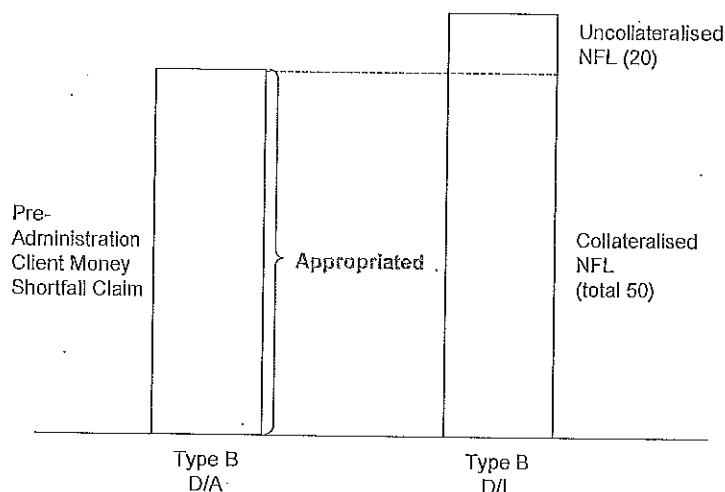
Pre-Administration Client Money Shortfall Claim will be Appropriated to reduce the Collateralised NFL and Uncollateralised NFL.

If Pre-Administration Client Money Shortfall Claim is greater than the NFL, then all NFL will be discharged in full. Any remaining Pre-Administration Client Money Shortfall Claim will be

an Ascertained Claim to the TA Signatory. If Pre-Administration Client Money Shortfall Claim is less than the NFL, then the Pre-Administration Client Money Shortfall Claim will be Appropriated in full. NFL that is not reduced by the Pre-Administration Client Money Shortfall Claim will remain unsatisfied.

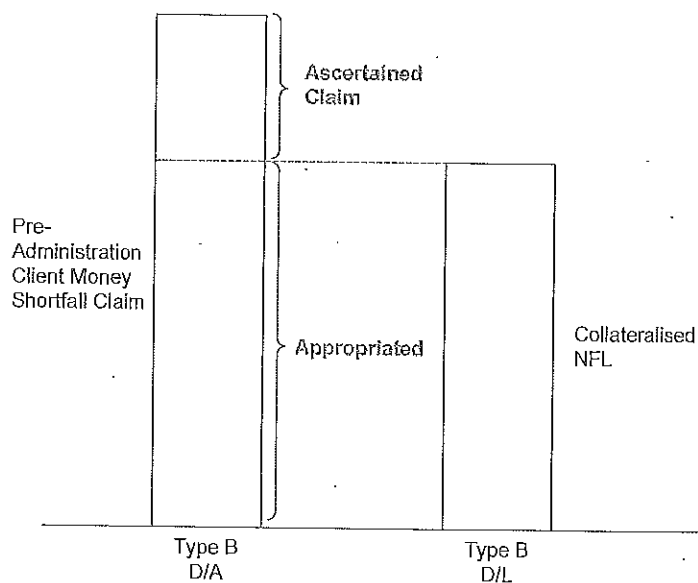
In the example illustrated by diagram 7.1 below, the Pre-Administration Client Money Shortfall Claim is Appropriated in full to discharge the Collateralised NFL.

Diagram 7.1 – Last Distribution of Pre-Administration Client Money to TA Signatory with NFL Client Money Collateralisation Election (Case 1)



In the example illustrated by diagram 7.2 below, the Pre-Administration Client Money Shortfall Claim fully discharges the Collateralised NFL. The remaining Pre-Administration Client Money Shortfall Claim is an Ascertained Claim to the TA Signatory.

Diagram 7.2 – Last Distribution of Pre-Administration Client Money to TA Signatory with NFL (Client Money Collateralisation Election) (Case 2)



Waterfall 3d – Final Distribution of Collateral Amount following determination of Pre-Administration Client Money Shortfall Claim and Last Asset Allocation

The interim Distributions of Pre-Administration Client Money and payment of Deferral Cash Amounts will increase the Collateral Amount. The Collateral Amount will be Appropriated to reduce, first, Costs Amount, secondly, Uncollateralised NFL (to the extent there is any after being reduced by Asset Shortfall Claim and Pre-Administration Client Money Shortfall Claim), thirdly, Collateralised NFL (to the extent there is any after being reduced by Asset Shortfall Claim and Pre-Administration Client Money Shortfall Claim), fourthly, Ascertained NFCL and, fifthly, Unfunded Retention Amount in that order.

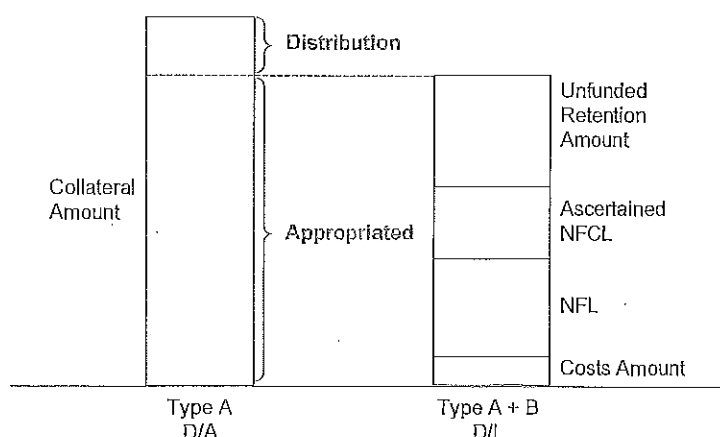
If the Collateral Amount is greater than Distribution Liabilities, then the Distribution Liabilities will be discharged in full. Any remaining Collateral Amount will be paid back to the TA Signatory.

If the Collateral Amount is less than Distribution Liabilities, then the Collateral Amount will be Appropriated in full. Each Distribution Liability that is not reduced by the Collateral Amount will remain unsatisfied.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
Collateral Amount		- Costs Amount - Ascertained NFCL - Unfunded Retention Amount	- Uncollateralised NFL - Collateralised NFL

In the example illustrated by diagram 8.1 below, the Collateral Amount is applied as a Distribution Asset and discharges in full Costs Amount, NFL, Ascertained NFCL and the Unfunded Retention Amount. The remaining portion of the Collateral Amount is a Distribution to the TA Signatory.

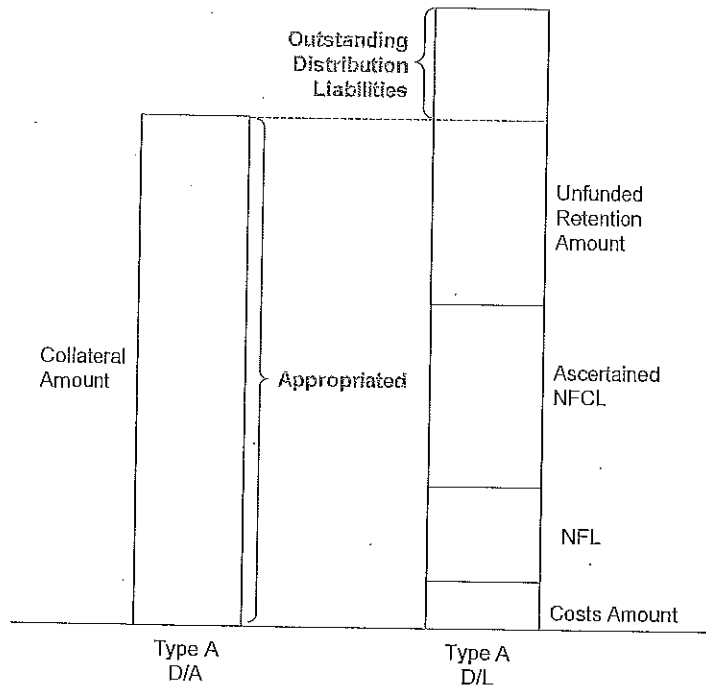
Diagram 8.1 – Collateral Amount (Case 1)



In the example illustrated by diagram 8.2 below, the Collateral Amount is applied as a Distribution Asset to reduce the applicable Distribution Liabilities. The Collateral Amount is

Appropriated in full and is only sufficient to discharge the Costs Amount, NFL, the Ascertained NFCL and a portion of the Unfunded Retention Amount. The remaining portion of the Unfunded Retention Amount remains an outstanding Distribution Liability.

Diagram 8.2 – Collateral Amount (Case 2)



3.4 Affected Intermediary Collateralisation Election

Waterfall 4a – Asset Allocation following an Affected Intermediary Collateralisation Election

Facts

A TA Signatory has an NFL to the Company. The TA Signatory has made an Affected Intermediary Collateralisation Election in respect of a Net Equity Intermediary so its NFL comprises a collateralised portion and an uncollateralised portion. The Company determines an interim Asset Allocation to such TA Signatory in respect of the Affected Stock Lines of such Net Equity Intermediary.

Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
Asset Allocation		- Costs Amount - Ascertained NFCL - Unfunded Retention Amount - Affected Intermediary Derived Asset	Collateralised NFL

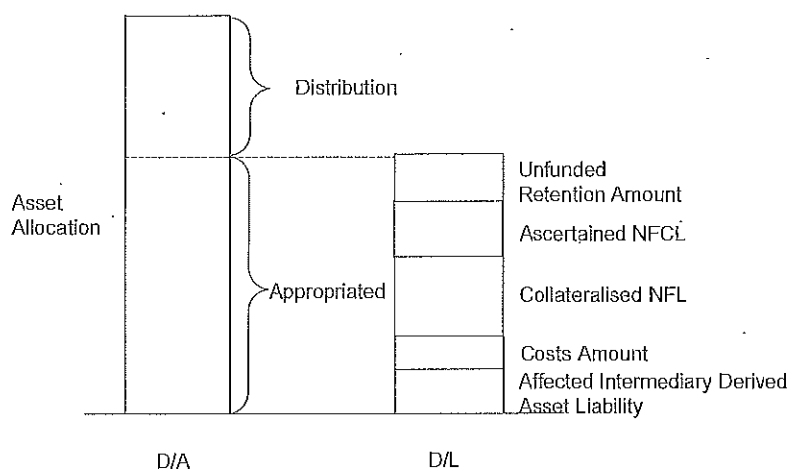
Applicable Distribution Asset		Applicable Distribution Liabilities	
Type A	Type B	Type A	Type B
		Liability	

Analysis and Examples

Since the Asset Allocation relates to the Stock Lines of the relevant Net Equity Intermediary, the Asset Allocation would not follow any of the waterfalls set out above. Instead, such Asset Allocation will be Appropriated by the Company to reduce first, any Affected Intermediary Derived Asset Liability relating to that Asset Allocation, secondly, Costs Amount, thirdly, Collateralised NFL, fourthly Ascertained NFCL and fifthly, Unfunded Retention Amount in that order.

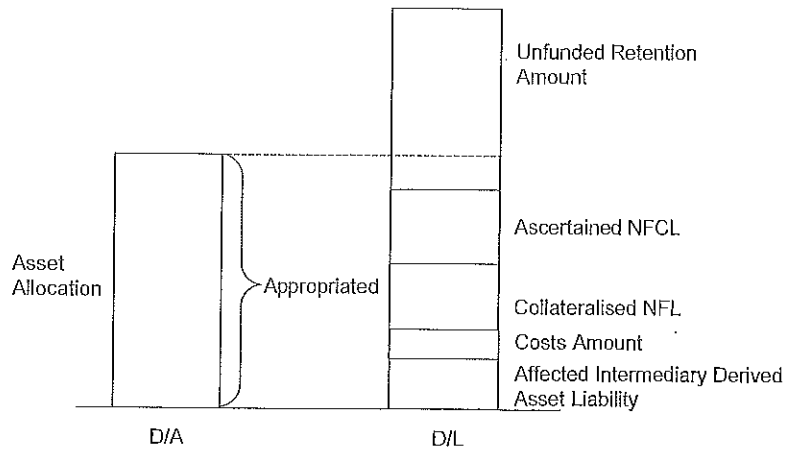
If the Asset Allocation is greater than Distribution Liabilities, then all Distribution Liabilities will be discharged. Any remaining Asset Allocation will be a Distribution to the TA Signatory and will be delivered to the TA Signatory. See diagram 9.1 below. This may only happen where, following an Affected Intermediary Collateralisation Election, the Total Collateralisation Amount exceeds all Distribution Liabilities.

Diagram 9.1 – Asset Allocation following an Affected Intermediary Collateralisation Election



If the Asset Allocation is less than Distribution Liabilities, then no Distribution will be made to the TA Signatory. Each Distribution Liability that is not reduced by the Asset Allocation will remain unsatisfied. See diagram 9.2 below.

Diagram 9.2 – Asset Allocation following an Affected Intermediary Collateralisation Election



Waterfall 4b – Last Allocation of Assets from the Affected Intermediary under an Affected Intermediary Collateralisation Election

Facts

After the Company has determined that it does not expect to make any further Asset Allocation in relation to Distributable Trust Assets received from the relevant Net Equity Intermediary to the TA Signatory, the Company determines the Shortfall For Appropriation of the TA Signatory.

Applicable Distribution Asset		Applicable Distribution Liability	
Type A	Type B	Type A	Type B
	Shortfall For Appropriation		Collateralised NFL

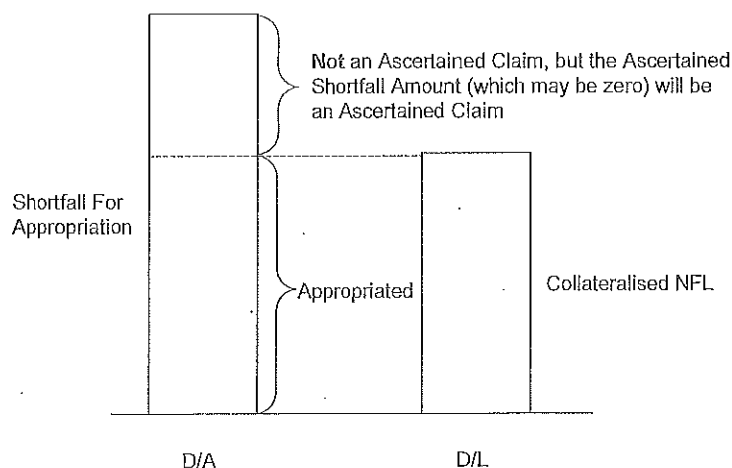
Analysis and Examples

The Shortfall For Appropriation will be Appropriated to reduce Collateralised NFL.

If the Shortfall For Appropriation is less than the Collateralised NFL, then the Shortfall For Appropriation will be Appropriated in full. Collateralised NFL that is not reduced by the Shortfall For Appropriation will remain unsatisfied.

If Shortfall For Appropriation is greater than the Collateralised NFL, then all NFL will be discharged in full. Any remaining Pre-Administration Client Money Shortfall Claim will not become an Ascertained Claim, but instead, the TA Signatory will have an Ascertained Claim in an amount equal to the Ascertained Shortfall Amount (which may be zero) as determined by the Company. See diagram 10 below.

Diagram 10 – Shortfall For Appropriation



4 Affected Intermediary Collateralisation Election

This section explains how the Ascertained Shortfall Amount is determined with the different amounts of NFL.

Facts

A TA Signatory has an Asset Claim against securities held by LBI. The TA Signatory has not made any other Collateralisation Elections and there are no Derived Assets in respect of such securities. The TA Signatory has an NFL owed to the Company. LBI Distributes an aggregate value of Asset Allocations worth 70 to the Company (assuming that the value of Assets have not changed from the 19 September 2008 to the relevant Distribution Value Date). There are no other Distribution Liabilities (other than the NFL). The amount of the Affected Intermediary Admitted Claim Amount is 100.

Analysis and Examples

The NFL will be collateralised by the Affected Intermediary Admitted Claim Amount (100). The Asset Allocations (70) will be used to Reduce the NFL first. The Shortfall For Appropriation, which is the difference between the Affected Intermediary Admitted Claim Amount (100) and the aggregate value of Asset Allocations (70) is 30. The Asset Shortfall Claim (10) is the difference between the lower of LBI acknowledged liability or the Company liability (80) and the LBI Assets returned by LBI (70).

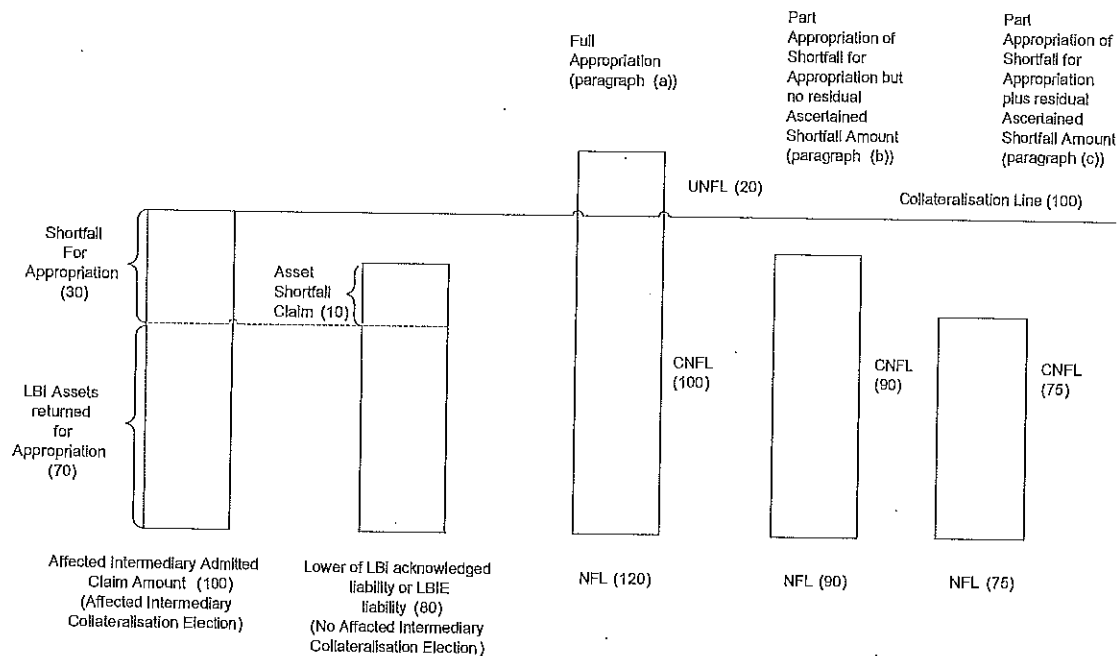
- (a) If the TA Signatory has an NFL of 120, then there is a full Appropriation of Asset Allocation (70) and the Shortfall For Appropriation (30). Since the Shortfall For Appropriation has been Appropriated in full, there will be no Ascertained Claim against the unsecured estate.
- (b) If the TA Signatory has an NFL of 90, then there is a full Appropriation of Asset Allocations (70) but only part of the Shortfall For Appropriation (20) is Appropriated. As the Shortfall For Appropriation has not been Appropriated in full, there is a potential admitted claim equal to the Ascertained Shortfall Amount. The Ascertained Shortfall Amount is the Asset Shortfall Claim (10) less Collateralised NFL Reduced to zero by Appropriation against the related Shortfall For Appropriation (20), subject to a minimum of zero. Since the Ascertained Shortfall

Amount is zero (minus 10 rounded up to zero), there will be no Ascertained Claim against the unsecured estate.

- (c) If the TA Signatory has an NFL of 75, then there is full Appropriation of Asset Allocations (70) but only part of the Shortfall For Appropriation (5) is Appropriated. As the Shortfall For Appropriation has not been Appropriated in full, there is a potential admitted claim equal to the Ascertained Shortfall Amount. The Ascertained Shortfall Amount is the Asset Shortfall Claim (10) less the amount of Collateralised NFL that is Reduced to zero by Appropriation against the related Shortfall For Appropriation (5), subject to a minimum of zero. Since the Ascertained Shortfall Amount is 5, the Ascertained Claim against the unsecured estate is 5.

Diagram 11 below illustrates the interaction between Affected Intermediary Collateralisation Election with different amounts of NFL.

Diagram 11 – Ascertained Shortfall Amount



(The diagrams in this Appendix are produced for illustration purposes only, do not include all contemplated scenarios and do not represent the relevant provisions of the Agreement in full.)

Appendix 5 Dispute Resolution

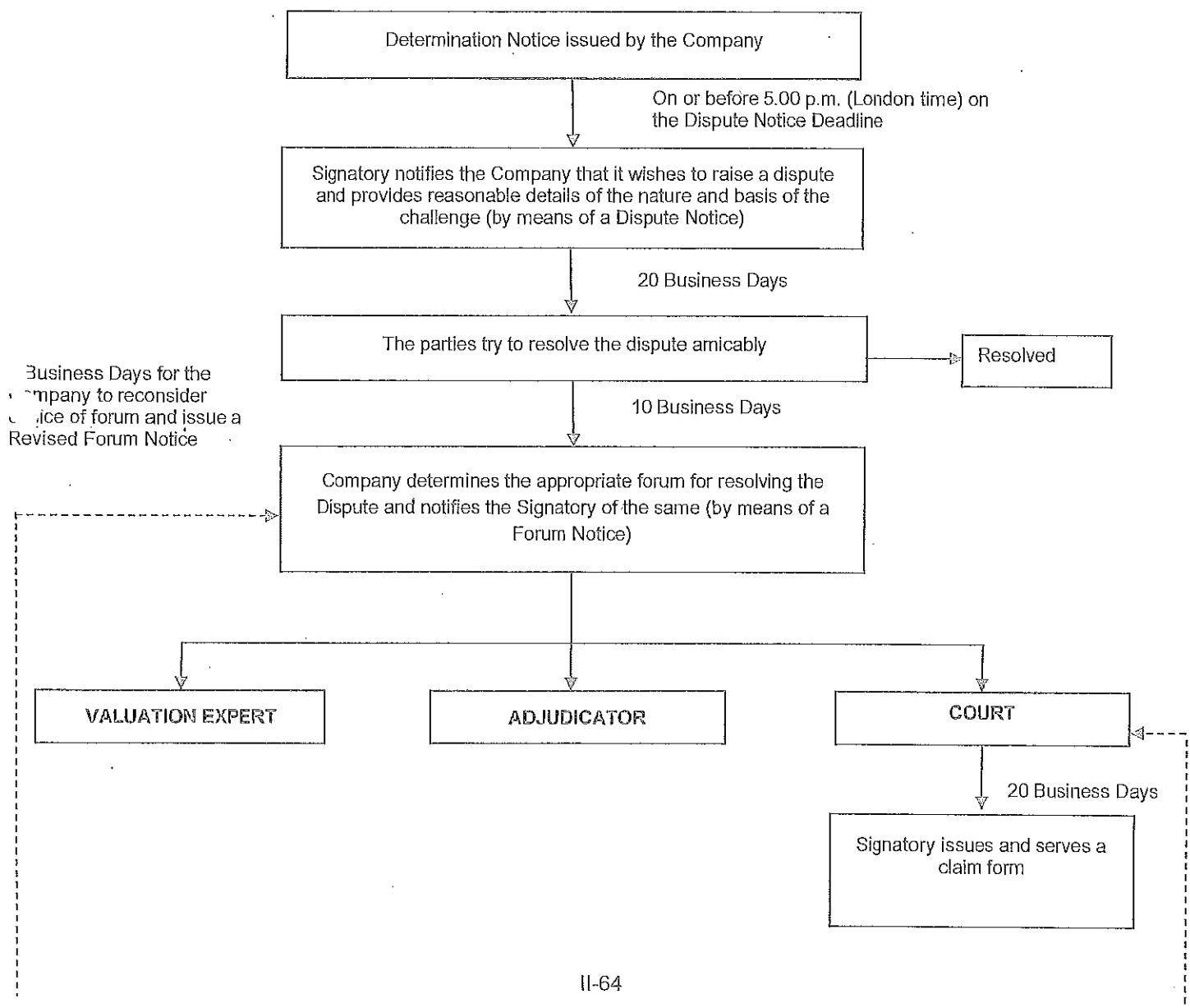
The Dispute Resolution Mechanism provides a procedure for resolving Disputes between the Company and a Signatory arising out of any Determination Notice issued by the Company to a Signatory (a Dispute).

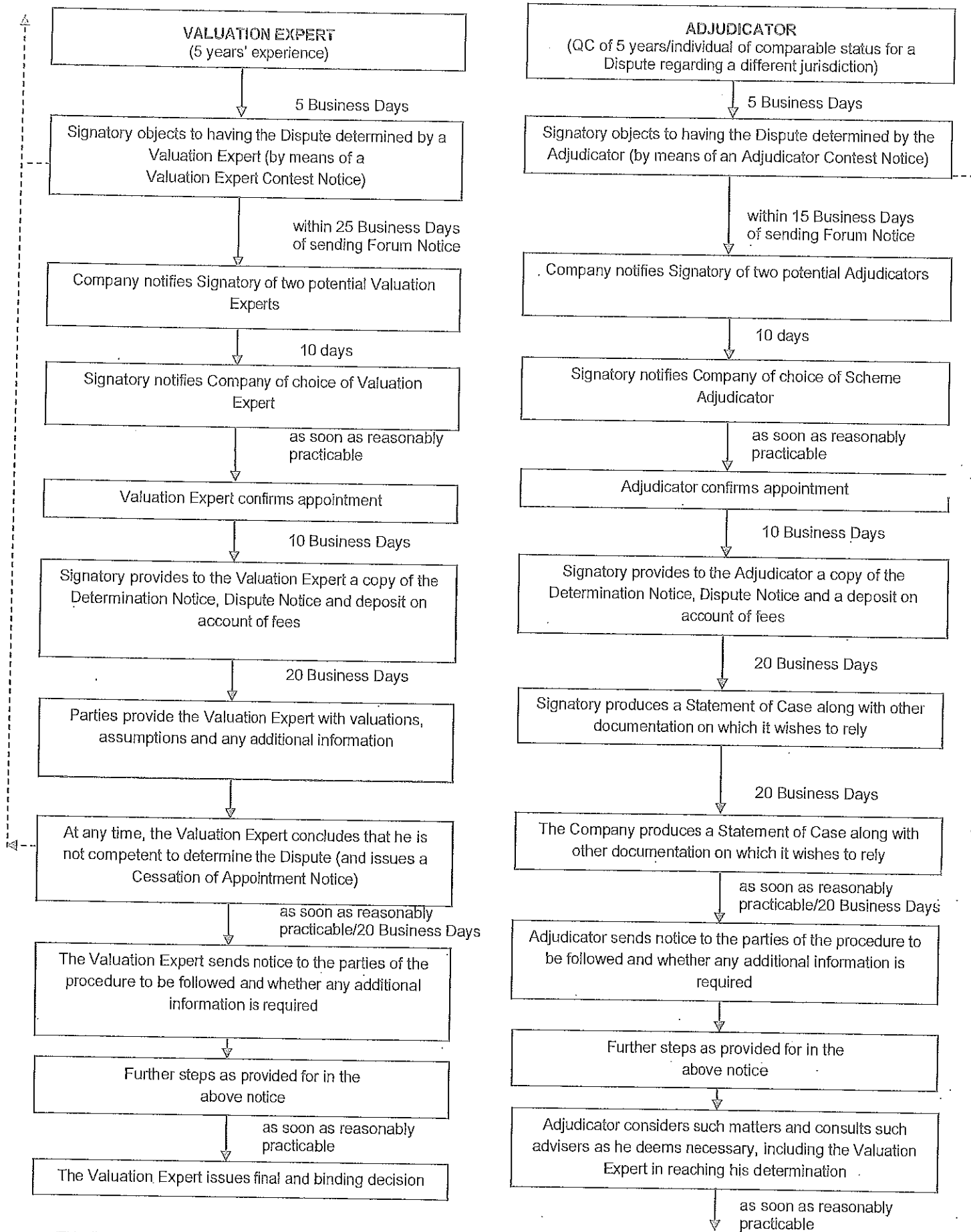
Each of the following is a Determination Notice:

- a Net Contractual Position Statement;
- a Claim Amount Notice;
- an Intermediary Distribution Value Notice; and
- a Distribution and Appropriation Notice.

The Dispute Resolution Mechanism does not prevent the Company from entering into a compromise, arrangement or settlement with a Signatory in relation to a Dispute.

The following procedure applies for resolving a Dispute:





(This diagram is produced for illustration purposes only, does not include all contemplated scenarios and does not represent the relevant provisions of the Agreement in full.)

PART III
CLAIM RESOLUTION AGREEMENT

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Dated the Effective Date

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)

and

THE SIGNATORIES
(as defined in this Agreement)

CLAIM RESOLUTION AGREEMENT

Linklaters

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M Au Yeung/S Ahmed

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This Claim Resolution Agreement (this "Agreement") is made on the Effective Date between:

- (1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**, a company incorporated in England and Wales with registered number 2538254 whose registered address is 25 Bank Street, London E14 5LE, acting by its administrators, Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmans and Michael John Andrew Jervis of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT; and
- (2) each person who has:
 - (i)
 - (a) validly accepted the Offer by the Company to enter into this Agreement in accordance with the terms of such Offer; and
 - (b) been given an Accession Notice by the Company on or after the Effective Date; or
 - (ii)
 - (a) otherwise become a Signatory to this Agreement by operation of this Agreement; and
 - (b) been given a confirmation to such effect by the Company,(each, a "Signatory" and, together, the "Signatories").

Background:

- (A) The Administrators were appointed to act as joint administrators of the Company on the Administration Date by an order of the High Court of Justice, Chancery Division.
- (B) The Company and Signatories have entered into this Agreement to release, modify and agree all Claims of the Signatories relating to the Trust Assets and Financial Contracts (other than certain specified Excluded Claims) in exchange for mechanisms to:
 - (i) determine the Asset Claims to Trust Assets and to effect Distributions and Appropriations of Distributable Trust Assets of TA Signatories;
 - (ii) allocate and make provision for the costs of managing Trust Assets and Allocating Distributable Trust Assets to TA Signatories;
 - (iii) retain any Retention Amount of TA Signatories;
 - (iv) determine, quantify and crystallise the value of unsecured claims (including any Asset Shortfall Claim, Pre-Administration Client Money Shortfall Claim and Net Financial Claim) of TA Signatories;
 - (v) determine the Net Financial Liability, Pre-Administration Client Money Shortfall Claim and Net Financial Claim of all Signatories; and
 - (vi) determine certain other Liabilities owed to the Company by Signatories, including Ascertained Non-Financial Contract Liabilities,(together, the "purposes").

It is agreed as follows:

PART 1: GENERAL PROVISIONS

1 Effective Date

1.1 Effectiveness of this Agreement

This Agreement shall be effective on and from the Effective Date.

1.2 Terms and Conditions of the Offer

The terms and conditions set out in Schedule 1 apply to the Offer (and to any Further Offer, as may be applicable) to enter into this Agreement and, once this Agreement is effective, form part of this Agreement unless otherwise stated in this Agreement.

1.3 Notification of the Effective Date

The Company shall, on or as soon as practicable following the Effective Date, Notify each Signatory of the Effective Date of this Agreement.

2 Eligibility of Signatories

2.1 Persons acting as Representative Signatory

The Company shall have the power to amend the terms of this Agreement to enable potential Representative Signatories to enter into this Agreement. The amendments to be made by the Company in accordance with this Clause 2.1 shall be made on a bilateral basis between the Company and each such Representative Signatory, respectively, but the effect of such bilateral arrangements is that the Representative Signatories shall be Signatories to this Agreement as amended or varied by the terms of such bilateral arrangements. The bilateral arrangements may vary in detail from one Representative Signatory to another provided that the terms of such bilateral arrangements shall, for the sole purpose of ensuring that all the provisions of this Agreement described in Clause 18, apply separately to the Net Contractual Position and Ownership Claims of each Beneficiary represented by each such Representative Signatory and shall permit all Distributions (after any applicable Appropriations) to be made to the Representative Signatory on behalf of the Beneficiary, and the Company may require specific representations, warranties and undertakings from and tailored to such Representative Signatory. The Company has the right to request any further information from potential Representative Signatories for the purposes of entering into such bilateral arrangements, including information on: (i) the identities of the Beneficiaries; and (ii) any Liabilities of the Beneficiaries to the Company or any Retention Creditors.

2.2 Effect of Further Offer

If the Company makes a Further Offer to Eligible Offerees (pursuant to paragraph 7.10 of Schedule 1), each of the Signatories agrees that if an Eligible Offeree validly accepts such Further Offer by the Company in accordance with the terms of such Further Offer, such Eligible Offeree shall become a Party to this Agreement and have all the rights, benefits and obligations under this Agreement as if it were an original Signatory to this Agreement.

2.3 Consequence of excluding Excluded Parties

If the Company determines that a person who has submitted a Form of Acceptance to the Company will be excluded from being a Signatory to this Agreement (pursuant to paragraph

13.5 of Schedule 1, an "Excluded Party"), then Clause 49 of this Agreement shall apply to any Signatory who suffers any direct losses as a result of this Clause 2.3.

2.4 Determination of TA Signatory and NTA Signatory

The Company shall, as soon as reasonably practicable, determine whether a Signatory is a TA Signatory or an NTA Signatory. The Company shall make such determination initially and, notwithstanding that, the Company may change such determination from time to time thereafter so that a TA Signatory may become, and be treated as, an NTA Signatory for the purposes of this Agreement, and vice versa.

3 Effect of other agreements on this Agreement

3.1 Effect of other agreements

This Agreement shall not affect the terms of any Pre-Agreement Contract made with any Signatory prior to its Accession Date, save as otherwise agreed between the Company and that Signatory. The Company shall have the right to vary or amend the terms of this Agreement as they apply to any Signatory that has entered into such Pre-Agreement Contract for the sole purpose of rendering the application of this Agreement to such Signatory consistent with such Pre-Agreement Contract.

3.2 Pre-Agreement Asset Contracts

Each Pre-Agreement Provisionally Returned Asset Recipient shall:

3.2.1 for the purposes of Part 10, be treated as if:

- (i) it had not received any Pre-Agreement Provisionally Returned Assets, so that Distributable Trust Assets shall include all Pre-Agreement Provisionally Returned Assets;
- (ii) it is a Signatory whether or not it is, in fact, a Non-Signatory; and
- (iii) the amount or value of any Claim finally agreed in the associated Pre-Agreement Asset Contract (if applicable) shall have been determined in accordance with this Agreement; and

3.2.2 for the purposes of Part 7, have a Close-Out Amount and Net Contractual Position for any Financial Contract(s), which is/are the subject of a Pre-Agreement Asset Contract, equal to any value(s) so agreed.

The provisions of this Clause 3.2 are solely for the purpose of determining whether any Pre-Agreement Provisionally Returned Assets under any Pre-Agreement Asset Contract should become Recovered Assets, and the notional Allocations under this Agreement. Any actual Distribution or Appropriation under this Agreement to a Signatory that is a Pre-Agreement Provisionally Returned Asset Recipient shall be determined in accordance with Clause 61.

4 Effect of this Agreement on Signatories' Claims

4.1 Claims modified by Signatories

With effect from its Accession Date, each Signatory's Asset Claims to Trust Assets against the Released Parties shall (to the extent that they are not Excluded Claims, and subject to Clause 4.3) be modified and amended (together, the "Modified Claims") so they constitute the New Claims described in Clause 4.4.

4.2 Claims released by Signatories

With effect from its Accession Date, each Signatory shall waive and release the following Claims against the Released Parties (to the extent that they are not Excluded Claims, and subject to Clause 4.3):

- 4.2.1 all Claims for or in respect of any payment for or on account of any Asset which is or was at any time the subject of an Asset Claim;
 - 4.2.2 all Claims for consequential or economic loss (including Claims for loss of bargain, loss of value or other losses computed by reference to the value which may have been available to a Signatory had any obligation of the Company to the Signatory been duly performed in a timely manner in accordance with its terms) in respect of any Asset which is or was at any time the subject of an Asset Claim; and
 - 4.2.3 all Claims (apart from, for the avoidance of doubt, Modified Claims) in respect of any Financial Contract,
- (together, the "Released Claims").

4.3 Qualifications to modification and release

The Modified Claims and the Released Claims shall not include:

- 4.3.1 any Post-Administration Client Money Claim (pursuant to Clause 4.8);
- 4.3.2 Excluded Claims (although Signatories shall be required to account to the Company for the benefit of any such Ownership Claims to Non-Trust Assets in accordance with Clause 7.3);
- 4.3.3 Claims against the Company for breach of any of the terms of this Agreement or for any failure on the part of the Company to discharge its obligations under this Agreement; and
- 4.3.4 any counter-claims against the Company for or in respect of any Ascertained Non-Financial Contract Liabilities that the Company may assert against any Signatory.

4.4 New Claims of Signatories

4.4.1 Modified Claims

The Modified Claims of each Signatory shall remain unaffected, save that:

- (i) upon any Distribution pursuant to this Agreement:
 - (a) the Signatory shall receive full title (to the extent that the Company and/or the other Signatories are able to convey such title) to those Assets delivered to the Signatory as the Distribution, free and clear of any liens, charges, Claims or encumbrances to which the Company or any other Signatory would otherwise be entitled to benefit, and which (in conjunction with Clause 4.4.1(ii) and Clause 4.4.1(iii)) shall be in full and final satisfaction of the Signatory's Modified Claims; and
 - (b) each other Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Assets delivered to the Signatory as the Distribution; and
- (ii) upon any Appropriation pursuant to this Agreement:

- (a) the Company shall receive full title (to the extent that the Signatories are able to convey such title) to those Assets so Appropriated by the Company, free and clear of any liens, charges, Claims or encumbrances to which any Signatory would otherwise be entitled to benefit; and
- (b) each Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Assets of the Signatory so Appropriated; and
- (iii) upon any retention, transfer or disposition of Surplus Assets pursuant to this Agreement:
 - (a) the Company shall receive full title (to the extent that the Signatories are able to convey such title) to those Surplus Assets, free and clear of any liens, charges, Claims or encumbrances to which any Signatory would otherwise be entitled to benefit; and
 - (b) each Signatory shall waive and release all their Ownership Claims against the Released Parties, to those Surplus Assets so retained, transferred or disposed.

4.4.2 Released Claims

All Signatories shall have their Released Claims exchanged for the following, as appropriate:

- (i) the right to have their Net Contractual Position, Allocations, Distributions and Appropriations determined on the basis set out in this Agreement;
- (ii) the right to claim as a new obligation of the Company their Net Financial Claim (if any); and
- (iii) an Ascertained Claim (if any) for such amount as is determined under this Agreement,

(together with the Modified Claims as modified by Clause 4.4.1, the "**New Claims**").

4.5 Conveyance

For the purpose of any Distribution, Appropriation, retention, transfer or disposition of any Assets contemplated by Clause 4.4.1 (or otherwise by this Agreement) in relation to a Signatory, such Signatory hereby transfers and assigns those Assets, and all its right, title and interest in those Assets, to the recipient specified in this Agreement; and agrees, so far as permitted by applicable law, to sign and execute all such documents and do all such further acts and things as may be necessary, in the opinion of the Company, to give effect to each such transfer and assignment.

4.6 Third Party Obligations

4.6.1 Surviving Claims

If the release of a Claim against the Company by a Signatory pursuant to Clause 4.2 would affect a guarantee, indemnity or other obligation given by a Third Party in respect of that Claim (a "**Third Party Obligation**"), such that the Third Party Obligation would be extinguished by such release, then, notwithstanding Clause 4.2, that Released Claim (a "**Surviving Claim**") shall not be released by the Signatory but shall

continue to exist to the extent necessary for the Third Party Obligation to remain effective despite the acquisition of a corresponding New Claim.

4.6.2 No entitlement to enforce Surviving Claims

Notwithstanding Clause 4.6.1, no Signatory or any person who may derive a Claim in respect of a Surviving Claim, whether by reason of subrogation or otherwise, shall be entitled to make, enforce or prove any Claim against the Company in respect of such Surviving Claim, whether in any legal proceedings, by way of proof in any insolvency proceedings affecting the Company or by way of set-off, netting, counterclaim or attachment.

4.6.3 Signatories' rights in respect of Surviving Claims

Surviving Claims shall be taken into account by the Company for the purposes of calculating the New Claims of the relevant Signatory against the Company in accordance with this Agreement as though they were Released Claims that are not Surviving Claims.

4.6.4 Discharge of Surviving Claims

Satisfaction by the Company of a New Claim in respect of a Surviving Claim of the Signatory shall constitute a valid discharge pro tanto of the Surviving Claim against the Company.

4.7 Waiver of Claims relating to Intermediary and Sub-Intermediary

Each Signatory irrevocably waives any Claims it may have against:

- 4.7.1 any Intermediary or Sub-Intermediary for or in respect of Assets held by that Intermediary or Sub-Intermediary at the Time of Administration that have been Appropriated by the Company to Reduce such Signatory's Distribution Liabilities pursuant to Clause 60; and
- 4.7.2 any Intermediary, Sub-Intermediary or the Company for or in respect of any Intermediary Retention.

4.8 Post-Administration Client Money comprising Derived Assets

4.8.1 Each Signatory hereby irrevocably:

- (i) effects an absolute assignment to AssignCo of all and any Post-Administration Client Money Claims which comprise Derived Assets ("**Assignable Post-Administration Client Money Claims**") and all of its rights with respect thereto. The Company, acting as authorised agent of AssignCo, hereby accepts such assignment;
- (ii) directs the Company to pay any Post-Administration Client Money relating to, or proceeds of, an Assignable Post-Administration Client Money Claim ("**Assignable Post-Administration Client Money**") that would, but for Clause 4.8.1(i), have been made to the Signatory to a bank account opened in the name of AssignCo (such account, the "**Post-Administration Client Money Collection Account**") and the Signatory agrees that AssignCo shall be entitled to retain such amount absolutely for its own account without any obligation to account for it to the Signatory; and

- (iii) agrees that each payment by the Company in accordance with Clause 4.8.1(ii) in respect of Assignable Post-Administration Client Money held on the Statutory Trust shall constitute a valid discharge pro tanto of the Statutory Trust upon which the Company held the relevant amount of Assignable Post-Administration Client Money for the Signatory and the Company's obligations with respect to the distribution of Derived Assets comprised of such amount of Assignable Post-Administration Client Money.

4.8.2 The modification, waiver and release pursuant to Clause 4.1 and Clause 4.2 shall not affect a Signatory's Assignable Post-Administration Client Money Claims (if any) and, to the extent (if any) necessary to preserve such Assignable Post-Administration Client Money Claims, shall also not affect the obligations giving rise to such Assignable Post-Administration Client Money Claims.

4.8.3 Each Signatory:

- (i) undertakes that if, notwithstanding the assignment in Clause 4.8.1, it receives any amount or benefit in relation to an Assignable Post-Administration Client Money Claim, it shall promptly upon receipt and without need for any demand pay such amount or, as the case may be, the fair value of such benefit to the Post-Administration Client Money Collection Account for AssignCo's account, except to the extent such amounts form part of any Pre-Agreement Returned Asset;
- (ii) irrevocably authorises the Company, AssignCo and the Administrators to take all such action as they may reasonably consider appropriate in the name of, and on behalf of, the Signatory to establish, pursue or enforce any Assignable Post-Administration Client Money Claims;
- (iii) agrees to promptly render such assistance and take such action as the Company, AssignCo or the Administrators may reasonably request in relation to any Assignable Post-Administration Client Money Claims including, without limitation, action to enforce any of the Assignable Post-Administration Client Money Claims to the extent that the assignment in Clause 4.8.1 is, for any reason, ineffective; and
- (iv) agrees not to take any action in relation to any Assignable Post-Administration Client Money Claim (save as provided in this Agreement) or to waive, compromise, dispose of, charge, encumber or otherwise deal with the same except as so requested.

5 Effect of this Agreement on the Company's Claims

5.1 Claims released by the Company

5.1.1 With effect from the Accession Date of each Signatory, the Company shall, subject to Clause 5.1.2, release the Claims against the relevant Signatory for, or in respect of, all rights in respect of any Financial Contracts (together, the "Company Released Claims").

5.1.2 The Company Released Claims shall not include:

- (i) any Claim (including, but not limited to, Claims in respect of, or under, any guarantee) that the Company may have against any person other than the

Signatories, whether arising in respect of any Trust Assets, any other Asset or any other contract;

- (ii) Claims against the Signatories for breach of any of the terms of this Agreement or for any failure on the part of the Signatories to discharge their obligations under this Agreement; and
- (iii) any Antecedent Transaction Liabilities.

5.2 New Claims

The Company shall have its Company Released Claims exchanged for the following:

- 5.2.1 the right to determine the Net Contractual Position, Allocations, Appropriations, Distributions and Ascertained Claims of each Signatory on the basis set out in this Agreement;
- 5.2.2 the right to Claim as a new obligation of the Signatory the Distribution Liabilities, as calculated under this Agreement, from the Signatory; and
- 5.2.3 the right to appropriate such part of the Distributable Trust Assets as is Allocated to a Signatory in or towards the discharge of that Signatory's Distribution Liabilities to the Company, as provided for under this Agreement.

6 Transfer of Positions

6.1 Transfer of Entire Position to a Signatory

Nothing in this Agreement shall prevent a Signatory from Transferring its Entire Position to any other Signatory after the Time of Administration. Such Transferee shall be treated as a Signatory in respect of the Entire Position Transferred to it by the Transferor. The Transferor shall cease to be a Signatory.

6.2 Transfer of Entire Position to a Non-Signatory after the Accession Date

A Signatory shall not Transfer all or any part of its Entire Position to a Non-Signatory after its Accession Date, unless such Non-Signatory becomes a Signatory at or before the time such Transfer is effective, in which case Clause 6.1 shall apply.

6.3 Transferred Position

- 6.3.1 A Signatory who is a Transferee in respect of one or more Transferred Positions shall be treated as a separate Signatory in respect of: (i) its Original Position; and (ii) each such Transferred Position, for the purposes of calculating its rights and Liabilities under the Agreement, such that its Claims against the Company and Liabilities owed to the Company pursuant to each such Transferred Position shall not be aggregated with its Claims against the Company, and Liabilities owed to the Company, comprising its Original Position, or any Claims against the Company, and Liabilities owed to the Company, arising under other Transferred Positions.
- 6.3.2 The Distribution Assets and the Distribution Liabilities under the Original Position and each Transferred Position may be applied towards the Reduction or Appropriation of, or collateralised against, each other in the same way and to the same extent as the Transferor would have been entitled to had it been a Signatory, but, for the avoidance of doubt, such Distribution Assets and such Distribution Liabilities shall not be applied

under this Agreement towards the Reduction or Appropriation of, or collateralised against:

- (i) any Distribution Liabilities or any Distribution Assets (as applicable) of the Transferee in respect of the Transferee's Original Position; or
- (ii) any Distribution Liabilities or any Distribution Assets (as applicable) of the Transferee in respect of any other Transferred Position.

6.4 Transfers of Trust Assets to the Company

Nothing in this Agreement shall restrict any Signatory or Non-Signatory from Transferring any Trust Asset (or interest in a Trust Asset) to the Company for such consideration as may be agreed between the Company and such Signatory or Non-Signatory, including the Reduction of any Liability of such Signatory or Non-Signatory to the Company, whether or not under this Agreement.

6.5 Notice of Transfer

Each Signatory who is a Transferor, or who is a Transferee, undertakes to Notify the Company of the relevant Transfer, including sufficient detail for the Company to determine what Positions have been so Transferred by, or to, it respectively.

7 No double counting

7.1 Intermediary Distribution

If a Signatory receives or has received an Intermediary Distribution, whether before or after its Accession Date, any subsequent Allocation Amount(s) which would have been Allocated to such Signatory up to the Excess Value shall be Allocated to other Signatories in respect of the same Asset Pool in accordance with Clause 45.3.7.

7.2 Intermediary Retention

If the Company receives or has received an Intermediary Retention in respect of a Signatory whether before or after its Accession Date, the relevant Intermediary Retention shall Reduce pro tanto the Distribution Liabilities of that Signatory in accordance with Clause 55.4.3.

7.3 Breach of moratorium in relation to Non-Trust Assets

If a Signatory successfully asserts a Claim, whether in breach of Clause 8.1 or otherwise, against Non-Trust Assets in respect of a Liability owed to it by the Company which has been taken into account in the determination of that Signatory's Net Contractual Position, Asset Shortfall Claim or Ascertained Claim, then the value (as determined by the Company) of any benefits which have been received by or on behalf of that Signatory from the Company by way of delivery of Securities, payment of cash, set-off or otherwise, as a result of the successful assertion of such Claim, as at the date upon which the Company makes such delivery or payment or applies such set-off, shall be applied in or towards discharge or reduction of any Net Financial Claim, Asset Shortfall Claim or Ascertained Claim which that Signatory has against the Company. If the value of such benefits exceeds such relevant Net Financial Claim, Asset Shortfall Claim or Ascertained Claim, then such excess shall be a Non-Financial Contract Liability, except to the extent of that Signatory's receipts under any Third Party Obligation.

7.4 Breach of moratorium in relation to a Released Claim or a Modified Claim

If a Signatory obtains against the Company in relation to a Released Claim or a Modified Claim, an order, judgment, decision or award of a court or tribunal, whether in contravention of Clause 8.1 or otherwise, and the Company is required by such court or tribunal to deliver, or otherwise pay the realisation proceeds of, any Distributable Trust Assets of an Asset Pool in or towards the satisfaction of such order, judgment, decision or award, the Value of such Distributable Trust Assets so delivered or realised, as at the date of delivery or realisation, shall be a "Recoverable Delivery Value" and any subsequent Allocation Amount(s) which would have been Allocated to such Signatory up to the Excess Value shall be Allocated to another Signatory in respect of the same Asset Pool in accordance with Clause 45.3.7. To the extent that the sum of: (i) the Recoverable Delivery Value; and (ii) the aggregate Value, as at the Provisional Valuation Date, of all the Assets which have been Allocated to that Signatory in respect of the relevant Asset Pool exceeds the sum of the Value as at the Provisional Valuation Date and of each Asset that is included in its TA Claimant Amount in respect of that Asset Pool, such excess shall be a Non-Financial Contract Liability.

7.5 No double counting in respect of same Asset or Claim

To the extent not already provided for in Clause 7.1 to Clause 7.4, no Signatory will be entitled to recover more than once in respect of the same Asset or Claim, except in the case of recoveries pursuant to any Third Party Obligation (provided that the full amount recovered shall not exceed the original Claim).

8 Moratorium

8.1 No Proceedings against the Company or Creditors' Committee Group

Upon and with effect from the Effective Date, absent any fraud, no Signatory shall be entitled to take, commence or continue any Proceedings against the Company, the Creditors' Committee Group, the Administrators, the Advisers, or their firms, members, agents, partners or employees in any jurisdiction whatsoever in relation to any Released Claim or any Modified Claim except as expressly agreed by the Company or, in the case of any Proceedings against the Creditors' Committee Group, as expressly agreed by the Creditors' Committee.

8.2 No Asset Claim and no double counting

If and to the extent that a Signatory obtains against the Company in relation to a Released Claim or a Modified Claim, an order, judgment, decision or award of a court or tribunal in contravention of Clause 8.1, such order, judgment, decision or award shall not give rise to an Asset Claim and shall, subject to Clause 7.3, be disregarded when determining the Liability of the Company under this Agreement.

8.3 Enforcement of Agreement by Signatory

Nothing in this Clause 8 shall prejudice the enforcement by a Signatory of its rights under this Agreement or preclude a Signatory or the Company from applying to the Court to determine any matter arising under it or in relation to this Agreement (save to the extent that the Dispute Resolution Mechanism provides otherwise).

8.4 Enforcement of Agreement by Company

Nothing in this Agreement shall preclude the Company from taking, commencing or continuing any Proceedings against a Signatory to the extent that they do not comply with their

obligations under this Agreement, or in respect of any dispute regarding New Claims or Excluded Claims.

9 Release of Liability

9.1 Release and waiver by Signatories

Each Signatory hereby waives and releases fully and absolutely:

- 9.1.1 each and every Ownership Claim it may have in respect of any Pre-Agreement Provisionally Returned Assets and Pre-Agreement Returned Assets and each and every Claim in respect of such Assets that it may have against any person to whom the Company shall have returned such Assets other than in its capacity as the Pre-Agreement Provisionally Returned Asset Recipient;
- 9.1.2 the members of the Creditors' Committee Group in their capacity as such from any Liability (whether present, future, actual, prospective or contingent) that they may have to any Signatory or the Company arising in connection with the preparation and negotiation of this Agreement and in connection with their acts, omissions or defaults under this Agreement as members of the Creditors' Committee Group;
- 9.1.3 each and every Claim the Company and each of the Signatories may have in connection with the negotiation and preparation of this Agreement against the members of the Creditors' Committee Group;
- 9.1.4 the Administrators, the Advisers and their firms, members, agents, partners and employees from any Liability (whether present, future, actual, prospective or contingent) that they may have to any Signatory arising in connection with the preparation and negotiation of this Agreement and in connection with their acts, omissions or defaults under or in connection with this Agreement; and
- 9.1.5 each and every Claim each of the Signatories may have in connection with the negotiation and preparation of this Agreement against the Administrators, the Advisers and their firms, members, agents, partners and employees.

9.2 Creditors' Committee Group indemnity

The Company shall indemnify the members of the Creditors' Committee Group against all costs, charges, expenses and Liabilities suffered or properly incurred by each of them, in such capacity, as a result of a breach by any Signatory of its obligations under Clause 8.1.

10 Priorities of the Company under this Agreement

The Company may, in its absolute discretion:

- (i) determine the Asset Claims, Net Contractual Positions, Allocations, Retention Claims, Distributions, Appropriations and deliveries in respect of TA Signatories first, prior to determining the Net Contractual Positions of the NTA Signatories;
- (ii) deal with the Disputes from TA Signatories first, prior to those of NTA Signatories; and
- (iii) deal with any Signatory, or any group of them, within each group of TA Signatories, or NTA Signatories, in such order as the Company sees fit,

provided that this does not conflict with the terms of this Agreement.

PART 2: ASSET CLAIMS AND BAR DATE

11 Asset Claims and Bar Date

11.1 Notification of Bar Date

The Company shall, as soon as practicable following the Effective Date, Notify each TA Signatory in accordance with Clause 89 and place an advertisement in accordance with Clause 91 to inform the TA Signatories of the Bar Date of this Agreement.

11.2 Procedures for TA Signatories to provide information in relation to Asset Claims

11.2.1 Each TA Signatory may submit any information in relation to its Asset Claims by amending or confirming the information that is available on the Portal in accordance with Clause 89.1.1 and, where necessary, provide any supplementary information in order for the Company to determine its Asset Claims. To the extent not so confirmed or amended by such TA Signatory, the Company shall treat such information as true and accurate.

11.2.2 A TA Signatory may submit any information in relation to its Asset Claim other than in accordance with Clause 89.1.1, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed), provided that, for the purposes of this Clause 11.2.2, it shall not be unreasonable for the Company to withhold its consent where submission of such information by a TA Signatory other than in accordance with Clause 89.1.1 would require the Company to expend disproportionate costs, time or effort in dealing with such information.

11.2.3 Any TA Signatory who has not received a User ID and Password for the Portal from the Company shall contact the Company in accordance with Clause 89.3 as soon as practicable after its relevant Accession Date to obtain a User ID and Password for the Portal.

11.3 Failure to submit Asset Claims

11.3.1 Subject to Clause 12, to the extent that a TA Signatory does not submit any information in relation to its Asset Claims in accordance with Clause 11.2.1 and Clause 11.2.2 to the Company by 5.00 p.m. (London time) on the Bar Date, the Company shall determine such Signatory's entitlements under this Agreement at any time after the Bar Date using Relevant Information relating to such Signatory that is available to the Company at the time of such determination.

11.3.2 The Company shall, subject to Clause 12.3 and Clause 50, still take into account any Relevant Information relating to a Stock Line or Asset Pool submitted by a TA Signatory on any day after the Bar Date, for the purpose of Allocation for that Stock Line or Asset Pool, but any Assets for which instructions for settlement in respect of their Distribution or Appropriation have already been given will not be taken into account as Distributable Trust Assets of that Stock Line or Asset Pool.

11.4 Superseding

If a TA Signatory has previously submitted any information in respect of its Asset Claims, such TA Signatory may only submit new or further information in respect of its Asset Claims that was previously submitted by such TA Signatory by amending such information via the Portal (or otherwise as the Company directs).

11.5 Withdrawal of Asset Claims

A TA Signatory may withdraw its Asset Claims and any related information at any time by giving a Notice to the Company by electronic mail.

PART 3: RELEVANT INFORMATION

12 Information

12.1 Relevant Information

For the purposes of making a determination in respect of a Signatory pursuant to this Agreement, the Company shall have regard to the following information to the extent available to it at the time of such determination:

- 12.1.1 information that is capable of being ascertained by the Company from its Books and Records;
- 12.1.2 information made available to the Company by a TA Signatory in relation to its Asset Claims in accordance with Clause 11.2, including any information that has been uploaded by the Company on the Portal in relation to a TA Signatory;
- 12.1.3 any information made available by a Signatory or Non-Signatory to the Company before or after the Bar Date;
- 12.1.4 information contained in Notices received by the Company pursuant to this Agreement;
- 12.1.5 information made available to the Company by Intermediaries, Sub-Intermediaries and Affiliates;
- 12.1.6 information made available to the Company by any relevant exchanges; and
- 12.1.7 information which may be taken into account when determining any Close-Out Amount of any Financial Contract and any Value of any Relevant Asset in accordance with this Agreement, whether provided by a Signatory or a Third Party or otherwise available to the Company, which shall include, for the avoidance of doubt, any information provided by a Signatory pursuant to Clause 14,

(together, the "Relevant Information").

12.2 Discretion to use any information

The Company may, in its absolute discretion, take into account any information which is not Relevant Information for the purposes of making determinations in respect of a Signatory pursuant to this Agreement, and may, in its absolute discretion, take into account any information which comes into its possession after making such determinations, whether in response to a request for supplementary information or otherwise.

12.3 Disregarding information due to costs, time or effort

Notwithstanding Clause 12.2 and Clause 14, the Company shall be entitled to disregard information received after the Bar Date, from a Signatory or any other person, where it would not be reasonably practicable for the Company to take such information into account because of the disproportionate costs, time or effort required to interpret such information.

12.4 Incomplete or missing information in Asset Claims

- 12.4.1 Each Signatory shall be solely responsible for the cost of providing any information to the Company, including any information in relation to its Asset Claims, which shall be submitted at the Signatory's risk. The Company shall have no obligation, responsibility or Liability for incomplete or missing information or any errors in information, including information relating to its Asset Claims.

12.4.2 If any information provided by a Signatory is ambiguous, unclear or insufficient, the Company may request by Notice that the relevant Signatory provides supplementary information, at the cost of such Signatory. In the absence of a satisfactory response to such a request within 20 Business Days of the Notice, the Company may disregard such unclear or ambiguous information or may, acting in a commercially reasonable manner, attribute a clarificatory meaning. Where the information provided by the Signatory is insufficient, the Company may use its Relevant Information.

12.5 Reversal of Failed Trade Entry

Any Failed Trade Entry shall be reversed, unless such Failed Trade Entry recorded a Connected Trade (or Connected Trades) as well as a Failed Trade, in which case, such Failed Trade Entry shall be replaced with a new entry in the Books and Records of the Company to reflect the status of such Connected Trade (or Connected Trades) without regard to the Failed Trade.

13 Confidentiality

13.1 Waiver of confidentiality by Signatories

All Signatories hereby waive, to the maximum extent permitted by law, any breach of confidentiality arising from the operation of this Agreement and authorise the Company to disclose to any other person any information which the Company is required to disclose or considers to be necessary or desirable to disclose to enable this Agreement to be administered effectively and/or for the purposes of disclosure as set out in Clauses 13.2, 13.3 and 13.4.

13.2 Deletion of identity of Signatories

Where the Company discloses any Relevant Information to any other person in accordance with this Clause 13.1, the Company shall have all references to the identity of a Signatory deleted unless the Company determines that references to the identity of a Signatory are necessary to assist the purpose of disclosure.

13.3 Disclosure of information to authorities and CAPCO

Clause 13.2 shall not restrict or prevent:

- 13.3.1 any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange or any enquiry or investigation by any governmental, official or regulatory body which is lawfully entitled to require such disclosure; or
- 13.3.2 any disclosure by the Company to CAPCO of any information received or generated by the Company pursuant to this Agreement to the extent that such information is requested or required by CAPCO.

13.4 Disclosure of identity of Signatories bringing Claims in breach of this Agreement

Clause 13.2 shall not restrict or prevent any disclosure by the Company to a Signatory against whom Proceedings in any court of competent jurisdiction have been brought, of whether the person bringing such Proceedings is a Signatory.

14 Incompletely Documented Agreement

14.1 Incompletely Documented Agreement

If, in respect of any contract, agreement or arrangement between the Company and a Signatory, it is not possible to ascertain solely from the Books and Records of the Company the terms applicable to that contract, agreement or arrangement (an "**Incompletely Documented Agreement**"), then the Company shall have regard to all Relevant Information and shall use its reasonable endeavours to make enquiry of the Signatory to determine if any, or any further, information is available to ascertain the terms of such Incompletely Documented Agreement. If any such information is available and the Signatory provides such information so that it is received by the Company within 10 Business Days of the Company's enquiry, the Company and the Signatory shall then use their reasonable endeavours to agree the terms and conditions which apply to such Incompletely Documented Agreement.

14.2 Standard Terms

If no further information is available and provided within 10 Business Days of the Company's enquiry by the relevant Signatory or if the Company and the relevant Signatory are unable to agree on the terms and conditions that apply to an Incompletely Documented Agreement, then the terms and conditions of such Incompletely Documented Agreement shall be determined by the Company, based on any information it then has in its possession, as supplemented by those terms and conditions which customarily applied at the relevant time to any contract, agreement or arrangement of a substantially similar type which the Company had entered into with other comparable counterparties (the "**Standard Terms**").

PART 4: MANAGEMENT OF ASSETS PRIOR TO DISTRIBUTION

15 Corporate Events, Corporate Actions and Derived Assets

15.1 Corporate Actions

The Company shall deal with Corporate Actions occurring in relation to Relevant Securities which are Trust Assets subject to the conditions set out in this Clause 15.

15.2 Information relating to Corporate Actions

If a Corporate Action arises in respect of Relevant Securities which are Trust Assets and either:

- (i) it is of the type described in Clause 15.7; or
- (ii) a TA Signatory has Notified the Company in writing of an instruction regarding such Corporate Action,

then the Company will use reasonable endeavours to identify the following information:

- 15.2.1** the identity of the Relevant Securities;
- 15.2.2** the nature of the Corporate Action, including its commercial terms;
- 15.2.3** the amounts of the Relevant Securities held in different Intermediaries or Sub-Intermediaries and the nature of such accounts;
- 15.2.4** the identity of TA Signatories and TA Non-Signatories to which such holdings appear to be attributable and the amounts of the Relevant Securities attributable thereto; and
- 15.2.5** whether any Failed Trades are outstanding in relation to the Relevant Securities.

15.3 No obligation on the Company

The Company shall be under no obligation to take any steps with regard to any Corporate Action save as provided in this Clause 15.

15.4 Conditions for Corporate Actions

In the case of a Corporate Action which falls within Clause 15.2(ii), the Company will not take any action in relation to such Corporate Action unless:

- 15.4.1** the Company has received clear and unambiguous instructions from a TA Signatory in relation to such action ("**Instructions**");
- 15.4.2** the relevant TA Signatory has agreed to pay a fee (the "**Corporate Action Fee**") to the Company in consideration of the Company agreeing to use reasonable endeavours to follow the Instructions;
- 15.4.3** the Company, acting in a commercially reasonable manner, considers that there are reasonable grounds to believe that such TA Signatory may be Allocated the Securities which are the subject of the Instructions (the "**Relevant Securities**"). Any view taken by the Company is without prejudice to any final determination under this Agreement as to whether the Relevant Securities are ultimately Allocated to the relevant TA Signatory;
- 15.4.4** the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in

connection with such action. The Company shall exercise its discretion in respect of these matters as it sees fit having regard to the interests of the creditors of the Company as a whole; and

- 15.4.5 the Company has determined that it is reasonably practicable for the Company to effect the Instructions in the time available.

15.5 Corporate Action Fee

The Corporate Action Fee referred to in Clause 15.4.2 will be US\$3,000 (plus any applicable VAT) and is payment in or towards reimbursement of the costs incurred by the Company in dealing with the Instructions. The Company reserves the right to increase the Corporate Action Fee if the Company, acting in a commercially reasonable manner, concludes that the costs relating to the Instructions will be materially higher than US\$3,000.

15.6 Procedure for carrying out Instructions

Unless modified by bilateral agreement between the Company and the TA Signatory, any TA Signatory that provides the Company with Instructions in relation to a Corporate Action shall also be deemed to have acknowledged and confirmed to the Company that, by providing such Instructions, it thereby:

- 15.6.1 indemnifies all of the Company Released Parties from and against any Claims and losses, Liabilities, costs (including, without limitation, legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, Claims and demands arising out of or in connection with the carrying out of the Instructions; and

- 15.6.2 acknowledges and agrees that:

- (i) it waives any right of action it may have against the Company Released Parties arising out of, in connection with, or as a result of the carrying out of the Instructions;
- (ii) the Company shall be entitled to deal with any proceeds realised as a result of carrying out the Instructions (the "**Realisation**") as the Company sees fit (in its absolute discretion) until such time as the Company has ascertained to its satisfaction the extent of the relevant TA Signatory's entitlement (if any) to the Realisation;
- (iii) by carrying out the Instructions, the Company does not:
 - (a) make any admission that the Company is or was obliged to carry out the Instructions;
 - (b) agree that the Company will carry out any other instructions received from the relevant TA Signatory;
 - (c) accept that the relevant TA Signatory has any entitlement to the Realisation of the Relevant Securities; or
 - (d) make any admissions that any part or whole of the Realisation constitutes Trust Assets;
- (iv) in carrying out the Instructions, the Company reserves all rights in relation to the foregoing and that, in particular, the Company's carrying out of the Instructions and all steps relating thereto are without prejudice to this

Agreement or any other agreements between the relevant TA Signatory and the Company;

- (v) the Corporate Action Fee shall be payable within three Business Days of the date upon which the relevant TA Signatory agrees to pay it and, if not so paid, shall, at the election of the Company, be deductible from any combination of:
(a) any Realisation; (b) any amount that the Company determines to be payable by it to the relevant TA Signatory; or (c) the proceeds of sale of such relevant Trust Assets as may be required, and, for these purposes, the Company may make any necessary currency conversion. The Corporate Action Fee shall be payable without set-off, deduction, counterclaim or the exercise of any liens, any right to which is waived by the relevant TA Signatory;
- (vi) the Administrators act as agents for and on behalf of the Company, and in doing so they and their firms, members, agents, partners, employees and their representatives shall not incur any personal liability whatsoever in relation to steps taken by the Company in connection with the Instructions. This acknowledgement of the exclusion of liability shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims in tort as well as under the laws of contract and each of the Administrators, their firms, members, agents, partners and employees shall be entitled to rely on, enforce and enjoy the benefit of this acknowledgement;
- (vii) the Company Released Parties shall not be responsible for any failure on the part of any person to comply with any instruction the Company may give to them or carry out or make any transaction or payment contemplated in the Instructions; and
- (viii) if the Relevant Securities are held through an Intermediary or Sub-Intermediary over which the Company has no or restricted access, it may not be possible to effect the Instructions or to ascertain if the Instructions have been effected.

15.7 Corporate Action without Instructions

If no Instructions have been received and the relevant Corporate Action is:

- 15.7.1** subject to Clause 15.7.2, the grant of tradable subscription rights to holders of the relevant Securities, then, if not otherwise automatically sold in the relevant market, such rights shall be sold by the Company at a price and time determined by it in its absolute discretion; or
- 15.7.2** the grant of bonus rights to holders of the Relevant Securities which require no payment to be made, then such rights shall be taken up.

15.8 No action to be taken if payment is required

The Company shall not be required to take any action regarding Trust Assets in respect of Corporate Actions to the extent that it requires a payment to be made by the Company. The Company may take such action in any event if the Company considers that to do so will ultimately be more beneficial to the creditors of the Company as a whole.

15.9 No Corporate Action if below de minimis level

The Company shall not be required to take any action regarding Trust Assets in respect of Corporate Actions to the extent that the Company determines, acting in a commercially reasonable manner, that the value (as determined by the Company) of such Corporate Action is below a de minimis level determined by the Company from time to time.

15.10 Failed Trades

If, in relation to a Corporate Action, any Failed Trades are outstanding in respect of Trust Assets and the relevant TA Signatory would, were it not for such failure to settle, have sold or transferred the Relevant Securities to one or more Third Parties, no action will be taken in respect of that Corporate Action unless each such Third Party gives, in a form satisfactory to the Company, its written consent to the proposed Corporate Action and waives any right of action against the Company Released Parties arising out of, in connection with, or as a result of, the carrying out of the Instructions.

15.11 Corporate Event

Each of the following shall be a Corporate Event:

15.11.1 payment of a dividend;

15.11.2 payment of a coupon;

15.11.3 payment of a redemption amount;

15.11.4 an exchange of a security for a security, of a security for cash, of a security for any other securities or assets, or of a security for any combination of these; and

15.11.5 any other analogous or similar event,

in each case, where the relevant event would not qualify as a Corporate Action.

15.12 Derived Assets form part of Trust Assets

To the extent that any Derived Assets are actually received by the Company (or otherwise constitute Distributable Trust Assets) as a result of the occurrence of a Corporate Action or a Corporate Event, such Derived Assets will be accounted for as part of the Trust Assets from which they are derived.

16 Undertakings by the Company in respect of the Trust Assets

16.1 Standard of care of the Company

The Company shall act in accordance with the standard of care imposed on a fiduciary in respect of the Trust Assets to the TA Signatories. Consistent with that standard of care, the Company shall not, save as provided in this Agreement:

16.1.1 take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to take, any action which would result in any Distributable Trust Assets ceasing to be Distributable Trust Assets; or

16.1.2 omit to take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to omit to take, any action the omission of which would result in Distributable Trust Assets ceasing to be Distributable Trust Assets.

16.2 Exceptions to the standard of care

However, notwithstanding Clause 16.1:

16.2.1 nothing in this Agreement shall impose on the Company more extensive obligations than its obligations prior to Administration; and

16.2.2 the Company shall not be obliged to take any action, or omit to take any action, or procure the same in respect of any other person (to the extent it has power in its capacity as fiduciary to do so), unless the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in connection with such action or omission.

16.3 The Company acting as trustee of the Trust Assets

The Company shall, to the extent that it is able to do so in its capacity as trustee, use all reasonable endeavours to gather in Trust Assets and to remove any impediment on Assets being Distributable Trust Assets, provided that the Company shall not be required to transfer any asset to which the Company is absolutely entitled nor to expend any amount on discharging any Liability unless and to the extent that the Company will be indemnified for, and on behalf of, the Signatories for the expense of so doing or where the net value of the Assets of the Company will not be decreased as a result.

16.4 Appropriation Rights of the Company

From the Effective Date, the Company shall not appropriate for itself any Trust Assets save in accordance with, and to the extent of, its Appropriation Rights or as otherwise permitted by this Agreement.

PART 5: ASSET VALUATION METHODOLOGY

17 Asset Valuation Methodology

17.1 Asset Valuation Methodology

The Value of: (i) any Unpaid Amount Deliverable; and (ii) any other Security (each such Security being Valued, a "Relevant Asset") as at the relevant Asset Valuation Date shall be an amount in US dollars determined by the Company in accordance with the following provisions (the "Asset Valuation Methodology"):

17.1.1 Proceeds of sale: if the Company sells or has sold on that date a Security that is fungible with, or otherwise substantially economically equivalent to, the Relevant Asset, the proceeds of sale; or

17.1.2 Reported price: if Clause 17.1.1 does not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v):

(i) **Reported mid-market price:** if a single price (not being a bid price or an offer price) for the Relevant Asset is quoted on a generally recognised exchange or quotation system or published by a generally recognised price source for the Relevant Asset and the quotation or publication of such price is not suspended on the relevant Asset Valuation Date, the single price for the Relevant Asset so quoted or published at 5.00 p.m. in the relevant market on the relevant Asset Valuation Date; or

(ii) **Arithmetic mean of reported bid price and offer price:** if a bid price and an offer price for the Relevant Asset are both quoted on a generally recognised exchange or quotation system or published by a generally recognised price source for the Relevant Asset and the quotation or publication of such bid price and offer price is not suspended on the relevant Asset Valuation Date, the arithmetic mean of the bid price and the offer price so quoted or published at 5.00 p.m. in the relevant market on the relevant Asset Valuation Date; or

17.1.3 Mid-market value using firm quotations: if Clause 17.1.1 and Clause 17.1.2 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), if the Company has obtained one or more firm bid quotations and one or more firm offer quotations in respect of the Relevant Asset from market makers or regular dealers in an appropriate market for such Asset on the Asset Valuation Date, then the mid-point between: (i) such bid quotation (or, if there are two or more such bid quotations, the arithmetic mean of such bid quotations); and (ii) such offer quotation (or, if there are two or more such offer quotations, the arithmetic mean of such offer quotations); or

17.1.4 Mid-market value using indicative quotations: if Clauses 17.1.1 to 17.1.3 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), if the Company has obtained one or more indicative bid quotations and one or more indicative offer quotations in respect of the Relevant Asset from market makers or regular dealers in an appropriate market for such Asset on the Asset Valuation Date, then the mid-point between: (i) such bid quotation (or, if there are two or more such bid quotations, the arithmetic mean of such bid quotations); and (ii) such offer quotation (or, if there are two or more such offer quotations, the arithmetic mean of such offer quotations); or

17.1.5 Fallback valuation: if Clauses 17.1.1 to 17.1.4 do not apply, subject to Clause 17.1.6(i) to Clause 17.1.6(v), the fair market value (which shall be based on mid-

market pricing and may be zero) for the Relevant Asset on the relevant Asset Valuation Date, as determined by the Company, for which purpose the Company may take into account any Relevant Information, including, without limitation, one or more of the following types of information:

- (i) any bid or offer prices on or about the relevant Asset Valuation Date in respect of the Relevant Asset or Assets which are comparable to the Relevant Asset, customary bid-offer spreads for the Relevant Asset or Assets which are comparable to the Relevant Asset and any historical trading prices in respect of the Relevant Asset or Assets which are comparable to the Relevant Asset, as published by any exchange or quotation system or other generally recognised price source;
- (ii) market data in respect of the relevant market supplied by one or more third parties or derived from internal sources, including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations; and
- (iii) the results of the operation of any models or other pricing methodologies, including manual or automated calculations performed by the Company's personnel using existing or reinstated systems of the Company (including the use of statistical inference techniques) or the proprietary pricing models of, or information supplied by, one or more third parties selected by the Company.

17.1.6 Provisos to Asset Valuation Methodology: Clauses 17.1.2 to 17.1.5 are subject to the following:

- (i) the Company has no obligation to solicit or obtain a specific number of quotations, values or prices and may seek any number of quotations, values or prices that it considers appropriate;
- (ii) the Company may discard quotations, values or prices that it has obtained where it determines this to be appropriate in the circumstances, in particular where the Company believes that the discarded quotations, values or prices would have a distorting effect on any arithmetic mean;
- (iii) the time as at which quotations are to be obtained will be selected by the Company;
- (iv) if only bid quotations, values or prices or only offer quotations, values or prices are made available to the Company, then the Company may determine the mid-market value for the Relevant Asset by reference to the historical bid-offer spreads for the Relevant Asset or customary bid-offer spreads for Assets comparable to the Relevant Asset, as determined by the Company; and
- (v) notwithstanding Clause 17.1.6(i) to Clause 17.1.6(iv) above, if the Company determines that: (a) it would not be commercially reasonable to determine the Value in accordance with Clause 17.1.2, Clause 17.1.3 or Clause 17.1.4; or (b) the Value that would otherwise have been determined under Clause 17.1.2, Clause 17.1.3 or Clause 17.1.4 does not represent the fair market value of the Relevant Asset, then the Company may determine the Value of the Relevant Asset in accordance with Clause 17.1.5.

17.2 Valuations as at the Date before Administration

For the avoidance of doubt, valuations required to be made as at the Date Before Administration shall disregard all subsequent Corporate Actions and Corporate Events and all Derived Assets.

17.3 Adjustment for size

For the avoidance of doubt, the Company may adjust any quotation, value or price obtained or determined in accordance with Clauses 17.1.1 to 17.1.5 to reflect the fact that the amount of the Relevant Asset being Valued in accordance with Clause 17.1 is unusually large or unusually small for such Asset in the relevant market, or where different quotations have been received in smaller amounts to produce an aggregate equivalent to the amount of the Relevant Asset.

17.4 Determinations by the Company

All determinations, valuations and calculations of the Company for the purpose of this Clause 17 shall be performed in a commercially reasonable manner.

17.5 Conversion to US dollars

For the purpose of this Clause 17, amounts denominated in a currency other than US dollars shall be converted into US dollars using the Spot Rate at the Relevant FX Conversion Time.

PART 6: OVERVIEW OF DISTRIBUTION

18 Overview of Distribution mechanism

18.1 Distribution mechanism

Parts 7 to 12 of this Agreement set out the mechanism for determining: (i) in respect of each Signatory, the Net Contractual Position; and (ii) in respect of each TA Signatory:

- 18.1.1 any Retention Amount;
- 18.1.2 its Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities);
- 18.1.3 its TA Claimant Amount to each Asset Pool;
- 18.1.4 the Identification of Assets that constitute Distributable Trust Assets for each Asset Pool;
- 18.1.5 Allocations of Distributable Trust Assets;
- 18.1.6 Distributions and Appropriations of Distribution Assets;
- 18.1.7 any Asset Shortfall Claim in respect of an Asset Pool; and
- 18.1.8 the delivery and payment of Distributions.

18.2 Determination procedure

- 18.2.1 In respect of each TA Signatory, the Net Contractual Position, any Retention Amount, Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities) and any Allocation may be determined independently of each other prior to Distribution and Appropriation of Distribution Assets to such TA Signatory.
- 18.2.2 In respect of each TA Signatory, any Net Contractual Position, Retention Amount and Ascertained Non-Financial Contract Liabilities (including its Limited Ascertained Non-Financial Contract Liabilities) will be determined on a per TA Signatory basis. Allocations of Distributable Trust Assets to TA Signatories will be determined on a per Stock Line basis (other than for Affected Intermediaries). Allocations of Distributable Trust Assets of a Stock Line are dependent upon: (i) the Identification of Trust Assets of that Stock Line that constitute Distributable Trust Assets for that Stock Line; and (ii) determination of the TA Claimant Amount of all TA Signatories and Non-Signatories to that Stock Line. Interim Allocations for a Stock Line may be determined pending the resolution of any Dispute over the Company's determination of a TA Claimant Amount. Allocations of Distributable Trust Assets from Affected Intermediaries to TA Signatories shall be done on a per Affected Intermediary basis.
- 18.2.3 Distributions and Appropriations will only be determined in respect of a TA Signatory and an Asset Pool, when the following have been ascertained: (i) that TA Signatory's Net Contractual Position; (ii) whether that TA Signatory has a Retention Amount and, if so, its amount; (iii) that the Allocation of Assets of the same Asset Pool is not a De Minimis Allocation; and (iv) whether any Non-Financial Contract Liabilities as described in Clause 33.1 and Clause 33.4 have become Ascertained Non-Financial Contract Liabilities and which of those are Limited Ascertained Non-Financial Contract Liabilities. Any Asset Shortfall Claim will only be determined in respect of a TA

Signatory and an Asset Pool, when all Assets of that Asset Pool have been Allocated pursuant to a Last Allocation.

18.2.4 The Net Contractual Position will be determined in respect of each NTA Signatory.

18.3 Determination of Net Contractual Position

18.3.1 Each Open Contract between the Company and a Signatory shall be terminated in accordance with Clause 19.

18.3.2 A Close-Out Amount in respect of each Financial Contract between the Company and a Signatory shall be determined in accordance with Part 7.

18.3.3 A Net Contractual Position in respect of all Financial Contracts between the Company and a Signatory shall be determined in accordance with Clause 24 and Clause 25.

18.4 Determination of Retention Amounts

18.4.1 The Company shall determine the Retention Amount in respect of each TA Signatory, from time to time, in accordance with Clause 28.

18.4.2 The handling of Retention Amounts and payments of Retention Amounts to Retention Creditors will be dealt with in accordance with Part 8.

18.5 Determination of Ascertained Non-Financial Contract Liabilities

The Company shall determine from time to time any Ascertained Non-Financial Contract Liabilities in respect of each TA Signatory in accordance with Part 9.

18.6 Determination of Allocation and Asset Shortfall Claim

18.6.1 The Company shall, from time to time, Identify Assets that constitute Distributable Trust Assets for each Asset Pool in accordance with Clause 43.

18.6.2 The Company shall, from time to time, Allocate an amount of Assets which are Distributable Trust Assets to each TA Signatory with a relevant Asset Claim in accordance with Clause 41, Clause 45 or Clause 47, as the case may be.

18.6.3 The Company shall determine the Asset Shortfall Claim of a TA Signatory in accordance with Clause 46 or Clause 48, as the case may be.

18.7 Determination of Appropriations and Distributions

18.7.1 A TA Signatory may elect to discharge its Net Financial Liability and its other Distribution Liabilities in full or in part by Payment to the Company in accordance with Clause 55.4.2.

18.7.2 A TA Signatory may elect to reduce its outstanding Net Financial Liability by the amount of any Collateral Amount that it may have against the Company in accordance with Clause 55.4.4.

18.7.3 A Signatory may elect to make a Collateralisation Election under Clause 59.

18.7.4 After determining the Net Contractual Position of a TA Signatory and one or more Allocations to that TA Signatory in respect of an Asset Pool, the Company will determine Appropriations and Distributions to such TA Signatory in respect of its Allocations in accordance with Part 11.

18.7.5 Appropriations of Distribution Assets of a TA Signatory to Reduce a Signatory's Distribution Liabilities will be effected in accordance with Clause 60.

- (i) Distributions and Appropriations in relation to a TA Signatory with a Net Financial Claim against the Company will be determined in accordance with Clause 60.1.
- (ii) Distributions and Appropriations in relation to a Signatory with a Net Financial Liability to the Company will be determined in accordance with Clauses 60.2 to 60.8.
- (iii) Distributions and Appropriations in relation to Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election shall be determined in accordance with Clause 60.3 and Clause 60.6.
- (iv) Distributions and Appropriations in relation to a Signatory who has made a Client Money Collateralisation Election shall be determined in accordance with Clause 60.4, Clause 60.7 and Clause 60.8.

18.7.6 Deliveries and payments of Distributions to Signatories will be made in accordance with Clause 63.

PART 7: NET CONTRACTUAL POSITION

19 Termination of Financial Contracts

19.1 Effect of this Agreement on Open Contracts

All Open Contracts between the Company and a Signatory shall be terminated in accordance with this Clause 19.

19.2 Defective Notice of Termination

The Company shall have the right to deem any Defective Notice of Termination as having validly terminated the relevant Financial Contract between the Company and the Signatory on the date specified in that Defective Notice of Termination or otherwise in accordance with the terms of the relevant Financial Contract, despite any defect in or uncertainty about the effect of such notice.

19.3 Termination of Open Contracts

Each Open Contract not terminated pursuant to Clause 19.2 shall be deemed to be terminated as between the Company and the relevant Signatory on the relevant Open Contract Termination Date without any action being required to be taken by the Company, notwithstanding any action by or on behalf of the Signatory before the Open Contract Termination Date purporting to terminate such Open Contract.

19.4 General provisions in relation to termination

19.4.1 Any termination of an Open Contract otherwise than pursuant to this Clause 19 shall be void.

19.4.2 The termination of any Open Contract under this Clause 19 shall not prejudice any Ownership Claims of the Signatory which may have existed prior to such termination, which shall survive to the extent that any Ownership Claims survive (subject to any modification) under this Agreement, including those rights that survive pursuant to Clause 93, subject always to any Appropriation Rights.

19.4.3 Subject to Clause 93, no termination of any Open Contract under this Clause 19 shall modify any contract or rights between a Signatory and any Third Party.

20 Close-Out Amount

20.1 Determination of the Close-Out Amount

The Close-Out Amount in respect of each Financial Contract shall be determined by the relevant Determining Party in accordance with the applicable Financial Contract Valuation Methodology. For the avoidance of doubt, the Overriding Valuation Provisions form part of each Financial Contract Valuation Methodology.

20.2 Financial Contract Valuation Methodologies

Without prejudice and subject to the other provisions set out in this Part 7, the Close-Out Amount in respect of a Financial Contract shall be determined:

20.2.1 first, in accordance with the Contractual Valuation Methodology, insofar as it is possible to do so under Clause 21;

20.2.2 secondly, in the circumstances as further set out in Clause 22, in accordance with the Agreed Valuation Methodology; and

20.2.3 thirdly, if neither the Contractual Valuation Methodology nor the Agreed Valuation Methodology is applicable as further described in Clause 23, in accordance with the Fallback Valuation Methodology,

(each of the Contractual Valuation Methodology, the Agreed Valuation Methodology and the Fallback Valuation Methodology, a "**Financial Contract Valuation Methodology**").

20.3 Positive Close-Out Amounts and negative Close-Out Amounts

A Close-Out Amount (or a Close-Out Component) representing an amount payable by the Signatory to the Company shall be expressed as a negative number. A Close-Out Amount (or a Close-Out Component) representing an amount payable by the Company to the Signatory shall be expressed as a positive number.

20.4 Overriding Valuation Provisions

Each of the following shall be an "**Overriding Valuation Provision**":

20.4.1 **Exclusion of Asset Claim:** any Asset Claim which is the subject of a Financial Contract shall be disregarded in the Valuation of the Close-Out Amount;

20.4.2 **Open Contracts:** the Close-Out Amount, in respect of each Open Contract, except to the extent that it relates to Short Positions and Rehypothesized Securities, shall be determined as at the Open Contract Termination Date;

20.4.3 **Short Positions and Rehypothesized Securities:** for the purpose of determining the Close-Out Amount of a Financial Contract:

(i) the Value of:

(a) any Security which is the subject of a Short Position; and

(b) any Rehypothesized Security,

shall be the market closing price as quoted on a generally recognised price source for such Security as at the relevant Asset Valuation Date, provided that, if it is impossible or otherwise not reasonably practicable for the Company to obtain such market closing price, the Value of such Security shall be determined in accordance with the Asset Valuation Methodology in Clause 17; and

(ii) any other payment or delivery obligation arising under the Financial Contract in relation to Clause 20.4.3(i)(a) or Clause 20.4.3(i)(b) (including, for example, the payment obligation of manufactured dividends in respect of Clause 20.4.3(i)(a) or Clause 20.4.3(i)(b)) which become payable or deliverable on or after the Administration Date shall not be taken into account in the determination of the relevant Close-Out Amount;

20.4.4 **Flawed Asset Provisions:** any term of a Financial Contract which provides that an obligation of a party is subject to a condition precedent that an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event has not occurred and/or is not continuing with respect to the other party (any such term, a "**Flawed Asset Provision**") shall be disregarded in the calculation of the Close-Out Amount;

20.4.5 Walk away provisions: any term of a Financial Contract which:

- (i) provides that an amount which, but for such term, would be payable by one party to the other party as a result of termination of such Financial Contract would not be payable to such other party as a result of an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event having occurred with respect to such other party; or
- (ii) provides that only the party which is not subject to an event of default, failure to pay or deliver, act of insolvency, breach of contract or other similar event is entitled to receive a payment following the termination of such Financial Contract,

shall be disregarded by the Determining Party in the calculation of the Close-Out Amount;

20.4.6 Exclusion of Pre-Administration Client Money Claim: any Pre-Administration Client Money Claim shall be disregarded in the Valuation of any Close-Out Amount but without prejudice to the calculation in Clause 59;

20.4.7 Accrual of interest: in determining the Close-Out Amount in respect of a Financial Contract, no interest shall accrue on any unpaid Liability of the Company from the Administration Date save to the extent that such interest would accrue under Rule 2.88 of the Insolvency Rules;

20.4.8 Third Party Liabilities: in determining the Close-Out Amount in respect of each Financial Contract, no account will be taken of any Liabilities which are asserted to be due from that Signatory to persons other than the Company or due to that Signatory from persons other than the Company; and

20.4.9 Antecedent transactions: in determining the Close-Out Amount in respect of a Financial Contract, no account will be taken of any amounts which might be, or in due course become, Antecedent Transaction Liabilities.

20.5 Disapplication of Overriding Valuation Provisions

The Company may in its absolute discretion disapply any of the Overriding Valuation Provisions if it deems that it is not reasonably practicable to apply such Overriding Valuation Provision, provided that this shall result in a greater Net Contractual Position in respect of a Financial Contract than would otherwise have been the case, and shall not affect any Signatory's Asset Claim.

20.6 The Determining Party

20.6.1 The party determining the calculation of the Close-Out Amount in respect of a Financial Contract in accordance with this Part 7 shall be referred to as the "Determining Party".

20.6.2 If the Contractual Valuation Methodology applies, the Determining Party shall be determined in accordance with Clause 21.7. Where the Determining Party in respect of a Financial Contract is:

- (i) a Signatory, such Signatory shall submit a Valuation Statement to the Company; and
- (ii) a Third Party, the relevant Signatory shall request the Third Party to submit a Valuation Statement to the Company,

in each case, in accordance with Clause 21.

20.6.3 If the Agreed Valuation Methodology applies, the Determining Party shall be the Company, in accordance with Clause 22.

20.6.4 If the Fallback Valuation Methodology applies, the Determining Party shall be the Company, in accordance with Clause 23.

20.6.5 Where the Determining Party is the Company, the Company may deal with any Signatory or group of them in such order as the Company sees fit, provided that this does not prejudice or unduly delay meeting the objectives and purposes of this Agreement.

21 Contractual Valuation Methodology

21.1 Contractual Valuation Provisions

In respect of each Financial Contract, "**Contractual Valuation Provisions**" shall be any terms in such Financial Contract which provide for the calculation of an amount or amounts payable by one party to the other as a result of the termination of such Financial Contract.

21.2 Application of the Contractual Valuation Provisions and the Overriding Valuation Provisions

21.2.1 Subject to the other provisions of this Clause 21, in respect of each Financial Contract, the Close-Out Amount shall be determined in accordance with the relevant Contractual Valuation Provisions, as modified and supplemented by the Overriding Valuation Provisions.

21.2.2 If there is any conflict between any Contractual Valuation Provision and the Overriding Valuation Provisions, Clause 21.6 shall apply.

21.2.3 The Contractual Valuation Provisions in respect of a Financial Contract, as modified and supplemented by the Overriding Valuation Provisions, shall be the "**Contractual Valuation Methodology**" in respect of such Financial Contract.

21.3 Close-Out Amount

21.3.1 Where the Contractual Valuation Methodology contains provisions for calculating a single amount payable by one party to the other as a result of the termination of a Financial Contract, such amount shall be the Close-Out Amount in respect of such Financial Contract.

21.3.2 Where the Contractual Valuation Methodology contains provisions for calculating more than one amount payable by one party to the other as a result of the termination of a Financial Contract (each such amount, a "**Close-Out Component**"), the aggregate of each Close-Out Component, as determined by the Company, shall be the Close-Out Amount in respect of such Financial Contract.

21.4 Election of the relevant Contractual Valuation Provisions within a Financial Contract

Where the Contractual Valuation Provisions of a Financial Contract differ depending upon the reason for the termination of such Financial Contract:

21.4.1 if a valid election between such differing provisions has been made by the Signatory in accordance with the relevant Financial Contract (including as a result of any defect in

the election having been waived by the Company), then the Contractual Valuation Provisions shall apply on the basis of that election; or

- 21.4.2 If no such valid election has been made, then the Contractual Valuation Provisions that, in the opinion of the Company, are applicable following an event that most closely corresponds to an act of insolvency with respect to the Company shall apply to such Financial Contract.

21.5 Valuation postponement provisions

- 21.5.1 Subject to Clause 21.5.2, if any Contractual Valuation Provisions in respect of a Signatory would require or permit the Close-Out Amount to be determined 30 Business Days after the relevant Open Contract Termination Date of that Signatory, they shall be amended such that the Close-Out Amount may be determined no later than the 30 Business Days after the relevant Open Contract Termination Date of such Signatory. The Company shall determine the nature and extent of the amendments necessary to achieve this and Notify the Signatory of such amendments.

- 21.5.2 If the Company determines that it is not reasonably practicable to effect such amendments, the Close-Out Amount in respect of such Financial Contract shall be determined in accordance with the Fallback Valuation Methodology in Clause 23, unless:

- (i) the Close-Out Amount in respect of such Financial Contract is the aggregate of the Close-Out Components; and
- (ii) the Contractual Valuation Provisions enable some of the Close-Out Components to be determined on or before the Valuation Submission Date (the "Unaffected Close-Out Components"),

then such Financial Contract shall be treated as two separate Financial Contracts, comprising:

- (a) one Financial Contract in respect of the transactions to which the Unaffected Close-Out Components relate, the Close-Out Amount of which shall be determined in accordance with the Contractual Valuation Methodology; and
- (b) one Financial Contract in respect of all other transactions, the Close-Out Amount of which shall be determined in accordance with the Fallback Valuation Methodology in Clause 23.

The Company shall Notify the Signatory of its determination to treat a Financial Contract as two separate Financial Contracts in accordance with this Clause 21.5.2.

21.6 Conflict between Contractual Valuation Provisions and the Overriding Valuation Provisions

- 21.6.1 Subject to Clause 21.6.2, if a Contractual Valuation Provision conflicts with any of the Overriding Valuation Provisions such that a determination of the Close-Out Amount in accordance with such Contractual Valuation Provision would result in a non-compliance with any Overriding Valuation Provisions, the latter shall prevail and such Contractual Valuation Provision shall be amended only to the extent necessary to enable the Close-Out Amount to be determined without such conflict. The Company shall determine the nature and extent of the amendments necessary to achieve this and Notify the Signatory of such amendments.

- 21.6.2 If the Company determines that it is not reasonably practicable to effect such amendments, the Close-Out Amount in respect of such Financial Contract shall be determined in accordance with the Fallback Valuation Methodology in Clause 23.

21.7 The Determining Party under the Contractual Valuation Methodology

21.7.1 The Contractual Determining Party

The party which is entitled or required under the Contractual Valuation Provisions of a Financial Contract to determine the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract shall be the "Contractual Determining Party" in respect of such Financial Contract.

21.7.2 The Contractual Determining Party conditional upon occurrence of event of default

Where the Contractual Valuation Provisions of an Open Contract which is terminated in accordance with Clause 19.3 require an event of default, act of insolvency, failure to pay or deliver, breach of contract or other similar event to have occurred in respect of one party in order to ascertain the Contractual Determining Party, then such an event of default, act of insolvency, breach of contract or other similar event shall be deemed to have occurred in respect of the Company for this purpose only.

21.7.3 General rule

The Contractual Determining Party in respect of a Financial Contract shall be the Determining Party in respect of such Financial Contract, provided that:

- (i) if the Contractual Determining Party is a person other than the Company and that person fails to deliver a Valuation Statement on or before the Valuation Submission Date, the Company shall be the Determining Party;
- (ii) if there is more than one Contractual Determining Party, each such party shall be a Determining Party to the extent that, pursuant to the Contractual Valuation Provisions, it is entitled or required to contribute to the determination of the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract (such extent, the "Contribution to Determination") subject to Clause 21.7.4; and
- (iii) if the Contractual Valuation Provisions do not specify any Contractual Determining Party, the Company shall be the Determining Party.

21.7.4 Multiple Contractual Determining Parties

Where there is more than one Contractual Determining Party, this Clause 21.7.4 shall apply to each such Contractual Determining Party with respect to its relevant Contribution to Determination as if: (i) it were the sole Contractual Determining Party in respect of such Financial Contract; and (ii) its Contribution to Determination represented the entire right or obligation under the Contractual Valuation Provisions of a Financial Contract to determine the amount or amounts payable by one party to the other as a result of the termination of such Financial Contract.

21.8 Valuation Statements

21.8.1 Signatory to submit Valuation Statement

If the Signatory is the Determining Party in respect of a Financial Contract, then, to the extent not already required by the Contractual Valuation Provisions, the Signatory shall submit a Valuation Statement for such Financial Contract to the Company on or before the Valuation Submission Date.

21.8.2 Third Party to submit Valuation Statement

If a Third Party is the Determining Party in respect of a Financial Contract, then, to the extent not already required by the Contractual Valuation Provisions, the Signatory shall request the Third Party to provide a Valuation Statement for such Financial Contract to the Company on or before the Valuation Submission Date.

21.8.3 Company may consider Valuation Statement not in compliance with the Overriding Valuation Provisions

Where the calculation of a Close-Out Amount contained in a Valuation Statement is not in compliance with any of the Overriding Valuation Provisions, the Company may give consideration to such calculation, notwithstanding such non-compliance, after making such adjustments to the calculation to the extent it considers necessary in order to rectify such non-compliance, provided that if additional information not already contained in such Valuation Statement is required to be taken into account in order to make such adjustments, the Company may request the relevant Signatory or Third Party to provide supplementary information in accordance with Clause 21.8.5.

21.8.4 New Valuation Statement or amendment to previously submitted Valuation Statement

If a Signatory or Third Party has previously submitted a Valuation Statement in respect of a Financial Contract, such Signatory or Third Party may only submit a new Valuation Statement superseding such previously submitted Valuation Statement, or an amendment to such previously submitted Valuation Statement:

- (i) if such new Valuation Statement or amendment is submitted prior to the Valuation Submission Date; and
- (ii)
 - (a) if the previously submitted Valuation Statement was submitted prior to the Effective Date and the new Valuation Statement or amendment is being submitted to ensure compliance of the Close-Out Amount with the provisions of this Agreement; or
 - (b) with the consent of the Company.

21.8.5 Company may request supplementary information

Notwithstanding Clause 21.8.4 where, in the opinion of the Company, the information on a Valuation Statement is ambiguous, unclear or insufficient (including for the purpose of making any adjustments in accordance with Clause 21.8.3), the Company may request the relevant Signatory or Third Party to provide supplementary information and, in the absence of a satisfactory response to such a request on or before the twentieth Business Day after the request has been made, the Company may disregard such unclear or ambiguous information or treat such Valuation

Statement as invalid to the extent of the insufficiency of the information, or may attribute a clarificatory meaning which shall be binding on such Signatory.

21.9 Failure to apply the Contractual Valuation Methodology

If the Determining Party is the Signatory or a Third Party and it fails to determine the Close-Out Amount or a Contribution to Determination in accordance with the Contractual Valuation Methodology, the Company shall, subject to Clause 22.1, determine the Close-Out Amount or the Contribution to Determination in respect of such Financial Contract in accordance with the Contractual Valuation Methodology as if it were the Determining Party. In such circumstances, the Company's determination shall prevail over any determination that the Signatory or a Third Party has made, even if it purports to be in compliance with the Contractual Valuation Methodology. For the avoidance of doubt, the Contractual Valuation Methodology shall be applied by the Company as if the Contractual Determining Party were still the Signatory or a Third Party.

21.10 Unclear or ambiguous Contractual Valuation Provision

21.10.1 The Company as Determining Party

Where the Determining Party is the Company and the Company determines that the Contractual Valuation Provision in respect of a Financial Contract is unclear, ambiguous or incapable of strict compliance due to a technicality, the Company shall: (i) determine the modifications to the Contractual Valuation Provision to the extent (and only to the extent) as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity; and (ii) Notify the relevant Signatory of such modifications (which may be in the Net Contractual Position Statement). If the Company has not received a Notice from the Signatory that it objects to such modifications by 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies such Signatory of such modifications, the Signatory shall be deemed to have accepted such modifications to the Contractual Valuation Provision. If the Company receives a Notice from the Signatory that it objects to such modifications before 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies such Signatory of such modifications, subject to Clause 21.10.3, the Company and the Signatory may agree such modifications to the Contractual Valuation Provision as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity, provided that such modification is not, in the opinion of the Company, materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

21.10.2 Signatory or Third Party as Determining Party

Subject to Clause 21.10.3, where the Company determines that the Contractual Valuation Provision in respect of a Financial Contract is unclear or ambiguous or incapable of strict compliance due to a technicality, such that the Company is unable to determine whether the Signatory or a Third Party has determined the Close-Out Amount or a Contribution to Determination in accordance with such Contractual Valuation Methodology, the Company and the Signatory or that Third Party may agree such modifications to the Contractual Valuation Provision as are necessary or desirable to eliminate such uncertainty, ambiguity or incapacity, provided that such modification is not, in the opinion of the Company, materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

21.10.3 Inability to agree modifications

If the Company determines that it cannot agree with the Signatory or a Third Party to such modifications to the Contractual Valuation Provision, the Company shall be deemed to be the Determining Party and shall determine the Close-Out Amount in respect of that Financial Contract in accordance with the Fallback Valuation Methodology. In such circumstances, the Company's determination shall prevail over any determination made by the Signatory or a Third Party, whether or not it complies with the Contractual Valuation Methodology.

22 Agreed Valuation Methodology

22.1 Circumstances where Agreed Valuation Methodology may be applicable

22.1.1 Where the Company is the Determining Party in respect of a Financial Contract (including, for the avoidance of doubt, where the Company is deemed to be the Determining Party pursuant to Clause 21.9) and the Contractual Valuation Methodology would otherwise apply but the Company determines that it is not reasonably practicable for it to calculate such Close-Out Amount in accordance with the Contractual Valuation Methodology, the Company shall Notify the Signatory of this determination.

22.1.2 If the Company has not received a Notice from the Signatory that it objects to the determination under Clause 22.1.1 by 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies the Signatory of such determination (the "**Fallback Notification Date**"), the Signatory shall be deemed to have accepted such determination and the Company shall determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Fallback Valuation Methodology.

22.1.3 If the Company receives a Notice from the Signatory that it objects to the determination under Clause 22.1.1 before 5.00 p.m. in London on the tenth Business Day following the day on which the Company Notifies the Signatory of such determination, the Company and the Signatory may:

- (i) agree an alternative valuation methodology for determining the Close-Out Amount in respect of that Financial Contract; or
- (ii) agree a Close-Out Amount for that Financial Contract,

provided that such alternative valuation methodology or agreed Close-Out Amount (each an "**Agreed Valuation Methodology**") complies with the Overriding Valuation Provisions and such Agreed Valuation Methodology is not materially prejudicial to the interests of other Signatories as a whole or the unsecured creditors of the Company as a whole.

22.2 Determination of the Agreed Valuation Methodology

If the Company agrees with the Signatory on the Agreed Valuation Methodology, the Company shall determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Agreed Valuation Methodology.

22.3 Failure to reach an Agreed Valuation Methodology

If the Company determines that it cannot agree with the Signatory on an Agreed Valuation Methodology, the Company shall: (i) Notify the Signatory of this determination; and (ii) determine the Close-Out Amount in respect of the relevant Financial Contract in accordance with the Fallback Valuation Methodology.

23 Fallback Valuation Methodology

23.1 Applicability of the Fallback Valuation Methodology

Where:

- 23.1.1 a Financial Contract does not contain any Contractual Valuation Provisions;
- 23.1.2 the terms of a Financial Contract (or the terms of any Contractual Valuation Provisions that it may contain) cannot be ascertained; or
- 23.1.3 the Company determines that it is not reasonably practicable to apply the Contractual Valuation Methodology (including where the Signatory or a Third Party, having initially been the Determining Party, has failed to determine a Close-Out Amount in accordance with the Contractual Valuation Methodology and the Company is deemed to be the Determining Party pursuant to Clause 21.9) and (i) if the Signatory does not Notify the Company before 5.00 p.m. in London on the Fallback Notification Date that it objects to the determination under Clause 22.1.1; or (ii) the Company and the relevant Signatory cannot agree to an Agreed Valuation Methodology in accordance with Clause 22, then the Company shall determine the Close-Out Amount of that Financial Contract in accordance with the Fallback Valuation Methodology.

23.2 Lack of Contractual Valuation Provisions or governing terms of Financial Contract

For the avoidance of doubt, for the purpose of determining whether a Financial Contract contains any Contractual Valuation Provisions or whether the terms of a Financial Contract (or the terms of any Contractual Valuation Provisions that it may contain) can be ascertained, the provisions of Clause 14 shall apply.

23.3 The Fallback Valuation Methodology

23.3.1 The "Fallback Valuation Methodology" refers to the calculation of a Close-Out Amount in accordance with the Overriding Valuation Provisions, being an amount equal to:

- (i) the Mid-Market Value; plus
- (ii) the Unpaid Amounts owing to the Signatory; less
- (iii) the Unpaid Amounts owing to the Company.

23.3.2 All determinations, valuations and calculations of the Company for the purpose of this Clause 23 shall be performed in a commercially reasonable manner.

23.4 Determination of the Mid-Market Value

23.4.1 "Mid-Market Value" means, with respect to one or more Positions under a Financial Contract, a value (which may be zero) equal to the arithmetic mean of:

- (i) one or more amounts, if any, that would be paid to the Company (expressed as a negative number) or by the Company (expressed as a positive number) in

consideration for entering into a transaction between the Company and a Hypothetical Counterparty in respect of such Position or group of Positions under the Financial Contract on terms which are the same, in all material respects, as those of the Financial Contract on the Fallback Valuation Date, other than any terms that require a payment to be made or assets to be delivered on or prior to the Fallback Valuation Date (or would have done so but for any Flawed Asset Provision); and

- (ii) one or more amounts, if any, that would be paid to the Signatory (expressed as a positive number) or by the Signatory (expressed as a negative number) in consideration for entering into a transaction between the Signatory and a Hypothetical Counterparty in respect of such Position or group of Positions under the Financial Contract on terms which are the same, in all material respects, as those of the Financial Contract on the Fallback Valuation Date, other than any terms that require a payment to be made or assets to be delivered on or prior to the Fallback Valuation Date (or would have done so but for any Flawed Asset Provision),

provided that, for the purpose of determining the Mid-Market Value, both the Company and the Signatory shall be assumed to have a creditworthiness of prime quality.

23.4.2 Relevant Information for determining the Mid-Market Value

In determining the Mid-Market Value, the Company may consider any Relevant Information, including, without limitation, one or more of the following types of information:

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties;
- (ii) market data in respect of the relevant market supplied by one or more third parties or derived from internal sources, including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads and correlations; and
- (iii) the results of the operation of any models or other pricing methodologies, including manual or automated calculations performed by the Company's personnel using existing or reinstated systems of the Company (including the use of statistical inference techniques) or the proprietary pricing models of, or information supplied by, one or more third parties selected by the Company.

23.4.3 Discretions in determining the Mid-Market Value

In determining the Mid-Market Value:

- (i) subject to the Overriding Valuation Provisions, the date and time as of which the quotations are to be obtained will be selected by the Company;
- (ii) the Company may discard values or prices where it determines appropriate in the circumstances, in particular where the Company reasonably believes that the discarded values or prices would have a distorting effect on any arithmetic mean; and
- (iii) the Company shall not be required to: (a) enter, or seek to enter, into any replacement contract(s) or transaction(s); or (b) transfer, or seek to transfer, any contract(s) or transaction(s).

23.5 Determination of Unpaid Amounts

"Unpaid Amounts" owing to any party means, with respect to a Financial Contract, the aggregate of:

- 23.5.1 any amounts that became payable (or that would have become payable but for any Flawed Asset Provision) to such party under the terms of such Financial Contract on or prior to the Fallback Valuation Date and which remain unpaid on such Fallback Valuation Date; and
- 23.5.2 for each obligation which was (or would have been but for any Flawed Asset Provision) required to be settled by delivery of assets (the "Unpaid Amount Deliverables") to such party on or prior to such Fallback Valuation Date and which has not been so settled on the Fallback Valuation Date, an amount equal to the Value of such Unpaid Amount Deliverables as at the relevant Asset Valuation Date.

- 23.6 The Company shall not take any action against a Signatory to recover any outstanding Collateralised Net Financial Liability at any time.

24 Net Contractual Position

24.1 Conversion of Close-Out Amounts into US dollars

All Close-Out Amounts shall be denominated in US dollars. To the extent that a Close-Out Amount is denominated in a currency other than US dollars, the Company shall convert such Close-Out Amount into US dollars using the Spot Rate as of the Relevant FX Conversion Time.

24.2 Determining the Net Contractual Positions

- 24.2.1 If there is only one Financial Contract between the Company and a Signatory, the Close-Out Amount in respect of that Financial Contract shall be the Net Contractual Position in respect of that Signatory.
- 24.2.2 Subject to Clause 24.2.3, if there is more than one Financial Contract between the Company and a Signatory, the Company shall aggregate the Close-Out Amounts in respect of those Financial Contracts. The aggregate of such Close-Out Amounts shall be the Net Contractual Position in respect of that Signatory.
- 24.2.3 The Company shall not aggregate the Close-Out Amounts in respect of the Post-Administration Financial Contracts of a Signatory with Close-Out Amounts in respect of Pre-Administration Financial Contracts of that Signatory. A Signatory that has had a Post-Administration Financial Contract Transferred to it from a Transferor after the Time of Administration shall aggregate the Close-Out Amounts in respect of those Post-Administration Financial Contracts that have been Transferred to it after the Time of Administration from the same Transferor. The operation of this Clause 24.2.3 may result in a Signatory having more than one Net Contractual Position.

24.3 Netting agreements disregarded

Any term in any contract between the Company and the Signatory which purports to, or which would, but for this Clause 24.3, have the effect of aggregating or setting off two or more Close-Out Amounts in a way that is inconsistent with the determination of the Net Contractual Position under this Clause 24 shall be disregarded.

24.4 Net Contractual Position Statement

The Company shall, as soon as reasonably practicable following the determination of the Net Contractual Position in respect of a Signatory, provide a statement ("**Net Contractual Position Statement**") to such Signatory showing the Net Contractual Position and the Close-Out Amount for each Financial Contract in respect of such Signatory.

25 Determination of Net Financial Claim and Net Financial Liability

25.1 Net Financial Claim

A Net Contractual Position in respect of a Signatory expressed as a positive number will represent an amount due and owing by the Company to that Signatory, which shall constitute an ascertained unsecured claim of that Signatory in the winding-up of the Company or any distribution of the Company's assets to its unsecured creditors (such Claim, a "**Net Financial Claim**"). For the avoidance of doubt, no interest shall accrue on any Net Financial Claim, save to the extent provided in Rule 2.88 of the Insolvency Rules.

25.2 Net Financial Liability

A Net Contractual Position in respect of a Signatory expressed as a negative number will represent an amount due and owing by that Signatory to the Company. Interest shall accrue daily in respect of such amount from the Administration Date on any Gross Uncollateralised Liability and be calculated as the Net Financial Interest Amount from time to time determined in accordance with Clause 25.3. The aggregate of such amounts due and owing by the Signatory to the Company and the Net Financial Interest Amount from time to time shall constitute a debt due and payable from that Signatory to the Company (such debt, a "**Net Financial Liability**"); provided that, if the Net Financial Interest Amount would, but for the operation of this Clause 25.2, otherwise be a value expressed as a negative number, then the Net Financial Liability shall be Reduced by the absolute value of that Net Financial Interest Amount.

25.3 Net Financial Interest Amount

25.3.1 The "**Net Financial Interest Amount**", in respect of any date for which it is required to be determined (the "**Current Date**"), is an amount determined by the Company that is equal to:

- (i) the amount of Gross Uncollateralised Liability Interest due and payable on the Current Date in respect of the period from (and including) the immediately preceding Distribution Value Date (or if none, the Administration Date; in each case, the "**Prior Date**") to (but excluding) the Current Date; less
- (ii)
 - (a) unless the Prior Date is the Administration Date, the absolute value equal to the difference between:
 - (x) the amount of Gross Uncollateralised Liability Interest that would have been due and payable on the Prior Date in respect of the period from (and including) the Administration Date to (but excluding) the Prior Date (such period, the "**Previous Period**"), determined using the Greatest Pre-Administration Admitted Client Money Amount relevant to the Prior Date; and

(y) the amount of Gross Uncollateralised Liability Interest that would have been due and payable on the Prior Date in respect of the Previous Period, determined using the Greatest Pre-Administration Admitted Client Money Amount relevant to the Current Date; or

(b) if the Prior Date is the Administration Date, zero.

25.3.2 To determine the Net Financial Interest Amount, and in respect of each Signatory:

- (i) the "**Gross Uncollateralised Liability Interest**" shall be an amount of interest on the Gross Uncollateralised Liability calculated on a daily basis at the then prevailing Applicable Rate, from the Administration Date until the date on which such Gross Uncollateralised Liability is reduced to zero (the "**Relevant Period**") in accordance with Part 11;
- (ii) the "**Gross Uncollateralised Liability**" on each day is an amount (subject to a minimum of zero) equal to: (a) its outstanding Net Financial Liability (excluding any Net Financial Interest Amount) on such day; less (b) the greatest amount of all its Pre-Administration Admitted Client Money Amounts (the "**Greatest Pre-Administration Admitted Client Money Amount**") that is admitted or determined in accordance with Clause 59.2.3 during the Relevant Period; less (c): (x) for the period from the Administration Date to the date on which an Affected Intermediary Admitted Claim Amount is admitted or determined in accordance with Clause 59.4.3, such Affected Intermediary Admitted Claim Amount; and (y) thereafter, the Affected Intermediary Claim Amount from time to time during the Relevant Period; less (d) in respect of any day, the amount by which the Total Collateralisation Amount as at that day exceeds the sum of: (x) the Greatest Pre-Administration Admitted Client Money Amount (if any); and (y) the amount determined in accordance with the preceding subparagraph (c) (if any); and
- (iii) the "**Applicable Rate**" means a simple rate of interest equal to the lesser of (a) USD-LIBOR plus 1 per cent.; and (b) the highest rate of interest applicable to any sum due from that Signatory to the Company, where the Signatory is not the defaulting party, as specified in any Financial Contract between that Signatory and the Company.

For the avoidance of doubt, interest shall accrue daily, payable in arrear, from the Administration Date on any Gross Uncollateralised Liability notwithstanding that the relevant Greatest Pre-Administration Admitted Client Money Amount or Affected Intermediary Admitted Claim Amount is established after the Administration Date.

25.4 Reduction of Net Financial Liability

Any Reduction of Net Financial Liability shall first be deemed to Reduce the portion comprising any Net Financial Interest Amount until that has been Reduced in full, and then the portion not comprising any Net Financial Interest Amount.

25.5 Collateralised Net Financial Liability

In respect of a Signatory who has made a Collateralisation Election, the element of the Net Financial Liability comprising the Net Financial Interest Amount shall be deemed attributed to the Uncollateralised Net Financial Liability, unless the Net Financial Interest Amount exceeds the Uncollateralised Net Financial Liability, in which case such excess portion of the Net

Financial Interest Amount shall be deemed attributed to the Collateralised Net Financial Liability.

PART 8: RETENTION AMOUNTS

26 Retention Claims and Retention Creditors

26.1 Retention Claims

A "Retention Claim" in respect of a Signatory is a Claim of a person:

- 26.1.1 who is a Security Interest Claimant in respect of a Security Interest over Assets in respect of which the Signatory is the Pledgor; and
- 26.1.2 to whom the Company is under a fiduciary obligation to account for the Liabilities of such Signatory due and owing to that person out of the Trust Assets by reason of such Security Interest.

26.2 Retention Creditors

A person who has a Retention Claim is a "Retention Creditor".

27 Identification of Trust Assets subject to Retention Claim

The Company shall use its reasonable endeavours to identify, in respect of each Signatory, any Retention Claim according to the Relevant Information and any other information provided to the Company from time to time (including, for the avoidance of doubt, information provided to the Company by a Signatory, a Retention Creditor or a competent court) until such time (the "Retention Claim Identification Cut-Off Time") as: (i) the Company in its absolute discretion determines that it does not expect to identify any (or any further) Retention Claims in respect of such Signatory; or (ii) a Court confirms that the Company is at liberty to make Distributions and Appropriations of Distributable Trust Assets to the Signatory without regard to Retention Claims that have not yet been identified or resolved. The Company may postpone a Retention Claim Identification Cut-Off Time determined under limb (i) above if that test ceases to be correct.

28 Determination of Retention Amount

28.1 Retention Amount

The "Retention Amount", in respect of a Signatory, from time to time, is equal to the aggregate of one or more of the following:

- 28.1.1 all amounts determined by a competent court, whose rulings are binding upon the Company and which are not then subject to appeal, as being Liabilities of the Signatory due and owing to a Retention Creditor which are secured by Trust Assets (the "Judgment Amounts");
- 28.1.2 if not represented by a Judgment Amount, all amounts agreed between the relevant Signatory and a Retention Creditor as being Liabilities of the Signatory due and owing to such Retention Creditor which are secured by Trust Assets (the "Agreed Amounts"); and
- 28.1.3 all amounts as alleged by a Retention Creditor to be the total Liabilities of the Signatory due and owing to such Retention Creditor which are secured by Trust Assets which, at such time, have not been (i) agreed with the relevant Signatory; or (ii) determined by a competent court whose rulings are binding upon the Company and which are not then subject to appeal (the "Alleged Amounts"),

(any Judgment Amount, Agreed Amount or Alleged Amount, a "**Retention Claim Amount**"). Solely for the purpose of calculating the Retention Amount, a Retention Claim Amount denominated in a currency other than US dollars shall be converted into US dollars using the Spot Rate as of the Relevant FX Conversion Time.

28.2 Timing of determination

The Company shall determine the Retention Amount of each Signatory:

28.2.1 as soon as reasonably practicable following the Retention Claim Identification Cut-Off Time in respect of such Signatory;

28.2.2 in relation to a Signatory falling within Clause 28.2.1, as soon as reasonably practicable following:

- (i) the Company being notified of any additional Retention Claim not previously identified in respect of such Signatory; and
- (ii) the Company being notified that an Alleged Amount has become a Judgment Amount or an Agreed Amount; and

28.2.3 on each Distribution Value Date with respect to such Signatory.

29 Unfunded Retention Amount and Funded Retention Amount

29.1 Unfunded Retention Amount

In respect of each Signatory, the amount of Retention Amount determined by the Company as soon as reasonably practicable following the Retention Claim Identification Cut-Off Time shall notionally be designated as the "**Unfunded Retention Amount**". Once established, an Unfunded Retention Amount shall only be: (i) decreased following a Reduction of the Unfunded Retention Amount in accordance with Clause 55.4 together with a corresponding increase of the Funded Retention Amount in accordance with Clause 29.2; or (ii) increased or decreased following a change in the Retention Amount in accordance with Clause 29.3, Clause 29.4 or Clause 29.5.

29.2 Conversion of Unfunded Retention Amount to Funded Retention Amount

29.2.1 On each occasion on which the Unfunded Retention Amount is Reduced in accordance with Clause 55.4, the Funded Retention Amount in respect of each currency in which any Retention Claim Amount is denominated shall be increased by an amount equal to a portion of such Reduction (where the Unfunded Retention Amount is Reduced by an Appropriation of Securities, after deducting any costs and expenses relating to the realisation of such Securities), converted into such currency using the Spot Rate as of the Relevant FX Conversion Time, pro rata to the Unfunded Retention Amount Component in respect of such currency relative to the Unfunded Retention Amount (immediately before such Reduction).

29.2.2 Once established, a Funded Retention Amount shall only be: (i) increased together with a corresponding Reduction of the Unfunded Retention Amount in accordance with this Clause 29.2; or (ii) increased or decreased in accordance with Clause 29.5 and Clause 30.

29.3 Changes in Retention Amount due to exchange rate fluctuation

At any time when, and to the extent that, there is an increase or decrease in the Retention Amount as determined by the Company which is due to the fluctuation of the exchange rate of the currency in which a Retention Claim Amount is denominated, the Unfunded Retention Amount shall correspondingly be increased or decreased by an amount equal to a portion of such increase or decrease (as applicable) pro rata to the Unfunded Retention Amount relative to the Retention Amount (immediately before such increase or decrease).

29.4 Increase in Retention Amount otherwise than due to exchange rate fluctuation

At any time when, and to the extent that, there is an increase in the Retention Amount as determined by the Company which is not due to the fluctuation of the exchange rate of the currency in which a Retention Claim Amount is denominated, the Unfunded Retention Amount shall be increased by the same amount.

29.5 Decrease in Retention Amount otherwise than due to exchange rate fluctuation

At any time when, and to the extent that, there is a decrease in the Retention Amount as determined by the Company (the amount of such decrease, denominated in US dollars, the "**Retention Decrease Amount**") which is due to a decrease of the aggregate Retention Claim Amount denominated in a currency (the "**Relevant Currency**") for reasons other than: (i) the fluctuation of the exchange rate of the Relevant Currency against the US dollar; or (ii) payment to a Retention Creditor:

29.5.1 the Unfunded Retention Amount Component in respect of the Relevant Currency shall be decreased by an amount equal to the lesser of (a) the Retention Decrease Amount and (b) such Unfunded Retention Amount Component; and

29.5.2 if there is any surplus of the Retention Decrease Amount over the Unfunded Retention Amount Component in respect of the Relevant Currency (immediately prior to the most recent determination of the Retention Amount), the Funded Retention Amount in respect of the Relevant Currency shall be decreased by an amount equal to such surplus, and:

- (i) in the case where the surplus is less than the remaining Unfunded Retention Amount (immediately after the decrease in accordance with Clause 29.5.1):
 - (a) the Unfunded Retention Amount Component in respect of each currency other than the Relevant Currency shall be decreased in an amount equal to a portion of such surplus pro rata to the Unfunded Retention Amount Component in respect of such currency relative to the remaining Unfunded Retention Amount; and
 - (b) the Funded Retention Amount in respect of each currency other than the Relevant Currency shall be increased by an amount equal to the reduction of the Unfunded Retention Amount Component in respect of such currency converted into such currency using the Spot Rate as of the Relevant FX Conversion Time; or
- (ii) in the case where the surplus is equal to or greater than the remaining Unfunded Retention Amount (immediately after the decrease in accordance with Clause 29.5.1):

- (iii) the Unfunded Retention Amount shall be decreased to zero;
- (a) the Funded Retention Amount in respect of each currency other than the Relevant Currency shall be increased to the aggregate Retention Claim Amount denominated in such currency; and
- (b) such excess surplus (if any) shall be deemed to form part of the Distributable Trust Assets to be Allocated to such Signatory on its next Allocation Date (such Allocation, a "Retention Allocation").

29.6 No interest on Funded Retention Amount

The Company shall have no obligation to account to any Retention Creditor or any Signatory for any interest accruing from time to time on the Funded Retention Amount, which may be retained by the Company absolutely for its own account.

30 Payment to Retention Creditor

30.1 Decrease in Funded Retention Amount

A Funded Retention Amount shall only be decreased: (i) in accordance with Clause 29; or (ii) by a payment to a Retention Creditor in accordance with this Clause 30. The Company shall have no responsibility to ensure that any Retention Creditor applies any amount so received for any particular purpose.

30.2 In respect of a Funded Retention Amount

30.2.1 One Retention Claim in respect of a Funded Retention Amount

If the Company is only aware of one Retention Claim in respect of a Funded Retention Amount which has not been discharged in full, the Company may only make a payment (denominated in the Relevant Currency) up to an amount equal to the relevant Funded Retention Amount to the relevant Retention Creditor to discharge the Retention Claim in full or in part, provided that the Retention Claim is not in respect of an Alleged Amount.

30.2.2 Multiple Retention Claims in respect of a Funded Retention Amount

If the Company is aware of more than one Retention Claim in respect of a Funded Retention Amount which has not been discharged in full:

- (i) if none of the Retention Claims is in respect of an Alleged Amount, the Company may make a payment (denominated in each Relevant Currency, respectively) to discharge each such Retention Claim (a) in full, if such Funded Retention Amount is greater than or equal to the aggregate Retention Amounts denominated in the Relevant Currency (converted into the Relevant Currency using the Spot Rate as of the Relevant FX Conversion Time) or (b) in part, pro rata to their respective Agreed Amounts or Judgment Amounts, as applicable, if such Funded Retention Amount is less than the aggregate Retention Amounts denominated in the Relevant Currency (converted into the Relevant Currency using the Spot Rate as of the Relevant FX Conversion Time); and
- (ii) if at least one of the Retention Claims is in respect of an Alleged Amount, the Company may only make a payment (denominated in each Relevant Currency, respectively) from any excess of the Funded Retention Amount above the aggregate amount of all such Alleged Amounts denominated in the Relevant

Currency, to discharge each such Retention Claim which is not in respect of an Alleged Amount: (a) in full, if the amount of such excess is greater than or equal to the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency; or (b) in part, pro rata to their respective Judgment Amounts or Agreed Amounts, as applicable, if the amount of such excess is less than the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency.

30.3 An order of a Court of competent jurisdiction

After making such adjustments to the Unfunded Retention Amount and Funded Retention Amount in accordance with Clause 29.5, the Company may make a payment (denominated in each Relevant Currency, respectively) to discharge each Retention Claim in respect of each Funded Retention Amount of which the Company is aware: (i) in full, if the relevant Funded Retention Amount is greater than or equal to the aggregate of the Judgment Amounts and/or Agreed Amounts denominated in the Relevant Currency; or (ii) otherwise, in part, pro rata to their respective Agreed Amounts or Judgment Amounts, as applicable (unless there is a legally binding order of priorities in relation to such Retention Claims that is different, in which case such legally binding order of priorities shall apply).

30.4 No payments in discharge of Alleged Amounts

The Company shall not make a payment at any time to discharge a Retention Claim in respect of an Alleged Amount.

31 Appropriation for Reduction of Unfunded Retention Amount

31.1 Realisation of Securities

Any Assets that are Appropriated to Reduce any Unfunded Retention Amount under Clause 60 shall be realised for cash (if not already in cash) by the Company as soon as reasonably practicable following such Appropriation, provided that the Signatory shall be first given the option to purchase such Securities for a purchase price equal to the Value of such Securities as at the relevant Distribution Value Date. For the purpose of this Clause 31.1, the Company shall not take into account the proceeds of sale of such Security to such Signatory in applying Clause 17.1.1 of the Asset Valuation Methodology.

31.2 Conversion into the currency denomination of the Funded Retention Amount

If: (i) the realisation proceeds of the Appropriated Securities; or (ii) any Appropriated Assets which comprise cash, are not denominated in the currency of the relevant Funded Retention Amount which shall be increased in accordance with Clause 29.2, then the Company shall convert such proceeds or Assets (as applicable) into such currency at the actual rate of exchange available to the Company at the time of receipt of such proceeds or Assets (as applicable).

32 Parallel Debt

32.1 Payment of debt by Signatory

Each Signatory hereby irrevocably and unconditionally undertakes to pay to the Company amounts equal to any Retention Claim Amount.

32.2 Corresponding Debt and Parallel Debt

Each Signatory and the Company acknowledge that the obligations of each Signatory under this Clause 32 are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Signatory to any Retention Creditor in respect of any Retention Claim (its "**Corresponding Debt**") nor shall the amounts for which each Signatory is liable under this Clause 32 (its "**Parallel Debt**") be limited or affected in any way by its Corresponding Debt provided that:

32.2.1 the Parallel Debt of each Signatory shall be decreased to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and

32.2.2 the amount of the Parallel Debt of a Signatory shall at all times be equal to the amount of its Corresponding Debt.

32.3 Company not a trustee

For the purpose of this Clause 32, the Company acts in its own name and not as a trustee, and its Claims in respect of the Parallel Debt shall not be held on trust.

PART 9: NON-FINANCIAL CONTRACT LIABILITIES

33 Non-Financial Contract Liabilities

33.1 Meaning of Non-Financial Contract Liabilities

The Non-Financial Contract Liabilities of a Signatory are all its outstanding Liabilities to the Company, whether arising under this Agreement or otherwise, but excluding:

- 33.1.1 Net Financial Liability;
- 33.1.2 Costs Amount; and
- 33.1.3 Unfunded Retention Amount.

33.2 Ascertained Non-Financial Contract Liabilities

The Company shall: (i) determine from time to time whether there are any Non-Financial Contract Liabilities in respect of each Signatory; and (ii) as soon as reasonably practicable thereafter, determine or otherwise ascertain whether such Non-Financial Contract Liabilities comprise an obligation to pay an ascertained amount of money that is due and payable. Non-Financial Contract Liabilities that have been so determined or ascertained shall be the "Ascertained Non-Financial Contract Liabilities" in respect of the relevant Signatory.

33.3 Conversion of Ascertained Non-Financial Contract Liabilities into US dollars

For the purpose of Part 11, Ascertained Non-Financial Contract Liabilities shall be denominated in US dollars. To the extent that any Ascertained Non-Financial Contract Liabilities are denominated in a currency other than US dollars, the Company shall convert such Ascertained Non-Financial Contract Liabilities into US dollars using the Spot Rate as of the Relevant FX Conversion Time. For the avoidance of doubt, the conversion of such Ascertained Non-Financial Contract Liabilities into US dollars for the purpose of Part 11 shall not prejudice any of the Company's rights to take any action against the Signatory outside this Agreement in respect of any Non-Financial Contract Liabilities denominated in their Original Currency.

33.4 Certain Non-Financial Contract Liabilities

Non-Financial Contract Liabilities shall include, without limitation, any of the following:

- 33.4.1 any amounts payable from a Signatory to the Company arising from a Claim for damages made by the Company against the Signatory for breach of any Representation and Warranty or failure to comply with any Undertaking;
- 33.4.2 any Antecedent Transaction Liabilities;
- 33.4.3 the value of the relevant benefits which have been received by or on behalf of that Signatory in excess of its Net Financial Claim, Asset Shortfall Claim or Ascertained Claim as set out in Clause 7.3, except to the extent of that Signatory's receipts under any Third Party Obligation;
- 33.4.4 the excess described in Clause 7.4, without prejudice to Clause 63.7; and
- 33.4.5 any costs and expenses incurred by the Company as a result of a Signatory's failure to make a Payment as set out in Clause 55.4.2.

33.5 Limited Ascertained Non-Financial Contract Liabilities

Where a TA Signatory's Ascertained Non-Financial Contract Liabilities include any amount arising from the Antecedent Transaction Liabilities, the Company shall exclude such Antecedent Transaction Liabilities from the Ascertained Non-Financial Contract Liabilities (the Ascertained Non-Financial Contract Liabilities following such exclusion, the "**Limited Ascertained Non-Financial Contract Liabilities**") for the purpose of Appropriation of such TA Signatory's Net Financial Claim to reduce any Ascertained Non-Financial Contract Liabilities under Clause 60.1.

PART 10: ALLOCATION OF ASSETS AND ASSET SHORTFALL CLAIM

34 General principles

34.1 Allocation of Distributable Trust Assets

The Company shall allocate Distributable Trust Assets by identifying them in the Books and Records of the Company as belonging to a particular Stock Line and, where applicable, a particular Asset Pool, and being available in due course for Appropriation or Distribution in relation to the Asset Claim of a particular Signatory, in accordance with this Part 10 for the purpose of determining: (i) the Appropriation and/or Distribution of such Distributable Trust Assets to the Company or, as the case may be, such Signatory under Part 11; and (ii) the Asset Shortfall Claim of such Signatory in relation to such Distributable Trust Assets (such an allocation for this purpose, an "**Allocation**" and "**Allocate**", "**Allocated**", "**Unallocated**" and "**Allocating**" shall be construed accordingly).

34.2 Stock Lines

34.2.1 Subject to Clause 34.2.2, a "**Stock Line**" means a group of fungible Securities, often identified by a unique ISIN or CUSIP number and, in relation to the Asset of an Asset Pool, includes all Derived Assets of such a group of fungible Securities.

34.2.2 Where a group of fungible Securities is held through more than one Intermediary and one or more of those Intermediaries is an Affected Intermediary, the portion of fungible Securities that is held through each Affected Intermediary shall be deemed to form a separate Stock Line.

34.2.3 Where a group of fungible Securities is deemed to form more than one Stock Line in accordance with Clause 34.2.2 and the Relevant Information available to the Company at such time is not sufficiently adequate or reliable for the Company to Identify the Stock Line(s) in respect of an amount of Asset that is subject to a particular Asset Claim, then the Assets that are subject to such Asset Claim shall be apportioned between each of such Stock Lines pro rata to the amount of Distributable Trust Assets that have been Identified by the Company in respect of such Stock Lines at such time.

34.3 Allocation on a Stock Line-by-Stock Line basis

The Company shall determine the Allocation of Distributable Trust Assets following the Bar Date on a Stock Line-by-Stock Line basis. Stock Lines shall be chosen by the Company in its absolute discretion in such order as it sees fit.

34.4 Reallocation following the receipt of new Relevant Information

If the Company receives or otherwise becomes aware of any new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) after any determination in relation to Allocation has been made by the Company in respect of such Stock Line or Asset Pool, the Company shall redetermine the Allocation in respect of such Stock Line or Asset Pool in accordance with Clause 50.

34.5 Affected Intermediary and Affected Stock Lines

An Intermediary is an "**Affected Intermediary**" if it is required or permitted by any applicable law to return Trust Assets comprising more than one Stock Line (each, an "**Affected Stock Line**") to the Company, or to the Company on behalf of other people, on the basis that the aggregate of any shortfall in respect of each Affected Stock Line shall be borne by all people

having an Asset Claim to any of the Affected Stock Lines (each, an "Affected Claimant") pro rata to: (i) their Asset Claims to all Affected Stock Lines held through that Affected Intermediary (an "Asset Claim Intermediary"); or (ii) any other Claims of (or derived from) such Affected Claimants against the Affected Intermediary, as determined by, or on behalf of, such Affected Intermediary (a "Net Equity Intermediary").

34.6 Affected Stock Line

Clause 40, Clause 41 and Clause 42 shall not apply in respect of an Affected Stock Line.

34.7 Maximum Allocation

The aggregate Allocation of Assets in respect of an Asset Pool to any Asset Pool Signatory under this Part 10 shall not be greater than the maximum of its TA Claimant Amount, without prejudice to Clause 63.7.

35 Identification of Distributable Trust Assets for each Stock Line

In respect of each Stock Line, the Company shall determine:

- (i) whether an Asset comprises Trust Assets;
- (ii) whether any Trust Assets comprise Distributable Trust Assets by reference to the definition of "Trust Assets" and "Distributable Trust Assets", including whether such Assets have been located or identified; and
- (iii) the Asset Pool or Asset Pools into which each Stock Line falls.

The process of any such determination in relation to a Stock Line is referred to as the "Identification" of the Distributable Trust Assets relating to that Stock Line, and "Identified" and "Identify" shall be construed accordingly.

36 Individual Claim Amount, Net Equity Amount and TA Claimant Amount

36.1 Individual Claim Amount

The Company shall determine the amount (i.e. number) of Assets in a Stock Line which are the subject of an Asset Claim based on the Relevant Information available to the Company at the time of such determination (in respect of each person having an Asset Claim and in respect of each Stock Line, its "Individual Claim Amount").

36.2 Net Equity Amount

The Company shall determine the Net Equity Amount of each Affected Claimant in respect of a Net Equity Intermediary once it has received sufficient information from the relevant Net Equity Intermediary in order to do so. The "Net Equity Amount" for each such Affected Claimant is the amount of the Claims of (or derived from) the Affected Claimant against the Net Equity Intermediary that the Net Equity Intermediary recognises or acknowledges for the purpose of quantifying that Affected Claimant's Asset Claim in respect of Trust Assets held by such Net Equity Intermediary. If the Company determines that it cannot determine the Net Equity Amount for all Affected Claimants in respect of a Net Equity Intermediary, then no further Allocation shall be made in respect of any Distributable Trust Assets returned to the Company from such Net Equity Intermediary unless:

- 36.2.1 the Company is subject to an order made by a court of competent jurisdiction, which:
- (i) requires the Company to make an Allocation in respect of such Distributable Trust Assets;
 - (ii) determines the entitlements of TA Claimants to the relevant Distributable Trust Assets; or
 - (iii) permits the Company to make an Allocation, Distribution or Appropriation in respect of such Distributable Trust Assets without incurring a liability to the TA Claimants in doing so,
- provided that either:
- (a) the order is not capable of being appealed; or
 - (b) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- 36.2.2 the proposed Allocation has been agreed between: (i) the Company; and (ii) each Affected Claimant in relation to such Net Equity Intermediary; or
- 36.2.3 this Agreement has been modified in accordance with Clause 80 to provide for an alternative method of Allocation which takes into account such insufficiency of information.

36.3 TA Claimant Amount

"TA Claimant Amount" means:

- 36.3.1 in relation to: (i) a Stock Line which is not an Affected Stock Line; or (ii) an Affected Stock Line in respect of an Asset Claim Intermediary, an Individual Claim Amount; and
- 36.3.2 in relation to a Net Equity Intermediary, a Net Equity Amount.

36.4 Asset Claims of Non-Signatories

Where a Non-Signatory asserts an Asset Claim on a Stock Line, the Company may, in its absolute discretion based on its own Books and Records, disregard such Asset Claim in whole or part if the Company determines that such Non-Signatory has no Asset Claim to such Stock Line or if the Company considers that an Asset Claim to such Stock Line has been overstated.

36.5 Claim Amount Notice

As soon as reasonably practicable after determining: (i) all the Individual Claim Amounts in respect of a Stock Line; or (ii) all the Net Equity Amounts in respect of a Net Equity Intermediary, the Company shall send a Notice (a "**Claim Amount Notice**") to:

- 36.5.1 each person whom the Company determines as having an Asset Claim to such Stock Line or Asset Pool, specifying its TA Claimant Amount; and
- 36.5.2 each person who alleges to the Company (in its information provided via the Portal, or through other means of communication) that it has an Asset Claim with respect to the relevant Stock Line but for whom the Company determines that it does not have an Asset Claim with respect to such Stock Line, specifying a TA Claimant Amount of zero.

The Company may provide a TA Signatory's TA Claimant Amount by uploading such information onto the Portal of such Signatory and such provision of information via the Portal shall be deemed to be a Claim Amount Notice to such TA Signatory.

37 Determination of Intermediary Distribution Value

37.1 Intermediary Distribution Notice

As soon as reasonably practicable and in no event later than 20 Business Days after receiving an Intermediary Distribution (where a Signatory receives an Intermediary Distribution after its Accession Date), or within twenty Business Days of its Accession Date (where a Signatory has received an Intermediary Distribution prior to its Accession Date), the relevant Asset Pool Signatory shall send a Notice (an "**Intermediary Distribution Notice**") to the Company specifying:

37.1.1 the date on which it has received the Intermediary Distribution;

37.1.2 the Asset Claim to which such Intermediary Distribution relates; and

37.1.3 information on the composition of the Intermediary Distribution in reasonable detail, including:

- (i) the identity and number of Securities (where such Intermediary Distribution comprises delivery of Securities);
- (ii) the amount of money (where such Intermediary Distribution comprises payment of money); and/or
- (iii) the amount of Liability owed by such Signatory to the relevant Intermediary that has been set off (where such Intermediary Distribution comprises a set-off of Liabilities between such Signatory and the relevant Intermediary).

37.2 Company may request further information

Where the information in an Intermediary Distribution Notice of an Asset Pool Signatory is ambiguous, unclear or insufficient, the Company may request in writing that the relevant Signatory provides supplementary information and, in the absence of a satisfactory response to such request within 10 Business Days of its receipt, the Company may disregard such unclear or ambiguous information or may, in a commercially reasonable manner, attribute a clarificatory meaning which shall be binding on all Signatories.

37.3 Intermediary Distribution Value

As soon as reasonably practicable after the Company receives an Intermediary Distribution Notice from an Asset Pool Signatory, the Company shall: (i) determine the Value of each Intermediary Distribution as at the date on which such Intermediary Distribution was received by the Signatory (the "**Intermediary Distribution Value**"); and (ii) send a Notice (the "**Intermediary Distribution Value Notice**") to such Asset Pool Signatory notifying it of the Intermediary Distribution Value as determined by the Company.

38 Dispute between a TA Signatory and a Net Equity Intermediary

38.1 Information about Net Equity Amount

The Company shall use reasonable endeavours to provide a TA Signatory with the relevant information received from the Net Equity Intermediary which the Company takes into account in determining the Net Equity Amount.

38.2 Challenge by TA Signatory of Intermediary determination

If a TA Signatory Notifies the Company that it wishes to challenge: (i) the accuracy of any information provided to it in accordance with Clause 38.1; or (ii) any other determination by the Net Equity Intermediary in connection with its Asset Claim, and it requests the Company's assistance in connection with such challenge, the Company shall, subject to Clause 38.3, use reasonable endeavours to assist such TA Signatory in making such challenge, including towards establishing a direct line of communication between the TA Signatory and the Net Equity Intermediary in order to enable the difference to be resolved directly.

38.3 Conditions to assistance from Company

The Company shall not take any action to assist a TA Signatory under Clause 38.2 unless:

- 38.3.1 the Company has received a clear and unambiguous request from a TA Signatory in relation to such action;
- 38.3.2 the Company has been indemnified to its satisfaction against any loss, Liability, cost, Claim, action, demand or expense which may be incurred or made against it in connection with such action. The Company shall exercise its discretion in respect of these matters as it sees fit having regard to the interests of the creditors of the Company as a whole; and
- 38.3.3 the Company has determined that it is reasonably practicable for the Company to take such action.

38.4 Limit to Company's duties

The Company shall not be required to take any other action in relation to a challenge by a TA Signatory of the determination of a Net Equity Amount by a Net Equity Intermediary.

39 Dispute over the TA Claimant Amount or the Intermediary Distribution Value

39.1 Alleged TA Claimant Amount

Notwithstanding any provisions to the contrary in Part 16, the Dispute Notice from a TA Signatory disputing a Claim Amount Notice must specify the relevant Alleged TA Claimant Amount.

39.2 Suspension of Allocation

No Distributable Trust Assets of a Stock Line or an Asset Pool (as applicable) will be Allocated to a Signatory until any Dispute over its Individual Claim Amount or Intermediary Distribution Value in respect of that Stock Line, or, in the case of a Multiple Stock Line Pool, all Disputes over all of its TA Claimant Amounts or Intermediary Distribution Values in respect of that Multiple Stock Line Pool, is or are resolved.

39.3 TA Claimant Amount or Intermediary Distribution Value following the resolution of a Dispute

Following the final resolution of a Dispute between the Company and a Signatory relating to a TA Claimant Amount or an Intermediary Distribution Value, the amount so settled as a result of the resolution of the Dispute shall become the TA Claimant Amount or the Intermediary Distribution Value (as applicable).

40 Identification of Stock Lines with potential shortfall

As soon as reasonably practicable after: (i) all of the Individual Claim Amounts or Alleged Individual Claim Amounts to a Stock Line that is not an Affected Stock Line have been determined; and (ii) such time when the Company determines that it does not expect to Identify any further Distributable Trust Assets in respect of such Stock Line, the Company shall compare:

- (a) the amount of Distributable Trust Assets Identified in respect of such Stock Line; and
- (b) the sum of each Individual Claim Amount or, if applicable, Alleged Individual Claim Amount in respect of that Stock Line (such sum, the "**Total Claim Amount**").

41 Allocation for Stock Line with no potential shortfall

For each Stock Line that is not an Affected Stock Line in respect of which the amount of Distributable Trust Assets Identified is greater than or equal to the Total Claim Amount:

- (i) subject to Clause 39.2, the Company shall Allocate to each Signatory with an Asset Claim to such Stock Line an amount of Distributable Trust Assets (each, an "**Allocation Amount**") equal to its Individual Claim Amount, less the sum of: (a) any Intermediary Distribution Value; and (b) any Recoverable Delivery Value, in each case converted into an amount of Securities of the relevant Stock Line based on the Value of such Securities as at the Date Before Administration; and
- (ii) the remainder of this Part 10 shall not apply in respect of that Stock Line, other than Clause 50, which shall apply.

42 Allocation for Stock Line with potential shortfall

For each Stock Line in respect of which the amount of Distributable Trust Assets Identified is less than the Total Claim Amount of such Stock Line and that is not an Affected Stock Line, the Company shall proceed to determine the Asset Pool in which the Distributable Trust Assets belong, and the remainder of this Part 10 shall apply.

43 Identification of Distributable Trust Assets into Asset Pools

43.1 Asset Pools

43.1.1 The Company shall Identify the Distributable Trust Assets that comprise the Assets in each Asset Pool for each Stock Line falling within Clause 42. All Distributable Trust Assets of each such Stock Line shall be divided into one of two pools:

- (i) Distributable Trust Assets which comprise Custody Securities and/or Derived Assets arising from such Custody Securities (in respect of each Stock Line, a "**Custody Securities Pool**"); and

- (ii) Distributable Trust Assets which comprise Non-Custody Securities and/or Derived Assets arising from such Non-Custody Securities (in respect of each Stock Line, a **"Non-Custody Securities Pool"**).

43.1.2 The Company shall Identify the Distributable Trust Assets that comprise the Assets in each Asset Pool for each Affected Stock Line. All Distributable Trust Assets in respect of each Affected Stock Line for an Affected Intermediary shall either fall into:

- (i) one of a group of Single Customer Pools; or
- (ii) the same Multiple Stock Line Pool,

as determined by the Company in accordance with Clause 43.2.

43.2 Determining the relevant Asset Pool for an Affected Stock Line

43.2.1 If the Company determines that it has received, or it is likely that it will receive, sufficient information from such an Affected Intermediary to enable the Company to Identify all the particular TA Claimants to which all Distributable Trust Assets returned, or proposed to be returned, from such Affected Intermediary relate (each such TA Claimant, a **"Single Customer"**), all such Distributable Trust Assets that relate to a specific Single Customer shall fall into a separate pool (each a **"Single Customer Pool"**) in respect of each such Single Customer.

43.2.2 If the Company cannot determine that all such Distributable Trust Assets fall within one or more Single Customer Pools, then the Distributable Trust Assets in all of the Affected Stock Lines that are held by that Affected Intermediary shall fall into a single pool (such Asset Pool, a **"Multiple Stock Line Pool"**).

43.2.3 For the avoidance of doubt, after any Allocation has been made with respect to any Distributable Trust Assets that have been returned from an Affected Intermediary, the determination by the Company in accordance with Clause 43.2.1 or Clause 43.2.2 shall be irrevocable.

43.3 Each Asset Pool to be Allocated independently

43.3.1 The Company shall Allocate the Assets in each Asset Pool independently of any Allocation of Assets in respect of another Asset Pool, including, for the avoidance of doubt, where such Assets of such other Asset Pool are of the same Stock Line.

43.3.2 To the extent that any Assets remain Unallocated in an Asset Pool following the Last Allocation of such Asset Pool, such excess Assets shall be Surplus Assets for the purpose of Clause 63.7 and shall not form part of any other Asset Pool.

43.4 Determination of the Asset Claim relating to each Asset Pool

The Company shall determine the Asset Pool which is the subject of the Individual Claim Amount of each TA Signatory before making any Allocation of Assets in respect of that Asset Pool. Where an Individual Claim Amount of a TA Signatory in respect of a single Stock Line may be in respect of a Custody Securities Pool and/or a Non-Custody Securities Pool, the Company shall apportion the Asset Claim between Individual Claim Amounts in accordance with the Relevant Information. If the Relevant Information is not sufficiently adequate or reliable to do this, the Company shall apportion the entire Asset Claim to the relevant Non-Custody Securities Pool.

44 Reservation of Assets from a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool for TA Non-Signatories

This Clause 44 does not apply to any Single Customer Pool and any reference to an "Asset Pool" in this Clause 44 shall not be construed as a reference to any Single Customer Pool.

44.1 TA Non-Signatory

Any Non-Signatory that: (i) the Company determines has an Asset Claim to a Stock Line; or (ii) alleges to the Company that it has an Asset Claim with respect to a Stock Line, is a "**TA Non-Signatory**" in respect of that Stock Line.

44.2 Reserved Asset from an Asset Pool

The Company shall designate as "**Reserved Assets**" an amount of Distributable Trust Assets in each Asset Pool for which there is at least one TA Non-Signatory in respect of a Stock Line to which such Asset Pool relates. Such designation shall be made before any Allocation is determined in respect of such Asset Pool in an amount equal to the lesser of:

- 44.2.1 the sum of each TA Non-Signatory's TA Claimant Amount or, if applicable, Alleged TA Claimant Amount in respect of that Asset Pool; and
- 44.2.2 from time to time, the total amount of Distributable Trust Assets in such Asset Pool (as applicable).

44.3 Distributable Trust Assets ceasing to be designated as Reserved Assets

44.3.1 The Company shall cease to designate an amount of Distributable Trust Assets as Reserved Assets in respect of a TA Claimant Amount or Alleged TA Claimant Amount (as the case may be) of a TA Non-Signatory in accordance with this Clause 44.3.

44.3.2 If the Company:

- (i) has agreed with a TA Non-Signatory the amount of Distributable Trust Assets of a Stock Line which would be required to satisfy such TA Non-Signatory's Asset Claim; or
- (ii) determines the maximum amount (which may be zero) of Distributable Trust Assets of a Stock Line that would be required to enable such TA Non-Signatory's Asset Claims to be satisfied,

and such amount is less than the amount of the Reserved Assets, the excess of any Distributable Trust Assets which has been designated as Reserved Assets in respect of such TA Non-Signatory's Asset Claim over such amount in Clause 44.3.2(i) or Clause 44.3.2(ii), as the case may be, shall cease to be designated as Reserved Assets.

44.3.3 If the Accession Date of a TA Non-Signatory that becomes a Signatory falls on a date after Reserved Assets have been designated in respect of its Asset Claim, all of the Distributable Trust Assets which have been designated as Reserved Assets in respect of that TA Non-Signatory's Asset Claim shall cease to be designated as Reserved Assets.

45 Allocation of Assets in respect of a Custody Securities Pool, a Non-Custody Securities Pool or a Multiple Stock Line Pool

This Clause 45 does not apply to any Single Customer Pool and any reference to an "Asset Pool" in this Clause 45 shall not be construed as a reference to any Single Customer Pool.

45.1 Determination of Provisional Allocation Percentage

The "Provisional Allocation Percentage" of each Asset Pool Signatory at any time shall be determined by the Company in accordance with the following formula:

$$\text{Provisional Allocation Percentage} = 100\% \times \frac{\text{Individual Claim Value}}{\text{Total Claim Value}}$$

Where:

"Individual Claim Value" means, in respect of each Asset Pool Signatory at any time, an amount equal to: (i) the sum of the Value, as at the Provisional Valuation Date, of each Asset that is included in its Individual Claim Amount; or (as the case may be) (ii) its Net Equity Amount in respect of the relevant Asset Pool, except that the Individual Claim Value which is the subject of any underlying Dispute over a related TA Claimant Amount by each Asset Pool Signatory at such time shall be calculated by reference to its Alleged TA Claimant Amount in respect of the relevant Asset Pool; and

"Total Claim Value" at any time shall be determined by the Company as the sum of the Individual Claim Values of each of the Asset Pool Signatories at such time as determined by the Company.

45.2 Timing of determination

The Company shall determine the Provisional Allocation Percentage of each Asset Pool Signatory as soon as reasonably practicable following the Dispute Notice Deadline in respect of all the Claim Amount Notices in respect of the relevant Asset Pool, and thereafter:

45.2.1 as soon as reasonably practicable following any resolution of a (or, in the case of a Multiple Stock Line Pool, all) Dispute(s) between an Asset Pool Signatory and the Company over the TA Claimant Amount (or, in the case of a Multiple Stock Line Pool, all TA Claimant Amounts) relating to that Asset Pool;

45.2.2 as soon as reasonably practicable following the Accession Date of a TA Claimant after the Effective Date in respect of the relevant Asset Pool to this Agreement; and

45.2.3 as soon as reasonably practicable after the Company receives or otherwise becomes aware of new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) in accordance with Clause 50.

45.3 Determination of Allocation Amount

45.3.1 Allocation Amount

The Company shall Allocate an amount of Distributable Trust Assets not comprising Reserved Assets (each, an "Allocation Amount") to each Asset Pool Signatory in respect of: (i) a Custody Securities Pool or a Non-Custody Securities Pool of a Stock Line to which Clause 42 applies; or (ii) a Multiple Stock Line Pool in accordance with this Clause 45.3.

45.3.2 Allocation Amount following the Identification of Distributable Trust Assets

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following: (i) the first Allocation Date of an Asset Pool; and (ii) only in relation to a Multiple Stock Line Pool, on any subsequent Allocation Date on which additional Distributable Trust Assets have been Identified, the Company shall Allocate an Allocation Amount to each Asset Pool Signatory equal to its most recently determined Provisional Allocation Percentage multiplied by the amount of any Distributable Trust Assets which have been Identified by the Company in respect of that Allocation Date and which are not Reserved Assets.

45.3.3 Allocation Amount following the satisfaction of an Asset Claim of a TA Non-Signatory

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following any subsequent Allocation Date on which additional Distributable Trust Assets cease to be designated as Reserved Assets in accordance with Clause 44.3.2, the Company shall Allocate an Allocation Amount to each Asset Pool Signatory of the relevant Asset Pool equal to its most recently determined Provisional Allocation Percentage multiplied by the amount of Distributable Trust Assets ceasing to be designated as Reserved Assets in respect of that Allocation Date.

45.3.4 Allocation Amount following the acceptance of a TA Non-Signatory

Subject to Clause 39.2 and Clause 45.3.5, as soon as reasonably practicable following any subsequent Allocation Date on which a TA Non-Signatory enters into this Agreement after the Effective Date:

- (i) the TA Non-Signatory that has entered into this Agreement shall be Allocated an Allocation Amount from the Distributable Trust Assets, which have ceased to be designated as Reserved Assets as a result of its entering into this Agreement in accordance with Clause 44.3.3, equal to the sum of each Allocation Amount (if any) which the Company would have Allocated to such TA Non-Signatory on each previous Allocation Date (if any) if such TA Non-Signatory had been a Signatory to this Agreement since the Effective Date; and
- (ii) to the extent that any Distributable Trust Assets, which have ceased to be designated as Reserved Assets as a result of its entering into this Agreement in accordance with Clause 44.3.3, exceeds the Allocation Amount of that TA Non-Signatory determined in accordance with Clause 45.3.4(i), each Asset Pool Signatory (including the TA Non-Signatory that has entered into this Agreement) that has an Asset Claim or Net Equity Amount with respect to the Distributable Trust Assets ceasing to be designated as Reserved Assets shall be Allocated an Allocation Amount equal to a portion of such excess pro rata to each Asset Pool Signatory's most recently determined Provisional Allocation Percentage.

45.3.5 Suspension of Allocation for any Signatory Disputing its TA Claimant Amount

The aggregate of any Allocation Amount which would have been Allocated to an Asset Pool Signatory in accordance with Clause 45.3.2, Clause 45.3.3 and Clause 45.3.4 if such Allocation had not been suspended by Clause 39.2 shall be the "Suspended Allocation Amount" in respect of that Asset Pool Signatory.

45.3.6 Allocation Amount following the resolution of a Dispute over a TA Claimant Amount

Subject to Clause 45.3.5, as soon as reasonably practicable following an Allocation Date on which a Dispute over the TA Claimant Amount of an Asset Pool Signatory has been resolved:

- (i) if the TA Claimant Amount so settled as a result of the resolution of the Dispute is equal to the Alleged TA Claimant Amount, the Company shall Allocate an Allocation Amount to such Asset Pool Signatory equal to the Suspended Allocation Amount; and
- (ii) if the TA Claimant Amount so settled as a result of the resolution of the Dispute is less than the Alleged TA Claimant Amount:
 - (a) the Company shall Allocate an Allocation Amount to such Asset Pool Signatory equal to the sum of each Allocation Amount (if any) which the Company would have Allocated to such Asset Pool Signatory on each previous Allocation Date (if any) if: (x) such Asset Pool Signatory were not Disputing its TA Claimant Amount; and (y) its Provisional Allocation Percentage were calculated by reference to its TA Claimant Amount so settled as a result of the resolution of the Dispute; and
 - (b) the Company shall, subject to Clause 39.2, Allocate an Allocation Amount to each Asset Pool Signatory (including the Asset Pool Signatory which has just resolved its Dispute over the TA Claimant Amount) equal to such portion of: (x) the Suspended Allocation Amount of the Asset Pool Signatory for which the Dispute over its TA Claimant Amount is resolved; less (y) the Allocation Amount determined in accordance with Clause 45.3.6(ii)(a), pro rata to each Asset Pool Signatory's most recently determined Provisional Allocation Percentage.

45.3.7 Effect of Intermediary Distribution Value and Recoverable Delivery Value on Allocation Amount

(i) General rule

Subject to Clause 45.3.8 and Clause 45.3.7(iv), if the Company becomes aware that an Asset Pool Signatory has received: (a) an Intermediary Distribution; and/or (b) any Distributable Trust Assets (or the realisation proceeds of any Distributable Trust Assets), in each case in contravention of Clause 8.1 (such an Asset Pool Signatory, an "**Over-Allocated Signatory**"), then the immediately following Allocation Amount(s) which would have been Allocated to it under Clause 45.3.2, 45.3.3, 45.3.4, 45.3.6 or 45.3.7(iii), with a Value as at the Provisional Valuation Date up to an amount equal to the Excess Value (such Allocation Amount(s), the "**Reallocation Amount**"), shall instead be Allocated to the other Asset Pool Signatories in accordance with Clause 45.3.7(iii).

(ii) Excess Value

The "**Excess Value**" shall be an amount determined by the Company equal to the product of: (a) 100 per cent. less the most recently determined Provisional Allocation Percentage of such Over-Allocated Signatory; and (b) the relevant

Intermediary Distribution Value and/or Recoverable Delivery Value (as applicable).

(iii) **Allocation of the Reallocation Amount**

The Company shall Allocate to each Asset Pool Signatory other than the Over-Allocated Signatory such portion of the Reallocation Amount pro rata to the most recently determined Provisional Allocation Percentage of each such other Asset Pool Signatory, provided that:

- (a) to the extent that a Reallocation Amount comprises Distributable Trust Assets which would have been Allocated to that Over-Allocated Signatory as a result of an Allocation of a Reallocation Amount from another Over-Allocated Signatory, such other Over-Allocated Signatory shall not be included in the Allocation under this Clause 45.3.7;
- (b) if each Asset Pool Signatory other than the Over-Allocated Signatory is excluded under Clause 45.3.7(iii)(a), then the Company shall Allocate the Reallocation Amount to such Over-Allocated Signatory notwithstanding Clause 45.3.7(i).

(iv) **Suspension of Allocation pending determination of or resolution of Dispute over an Intermediary Distribution Value**

If the Company becomes aware that an Asset Pool Signatory has received an Intermediary Distribution, but the Intermediary Distribution Value: (a) has not been determined by the Company; or (b) is the subject of a Dispute by the relevant Asset Pool Signatory, the immediately following Allocation Amount(s) which would have been Allocated to it under Clause 45.3.2, 45.3.3, 45.3.4, 45.3.6 or 45.3.7(iii) shall not be Allocated until: (x) the Intermediary Distribution Value has been determined; or (y) the Dispute over the Intermediary Distribution Value is resolved (as applicable).

45.3.8 No double counting of Intermediary Distribution with respect to a Net Equity Amount

If the Company determines that the Net Equity Amount of any TA Signatory has already taken into account an amount of Intermediary Distribution received by such Asset Pool Signatory (including, for the avoidance of doubt, the reduction of Liabilities of such TA Signatory to the relevant Affected Intermediary by way of set-off), then Clause 45.3.7 shall not apply with respect to such amount of Intermediary Distribution.

45.4 Realisation of Assets

The Company shall, acting in a commercially reasonable manner, use reasonable endeavours to sell all the Distributable Trust Assets of a Multiple Stock Line Pool within six months following the return of such Distributable Trust Assets by the Affected Intermediary to the Company.

45.5 The Company may determine an Allocation in respect of the Multiple Stock Line Pool before all Distributable Trust Assets have been Identified

The Company may, from time to time, make an Allocation of Distributable Trust Assets which have been Identified in respect of a Multiple Stock Line Pool to an Asset Pool Signatory in accordance with this Part 10, whether or not the Company expects additional Assets may subsequently be Identified.

46 Asset Shortfall Claim with respect to a Custody Securities Pool or a Non-Custody Securities Pool

46.1 Asset Shortfall Claim to be determined after Last Allocation

The Company shall determine the Asset Shortfall Claim for each Asset Pool Signatory as soon as reasonably practicable after making the Last Allocation from a Custody Securities Pool or a Non-Custody Securities Pool.

46.2 Amount of Asset Shortfall Claim

The "**Asset Shortfall Claim**" for each Asset Pool Signatory of a Custody Securities Pool or a Non-Custody Securities Pool means an amount (or several amounts where the Asset Pool includes Derived Assets) determined by the Company as:

46.2.1 its Individual Claim Amount; less

46.2.2 the aggregate of all its Allocation Amounts with respect to that Asset Pool,

provided that the Value of an Asset Shortfall Claim: (i) being applied as a Distribution Asset (Valued as at the relevant Distribution Value Date) in the priority of application under Clause 60.5; or (ii) becoming an Ascertained Claim (Valued as at the Date Before Administration) under Clause 62.1; shall not include the aggregate of the Intermediary Distribution Value and Recoverable Delivery Value received by such Asset Pool Signatory in respect of the relevant Asset Pool.

47 Allocation in respect of a Single Customer Pool

47.1 Allocation Amount

The Company shall Allocate to each Signatory with an Asset Claim to a Single Customer Pool an "**Allocation Amount**" equal to such amount of Distributable Trust Assets that have been returned from such Affected Intermediary from time to time and which have been Identified by the Company as relating to such Signatory.

47.2 Suspension of Allocation

If, at any time after an Allocation has been made in accordance with Clause 47.1, the Company determines that, notwithstanding its determination under Clause 43.2.1, the information received from the relevant Affected Intermediary is insufficient to enable the Company to continue to Identify the Distributable Trust Assets returned from such Affected Intermediary that relate to a Single Customer, then no further Allocation shall be made in respect of any Distributable Trust Assets returned to the Company from such Affected Intermediary unless:

- (i) the Company is subject to an order made by a court of competent jurisdiction, which:
 - (a) requires the Company to make an Allocation in respect of such Distributable Trust Assets;
 - (b) determines the entitlements of Trust Asset Claimants to the relevant Distributable Trust Assets; or
 - (c) permits the Company to make an Allocation, Distribution or Appropriation in respect of such Distributable Trust Assets without incurring a liability to the TA Claimants in doing so,

provided that either:

- (x) the order is not capable of being appealed; or
- (y) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- (ii) the proposed Allocation has been agreed between: (a) the Company; and (b) each Single Customer in relation to such Affected Intermediary; or
- (iii) this Agreement has been modified in accordance with Clause 80 to provide for an alternative method of Allocation which takes into account such insufficiency of information.

48 Asset Shortfall Claim with respect to an Affected TA Signatory

48.1 Affected TA Signatory

Each TA Signatory who has an Asset Claim to Securities in respect of an Affected Stock Line is an **"Affected TA Signatory"** with respect to the relevant Affected Intermediary. Any Asset Shortfall Claims of an Affected TA Signatory shall be determined with respect to all of its Asset Claims against the same Affected Intermediary in accordance with this Clause 48.

48.2 Timing of determination of Asset Shortfall Claim

The Company shall determine the Asset Shortfall Claim for each Affected TA Signatory as soon as reasonably practicable after:

- 48.2.1 the Company has made the Last Allocation: (i) in respect of such Affected TA Signatory's Asset Claim to Securities held by the relevant Affected Intermediary (where the Affected TA Signatory is a Single Customer); or (ii) otherwise, in respect of the relevant Multiple Stock Line Pool; and
- 48.2.2 the Company determines that it has received sufficient information from the relevant Affected Intermediary to determine the Asset Shortfall Claim in accordance with Clause 48.3.

48.3 Amount of Asset Shortfall Claim

The Asset Shortfall Claim for each Affected TA Signatory in respect of an Affected Intermediary means a cash value determined by the Company as the lesser of:

- 48.3.1 (i) the Value of such amount of Assets as of the Provisional Valuation Date; or (ii) otherwise, a cash value, in each case (i) and (ii), admitted by the relevant Affected Intermediary to be the shortfall between: (a) the amount of Distributable Trust Assets that have been returned by the Affected Intermediary to the Company in respect of such TA Signatory; and (b) the amount of Assets which should have been returned to the Company by the Affected Intermediary in order to fully discharge the liability of such Affected Intermediary in respect of such TA Signatory, in each case (a) and (b), in respect of the Trust Assets that were held by such Affected Intermediary (after taking into account: (x) the ability of the relevant Affected Intermediary to discharge the liability to return Trust Assets by returning an amount of cash to the Company equal to the value of such Trust Assets as at a time later than the relevant Provisional Valuation Date; and/or (y) the exercise of any rights to set-off available to such Affected

Intermediary, in each case (x) and (y), as permitted or required under the relevant governing laws and regulations applicable to such Affected Intermediary); and

- 48.3.2 the Value of its Individual Claim Amount as of the Provisional Valuation Date to each of the Affected Stock Lines in respect of such Affected Intermediary; less the aggregate of the Value as of the Provisional Valuation Date of all of its Allocations in respect of its Asset Claims to Securities held by the relevant Affected Intermediary,

provided that the Asset Shortfall Claim: (i) being applied as a Distribution Asset in the priority of application under Clause 60.5; (ii) becoming an Ascertained Claim under Clause 62.1; or (iii) used to determine the amount of Ascertained Shortfall Amount under Clause 62.2.2 shall not include the aggregate of the Intermediary Distribution Value (only to the extent that such Intermediary Distribution Value applies to Clause 45.3.7 in accordance with Clause 45.3.8) and Recoverable Delivery Value received by such Asset Affected TA Signatory in respect of the relevant Asset Claim.

49 Shortfall Signatory

49.1 Shortfall Signatory

A "Shortfall Signatory" is:

- 49.1.1 an Affected TA Signatory who has made an Affected Intermediary Collateralisation Election, and whose Ascertained Shortfall Amount is greater than it would have been as a consequence of either condition in Clause 49.2;
- 49.1.2 otherwise, a TA Signatory whose: (i) TA Claimant Amount in respect of an Asset Pool cannot be satisfied to the same extent that it would have been as a consequence of either condition in Clause 49.2; and (ii) Asset Shortfall Claim, following Appropriation in accordance with Clause 61, exceeds its Net Financial Liability.

49.2 Shortfall Signatory Conditions

In relation to an Asset Pool, the conditions to a TA Signatory being a Shortfall Signatory are:

- 49.2.1 A TA Claimant to that Asset Pool is a Non-Signatory as a result of being an Excluded Party pursuant to Clause 2.3; and
- 49.2.2 The Company has entered into a bilateral arrangement with a TA Non-Signatory that affects Asset Claims to that Asset Pool.

49.3 Payment to Shortfall Signatory

- 49.3.1 The Company shall pay to a Shortfall Signatory falling within Clause 49.1.1 a cash value equal to the Value of its Ascertained Shortfall Amount less the Value that would have been determined as the Shortfall Signatory's Ascertained Shortfall Amount had such Excluded Party been a Signatory, or the Company not entered into such bilateral arrangement, as the case may be; provided that the Shortfall Signatory's Ascertained Shortfall Amount shall thereafter be deemed to be the lesser of such amounts described in Clause 49.1.1.
- 49.3.2 The Company shall pay to a Shortfall Signatory falling within Clause 49.1.2 a cash value equal to the lesser of: (i) the Value by which the Shortfall Signatory's Asset Shortfall Claim exceeds its Net Financial Liability; and (ii) the Value of the Shortfall Signatory's Asset Shortfall Claim less the Value that would have been determined as

its Asset Shortfall Claim had such Excluded Party been a Signatory, or the Company not entered into such bilateral arrangement, as the case may be.

50 Reallocation following the Company becoming aware of a new TA Claimant Amount or Alleged TA Claimant Amount

On any day when the Company receives or otherwise becomes aware of any new Relevant Information that relates to an Asset Claim in respect of a Stock Line or an Asset Pool (as applicable) after any determination of an Allocation Amount has been made by the Company in respect of such Stock Line or Asset Pool in circumstances where the Company believes that such new Relevant Information would have resulted in the determination of different Allocation Amounts had it been available at the time, the Company shall disregard all previous determinations of the Allocation for such Stock Line or Asset Pool, and shall proceed to re-determine the Allocation Amounts taking into account such new Relevant Information and in accordance with this Part 10, provided that:

- (i) any Assets for which instructions for settlement in respect of their Distribution or Appropriation have already been given will not be taken into account as Distributable Trust Assets of the relevant Stock Line or Asset Pool;
- (ii) the Asset Claim of any TA Claimant in respect of which instructions for settlement for a Distribution or Appropriation have already been given (each such TA Claimant, a "**Satisfied Claimant**") shall be reduced by the amount of their Asset Claim which has been satisfied by such Distribution or Appropriation that has been made and/or which will be satisfied by such Distribution or Appropriation as set out in such Distribution and Appropriation Notice;
- (iii) the Asset Claim of a Satisfied Claimant (as reduced in accordance with Clause 50(ii)) shall not be taken into account in the determination of Allocation Amounts until all other Signatories with an Asset Claim to the relevant Stock Line or Asset Pool have been Allocated an Allocation Amount to the same pro rata extent as the Asset Claim of such Satisfied Claimant has been satisfied by such Distribution or Appropriation and/or will be satisfied by such Distribution or Appropriation as set out in the Distribution and Appropriation Notice; and
- (iv) the Company shall not deliver a new Claim Amount Notice to any person if the information in its Claim Amount Notice remains the same.

51 Application of Distributable Trust Assets towards satisfaction of Asset Claims of TA Non-Signatories

51.1 Restriction on satisfying Asset Claims of TA Non-Signatories

The Company shall not apply any Distributable Trust Assets (whether or not such Distributable Trust Assets are designated as Reserved Assets in accordance with Clause 44) towards the satisfaction of Asset Claims of a TA Non-Signatory in respect of a Stock Line unless:

- 51.1.1 the proposed application of Distributable Trust Assets has been agreed between: (i) the Company; (ii) such TA Non-Signatory; (iii) each person who the Company determines as having an Asset Claim to such Stock Line; and (iv) any other person who has alleged to the Company that it has an Asset Claim to such Stock Line but with whom the Company has not reached an agreement in respect of its alleged Asset Claim;

- 51.1.2 the Company is subject to an order made by a court of competent jurisdiction, which requires the Company to make such application of Distributable Trust Assets or which determines the entitlements of Trust Asset Claimants to the relevant Stock Line, provided that either: (i) the order is not capable of being appealed; or (ii) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought);
- 51.1.3 the proposed application of Distributable Trust Assets is in accordance with Clause 51.2 and the Company has obtained an order from a court of competent jurisdiction, the effect of which is to afford the Company protection from liability in its capacity as trustee in respect of the relevant Trust Assets in carrying out such proposed application of Distributable Trust Assets, provided that either: (i) the order is not capable of being appealed; or (ii) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought); or
- 51.1.4 the proposed application of Distributable Trust Assets is in accordance with Clause 51.2 and has been agreed between the Company and all TA Signatories having an Asset Claim to such Stock Line.

51.2 Requirements for satisfaction of Asset Claims of TA Non-Signatories

A proposed application of Distributable Trust Assets shall satisfy the requirement of Clause 51.1.3 or Clause 51.1.4, as the case may be, if:

- 51.2.1 it is carried out in respect of a Stock Line other than an Affected Stock Line on the same or substantially similar basis as an Allocation in accordance with this Part 10 as if all TA Non-Signatories to such Stock Line have entered into this Agreement; and
- 51.2.2 it is carried out in respect of an Affected Stock Line on the same or substantially similar basis as an Allocation in accordance with this Part 10 as if all TA Non-Signatories with an Asset Claim to such Affected Stock Line and each other Affected Stock Line with respect to the same Affected Intermediary have entered into this Agreement.

PART 11: APPROPRIATION AND DISTRIBUTION

52 Introduction

52.1 Appropriation and Distribution

The Company will determine Distributions of Distribution Assets to a Signatory, subject to any rights of the Company to appropriate any Distribution Assets to Reduce such Signatory's Distribution Liabilities to the Company in full or in part.

52.2 Definitions

"**Distribution**" means any distribution of a Distribution Asset to a Signatory determined in accordance with this Part 11.

"**Appropriation**" means any application or appropriation by the Company of any Distribution Asset to Reduce Distribution Liabilities in accordance with Clause 54.3, and "**Appropriate**", "**Appropriated**" and "**Appropriating**" shall be construed accordingly.

"**Reduction**" means any reduction or discharge of Distribution Liabilities in accordance with Clause 55.3, and "**Reduce**", "**Reduced**" and "**Reducing**" shall be construed accordingly.

52.3 Costs Amount

The Company shall determine the Costs Amount applicable to each TA Signatory from time to time. The Company shall have a discretion to waive the Costs Amount, in part, in respect of a TA Signatory whose Acceptance Date falls after the end of the Initial Offer Period subject to a minimum of the Costs Amount that would have applied had such Acceptance Date fallen before the end of the Initial Offer Period.

53 No set-off

53.1 No set-off for Assets and Liabilities Transferred post Administration

53.1.1 Only those Assets and Liabilities comprising, respectively, Distribution Assets and Distribution Liabilities of a Signatory that have been held or owed by that Signatory at the Time of Administration can be applied towards each other for Reduction or set-off in accordance with this Part 11.

53.1.2 Subject to Clause 6.3, no Liabilities comprising Distribution Liabilities that have been Transferred to a Signatory after the Time of Administration may be applied against the Appropriation of Assets comprising any Distribution Assets: (i) held by that Signatory before the Time of Administration; or (ii) that have been Transferred to such Signatory. Distribution Liabilities that have been Transferred to a Signatory after the Time of Administration may be applied against the Appropriation of any Distribution Assets that have been Transferred by the same Transferor to that Signatory after the Time of Administration.

53.1.3 Subject to Clause 6.3, no Distribution Assets that have been Transferred to a Signatory after the Time of Administration may be applied towards the Reduction of any Distribution Liabilities: (i) owed by the Signatory since the Time of Administration; or (ii) that have been Transferred to such Signatory. Distribution Assets that have been Transferred to a Signatory after the Time of Administration may be applied towards the Reduction of any Distribution Liabilities that have been Transferred by the same Transferor to that Signatory after the Time of Administration.

- 53.1.4 Notwithstanding Clauses 53.1.1 to 53.1.3, all Assets comprising Distribution Assets of a Signatory, whether such Assets have been held or owed by that Signatory before or after the Time of Administration, and all Distribution Assets whether such Distribution Assets have been Transferred to such Signatory before or after the Time of Administration, can be Appropriated to Reduce each of the Distribution Liabilities in the following order of priority: (i) the Costs Amount, (ii) Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities (as applicable) and (iii) Unfunded Retention Amounts.

54 Distribution Assets

54.1 Distribution Assets

"Distribution Assets" are Assets and/or Claims for which the Company is accountable to, or for the benefit of, a Signatory under this Agreement and which comprise:

- 54.1.1 any Asset Allocation to the TA Signatory determined in accordance with Part 10;
- 54.1.2 any Retention Allocation to the TA Signatory determined in accordance with Part 8;
- 54.1.3 if a Collateralisation Election has been made, any Collateral Allocation to the TA Signatory determined in accordance with Clause 59.10, the Collateral Amount of the Signatory and any Pre-Administration Client Money Shortfall Claim of the Signatory;
- 54.1.4 if an Affected Intermediary Collateralisation Election has been made, any Shortfall For Appropriation determined in accordance with Clause 60.6.2;
- 54.1.5 the Net Financial Claim of the TA Signatory determined in accordance with Part 7; and
- 54.1.6 any Asset Shortfall Claim of the TA Signatory for each Asset Pool.

54.2 Applicability of Distribution Assets

- 54.2.1 An Asset Allocation shall be applied as a Distribution Asset in the priorities of application under Clauses 60.1, 60.2, 60.3, and 60.5.
- 54.2.2 A Retention Allocation shall be applied as a Distribution Asset in the priority of application under Clause 60.2.
- 54.2.3 A Collateral Allocation shall be applied as a Distribution Asset in the priority of application under Clause 60.4.
- 54.2.4 Any Asset Shortfall Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.5.
- 54.2.5 Any Shortfall For Appropriation shall be applied as a Distribution Asset in the priority of application under Clause 60.6.
- 54.2.6 Any Pre-Administration Client Money Shortfall Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.7.
- 54.2.7 Any Collateral Amount shall be applied as a Distribution Asset in the priority of application under Clause 60.8.
- 54.2.8 Any Net Financial Claim shall be applied as a Distribution Asset in the priority of application under Clause 60.1.
- 54.2.9 Any Asset Shortfall Claim and any Pre-Administration Client Money Shortfall Claim shall only be Appropriated to Reduce Net Financial Liability and shall not be

Appropriated to Reduce any other Distribution Liabilities. Any Net Financial Claim shall only be Appropriated to Reduce the Limited Ascertained Non-Financial Contract Liabilities and shall not be Appropriated to Reduce any other Distribution Liabilities.

- 54.2.10 Subject to Clause 6 and Clause 53, each of the Distribution Assets may be determined and Appropriated by the Company at different times to Reduce different Distribution Liabilities. In determining any Distribution and Appropriation, the Company will only take into account Distribution Assets that are available and applicable for Appropriation at that time. The Company has no obligation to determine all Distribution Assets of a Signatory prior to determining a Distribution or an Appropriation.

54.3 Effect of Appropriation of Distribution Assets

The effect of Appropriation of Distribution Assets differs depending on the type of Distribution Asset. The effect of Appropriation for each type of Distribution Asset shall be:

- 54.3.1 for Securities comprising an Allocation, to appropriate and convey or otherwise transfer to the Company full and absolute title (to the extent that the Signatory is able to convey such title) in such Securities upon such time of Appropriation, free and clear of any encumbrances, restrictions, limitations and any equitable interest or Equity of Redemption of the relevant TA Signatory in such Securities, and any of which that may exist shall be extinguished;
- 54.3.2 for any money comprising an Allocation, Collateral Amount, Retention Allocation or Collateral Allocation, to entitle the Company to retain such amount absolutely for its own account without any obligation to account for it to the Signatory;
- 54.3.3 for any Asset Shortfall Claim, to reduce the Ascertained Claim of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Asset Shortfall Claim;
- 54.3.4 for any Shortfall For Appropriation, to reduce the Shortfall For Appropriation of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Shortfall For Appropriation;
- 54.3.5 for any Pre-Administration Client Money Shortfall Claim, to reduce the Ascertained Claim of the relevant Signatory by an amount equal to the Appropriated amount of the Pre-Administration Client Money Shortfall Claim; and
- 54.3.6 for any Net Financial Claim, to reduce the Net Financial Claim of the relevant TA Signatory by such amount as is equal to the Appropriated amount of the Net Financial Claim.

55 Distribution Liabilities

55.1 Distribution Liabilities

"Distribution Liabilities" are Liabilities due and owing by the Signatory to the Company which may be Reduced by Appropriation of Distribution Assets (or as otherwise provided under Clause 55.4) under this Agreement and which comprise:

- 55.1.1 the Costs Amount applicable to that TA Signatory;
- 55.1.2 any Ascertained Non-Financial Contract Liabilities of that TA Signatory;
- 55.1.3 any Limited Ascertained Non-Financial Contract Liabilities of that TA Signatory;

- 55.1.4 any Unfunded Retention Amount relating to that TA Signatory;
- 55.1.5 the Net Financial Liability (if any) of that Signatory, which may comprise Uncollateralised Net Financial Liability and Collateralised Net Financial Liability if a Collateralisation Election has been made; and
- 55.1.6 if an Affected Intermediary Collateralisation Election has been made, the Affected Intermediary Derived Asset Liability of that TA Signatory.

55.2 Applicability of Distribution Liabilities

- 55.2.1 The Costs Amount shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and Clause 60.8.
- 55.2.2 Any Ascertained Non-Financial Contract Liabilities shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and Clause 60.8.
- 55.2.3 Any Limited Ascertained Non-Financial Contract Liabilities shall be applied as a Distribution Liability in the priority of application under Clause 60.1.
- 55.2.4 Any Unfunded Retention Amount shall be applied as a Distribution Liability in the priorities of application under Clauses 60.1 to 60.5 and Clause 60.8.
- 55.2.5 The Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clause 60.2 and Clause 60.5, if no Collateralisation Election has been made.
- 55.2.6 The Uncollateralised Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clauses 60.2 (unless an Appropriation Deferral Election has been made) 60.5, 60.7 and 60.8, if a Collateralisation Election has been made.
- 55.2.7 The Collateralised Net Financial Liability shall be applied as a Distribution Liability in the priorities of application under Clauses 60.3, 60.6, 60.7 and 60.8, if a Collateralisation Election has been made.
- 55.2.8 The Affected Intermediary Derived Asset Liability shall be applied as a Distribution Liability in the priority of application under 60.3, if an Affected Intermediary Collateralisation Election has been made.
- 55.2.9 Subject to Clause 6 and Clause 53, each of the Distribution Liabilities may be Reduced at different times and in different ways, including by Appropriation of different Distribution Assets. In determining any Distribution or Appropriation, the Company will only take into account Distribution Liabilities that exist at that time. Any subsequent increase in Distribution Liabilities, such as Ascertained Non-Financial Contract Liabilities, Limited Ascertained Non-Financial Contract Liabilities, Affected Intermediary Derived Asset Liability or Unfunded Retention Amount, shall not invalidate any prior Distribution or Appropriation.

55.3 Effect of Reduction of Distribution Liabilities

The effect of Reduction of Distribution Liabilities differs depending on the type of Distribution Liability. The effect of Reduction for each type of Distribution Liability shall be:

- 55.3.1 for a Costs Amount, to discharge the obligation of the TA Signatory to pay or account to the Company for such amount of the Costs Amount as is Reduced;

- 55.3.2 for Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities, to discharge the obligation of the TA Signatory to pay or account to the Company for such amount of the Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities as is Reduced;
- 55.3.3 for an Unfunded Retention Amount, to decrease the Unfunded Retention Amount by such Reduced amount and increase the Funded Retention Amount by such Reduced amount correspondingly in accordance with Clause 29.2;
- 55.3.4 for a Net Financial Liability, to discharge the obligation of the Signatory to pay or account to the Company for such amount of Net Financial Liability as is Reduced; and
- 55.3.5 for an Affected Intermediary Derived Asset Liability, to discharge the obligation of the Affected TA Signatory to pay or account to the Company for such amount of Affected Intermediary Derived Asset Liability.

55.4 Reduction of Distribution Liabilities

Distribution Liabilities may be Reduced in full or in part from time to time in any one way or a combination of ways as set out in Clauses 55.4.1 to 55.4.4.

55.4.1 Appropriation

Subject to Clause 55.5, Distribution Liabilities shall be Reduced by Appropriation by the Company of Distribution Assets in accordance with the priorities of application in Clause 60.

55.4.2 Payment

Distribution Liabilities may be Reduced by Payment by the Signatory to the Company on any Business Day upon giving not less than five Business Days' Notice to the Company. Such Notice shall show the amount and proposed payment date of such Payment and give details of the relevant account from which any amount for such Payment will be paid. If the Company incurs any costs and expenses as a result of the Signatory's failure to make such Payment in accordance with such Notice, such costs and expenses shall be a Non-Financial Contract Liability in respect of such Signatory.

A Signatory shall specify in such Notice which of the Distribution Liabilities and the amount of each such Distribution Liability it is intending to Reduce by way of such Payment, failing which the Company shall decide in its absolute discretion.

55.4.3 Intermediary Retention

Subject to Clause 55.5, Distribution Liabilities shall be Reduced upon the receipt by the Company of any Intermediary Retention on any Business Day.

The Company shall, as soon as reasonably practicable following the receipt of such Intermediary Retention:

- (i) determine the Value of such Intermediary Retention, as at the Business Day on which such Intermediary Retention is received by the Company;
- (ii) determine which of the Distribution Liabilities and the amount of each such Distribution Liability that is Reduced by the Value of such Intermediary Retention according to the purpose of such Intermediary Retention, if and to the extent that such purpose is either: (a) notified to the Company by the relevant Intermediary or Sub-Intermediary, as the case may be; or (b) reasonably apparent to the Company. Failing Clause 55.4.3(ii)(a) and Clause

55.4.3(ii)(b) above, the Company shall determine a Reduction of Distribution Liabilities in its absolute discretion; and

- (iii) as soon as reasonably practicable following the determination of Clause 55.4.3(ii)(a) and Clause 55.4.3(ii)(b), Notify the TA Signatory of such determinations.

55.4.4 Election to apply Collateral Amount

A Signatory may give an irrevocable instruction to the Company to appropriate its Collateral Amount in full or in part to Reduce its Collateralised Net Financial Liability on any Business Day upon giving not less than fifteen Business Days' Notice to the Company.

The Signatory shall specify in such Notice the amount of such Collateral Amount that the Company shall appropriate, failing which the Company shall decide, in its absolute discretion, the amount of Collateral Amount that it may appropriate to Reduce such Signatory's Collateralised Net Financial Liability in its absolute discretion. The Collateral Amount shall be Reduced accordingly.

55.5 Limitation on Reduction of Non-Financial Contract Liabilities

Any Non-Financial Contract Liabilities shall not be Reduced by Appropriation of Distribution Assets under Clause 55.4.1 or receipt of Intermediary Retention under Clause 55.4.3 if (and then only to the extent that) such Reduction would:

- 55.5.1 be prohibited by any applicable law or regulation; or
- 55.5.2 have the effect of Reducing such Non-Financial Contract Liabilities to an extent greater or more extensive than is permitted under Rule 2.85 or Rule 4.90 of the Insolvency Rules or, if greater, any contract between such Signatory and the Company.

55.6 Outstanding amount of Distribution Liability

- 55.6.1 Any reference to a Distribution Liability shall, at any time, be a reference to the outstanding amount of such Distribution Liability following any Reduction effected prior to such time.
- 55.6.2 Any Costs Amount, Net Financial Liability or Affected Intermediary Derived Asset Liability that has been Reduced in full shall, from such time, cease to be a Distribution Liability.
- 55.6.3 Any Unfunded Retention Amount, Ascertained Non-Financial Contract Liability or Limited Ascertained Non-Financial Contract Liability that has been Reduced in full shall, from such time, cease to be a Distribution Liability provided that it may be subsequently increased (if determined appropriate) to become a Distribution Liability again.

56 Conditions to Distributions and Appropriations

56.1 Conditions

The Company may determine Distributions and Appropriations with respect to a Signatory at any time when each of the conditions set out in Clauses 56.1.1 to 56.1.4 is satisfied, except that once the condition in Clause 56.1.1 in respect of an NTA Signatory is satisfied, the

Company may determine the Distributions and Appropriations with respect to such NTA Signatory.

56.1.1 Net Contractual Position

The Net Contractual Position of such Signatory has been determined in accordance with Part 7 or, where that Signatory disputes its Net Contractual Position in accordance with Clause 68, such Dispute has been resolved.

56.1.2 Retention Claim

The Retention Claim Identification Cut-Off Time relating to such TA Signatory has occurred and has not been postponed to a later date in accordance with Clause 27.

56.1.3 Allocation and no suspension by reason of De Minimis Allocation

An Allocation to such TA Signatory has been determined and the determination of a Distribution or Appropriation is not suspended by reason of such Allocation not being a De Minimis Allocation as described in Clause 56.3.

56.1.4 Non-Financial Contract Liabilities have been ascertained

If the Company determines at any time that a TA Signatory has any of the Non-Financial Contract Liabilities as described in Clause 33.1 and Clause 33.4 and such Non-Financial Contract Liabilities have not yet become Ascertained Non-Financial Contract Liabilities or Limited Ascertained Non-Financial Contract Liabilities (as the case may be), then no Distribution or Appropriation shall be determined until such time as the Non-Financial Contract Liabilities have become Ascertained Non-Financial Contract Liabilities.

56.2 Valid determination

56.2.1 Once the condition in Clause 56.1.1 has been satisfied, it will remain satisfied for the duration of this Agreement. The conditions in Clause 56.1.2, Clause 56.1.3 and Clause 56.1.4 may be satisfied at any one point in time and subsequently cease to be satisfied.

56.2.2 Provided that the Company has determined a Distribution or Appropriation at a time when the conditions in Clauses 56.1.1 to 56.1.4 are satisfied with respect to a TA Signatory, then any such Distribution or Appropriation shall not be invalidated if at any subsequent time any one of the conditions in Clause 56.1.2, Clause 56.1.3 or Clause 56.1.4 ceases to be satisfied.

56.2.3 Once the conditions in Clauses 56.1.1 to 56.1.4 have been satisfied, the Company shall, in its absolute discretion, choose to deliver Distributions of Distributable Trust Assets:

- (i) on a Stock Line-by-Stock Line basis;
- (ii) on a Signatory-by-Signatory basis; and/or
- (iii) in a combination of both Clause 56.2.3(i) and Clause 56.2.3(ii),

in such order as the Company sees fit, provided that this does not prejudice or unduly delay meeting the objectives and purposes, or otherwise conflict with the terms, of this Agreement.

56.3 De Minimis Allocation

If the Company determines, in its absolute discretion, that Assets of a particular Asset Pool which have been Allocated to a TA Signatory are of such minimal quantity that it would not be reasonably practicable for a Distribution or Appropriation to be determined with respect to such Allocation (a "**De Minimis Allocation**"), then no Distribution or Appropriation for such De Minimis Allocation shall be determined until the earlier of:

56.3.1 any additional Allocation of Assets of the same Asset Pool to such TA Signatory, which, when aggregated with such De Minimis Allocation, is of such quantity that the Company determines in its absolute discretion that it would be reasonably practicable for a Distribution or Appropriation to be determined; and

56.3.2 the final Allocation of Assets of that Asset Pool.

56.4 Distributable Trust Assets subject to encumbrances

If the Company determines that any Distributable Trust Asset that would otherwise be eligible for Distribution or Appropriation is subject to any Security Interest or other encumbrance that would prevent or restrict the Distribution or Appropriation of that Distributable Trust Asset in accordance with this Agreement, the Company may postpone the Distribution or Appropriation of that Distributable Trust Asset until such Security Interest or other encumbrance is removed, discharged or otherwise dealt with to the Company's satisfaction.

57 Distribution Value Date

The Company shall determine Distributions and Appropriations using the Value of the relevant Distribution Assets and Distribution Liabilities as of a date (such date, a "**Distribution Value Date**") falling on the twenty-fifth Business Day prior to the latest date on which the Company intends to give instructions for settlement of such Distribution Assets, regardless of whether any such Distribution Assets would actually fall due for delivery to a Signatory or be Appropriated in full by the Company.

58 Distribution and Appropriation Notice

58.1 Distribution and Appropriation Notice

The Company shall, as soon as reasonably practicable following the determination of any Distribution or Appropriation and in any case within five Business Days of the relevant Distribution Value Date, give a Notice to the relevant Signatory (such Notice, a "**Distribution and Appropriation Notice**"). If a TA Signatory receives a Distribution and Appropriation Notice from the Company and the Company becomes aware of new Relevant Information prior to the instructions for settlement having been given in respect of the relevant Distribution or Appropriation, which affects the calculation or determination of the information in respect of the Allocation of one or more Stock Lines provided in the Distribution and Appropriation Notice, then the original Distribution and Appropriation Notice to the extent of that Stock Line or those Stock Lines shall cease to be final and binding between the Parties. If an Appropriation Deferral Election is made by a TA Signatory relating to the Asset Allocation of that Stock Line and a Deferral Cash Amount is Paid to the Company once instructions for settlement in respect of the relevant Distribution or Appropriation have been given, then the Company shall, as soon as practicable, return the Deferral Cash Amount to such TA Signatory. The Company shall send a new Distribution and Appropriation Notice amending or superseding the original Distribution and Appropriation Notice, or if the Company decides that no Assets would be delivered to such TA Signatory, then the Company shall send a Notice to this effect.

58.2 Multiple Distributions and Appropriations

A single Distribution and Appropriation Notice may be given in respect of the Distribution or Appropriation of more than one Distribution Asset, provided that it shall specify all Relevant Information set out in Clause 58.3 in respect of each such Distribution Asset.

58.3 Content of Distribution and Appropriation Notice

A Distribution and Appropriation Notice shall contain the following information:

- 58.3.1 a list of each Distribution Asset relating to such Distribution or Appropriation, including the identification details of any Securities, number of any Securities and amount of any cash;
- 58.3.2 the Value of each relevant Distribution Asset as at the Distribution Value Date;
- 58.3.3 a list of each Distribution Liability of the Signatory as at the Distribution Value Date, subject to Clause 58.4;
- 58.3.4 the Value of each such Distribution Liability as at the Distribution Value Date, subject to Clause 58.4;
- 58.3.5 the number or amount and the Value of any Distribution Asset which the Company intends to appropriate to Reduce such Signatory's Distribution Liabilities;
- 58.3.6 the number or amount of any Distribution Asset which the Company intends to deliver as a Distribution to such Signatory, if any;
- 58.3.7 whether a Collateralisation Election may be made by the Signatory and, if so, the Collateral Amount, Collateral Claim Amount and Affected Intermediary Claim Amount as at the relevant Distribution Value Date, and if an Appropriation Deferral Election has not already been made with respect to that Asset Allocation, then the Deferral Election Deadline, the Deferral Cash Amount and the Deferral Cash Payment Date relating to such Asset Allocation;
- 58.3.8 if a Collateralisation Election has already been made by the Signatory, the Collateral Amount, Collateral Claim Amount and the Affected Intermediary Claim Amount as at the relevant Distribution Value Date and, if an Appropriation Deferral Election has already been made with respect to an Asset Allocation, the Deferral Cash Amount and the Deferral Cash Payment Date relating to such Asset Allocation;
- 58.3.9 the Distribution Value Date; and
- 58.3.10 the Delivery Instruction Date, if any Distribution shall fall due for delivery by the Company.

58.4 Statement of Distribution Liabilities

- 58.4.1 Any information relating to Distribution Liabilities in any Distribution and Appropriation Notice may not reflect any Reduction of such Distribution Liabilities which have been effected by Payment by the Signatory or receipt of Intermediary Retention by the Company within the period of five Business Days preceding the relevant Distribution Value Date.
- 58.4.2 This Clause 58.4 shall not affect the effectiveness of the Reduction of such Distribution Liabilities. The Company shall take into account any such Reduction as soon as reasonably practicable following such Distribution Value Date and reflect such Reduction in the next Distribution and Appropriation Notice to such Signatory.

59 Collateralisation Election

59.1 Collateralisation Election

Subject to this Clause 59, a Signatory may elect to collateralise its Net Financial Liability with one or more of the following amounts or liabilities (each of the below, a "**Collateralisation Election**");

- 59.1.1** its Pre-Administration Admitted Client Money Amount (a "**Client Money Collateralisation Election**");
- 59.1.2** its Deferral Cash Amount (for a TA Signatory only); and/or
- 59.1.3** its Affected Intermediary Admitted Claim Amount (for an Affected TA Signatory in respect of the Affected Stock Lines of a Net Equity Intermediary only) (an "**Affected Intermediary Collateralisation Election**").

59.2 Pre-Administration Admitted Client Money Amount

- 59.2.1** A Signatory's Net Financial Liability may only be collateralised by its Pre-Administration Admitted Client Money Amount if all or part of its Pre-Administration Client Money Claim has been admitted or determined as a Pre-Administration Admitted Client Money Amount in accordance with this Clause 59.2.
- 59.2.2** A Signatory may elect to collateralise its Net Financial Liability with its Pre-Administration Client Money Claim on any Business Day by giving not less than fifteen Business Days' Notice to the Company.
- 59.2.3** The "**Pre-Administration Admitted Client Money Amount**" in respect of a Signatory, from time to time, is equal to the aggregate of:
 - (i) any amount admitted from time to time by the Company as the Liability of the Company to that Signatory in respect of its Pre-Administration Client Money Claim; and
 - (ii) any amount (other than an amount in Clause 59.2.3(i)) determined from time to time by a court of competent jurisdiction, whose ruling is binding upon the Company and the Signatory and which is not then subject to appeal, as the Liability of the Company to that Signatory in respect of its Pre-Administration Client Money Claim,

in each case, provided that such Liabilities remain unsatisfied at the time when: (a) the Collateralisation Election is made; or (b) an Ascertained Claim is determined or admitted by the Company pursuant to Clause 62.3.2.

59.3 Deferral Cash Amount

- 59.3.1** A TA Signatory may elect to defer the exercise of the Company's rights to Appropriate an Asset Allocation of a particular Asset Pool to Reduce its Net Financial Liability until its Asset Shortfall Claim for that Asset Pool has been determined (such election, an "**Appropriation Deferral Election**"). A TA Signatory may only make such election upon the first Asset Allocation of a Stock Line in respect of an Asset Pool by giving Notice to the Company on or prior to the fifteenth Business Day following the relevant Distribution Value Date of such Asset Allocation (the "**Deferral Election Deadline**").
- 59.3.2** If an Appropriation Deferral Election is made, the TA Signatory shall, on or prior to each day falling on the fifth Business Day following any Distribution Value Date relating

to an Asset Allocation of that Asset Pool (each, a “**Deferral Cash Payment Date**”), Pay to the Company a cash amount (each such amount, a “**Deferral Cash Amount**”) equal to the lesser of:

- (i) the Value of that Asset Allocation as at such Distribution Value Date; and
- (ii) the Net Financial Liability of the TA Signatory as at such Distribution Value Date.

59.3.3 If the TA Signatory fails to pay any Deferral Cash Amount on or prior to the relevant Deferral Cash Payment Date, then the Company may without prior notice exercise its rights to appropriate any Asset Allocation to such TA Signatory to Reduce its Net Financial Liability.

59.3.4 The aggregate amount of all Deferral Cash Amounts in respect of an Asset Pool Paid by the TA Signatory to the Company shall increase the Collateral Amount which shall be applied as a Distribution Asset in the priority of payment under Clause 60.8.

59.4 Affected Intermediary Admitted Claim Amount

59.4.1 An Affected TA Signatory may collateralise its Net Financial Liability by its Affected Intermediary Admitted Claim Amount in respect of a Net Equity Intermediary on any Business Day before the Company gives a Distribution and Appropriation Notice to such Affected TA Signatory in relation to any Asset Allocation in respect of Distributable Trust Assets received from such Net Equity Intermediary, by giving not less than fifteen Business Days’ Notice to the Company.

59.4.2 Such Affected TA Signatory’s Net Financial Liability may only be collateralised after the Affected Intermediary Admitted Claim Amount has been admitted or determined by the Company in accordance with Clause 59.4.3.

59.4.3 The “**Affected Intermediary Admitted Claim Amount**” of an Affected TA Signatory in respect of a Net Equity Intermediary is an amount admitted by the Company equal to the lesser of: (i) the aggregate Value, as at the Provisional Valuation Date, of its Individual Claim Amounts (excluding all Derived Assets included in such Individual Claim Amounts) in respect of the relevant Affected Stock Lines; and (ii) its Net Equity Amount in respect of such Net Equity Intermediary.

59.5 Consequence of Affected Intermediary Collateralisation Election

59.5.1 Overrides any Appropriation Deferral Election

If an Affected TA Signatory makes an Affected Intermediary Collateralisation Election, any Appropriation Deferral Election (for the avoidance of doubt, including an Appropriation Deferral Election which such Affected TA Signatory makes after making an Affected Intermediary Collateralisation Election) shall not apply with respect to any Asset Allocation in relation to any Affected Stock Line which is the subject of such Affected Intermediary Collateralisation Election.

59.5.2 Undertaking to pay Intermediary Distribution Value to the Company

Each Signatory undertakes that, if it elects to make an Affected Intermediary Collateralisation Election, it shall pay the Company an amount of cash equal to:

- (i) any Intermediary Distribution Value received from the relevant Net Equity Intermediary unless the Company determines that such Intermediary Distribution Value has been taken into account in the relevant Net Equity

Amount of the Affected TA Signatory (including for the avoidance of doubt, the reduction of Liabilities of such TA Signatory to the relevant Affected Intermediary by way of set-off); or

- (ii) the value of any asset received by a Signatory on or after the Administration Date from the relevant Net Equity Intermediary that, had it been received by the Company, would have been a Derived Asset.

Such amount of cash is payable promptly and in no event later than 20 Business Days after the later of: (a) the day on which the Affected TA Signatory makes an Affected Intermediary Collateralisation Election; or (b) the day on which the amount of such Intermediary Distribution Value has been determined (in relation to (i) above) or such asset has been received by the Affected TA Signatory (in relation to (ii) above).

Such amount of cash received by the Company shall be deemed to become an Asset Allocation in relation to any Affected Stock Line which is the subject of such Affected Intermediary Collateralisation Election, and shall be subject to Appropriation and/or Distribution in respect of such Signatory in accordance with this Part 11.

59.5.3 Covenant to pay Derived Assets

If an Affected TA Signatory makes an Affected Intermediary Collateralisation Election, such Affected TA Signatory covenants to transfer to the Company all Derived Assets forming part of any Asset Allocation in respect of that Affected TA Signatory and Affected Intermediary (the liability of such Affected TA Signatory in respect of such Derived Assets being "**Affected Intermediary Derived Asset Liability**").

59.6 Consequence of Client Money Collateralisation Election

This Clause shall immediately apply upon a valid Client Money Collateralisation Election by a Signatory.

59.6.1 Each Signatory hereby irrevocably:

- (i) effects an absolute assignment to AssignCo of all and any Pre-Administration Client Money Claims and all of its rights with respect thereto. The Company, acting as the authorised agent of AssignCo, hereby accepts such assignment;
- (ii) directs the Company (or, as the case may be, the relevant compensation scheme, insurer or other person) to pay any Pre-Administration Client Money or proceeds of a Pre-Administration Client Money Claim that would, but for Clause 59.6.1, have been made to the Signatory to a bank account opened in the name of AssignCo (such account, the "**Pre-Administration Client Money Collection Account**") and the Signatory agrees that AssignCo shall be entitled to retain such amount absolutely for its own account without any obligation to account for it to the Signatory; and
- (iii) agrees that each payment by the Company in accordance with Clause 59.6.1(i) in respect of Pre-Administration Client Money held on Statutory Trust shall constitute a valid discharge pro tanto of the Statutory Trust upon which the Company held the relevant amount of Pre-Administration Client Money for the Signatory and the Company's obligations with respect to the distribution of such amount of Pre-Administration Client Money.

59.6.2 The Signatory:

- (i) undertakes that if, notwithstanding the assignment in Clause 59.6.1(i), it receives any amount or benefit in relation to a Pre-Administration Client Money Claim, it shall promptly upon receipt and without need for any demand pay such amount or, as the case may be, the fair value of such benefit to the Pre-Administration Client Money Collection Account for AssignCo's account;
- (ii) irrevocably authorises the Company, AssignCo and the Administrators to take all such action as they may reasonably consider appropriate in the name of, and on behalf of, the Signatory to establish, pursue or enforce any Pre-Administration Client Money Claims;
- (iii) agrees to promptly render such assistance and take such action as the Company, AssignCo or the Administrators may reasonably request in relation to such Client Money Claims including, without limitation, action to enforce any of the Pre-Administration Client Money Claims to the extent that the assignment in Clause 59.6.1(i) is, for any reason, ineffective; and
- (iv) agrees not to take any action in relation to such Client Money Claim or to waive, compromise, dispose of, charge, encumber or otherwise deal with the same except as so requested.

59.7 Total Collateralisation Amount

- 59.7.1 At any time, the aggregate of the Collateral Claim Amount, the Collateral Amount and the Affected Intermediary Claim Amount of a Signatory shall be the **"Total Collateralisation Amount"**.
- 59.7.2 The **"Collateral Claim Amount"** shall be the Signatory's Pre-Administration Admitted Client Money Amount as admitted or determined from time to time in accordance with Clause 59.2 that remains unsatisfied from time to time.
- 59.7.3 The **"Collateral Amount"** shall be the aggregate amount of: (i) all Pre-Administration Client Money distributions paid into the Pre-Administration Client Money Collection Account from time to time in accordance with Clause 59.6.1(i) in respect of the Signatory; and (ii) all Deferral Cash Amounts paid to the Company in accordance with Clause 59.3 less any decrease in accordance with Clause 59.9.
- 59.7.4 The **"Affected Intermediary Claim Amount"** shall be the Affected Intermediary Admitted Claim Amount as reduced by the Value of any Asset Allocation as at the Distribution Value Date that has been Appropriated in accordance with Clause 60.3.
- 59.7.5 Upon a valid Collateralisation Election by a Signatory, the Company shall establish a notional ledger to record:
- (i) the Collateral Claim Amount in respect of any Client Money Collateralisation Election;
 - (ii) the Collateral Amount in respect of any Client Money Collateralisation Election and/or Appropriation Deferral Election; and
 - (iii) the Affected Intermediary Claim Amount in respect of an Affected Intermediary Collateralisation Election,
- in each case of such Signatory from time to time.

59.7.6 No interest shall accrue on the Collateral Amount, the Collateral Claim Amount or Affected Intermediary Admitted Claim Amount.

59.8 Collateralised Net Financial Liability and Uncollateralised Net Financial Liability

At any time, the portion of such Signatory's Net Financial Liability equal to the lesser of: (i) the Total Collateralisation Amount at that time; and (ii) its Net Financial Liability at that time, shall be the collateralised portion of its Net Financial Liability (such portion, the "Collateralised Net Financial Liability").

At any time, such Signatory's Net Financial Liability less the Collateralised Net Financial Liability at that time shall be the uncollateralised portion of its Net Financial Liability (such portion, the "Uncollateralised Net Financial Liability").

59.9 Increase or decrease of Collateral Claim Amount and Collateral Amount

59.9.1 On each occasion that the Company pays a distribution of Pre-Administration Client Money to the Pre-Administration Client Money Collection Account in accordance with Clause 59.6.1(i) in respect of a Signatory, the Signatory's Collateral Claim Amount shall be reduced by an amount equal to such payment and the Signatory's Collateral Amount shall be increased by an amount equal to such payment.

59.9.2 The Signatory's Collateral Amount shall only be increased either: (i) together with a corresponding reduction of the Signatory's Collateral Claim Amount in accordance with Clause 59.9.1; or (ii) in respect of a TA Signatory, whenever a TA Signatory pays a Deferral Cash Amount to the Company in accordance with Clause 59.3, and shall be decreased in accordance with Clause 55.4.4, Clause 59.10 or Clause 60.8.

59.9.3 The Signatory's Collateral Claim Amount shall only be decreased: (i) together with a corresponding increase of the Collateral Amount in accordance with Clause 59.9.1; or (ii) in accordance with Clause 59.10, and shall only be increased to the extent of any increase, from time to time, of the Signatory's Pre-Administration Admitted Client Money Amount.

59.10 Collateral Allocation attributable to surplus Collateral Amount

59.10.1 If at any time the Total Collateralisation Amount exceeds the Net Financial Liability of a Signatory that has made a Collateralisation Election, then an amount equal to the lesser of: (i) the surplus of the Total Collateralisation Amount over such Net Financial Liability; and (ii) the Collateral Amount, shall be deemed to be an Allocation to such Signatory (such deemed Allocation, a "Collateral Allocation").

59.10.2 A Collateral Allocation shall be applied as a Distribution Asset in the priority of payment under Clause 60.4 and there shall be a corresponding Reduction in the Collateral Amount.

59.11 Application of Pre-Administration Client Money Shortfall Claim as Distribution Asset

59.11.1 In respect of a Signatory who has made a Collateralisation Election in respect of a Pre-Administration Client Money Claim, as soon as reasonably practicable following such time when the Company, in its absolute discretion, determines that: (i) it does not expect to make any further distribution of Pre-Administration Client Money in satisfaction of any Signatory's Pre-Administration Client Money Claim; and (ii) it does not expect any further increase to that Signatory's Pre-Administration Admitted Client

Money Amount, the Company shall determine the "**Pre-Administration Client Money Shortfall Claim**" of such Signatory as an amount equal to the Signatory's Collateral Claim Amount at such time.

59.11.2 Upon the determination of a Signatory's Pre-Administration Client Money Shortfall Claim, the Signatory's Collateral Claim Amount shall be reduced to zero and the Pre-Administration Client Money Shortfall Claim shall be applied as a Distribution Asset in accordance with Clause 60.7.

60 Appropriation of Distribution Assets to Reduce Distribution Liabilities

60.1 Allocation to TA Signatory with a Net Financial Claim

60.1.1 Applicable Distribution Assets and Distribution Liabilities

For a TA Signatory with a Net Financial Claim, where an Asset Allocation is determined in respect of any Stock Line at any time:

- (i) the applicable Distribution Asset shall be such Asset Allocation and Net Financial Claim; and
- (ii) the applicable Distribution Liability shall be the Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

60.1.2 First priority of application

The Company shall appropriate the Asset Allocation towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Asset Allocation and the amount of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, Ascertained Non-Financial Contract Liabilities; and
- (iii) thirdly, Unfunded Retention Amount.

60.1.3 Excess Distribution Asset or outstanding Distribution Liabilities

If the Value of such Asset Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all such Distribution Liabilities will be Reduced in full by Appropriation in accordance with Clause 60.1.2 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.1.2 shall be a Distribution to the TA Signatory.

If the Value of the Asset Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then the Asset Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.1.2 shall remain outstanding.

60.1.4 Second priority of application

The Company shall appropriate the Net Financial Claim towards the Reduction of the amount of the Limited Ascertained Non-Financial Contract Liabilities at the relevant Distribution Value Date.

60.1.5 Excess Distribution Asset or outstanding Distribution Liabilities

If the Net Financial Claim exceeds the Limited Ascertained Non-Financial Contract Liabilities, then the Limited Ascertained Non-Financial Contract Liabilities will be Reduced in full in accordance with Clause 60.1.4 and any remaining amount of Net Financial Claim after Appropriation in accordance with Clause 60.1.4 shall become an Ascertained Claim.

If the Net Financial Claim is less than the Limited Ascertained Non-Financial Contract Liabilities, then the Net Financial Claim will be Appropriated in full and any remaining Limited Ascertained Non-Financial Contract Liabilities that are not Reduced in accordance with Clause 60.1.4 shall remain outstanding as a Liability of the TA Signatory to the Company.

60.2 Interim Asset Allocation or Retention Allocation to a TA Signatory with a Net Financial Liability

60.2.1 Applicability

This Clause 60.2 applies to: (i) an Asset Allocation in respect of any Stock Line, other than any Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election; and (ii) a Retention Allocation.

60.2.2 Applicable Distribution Assets and Distribution Liabilities

For a TA Signatory with a Net Financial Liability, where an Asset Allocation is determined at any time prior to the determination of an Asset Shortfall Claim for that Asset Pool or where a Retention Allocation is determined:

- (i) the applicable Distribution Asset shall be such Asset Allocation or Retention Allocation, as the case may be; and
- (ii) the applicable Distribution Liabilities shall be the Costs Amount, Net Financial Liability (subject to whether a Collateralisation Election has been made), Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

60.2.3 Priority of application

The Company shall appropriate the Asset Allocation or the Retention Allocation, as the case may be, towards the Reduction of the applicable Distribution Liabilities, based on the Value of such Asset Allocation or Retention Allocation, as the case may be, and the amount of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, if no Collateralisation Election has been made, Net Financial Liability; or, if a Collateralisation Election has been made, the Uncollateralised Net Financial Liability (unless an Appropriation Deferral Election has been made in respect of that Asset Allocation, in which case the Uncollateralised Net Financial Liability shall not be an applicable Distribution Liability);
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

60.2.4 Excess Distribution Asset or outstanding Distribution Liabilities

If the Value of the Asset Allocation or the Retention Allocation exceeds the aggregate amount of the Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.2.3 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.2.3 shall be a Distribution to the TA Signatory or any remaining value of the Retention Allocation after Appropriation in accordance with Clause 60.2.3 shall be paid to the TA Signatory.

If the Value of the Asset Allocation or the Retention Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then such Asset Allocation or such Retention Allocation, as the case may be, will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.2.3 shall remain outstanding.

60.3 Asset Allocation following an Affected Intermediary Collateralisation Election

60.3.1 Applicability

This Clause 60.3 applies to an Asset Allocation in respect of an Affected Stock Line that is the subject of an Affected Intermediary Collateralisation Election.

60.3.2 Applicable Distribution Assets and Distribution Liabilities

For a TA Signatory with a Net Financial Liability who has made an Affected Intermediary Collateralisation Election, where an Asset Allocation is determined in respect of the Net Equity Intermediary the subject of the Affected Intermediary Collateralisation Election :

- (i) the applicable Distribution Asset shall be such Asset Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Affected Intermediary Derived Asset Liability relating to that Asset Allocation, Costs Amount, Collateralised Net Financial Liability, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

60.3.3 First priority of application

The Company shall appropriate any part of the Asset Allocation that comprises Derived Assets towards the Reduction of the Affected Intermediary Derived Asset Liability relating to that Asset Allocation, based on the Value of the component of such Asset Allocation that comprises Derived Assets and the amount of the Affected Intermediary Derived Asset Liability as at the relevant Distribution Value Date.

60.3.4 Excess Distribution Asset or outstanding Distribution Liability

It is intended that the Value of the component of such Asset Allocation that comprises Derived Assets will equal the amount of the Affected Intermediary Derived Asset Liability such that all such Affected Intermediary Derived Asset Liability will be Reduced in full by Appropriation and the component of such Asset Allocation will be Appropriated in full, in each case in accordance with Clause 60.3.3.

60.3.5 Second priority of application

The Company shall appropriate the balance of the Asset Allocation that does not comprise Derived Assets towards the Reduction of the applicable Distribution Liabilities, based on the Value of the balance of such Asset Allocation and the amount

of such Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, Collateralised Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

60.3.6 Excess Distribution Asset or outstanding Distribution Liabilities

If the Value of the Asset Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.3.5 and any remaining Value of the Asset Allocation after Appropriation in accordance with Clause 60.3.5 shall be a Distribution to the TA Signatory.

If the Value of the Asset Allocation is less than the amount of the aggregate amount of the applicable Distribution Liabilities, then such Asset Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.3.5 shall remain outstanding.

60.4 Interim Collateral Allocation to a Signatory with a Net Financial Liability

60.4.1 Applicable Distribution Assets and Distribution Liabilities

For a TA Signatory with a Net Financial Liability who has made a Collateralisation Election, where a Collateral Allocation is determined in accordance with Clause 59.10 at any time prior to the determination of its Pre-Administration Client Money Shortfall Claim and the Last Allocation:

- (i) the applicable Distribution Asset shall be such Collateral Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

60.4.2 Priority of application

The Company shall appropriate the Collateral Allocation towards the Reduction of the applicable Distribution Liabilities, based on the amount of such Collateral Allocation and such applicable Distribution Liabilities as at the relevant Distribution Value Date, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, Ascertained Non-Financial Contract Liabilities; and
- (iii) thirdly, Unfunded Retention Amount.

60.4.3 Excess Distribution Asset or outstanding Distribution Liabilities

If the amount of Collateral Allocation exceeds the aggregate amount of the applicable Distribution Liabilities, then all applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.4.2 and an amount equal to such remaining amount of the Collateral Allocation after Appropriation in accordance with Clause 60.4.2 shall be paid to the TA Signatory.

If the amount of Collateral Allocation is less than the aggregate amount of the applicable Distribution Liabilities, then the Collateral Allocation will be Appropriated in full and any applicable Distribution Liability that is not Reduced in full in accordance with Clause 60.4.2 shall remain outstanding.

60.4.4 Interim Collateral Allocation to an NTA Signatory

For an NTA Signatory with a Net Financial Liability that has made a Collateralisation Election, where a Collateral Allocation is determined in accordance with Clause 59.10 at any time prior to the determination of its Pre-Administration Client Money Shortfall Claim, an amount equal to such Collateral Allocation shall be paid to the NTA Signatory.

60.5 Last Asset Allocation to a TA Signatory with a Net Financial Liability

60.5.1 Applicability

This Clause 60.5 applies to any Asset Allocation and/or Asset Shortfall Claim in respect of any Stock Line other than any Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election.

60.5.2 Applicable Distribution Assets and Distribution Liabilities

For a TA Signatory with a Net Financial Liability, upon the determination of an Asset Shortfall Claim of an Asset Pool:

- (i) the applicable Distribution Assets shall be such Asset Shortfall Claim and any Asset Allocation; and
- (ii) the applicable Distribution Liabilities shall be the Net Financial Liability (subject to whether a Collateralisation Election has been made), Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount.

60.5.3 First priority of application

The Company shall first appropriate such Asset Shortfall Claim towards the Reduction of Net Financial Liability or, if a Collateralisation Election has been made, first, the Uncollateralised Net Financial Liability and, secondly, the Collateralised Net Financial Liability in that order, in each case, based on the Value of the Asset Shortfall Claim and the amount of such Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, as the case may be, as at the relevant Distribution Value Date.

60.5.4 Excess Asset Shortfall Claim and outstanding Net Financial Liability after first priority of application

If the Asset Shortfall Claim exceeds the Net Financial Liability, then the Net Financial Liability will be Reduced in full in accordance with Clause 60.5.3 and any remaining amount of Asset Shortfall Claim after Appropriation in accordance with Clause 60.5.3 shall be Valued as at the Date Before Administration and become an Ascertained Claim.

If the Asset Shortfall Claim is less than the Net Financial Liability, then the Asset Shortfall Claim will be Appropriated in full and any remaining Net Financial Liability or the Uncollateralised Net Financial Liability and the Collateralised Net Financial

Liability, as the case may be, that is not Reduced in accordance with Clause 60.5.3 shall remain outstanding for application as a Distribution Liability under Clause 60.5.5.

60.5.5 Second priority of application

The Company shall then appropriate the Asset Allocation towards the Reduction of the applicable Distribution Liabilities in the order of priority set out in this Clause 60.5.5, based on the Value of such Asset Allocation and the amount of such Distribution Liabilities as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.5.3. The applicable Distribution Liabilities shall be Reduced in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly:
 - (a) if a Collateralisation Election has been made, the Uncollateralised Net Financial Liability; or
 - (b) if no Collateralisation Election has been made, the Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

60.5.6 Excess Distribution Assets or outstanding Distribution Liabilities after second priority of application

If the Value of the Asset Allocation exceeds the aggregate amount of the Distribution Liabilities in Clause 60.5.5, then all such applicable Distribution Liabilities will be Reduced in full in accordance with Clause 60.5.5. Any remaining Value of such Asset Allocation after Appropriation in accordance with Clause 60.5.5 shall be a Distribution to the TA Signatory.

If the aggregate Value of the Asset Allocation is less than the aggregate amount of the applicable Distribution Liabilities in Clause 60.5.5, then the Asset Allocation will be Appropriated in full and any applicable Distribution Liability in Clause 60.5.5 that is not Reduced in full in accordance with Clause 60.5.5 shall remain outstanding.

60.6 Last Asset Allocation of Assets from the Affected Intermediary under an Affected Intermediary Collateralisation Election

60.6.1 Applicability

This Clause 60.6 applies in respect of the Affected Stock Lines that are the subject of an Affected Intermediary Collateralisation Election upon the Company having determined that it does not expect to make any further Asset Allocation in relation to Distributable Trust Assets received from such Net Equity Intermediary to an Affected TA Signatory.

60.6.2 Shortfall For Appropriation

As soon as reasonably practicable after making the determination in Clause 60.6.1, the Company shall determine the "Shortfall For Appropriation" of such Affected TA Signatory in respect of such Net Equity Intermediary in an amount equal to any excess of: (i) the relevant Affected Intermediary Admitted Claim Amount; over (ii) the aggregate Value of each such Asset Allocation (other than the Derived Asset

components subject to the first priority of application in Clause 60.3.3) as at the relevant Distribution Value Date.

60.6.3 Applicable Distribution Assets and Distribution Liabilities

Upon the determination of a Shortfall For Appropriation in respect of a TA Signatory and a Net Equity Intermediary, the subject of such Affected Intermediary Collateralisation Election:

- (i) the applicable Distribution Asset shall be any Shortfall For Appropriation; and
- (ii) the applicable Distribution Liability shall be the Collateralised Net Financial Liability.

60.6.4 Priority of application

The Company shall appropriate any Shortfall For Appropriation towards the Reduction of the Collateralised Net Financial Liability based on the Value of such Collateralised Net Financial Liability at the relevant Distribution Value Date.

60.6.5 Excess Shortfall For Appropriation and outstanding Net Financial Liability after priority of application

If the Shortfall For Appropriation is less than the Collateralised Net Financial Liability, then the Shortfall For Appropriation will be Appropriated in full and any remaining Collateralised Net Financial Liability that is not Reduced in accordance with Clause 60.6.4 shall remain outstanding for application as a Distribution Liability.

If the Shortfall For Appropriation exceeds the Collateralised Net Financial Liability, then the Net Financial Liability will be Reduced in full and the Affected TA Signatory shall have an Ascertained Claim in an amount equal to the Ascertained Shortfall Amount (which may be zero) determined by the Company in accordance with Clause 62.2.

60.7 Last distribution of Pre-Administration Client Money to Signatory

60.7.1 Applicable Distribution Assets and Distribution Liabilities

For a Signatory with a Net Financial Liability who has made a Collateralisation Election in respect of Pre-Administration Client Money, upon the determination of its Pre-Administration Client Money Shortfall Claim:

- (i) the applicable Distribution Asset shall be any Pre-Administration Client Money Shortfall Claim; and
- (ii) the applicable Distribution Liabilities shall be the Collateralised Net Financial Liability and the Uncollateralised Net Financial Liability.

60.7.2 Priority of application

The Company shall appropriate any Pre-Administration Client Money Shortfall Claim towards the Reduction of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability based on the amount of such Pre-Administration Client Money Shortfall Claim and Net Financial Liability as at the relevant Distribution Value Date.

60.7.3 Excess Pre-Administration Client Money Shortfall Claim and outstanding Net Financial Liability after first priority of application

If the amount of the Pre-Administration Client Money Shortfall Claim exceeds the aggregate amount of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, then the Net Financial Liability will be Reduced in full in accordance with Clause 60.7.2 and any remaining amount of Pre-Administration Client Money Shortfall Claim after Appropriation in accordance with Clause 60.7.2 shall become an Ascertained Claim of such Signatory.

If the amount of the Pre-Administration Client Money Shortfall Claim is less than the aggregate amount of the Uncollateralised Net Financial Liability and the Collateralised Net Financial Liability, then the Pre-Administration Client Money Shortfall Claim will be Appropriated in full and any remaining Uncollateralised Net Financial Liability and/or the Collateralised Net Financial Liability that is not Reduced in accordance with Clause 60.7.2 shall remain outstanding for application as a Distribution Liability under Clause 60.8.

60.8 Final Distribution of Collateral Amount following determination of Pre-Administration Client Money Shortfall Claim and final Asset Allocation

60.8.1 Applicable Distribution Assets and Distribution Liabilities

For a Signatory with a Net Financial Liability who has made a Collateralisation Election where: (a) the Collateralisation Election is in respect of Pre-Administration Client Money and the Company has determined such Signatory's Pre-Administration Client Money Shortfall Claim; (b) (for a TA Signatory) the Collateralisation Election is an Appropriation Deferral Election and there is no further Asset Allocation in respect of such TA Signatory; or (c) (for a TA Signatory) the Collateralisation Election falls within both (a) and (b) and the criteria in both (a) and (b) are satisfied, then:

- (i) the applicable Distribution Asset shall be the Collateral Amount; and
- (ii) the applicable Distribution Liabilities for a TA Signatory shall be the Net Financial Liability, Costs Amount, Ascertained Non-Financial Contract Liabilities and Unfunded Retention Amount and for an NTA Signatory shall be the Net Financial Liability.

60.8.2 Priority of application

For a TA Signatory, the Company shall appropriate the Collateral Amount towards the Reduction of the applicable Distribution Liabilities, based on the amount of such Collateral Amount and such applicable Distribution Liabilities as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.7.2, in the following order of priority:

- (i) first, Costs Amount;
- (ii) secondly, the Net Financial Liability;
- (iii) thirdly, Ascertained Non-Financial Contract Liabilities; and
- (iv) fourthly, Unfunded Retention Amount.

For an NTA Signatory, the Company shall appropriate the Collateral Amount towards the Reduction of the Net Financial Liability, based on the amount of such Collateral

Amount and such Net Financial Liability as at the relevant Distribution Value Date following any Reduction effected in accordance with Clause 60.7.2.

60.8.3 Excess Distribution Asset or outstanding Distribution Liabilities after second priority of application

If the Collateral Amount exceeds the aggregate amount of the applicable Distribution Liabilities, or in the case of an NTA Signatory, the Net Financial Liability, in this Clause 60.8.2, then all such applicable Distribution Liabilities, or Net Financial Liability (as applicable), will be Reduced in full in accordance with this Clause 60.8.2. An amount equal to any remaining Collateral Amount after Appropriation in accordance with this Clause 60.8.2 shall be paid to the Signatory.

If the Collateral Amount is less than the aggregate amount of the applicable Distribution Liabilities, or the Net Financial Liability (as applicable), in this Clause 60.8.2, then the Collateral Amount will be Appropriated in full and any applicable Distribution Liability in this Clause 60.8.2 that is not Reduced in full in accordance with this Clause 60.8.2 shall remain outstanding.

61 Distributions relating to Pre-Agreement Asset Contracts

If a TA Signatory who is a Pre-Agreement Provisionally Returned Asset Recipient would, but for the operation of this Clause 61, otherwise be due a Distribution pursuant to Clause 60, then if the amount of such Distribution in the Company's absolute discretion (after the Company has made an appropriate adjustment to reflect timing differences relating to value and the accrual of Derived Assets between the date of return of the Pre-Agreement Provisionally Returned Assets and the proposed value date of the Distribution and Appropriation Notice for such Distribution) is:

- (i) equal to or greater than the amount of the Signatory's Pre-Agreement Provisionally Returned Assets:
 - (a) the Pre-Agreement Provisionally Returned Assets shall be its Pre-Agreement Returned Assets; and
 - (b) the Distribution (otherwise determined in accordance with Part 11) less its Pre-Agreement Returned Assets (after adjustment as provided above) shall be the Distribution to such Signatory for the purpose of this Agreement; or
- (ii) less than an amount of the Signatory's Pre-Agreement Provisionally Returned Assets:
 - (a) the Distribution (otherwise determined in accordance with Part 11) shall be its Pre-Agreement Returned Assets;
 - (b) there shall be no further Distribution to such Signatory for the purpose of this Agreement; and
 - (c) nothing in this Agreement shall be construed to prevent the Company from pursuing, or be a waiver of any right of the Company to pursue, the Signatory for such excess amounts of Pre-Agreement Provisionally Returned Assets in accordance with any such terms of the relevant Pre-Agreement Asset Contract.

62 Ascertained Claims

The Company shall determine the following Ascertained Claims (if any) of a Signatory.

62.1 Asset Shortfall Claim

For a Signatory with a Net Financial Liability, subject to Clause 46.2 or Clause 48.3 (as applicable), the aggregate of all excess Asset Shortfall Claims after Appropriation in accordance with Clause 60.5.4 shall be Valued as at the Date Before Administration and become an Ascertained Claim.

For a Signatory with a Net Financial Claim, subject to Clause 46.2 or Clause 48.3 (as applicable), the aggregate of all Asset Shortfall Claims shall be Valued as at the Date Before Administration and become an Ascertained Claim.

62.2 Ascertained Shortfall Amount

62.2.1 For an Affected TA Signatory who has made an Affected Intermediary Collateralisation Election and has an amount of Shortfall For Appropriation remaining after all Collateralised Net Financial Liability has been Reduced in accordance with Clause 60.6.5, the Ascertained Shortfall Amount shall become an Ascertained Claim.

62.2.2 An "Ascertained Shortfall Amount" for an Affected TA Signatory in respect of the relevant Net Equity Intermediary is an amount, subject to a minimum of zero and subject to Clause 48.3, equal to the Asset Shortfall Claim of such TA Signatory in respect of such Net Equity Intermediary (determined in accordance with Clause 48.3) less the amount of the Collateralised Net Financial Liability Reduced to zero by Appropriation against the related Shortfall For Appropriation in accordance with Clause 60.6.4.

62.3 Pre-Administration Client Money Shortfall Claim

62.3.1 For a Signatory who has made a Collateralisation Election, the amount of its Pre-Administration Client Money Shortfall Claim remaining after Appropriation in accordance with Clause 60.7.3 shall become an Ascertained Claim.

62.3.2 In respect of a Signatory who has not made a Collateralisation Election in respect of a Pre-Administration Client Money Claim, as soon as reasonably practicable following such time when the Company, in its absolute discretion, determines that it does not expect to make any further distribution of Pre-Administration Client Money in satisfaction of any Signatory's Pre-Administration Client Money Claim, the Company shall determine and admit as an Ascertained Claim an amount equal to the Signatory's Pre-Administration Admitted Client Money Claim that remains unsatisfied at that time.

62.4 Net Financial Claim

A TA Signatory with a Net Financial Claim, after Appropriation in accordance with Clause 60.1.4, shall have an Ascertained Claim for an amount equal to such Net Financial Claim remaining after Appropriation.

An NTA Signatory with a Net Financial Claim shall have an Ascertained Claim for an amount equal to such Net Financial Claim.

PART 12: DELIVERY OF DISTRIBUTIONS

63 Delivery of Distributions

63.1 Delivery of Distributions to Signatories

- 63.1.1 The Company shall deliver to each Signatory its Distribution in accordance with this Clause 63.
- 63.1.2 Each Signatory's Distribution may be delivered to it by a number of different deliveries. The Company shall, acting in a commercially reasonable manner, determine the Delivery Instruction Date in respect of each delivery.
- 63.1.3 Unless otherwise specified under this Agreement, a Signatory shall not be entitled to any payment or other assets, whether of interest or otherwise, if the delivery of the Distribution falls after the Delivery Date or if the Delivery Instruction Date or the Delivery Date is postponed (or both of them are) by reason of this Clause 63.
- 63.1.4 Any Securities to be delivered by the Company under this Part 12 shall be rounded down to the nearest: (i) whole number of Securities; or (ii) integral multiple of the minimum transfer value of such Security, and delivered to the relevant Signatory in accordance with Clause 63.2. The Company shall, provided that it is reasonably and economically practicable to do so, realise the number of the Securities which have been subject to the rounding down (if any) in aggregate and shall pay the realisation proceeds of the fractional entitlement of such Securities, to the Signatory in accordance with Clause 63.5.

63.2 Method of delivery of Securities

- 63.2.1 In order for the instruction for settlement to be given in respect of any Securities to which it is entitled out of a Distribution on a Delivery Instruction Date, a Signatory must send a Notice (an "**Asset Delivery Notice**") to the Company no later than 5.00 p.m. (London time) on the day which is five Business Days before the Delivery Instruction Date in relation to such Securities (the "**Notice Cut-off Date**"). An Asset Delivery Notice may be provided to the Company by a Signatory in respect of Securities of a single Stock Line or in respect of one or more classes or categories of Securities.
- 63.2.2 If a Signatory has delivered a valid Asset Delivery Notice in respect of Securities of one Stock Line or in respect of one or more classes or categories of Securities, the Company shall treat that Asset Delivery Notice as valid for all subsequent Distributions of Securities of the same Stock Line, class or category, unless and until the Signatory delivers a replacement Asset Delivery Notice to the Company in accordance with Clause 63.2.1.
- 63.2.3 An Asset Delivery Notice shall:
- (i) specify the Securities (whether by Stock Line, class or category) to which it applies;
 - (ii) contain full details of the person and/or account to which the Securities are to be delivered, together with the method by which delivery is to be effected and any other information that may be required for delivery of the Securities;
 - (iii) specify an account to which any cash amounts are to be paid; and

- (iv) authorise the production of such Notice in any applicable administrative or legal proceedings.

The Company may treat any Asset Delivery Notice which, in the opinion of the Company, is not compliant with this Clause 63.2.3, as null and void.

- 63.2.4 Notwithstanding Clause 63.2.3, where, in the opinion of the Company, the information in an Asset Delivery Notice is ambiguous, unclear or insufficient, the Company may reject such Asset Delivery Notice as invalid and request the relevant Signatory to provide a revised Asset Delivery Notice curing the ambiguity, lack of clarity or insufficiency.
- 63.2.5 Notwithstanding Clause 63.2.3, where, in the opinion of the Company, the instructions for and method of delivery of Securities as set out in the Asset Delivery Notice, or such instructions or method of delivery would involve disproportionate costs, the Company may in its absolute discretion:
 - (i) reject such Asset Delivery Notice as invalid and request the relevant Signatory to provide a revised Asset Delivery Notice with alternative instructions for and method of delivery of such Securities, which shall also be subject to this Clause 63.2.5; or
 - (ii) require the Signatory to pay to the Company such sum of money as the Company determines necessary to meet the additional costs incurred in delivering such Securities and the Company need not effect such delivery until these extra costs have been paid to it by the Signatory.
- 63.2.6 If a Signatory delivers an Asset Delivery Notice to the Company after 5.00 p.m. (London time) on the Notice Cut-off Date in relation to any Securities, then the Delivery Instruction Date for those Securities may, at the discretion of the Company, be postponed to the day that falls up to five clear Business Days after the day on which such Asset Delivery Notice is given or, if the Company considers that that date is not reasonably practicable, such later date as the Company may decide.
- 63.2.7 Provided that the Signatory has delivered a valid Asset Delivery Notice in accordance with Clause 63.2.1, Clause 63.2.2 and Clause 63.2.3, and subject to the Delivery Disruption Event provisions set out in Clause 63.4, the Company shall give, or procure the giving of, the instruction for settlement of each delivery on the Delivery Instruction Date to the person and/or account specified in the Asset Delivery Notice in such commercially reasonable manner as the Company shall determine to be appropriate for such delivery at the risk of the relevant Signatory.
- 63.2.8 If the Signatory fails to deliver an Asset Delivery Notice to the Company in respect of a Distribution (or any delivery in respect of that Distribution) by 5.00 p.m. (London time) on the day falling 12 months after the Notice Cut-off Date, the Signatory shall forfeit its right to receive delivery of the relevant Distribution (or part of it) and such Distribution (or part of it) shall be deemed to be an Unclaimed Distribution and applied in the manner set out in Clause 63.6.

63.3 Delivery Date

- 63.3.1 The "Delivery Date" in respect of any Securities comprising a Distribution shall be such date that the Company determines, acting in a commercially reasonable manner, would be the date on which those Securities would be delivered to the Signatory if the

Company instructed their delivery in accordance with the relevant Asset Delivery Notice on the respective Delivery Instruction Date.

63.4 Delivery Disruption Event

- 63.4.1 If the Company determines that delivery of a Distribution (or part of it) is not practicable on a Delivery Date by reason of a Delivery Disruption Event relating to those Securities, then that Delivery Date shall be postponed to the first following Business Day in respect of which there is no such Delivery Disruption Event; provided that, subject as provided below, in no event shall delivery be made later than such date as the Company and the Signatory may mutually agree (the "**Physical Delivery Deadline**").
- 63.4.2 The Company and the Signatory shall make reasonable endeavours to agree to such other alternative method of delivery which is not subject to a Delivery Disruption Event on or before the Physical Delivery Deadline.
- 63.4.3 If the delivery of the Distribution (or part of it) is not practicable by reason of a Delivery Disruption Event having occurred and continuing on the Physical Delivery Deadline, then, in lieu of delivery of the Distribution (or part of it), the Company shall discharge its obligations to deliver the Distribution to the Signatory by: (i) using reasonable endeavours to sell the relevant Distribution; and (ii) to the extent that the Company is able to sell the relevant Distribution, paying the Signatory the proceeds of such sale in accordance with Clause 63.5.

63.5 Method of delivery of money

- 63.5.1 Any Distribution of money shall be delivered by payment of cash by telegraphic transfer or other electronic means in immediately available funds to such bank account as the Signatory shall Notify to the Company in writing on the relevant Delivery Date at the risk of such Signatory.
- 63.5.2 A Distribution of money to Signatories shall be deemed to have been delivered on the day that the wire transfer instruction is given by or on behalf of the Company to the relevant bank.
- 63.5.3 Receipt of the amount of any such telegraphic transfer or an amount received by other electronic means into such bank account shall be good discharge and satisfaction of the money in respect of which it was paid.
- 63.5.4 If the Company has made a payment of money by telegraphic transfer or other electronic means using details provided by the Signatory, and such payment fails to be credited to that account and remains in the bank account of the Company, then the Company shall Notify the Signatory and request details of an alternative bank account from that Signatory. Signatories will have a period of 12 months to provide such instructions and the Company shall send a second request for instructions six months after the first request, and a third request three months after the second request. If the Signatory fails to provide details of an alternative bank account to the Company within 12 months of the date of the failed transfer of the cash, such failure to provide instructions to the Company shall be deemed a discharge of the Company's obligations to that Signatory in respect of that payment and the Signatory shall forfeit its Claim to that Distribution and such Distribution shall be considered to be an Unclaimed Distribution and applied in the manner set out in Clause 63.6.

63.6 Unclaimed Distributions

At the expiration of 12 months from a Delivery Instruction Date, a Signatory who fails to Claim a Distribution pursuant to Clause 63.2.8 or Clause 63.5.4 (an "**Unclaimed Distribution**") shall be deemed to have waived its rights to that Distribution pursuant to this Agreement and the Company shall retain, transfer or dispose of such Unclaimed Distribution.

63.7 Surplus Assets

If, after having made all Distributions in respect of any particular type of Asset which are required to be made under this Agreement, there remains Distributable Trust Assets of that type which could still be available for delivery (the "**Surplus Assets**"), the Company shall retain, transfer or dispose of such Surplus Assets, except to the extent any such Assets relate to excess assets distributed for the benefit of any Signatory by LBI.

PART 13: CLOSING

64 Closing Statement

64.1 Closing Time

Upon the determination of the final Distribution and Appropriation to a TA Signatory and an NTA Signatory that has made a Collateralisation Election (such time, the "**Closing Time**"), the Company shall give a Closing Statement to such Signatory.

64.2 Closing Statement

64.2.1 The "**Closing Statement**" for a TA Signatory shall specify the following information:

- (i) any outstanding Net Financial Liability and Non-Financial Contract Liabilities of such TA Signatory, as at such date;
- (ii) all Allocations to such TA Signatory under this Agreement;
- (iii) all Distributions to such TA Signatory under this Agreement;
- (iv) any Asset Shortfall Claim and any other Ascertained Claim of such TA Signatory;
- (v) if a Collateralisation Election has been made, the Pre-Administration Client Money Claim or Pre-Administration Client Money Shortfall Claim (if any) of such TA Signatory;
- (vi) all payments that have been made to such TA Signatory's Retention Creditors;
- (vii) any Intermediary Distribution and Intermediary Retention in respect of such TA Signatory; and
- (viii) the Costs Amount and, if applicable, any Costs Rebate Amount to be repaid to such TA Signatory.

64.2.2 The "**Closing Statement**" for an NTA Signatory shall specify the following information:

- (i) any outstanding Net Financial Liability of such NTA Signatory as at such date;
- (ii) all Distributions to such NTA Signatory under this Agreement;
- (iii) any Ascertained Claim of such NTA Signatory; and
- (iv) if a Client Money Collateralisation Election has been made, the Pre-Administration Client Money Claim or Pre-Administration Client Money Shortfall Claim (if any) of such NTA Signatory.

64.2.3 The Closing Statement shall also state that the Company has discharged all of its obligations in respect of that Signatory pursuant to this Agreement.

64.3 Payment of Costs Rebate Amount

At the Closing Time for a TA Signatory, if the Company determines that there is a Costs Rebate Amount for such TA Signatory, it shall pay such Costs Rebate Amount to such bank account as the TA Signatory has Notified to the Company in writing in accordance with Clause 63.5.

**PART 14: REPRESENTATIONS AND WARRANTIES, AND CERTAIN
UNDERTAKINGS BY A SIGNATORY**

65 Provision of Representations and Warranties, and certain Undertakings

65.1 Provision of Initial Representations and Warranties upon signing this Agreement

Each Signatory represents and warrants to the Company that as at its Accession Date:

- 65.1.1 it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws of which it is established, and, if relevant under such laws, in good standing and has full power and authority to conduct its business activities;
- 65.1.2 it has (or, in respect of completed actions, at the relevant time had) the power to execute this Agreement and any documentation relating to this Agreement to which it is a party, to deliver this Agreement and any documentation relating to this Agreement that it is required to deliver and to perform its obligations under this Agreement and any documentation relating to this Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- 65.1.3 such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term or provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;
- 65.1.4 all actions or things required to be taken, fulfilled or done (including, without limitation, the obtaining of any consent or licence or the making of any filing or registration) by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 65.1.5 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in equity or at law)); and
- 65.1.6 there is not pending or, to its knowledge, threatened against it any action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement,

(each, an "Initial Representation and Warranty", and together, the "Initial Representations and Warranties").

65.2 Provision of Information Representations and Warranties upon submission of information

By submitting information in respect of its Asset Claims (via the Portal or otherwise), each TA Signatory represents and warrants to the Company, as at: (i) the date of submission of such information; and (ii) with respect to Clause 65.2.5 and Clause 65.2.8, each time upon

providing the Company with any information in accordance with this Agreement (whether in response to requests for information from the Company, Adjudicator, the Valuation Expert or otherwise), that:

- 65.2.1 the TA Signatory has a right, free from encumbrances, to make an Asset Claim in respect of an Asset or has fully disclosed to the Company all encumbrances in respect of that Signatory's right to make an Asset Claim in respect of that Asset;
- 65.2.2 save as specifically disclosed (via the Portal or otherwise), or permitted by Clause 6, the TA Signatory is not asserting any Asset Claims, Pre-Administration Client Money Claims or any other Claims or Liabilities against the Company that have been Transferred to such TA Signatory after the Time of Administration;
- 65.2.3 the Signatory is not asserting an Asset Claim in respect of any Asset previously received from another person, including, for the avoidance of doubt, any other Signatories;
- 65.2.4 the Signatory has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, all documents and obligations pursuant to this Agreement, including, for the avoidance of doubt, the power and authority to provide Relevant Information to the Company;
- 65.2.5 the Signatory believes, after making due and careful enquiries, that the information in respect of its Asset Claims submitted (via the Portal or otherwise), any Intermediary Distribution Notice, the Valuation Statements, the Asset Delivery Notice and any further information provided to the Company in accordance with this Agreement, whether in response to requests for information from the Company, Adjudicator or the Valuation Expert, or otherwise, is true, complete, accurate and not misleading;
- 65.2.6 save as previously disclosed in writing, the Signatory is not aware, having made due and careful enquiries, of any further Liabilities in respect of the Asset which may give rise to an entitlement on the part of the Company to withhold a Retention Amount in accordance with Part 8 and any previously disclosed Liabilities in respect of the Asset have been fully and accurately disclosed;
- 65.2.7 the Signatory has the ability, and is permitted pursuant to the applicable laws of the jurisdiction in which that Signatory is located, to lawfully accept the delivery of any Distribution made by the Company in accordance with this Agreement and to give full discharge to the Company Released Parties for the Assets which have been delivered to such Signatory as a Distribution;
- 65.2.8 the Signatory is not prohibited by:
 - (i) any law or regulation applicable to such Signatory;
 - (ii) any constitutional documents of such Signatory; or
 - (iii) any agreement or instrument binding on such Signatory,from disclosing the information relating to its Asset Claims (via the Portal or otherwise) or receiving any Distributions pursuant to this Agreement,

(each, an "Information Representation and Warranty", and together, the "Information Representations and Warranties").

65.3 Repetition of Information Representations and Warranties

Each TA Signatory shall be deemed to repeat in full the Information Representations and Warranties on each Delivery Instruction Date that the relevant TA Signatory is due to be delivered a Distribution.

65.4 Disclosure against Information Representations and Warranties

The Information Representations and Warranties shall be subject to any specific matters which are fully and fairly disclosed by each Signatory to the Company in the information submitted via the Portal by such Signatory, or otherwise disclosed by Notice to the Company from the Signatory by 5.00 p.m. on the Business Day before the relevant Delivery Instruction Date, provided that:

65.4.1 Signatories shall not be entitled to disclose information against the Information Representations and Warranties set out in Clause 65.2.4 and Clause 65.2.7 and, for the avoidance of doubt, the Initial Representations and Warranties; and

65.4.2 in respect of Information Representations and Warranties against which Signatories are entitled to make disclosures, matters are disclosed in sufficient detail to enable the Company to assess their impact on the relevant Asset Claims and/or the relevant Distribution.

65.5 Undertaking to Notify incorrect or misleading Representations and Warranties

Each of the Signatories undertakes that, if it becomes aware that any Representation and Warranty given by it under this Clause 65 was incorrect or misleading in any material respect when made or repeated, or would be so if then repeated, it shall Notify the Company of this as soon as reasonably practicable.

65.6 Undertakings in relation to Intermediary Distribution

Each TA Signatory undertakes to the Company, as at its Accession Date, that the Signatory shall: (i) where it has received an Intermediary Distribution on or prior to the Accession Date, promptly after its relevant Accession Date; or (ii) where it receives an Intermediary Distribution after the Accession Date, promptly following the receipt of such Intermediary Distribution, provide an Intermediary Distribution Notice to the Company in accordance with Clause 37.1.

65.7 Claim for breach of Representation and Warranty

The Company may make a Claim for damages against any Signatory for breach of any of the Representations and Warranties or failure to comply with any Undertakings set out in this Clause 65, whether or not the relevant facts, matters or circumstances giving rise to the breach of any Representations and Warranties were known to the Company, or could have been discovered (whether by any investigation made by or on behalf of the Company or otherwise), provided that such breach of Representations and Warranties or failure to comply with Undertakings had not previously been disclosed to the Company, where, and in a manner by which, such disclosure is permitted or required pursuant to this Agreement. The Company shall be entitled to take any such Claim for damages arising from such breach of any Representations and Warranties or failure to comply with any Undertakings into account when calculating the Non-Financial Contract Liabilities of such Signatory.

PART 15: TAX

66 Tax

66.1 Power to withhold Tax

The Company may, in its absolute discretion, withhold any Tax payable or, in the reasonable opinion of the Company, required to be withheld or accounted for in relation to any Appropriation, any Distribution or any payment which, as a result of the implementation and operation of this Agreement, the Company is treated as making for Tax purposes (including, but not limited to, circumstances where a payment is made, or treated as being made, because a Claim against the Company is set off against a Liability which is owed to the Company).

66.2 Disclosure to Tax Authorities

The Company may also make any disclosures or reports to any Tax Authorities in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of this Agreement.

66.3 Tax certificates

The Company is not obliged to provide any Tax certificates in respect of any dividends or other payments made or received in respect of any Securities forming the basis of a Signatory's Asset Claim to Signatories.

66.4 Tax liabilities

Any stamp duty, stamp duty reserve tax, transfer taxes, VAT or other Tax liabilities or costs, including any penalties or interest, arising out of the implementation and operation of this Agreement (including, but not limited to, any Tax costs arising from the making of Distributions or Appropriations in cash or kind) shall be borne by the Signatories whether chargeable directly or primarily against, or attributable directly or primarily to, the Signatories or any other person.

66.5 Tax obligations

A Signatory will deliver to the Company any form or document that may be required or reasonably requested in writing in order to allow the Company to make a payment in accordance with this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to Company and to be executed and to be delivered with any reasonably required certification, as soon as reasonably practicable.

PART 16: DISPUTE RESOLUTION MECHANISM

67 Disputes, Disputing Parties and Determination Notices

67.1 Disputing Parties

This Dispute Resolution Mechanism shall govern the resolution of any and all disputes between the Company on the one hand and a Signatory on the other hand (together the "Disputing Parties") arising out of or relating to any of the following Notices issued by the Company pursuant to this Agreement:

67.1.1 a Net Contractual Position Statement;

67.1.2 a Claim Amount Notice;

67.1.3 an Intermediary Distribution Value Notice; or

67.1.4 a Distribution and Appropriation Notice,

each, a "Determination Notice" and, each such dispute, a "Dispute".

67.2 Settlement of Dispute

For the avoidance of doubt, nothing in this Clause 67 or in any of Clauses 68 to 74 precludes the Disputing Parties from entering into a compromise, arrangement or settlement of a Dispute at any stage, whether by mediation or otherwise, nor precludes the Company from entering into a compromise, arrangement or settlement with a Signatory or person who claims to be a Signatory.

68 Dispute Notice

68.1 Dispute Notice

If a Signatory wishes to raise a Dispute with respect to a Determination Notice relating to its Claim, it must Notify the Company by way of a written Notice, to be received by the Company on or before 5.00 p.m. (London time) on the Dispute Notice Deadline, that it wishes to raise a Dispute. This Notice (the "Dispute Notice") must be in writing in the form set out in Schedule 3. It must specify which aspect(s) of the Determination Notice the Signatory wishes to challenge and must include reasonable details of the nature and basis of the challenge. If the Signatory is neither resident, nor has its principal place of business, in England and Wales, the Dispute Notice must also provide details of, and appoint, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Dispute. If the Signatory fails to serve a Dispute Notice within the time period specified within this Agreement, the Signatory shall be deemed to have accepted the Determination Notice and to have given up any rights of objection in relation to the same, whether under this Agreement or otherwise. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

68.2 Amicable resolution

Upon receipt by the Company of a Dispute Notice, the Disputing Parties shall first, and for a period of 20 Business Days, seek to resolve the Dispute amicably.

68.3 Determination of Dispute by Company

Where the parties are unable to resolve the Dispute amicably within the time period referred to in Clause 68.2, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Valuation Expert pursuant to Clause 69, to the Adjudicator pursuant to Clause 70 or to the Court pursuant to Clause 71. The Company shall Notify the Signatory of its decision in writing (a "**Forum Notice**") within 10 Business Days of the expiry of the time period referred to in Clause 68.2.

68.4 Dispute forum

Subject to Clause 68.5, Clause 68.7 and Clause 69.11.5, the Company's decision as regards the forum for resolving the Dispute pursuant to Clause 68.3 shall be final and binding.

68.5 Valuation Expert Contest Notice

If the Signatory disagrees with the Company's decision to have a Dispute resolved by the Valuation Expert, the Signatory may, within five Business Days of receipt of a Forum Notice sent in accordance with Clause 68.3, Notify the Company in writing (a "**Valuation Expert Contest Notice**") that it requires it to reconsider its decision and refer the Dispute either to the Adjudicator or to the Court.

68.6 Revised Forum Notice

Upon receipt of a Valuation Expert Contest Notice, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Adjudicator pursuant to Clause 70, or to the Court pursuant to Clause 71. The Company shall Notify the Signatories of its revised determination in writing (a "**Revised Forum Notice**") within five Business Days of receipt of a Valuation Expert Contest Notice. The Company's revised determination as regards the forum for resolving the Dispute shall, subject to Clause 68.7, be final and binding.

68.7 Adjudicator Contest Notice

If the Signatory disagrees with the Company's decision to have a Dispute resolved by the Adjudicator, the Signatory may, within five Business Days of receipt of a Forum Notice sent in accordance with Clause 68.3 or a Revised Forum Notice sent in accordance with Clause 68.6, Notify the Company in writing (an "**Adjudicator Contest Notice**") that it requires the Dispute to be resolved by the Court pursuant to Clause 71.1.

68.8 Early determination

Notwithstanding the foregoing, if the Disputing Parties agree that it would be beneficial to obtain a determination of an issue before the issuance of a Determination Notice, the Disputing Parties may make a joint referral for early determination to the Court, to the Valuation Expert or the Adjudicator. The Disputing Parties shall agree which forum is most appropriate for resolving the issue and shall also agree the procedure for obtaining an early determination.

68.9 Award of Alleged TA Claimant Amount

In determining a Dispute, the maximum amount that may be awarded to a Signatory in respect of its TA Claimant Amount shall be no more than the Alleged TA Claimant Amount Claimed by

the Signatory in the relevant Dispute Notice. The Signatories irrevocably waive any rights they may have to, and undertake not to bring a Claim for, an Asset Claim in excess of the relevant Alleged TA Claimant Amount.

69 Valuation Expert

69.1 Exclusive jurisdiction of Valuation Expert

Where the Company determines pursuant to Clause 68.3 that the Valuation Expert should determine a Dispute, the Valuation Expert shall, subject to Clause 68.5, have exclusive jurisdiction to settle that Dispute.

69.2 Settlement of Dispute by Valuation Expert

If the Company determines, pursuant to Clause 68.3, that the Valuation Expert shall settle the Dispute, then, provided no Valuation Expert Contest Notice has been served by a Signatory, the Company shall, within 25 Business Days of sending a Forum Notice, provide in writing to the Signatory the names of two candidates willing to act as an independent valuation expert (the "Valuation Expert"), together with contact details for those candidates.

69.3 Attributes of Valuation Expert

The Valuation Expert shall:

- 69.3.1** be an individual who has at least five years' experience in dealing with financial products of the type that are the subject matter of the Dispute Notice;
- 69.3.2** in the reasonable opinion of the Company, be duly qualified to discharge the functions and powers of the Valuation Expert, as applicable, under this Agreement, with the appropriate expertise having regard to the nature of the Dispute; and
- 69.3.3** in the reasonable opinion of the Valuation Expert, have no conflict of interest in accepting the appointment, provided that having previously acted as a Valuation Expert in relation to a Dispute shall not be considered a conflict of interest.

69.4 Election of Valuation Expert

Within 10 Business Days of receipt of the names of the two candidates in accordance with Clause 69.2 or Clause 69.8, the Signatory shall Notify the Company which of the candidates it elects to act as Valuation Expert, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment.

69.5 Powers of Valuation Expert

The Valuation Expert shall have the powers, rights and duties conferred upon him by this Agreement. The Valuation Expert shall act as an expert and not as an arbitrator.

69.6 Terms of appointment of Valuation Expert

The Valuation Expert shall be retained on such reasonable terms as may be agreed by the Company.

69.7 Acceptance of appointment by Valuation Expert

As soon as reasonably practicable, the Valuation Expert shall notify the Disputing Parties in writing that he has accepted the appointment.

69.8 Failed appointment of Valuation Expert

If the Valuation Expert chosen by the Signatory is unable or unwilling to accept the appointment, or is unable to agree the terms of his appointment to the satisfaction of the Company, the Company shall, as soon as reasonably practicable, provide in writing to the Signatory the names and contact details of two alternative candidates (one of whom may be a candidate previously not selected by the Signatory). The provisions of Clause 69.4 shall then apply.

69.9 Provision of deposit to Valuation Expert

Within 10 Business Days of the receipt of confirmation given by the Valuation Expert pursuant to Clause 69.7, the Signatory shall provide to the Valuation Expert (copied simultaneously to the Company) a copy of the relevant Determination Notice and Dispute Notice, together with a deposit of the lesser of: (i) US\$50,000; and (ii) subject to a minimum of US\$25,000, 10 per cent. of the Value of the Signatory's Asset Claim, on account of the Valuation Expert's fees. No referral to the Valuation Expert may proceed without payment of the deposit and the deposit shall be payable in respect of each Determination Notice that is the subject of the Dispute.

69.10 Provision of information to Valuation Expert

The Disputing Parties shall, within 20 Business Days of the receipt by the Valuation Expert of the Determination Notice, the Dispute Notice and the deposit to the Valuation Expert in accordance with Clause 69.9, provide the Valuation Expert with details of their respective valuations and assumptions behind those valuations, together with any additional documentation or information that they wish to be taken into account by the Valuation Expert in reaching his decision. The Disputing Parties may (but are not obliged to) submit written representations to the Valuation Expert within the same period of 20 Business Days.

69.11 Determination of Dispute by Valuation Expert

The Valuation Expert shall be entitled to rely exclusively upon the documents supplied to him pursuant to Clause 69.9 and Clause 69.10 when determining the Dispute.

69.11.1 Following the receipt of the documents supplied pursuant to Clause 69.9 and Clause 69.10, the Valuation Expert shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) notify the Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of the procedure and timetable he wishes to adopt for resolving the Dispute.

69.11.2 The Valuation Expert shall, in his absolute discretion, consider such matters as he thinks fit in making his determination. The Valuation Expert shall be entitled to consult with such advisers, including legal advisers and experts, and to take into account such information or evidence obtained from these sources, as he may deem appropriate. Subject to Clause 69.11.5, the Valuation Expert shall be entitled (but is not obliged) to substitute his own valuation for those provided by the Disputing Parties.

69.11.3 Each Disputing Party shall respond promptly (and, subject to Clause 72.4, at its own expense) to all reasonable requests for information and other assistance that the Valuation Expert requests in connection with making his determination. If the Signatory fails to provide any documentation or information within the timeframe provided in this Agreement (or such other time period as the Valuation Expert directs), it shall be

deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

69.11.4 The Valuation Expert may, but is not obliged to, require the Disputing Parties to appear before him and address him on any matters, in which case the Disputing Parties shall appear on such date and at such place as the Valuation Expert shall reasonably prescribe. If the Valuation Expert requires the parties to appear before him, the Valuation Expert shall be entitled to prescribe and lay down such reasonable procedures or provisions as he, in his absolute discretion, deems appropriate for the purposes of assisting him in reaching his determination.

69.11.5 If, in the course of considering the Dispute, the Valuation Expert considers that the Dispute gives rise to issues of law (including, without limitation, issues as to the interpretation of the terms of the Agreement) or other matters outside his area of expertise, he shall Notify the Disputing Parties that he no longer considers himself capable of determining the Dispute. Upon receiving notice from the Valuation Expert (a "**Cessation of Appointment Notice**"), the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Dispute relates, whether the Dispute should be referred for determination to the Adjudicator pursuant to Clause 70, or to the Court pursuant to Clause 71. The Company shall Notify the Signatory of its decision in writing within five Business Days of receipt of a Cessation of Appointment Notice, by means of a Revised Forum Notice. The Company's revised determination of forum shall, subject to Clause 68.7, be final and binding.

69.11.6 Upon the conclusion of the procedure adopted pursuant to this Clause 69, the Valuation Expert shall, as soon as reasonably practicable, inform the Disputing Parties in writing of his decision. The Valuation Expert shall not be obliged to give reasons for his decision.

70 Adjudicator

70.1 Exclusive jurisdiction of Adjudicator

Where the Company determines pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5 that the Adjudicator should determine a Dispute, the Adjudicator shall, subject to Clause 68.7, have exclusive jurisdiction to settle that Dispute.

70.2 Settlement of Dispute by Adjudicator

If the Company determines, pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5, that the Adjudicator shall settle the Dispute, then, provided no Adjudicator Contest Notice has been served by the Signatory, the Company shall, within fifteen Business Days of sending a Forum Notice or Revised Forum Notice, provide in writing to the Signatory the name of two candidates willing to act as an independent adjudicator (the "**Adjudicator**"), together with contact details for those candidates.

70.3 Attributes of Adjudicator

The Adjudicator shall:

- 70.3.1** be an individual who has been appointed Queen's Counsel and has held this position for at least five years or an individual of comparable status in whose jurisdiction the laws are applicable to the Dispute;
- 70.3.2** in the reasonable opinion of the Company, be duly qualified to discharge the functions and powers of the Adjudicator, as applicable, under this Agreement, with the appropriate expertise having regard to the nature of the Dispute; and
- 70.3.3** in the reasonable opinion of the Adjudicator, have no conflict of interest in accepting the appointment, provided that having previously acted as Adjudicator in relation to a Dispute shall not be regarded as being a conflict of interest.

70.4 Election of Adjudicator

Within 10 Business Days of receipt of the names of the two candidates in accordance with Clause 70.2 or Clause 70.8, the Signatory shall Notify the Company of which of the candidates it elects to act as Adjudicator, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment.

70.5 Powers of Adjudicator

The Adjudicator shall have the powers, rights and duties conferred upon him by this Agreement. The Adjudicator shall act as an expert and not as an arbitrator.

70.6 Terms of appointment of Adjudicator

The Adjudicator shall be retained on such reasonable terms as may be agreed by the Company, which may include the imposition of an obligation for the payment of fees and disbursements, by the Disputing Parties, on an ongoing basis.

70.7 Acceptance of appointment by Adjudicator

As soon as reasonably practicable, the Adjudicator shall notify the Disputing Parties that he has accepted the appointment.

70.8 Failed appointment of Adjudicator

If the Adjudicator chosen by the Signatory is unable or unwilling to accept the appointments, or is unable to agree the terms of his appointment to the satisfaction of the Company, the Company shall, as soon as reasonably practicable, provide in writing to the Signatory the names and contact details of two alternative candidates (one of whom may be a candidate previously not selected by the Signatory). The provisions of Clause 70.4 shall then apply.

70.9 Provision of deposit to Adjudicator

Within 10 Business Days of receipt of confirmation given by the Adjudicator pursuant to Clause 70.7, the Signatory shall provide to the Adjudicator (copied simultaneously to the Company) a copy of the relevant Determination Notice and Dispute Notice, together with a deposit of the lesser of: (i) US\$50,000; and (ii) subject to a minimum of US\$25,000, 10 per cent. of the Value of the Signatory's Asset Claim, on account of the Adjudicator's fees. No referral to the Adjudicator may proceed without payment of the deposit and the deposit shall be payable in respect of each Determination Notice that is the subject of the Dispute.

70.10 Provision of information to Adjudicator

Within 20 Business Days of receipt by the Adjudicator of the Determination Notice, the Dispute Notice and the deposit in accordance with Clause 70.9, the Signatory shall provide to the Adjudicator and simultaneously to the Company a written statement of its position (a "Statement of Case"), together with any documentation and other evidence upon which it wishes to rely.

Within 20 Business Days of receipt by the Company of the Signatory's Statement of Case, the Company shall provide to the Adjudicator and simultaneously to the Signatory its Statement of Case, together with any documentation and other evidence upon which it wishes to rely.

70.11 Determination of Dispute by Adjudicator

The Adjudicator shall be entitled to rely exclusively upon the documents supplied to him pursuant to Clause 70.9 and Clause 70.10 when determining the Dispute.

70.11.1 Following the receipt of the Disputing Parties' Statements of Case, the Adjudicator shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) notify the Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of the procedure and timetable he wishes to adopt for resolving the Dispute.

70.11.2 The Adjudicator shall, in his absolute discretion, consider such matters as he thinks fit (including the Statements of Case and evidence provided in accordance with Clause 70.9 and Clause 70.10, and any additional evidence he deems necessary or desirable, including evidence obtained as a result of his own investigations or research) in making his determination. The Adjudicator shall be entitled to consult with such advisers, including legal advisers and experts (including persons who have previously acted as a Valuation Expert), and to take into account information or evidence obtained from these sources, as he may deem appropriate.

70.11.3 Each Disputing Party shall respond promptly (and, subject to Clause 72.4, at its own expense) to all reasonable requests for information and other assistance that the Adjudicator requests in connection with making his determination. If the Signatory fails to provide any documentation or information within the timeframe provided in this Agreement (or such other time period as the Adjudicator directs), it shall be deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

70.11.4 The Adjudicator may, but is not obliged to, require the Disputing Parties to appear before him and address him on any matters, in which case the Disputing Parties shall appear on such date and at such place as the Adjudicator shall reasonably prescribe. If the Adjudicator requires the parties to appear before him, the Adjudicator shall be entitled to prescribe and lay down such reasonable procedures or provisions as he in his absolute discretion deems appropriate for the purposes of assisting him in reaching his determination.

70.11.5 Upon the conclusion of the procedure adopted pursuant to this Clause 70, the Adjudicator shall, as soon as reasonably practicable, inform the Disputing Parties in writing of his decision. The Adjudicator shall not be obliged give reasons for his decision.

71 The Court

71.1 Exclusive jurisdiction of the Court

Where the Company determines pursuant to Clause 68.3, Clause 68.6 or Clause 69.11.5, or a Signatory requires pursuant to Clause 68.7, that the Court should determine a Dispute, the Court shall have exclusive jurisdiction to settle that Dispute.

71.2 Failure to issue Proceedings

If the Signatory fails to issue Proceedings in the Court and to serve the claim form within the timeframe provided in Clause 70, it shall be deemed to have abandoned the Dispute and to have accepted the relevant Determination Notice. The Determination Notice is then final and binding and no subsequent Dispute may be raised by the Signatory in respect of that Determination Notice.

72 Appeals, costs, indemnities and insurance

72.1 Right of appeal

The decision of the Valuation Expert or the Adjudicator on any Dispute referred to them in accordance with this Agreement shall, insofar as the law allows, be final and binding. There shall be no right of appeal therefrom, nor shall there be any right to make any claim against the Valuation Expert or the Adjudicator in respect thereof, save in the case of any loss arising from the Valuation Expert's or Adjudicator's fraud, wilful default, dishonesty or negligence.

72.2 Rate of remuneration

The Valuation Expert and the Adjudicator shall be entitled to be remunerated at such reasonable rate as may be agreed by the Company and to be reimbursed their reasonable costs and expenses in carrying out their duties under this Agreement.

72.3 Apportionment of remuneration of Valuation Expert or Adjudicator

Any remuneration, costs, charges and expenses incurred by the Valuation Expert or the Adjudicator in respect of a Dispute shall be apportioned between the Disputing Parties in such proportions as the Valuation Expert or Adjudicator may determine in their absolute discretion, and shall be paid in accordance with Clause 72.5, Clause 72.6 and Clause 72.7.

72.4 Apportionment of costs of Disputing Parties

Any remuneration, costs, charges and expenses incurred by the Disputing Parties in respect of a Dispute determined by the Valuation Expert or the Adjudicator shall be apportioned between the Disputing Parties in such proportions as the Valuation Expert or Adjudicator may determine in their absolute discretion, and shall be paid in accordance with Clause 72.5, Clause 72.6 and Clause 72.7.

72.5 Costs borne by a Signatory

Any costs, charges and expenses (together with any applicable VAT) directed by the Valuation Expert or the Adjudicator to be borne by a Signatory in respect of a Dispute shall be borne in full by that Signatory. The deposit paid pursuant to Clause 69.9 and Clause 70.9 shall be applied against this amount and then, if there is a shortfall, the Signatory shall be liable to the Company to discharge such shortfall in full without set-off, deduction, defence to payment or counterclaim. The Company may deduct such shortfall in accordance with Clause 72.7.

72.6 Costs borne by the Company and/or the Administrators

Any costs, charges and expenses directed by the Valuation Expert or the Adjudicator to be borne by the Company and/or the Administrators shall be borne in full by the Company and shall be paid as an expense of the Administration.

72.7 Default of Signatory

If a Signatory defaults in its Liability under Clause 72.5, then that Signatory's share of the Valuation Expert's or Adjudicator's remuneration, costs, charges and expenses shall be deducted from the deposit paid by that Signatory and/or taken into account when calculating the Signatory's Distribution.

72.8 General indemnification of the Valuation Expert and the Adjudicator

The Company shall indemnify the Valuation Expert and the Adjudicator against:

72.8.1 all actions, Claims, proceedings and demands brought or made against him in respect of any act done or omitted to be done by him in good faith, without wilful default, fraud, dishonesty or negligence in the course of performing his duties and functions under this Agreement; and

72.8.2 all costs, charges, expenses and Liabilities properly incurred by the Valuation Expert and the Adjudicator in the course of performing their duties and functions under this Agreement.

72.9 Specific indemnification of the Valuation Expert and the Adjudicator

Without prejudice to the generality of Clause 72.8, the Company shall indemnify the Valuation Expert and the Adjudicator:

72.9.1 against any costs, charges, expenses and Liabilities properly incurred by them in defending any proceedings, whether civil or criminal, in respect of any wilful default, fraud, dishonesty or negligence in relation to the performance of their duties and functions under this Agreement, in which judgment is given in their favour or in which they are acquitted; or

72.9.2 in connection with any application in any such proceedings in which relief is granted to them by a court from liability for wilful default, fraud, dishonesty or negligence in relation to the operation of this Agreement.

73 Indemnity insurance

The Company may purchase and maintain at the Company's cost for the Valuation Expert and the Adjudicator insurance against any Liability in respect of which the Company would be obliged to indemnify that person in accordance with Clause 72.8 and Clause 72.9.

74 Miscellaneous

74.1 Exclusivity of Dispute Resolution Mechanism

The Dispute Resolution Mechanism shall be the exclusive method for determining any Dispute and Signatories shall be barred from bringing any other proceedings in any jurisdiction in respect of a Dispute.

74.2 Jurisdiction of the Court

Notwithstanding the foregoing, nothing in this Agreement shall (save to the extent that such matters are Disputes and therefore subject to the Dispute Resolution Mechanism) prevent the Court from having jurisdiction to hear applications from the Company, the Administrators or any Signatory with respect to the operation or implementation of this Agreement, or from hearing applications for directions brought by the Administrators in the Administration.

74.3 Extension of time limits of Dispute Resolution Mechanism

Save in respect of Clause 68.1 (the time limit for which may not be extended), any of the time limits in this Dispute Resolution Mechanism may be extended by prior written agreement between the Disputing Parties or by the Adjudicator or Valuation Expert, as appropriate.

PART 17: OTHER PROVISIONS

75 No personal liability on the Administrators

The Administrators have entered into this Agreement as agents for and on behalf of the Company and none of the Administrators, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatever in respect of any of the obligations undertaken or assumed 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 Agreement. The exclusion of liability set out in this Clause 75 shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims in tort as well as under the laws of contract. Each of the Administrators, their firm, partners, employees, agents, advisers and representatives shall be able to rely on this Clause 75 as if they were a party to this Agreement.

76 Non-reliance on Circular by Signatory

So far as permitted by law and except in the case of fraud, the Company shall not be liable in respect of anything done or suffered by a Signatory in reliance on the Circular (save for this Agreement contained within the Circular). The Signatory has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from its own advisers as it has deemed necessary. The Signatory is not relying on any communication (written or oral) of or from the Company, including the Circular (save for this Agreement contained within the Circular), as a recommendation or an inducement to enter into this Agreement, it being understood that information and explanations related to this Agreement in the Circular (save for this Agreement contained within the Circular) will not be relied upon or treated as a recommendation or an inducement to enter into this Agreement. Nothing in this Agreement will exclude any liability the Company may have under the regulatory system (as defined in the FSA Rules) which may not be excluded or restricted thereunder.

77 Authority

Each Signatory hereby irrevocably authorises the Company to make such Claims of, give such release or discharge to, sign or execute any agreement or instrument with, and/or take all such action (as the Company may reasonably consider appropriate) in relation to, any Intermediary, in the name of, and on behalf of, the Signatory for the purpose of establishing, pursuing, or enforcing any distribution of, or any Claim for the distribution of, Assets from an Intermediary to the Company. The authority conferred by this Clause 77 shall not apply to any determination or notice from an Affected Intermediary in respect of which a TA Signatory has Notified the Company that it wishes to make a challenge under Clause 38.

78 Delegation by the Company of its functions

78.1 Power of the Company to delegate

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

- 78.1.1 employ and remunerate accountants, actuaries, lawyers and other professional advisers or agents in connection with this Agreement; and
- 78.1.2 delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Agreement, 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.

79 Signatories to co-operate

79.1 Signatories to co-operate

The Signatories shall:

- 79.1.1 co-operate with and render such assistance to the Company as it may reasonably require, including, but not limited to, the provision of information and documents in connection with their Asset Claims, the calculation of their Net Contractual Position and the operation of this Agreement;
- 79.1.2 provide such assistance as the Company may reasonably require in connection with gathering in any Trust Assets, removing any impediments upon Assets being Distributable Trust Assets or enforcing obligations owed to the Company; and
- 79.1.3 use best endeavours to ensure that maximum effect is given to this Agreement.

80 Modifications

80.1 Modification of Agreement

Subject to each of Clause 3.1 and Clause 80.3, no amendment, modification or waiver in respect of this Agreement (or any agreement supplemental to it) shall be effective unless in writing and previously approved by (i) the Company; and (ii) Extraordinary Resolution.

80.2 Powers of modification of the Company

In furtherance of Clause 80.1:

- 80.2.1 the Company may certify that it has determined, as it may do in its absolute discretion, that any such amendment, modification or waiver will materially affect some (but not all) of the Signatories, or will materially affect different classes or groups of Signatories in different ways;
- 80.2.2 the Company is hereby authorised to agree for and on behalf of the relevant Signatories, all amendments, modifications or waivers, if so directed by an Extraordinary Resolution Direction; and
- 80.2.3 the Company shall not be responsible for having acted in good faith on a resolution purporting to have been passed by the Signatories (either in writing or, if at a meeting, in respect of which minutes of such meeting have been made and signed) even if it is later found that there was a defect in the constitution of the meeting or the passing of the resolution or that the resolution was not valid or binding on the Signatories.

80.3 Minor, technical or not materially prejudicial amendments

The Company may, without the consent of the Signatories, amend, modify or waive any term or condition of this Agreement (or any agreement supplemental to it), which is, in its opinion:

80.3.1 of a formal, minor or technical nature, or to correct a manifest error; or

80.3.2 not materially prejudicial to the interests of the Signatories (or some of them).

80.4 Notice of outcome

The Company shall inform the relevant Signatories, by written Notice in accordance with Clause 89, of any modification of this Agreement made in accordance with this Clause 80.

81 Conflict

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

82 Liquidation Event

82.1 Survival of Agreement upon a Liquidation Event

82.1.1 If the Company shall become subject to a Liquidation Event, this Agreement shall not terminate and shall continue in full force and effect.

82.1.2 In the event of any inconsistency between the provisions of this Agreement and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event in accordance with this Clause 82.1, for the purposes of this Agreement the provisions of this Agreement shall prevail to the extent that the law allows.

83 Act in good faith

All actions and determinations by the Company under this Agreement shall be made in good faith.

84 No challenge to the validity of acts of the Company or its Delegates

Subject to any applicable provision of the Insolvency Act, no Signatory shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, or any Delegate, in pursuance of its functions or duties under this Agreement, or the exercise or non-exercise by the Company or any Delegate, in good faith, of any power or discretion conferred upon it for the purposes of this Agreement, and neither the Company 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 any Delegate.

85 Payment

Any Payment to the Company under this Agreement shall be made in immediately available funds in US dollars to a bank account as Notified in advance by the Company to the relevant payor.

86 Entire Agreement

This Agreement contains the whole agreement between the Company and each Signatory relating to the subject matter of this Agreement at the date of the relevant Signatory's Accession Date to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement (save as provided in Clause 3) between the Company and each Signatory in relation to the matters dealt with in this Agreement.

87 Partial invalidity

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

88 Modification of foreign law contracts

Where this Agreement 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. Each Signatory undertakes to the Company to take all actions that the Company requests (including executing such instruments or entering into such agreements, in each case governed by the relevant proper law) to perfect any modifications to such contracts in order to ensure that such modifications are effective to the fullest extent possible under such governing law.

89 Notices

89.1 General provisions

89.1.1 Any Notice or other communication to be given, or document to be sent to the Company, pursuant to this Agreement, except where this Agreement otherwise provides, shall be in writing in English and shall be delivered:

- (i) by NTA Signatories by electronic mail; or
- (ii) by TA Signatories by using the Portal or electronic mail,

in accordance with this Clause 89.

89.1.2 The accidental omission by the Company to send any Notice, communication or document in accordance with this Clause 89, or the non-receipt of any such Notice, communication or document by any Signatory, shall not affect the provisions of this Agreement.

89.1.3 A Signatory may submit any information or give Notices or other communication or send documents to the Company by registered post or by courier using an internationally recognised courier company other than in accordance with Clause

89.1.1, subject to the consent of the Company (such consent not to be unreasonably withheld or delayed) (so far as permitted by applicable law or regulation). For the purposes of this Clause 89.1.3 it shall not be unreasonable for the Company to withhold its consent where submission of such information or giving of Notices or communication or sending documents by registered post or courier would require the Company to expend disproportionate costs, time or effort in dealing with such information, Notices, communication or documents.

89.2 The Portal

89.2.1 The Portal will only be available to TA Signatories. TA Signatories will be able to access the Portal if they have obtained a unique login (a "User ID") and password (a "Password") from the Company.

89.2.2 The Company may give any Notice or other communication or send any document to TA Signatories that have been given access to the Portal by uploading the same to the Portal. TA Signatories will be sent an electronic mail notification to inform them that such Notice, communication or document has been uploaded. Any such Notice, communication or document shall be deemed to have been received when it was first uploaded or, if later, when the recipient received (or is deemed to have received) notice of the fact that it was available on the Portal.

89.3 Addresses

89.3.1 Any Notice or communication shall be given or any document shall be sent to the Company:

- (i) by electronic mail to claimresolutionagreement@lbia-eu.com by any Signatory;
- (ii) by using the Portal to send an electronic mail to the address above by any TA Signatory; or
- (iii) by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom, or by courier, using an internationally recognised courier company (if Clause 89.1.3 applies), only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom.

89.3.2 Any Notice or communication shall be given or any document shall be sent by the Company:

- (i) to an NTA Signatory by electronic mail to the address specified by the recipient;
- (ii) to a TA Signatory by using the Portal by uploading the Notice or communication to that part of the Portal that is allocated to the User ID of that TA Signatory within the Portal or by electronic mail to the address specified by the TA Signatory; or
- (iii) to a Signatory by registered post or by courier to the address specified by the recipient from time to time,

where "address" includes, without limitation, any electronic mail address or postal address used for the purposes of such communications.

89.3.3 The Signatories shall provide details of an electronic mail address in their Forms of Acceptance and upon request by the Company 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).

89.4 Notices by electronic mail

89.4.1 Any Notice or communication given or document sent by electronic mail shall be sufficiently served by sending the same by electronic mail to the address specified in Clause 89.3.

89.4.2 Any Notice or communication given or document sent by electronic mail shall be deemed to have been received:

- (i) if sent in accordance with Clause 89.3.1, at the time recorded on the response email that will be automatically generated by the Company's electronic mail system; or
- (ii) 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 in London or after 5.00 p.m. on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day in London.

89.5 Notices by registered post or courier

89.5.1 Any Notice or communication given or document sent by registered post or courier by the Company shall be sufficiently served by sending the same to the address specified by the recipient from time to time in accordance with Clause 89.3.2.

89.5.2 Any Notice or communication given or document sent by registered post or courier by the Signatory shall be effective upon receipt by the Company and shall be deemed to have been received at the time of delivery in accordance with Clause 89.3.1.

90 Authority to sign Notices and documents

In the case of a Notice, communication or document, including, for the avoidance of doubt, this Agreement, which is signed on behalf of a Signatory, the Company shall not be required to make enquiry as to the authority of the signatory of that Notice, communication or document to sign such Notice, communication or document on behalf of such Signatory.

91 General notifications and advertisements

The Company may also, in its absolute discretion, publish any information in respect of this Agreement (including information in respect of Bar Date, other relevant dates pursuant to this Agreement and communications from the Company), and any other Notice, communication or document required to be or capable of being given or sent under this Agreement, on the Website.

91.1 Notices

Any Notice, communication or document which is published on the Website shall be deemed to have been received when the material was first made available on that Website or, if later,

when the recipient received (or is deemed to have received) notice of the fact that the material was available on the Website.

91.2 Advertisements

Any advertisements by the Company in respect of this Agreement shall be placed in at least the following website and newspapers:

91.2.1 the Website;

91.2.2 the *Financial Times* (United Kingdom and international editions); and

91.2.3 *The Wall Street Journal* (European, US and Asian editions).

91.3 Accidental failure to send communication by the Company

Accidental failure by the Company to send any communication to any Signatory shall not be considered a breach of its obligations pursuant to this Agreement and shall not prejudice the operation of this Agreement as regards that Signatory or at all. The Company shall not be liable to any Signatory for such failure but it may, in its absolute discretion, extend the deadline laid down in this Agreement for any Signatory affected by such failure in accordance with Clause 92.

92 Extension and calculation of deadlines

All or any of the deadlines laid down by this Agreement for the taking of any step by the Company or by any Signatory, save in respect of the Dispute Resolution Mechanism, may be postponed or extended for such period or periods as may be determined by the Company in its absolute discretion, whether in relation to one or more Asset Claims only or in relation to all Asset Claims, or to matters relevant to the determination of Net Contractual Positions.

93 Treatment of International Prime Brokerage Agreements terminated at or after the Time of Administration

93.1 Custody Security, Non-Custody Security and/or Trust Assets

Any Security which would otherwise be a Custody Security, a Non-Custody Security and/or Trust Assets shall not fail to be a Custody Security, a Non-Custody Security and/or Trust Assets, as the case may be, by reason of the application at or after the Time of Administration of any provision of any contract waiving, releasing or otherwise negating the existence of a trust over such Asset, and "Custody Asset Claim", "Non-Custody Asset Claim", "Signatory", "Converted Asset", "Non-Trust Assets", "Net Contractual Position", "Close-Out Amount", "Trust Assets", "TA Signatory" and "Distributable Trust Assets" shall be construed accordingly.

93.2 Custody Asset Claim, Non-Custody Asset Claim

Any Claim that would otherwise be a Custody Asset Claim or a Non-Custody Asset Claim, as appropriate, shall not fail to be treated as such by reason only of the application at or after the Time of Administration of any provision of any contract waiving, releasing or otherwise negating the existence of a trust over the relevant Securities that would prevent the delivery of such Securities to satisfy such Claim, and "Custody Asset Claim", "Non-Custody Asset Claim", "Signatory", "Converted Asset", "Non-Trust Assets", "Net Contractual Position", "Close-Out Amount", "Trust Assets", "TA Signatory" and "Distributable Trust Assets" shall be construed accordingly.

94 Third Party rights

Except as provided for in Clauses 4.7, 5, 9, 75, and this Clause 94, nothing in this Agreement or the Circular is intended to, nor should it be construed as purporting to, confer any rights on, or to be enforceable by, any Third Party. Any term of this Agreement apart from those provisions of the specified Clauses that confer rights on Third Parties may be amended or waived in accordance with Clause 80 without the consent of any person named or described in this Clause 94 or in Clauses 4.7, 5, 9, or 75.

95 Governing law and jurisdiction

95.1 Exclusive jurisdiction

This Agreement shall be governed by, and construed in accordance with, English law and the Signatories hereby agree that the courts of England shall (save as otherwise provided in the Dispute Resolution Mechanism and save as provided in Clause 95.2) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with the Circular or this Agreement, or the operation of this Agreement, and the Signatories hereby submit to the exclusive jurisdiction of the courts of England for such purposes. The Signatories also waive any objections to Proceedings in the courts of England that may arise that are based on the grounds of the venue or that the Proceedings have been brought in an inconvenient forum.

95.2 Proceedings in other jurisdictions

Notwithstanding the provisions of Clause 95.1, the Company retains the right to bring Proceedings in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

PART 18: DEFINITIONS AND INTERPRETATION

96 Definitions

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

"Acceptance Condition"	has the meaning set out in paragraph 4.1 of Schedule 1
"Acceptance Date"	has the meaning set out in paragraph 8.7 of Schedule 1
"Acceptance Threshold Claims"	has the meaning set out in paragraph 4.2 of Schedule 1
"Acceptance Threshold Offerees"	has the meaning set out in paragraph 4.2 of Schedule 1
"Acceptance Value"	has the meaning set out in paragraph 4.2 of Schedule 1
"Accession Date"	in respect of a Signatory, the date on which the Company Notifies such Signatory that its Form of Acceptance has been validly submitted and that such Signatory is a Party to this Agreement
"Accession Notice"	a Notice given by the Company to a Signatory on or after the Effective Date confirming that its Form of Acceptance has been validly submitted and that such Signatory is a Party to this Agreement
"Adjudicator"	such person as may be appointed as Adjudicator in accordance with the provisions of Clause 70.2
"Adjudicator Contest Notice"	has the meaning set out in Clause 68.7
"Administration"	the administration of the Company under the Administration Order
"Administration Date"	15 September 2008
"Administration Order"	the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which the Administrators were appointed joint administrators of the Company
"Administrators"	the persons from time to time serving as joint administrators in the Administration who, as at the date of this Agreement, are Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom
"Advisers"	(i) Linklaters LLP; and (ii) any other professional advisers to the Administrators
"Affected Claimant"	has the meaning set out in Clause 34.5
"Affected Intermediary"	has the meaning set out in Clause 34.5
"Affected Intermediary Admitted Claim Amount"	has the meaning set out in Clause 59.4.3

"Affected Intermediary Claim Amount"	has the meaning set out in Clause 59.7.4
"Affected Intermediary Collateralisation Election"	has the meaning set out in Clause 59.1.3
"Affected Intermediary Derived Asset Liability"	has the meaning set out in Clause 59.5.3
"Affected Stock Line"	has the meaning set out in Clause 34.5
"Affected TA Signatory"	has the meaning set out in Clause 48.1
"Affiliate"	in relation to the Company, any Subsidiary, a Holding Company or any other Subsidiary of that Holding Company
"Agreed Amounts"	has the meaning set out in Clause 28.1.2
"Agreed Valuation Methodology"	has the meaning set out in Clause 22.1.3
"Alleged Amounts"	has the meaning set out in Clause 28.1.3
"Alleged Individual Claim Amount"	means, with respect to a Stock Line, the amount of Assets which a person alleges to be the subject of its Asset Claim to that relevant Stock Line
"Alleged Net Equity Amount"	means, with respect to each Affected Claimant, the amount of Claims of (or derived from) the Affected Claimant against the Net Equity Intermediary, as alleged by such Affected Claimant, that the Net Equity Intermediary should recognise or acknowledge for the purpose of quantifying that Affected Claimant's Asset Claim in respect of Trust Assets held by such Net Equity Intermediary
"Alleged TA Claimant Amount"	means: (i) in relation to (a) a Stock Line which is not an Affected Stock Line or (b) an Affected Stock Line in respect of an Asset Claim Intermediary, an Alleged Individual Claim Amount; and (ii) in relation to a Net Equity Intermediary, an Alleged Net Equity Amount
"Allocate", "Allocated", "Allocating", and "Allocation"	each has the meaning set out in Clause 34.1
"Allocation Amount"	has the meaning set out in Clause 41(i), Clause 45.3 and Clause 47.1
"Allocation Date"	in relation to an Asset Pool: (i) the first date on which both: (a) (x) in the case of a Custody Securities Pool and a Non-Custody Securities Pool, the Company has determined that it does not expect to Identify any further Distributable Trust Assets for that Asset Pool or (y) in the case of a Multiple Stock Line Pool, Distributable Trust Assets have been Identified for that Asset Pool; and

- (b) the first Provisional Allocation Percentage has been determined for an Asset Pool Signatory of that Asset Pool; and
- (ii) each subsequent date on which:
 - (a) (in respect of a Multiple Stock Line Pool) additional Distributable Trust Assets have been Identified for an Asset Pool;
 - (b) a Dispute over a TA Claimant Amount of any Asset Pool Signatory of that Asset Pool has been resolved; or
 - (c) Distributable Trust Assets of that Asset Pool cease to be Reserved Assets in accordance with Clause 44.3

"Antecedent Transaction Liabilities"

amounts due and payable from a Signatory to the Company under Sections 238 to 245 of the Insolvency Act (adjustment of prior transactions), Sections 423 to 425 of the Insolvency Act (provisions against debt avoidance) or Sections 213 to 215 of the Insolvency Act (fraudulent or wrongful trading) or as a result of any misfeasance, breach of duty or breach of contract owed by the Signatory to the Company

"Applicable Rate"

has the meaning set out in Clause 25.3.2(iii)

"Appropriate"

has the meaning set out in Clause 52.2

"Appropriated Asset"

at any time, any Asset which has been Appropriated by the Company prior to such time pursuant to Part 11

"Appropriation"

has the meaning set out in Clause 52.2

"Appropriation Deferral Election"

has the meaning set out in Clause 59.3.1

"Appropriation Rights"

the rights of the Company to appropriate any Distribution Asset pursuant to Clause 60

"Ascertained Claim"

an ascertained, unsecured claim in the winding-up of the Company or any distribution of the Company's assets generally to its unsecured creditors

"Ascertained Non-Financial Contract Liabilities"

has the meaning set out in Clause 33.2

"Ascertained Shortfall Amount"

has the meaning set out in Clause 62.2.2

"Asset"

any Security or Post-Administration Client Money

"Asset Allocation"

any Allocation of Distributable Trust Assets

"Asset Claim"

a Custody Asset Claim and/or a Non-Custody Asset Claim, as appropriate

"Asset Claim Intermediary"

has the meaning set out in Clause 34.5

"Asset Delivery Notice"

has the meaning set out in Clause 63.2.1

"Asset Pool"

a Custody Securities Pool, a Non-Custody Securities Pool, a Multiple Stock Line Pool or a Single Customer Pool

"Asset Pool Signatory"	with respect to each Asset Pool, a Signatory that has an Asset Claim with respect to any Assets in such Asset Pool and references to an Asset Pool Signatory are to that Signatory in that capacity only and not generally in its capacity as a Signatory
"Asset Shortfall Claim"	has the meaning set out in Clause 46.2 or Clause 48.3
"Asset Valuation Date"	(i) in respect of any Rehypothecated Security and for the purpose of calculating its Value in accordance with Clause 20.4.3, the Date Before Administration; (ii) in respect of any Security which is the subject of Short Positions Security and for the purpose of calculating its Value in accordance with Clause 20.4.3, the Date Before Administration; (iii) in respect of any Unpaid Amount Deliverable in accordance with Clause 23.5.2 other than any Rehypothecated Security and Securities which are the subject of Short Positions, the date on which such Unpaid Amount Deliverable was (or would have been but for any Flawed Asset Provision) required to be settled; (iv) in respect of any Individual Claim Value, the Provisional Valuation Date; (v) in respect of any Security that is the subject of an Allocation and for the purpose of calculating its Value in Clause 60, the relevant Distribution Value Date; (vi) in respect of any Security forming part of an Asset Shortfall Claim and for the purpose of calculating its Value in accordance with Clause 60.5.3, the relevant Distribution Value Date; (vii) in respect of any Security forming part of any excess Asset Shortfall Claim for the purpose of Clause 60.5.4 or any aggregate Asset Shortfall Claim for the purpose of Clause 62.1, the Date Before Administration; (viii) in respect of any Ownership Claim asserted against Non-Trust Assets and for the purpose of Clause 7.3, the date on which such Signatory successfully asserts such Claim; and (ix) in respect of any other Relevant Asset, any date which the Company determines appropriate for calculating the Value of such Relevant Asset
"Asset Valuation Methodology"	has the meaning set out in Clause 17.1
"Assignable Post-Administration Client Money Claims"	has the meaning set out in Clause 4.8.1(i)
"Assignable Post-Administration Client Money"	has the meaning set out in Clause 4.8.1(ii)

"AssignCo"	means such company (or other person) as the Company shall determine, and for whose name and details this Agreement will be updated on or prior to the Effective Date
"Bar Date"	26 February 2010 or such later date as the Company may Notify the Signatories in its sole discretion
"Beneficiary"	each person for whom a Representative Signatory holds Trust Assets and is a Beneficiary by virtue of the bilateral agreement between the Company and that Representative Signatory by which that Representative Signatory becomes a party to this Agreement
"Books and Records"	books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm. For the avoidance of doubt, Books and Records in respect of the Company shall include information received by the Company from the Signatory through the Portal, but shall not include books, records or other information: (i) owned by persons other than the Company but to which the Company has access (whether full or partial); or (ii) which the Company cannot locate or access
"Business Day"	(i) a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York; (ii) in the case of an obligation to be performed in a country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; (iii) in the case of the determination of an event or circumstance required to be calculated by reference to a day in any country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; or (iv) in the case of any country, a day on which banks are open for general business in such country
"CAPCO"	Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America
"CASS Rules"	the rules set out in Chapters 7 and 7A of the FSA's Client Assets Sourcebook (as amended)
"Cessation of Appointment Notice"	has the meaning set out in Clause 69.11.5
"Charge Long Positions"	in respect of an Acceptance Threshold Offeree, the "Charge Long Positions" referred to at line item reference 2.2.1 of that Acceptance Threshold Offeree's Updated Position and Balance Statement
"Circular"	the circular dated 24 November 2009 issued by the Company in connection with this Agreement (including the appendices

	thereto)
"Claim"	a claim in law or in equity of whatsoever nature: (i) including for (but not limited to) breach of contract, tort, restitutionary claims and breach of trust; (ii) whether arising by, amongst other things, reason of insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise; and (iii) for, amongst other things, the enforcement of any right to, or any liability in respect of a right to: (a) seek or enforce judgment; (b) exercise any remedy (for damages or otherwise), indemnity and contribution, whether for losses (including consequential loss, economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), costs, and expenses of any nature; or (c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever, and "Claimant", "to Claim" and "Claiming" shall be construed accordingly
"Claim Amount Notice"	has the meaning set out in Clause 36.5
"Client Money"	money which is client money pursuant to and as defined in the FSA Rules
"Client Money Collateralisation Election"	has the meaning set out in Clause 59.1.1
"Closed Contract"	any Financial Contract that is not an Open Contract
"Close-Out Amount"	in respect of a Financial Contract and each Signatory that is a party to it: (i) a single amount payable by either one of the Company or the relevant Signatory to the other as a result of termination of such Financial Contract as determined in accordance with Clause 20; or (ii) the aggregate of each Close-Out Component in accordance with Clause 21.3
"Close-Out Component"	has the meaning set out in Clause 21.3
"Closing Date"	has the meaning set out in paragraph 2.2 of Schedule 1
"Closing Statement"	has the meaning set out in Clause 64
"Closing Time"	has the meaning set out in Clause 64.1
"Collateral Allocation"	has the meaning set out in Clause 59.10

"Collateral Amount"	has the meaning set out in Clause 59.7.3
"Collateral Claim Amount"	has the meaning set out in Clause 59.7.2
"Collateralisation Election"	has the meaning set out in Clause 59.1
"Collateralised Net Financial Liability"	has the meaning set out in Clause 59.8
"Companies Act"	the Companies Act 2006
"Company"	Lehman Brothers International (Europe) (in administration), incorporated in England and Wales with registered number 2538254
"Company Released Claims"	has the meaning set out in Clause 5.1.1
"Company Released Parties"	the Company, the Administrators and their firms, members, agents, partners or employees
"Conditions"	the conditions to the Offer set out in paragraph 4 of Schedule 1
"Connected Trade"	(i) any transaction between the Company and a Signatory relating to a Financial Contract that was entered into contemporaneously with, and/or is directly or indirectly linked to, a Failed Trade, which was scheduled to settle on or before the Administration Date and has actually settled; or (ii) any transaction between the Company and a Signatory relating to a Financial Contract that was entered into contemporaneously with, and/or is directly or indirectly linked to, a Failed Trade, which was scheduled to settle after the Administration Date provided, however, that in no event shall a transaction between the Company and a Third Party be a Connected Trade
"Contractual Determining Party"	has the meaning set out in Clause 21.7.1
"Contractual Valuation Methodology"	has the meaning set out in Clause 21.2.3
"Contractual Valuation Provisions"	has the meaning set out in Clause 21.1
"Contribution to Determination"	has the meaning set out in Clause 21.7.3(ii)
"Converted Asset"	any Asset which has, after the Time of Administration, been exchanged or replaced (including, without limitation, as a result of any Corporate Action or Corporate Event in respect of such Asset), realised, disposed of or appropriated or which has matured
"Corporate Action"	a subscription rights issue, a tender offer (such as a takeover offer, exchange offer or other similar offer or proposal) which may be of a security for a security, cash, any other securities or assets, or any combination of these, a scheme of arrangement pursuant to Part 26 of the Companies Act, a security subdivision/security split, a reverse security split, a

	bonus issue or a bonus rights issue, an exercise of voting rights, an exercise of conversion rights in relation to convertible bonds/warrants, a capital reorganisation, a merger, an election in relation to dividends (whether for cash or securities), and any other analogous or similar action
"Corporate Action Fee"	has the meaning set out in Clause 15.4.2
"Corporate Event"	has the meaning set out in Clause 15.11
"Costs Amount"	an amount determined by the Company on each Distribution Value Date equal to the relevant Costs Amount Percentage multiplied by the aggregate amount of the Value as at the Bar Date of all Asset Claims (including any new or additional Asset Claims submitted by that TA Signatory up to the relevant Distribution Value Date that have previously not been added to such amount (whether or not the Asset Claim is subsequently reduced or withdrawn)), as supplemented by further information or as attributed a clarificatory meaning in accordance with Clause 12.4.2 provided that, where the Acceptance Date for a TA Signatory falls on a date on or prior to the end of the Initial Offer Period, such amount shall not exceed US\$2.5 million for any TA Signatory
"Costs Amount Percentage"	(i) where the Acceptance Date for a TA Signatory falls on a date on or prior to the end of the Initial Offer Period: (a) in respect of a TA Signatory that is a Pure Custody Signatory, 0.75 per cent.; and (b) in respect of a TA Signatory that is not a Pure Custody Signatory, 1.00 per cent. (ii) where the Acceptance Date for a TA Signatory falls on a date after the end of the Initial Offer Period: (a) in respect of a TA Signatory that is a Pure Custody Signatory, 1.50 per cent.; and (b) in respect of a TA Signatory that is not a Pure Custody Signatory, 2.00 per cent.
"Costs Rebate Amount"	(i) in respect of each TA Signatory, the difference as determined by the Company between: (a) the Costs Amount determined as at the last Distribution Value Date; less (b) the relevant Costs Amount Percentage of the sum of: (I) the Value as at the Bar Date of all Asset Allocations to such TA Signatory; (II) the Value of each Intermediary Distribution as at the date on which such Intermediary Distribution was received by the Signatory; and (III) the Value of each Intermediary Retention as at the date on which such Intermediary

Retention was received by the Company from the relevant Intermediary; and

- (ii) in all cases provided that, if the difference between (a) and (b) above is less than US\$1,000, the Costs Rebate Amount shall be deemed to be zero

"Court"

the High Court of Justice in England and Wales

"Creditors' Committee"

the committee of creditors of the Company constituted under paragraph 57 of Schedule B1 to the Insolvency Act

"Creditors' Committee Group"

the members of the Creditors' Committee, including any sub-committees thereof, and their investment managers and investment managers' affiliates, and each of their respective advisers, firms, members, agents, partners, officers, directors and employees, at all times only in their respective capacities described in this definition, which ultimately derive from the role of the Creditors' Committee and, where the context requires, means them individually or collectively

"Current Date"

has the meaning set out in Clause 25.3

"CUSIP number"

the number assigned to a Security by the Company on Uniform Security Identification Procedures

"Custody Agreement"

any agreement, whether written, oral or otherwise, between the Company and any person for the provision of custodial services in respect of cash, Securities or other assets by the Company to such person, including, for the avoidance of doubt, custody arrangements evidenced by the maintenance of a custody account for a person on the Company's Books and Records within a range of account codes typically used by the Company for custody services

"Custody Asset Claim"

- (i) an Ownership Claim against the Company for or in respect of: (a) any Securities (excluding any Rehypothecated Securities and Securities Covered By Client Money) which were recorded in the Books and Records of the Company at the Time of Administration as Securities which, pursuant to an obligation giving rise to an Ownership Claim against the Company in respect of such Securities, the Company held or should have held as Custody Securities; and (b) Derived Assets relating to such Securities other than money; and
- (ii) a Claim against the Company in respect of any Derived Asset relating to (a) or (b) above that is money.

For the avoidance of doubt, unless otherwise required by law or regulation, the obligation of the Company in respect of a Custody Asset Claim shall not exceed the obligation of the Company under the terms of the agreement or arrangement that gives rise to such Custody Asset Claim

"Custody Long Positions"

in respect of an Acceptance Threshold Offeree, the "Custody

	Long Positions" referred to at line item reference 2.1.1 of that Acceptance Threshold Offeree's Updated Position and Balance Statement
"Custody Securities Pool"	has the meaning set out in Clause 43.1
"Custody Security"	a Security which is a Trust Asset credited to a custody account of a TA Claimant with the Company and, where held by an Intermediary and designated as being held for the Company's customers, is expressed to be so held for the benefit of the Company's custody customers
"CVA"	a company voluntary arrangement proposed or to be proposed by the Administrators under Part I of the Insolvency Act for the purpose of dealing with the claims of general unsecured creditors of the Company
"Date Before Administration"	the last business day before the Administration Date. For the purpose of this definition only, " business day " shall mean a business day in the city or principal market which is most closely connected to or for the trading in respect of the relevant Security that is being Valued
"De Minimis Allocation"	has the meaning set out in Clause 56.3
"Defective Notice of Termination"	in respect of any Financial Contract, a notice which a Signatory served on the Company on or before the Accession Date of that Signatory which would have validly terminated such Financial Contract in accordance with its terms but for a failure by that Signatory to comply with the terms of the relevant Financial Contract with regard to the delivery of notices in general or the requirements for Notices of Termination in particular
"Deferral Cash Amount"	has the meaning set out in Clause 59.3.2
"Deferral Cash Payment Date"	has the meaning set out in Clause 59.3.2
"Deferral Election Deadline"	has the meaning set out in Clause 59.3.1
"Delegate"	any person appointed as a delegate pursuant to Clause 78.1.2
"deliver"	when used in relation to the delivery or payment of any Securities or money forming part of a Distribution, " deliver " means delivery in accordance with Clause 63 and " delivery " and " delivered " shall be construed accordingly
"Delivery Date"	has the meaning set out in Clause 63.3.1
"Delivery Disruption Event"	an event beyond the control of the Company as a result of which the Company cannot deliver the Distribution in accordance with the instructions of the Signatory specified in the Asset Delivery Notice, or an event in which the delivery of the Distribution is rendered illegal under any applicable law or regulation
"Delivery Instruction Date"	in relation to any Distribution that the Company is due to make to a Signatory by delivery in accordance with Clause 63, the

	latest day on which the Company must give instructions for settlement of such Distribution
"Derived Asset"	any Asset received by the Company after the Time of Administration arising out of or derived from any Security (but also including interest on Post-Administration Client Money that was originally derived from a Security) which was itself a Trust Asset at or immediately before the time that that other Asset was received, including: (i) any Security or Post-Administration Client Money which an Intermediary delivers to the Company in lieu of a Segregated Asset held by such Intermediary, as required by, or otherwise permitted under, the applicable law of that Intermediary; (ii) any sale proceeds of any Security comprising paragraph (i) above realised by the Company in accordance with Clause 45.4; and (iii) any proceeds or consideration received in exchange, replacement, realisation, disposal, appropriation or maturity of any Converted Asset, and, when used in relation to a particular Security, any Asset that is so derived from that Security
"Determination Notice"	has the meaning set out in Clause 67.1
"Determining Party"	has the meaning set out in Clause 20.6.1
"Dispute"	has the meaning set out in Clause 67
"Dispute Notice"	has the meaning set out in Clause 68.1
"Dispute Notice Deadline"	the twenty-fifth Business Day after the date the Claim Amount Notice, an Intermediary Distribution Value Notice or Net Contractual Position Statement is given by the Company or the tenth Business Day after the date a Distribution and Appropriation Notice is given by the Company
"Dispute Resolution Mechanism"	the procedures for resolving Disputes as described in Clauses 67 to 74
"Disputing Parties"	has the meaning set out in Clause 67
"Distributable Trust Assets"	at any time, any Trust Assets which fulfil each of the following criteria at such time: (i) they have been sufficiently identified and located by the Company to enable the Company to Identify them in accordance with Clause 35; (ii) they are within the direct custody or control of the Company or any Intermediary through which the Company has indirect custody or control of the Assets and which is willing and able to act in accordance with a direction from the Company in respect of such Trust Assets; and (iii) they are not subject to any order or restriction of any

competent court or authority which would prevent or interfere with the operation of this Agreement in respect of such Trust Assets,

provided that:

- (a) Trust Assets which do not fulfil each of the criteria above at any time may subsequently become Distributable Trust Assets at such time as they fulfil each of the criteria above and for as long as they continue to fulfil each of the criteria above; and
- (b) conversely, Trust Assets which have at any time fulfilled each of the criteria above may cease to be Distributable Trust Assets at any time that they cease to fulfil each of the criteria above

"Distribution"	has the meaning set out in Clause 52.2
"Distribution and Appropriation Notice"	has the meaning set out in Clause 58.1
"Distribution Assets"	has the meaning set out in Clause 54.1
"Distribution Liabilities"	has the meaning set out in Clause 55.1
"Distribution Value Date"	has the meaning set out in Clause 57
"Effective Date"	the date on which this Agreement became effective as declared by the Company in accordance with paragraph 12 of Schedule 1
"Eligible Offeree"	has the meaning set out in paragraph 3.2 of Schedule 1
"Entire Position"	in respect of a Signatory, its Asset Claims, Pre-Administration Client Money Claims, Asset Shortfall Claims, Ascertained Claims, Distribution Liabilities, Financial Contracts (including all transactions under them) and any other Claims or Liabilities under this Agreement that together comprise all of the Claims against the Company of, and Liabilities owed to the Company by, that Signatory
"Equity of Redemption"	has the meaning given to it under English law and, in relation to security given under a legal system other than English law, any proprietary interest in an Asset that confers rights that are equivalent to an equity of redemption under English law
"Excess Value"	has the meaning set out in Clause 45.3.7(ii)
"Excluded Claims"	from time to time, any Claim: (i) for or in respect of Excluded Property other than Appropriated Assets; (ii) for loss or damage relating to the failure of the Company to perform any of its obligations with regard to Excluded Property; (iii) that is a Retention Claim; (iv) against the Company for breach of any of the terms of

	this Agreement or for any failure on the part of the Company to discharge their obligations under this Agreement; or (v) against the Company under a contract: (a) which is not a Financial Contract; and (b) where the Company, in its absolute discretion, determines it is not in the interests of the unsecured creditors of the Company as a whole to have the obligations under that contract resolved through this Agreement, provided that no Claim in respect of, or connected or related to, a Financial Contract shall be an Excluded Claim
"Excluded Party"	has the meaning set out in Clause 2.3
"Excluded Property"	at any time: (i) Non-Trust Assets; and (ii) any Security Interest over Assets
"Extended Offer Period"	has the meaning set out in paragraph 7.8 of Schedule 1
"Extraordinary Resolution"	has the meaning given to it in Schedule 4
"Extraordinary Resolution Direction"	means a direction by an Extraordinary Resolution of relevant Signatories
"Failed Trade"	any transaction for the purchase, sale or delivery of any Security which has actually failed to settle
"Failed Trade Entry"	an entry in the Books and Records of the Company recording a Failed Trade as having settled
"Fallback Notification Date"	has the meaning set out in Clause 22.1.2
"Fallback Valuation Date"	in respect of an Open Contract, the Open Contract Termination Date or as soon as reasonably practicable thereafter and, in respect of a Closed Contract, the date on which such Closed Contract was terminated or as soon as reasonably practicable thereafter
"Fallback Valuation Methodology"	has the meaning set out in Clause 23.3.1
"Financial Contract"	any bilateral or multilateral contract entered into before the Administration Date (whether evidenced in writing or not) relating to one or more transactions or positions of a financial nature (and which is not a purely administrative or services contract), including contracts for the delivery and/or custody of Assets, entered into between a Signatory and the Company. For the avoidance of doubt, Master Agreements are Financial Contracts and each Master Agreement, together with the transactions entered into under it, shall be treated as a single Financial Contract
"Financial Contract Valuation Methodology"	has the meaning set out in Clause 20.2

"Financial Instrument"	any financial instrument, including, without limitation, any share, instrument creating or acknowledging indebtedness, instrument creating or acknowledging entitlements to investments, warrant or unit in a collective investment scheme, that is capable of being credited to an account of the Company with an Intermediary, excluding money
"Financing and Derivatives Contract"	a Financial Contract which is capable of giving rise to a Liability of the Signatory to the Company in the form of indebtedness or such other arrangement with an economic effect similar to an indebtedness, including a Financial Contract which provides for: (i) an obligation of the Signatory to pay money or deliver Securities to the Company in respect of (a) a loan of cash and/or Securities or (b) a Security repurchase (or reverse-repurchase) arrangement; or (ii) an obligation of the Signatory to pay or deliver Securities to the Company in accordance with the terms of a derivative transaction, contract for differences transaction or a transaction for the sale and purchase of any futures or options contract. For the avoidance of doubt, (x) any standard terms of business, (y) a Custody Agreement or (z) a Prime Brokerage Agreement under or in connection with which a Signatory does not have any Liability as described above, as determined by the Company as at the Bar Date, is not a Financing and Derivatives Contract with respect to such Signatory
"Flawed Asset Provision"	has the meaning set out in Clause 20.4.4
"Form of Acceptance"	has the meaning set out in paragraph 1.2 of Schedule 1
"Forum Notice"	has the meaning set out in Clause 68.3
"FSA"	the Financial Services Authority of the United Kingdom
"FSA Handbook"	the handbook containing rules, principles and guidance made by the FSA under powers given to it by the FSMA as modified, amended or revised from time to time
"FSA Rules"	the FSMA and the FSA Handbook
"FSMA"	Financial Services and Markets Act 2000
"Funded Retention Amount"	an amount in a notional ledger established and designated as such by the Company in respect of each currency in which any Retention Claim Amount in respect of a Signatory is denominated
"Further Offer"	has the meaning set out in paragraph 7.10 of Schedule 1
"Greatest Pre-Administration Admitted Client Money Amount"	has the meaning set out in Clause 25.3.2(ii)
"Gross Uncollateralised Liability"	has the meaning set out in Clause 25.3.2(ii)

"Gross Uncollateralised Liability Interest"	has the meaning set out in Clause 25.3.2(i)
"Holding Company"	in relation to the Company, any other company, corporation or legal entity in respect of which it is a Subsidiary
"Hypothetical Counterparty"	a hypothetical market counterparty with a creditworthiness of prime quality
"Identification"	has the meaning set out in Clause 35
"Incompletely Documented Agreement"	has the meaning set out in Clause 14.1
"Individual Claim Amount"	has the meaning set out in Clause 36.1
"Individual Claim Value"	has the meaning set out in Clause 45.1
"Information Representation and Warranty"	has the meaning set out in Clause 65.2
"Initial Offer Period"	has the meaning set out in paragraph 2.2 of Schedule 1
"Initial Representation and Warranty"	has the meaning set out in Clause 65.1
"Insolvency Act"	the Insolvency Act 1986
"Insolvency Rules"	the Insolvency Rules 1986
"Instructions"	has the meaning set out in Clause 15.4.1
"Intermediary"	a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of Assets) on behalf of or to the order of the Company, and which has a direct contractual or fiduciary relationship with the Company in relation to those assets
"Intermediary Distribution"	(i) any asset or benefit received by a Signatory on or after the Administration Date from an Intermediary or its Sub-Intermediary (other than from the Company), by way of delivery of Security, payment of cash, set-off or otherwise equivalent to Appropriation or Distribution under this Agreement, in or towards satisfaction of an Asset Claim of that Signatory, as determined by the Company; and (ii) for the purpose of Clause 48.3 only, also includes any asset received by a Signatory on or after the Administration Date from an Intermediary or its Sub-Intermediary (other than from the Company) that, had it been received by the Company, would have been a Derived Asset. For the avoidance of doubt, Intermediary Distribution includes any such assets or benefits received by a Signatory between the Administration Date and its Accession Date
"Intermediary Distribution Notice"	has the meaning set out in Clause 37.1

"Intermediary Distribution Value"	has the meaning set out in Clause 37.3
"Intermediary Distribution Value Notice"	has the meaning set out in Clause 37.3
"Intermediary Retention"	any asset or benefit which an Intermediary or its Sub-Intermediary has: (i) withheld from an Intermediary Distribution to a Signatory; and (ii) transferred to the Company by way of delivery of Security, payment of cash, set-off or otherwise equivalent to Appropriation or Distribution under this Agreement, in or towards the satisfaction of that Signatory's Distribution Liabilities
"International Prime Brokerage Agreement (Charge Version)"	means the international prime brokerage agreement entered into between a Signatory and the Company pursuant to which the assets of the Signatory were held for the Signatory by the Company as trustee for itself and/or others subject to a security interest, including with a right of use of such assets by the Company
"ISIN"	International Securities Identification Number
"Judgment Amounts"	has the meaning set out in Clause 28.1.1
"Last Allocation"	(i) in respect of a Custody Securities Pool or a Non-Custody Securities Pool, the Allocation to the relevant Asset Pool Signatory(ies) of an Asset in the relevant Asset Pool where: (a) there are no Disputes or all Disputes arising have been resolved over the TA Claimant Amount and/or Intermediary Distribution Value by the relevant Asset Pool Signatories; and (b) no Distributable Trust Assets in respect of the relevant Asset Pool are designated as Reserved Assets in respect of its TA Claimant Amount or Alleged TA Claimant Amount of a TA Non-Signatory (as the case may be) (ii) in respect of a Multiple Stock Line Pool, the Allocation to the relevant Asset Pool Signatory(ies) of an Asset in the relevant Asset Pool: (a) after the Company has determined in its absolute discretion that it does not expect to Identify any further Assets in respect of that Asset Pool; (b) where there are no Disputes or all Disputes arising have been resolved over the TA Claimant Amount and/or Intermediary Distribution Value by the relevant Asset Pool Signatories; and (c) where no Distributable Trust Assets in respect of the relevant Asset Pool are designated as Reserved Assets in respect of its TA Claimant Amount or Alleged TA Claimant Amount of a TA Non-Signatory (as the case may be); and

	(iii) in respect of a Single Customer Pool and in respect of the relevant Single Customer, the Allocation where the Company has determined in its absolute discretion that it does not expect to Identify any further Assets to be returned from such Affected Intermediary that relate to the Asset Claim of such Single Customer
"LBI"	Lehman Brothers Inc.
"Liabilities"	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
"Limited Ascertained Non-Financial Contract Liabilities"	has the meaning set out in Clause 33.5
"Liquidation Event"	either an order by the Court to compulsorily wind up the Company or the commencement of a creditors' voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)
"Master Agreement"	an agreement which provides a set of common terms and conditions for one or more transactions entered into under it, which together form a single agreement
"Mid-Market Value"	has the meaning set out in Clause 23.4.1
"Modified Claims"	has the meaning set out in Clause 4.1
"Multiple Stock Line Pool"	has the meaning set out in Clause 43.2.2
"Net Contractual Position"	the amount determined in accordance with Clause 24.2
"Net Contractual Position Statement"	has the meaning set out in Clause 24.4
"Net Equity Amount"	has the meaning set out in Clause 36.2
"Net Equity Intermediary"	has the meaning set out in Clause 34.5
"Net Financial Claim"	has the meaning set out in Clause 25.1
"Net Financial Interest Amount"	has the meaning set out in Clause 25.3.1
"Net Financial Liability"	has the meaning set out in Clause 25.2
"New Claims"	has the meaning set out in Clause 4.4
"Non-Custody Asset Claim"	(i) an Ownership Claim against the Company for or in respect of: (a) any Securities (excluding any Rehypothecated Securities and Securities Covered By Client Money) which were recorded in the Books and Records of the Company as at the Time of Administration as Securities which, pursuant to an obligation giving rise to an Ownership Claim against the Company in respect of such Securities, the

	Company held or should have held as Non-Custody Securities; and (b) Derived Assets relating to such Securities other than money; and
	(ii) a Claim against the Company in respect of any Derived Assets relating to (a) or (b) above that is money.
	(iii) For the avoidance of doubt, unless otherwise required by law or regulation, the obligation of the Company in respect of a Non-Custody Asset Claim shall not exceed the obligation of the Company under the terms of the agreement or arrangement that gives rise to such Non-Custody Asset Claim
"Non-Custody Securities Pool"	has the meaning set out in Clause 43.1
"Non-Custody Security"	any Security which is a Trust Asset, but not a Custody Security
"Non-Financial Contract Liabilities"	has the meaning given to it in Clause 33.1 and "Non-Financial Contract Liability" means any one of such Non-Financial Contract Liabilities
"Non-Signatory"	any person who is not a Signatory to this Agreement
"Non-Trust Assets"	any Assets held or controlled by the Company, other than Segregated Assets, Derived Assets and Recovered Assets, including, without limitation: (i) a Rehypothecated Security; (ii) a Converted Asset; (iii) a Returned Asset; (iv) a Pre-Agreement Returned Asset; (v) from the time of Appropriation, an Appropriated Asset; (vi) any Pre-Administration Client Money; and (vii) any Assets beneficially owned by the Company, including any Surplus Assets
"Notice"	any notice given in accordance with Clause 89, and "Notify" , "Notifying" and "Notified" shall be construed accordingly
"Notice Cut-off Date"	has the meaning set out in Clause 63.2.1
"Notice of Termination"	with respect to a Financial Contract, any notice from one party to another which purports to terminate such Financial Contract, regardless of whether such notice effectively terminates such Financial Contract in accordance with its terms
"NTA Condition"	has the meaning set out in paragraph 9.1 of Schedule 1
"NTA Offerees"	has the meaning set out in paragraph 3.1 of Schedule 1
"NTA Signatory"	any Signatory that is not a TA Signatory
"Offer"	has the meaning set out in paragraph 1.1 of Schedule 1
"Open Contract"	with respect to each Signatory, any Financial Contract that has not been terminated on or before the Accession Date of that Signatory
"Open Contract Termination Date"	in respect of each Signatory, the last Business Day of the month in which its relevant Accession Date falls
"Original Position"	the Entire Position of a Signatory as at the Time of Administration

"Over-Allocated Signatory"	has the meaning set out in Clause 45.3.7
"Overriding Valuation Provision"	has the meaning set out in Clause 20.4
"Ownership Claim"	with respect to an Asset in the possession or custody of a person (the "holder"), a Claim by another (the "ownership claimant") that: (i) the ownership claimant is the legal or beneficial owner of that Asset (whether or not it is subject to any prior ranking Security Claim of any person); and (ii) for the delivery or transfer of the Asset to (or to the order of) the ownership claimant by the holder in order to convey all right, title and interest in the Asset, subject to any right of the holder to withhold such delivery or transfer until the satisfaction of some condition precedent by the ownership claimant, including satisfaction of any Security Claim, but shall exclude any Claim in contract for the delivery or transfer of the Asset by the holder to the ownership claimant, unless such a Claim is capable of remedy by an order for specific performance (or equivalent under a legal system outside England)
"Parallel Debt"	has the meaning set out in Clause 32.2
"Party"	means the Company or any Signatory
"Password"	has the meaning set out in Clause 89.2.1
"Payment"	in respect of any payment to the Company, a payment in accordance with Clause 85 and "Pay" and "Paid" shall be construed accordingly
"Physical Delivery Deadline"	has the meaning set out in Clause 63.4.1
"Pledge Positions"	in respect of an Acceptance Threshold Offeree, the "Pledge Positions" referred to at line item reference 2.3.1 of that Acceptance Threshold Offeree's Updated Position and Balance Statement
"Pledgor"	in relation to any Security Interest, the party over whose assets the Security Interest has been created
"Portal"	a secure online facility made available by the Company through which certain Signatories (expected, initially, to be limited to TA Signatories) may access information about their Positions with the Company using their unique User ID and Password
"Position"	any asset (including an Asset) or Liability comprising a part of a Signatory's Entire Position, including an individual transaction under a Financial Contract
"Post-Administration Client Money"	any Client Money which is received by the Company after the Time of Administration and for which the Company remains accountable, but, for the avoidance of doubt, shall not include

	Pre-Administration Client Money or Pre-Administration Client Money Claims
"Post-Administration Client Money Claim"	any Claim by the Signatory in relation to Post-Administration Client Money including: (i) any Claim by the Signatory, whether against the Company or any other person, for or in respect of Post-Administration Client Money held on the Statutory Trust (or for or in respect of the proceeds of, or any substitute for, such money or any assets over which a trust, charge or other proprietary right exists in respect of such money); (ii) any Claim against the Company for or in respect of a shortfall in the Signatory's recovery of the Post-Administration Client Money whether on the basis that such money is owed as a debt, or that the Company is responsible for the loss of any Post-Administration Client Money or on any other basis whatsoever; (iii) any Claim or entitlement (including any discretionary entitlement) of the Signatory against any compensation scheme, insurer or other person in respect of Claims to or loss of Post-Administration Client Money; (iv) any debt, contractual right or other Claim which has given rise to a Post-Administration Client Money Claim; and (v) any right to waive, compromise, dispose of or otherwise deal with any of the foregoing, provided that this definition does not apply to (a) Client Money unrelated to the Company or (b) Claims by the Signatory under insurance or other arrangements entered into with a person unconnected with the Company by the Signatory for its own benefit
"Post-Administration Client Money Collection Account"	has the meaning set out in Clause 4.8.1(i)
"Post-Administration Financial Contract"	in relation to a Signatory, any Financial Contract (or any Positions under it) to which the Signatory became a party after the Time of Administration by reason of a Transfer from a Transferor
"Pre-Administration Admitted Client Money Amount"	has the meaning as set out in Clause 59.2.3
"Pre-Administration Client Money"	any Client Money which was received or held by the Company prior to the Time of Administration and for which the Company remained accountable at the Time of Administration and any money earned or arising at any time in respect thereof, whether before or after the Time of Administration

**"Pre-Administration Client
Money Claim"**

any Claim by the Signatory in relation to Pre-Administration Client Money including:

- (i) any Claim by the Signatory, whether against the Company or any other person, for or in respect of money held on the Statutory Trust (or for or in respect of the proceeds of, or any substitute for, such money or any assets over which a trust, charge or other proprietary right exists in respect of such money) or including, without limitation:
 - (a) any entitlement against the Company to a distribution from the Pre-Administration Client Money Pool;
 - (b) any Claim to Pre-Administration Client Money held at the Time of Administration outside of the Pre-Administration Client Money Pool; and
 - (c) any Pre-Administration Client Money received after the Time of Administration;
- (ii) any Claim against the Company for or in respect of a shortfall in the Signatory's recovery from the Pre-Administration Client Money Pool whether on the basis that such money is owed as a debt, or that the Company is responsible for the loss of any Pre-Administration Client Money or on any other basis whatsoever;
- (iii) any Claim or entitlement (including any discretionary entitlement) of the Signatory against any compensation scheme, insurer or other person in respect of Claims to or loss of Pre-Administration Client Money;
- (iv) any debt, contractual right or other Claim which has given rise to a Pre-Administration Client Money Claim; and
- (v) any right to waive, compromise, dispose of or otherwise deal with any of the foregoing,

provided that this definition does not apply to: (a) Client Money unrelated to the Company; or (b) Claims by the Signatory under insurance or other arrangements entered into with a person unconnected with the Company by the Signatory for its own benefit

**"Pre-Administration Client
Money Collection Account"**

has the meaning set out in Clause 59.6.2

**"Pre-Administration Client
Money Pool"**

the pool created pursuant to CASS Rule 7.9.6R (as in force at the Time of Administration)

**"Pre-Administration Client
Money Shortfall Claim"**

has the meaning set out in Clause 59.11.1

"Pre-Administration Financial"

at any time in relation to a person, any Financial Contract (or

Contract	any Positions under it) to which that person was a party at the Time of Administration and, at the relevant time, continues to be a party
"Pre-Agreement Asset Contract"	a Pre-Agreement Contract pursuant to which: (i) Pre-Agreement Provisionally Returned Assets were distributed, transferred or delivered; and (ii) such Assets or other assets may be required to be redelivered, delivered or paid to the Company, provided that the amount or value of any Claim for the purposes of this Agreement shall be the amount or value finally agreed for such Claim(s) in the Pre-Agreement Contract
"Pre-Agreement Contract"	any agreement entered into by the Company with a person after the Time of Administration, and where such person is a Signatory before their Accession Date
"Pre-Agreement Provisionally Returned Asset"	any Security which has been distributed, transferred or delivered by the Company to a person after the Time of Administration but prior to the Effective Date, in respect of which such person has an obligation to redeliver to the Company such Security or assets equivalent to such Security and proceeds of any conversion and/or derived assets of such Security or assets equivalent to such Security, whether in full or in part, which obligation includes an indemnity to the Company that compensates the Company, in whole or in part, for the consequences of any failure to make such a redelivery
"Pre-Agreement Provisionally Returned Asset Recipient"	a person who has undertaken pursuant to a Pre-Agreement Asset Contract to redeliver to the Company, in certain circumstances, any Pre-Agreement Provisionally Returned Asset
"Pre-Agreement Returned Asset"	any Pre-Agreement Provisionally Returned Asset that, in retrospect (and after the adjustment referred to in parentheses in the first paragraph of Clause 61), has been properly distributed, transferred or delivered by the Company to the relevant Pre-Agreement Provisionally Returned Asset Recipient as determined by the Company in accordance with Clause 61
"Previous Acceptors"	has the meaning set out in paragraph 11.3 of Schedule 1
"Previous Period"	has the meaning set out in Clause 25.3
"Prime Brokerage Agreement"	any agreement, whether written, oral or otherwise, between the Company and any person for the provision of prime brokerage services or margin lending services by the Company to such person including, for the avoidance of doubt, cash margin trading arrangements evidenced by the maintenance of a margin account for a person on the Company's Books and Records within a range of account codes typically used by the Company for such services

"Prior Date"	has the meaning set out in Clause 25.3
"Proceedings"	any process, action, legal or other proceeding, including, without limitation, 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
"Provisional Allocation Percentage"	has the meaning set out in Clause 45.1
"Provisional Valuation Date"	the Date Before Administration, unless the Provisional Allocation Percentage relates to an Asset Claim to an Affected Stock Line, in which case, the date as determined by the Company as the date on which the relevant Intermediary valued, or was required to value, the Assets of such Affected Stock Line for the purpose of determining the pro rata shortfall to be borne by the relevant Affected Claimants
"Pure Custody Signatory"	a Signatory which: (i) does not have any outstanding Claim or Liability in respect of any Financing and Derivatives Contract (whether terminated or not terminated) with the Company; and (ii) does not have a Non-Custody Asset Claim against the Company, as determined by the Company as at the Bar Date for the sole purpose of determining the Costs Amount that is applicable to such Signatory. For the avoidance of doubt, the determination by the Company on whether a Signatory is a Pure Custody Signatory is made without prejudice to the right of the Company under this Agreement to determine (i) and (ii) above again for all other purposes in this Agreement
"purposes"	has the meaning given to it on page III-9 of this Agreement
"Realisation"	has the meaning set out in Clause 15.6.2(ii)
"Reallocation Amount"	has the meaning set out in Clause 45.3.7
"Recoverable Delivery Value"	has the meaning set out in Clause 7.4
"Recovered Asset"	any Asset received by the Company at any time from a Pre-Agreement Provisionally Returned Asset Recipient to satisfy its redelivery obligation to the Company in respect of any Pre-Agreement Provisionally Returned Asset
"Reduction"	has the meaning set out in Clause 52.2
"rehypothecate"	to appropriate an asset (including money) that is subject to a Security Interest pursuant to which the Pledgor of that asset has an Equity of Redemption in respect of that asset, in such a manner as to eliminate that Equity of Redemption and replace it with a contractual obligation to redeliver equivalent assets or

	pay an amount of equivalent value, and "rehypothecation" and "rehypothecated" shall be construed accordingly
"Rehypothecated Security"	as at the Time of Administration, any Security which was rehypothecated by the Company, including any Security which was appropriated by the Company so as to cease being a Segregated Asset, whether or not the Company was entitled to do so
"Released Claims"	has the meaning set out in Clause 4.2
"Released Parties"	in respect of a Signatory, the Company Released Parties together with all other Signatories. For the avoidance of doubt: (i) Lehman Brothers Holding Inc., Lehman Brothers Inc. and CAPCO; and (ii) Lehman Brothers Bankhaus AG, shall not be Released Parties
"Relevant Asset"	has the meaning set out in Clause 17.1
"Relevant Currency"	has the meaning set out in Clause 29.5
"Relevant FX Conversion Time"	(i) for the purpose of Clause 17.5, the close of business in London on: (a) if the Asset being valued comprises Trust Assets, the relevant Asset Valuation Date; and (b) otherwise, the Administration Date; (ii) for the purpose of Clause 24.1, the close of business in London on the Administration Date; (iii) for the purpose of Clause 28, the close of business in London on the day on which the Retention Amount is determined; (iv) for the purpose of the definition of Unfunded Retention Amount Component, the close of business in London on the day on which the Unfunded Retention Amount Component is determined; (v) for the purpose of Clause 29.2, the close of business in London on the day on which the Unfunded Retention Amount is Reduced; (vi) for the purpose of Clause 29.5.2, the close of business in London on the day on which the Funded Retention Amount in respect of each currency other than the Relevant Currency is increased; (vii) for the purpose of Clause 30.2.2, the close of business in London on the day on which the Funded Retention Amount is determined; and (viii) for the purpose of Clause 33.3, the close of business in London on the Administration Date, provided that, if the Company determines that it is not reasonably practicable for it to determine the foreign currency exchange rate as at the close of business in London, then

	such other time as the Company determines in its absolute discretion
"Relevant Information"	has the meaning set out in Clause 12.1
"Relevant Period"	has the meaning set out in Clause 25.3.2(i)
"Relevant Securities"	has the meaning set out in Clause 15.4.3
"Representation and Warranty"	any Initial Representation and Warranty or Information Representation and Warranty, and "Representations and Warranties" shall be construed accordingly
"Representative Offeree"	any Eligible Offeree who is acting as an agent, trustee, custodian or other similar representative on behalf of its clients or other third parties (excluding any Eligible Offeree who is acting as an authorised signatory on behalf of and with the power to bind its principal to enter into this Agreement)
"Representative Signatory"	a Representative Offeree who becomes a Signatory to this Agreement
"Reserved Assets"	at any time, means such amount of Distributable Trust Assets designated as such in accordance with Clause 44.2 and which has not ceased to be so designated in accordance with Clause 44.3
"Reset Date"	the last Business Day in London of every month following the Effective Date
"Retention Allocation"	has the meaning set out in Clause 29.5.2(ii)
"Retention Amount"	an amount determined in accordance with Clause 28
"Retention Claim"	has the meaning set out in Clause 26.1
"Retention Claim Amount"	has the meaning set out in Clause 28
"Retention Claim Identification Cut-Off Time"	has the meaning set out in Clause 27
"Retention Creditor"	on any date, any person which has notified the Company of a Retention Claim in accordance with Clause 28 or is otherwise determined by the Company based on Relevant Information to have a Retention Claim as at such date
"Retention Decrease Amount"	has the meaning set out in Clause 29.5
"Returned Asset"	at any time, any Asset comprising a Distribution that has been delivered to a Signatory by the Company prior to such time pursuant to Clause 60
"Revised Forum Notice"	has the meaning set out in Clause 68.6
"Revised Offer"	has the meaning set out in paragraph 7.7 of Schedule 1
"Satisfied Claimant"	has the meaning set out in Clause 50(ii)
"Scheme"	a scheme of arrangement proposed or to be proposed by the Company under Part 26 of the Companies Act for the purpose

	of dealing with the claims of general unsecured creditors of the Company
"Securities Covered By Client Money"	in respect of a Signatory, any Securities: (i) which were recorded in the Books and Records of the Company at the Time of Administration as Securities which, pursuant to a legal or equitable obligation of the Company, should have been held by the Company as Custody Securities or Non-Custody Securities (as applicable) for that Signatory but which were not so held; and (ii) in respect of which the Company, prior to and at the Time of Administration, held as Client Money in a client bank account (as defined under the CASS Rules) an amount of money determined by the Company from time to time as equivalent to the value of such Securities, to which Client Money the Signatory is entitled under the CASS Rules
"Security" or "Securities"	any Financial Instrument or any right in respect of any Financial Instrument against a custodian, clearing system, depositary, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of assets) on behalf of or to the order of a person who holds such Financial Instrument
"Security Claim"	any Claim asserted by a Security Interest Claimant that it has a Security Interest
"Security Interest"	any legal, equitable or possessory interest (or equivalent under a legal system outside England) of a person (a "Security Interest Claimant") in an identified or identifiable asset that is in the nature of a lien, pledge or security that encumbers the entitlement of the Pledgor to that asset until one or more obligations of the Pledgor to the Security Interest Claimant are discharged in full
"Security Interest Claimant"	has the meaning set out in the definition of "Security Interest"
"Segregated Asset"	any Security which was recorded in the Books and Records of the Company as at the Time of Administration as being held in a segregated manner for customers of the Company separately from other Securities held by the Company which are available to the unsecured creditors of the Company and which was: (i) held in physical form by the Company and segregated from other Securities held in physical form by the Company which are not credited to an account of a customer of the Company; (ii) held in physical form by an Intermediary for the Company's customers and segregated from other Securities held in physical form by such Intermediary which are not credited to an account of a customer of

	such Intermediary; or
	(iii) if not held in physical form by an Intermediary,
	(a) credited to an account designated in the Books and Records of the Intermediary as an account in the name of the Company, but being held by the Company for the benefit of its customers; or
	(b) where the Intermediary does not designate any account recorded in its Books and Records as being for the Company's customers, credited to an account in the name of the Company
"Short Position"	an obligation of the Signatory to deliver equivalent Securities (or pay an amount equal to their value) to the Company arising in connection with a Short Sale
"Short Sale"	a transaction which involves a sale or other transfer for value of Securities by a Signatory or by the Company for the account of the Signatory where the Signatory is required to borrow such Securities from the Company at the time of sale or transfer, and in connection with which the Signatory assumes an obligation to deliver equivalent Securities (or to pay an amount equal to their value) to the Company at a future date
"Shortfall For Appropriation"	has the meaning set out in Clause 60.6.2
"Shortfall Signatory"	has the meaning set out in Clause 49
"Signatory"	has the meaning given to it on page III-9 of this Agreement
"Single Customer"	has the meaning set out in Clause 43.2.1
"Single Customer Pool"	has the meaning set out in Clause 43.2.1
"Spot Rate"	in respect of a conversion of a currency (the "Original Currency") into another currency (the "Target Currency"), the rate at which the Target Currency may be purchased in the London spot market using the Original Currency at the Relevant FX Conversion Time, as determined by the Company in its absolute discretion
"Standard Terms"	has the meaning set out in Clause 14.2
"Statement of Case"	has the meaning set out in Clause 70.10
"Statutory Trust"	the statutory trust created by the CASS Rules
"Stock Line"	has the meaning set out in Clause 34.2
"Sub-Intermediary"	in respect of each Intermediary, a custodian, clearing system, depository, nominee or other person which holds assets (including rights in respect of assets) on behalf of or to the order of such Intermediary, and which has a direct or (through one or more Sub-Intermediaries) indirect contractual or fiduciary relationship with the Intermediary in relation to those assets
"Subsidiary"	in relation to the Company or its Holding Company, any

	company, corporation or other legal entity:
	(i) which is controlled, directly or indirectly, by the Company or its Holding Company;
	(ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the Company or its Holding Company; or
	(iii) which is a subsidiary of another Subsidiary of the Company or its Holding Company,
	and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body
"Surplus Assets"	has the meaning set out in Clause 63.7
"Surviving Claim"	has the meaning set out in Clause 4.6.1
"Suspended Allocation Amount"	has the meaning set out in Clause 45.3.5
"TA Claimant"	any TA Signatory or TA Non-Signatory
"TA Claimant Amount"	has the meaning set out in Clause 36.3
"TA Non-Signatory"	has the meaning set out in Clause 44.1
"TA Offerees"	has the meaning set out in paragraph 3.1 of Schedule 1
"TA Signatory"	any Signatory that asserts, or any Signatory that the Company believes has, an Asset Claim
"Tax"	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, 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 Signatory or any other person
"Tax Authority"	any taxing or other authority 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
"terminated"	in respect of a Financial Contract, that the relevant contract has matured or expired or, as the context requires, been terminated, accelerated, closed out, or the payment or delivery rights and obligations arising under it have fallen due or been crystallised, or other similar event has occurred, either: (i) by operation of the contract (including, for the avoidance of doubt, where such event takes effect automatically, by effluxion of time or where the Signatory has effectively served a Notice of Termination in respect of such Financial Contract to the Company which terminates such Financial Contract in accordance with its terms); or

	(ii) by operation of Clause 19, and "terminate" and "termination" shall be construed accordingly
"Third Party"	means in relation to any contract, a person who is not a party to that contract
"Third Party Obligation"	has the meaning set out in Clause 4.6.1
"Time of Administration"	7.56 a.m. (London time) on the Administration Date
"Total Claim Amount"	has the meaning set out in Clause 40
"Total Claim Value"	has the meaning set out in Clause 45.1
"Total Collateralisation Amount"	has the meaning set out in Clause 59.7.1
"Transfer"	in relation to any asset or liability, the assignment, novation, sale or any other form of transfer (including any succession in title arising by operation of insolvency or any other law), which is effective to transfer the title to, rights of and obligations under such asset or liability, as the case may be, from one person to another and "Transferred" shall be construed accordingly
"Transferee"	means any Signatory to whom one or more Positions or Entire Positions have been Transferred
"Transferor"	means any person who makes a Transfer of one or more Positions or an Entire Position to a Signatory
"Transferred Position"	any Position that has been Transferred
"Trust Assets"	at any time, any Assets which fulfil the following criteria at such time: (i) they are a Segregated Asset, a Derived Asset or a Recovered Asset; and (ii) they are not Excluded Property
"Unaffected Close-Out Components"	has the meaning set out in Clause 21.5.2(ii)
"Unallocated"	has the meaning set out in Clause 34.1
"Unclaimed Distribution"	has the meaning set out in Clause 63.6
"Uncollateralised Net Financial Liability"	has the meaning set out in Clause 59.8
"Undertaking"	any of the undertakings given by the Signatory under Clauses 4.8.3, 6.5, 32.1, 59.6.2, 65.5, 65.6, 68.9 and 88, and "Undertakings" shall be construed accordingly
"Unfunded Retention Amount"	has the meaning set out in Clause 29.1
"Unfunded Retention Amount Component"	in respect of each currency, that portion of the Unfunded Retention Amount that comprises the aggregate Retention Claim Amounts denominated in such currency converted into US dollars using the Spot Rate as of the Relevant FX Conversion Time

"Unpaid Amounts"	has the meaning set out in Clause 23.5
"Unpaid Amount Deliverables"	has the meaning set out in Clause 23.5.2
"unsecured creditors"	those persons who have unsecured claims against the Company
"Updated Position and Balance Statement"	the updated position and balance statement provided to each TA Offeree by the Company through the Portal on or around the date of this Agreement
"US dollars" or "US\$"	the lawful currency of the United States of America
"USD-LIBOR"	on any Reset Date, the London Inter-Bank Offered Rate for deposits in US dollars for a designated maturity of one month which appears on the Telerate Page 3750 as of 11.00 a.m. (London time) on the day which is two London Business Days prior to such Reset Date and, if such rate does not appear on the Telerate Page 3750, then the rate for such Reset Date will be determined on the basis of the arithmetic mean of the rates at which deposits in US dollars are offered by at least three major banks in the London interbank market to prime banks in the London interbank market for a designated maturity of one month commencing on that Reset Date and in a representative amount of a reasonable size, as determined by the Company
"User ID"	has the meaning set out in Clause 89.2.1
"Valuation Expert"	an independent valuation expert appointed pursuant to Clause 69.2
"Valuation Expert Contest Notice"	has the meaning set out in Clause 68.5
"Valuation Statement"	in respect of each Financial Contract, one or more statements that, when taken together, show in reasonable detail the calculation of the relevant Close-Out Amount or Close-Out Components for such Financial Contract. Such statement(s) may be contained within any other Notice or document which the Signatory may send to the Company in accordance with this Agreement, including, for the avoidance of doubt, any supplementary information provided by the Signatory in accordance with Clause 21.8.5
"Valuation Submission Date"	in respect of each Signatory, 30 Business Days after its relevant Open Contract Termination Date, unless the Company has: (i) amended the Contractual Valuation Provisions of a Financial Contract in accordance with Clause 21.5.1 or 21.6.1; or (ii) determined to treat a Financial Contract as two separate Financial Contracts in accordance with Clause 21.5.2, in which case the Valuation Submission Date in relation to such Financial Contract shall be the day falling 20 Business

Days after the Company has Notified the relevant Signatory of the relevant amendments. For the avoidance of doubt, the Valuation Submission Date in respect of Clause 21.7.3 and Clause 21.8.1 shall be 30 Business Days after the relevant Open Contract Termination Date of a Signatory in respect of its Closed Contracts

"Value"

unless otherwise specifically provided in this Agreement:

- (i) in respect of any Financial Contract, the Close-Out Amount of such Financial Contract as determined in accordance with the applicable Financial Contract Valuation Methodology set out in Clauses 19 to 24;
- (ii) in respect of any Relevant Asset, the Value of such Relevant Asset as determined in accordance with the Asset Valuation Methodology set out in Clause 17.1;
- (iii) in respect of a monetary amount of a given currency, the value in that currency of that monetary amount; and
- (iv) in respect of a variable that is itself a composite of other variables, its Value shall be determined with regard to the Value of each of its composite elements,

and **"Valuation"** and **"Valued"** shall be construed accordingly

"VAT"

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 levied by reference to added value or sales

"Website"

the Company's site on the website of PricewaterhouseCoopers LLP at http://www.pwc.co.uk/eng/issues/lehman_updates.html

97 Interpretation

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

- 97.1.1** references to any specified provision of this Agreement shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 80;
- 97.1.2** 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;
- 97.1.3** references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 97.1.4** words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 97.1.5** headings are for ease of reference only and shall not affect the interpretation of this Agreement;
- 97.1.6** references to Clauses, Parts and Schedules are to Clauses and Parts of and Schedules to this Agreement, and references to time are to London time;

- 97.1.7 if there is any ambiguity, inconsistency, discrepancy or conflict between this Agreement and any other part of the Circular, this Agreement shall prevail;
- 97.1.8 the language which governs the interpretation of this Agreement is the English language. All notices to be given by any Party and all other communications and documentation which are in any way relevant to this Agreement or the performance or termination of this Agreement shall be in the English language;
- 97.1.9 the words "include" and "including" are to be construed without limitation;
- 97.1.10 a reference to "indebtedness" includes any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of money, whether present or future, actual or contingent;
- 97.1.11 a reference to a "judgment" includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and
- 97.1.12 a reference to a "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and "lawful" and "unlawful" shall be construed accordingly).
- 97.2 In determining whether any action is "reasonably practicable" for the Company for the purposes of this Agreement, regard shall be had to:
 - 97.2.1 the fact that the Company is in administration;
 - 97.2.2 the fact that the Company is not operating as an investment bank whose business includes prime brokerage services;
 - 97.2.3 the actual limitations on access to Books and Records of the Company and other resources;
 - 97.2.4 the materiality of the likely impact of such action on the Company's aim to control costs and to deal with matters arising under this Agreement expeditiously; and
 - 97.2.5 any other matters of order or more general application.

SCHEDULE 1

TERMS AND CONDITIONS OF THE OFFER

1 The Offer

- 1.1 The Company hereby makes an offer (the "**Offer**"), on the terms and subject to the conditions set out in this Schedule 1 and the Form of Acceptance, to Eligible Offerees (as defined in paragraph 3 below) to enter into and be bound by all of the provisions of the Claim Resolution Agreement (the "**Agreement**") as if they had signed the Agreement itself.
- 1.2 Eligible Offerees may accept the Offer by completing and submitting, in accordance with paragraph 8 below, a form of acceptance to the Company in the form set out in Schedule 2 to the Agreement (the "**Form of Acceptance**"), subject to the provisions set out in this Schedule 1.

2 General

- 2.1 The terms and conditions set out in this Schedule 1 apply to the Offer and, once the Agreement is effective, are incorporated in and form part of the Agreement. Unless the context requires otherwise, capitalised terms used in this Schedule 1 have the same meaning as ascribed to them in the Agreement and any reference to "**Signatory**" in the definition of such capitalised term in the Agreement shall be construed as a reference to "**Eligible Offeree**" in this Schedule 1.
- 2.2 Except where the context otherwise requires, in this Schedule 1 and in the Form of Acceptance:
- 2.2.1 "**Closing Date**" means 5.00 p.m. (London time) on Tuesday 29 December 2009 (or such later time and/or date as may apply under paragraph 7.7 below or as the Company may decide in accordance with paragraph 7.3 below);
- 2.2.2 "**Initial Offer Period**" means the period from the date of the Circular until the Closing Date;
- 2.2.3 any reference to the "**Offer**", "**Closing Date**" or the "**Initial Offer Period**" includes any revision or variation to or extension of it in accordance with this Schedule 1; and
- 2.2.4 any reference to a person having an "**Ownership Claim**" or being party to a "**Financial Contract**" as at the Time of Administration includes a person to whom such claim or contract has been Transferred, subject to paragraph 8.8.1 below.

3 Eligible Offerees

- 3.1 The Offer is open for acceptance, subject to paragraph 9.1 and paragraph 13.5 below, by those persons who, at the date of the Circular:
- 3.1.1 have Ownership Claims to Segregated Assets as at the Time of Administration (the "**TA Offerees**"); and
- 3.1.2 are not TA Offerees but who are party to Financial Contracts with the Company as at the Time of Administration (the "**NTA Offerees**").
- 3.2 Each TA Offeree or, as the case may be, NTA Offeree is referred to in this Schedule 1 as an "**Eligible Offeree**" and together, the "**Eligible Offerees**".

- 3.3 The Company reserves the right to determine whether a person is eligible to accept the Offer pursuant to paragraph 3.1 above.
- 3.4 The following criteria shall not of themselves disqualify a person from being a TA Offeree:
- 3.4.1 the fact that the Company or any other person may have Claims of any nature whatsoever against that person whether or not those Claims are ascertained, capable of being reduced by any set-off, netting, withholding, combination of accounts, retention and/or any other similar operation and irrespective of the amount of such Claims;
 - 3.4.2 any defect in the title which the Company itself or any Intermediary may have to the Trust Assets which are the subject of the relevant Ownership Claim provided that such defect in title did not have the effect that none of the relevant Assets were held as Segregated Assets;
 - 3.4.3 the fact that any other person also has an Ownership Claim to the same Segregated Assets; and
 - 3.4.4 the fact that such person's Ownership Claim is disputed, uncertain, conditional, unascertained, future or contingent and regardless of whichever system of law may govern the Ownership Claim provided such claim is of a type the courts of England would be prepared to recognise and enforce.
- 3.5 In determining whether a person is a TA Offeree, no regard shall be had to the application upon or after the Time of Administration of any provision of any Financial Contract which would or might result in a person not having an Ownership Claim to Segregated Assets if: (i) that person had an Ownership Claim to Segregated Assets immediately prior to the Time of Administration; and (ii) that person would have an Ownership Claim to Segregated Assets at the time of the Offer but for the application of such provision.

4 Conditions to the Offer

- 4.1 The Offer is subject to the following conditions (the "**Conditions**"):
- 4.1.1 valid Forms of Acceptance being received, in accordance with paragraph 8.4 below, by the Company by the Closing Date from Acceptance Threshold Offerees who represent not less than 90 per cent. of the Acceptance Value of the Acceptance Threshold Claims in aggregate.

This Condition 4.1.1 is referred to in this Schedule 1 as the "**Acceptance Condition**";
 - 4.1.2 the Company having obtained from the Court, following its application for leave to distribute assets after a bar date, an order in terms acceptable to the Company as regards liberty to distribute assets; and
 - 4.1.3 prior to the time at which the Offer would otherwise become or be declared unconditional in all respects, no government or governmental, quasi-governmental, regulatory or investigative body, court, authority, or any other similar body or person in any jurisdiction having given notice of a decision to take, institute or threaten any action or suit, or having required any action to be taken, or otherwise having done anything, which, in the absolute opinion of the Company, would:
 - (i) make the Agreement or its implementation void, unenforceable or illegal (in whole or in part); or

- (ii) restrict or delay to a material extent or otherwise materially interfere with the implementation or require material amendment of the Agreement.

4.2 For the purposes of the Acceptance Condition:

4.2.1 "Acceptance Threshold Claims" means Ownership Claims to Distributable Trust Assets of each Acceptance Threshold Offeree that appear in the Books and Records of the Company as at the statement date of such Acceptance Threshold Offeree's Updated Position and Balance Statement as determined by the Company.

4.2.2 "Acceptance Threshold Offerees" means the TA Offerees with Acceptance Threshold Claims excluding those TA Offerees who are:

- (i) Representative Offerees; and
- (ii) such other TA Offerees as the Company may decide, in its absolute discretion, to exclude as Acceptance Threshold Offerees.

4.2.3 "Acceptance Value" means, in respect of each Acceptance Threshold Offeree, the aggregate of the values of such Acceptance Threshold Offeree's Custody Long Positions, Charge Long Positions and Pledge Positions as determined by the Company and provided to each Acceptance Threshold Offeree on its Updated Position and Balance Statement.

4.3 The Acceptance Values will be used by the Company solely for the purpose of determining the level of acceptances in relation to the Offer. They are not determinative of any rights or claims of any person and are not an indication of any allocation or distribution of assets or calculations of claims or liabilities that a person may receive or have under the Agreement.

4.4 The Company reserves the right to withdraw the Offer at any time before the Effective Date if any of the Conditions set out in paragraph 4.1 above in the absolute opinion of the Company is not satisfied or is not capable of being satisfied. In such circumstances, the Company will notify Eligible Offerees of its withdrawal in accordance with the provisions of paragraph 14 below.

4.5 The Company will not invoke any of the Conditions set out in paragraph 4.1 above so as to cause the Offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the relevant Condition are, in the absolute opinion of the Company, of material significance in the context of the Offer.

5 Waiver of Acceptance Condition

5.1 The Company may waive the Acceptance Condition with the consent of Acceptance Threshold Offerees who represent not less than 90 per cent. of the Acceptance Value of the Acceptance Threshold Claims (in aggregate) of those Acceptance Threshold Offerees who have submitted a Form of Acceptance to the Company (as at the date of notification by the Company of the proposed waiver or such other date as the Company may decide).

5.2 As soon as practicable after it decides that it wishes to waive the Acceptance Condition, the Company shall notify (in accordance with the provisions of paragraph 14 below) each Acceptance Threshold Offeree who has submitted a Form of Acceptance to the Company and request consent from each such Acceptance Threshold Offeree to the waiver of the Acceptance Condition by such date as the Company may decide.

5.3 If the requisite majority set out in paragraph 5.1 above consent to the waiver of the Acceptance Condition, each Eligible Offeree who has submitted a Form of Acceptance to the

Company (whether before or after the waiver of the Acceptance Condition) shall be bound by such waiver and shall not have a right to withdraw its Form of Acceptance on the basis of or by reason of such waiver.

- 5.4 As soon as practicable after the waiver of the Acceptance Condition in accordance with the provisions of this paragraph 5, the Company shall notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) of such waiver.
- 5.5 The waiver of the Acceptance Condition shall take effect on such date as the Company may determine, provided that consent to the waiver is obtained from Acceptance Threshold Offerees in accordance with paragraph 5.1 above.

6 Waiver of other Conditions

- 6.1 The Company reserves the right to waive, in whole or in part, at any time before the Effective Date, all or any of the Conditions set out in paragraph 4.1 above except for the Acceptance Condition which shall be subject to the provisions of paragraph 5 above.
- 6.2 As soon as practicable after it decides to waive any of the Conditions set out in paragraph 4.1 above other than the Acceptance Condition, the Company shall notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) of such waiver which shall take effect on such date as the Company may determine.

7 Acceptance period

- 7.1 The Offer will be open for acceptance by Eligible Offerees at any time during the Initial Offer Period.
- 7.2 If the Acceptance Condition is satisfied on or before the Closing Date, the Company will notify the Eligible Offerees (in accordance with the provisions of paragraph 14 below) that the Offer has become unconditional as to acceptances (but is subject to any other conditions that remain unsatisfied in the absolute opinion of the Company).
- 7.3 If, at any time prior to the Closing Date, the Acceptance Condition has not been satisfied or waived in the absolute opinion of the Company, or for any other reason in its sole discretion, the Company:
- 7.3.1 may extend the Closing Date to such later time and/or date as the Company may determine, subject to paragraph 7.4 below; and
 - 7.3.2 will notify Eligible Offerees of the new Closing Date in accordance with the provisions of paragraph 14 below.
- 7.4 The Company may extend the Closing Date from 5.00 p.m. (London time) on Tuesday 29 December 2009 to a time and date that is no later than 5.00 p.m. (London time) on Friday 26 February 2010. Any further extension by the Company of the Closing Date beyond such time and date shall be subject to the approval of the Creditors' Committee.
- 7.5 The Offer will lapse:
- 7.5.1 in the case of TA Offerees:
 - (i) if the Acceptance Condition has not been satisfied or waived by the Closing Date, provided that the Company has decided not to extend the Closing Date pursuant to paragraph 7.3 above; or

- (ii) if all of the Conditions set out in paragraph 4.1 above (other than the Acceptance Condition) have not been satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010.
- 7.5.2 In the case of NTA Offerees:
 - (i) if the Acceptance Condition has not been satisfied or waived by the Closing Date, provided that the Company has decided not to extend the Closing Date pursuant to paragraph 7.3 above;
 - (ii) if all of the Conditions set out in paragraph 4.1 above (other than the Acceptance Condition) have not been satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010; or
 - (iii) if the NTA Condition (as defined in paragraph 9 below) is not satisfied or waived by 5.00 p.m. (London time) on Wednesday 30 June 2010 or such later time and/or date as the Company may decide.
- 7.5.3 If the Offer lapses in relation to TA Offerees pursuant to paragraph 7.5.1 above, the Company will notify the TA Offerees in accordance with the provisions of paragraph 14 below.
- 7.5.4 If the Offer lapses in relation to NTA Offerees pursuant to paragraph 7.5.2 above, the Company will notify the NTA Offerees in accordance with the provisions of paragraph 14 below.
- 7.6 If the Offer lapses pursuant to paragraph 7.5.1 or 7.5.2 above, it will cease to be capable of further acceptance and the Company and any TA Offeree or, as the case may be, NTA Offeree who has submitted a Form of Acceptance at or prior to the time when the Offer so lapses will cease to be bound by such Form of Acceptance.
- 7.7 If any term of the Offer is revised by the Company in accordance with the provisions of paragraph 11 below (the "**Revised Offer**"), the Revised Offer will remain open for acceptance until, whichever is later:
 - 7.7.1 the Closing Date; or
 - 7.7.2 the day which is 14 days from the date on which written notification of the revision is provided by the Company to Eligible Offerees, in which case the Closing Date shall be deemed to be extended to such date.
- 7.8 Notwithstanding that the Offer may have become unconditional as to acceptances or that the Effective Date of the Agreement may have been declared in accordance with paragraph 12 below, the Company reserves the right to keep the Offer open for acceptance by Eligible Offerees to such later time and/or date after the end of the Initial Offer Period as it may determine or for an indefinite period after the end of the Initial Offer Period (the "**Extended Offer Period**").
- 7.9 In the event that the Company decides to have an Extended Offer Period by keeping the Offer open after the end of the Initial Offer Period, the Company will notify Eligible Offerees in accordance with the provisions of paragraph 14 below.
- 7.10 After the end of the Initial Offer Period or, as the case may be, the end of the Extended Offer Period, the Company reserves the right to make further offers to Eligible Offerees, including a restricted number or category of Eligible Offerees that may comprise only one person, to enter into the Agreement (each a "**Further Offer**").

- 7.11 Each Further Offer shall be subject to such terms and conditions (if any) as the Company may determine, provided that any such terms and/or conditions shall not be more favourable, in the absolute opinion of the Company, to the Eligible Offerees to whom any such Further Offer is made than the terms and conditions of the Offer set out in this Schedule 1.
- 7.12 Those Eligible Offerees whose Forms of Acceptance are received by the Company after the end of the Initial Offer Period will be subject to higher Costs Amounts than those whose Forms of Acceptance are received by the Company before the end of the Initial Offer Period (subject to and in accordance with the provisions of the Agreement).

8 Form of Acceptance

- 8.1 Each Eligible Offeree who wishes to accept the Offer must complete, execute and submit (or authorise the completion, execution and submission of) a Form of Acceptance to the Company, subject to paragraph 10 below.
- 8.2 Each Form of Acceptance submitted by or on behalf of an Eligible Offeree must include an electronic mail address to which notices and communications may be sent by the Company in accordance with the provisions of paragraph 14 below.
- 8.3 Each Form of Acceptance submitted by or on behalf of an Eligible Offeree must also include a disclosure of whether that person is:
- 8.3.1 acting as principal on its own behalf or as an authorised signatory executing the Form of Acceptance on behalf of and with authority to bind its principal to the Agreement; or
 - 8.3.2 acting as a Representative Offeree (in which case the provisions of paragraph 10 below shall apply).
- 8.4 A completed and signed Form of Acceptance must be submitted to the Company by emailing a scanned copy to claimresolutionagreement@lbia-eu.com or by faxing a copy to +44 (0)20 7067 8542. As soon as possible after the Form of Acceptance has been so submitted by electronic mail or facsimile, the original must be sent to the Company by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).
- 8.5 Forms of Acceptance must be submitted to the Company as soon as possible and in any event so as to be received by the Company by electronic mail or facsimile no later than the Closing Date (subject to paragraphs 7.8 and 7.10 above).
- 8.6 Without prejudice to any other provision in this Schedule 1, the Company reserves the right to treat a Form of Acceptance as being validly submitted to the Company even if the Form of Acceptance is not entirely in order or complete or is not received in the manner stated in this Schedule 1.
- 8.7 As soon as practicable after it receives a Form of Acceptance from an Eligible Offeree by electronic mail or facsimile, the Company will send an electronic mail to such Eligible Offeree confirming receipt of its Form of Acceptance. The date of receipt by the Company of a duly completed and signed Form of Acceptance submitted by an Eligible Offeree by electronic mail or facsimile is referred to as the "Acceptance Date" of such Eligible Offeree.
- 8.8 Each Eligible Offeree by whom or on whose behalf a Form of Acceptance is executed (save for a Representative Offeree in which case paragraph 10 below shall apply) irrevocably

undertakes, represents, warrants and agrees to and with the Company as at its Acceptance Date (so as to bind such person and its personal representatives, heirs, successors and assignees) to the following effect that:

- 8.8.1 the execution of a Form of Acceptance constitutes, on and subject to the terms and conditions set out in this Schedule 1:
- (i) an irrevocable acceptance of the Offer (subject to the right of withdrawal in the circumstances described in paragraph 11.3 below and the right of exclusion of the Company in paragraph 13.5 below);
 - (ii) an undertaking to execute any further documents and give any further assurances as may be reasonably requested by the Company in order to implement the Agreement;
 - (iii) a representation and warranty that such person has not Transferred its Entire Position prior to its Acceptance Date; and
 - (iv) an undertaking that, except in accordance with the Agreement, such person shall not Transfer any of its Positions after its Acceptance Date;
- 8.8.2 it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws under which it is established, and, if relevant under such laws, in good standing and has full power and authority to conduct its business activities;
- 8.8.3 it has (or, in respect of completed actions, at the relevant time had) the power to execute the Form of Acceptance, the Agreement and any documentation relating to the Agreement to which it is a party, to deliver the Form of Acceptance, the Agreement and any documentation relating to the Agreement that it is required to deliver, and to perform its obligations under the Form of Acceptance and the Agreement and any documentation relating to the Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- 8.8.4 such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term of provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;
- 8.8.5 all actions or things required to be taken, fulfilled or done (including, without limitation, the obtaining of any consent or licence or the making of any filing or registration) by it with respect to the Form of Acceptance and the Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- 8.8.6 its obligations under the Form of Acceptance and the Agreement constitute, or (upon the Accession Date of such Eligible Offeree) will constitute, its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in equity or at law)); and

8.8.7 there is not pending or, to its knowledge, threatened against it any action, suit or proceedings at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of the Form of Acceptance and the Agreement or its ability to perform its obligations under the Form of Acceptance and the Agreement.

8.9 The Company reserves the right to require evidence of power and authority or any supporting documentation or supplementary information from any person who executes or submits a Form of Acceptance to the Company.

9 Acceptances by NTA Offerees

9.1 A Form of Acceptance submitted by an NTA Offeree to the Company shall be subject to the following condition (the "NTA Condition"):

9.1.1 by no later than 5.00 p.m. (London time) on Wednesday 30 June 2010 or such later time and/or date as the Company may decide, one of the following events having occurred:

- (i) the Court declining on an application by the Administrators or the Company to permit meetings of the Company's creditors to be convened for the purposes of voting in relation to the Scheme;
- (ii) a failure to obtain approval of the Scheme or the CVA from the requisite majority of creditors or classes of creditors at the relevant Scheme or CVA meeting(s);
- (iii) the Court declining to sanction the Scheme;
- (iv) the Court revoking a decision approving the CVA on the grounds of unfairness or material irregularity; or
- (v) the Company notifying NTA Offerees that it has decided not to promulgate or propose the Scheme or the CVA.

9.2 Any Form of Acceptance submitted by an NTA Offeree shall not be valid and effective unless and until the NTA Condition is satisfied in the absolute opinion of the Company.

9.3 If the Scheme or, as the case may be, the CVA becomes effective (provided that, in the case of the CVA, it is not challengeable under section 6 of the Insolvency Act, the Offer in relation to NTA Offerees will be treated as having automatically lapsed as from the effective date of the Scheme or, as the case may be, the CVA (subject to the provisions of paragraphs 7.5.2 and 7.5.4 above). The Offer will thereafter cease to be capable of acceptance by any NTA Offeree and the Company and any NTA Offeree who has submitted a Form of Acceptance at or prior to the time when the Offer so lapses will cease to be bound by such Form of Acceptance.

9.4 The Company reserves the right to waive the NTA Condition, in whole or in part, at any time before the applicable Effective Date in relation to NTA Offerees. As soon as practicable after it decides to waive the NTA Condition, the Company shall notify the NTA Offerees (in accordance with the provisions of paragraph 14 below) of such waiver which shall take effect on such date as the Company may determine.

10 Representative Offerees

- 10.1** If an Eligible Offeree is acting as a Representative Offeree, the mere execution of the Form of Acceptance will not constitute a valid acceptance or bind the Representative Offeree to the Agreement since such person is acting in a representative capacity.
- 10.2** Such Representative Offeree must submit its Form of Acceptance and also provide all necessary information to the Company as reasonably requested by the Company in order for the Company and such person to enter into the Agreement on a bilateral basis with such amendments as may be agreed in accordance with the provisions of Clause 2.1 of the Agreement.

11 Revised Offer and withdrawal

- 11.1** Once submitted to the Company, a Form of Acceptance shall be irrevocable, except in the circumstances specified in this paragraph 11.
- 11.2** Although no revision is envisaged, the Company reserves the right to revise the terms of the Offer set out in this Schedule 1 at any time before the Effective Date.
- 11.3** If any term of the Offer set out in this Schedule 1 is revised by the Company and such revision, in the absolute opinion of the Company, represents a material change or amendment of the Offer, the Company will notify Eligible Offerees in accordance with the provisions of paragraph 14 below. Those Eligible Offerees who have previously submitted a Form of Acceptance to the Company (the "**Previous Acceptors**") will be informed that they may withdraw such Form of Acceptance within 14 days of written notification by the Company of such revision.
- 11.4** If the Company does not receive written notification of withdrawal of a Form of Acceptance from a Previous Acceptor within 14 days following written notification of revision of the terms of the Offer, the Form of Acceptance previously submitted by or on behalf of such Previous Acceptor shall be deemed to be, and will be treated as, valid in respect of the Offer as so revised.
- 11.5** This paragraph 11 shall not apply to waiver of any of the Conditions set out in paragraph 4.1 above, which shall be subject to the provisions of paragraphs 5 and 6 above, nor to waiver of the NTA Condition which shall be subject to the provisions of paragraph 9.4 above.

12 Declaration of Effective Date

- 12.1** The Company shall declare the Effective Date of the Agreement in relation to the TA Offerees as soon as practicable after all of the Conditions set out in paragraph 4.1 above have, in the absolute opinion of the Company, been satisfied or waived by the Company in accordance with paragraphs 5 and 6 above.
- 12.2** The Company shall declare the Effective Date of the Agreement in relation to the NTA Offerees as soon as practicable after all of the Conditions set out in paragraph 4.1 above and the NTA Condition have, in the absolute opinion of the Company, been satisfied or waived by the Company in accordance with paragraph 9.4 above.
- 12.3** The Company shall, as applicable, confirm to the TA Offerees or, as the case may be, the NTA Offerees that the Offer has become unconditional in all respects and notify them of their applicable Effective Date in accordance with the provisions of paragraph 14 below.

13 Notification of Accession Date

- 13.1** The Company shall confirm (in accordance with the provisions of paragraph 14 below) to each person who has submitted a Form of Acceptance whether such Form of Acceptance has been validly submitted and whether such person is or is not a Signatory to the Agreement.
- 13.2** The Company reserves the right, in its absolute discretion, to consider and deal with Forms of Acceptance which are received by the Company from TA Offerees as a priority ahead of those Forms of Acceptance which are received by the Company from NTA Offerees.
- 13.3** In the case of a TA Offeree, the confirmation pursuant to paragraph 13.1 above shall be provided by the Company no later than:
- 13.3.1** the Effective Date; or
 - 13.3.2** if later, 25 days after the TA Offeree's Acceptance Date.
- 13.4** In the case of an NTA Offeree, the confirmation pursuant to paragraph 13.1 above shall be provided by the Company no later than:
- 13.4.1** 60 days after the satisfaction of the NTA Condition in accordance with paragraph 9.1 above, as determined by the Company; or
 - 13.4.2** if later, 60 days after the NTA Offeree's Acceptance Date.
- 13.5** The Company reserves the right in its absolute discretion to exclude any person from being a party to the Agreement. No person shall be, or be treated as, a Signatory to the Agreement unless and until the Company has sent a notification in accordance with this paragraph 13 to such person confirming that that person is a Signatory to the Agreement.

14 Notices and announcements

- 14.1** Any notice or communication to be given or document to be sent by or on behalf of the Company pursuant to this Schedule 1 shall be in writing in English and may be delivered as the Company considers appropriate:
- 14.1.1** by electronic mail to the address specified by the recipient on its Form of Acceptance or provided otherwise to the Company;
 - 14.1.2** where applicable, via the Portal to TA Offerees;
 - 14.1.3** by an announcement or update published on the Website; or
 - 14.1.4** by post or air mail to the address specified by the recipient or the last known address of such person.
- 14.2** Any notice or communication given or document sent by or on behalf of the Company pursuant to this Schedule 1 shall be deemed to be received by the recipient at the time stated in Clause 89 or Clause 91 of the Agreement as applicable.
- 14.3** Save as otherwise specified in this Schedule 1, any notice or communication to be given or document to be sent to the Company pursuant to this Schedule 1 shall be in writing in English and may be delivered to the Company:
- 14.3.1** by electronic mail to claimresolutionagreement@lbia-eu.com; or
 - 14.3.2** by facsimile to +44 (0)20 7067 8542.

15 Governing law and jurisdiction

15.1 All matters and disputes arising out of or in connection with the Offer or the Form of Acceptance shall be governed by, and construed in accordance with, English law.

15.2 The execution of a Form of Acceptance by or on behalf of an Eligible Offeree constitutes such Eligible Offeree's:

15.2.1 submission to the exclusive jurisdiction of the courts of England in relation to all matters and disputes arising out of or in connection with the Offer or the Form of Acceptance; and

15.2.2 agreement that nothing shall limit the right of the Company to bring any Proceedings arising out of or in connection with the Offer or the Form of Acceptance in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

SCHEDULE 2 FORM OF ACCEPTANCE

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.

If you are in any doubt about the action you should take, you are recommended to seek advice immediately from your own professional adviser. If you have sold or otherwise transferred all of your interests as an Eligible Offeree (as defined in the Claim Resolution Agreement contained in Part III of the accompanying Circular (the "Agreement")), please forward this document together with the accompanying documentation as soon as possible to the purchaser or transferee, or to the stockbroker, bank or other agent through whom the sale or transfer was effected for onward transmission to the purchaser or transferee. However, such documents should not be forwarded or transmitted in or into any jurisdiction outside the United Kingdom if to do so would constitute a violation of the relevant laws in such jurisdiction.

This Form of Acceptance should be read in conjunction with the accompanying Circular and the Agreement contained therein. Unless the context otherwise requires, capitalised terms used in this Form of Acceptance have the meanings ascribed to them in the Agreement.

This document does not constitute nor does it form part of any offer to sell or to purchase or to subscribe for, or the solicitation of an offer to sell or purchase or subscribe for, any securities in any jurisdiction or territory. Certain of the securities which are the subject of the Agreement may have been issued by Affiliates of the Company (the "Affiliate Securities"). No offer or sale of Affiliate Securities may have been registered under the United States Securities Act of 1933, as amended (the "Securities Act"). Any Affiliate Securities that may be delivered under the Agreement may not be offered or sold to other investors except as part of a transaction that is registered under the Securities Act or that is exempt from registration.

The information used by or relied upon by the Company for the purpose of determining the level of acceptances in relation to the Offer is not determinative of any rights or claims of any person and should not be used or relied upon for this or any other purpose. This information is not an indication of any allocation or distribution of assets or calculation of claims or liabilities that a person may receive or have under the Agreement. Please refer to the Agreement for further information regarding allocations and distributions of assets and calculations of claims and liabilities.

Further copies of this document may be downloaded from the PricewaterhouseCoopers website at http://www.pwc.co.uk/eng/issues/lehman_updates.html.

FORM OF ACCEPTANCE

of the Offer

in relation to a proposed

CLAIM RESOLUTION AGREEMENT

between

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(in administration)

and

ELIGIBLE OFFEREES

**You must submit your Form of Acceptance so as to be received by the Company no later than
5.00 p.m. (London time) on Tuesday 29 December 2009.**

ACTION TO BE TAKEN

- Your attention is drawn to the notes set out on page 4 of this Form of Acceptance and to Schedule 1 to the Agreement, the terms of which are incorporated in and form part of this Form of Acceptance. Your acceptance of the Offer is on the terms and subject to the conditions set out in Schedule 1 to the Agreement.
- If you wish to accept the Offer to enter into the Agreement, you must complete Section A of this Form of Acceptance. If you are an NTA Offeree (as defined in the Agreement), you must complete both Section A (except Box 1) and Section B of this Form of Acceptance.
- Please submit your completed and signed Form of Acceptance as soon as possible and in any event so as to be received by the Company no later than 5.00 p.m. (London time) on Tuesday 29 December 2009. Completed and signed Forms of Acceptances may be submitted by email to claimresolutionagreement@lbia-eu.com or by facsimile to +44 (0)20 7067 8542. After you submit your Form of Acceptance by email or facsimile, you must send the original to the Company by pre-paid post or air mail to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).

The provisions of Schedule 1 to the Agreement are incorporated in and form part of this Form of Acceptance. Please carefully read the notes on page 4 of this Form of Acceptance before completing this Form of Acceptance.

SECTION A

1	TA OFFEREE'S DETAILS This Box 1 only applies to TA Offerees. If you are an NTA Offeree, you must provide your details in Section B of this Form of Acceptance in addition to completing Boxes 2 to 5 of this Section A.	Name: _____ GAC Code: (See Note 3) _____

2	ACCEPT THE OFFER Please put a tick or an X in the box to the right.	<input style="width: 50px; height: 20px; margin-right: 10px;" type="checkbox"/> I wish to accept the offer to enter into the Agreement on the terms and conditions set out in Schedule 1 to the Agreement and hereby agree to be bound by all of the provisions of the Agreement contained in Part III of the Circular (subject to Note 5 below in the case of Representative Offerees).

3	CAPACITY (See Notes 4 and 5) Please put a tick or an X in the appropriate box to the right to confirm the capacity in which you are executing this Form of Acceptance.	I represent that I am: <input style="width: 50px; height: 20px; margin-right: 10px;" type="checkbox"/> (i) acting as principal on my own behalf or as an authorised signatory executing this Form of Acceptance on behalf of and with authority to bind my principal to the Agreement. OR <input style="width: 50px; height: 20px; margin-right: 10px;" type="checkbox"/> (ii) a Representative Offeree (that is, I am acting as an agent, custodian or trustee on behalf of clients or other third parties).

4	SIGNATURE (See Notes 6 and 7) Signed by or on behalf of the TA Offeree named in Box 1 above or, as the case may be, the NTA Offeree named in Box 6 overleaf.	
	Signature _____	Name of signatory _____
	Date _____	Title of signatory _____

5	EMAIL ADDRESS (See Note 8) You must provide in the box to the right an email address to receive notifications from the Company in relation to the Agreement.	

SECTION B (See Note 2)

Please complete this Section B only if you are an NTA Offeree.

6

NTA OFFEREE'S DETAILS

Name:

Client Account/ID Number:

7

ADDRESS

Please provide the mailing address of the NTA Offeree in the box to the right.

8

TELEPHONE NUMBER

Please provide the telephone number (including the international dialling code) of the NTA Offeree in the box to the right.

9

FAX NUMBER

Please provide the fax number of the NTA Offeree in the box to the right.

Notes for Completion of the Form of Acceptance

1. This Form of Acceptance must be completed and signed by you or on your behalf if you are an Eligible Offeree (as defined in the Agreement) and wish to accept the Offer to enter into the Agreement with the Company. Once you have completed and signed this Form of Acceptance in accordance with the instructions set out herein, this will constitute your acceptance of the Offer (subject to the terms and conditions in Schedule 1 to the Agreement) and your agreement to be bound by all of the provisions of the Agreement as if you had signed the Agreement itself (save in the circumstances set out in Note 5 below).
2. If you are an NTA Offeree, you must complete both Section A (except Box 1) and Section B of this Form of Acceptance. A TA Offeree should complete only Section A of this Form of Acceptance. As a general guideline, you are likely to be a TA Offeree based on the Company's Books and Records if you have received, on or around the date of the Circular, a personal letter from the Company by email containing access links to the Circular and a Form of Acceptance. If you have not received such a letter from the Company and you are an Eligible Offeree, you are likely to be an NTA Offeree.
3. Your GAC Code is your unique client reference number provided by the Company. Box 1 in Section A applies to TA Offerees only. If you are an NTA Offeree, you must provide your details (including your Client Account or ID Number) by completing all of the boxes in Section B.
4. This Form of Acceptance must include a disclosure of whether you: (i) are acting as principal on your own behalf or as an authorised signatory executing this Form of Acceptance on behalf of and with power to bind your principal; or (ii) are a Representative Offeree (that is, you are an agent, custodian or trustee acting on behalf of clients or other third parties).
5. If you are a Representative Offeree, the mere execution of this Form of Acceptance will not constitute a valid acceptance or bind you to the Agreement since you are acting in a representative capacity. You will need to submit your Form of Acceptance and provide all necessary information to the Company as reasonably requested by the Company in order for you and the Company to enter into the Agreement on a bilateral basis with such amendments as may be agreed in accordance with Clause 2.1 of the Agreement.
6. Unless you are a Representative Offeree (in which case see Note 5 above), on execution of this Form of Acceptance you are deemed to give the undertakings, representations and warranties to the Company that are set out in paragraph 8.8 of Schedule 1 to the Agreement.
7. If you are signing this Form of Acceptance as authorised signatory on behalf of the Eligible Offeree, please state your title and the capacity in which you are signing this Form of Acceptance. The Company may require you to provide evidence of power and authority or any other supporting documentation in connection with the execution and submission of this Form of Acceptance.
8. You must provide a valid email address to which notices and communications may be sent by the Company to you in connection with the Agreement.
9. Once this Form of Acceptance is completed and signed, you should submit this Form of Acceptance to the Company as soon as possible and in any event so as to be received by the Company by email or facsimile no later than **5.00 p.m. (London time) on Tuesday 29 December 2009**.
10. You may submit your completed and signed Form of Acceptance by emailing a scanned copy to the Company at claimresolutionagreement@lbia-eu.com or by sending a copy by facsimile to +44 (0)20 7067 8542. After submitting your Form of Acceptance by email or facsimile, you must send the original by pre-paid post or air mail to the following address: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, PO Box 62492, London E14 1JX, United Kingdom or by courier only to: Lehman Brothers International (Europe) (in administration), Trust Property 24th Floor, 25 Bank Street, Canary Wharf, London E14 5LE, United Kingdom (marked for the attention of E. Levy).
11. As soon as practicable after it receives your Form of Acceptance by email or facsimile, the Company will send an email to you to confirm receipt of your Form of Acceptance.

SCHEDULE 3 FORM OF DISPUTE NOTICE

IMPORTANT: This Notice must be completed in full in order for it to be operative.

1	Name of Signatory	
2	Registered address and contact details (including postal address) for Signatory	
3	Is the Signatory resident in, or does it have its principal place of business in, England or Wales?	
4	If the answer to 3 is 'NO', please complete the attached form for the appointment of an agent to accept service of process in England and Wales	
5	Please provide details of the Determination Notice that the Signatory is challenging (e.g. date and type of notice)	
6	Please specify the aspects of the Determination Notice that the Signatory is challenging	
7	Please explain the reasons why the Signatory is challenging those aspects of the Determination Notice, including the Signatory's view of the correct position/approach	
8	Please provide details (including underlying workings, where relevant) of the Signatory's calculation of any figures that it is disputing	
9	Please provide copies of any past correspondence relating to the subject matter of the dispute	

If further space is needed to respond, additional sheets should be attached to and submitted with this form.

SCHEDULE 4
WRITTEN RESOLUTIONS AND MEETINGS OF SIGNATORIES

PART I
GENERAL

Interpretation

- 1** In this Schedule 4:
- 1.1** references to a meeting are to a meeting of Signatories (or some of them) and include, unless the context otherwise requires, any adjournment;
- 1.2** references to "Signatories" are only to those Signatories who have rights in respect of which (i) a written resolution has been (or is to be) proposed, or (ii) a meeting has been (or is to be) called, as determined in the absolute discretion of the Company; provided that such determination shall accord with any certification made by the Company pursuant to Clause 80.2.1 of this Agreement;
- 1.3** "agent" means a holder of a voting certificate or a proxy for a Signatory;
- 1.4** "Extraordinary Resolution" means a resolution passed at a meeting duly convened and held in accordance with this Agreement, by a majority of at least 75 per cent. of the votes cast;
- 1.5** "voting ratio" means, in respect of a Signatory, that proportion of the aggregate applicable voting value of Signatories which is represented by the voting value attributable to the relevant Signatory; and
- 1.6** "voting value" means, for a Signatory, the Value (in US dollars), which the Company determines for the date of the proposed meeting or resolution, of the Signatory's Distribution Assets less its Distribution Liabilities, subject to a minimum of US\$1.00; provided that those Values that have not then been finalised or agreed shall be such Values as the Company then attributes to them from its Books and Records pending their finalisation or agreement, as the case may be.

Powers

- 2** Subject to the terms and conditions of this Agreement and without prejudice to any powers conferred on other persons by this Agreement, the Signatories (or, if applicable, a meeting of them) shall have power by Extraordinary Resolution:
- 2.1** to sanction any proposal for any amendment, modification, variation, compromise, abrogation or waiver of, or arrangement in respect of, the rights of the Company against the Signatories or the Signatories against the Company, whether or not those rights arise under this Agreement;
- 2.2** to assent to any modification of this Agreement (or any agreement supplemental to it) proposed;
- 2.3** to authorise anyone to concur in and do anything necessary to carry out and give effect to an Extraordinary Resolution;
- 2.4** to give any authority, direction or sanction required to be given by Extraordinary Resolution;

- 2.5 to appoint any persons (whether Signatories or not) as a committee or committees to represent the Signatories' interests and to confer on them any powers or discretions which the Signatories could themselves exercise by Extraordinary Resolution; and
- 2.6 to discharge or exonerate the Company from any Liability in respect of any act or omission for which it may become responsible under this Agreement (or any agreement supplemental to it).
- 3 Any notice or communication to be given, or document to be sent, pursuant to this Schedule (including the submission of a written resolution) shall be provided, except where this Agreement otherwise provides or the Company otherwise specifies at such time, in accordance with Clause 89, Clause 90 and Clause 91. In relation to the submission of any written resolution by, or on behalf of, a Signatory, a copy of the original shall follow by post or courier to the address specified by the Company at such time.

PART II WRITTEN RESOLUTIONS

Written resolutions

- 4 A written resolution signed by Signatories with 75 per cent. of the aggregate applicable voting value shall take effect as if it were an Extraordinary Resolution. Such a resolution in writing may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Signatories.
- 5 At least five days' notice (exclusive of the day on which the notice is given and of the day appointed for the passing of such written resolution) shall be given by the Company to the Signatories. The notice shall: (i) specify the day appointed for the passing of the written resolution, the nature of the resolution proposed, and the relevant Signatory's voting value for such purpose; and (ii) shall explain: (a) how Signatories may submit completed written resolutions; and (b) the details of the time limits applicable.

PART III MEETINGS

Convening a meeting

- 6 The Company may at any time convene a meeting. Every meeting shall be held at a time and place approved by the Company.
- 7 At least 21 days' notice (exclusive of the day on which the notice is given and of the day of the meeting) shall be given by the Company to the Signatories. The notice shall: (i) specify the day, time and place of meeting, the nature of the resolutions to be proposed, and the relevant Signatory's voting value and voting ratio; and (ii) shall explain: (a) how Signatories may appoint proxies and vote; and (b) the details of the time limits applicable and procedures concerning such matters as appointment of a chairman, who may attend and vote at the meeting, and adjournment of the meeting.

Chairman

- 8 The chairman of a meeting shall be such person as the Company appoints. The chairman need not be a Signatory or agent. The chairman of an adjourned meeting need not be the same person as the chairman of the original meeting.

Quorum and adjournment

- 9 No business (except choosing a chairman, if applicable) shall be transacted at a meeting unless a quorum is present at the commencement of business. If a quorum is not present within 15 minutes from the time initially fixed for the meeting, it shall, if convened on the requisition of Signatories or if the Company agrees, be dissolved. In any other case, it shall be adjourned (in accordance with the procedures specified for the meeting). If a quorum is not present within 15 minutes from the time fixed for a meeting so adjourned, the meeting shall be dissolved.
- 10 Two or more Signatories or agents present in person shall be a quorum only if they represent:
- 10.1 in the case of any meeting (except where such meeting was previously adjourned through want of quorum), 25 per cent. of the proportion of the total number of persons who are entitled to attend and vote at the meeting which they represent; and
- 10.2 in the case of a meeting that was previously adjourned through want of quorum, whatever the proportion of the total number of persons who are entitled to attend and vote at the meeting which they represent.
- 11 The chairman may, with the consent of (and shall if directed by) a meeting, adjourn the meeting from time to time and from place to place. Only business which could have been transacted at the original meeting may be transacted at a meeting adjourned in accordance with this paragraph 11 or paragraph 10.
- 12 At least 10 days' notice of a meeting adjourned through want of a quorum shall be given in the same manner as for an original meeting and that notice shall state the quorum required at the adjourned meeting. No notice need, however, otherwise be given of an adjourned meeting.

Voting

- 13 Each question submitted to a meeting shall be decided by a poll, and shall be taken in such manner and (subject as provided below) either at once or after such adjournment as the chairman directs. The result of the poll shall be deemed to be the resolution of the meeting at which it was demanded as at the date it was taken.
- 14 Every person who is present in person and is eligible to vote (in accordance with the procedures of such meeting) has one vote in respect of their voting ratio.
- 15 In case of equality of votes, the chairman shall have a casting vote in addition to any other votes which he may have.

Effect and publication of an Extraordinary Resolution

- 16 An Extraordinary Resolution shall be binding on all the Signatories (if passed at a meeting, whether or not all Signatories were present at the meeting) and they shall be bound to give effect to it accordingly. The passing of such a resolution shall be conclusive evidence that the circumstances justify its being passed. The Company shall give notice of the passing of an Extraordinary Resolution to Signatories within fourteen days but failure to do so shall not invalidate the resolution.

Minutes

- 17 Minutes shall be made of all resolutions and proceedings at every meeting (if any) and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting, shall be conclusive evidence of the matters in them. Until the contrary is proved, every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

Company's power to prescribe regulations

- 18 Subject to all other provisions in this Agreement the Company may, without the consent of the Signatories, prescribe such further regulations regarding the holding of meetings and attendance and voting at them as it, in its sole discretion, determines including (without limitation) such requirements as the Company thinks reasonable to satisfy itself that the persons who purport to make any requisition in accordance with this Agreement (or any agreement supplemental to it) are entitled to do so and so as to satisfy itself that persons who purport to execute written resolutions, or attend or vote at a meeting, are entitled to do so.

Linklaters LLP
One Silk Street
London EC2Y 8HQ

Linklaters LLP/06/09/2011

[Ignoring the blackline herein, this template was designed for creditors who had not entered into an agreement purportedly creating a security interest in favour of LBIE (i.e. it contained no protective security interest language. The blackline indicates what we consider is necessary as a minimum for this template to apply regardless of what underlying agreements LBIE entered into with its creditors.)]

[1. SINGLE - MULTIPLE CLAIMS_NO COUNTERCLAIM]

Dated [o]

LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

and

[o]

CLAIMS DETERMINATION DEED

Linklaters

Linklaters LLP
One Silk Street
London EC2Y 8HQ

Telephone (+44) 20 7456 2000
Facsimile (+44) 20 7456 2222

Linklaters LLP/06/09/2011

[Ignoring the blackline herein, this template was designed for creditors who had not entered into an agreement purportedly creating a security interest in favour of LBIE (i.e. it contained no protective security interest language. The blackline indicates what we consider is necessary as a minimum for this template to apply regardless of what underlying agreements LBIE entered into with its creditors.)]

Ref: L-179880/TB/JM

[This page should be deleted before sending to the Creditor]

[To be used where:

- *a proof of debt has been submitted;*
- *there is a single Claim or there are multiple creditor Claims arising under one or more of the documented agreements listed below (each to a close out amount in relation to agreements which have close out mechanics, or, in relation to agreements which do not have a close out mechanism, to a Claim or Claims under such agreement where the Company has no Claims against the Creditor under the same agreement);*
- *the Creditor and the Company have entered into one or more of the following documented agreements only, namely a CAA/MLA/GMSLA and/or IPBA (charge), MCA, MIFCA, ISDA, GMSLA, GMRAs, OSLAs, IPBA (title transfer), IPBA (title – Charged Securities), MPBA and/or CPMNA and/or CMNA¹. There are no other claims/contracts in place between the Creditor and the Company;*
- *the ISDAs, GMSLAs², GMRAs, OSLAs, IPBA (title transfer), IPBA (charge), IPBA (title – Charged Securities) and MPBA have been validly terminated³ and close out under those agreements has occurred. If the above contracts have not been terminated, please consult Linklaters⁴.*
- *there are no failed trades;*
- *Claim amounts are all denominated in the same currency which is. \$, or € or £ and the Agreed Claim Amount is to be denominated in that same currency;*
- *the Creditor is the original holder of the Claims;*
- *the Creditor has not entered into any “client money proposal” (or other form of settlement regarding the return of its Client Money)⁵;*
- *the Company has no counterclaim against the Creditor. For example, the Company has no Claim to a close out amount, there are no outstanding loans made by the Company to the Creditor under the MLA⁶, there are no outstanding fees/interest on any loans made to the Creditor and there is no outstanding income on any*

¹ For the avoidance of doubt, these documents reference the “standard form” LBIE template. To the extent that the documentation is not standard form please consult Linklaters in order to discuss the application of this template.

[Note: In particular, if it is not clear whether the MPBA or IPBA (title – Charged Securities) have been validly terminated and closed out, additional wording may be required in order for LBIE to gain comfort that title to collateral has passed to it.]

² Note that this is not a reference to the GMSLA which is incorporated by reference into the MLA.

³ We assume that the Company will argue that the Creditor only has unsecured (or potentially client money) claims under a terminated IPBA (charge), and that this unsecured/client money amount will be included within the Agreed Claim Amount.

⁴ [Linklaters Internal note: termination/event of default will be relevant where LBIE needs to enforce its charge over securities.]

⁵ “Client Money proposals” / agreements entered into by the Creditor and the Company for the return of Client Money will need to be reviewed on a case by case basis, in particular assessing the extent of any waiver of additional Client Money contained therein.

⁶ Note the lack of close out mechanic under the MLA.

securities lent to the Creditor under the MLA, there are no fees or interest due under the MIFCA¹⁰;

- the Creditor is not party to the CRA; and
- the Creditor has no Trust Asset Claim (e.g. (a) no securities were delivered to the Company under the MLA/CAA to be held by the Company (or held by any other person, such as an intermediary or affiliate, on behalf of the Company) on trust for the benefit of the Creditor; (b) all securities that have been delivered to the Company to be held by the Company (or held by any other person, such as an intermediary or affiliate, on behalf of the Company) on trust for the benefit of the Creditor under the MLA/CAA were rehypothecated by the Company before 7.56am on 15 September 2008; (c) if the MCA is one of the documents applicable to the Creditor, no securities were held for the Creditor under the MCA as of the time of the administration; (d) if the MIFCA is one of the documents applicable to the Creditor, no securities were credited to any accounts governed by the MIFCA at the time of the administration because of the amendment made by the CPMNA and no securities became due to the Creditor after all contracts under the MIFCA terminated after the administration).

[Note:

- *this template is not appropriate if the entire amount of the Creditor's Claim under one of the documented agreements set out above is in respect of segregated Client Money. Where a part of the Creditor's Claim under one of the documented agreements set out above is in respect of segregated Client Money, please consider, based on previous Linklaters' advice, whether this template is fit for purpose;*
- *where an MLA incorporates a GMSLA please refer to those documents as follows: "Margin Lending Agreement dated [X] entered into between the Company and the Creditor, incorporating a Global Master Securities Lending Agreement entered into between the Company and the Creditor dated [X]"; and*
- *where there is a New York law CSA (and ISDA), please refer to those documents as follows: "ISDA Master Agreement entered into between the Company and the Creditor dated [as of] [x], including for the avoidance of doubt the Credit Support Annex thereto dated [as of] [x]".*
- *where there is a CAA, please refer to it as follows: "a Customer Account Agreement Prime Brokerage entered into between, inter alia, the Company and the Creditor dated [DATE]";*
- *if a Markit "Position Valuation" is to be provided to the Creditor, an additional clause will be required;*
- *if the Creditor has entered into an MLA/CAA (or may have done so, or may have taken on any obligations under an MLA/CAA originally entered into between a third party and the Company, for example by way of novation), please include the provisions in the CDD which are relevant for the MLA/CAA;*
- *a search for "[and "]" should be performed before this Deed is sent to a Creditor.]*

This Claims Determination Deed (this "Deed") is made on [date] between:

- (1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**, a company incorporated in England and Wales with registered number 2538254, whose registered address is Level 23, 25 Canada Square, Canary Wharf, London E14 5LQ, United Kingdom, acting by its joint administrators, Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmenn and Derek Anthony Howell, each a partner of PwC, 7 More London Riverside, London SE1 2RT, United Kingdom (the "Company"); and
- (2) [insert name and details of counterparty] (the "Creditor").

Background:

- (A) Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Dan Yoram Schwarzmenn, each a partner of PwC, were appointed to act as joint administrators of the Company on the Administration Date pursuant to the Administration Order. On 30 November 2009, Derek Anthony Howell, a partner of PwC, was appointed to act as an additional joint administrator of the Company.
- (B) In consideration of the Company and the Creditor agreeing that the Creditor's Claim(s) against the Company under the Creditor Agreement[s] are limited to the Agreed Claim Amount, the Company and the Creditor wish to release and discharge each other in respect of any and all other losses, costs, charges, expenses, Claims, demands, actions, causes of action, Liabilities, rights and obligations to or against each other and howsoever arising.

It is agreed as follows:

1 Definitions and Interpretation

1.1 Definitions

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

"Administration"	the administration of the Company under the Administration Order;
"Administration Date"	15 September 2008;
"Administration Order"	the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Dan Yoram Schwarzmenn were appointed as joint administrators of the Company;
"Administrators"	the persons from time to time serving as administrators of the Company who, as at the date of this Deed, are Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmenn and Derek Anthony Howell, each a partner of PwC, 7 More London Riverside, London SE1 2RT, United Kingdom;

"Admitted Claim"	an unsecured Claim of a creditor of the Company which qualifies for dividends from the estate of the Company available to its unsecured creditors pursuant to the Insolvency Rules and the Insolvency Act (or, if applicable, as amended or replaced pursuant to the terms of, <i>inter alia</i> , a scheme of arrangement or a company voluntary arrangement);
"Affiliate"	in relation to the Company, any Subsidiary, a Holding Company or any other Subsidiary of that Holding Company;
"Agreed Claim"	the Creditor's Claim (or Claims, as the case may be) against the Company under and in connection with the Creditor Agreement[s], including for the avoidance of doubt any Client Money Claim arising under or in connection with the Creditor Agreement[s], but excluding any Trust Asset Claims (if any) whether or not arising under and/or in connection with the Creditor Agreement[s];
"Agreed Claim Amount"	<i>[PwC to insert appropriate currency][insert appropriate amount];</i>
"Agreements"	<i>[the Creditor Agreement[s] and [list all other contracts to which the Company and the Creditor are party. There should be no exposures under these other contracts].</i> <i>[Note if there are no contracts other than the Creditor Agreement[s]], delete this definition of "Agreements" and change 'Agreements' to 'Creditor Agreement[s]' throughout this Deed;]</i>
"Assigned/Waived Client Money Claim"	has the meaning given to it in Clause 3.2.2;
"CAPCO"	Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America;
"CASS Rules"	the rules set out in Chapter 7 of the FSA's Client Assets Sourcebook and (if applicable) Chapter 7A of such Sourcebook;
"Change of Address"	has the meaning given to it in Clause 23.2;
"Claim"	a claim in law, in equity or otherwise and of whatsoever nature: (i) including any and all claims, actions, Liabilities, rights and obligations for breach of contract, tort, statute, restitutionary claims and breach of trust; (ii) whether arising by reason of, amongst other things, insolvency or the termination, whether voluntary or for cause, of any contractual

obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise; and/or

(iii) for, amongst other things, the enforcement of any right to, or any Liability in respect of a right to:

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

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

"Client Money"

money which is client money held by or on behalf of the Company pursuant to and as defined in the FSA Rules;

"Client Money Claim"

any Claim by the Creditor in relation to Client Money, including:

- (i) any Claim by the Creditor, whether against the Company or any other person, for or in respect of Client Money held by the Company on the Statutory Trust (or for or in respect of the proceeds of, or any substitute for, such money or any assets over which a trust, charge or other proprietary right exists in respect of such money), including, without limitation:
 - (a) any entitlement against the Company to a distribution from the Client Money Pool;
 - (b) any Claim to Client Money held at the Time of Administration outside of the Client Money Pool; and
 - (c) any Client Money received after the Time of Administration; and/or
- (ii) any Claim or entitlement (including any discretionary entitlement) of the Creditor against any compensation scheme, insurer or other person in respect of Claims to or loss of Client Money; and/or

	(iii) any right to waive, compromise, dispose of or otherwise deal with any of the foregoing, provided that this definition does not apply to (a) Client Money unrelated to the Company or (b) Claims by the Creditor under insurance or other arrangements entered into with a person unconnected with the Company by the Creditor for its own benefit;
"Client Money Distribution"	(i) a distribution of Client Money under the Statutory Trust; or (ii) a distribution of the proceeds of, or any substitute for, Client Money or a distribution of any assets over which a trust, charge or other proprietary right exists in respect of Client Money (whether such amounts or assets are held and/or distributed by the Company or a third party); or (iii) a distribution by a compensation scheme, insurer or other person in respect of Claims to or loss of Client Money (save in respect of Claims by the Creditor under insurance or other arrangements entered into with a person unconnected with the Company by the Creditor for its own benefit);
"Client Money Payments"	has the meaning given to it in Clause 3.3.2 provided that Client Money Payments shall not, in any circumstance, exceed an amount equal to the Agreed Claim Amount;
"Client Money Pool"	the pool of Client Money (as defined in the FSA Rules) created pursuant to CASS Rule 7.9.6R(1) (as in force at the Time of Administration);
"Court"	the High Court of Justice in England and Wales;
"Creditor Agreement[s]"	<i>[PwC to insert name and date of agreements under which the Creditor's Claim arises];</i>
"Current Process Agent"	has the meaning given to it in Clause 23.3;
"Exchange Rate"	the "official exchange rate" set out in Rule 2.86(2) of the Insolvency Rules which for the purpose of converting <i>[U.S. dollars/euro]</i> to pounds sterling shall mean the following exchange rate <i>[\$1.79370:£1 / €1.26410:£1]</i> and, for the purpose of converting the currencies specified in Appendix C of the Administrators' fourth statutory progress report (dated 14 October 2010) to pounds sterling shall mean the rates set out in Appendix C thereof;
"First Admitted Claim Amount"	has the meaning given to it in Clause 3.2.2;
"FSA"	the Financial Services Authority of the United Kingdom (or any successor body as relevant);

"FSA Rules"	the rules and guidance of the FSA;
"Holding Company"	in relation to the Company, any other company, corporation or legal entity in respect of which it is a Subsidiary;
"Insolvency Act"	Insolvency Act 1986;
"Insolvency Rules"	Insolvency Rules 1986;
"LBHI"	Lehman Brothers Holdings Inc.;
"Liabilities"	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 or otherwise and whether owed or incurred severally or jointly or as principal or surety, and "Liability" means any one of them;
"Liquidation Event"	either an order by the Court to compulsorily wind up the Company or the commencement of a creditors' voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules);
"New Process Agent"	has the meaning given to it in Clause 23.3;
"No Client Money Confirmation"	has the meaning given to it in Clause 3.2.1;
"Partial Assignment/Waiver"	has the meaning given to it in Clause 3.2.2;
"Party"	the Company or the Creditor or both (as applicable);
"Proceeding"	any process, demand, action, legal or other proceeding or suit, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, expert determination, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution, enforcement of judgment or award or otherwise howsoever and/or any other step taken for the purpose of creating or enforcing a lien;
"PwC"	PricewaterhouseCoopers LLP, a limited liability partnership registered in England (number OC 303525), with its registered office at 1 Embankment Place, London, England, WC2N 6RH;
"Relevant Persons"	the Company, the Administrators and their firm, members, partners, directors, officers, employees, agents, advisers and representatives;
"Statutory Trust"	the statutory trust created by the CASS Rules;
"Subsidiary"	in relation to the Company or its Holding Company, any

company, corporation or other legal entity:

- (i) which is controlled, directly or indirectly, by the Company or its Holding Company;
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the Company or its Holding Company; or
- (iii) which is a subsidiary of another Subsidiary of the Company or its Holding Company,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body;

"Time of Administration"

7.56 a.m. (London time) on the Administration Date;

"Transfer"

in relation to any Claim, asset or Liability, the assignment, novation, sale or any other form of transfer (including by way of any succession in title arising by operation of insolvency or any other law), whether directly or indirectly, legally or beneficially, which is effective to transfer the title to, rights of and obligations under such Claim, asset or Liability, as the case may be, from one person to another and "Transferred" shall be construed accordingly;

"Transfer Notice"

has the meaning given to it in Clause 4.3;

"Transferee"

has the meaning given to it in Clause 4.2;

"Transferor"

has the meaning given to it in Clause 4.2; and

"Trust Asset Claim"

with respect to an asset in the possession and/or custody of, held in the name of, or otherwise held to the order of, the Company, a Claim, against the Company and/or the Administrators:

(i) that the Creditor is the legal and/or beneficial owner of that asset (whether or not it is subject to any prior ranking security interest or encumbrance of any kind whatsoever (including whether legal, equitable and/or possessory)); and/or

(ii) for delivery and/or transfer of such asset to (or to the order of) the Creditor in order to convey all rights, title and interest in the asset,

[provided that "Trust Asset Claim" shall exclude any Claim in contract for the delivery or transfer of any asset, unless such a Claim is capable of remedy by an order for specific performance (or equivalent under a legal system outside England)] [☐] *to be included where the Creditor's claims are in respect of a claim to a return of an asset- e.g. rehypothecated asset*

and for the avoidance of doubt, a reference to "asset" within this definition includes present and future properties, revenues and rights of every description, but excludes money and specifically Client Money.

1.2 Interpretation

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

- 1.2.1 references to any specified provision of this Deed shall be construed as references to that provision subject to any modification, addition or condition approved or imposed pursuant to Clause 14 (*Modification*);
- 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 any person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.4 a reference to the Administrators shall be construed as being to the Administrators both jointly and severally and to any person who from time to time is appointed as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Administrators;
- 1.2.5 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.6 references to any document, agreement or instrument is a reference to that document, agreement or instrument as amended, novated, supplemented, extended, restated or replaced from time to time;
- 1.2.7 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;
- 1.2.8 headings are for ease of reference only and shall not affect the interpretation of this Deed;
- 1.2.9 references to Clauses, sub-clauses and Appendices are to Clauses and sub-clauses of, and Appendices to, this Deed;
- 1.2.10 references to time are to London time;
- 1.2.11 in the event of a conflict or inconsistency between the provisions of this Deed, the Insolvency Act, the Insolvency Rules and/or the FSA Rules, for the purposes of this Deed, and to the extent such acts and/or rules permit, the provisions of this Deed shall prevail;
- 1.2.12 the language which governs the interpretation of this Deed is the English language. All notices to be given by any parties and all other communications and documentation which are in any way relevant to this Deed or the performance of this Deed shall be in the English language;
- 1.2.13 references to (i) "£" and "pounds sterling" are to the lawful currency for the time being of the United Kingdom of Great Britain and Northern Ireland, [(ii) "€" and

"euro" are to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty of the functioning of the European Union as amended and (iii) "\$" and "U.S. dollars" are to the currency of the United States of America;] *[delete as applicable]*

- 1.2.14 the words "include" and "including" mean include and including without limitation;
- 1.2.15 a reference to a "judgment" includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction; and
- 1.2.16 a reference to a "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and "lawful" shall be construed accordingly).

2 Claims Agreement

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

- 2.1.1 the Agreed Claim shall be limited to, and in an amount equal to, the Agreed Claim Amount and shall constitute the Creditor's entire Claim against the Company;
- 2.1.2 save solely for the Agreed Claim, the Creditor and (i) the Company and (ii) the Administrators are hereby each irrevocably and unconditionally released and forever discharged from any and all losses, costs, charges, expenses, Claims (including all Claims for interest costs and orders for costs, Trust Asset Claims and Client Money Claims (if any)), demands, actions, causes of action, Liabilities, rights and obligations (including those which arise hereafter upon a change in the relevant law) to or against each other and howsoever arising in equity or under common law or any statute or by reason of breach of contract or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether arising under the Creditor Agreements or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of the Creditor and/or the Company and/or the Administrators on the date hereof; and
- 2.1.3 the Creditor will not take any steps to prove for, or to Claim for, any debt in the Administration (or other insolvency process) of the Company, or otherwise bring any Claim, action, demand or issue (or continue) any Proceedings against the Company and/or the Administrators (or any of them) in any jurisdiction in respect of any and all Claims and matters as are referred to in Clause 2.1.2 above.

2.2 [With respect to the releases provided herein, each Party further acknowledges and expressly waives (on behalf of itself and any and all other persons on whose behalf its release is given) the benefit of any statutory provision or common law rule that provides that a release does not extend to claims which a Party does not know or suspect to exist in its favour at the time of execution of this Deed.]

[PwC - Clause 2.2 is only necessary where the Creditor has entered into an MLA, CAA and/or a New York law CSA]

- 2.3 The irrevocable release and discharge set out in Clause 2.1.2 shall not prohibit the Creditor from asserting that all or part of the Agreed Claim constitutes a Client Money Claim.

3 Entitlement to an Admitted Claim

- 3.1 Save as set out in Clauses 3.2 and 3.3 below, the Agreed Claim shall not be accepted (in whole or in part) as an Admitted Claim.

- 3.2 Where the Creditor has (to the satisfaction of the Company (in its absolute discretion)) either assigned to a nominee (nominated by the Company in its absolute discretion) or waived (the decision as to assignment or waiver to be taken by the Company in its absolute discretion):

3.2.1 any and all Client Money Claims (if any) (a "No Client Money Confirmation"), then the Agreed Claim, at the Agreed Claim Amount, converted (to the extent not already denominated in pounds sterling) to pounds sterling at the Exchange Rate, shall be accepted as an Admitted Claim; or

3.2.2 any part of any Client Money Claim (in an amount less than the Agreed Claim Amount) it may have under or in connection with the Creditor Agreement[s] (the "Assigned/Waived Client Money Claim") (such an assignment or waiver being a "Partial Assignment/Waiver"), then the relevant part of the Agreed Claim, at an amount equal to the amount of the Assigned/Waived Client Money Claim, converted (to the extent not already denominated in pounds sterling) to pounds sterling at the Exchange Rate (the "First Admitted Claim Amount") shall be accepted as an Admitted Claim.

[PwC to note – an assignment, rather than a waiver, may carry with it the risk that any Security Interest continues to attach to the assigned Client Money Claim (rather than the claim which remains with the Creditor). Please consult with Linklaters prior to permitting an assignment under clause 3.2.2.]

- 3.3 Where a No Client Money Confirmation has not been provided to the Company in accordance with Clause 3.2.1 and:

3.3.1 all issues regarding the existence and validity of, and any rights and remedies for or in respect of, all potential Client Money Claims (if any) under or in connection with the Creditor Agreement[s]; and

3.3.2 the amounts (or, if applicable, assets) (if any) which the Creditor shall recover in respect of any such Client Money Claim(s) by way of Client Money Distributions (the "Client Money Payments"),

have been finally determined by the Company, in its capacity as statutory trustee of the Statutory Trust, and the Client Money Payments have been made to, or recovered by, the Creditor, then:

- (a) where the Creditor has agreed to one or more Partial Assignment/Waivers pursuant to Clause 3.2.2, then the relevant part of the Agreed Claim, in an amount equal to the Agreed Claim Amount less (i) the First Admitted Claim Amount(s) and (ii) the value of the Client Money Payments, shall be accepted as an Admitted Claim;

- (b) where the Creditor has not agreed to any Partial Assignment/Waiver pursuant to Clause 3.2.2, then the Agreed Claim, in an amount equal to the Agreed Claim Amount less the value of the Client Money Payments, shall be accepted as an Admitted Claim,

and in each case, such amount being converted (to the extent not already denominated in pounds sterling) to pounds sterling at the Exchange Rate.

4 Transfer

- 4.1 Save as set out in Clause 4.2, the Creditor may not Transfer its legal and/or beneficial interest in, or otherwise, the whole or any part of:

- 4.1.1 the Agreed Claim; and/or

- 4.1.2 any Admitted Claim; and/or

- 4.1.3 its right to receive any dividend in respect of, or in connection with, the Agreed Claim; and/or

- 4.1.4 its right to receive any Client Money Payments,

(whether or not the whole or any part of the Agreed Claim constitutes or has been accepted as an Admitted Claim).

- 4.2 Notwithstanding any provision to the contrary in the Agreements, and subject always to Clauses 4.3 and 4.4, the Creditor (the "Transferor") may assign all of the items set out in Clause 4.2.1 to Clause 4.2.3 inclusive below (all together and in whole (but not part)):

- 4.2.1 its entire legal and beneficial interest in the Agreed Claim; and

- 4.2.2 its entire right to receive, and its entire legal and beneficial interest in, any and all dividends in respect of, or in connection with, the Agreed Claim; and

- 4.2.3 its entire right to receive, and its entire legal and beneficial interest in, any and all Client Money Payments,

(whether or not the whole or any part of the Agreed Claim constitutes or has been accepted as an Admitted Claim)

to another person (the "Transferee").

- 4.3 Any assignment in accordance with Clause 4.2 shall not be valid and the Administrators and the Company shall not be bound to recognise, nor to deal with, the Transferee (in respect of such assignment) in substitution for, and in place of, the Transferor unless and until the Transferor and Transferee sign and deliver to the Company (in accordance with Clause 19 (Notices)) the letter agreement substantially in the form set out in the Appendix (Form of Transfer Notice) (a "Transfer Notice") and the Company countersigns such Transfer Notice and serves the same on the Transferor (in accordance with Clause 19 (Notices)) and the Transferee (such service being deemed effective by sending the same to the Transferee's postal or email address specified in the Transfer Notice).

- 4.4 In respect of any assignment in accordance with Clause 4.2:

- 4.4.1 if the Company serves any notices on, or the Company or the Administrators make any payment to, or to the order of, the Transferor before the Company has served a countersigned Transfer Notice on the Transferor and Transferee (in accordance

with Clause 4.3), this shall constitute a valid discharge of the Company's and the Administrators' obligations notwithstanding any assignment; and

4.4.2 where the countersigned Transfer Notice is served after any notice of declaration of a dividend to creditors with Admitted Claims, but before the actual payment of that dividend, payment to, or to the order of, the Transferor shall constitute a valid discharge of the Company's and the Administrators' obligation to pay the declared dividend.

4.5 The Creditor represents and warrants to the Company and the Administrators, on the date that it executes the Transfer Notice, and immediately before the Effective Date (as defined therein), that it has not Transferred or purported to Transfer its legal and/or beneficial interest in, or otherwise the whole or any part of, the Agreed Claim, any Admitted Claim and/or its right to receive, or legal or beneficial interest in (i) any dividend in respect of, or in connection with, the Agreed Claim; and/or (ii) any Client Money Payments, to any person.

5 Representations and Warranties

The Creditor makes the representations and warranties set out in this Clause 5 to the Company and the Administrators on the date of this Deed. The Creditor shall repeat the representations and warranties set out in Clauses 5.1, 5.2, 5.3, [5.4.2,] *[amend this reference of "5.4.2" to "5.4.1" if the current Clause 5.4.1 is deleted]* [5.4.3,] *[amend this to 5.4.2 if the current Clause 5.4.1 is deleted]* 5.6, 5.7, 5.8[,/and] 5.9 [and 5.10] immediately prior to the payment to the Creditor of each and every Client Money Payment, dividend and/or distribution by the Company and/or the Administrators. *[Note – whilst it is helpful for these representations to be repeated (particularly Clause 5.4.2), the key representation to be repeated is Clause 5.9. To discuss with LBIE.]*

5.1 Basic representations

5.1.1 It is duly organised and validly existing under the laws of its jurisdiction of incorporation or organisation and, if relevant under such laws, in good standing.

5.1.2 It has the power to execute, deliver and perform its obligations under this Deed (and any Transfer Notice to which it is party) and has taken all necessary action to authorise such execution, delivery and performance and the signatory or signatories (as applicable) are properly authorised to execute this Deed (and any such Transfer Notice) on its behalf.

5.1.3 The execution, delivery and performance of its obligations under this Deed (and any Transfer Notice to which it is party) do not and will not conflict with any law or regulation applicable to it, its constitutional documents, any agreement or instrument binding on or affecting it or any of its assets [and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument]. *[[] only relevant where this Deed deals with open contracts.]*

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

5.2 No insolvency proceedings

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

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

5.3 No agency

It is acting as principal and not as agent in entering this Deed and in respect of the Agreed Claim, the Agreements and all transactions and trades thereunder.

5.4 Claims

5.4.1 Immediately prior to this Deed becoming effective, it was the legal and beneficial owner of any and all Claims (including any Client Money Claims and/or Trust Asset Claims) arising under or in connection with the Agreements. *[This provision is only necessary where the definition of "Agreements" is being used]*

5.4.2 It is the legal and beneficial owner of the Agreed Claim.

5.4.3 Save for any payments (including any Client Money Payment, dividend or distribution) made directly by the Company and/or the Administrators to the Creditor, it has not received any amount or benefit in relation to the Claims referred to in this Clause 5.4.

5.5 Trust Assets

Immediately prior to this Deed becoming effective, it had no Trust Asset Claims howsoever arising.

5.6 No previous Transfer

Save as set out in Clause 2.1.2, it has not Transferred, or purported to Transfer, the benefit of, waived, compromised or otherwise disposed of any direct or indirect right, Claim, title, interest, action or cause of action (if any) against the Company whether arising in equity, at common law or under statute, contract (including any right, title or interest (if any) which it may have, or had, or purport to have (or to have had) under the Agreements or any other contract (if any) to which the Company and the Creditor are parties) or otherwise.

5.7 Accuracy of information

To the best of its knowledge and belief, and having made reasonable enquiries, any proof of debt and any substantiating documents submitted by, or on behalf of, the Creditor (as referenced in rule 2.72 of the Insolvency Rules) are, as at the date of this Deed, true, accurate and complete in every material respect.

5.8 No Claims against Affiliates

The Creditor has not Claimed or submitted a proof of debt (or equivalent in any foreign jurisdiction) in respect of the whole or any part of its Claim(s) (including for the avoidance of doubt any Client Money Claims and/or any Trust Asset Claims) arising under, or in connection with, the Agreements against any Affiliate of the Company.

5.9 [Company or] Affiliate Liabilities

It owes no amount, asset or Liability to [the Company and/or] any Affiliate of the Company.

5.10 [No Third Party Security Interest]

Other than any security interest created pursuant to the Agreements, it has not created a security interest over all or any part of the assets or Claims (including any Client Money Claims) of the Creditor which are subject to any security interest created pursuant to the Agreements.]

[PwC - this Clause 5.10 is necessary when the Creditor has entered into a MLA, CAA and/or New York law governed CSA.]

[Explanatory note: If a third party (including an affiliate) has US security over the Creditor's claim then, under the UCC rules, LBIE is obliged to notify such third parties of the Agreed Claim Amount and such third party would have 20 days to object. We understand that LBIE does not wish to verify whether third parties have security (by searching US security registers), and wishes to rely on the above representation if a third party Security Interest exists and LBIE suffers loss as a result of any claim made by such third party.]

5.11 No other agreements

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

6 Undertakings [and Consent]

6.1 The Creditor undertakes to do all such acts and things as will be reasonably necessary and execute and deliver any further documents and give any further assurances as may be requested by the Company in order to give full effect to this Deed (and the terms of any further documents shall exclude any personal liability of the Administrators such exclusion to be substantially in the form contained in Clause 11 (*Exclusion of Administrators' Liability*)).

6.2 [In the case of any security interest (whether existing over the Agreed Claim or otherwise) to which the New York Uniform Commercial Code applies, the Creditor (as grantor of any such security interest) authorises the Company on the Creditor's behalf to request from time to time, from the person to whom such security interest was granted (a "Chargee"), an accounting under Section 9-210 of the New York Uniform Commercial Code to determine what obligations, if any, are owed to the Chargee and are secured by such security interest. The Creditor authorises the Company to submit a copy of an excerpt of this Deed to any such Chargee as proof of the Company's authorisation to make such demand for accounting on behalf of the Creditor.]

[PwC - The section in square brackets is only required where there is a CAA or an MLA.]

7 Confidentiality

7.1 Confidentiality of this Deed

7.1.1 No announcement or circular in connection with the existence or the subject matter of this Deed shall be made or issued by or on behalf of the Creditor.

7.1.2 The Creditor shall treat as strictly confidential and not disclose (whether in writing, verbally or in electronic form or by any other means) to any party the negotiations relating to this Deed and/or this Deed (and/or any part thereof) save as provided in Clause 7.1.3.

7.1.3 The Creditor may disclose this Deed (or any part thereof) to:

- (i) its directors, officers and employees;
- (ii) its advisers (on terms that such professional advisers undertake to comply with the provisions of Clause 7.1.1 and 7.1.2 in respect of such information as if they were a party to this Deed);
- (iii) LBHI, solely for the purpose of the Creditor proving a Claim against LBHI in respect of the obligations of the Company owed to the Creditor which were guaranteed by LBHI [(on terms that LBHI undertake to comply with the provisions of Clause 7.1.1 and Clause 7.1.2 in respect of such information as if they were party to this Deed)]; and/or
- (iv) any Transferee and/or any person whom the Creditor considers, acting in good faith, to be a potential Transferee (in each case, on terms that such Transferee and/or potential Transferee undertakes to comply with the provisions of Clause 7.1.1 and 7.1.2 in respect of such information as if they were a party to this Deed (where they are not otherwise bound by Clause 7.1.1 and 7.1.2)).

7.2 Waiver of confidentiality by Creditor

The Creditor hereby waives, to the maximum extent permitted by law, any breach of confidentiality arising from the operation of this Deed and authorises the Company and/or the Administrators to disclose to any other person any information which the Company and/or the Administrators are required to disclose or consider to be necessary or desirable to disclose to enable this Deed to be administered effectively and/or for the purposes of disclosure as set out in Clause 7.3 (*Disclosure of information by Company and Administrators*).

7.3 Disclosure of information by Company and Administrators

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

- 7.3.1 [any disclosure or use permitted pursuant to Clause 6.2;] *[PwC – remove this 7.3.1 if Clause 6.2 is not utilised.]*
- 7.3.2 any disclosure or use required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange;
- 7.3.3 disclosure or use for the purpose of any enquiry or investigation by any governmental, official or regulatory body which is lawfully entitled to require such disclosure or use;
- 7.3.4 any disclosure to CAPCO of any information received or generated by the Company and/or the Administrators pursuant to the submission of a proof of debt, information related thereto and this Deed to the extent that such information is requested or required by CAPCO;

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

8 Survival of Deed upon a Liquidation Event

- 8.1 If the Company shall become subject to a Liquidation Event, this Deed shall not terminate and shall continue in full force and effect, and, unless the context otherwise requires, all references to the Administrators shall be construed as references to the liquidators of the Company from time to time.
- 8.2 In the event of any inconsistency between the provisions of this Deed and the Insolvency Act or the Insolvency Rules as they apply to the Company following a Liquidation Event in accordance with this Clause 8, for the purposes of this Deed, the provisions of this Deed shall prevail to the maximum extent that the law allows.

9 Non-reliance on Information Ancillary to this Deed

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

10 No Expense Claim

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

11 Exclusion of Administrators' Liability

The Administrators have entered into and signed this Deed as agents for and on behalf of the Company and neither they, their firm, members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Deed. The exclusion of liability set out in this Clause 11 shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Claims in tort as well as under the laws of contract.

12 Contracts (Rights of Third Parties) Act 1999

- 12.1** A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Deed, except to the extent set out in this Clause 12.
- 12.2** A subsequent supervisor, liquidator or other officeholder of the Company may enforce and rely on any Clause of this Deed to the same extent as if it were a Party.
- 12.3** The Administrators, their firm, members, partners, directors, officers, employees, agents, advisers and representatives may enforce and rely on Clause 2 (*Claims Agreement*), Clause 4 (*Transfer*), Clause 5 (*Representations and Warranties*), Clause 6 (*Undertakings*), Clause 7 (*Confidentiality*), Clause 9 (*Non-reliance on Information Ancillary to this Deed*), Clause 11 (*Exclusion of Administrators' Liability*), this Clause 12[,] [and] Clause 22 (*Governing Law and Jurisdiction*) [and Clause 23 (*Appointment of Process Agent*)] to the same extent as if they were a Party.
- 12.4** Any term of this Deed may be amended or waived without the consent of any person named or described in Clauses 12.2 and, other than in respect of the Administrators, 12.3.

13 Whole Agreement

- 13.1** This Deed contains the whole agreement between the Company and the Creditor relating to the subject matter of this Deed at the date of this Deed to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Company and the Creditor in relation to the matters dealt with in this Deed.
- 13.2** The Creditor acknowledges that it has not been induced to enter this Deed by any representation, warranty or undertaking not expressly incorporated into it.

14 Modification

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

15 Costs

- 15.1** Except as expressly provided in this Deed and subject always to Clause 15.2, the Parties shall bear their own costs in connection with the preparation, negotiation, entry into and performance of this Deed.
- 15.2** The Creditor shall bear the cost of all stamp duty, stamp duty reserve tax or stamp duty land tax, any notarial fees and all other taxes and duties or their equivalents in all jurisdictions where such fees, taxes and duties are payable as a result of the transactions contemplated by this Deed. The Creditor shall be responsible for arranging the payment of such stamp duty, stamp duty reserve tax or stamp duty land tax and all other such fees, taxes and duties, including fulfilling any administrative or reporting obligation imposed by the jurisdiction in question in connection with the payment of such taxes and duties.

16 Invalidity

- 16.1** If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Deed under the law of that jurisdiction shall in any way be affected or impaired thereby.
- 16.2** Subject to Clause 16.1, if any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.
- 16.3** Subject to Clause 16.1, to the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 16.2, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Deed and the legality, validity and enforceability of the remainder of this Deed shall, subject to any deletion or modification made under Clause 14 (*Modification*), not be affected.

17 Modification of Foreign Law Contracts

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

18 Waivers

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

19 Notices

19.1 General

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

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

- (i) prepaid post or airmail to, or by courier using an internationally recognised courier company only to Lehman Brothers International (Europe) (in administration), Level 23, 25 Canada Square, London, E14 5LQ, United Kingdom (for the attention of "Tony Lomas / In House Legal Team"), (or to such other postal address as may be notified (in accordance with this Clause 19) to the Creditor from time to time) in accordance with Clause 19.2 (*Notices by post*); and
- (ii) electronic mail to claimsdeed@lbia-eu.com (or to such other electronic mail address as may be notified (in accordance with this Clause 19) to the Creditor from time to time) in accordance with Clause 19.3 (*Notices by electronic mail*); and

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

- (i) prepaid post or airmail to, or by courier to, **[Insert relevant address]** (or to such other postal address as may be notified (in accordance with this Clause 19) to the Company and/or the Administrators from time to time) in accordance with Clause 19.2 (*Notices by post*); or
- (ii) electronic mail to **[Insert relevant electronic mail address]** (or to such other electronic mail address as may be notified (in accordance with this Clause 19) by the Creditor to the Company and/or the Administrators from time to time)) in accordance with Clause 19.3 (*Notices by electronic mail*).

19.2 Notices by post

19.2.1 Any notice, information or communication given or document sent by the Creditor by registered post or courier shall be effectively served on and received by the Company and/or the Administrators upon receipt by the Company and/or the Administrators (if sent in accordance with Clause 19.1.1(i)) and shall be deemed to have been received by the Company at the time of delivery to the relevant address specified in Clause 19.1.1(i).

19.2.2 Any notice, information or communication given or document sent by registered post or courier by the Company and/or the Administrators shall be sufficiently served by sending the same to the relevant address set out in Clause 19.1.2(i).

19.3 Notices by electronic mail

19.3.1 Any notice, information or communication given or document sent by electronic mail shall be sufficiently served by sending the same by electronic mail to the address specified in Clause 19.1.1(ii) or 19.1.2(ii) (as appropriate).

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

19.4 Accidental omission

The accidental omission by the Company and/or the Administrators to send any notice, communication or document in accordance with this Clause 19, or the non-receipt of any such notice, communication or document by the Creditor, shall not affect the provisions of this Deed.

20 Authority to Sign Notices and Documents

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

21 Counterparts

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

22 Governing Law and Jurisdiction

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

22.2 The Creditor hereby agrees that the courts of England shall (save as otherwise provided in Clause 22.4) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of or in connection with this Deed or the operation of this Deed, and that accordingly any Proceedings arising out of or in connection with this Deed (save as otherwise provided in Clause 22.4) shall be brought in such courts.

22.3 The Creditor hereby submits to the exclusive jurisdiction of the courts of England for the purposes of Clause 22.2. The Creditor also waives any objections to Proceedings in the courts of England that may arise that are based on the grounds of the venue or that the Proceedings have been brought in an inconvenient forum.

22.4 Notwithstanding Clauses 22.2 and 22.3, which are for the benefit of the Company and the Administrators, the Administrators and the Company retain the right to bring Proceedings, in the name of the Company or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

23 [Appointment of Process Agent]

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

- 23.2 The Creditor agrees to inform the Company in writing of any change of address of such process agent (a "Change of Address") within 14 days of such change (in accordance with the provisions of Clause 19 (*Notices*)).
- 23.3 If such process agent (the "Current Process Agent") ceases to be able to act as such or to have an address in England, the Creditor irrevocably agrees to appoint a new process agent acceptable to the Company (a "New Process Agent") and to deliver to the Company within 14 days a copy of a written acceptance of appointment by the New Process Agent together with the address of the New Process Agent (in accordance with the provisions of Clause 19 (*Notices*)).
- 23.4 In the event of a Change of Address or the appointment of a New Process Agent, the Creditor agrees that any service of process in England in any legal action or Proceedings arising out of this Deed shall be deemed valid service upon the Creditor if service is effected:
- (a) to the address specified in Clause 23.1 (or to any subsequent address notified to the Company in accordance with Clause 23.2); or
 - (b) to the Current Process Agent,
- prior to notification by the Creditor to the Company of such Change of Address or of the written acceptance of appointment by the New Process Agent and the address of the New Process Agent (in accordance with Clauses 23.2 and 23.3, respectively) (as appropriate) and notwithstanding any such Change of Address or appointment of a New Process Agent (as appropriate).
- 23.5 Nothing in this Deed shall affect the right to serve process in any other manner permitted by law.]

[Process agent clause to be included if Creditor is located or incorporated outside of England and Wales]

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

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

.....

In the presence of:

Witness's signature:

.....

Name:

Address:

Occupation:

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

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

.....
Director

In the presence of:

Witness's signature:

.....

Name:

Address:

Occupation:

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

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

.....
[Authorised Signatory]

and *[name of authorised
signatory]*

.....
[Authorised Signatory]

APPENDIX
FORM OF TRANSFER NOTICE

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

And by email: *[insert email address]*

Att: Tony Lomas / In House Legal Team

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

From: *[Name of Transferee]* (the "Transferee")
[Address of Transferee]
[Email Address of Transferee]
[Telephone number of Transferee]
[GAC Code of Transferee if Transferee has a GAC Code]

[insert date]

Dear Sirs

Transfer Notice in respect of Transfer of Agreed Claim

- 1 [Subject to paragraph 2 of this letter deed,] the terms of this letter deed shall be effective on the date upon which the Company serves a countersigned copy of this letter deed on the Transferor or Transferee (whichever is later) in accordance with paragraph 9 of this letter deed (the "Effective Date"), provided that paragraphs 2, 3, 4.1 and paragraphs 8 to 13 inclusive of this letter deed shall become effective on the date of this letter deed.
- 2 [If the Effective Date does not occur on or before *[Transferor & Transferee to insert date]* (or such later date as may be agreed in writing between the Company, the Transferor and the Transferee), this letter deed shall lapse and the terms of this letter deed shall cease to have any effect other than this paragraph 2 and paragraphs 3, 10, 11 and 13 which shall remain in full force and effect⁷.]
- 3 Unless otherwise defined herein, terms defined in the Claims Determination Deed between the Company and *[the Transferor / state name of original party to the deed if different to the Transferor]* dated [•] (the "Deed"), shall have the same meaning in this letter deed.
- 4 The Transferor and Transferee agree that:

⁷ *[Transferor and Transferee to note that if this paragraph 2 is not included, consequential amendments in respect of cross-referencing will need to be made.]*

- 4.1 subject to paragraph 2 of this letter deed, the terms of this letter deed may not be revoked or amended without the prior written consent of the Company;
- 4.2 the Transfer of the rights and Claims set out in Clause 4.3 below, the Deed and this Transfer Notice are without prejudice to, and shall not affect, any security interest created in favour of any person (including any of LBIE's Affiliates), whether created under the Agreements or otherwise; *[JM to flag IPBA charge issue to LBIE]*
- 4.3 the whole of the Agreed Claim and the whole of the Transferor's right to receive (i) any and all dividends in respect of, or in connection with, the Agreed Claim; and (ii) any and all Client Money Payments, shall be unconditionally and immediately assigned to the Transferee;
- 4.4 the proof of debt and accompanying information lodged by or on behalf of the Transferor shall stand as the Transferee's proof of debt;
- 4.5 Client Money Payments or dividends paid (as applicable), and/or any other benefit given in lieu thereof, by the Company and/or Administrators to (or at the direction of) the Transferee shall constitute a good discharge by the Company and the Administrators of their obligations in respect of the Agreed Claim;
- 4.6 subject to the provisions of the Deed, the Transferor confirms that the Transferee may agree, compromise, settle, waive, release, discharge, Transfer (by way of assignment, novation, sale or otherwise) or otherwise dispose of the whole or any part of the Agreed Claim (and/or any direct or indirect benefit, right, title, interest, action or cause of action deriving from the Agreed Claim, including any right to receive (i) dividends in respect of, or in connection with, the Agreed Claim; and/or (ii) Client Money Payments) and to the extent that the Transferor's consent is required for the Transferee to take such action, the Transferor hereby consents to the Transferee taking any such action;
- 4.7 the Company and/or the Administrators may communicate solely with the Transferee in relation to the Agreed Claim; and
- 4.8 the terms of this letter deed shall not prevent the Company and/or the Administrators from making further requests for information from the Transferor and/or the Transferee in due course.
- 5 The Transferor agrees that:
 - 5.1 immediately prior to the payment of each and every Client Money Payment, dividend and/or distribution by the Company and/or the Administrators, it represents that it owes no amount, asset or Liability to any Affiliate of the Company;
 - 5.2 the Company and/or the Administrators shall be permitted to disclose to the Transferee and the Transferee's partners, directors, employees, officers, agents, advisers and representatives (together the "Transferee's Representatives") any and all documentation and/or information submitted by the Transferor, or on its behalf, to the Company and/or the Administrators in support of the Agreed Claim (including but not limited to any proof of debt and any substantiating documents (as referenced in rule 2.72 of the Insolvency Rules 1986)); and
 - 5.3 the Transferee and the Transferee's Representatives shall be permitted to rely on and utilise all such information.
- 6 The Transferee:

- 6.1 agrees that, subject to paragraph 7 of this letter deed, the Transferee shall assume rights and obligations which are equivalent to the rights and obligations of the Transferor pursuant to the Deed and that for the purpose of Clause 19.1.2 of the Deed, the postal address and the email address of the Transferee set out in this letter deed shall replace the postal address and the email address set out at Clause 19.1.2(i) and 19.1.2(ii) (respectively) of the Deed; and
- 6.2 makes the representations set out in Clause 5 of the Deed to the Company and the Administrators on the Effective Date and on each date specified in Clause 5 of the Deed, provided that the Transferee shall not be required to make the representations set out in [Clause 5.4.1,] *[delete this reference to Clause 5.4.1 if the current Clause 5.4.1 of the Deed is deleted]* Clause 5.5, Clause 5.6 [and] Clause 5.10 [and Clause 5.11] *[If Clause 5.10 of the Deed is deleted, remove reference to Clause 5.11]*, of the Deed.
- 7 For the avoidance of doubt, following an assignment (pursuant to Clause 4 of the Deed), the mutual discharge and release set out in Clause 2.1.2 of the Deed shall not apply to any Claims or other matters or causes of action (whether contractual, proprietary or otherwise arising) other than those Claims and other matters and causes of action released and discharged as between the Company, the Administrators and the Transferor by operation of Clause 2.1.2 immediately before the assignment (pursuant to Clause 4 of the Deed).
- 8 Each person signing this letter deed on behalf of the Transferor and Transferee (as appropriate) represents that they are an authorised signatory executing this letter deed for and on behalf of, and with authority to bind, the Transferor or the Transferee (as applicable) to this letter deed and each such person acknowledges that the Company and/or the Administrators reserve the right to require evidence of power and authority and/or any supporting documentation or supplementary information from any person who purports to execute this letter deed on behalf of each of the Transferor and Transferee (as appropriate).
- 9 The acknowledgement of receipt shall be sent by the Company to the Transferor in accordance with Clause 19 (Notices) of the Deed (and Clause 19.2.2 of the Deed shall govern the effective service thereof) and to the Transferee by sending such communication to the postal address or the email address of the Transferee as set forth in this letter deed and such acknowledgement shall be deemed to be sufficiently served on the Transferee by sending the same to the Transferee's postal or email address.
- 10 The Transferor and Transferee agree that the Administrators have countersigned this letter deed and agree to be bound by the terms of this letter deed as agents for and on behalf of the Company and neither they, their firm, members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this letter deed. The exclusion of liability hereunder shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).
- 11 Any person who is not a party to this letter deed shall have no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce or enjoy the benefit of any term of this letter deed provided that the Administrators shall be entitled to rely on

paragraph 4, paragraph 5, paragraph 7, paragraph 8, paragraph 10 and this paragraph 11 of this letter deed and the Administrators' firm, members, partners, directors, officers, employees, agents, advisers and representatives shall be entitled to rely on paragraph 10 and this paragraph 11 of this letter deed, as if they were a party to it.

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

13 This letter deed and any non-contractual obligation arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

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

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

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

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

.....
Director

In the presence of:

Witness's signature:

Name:

Address:

Occupation:

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

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

.....
[Authorised Signatory]

and *[name of authorised signatory]*

.....
[Authorised Signatory]

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

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

.....
Director

In the presence of:

Witness's signature:

Name:

Address:

Occupation:

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

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

.....
[Authorised Signatory]

and *[name of authorised signatory]*

.....
[Authorised Signatory]

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

Acknowledged and agreed by

Administrator

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

Date: