

## **Transfer of Trust Asset Claims – Guidance Document - January 2010**

This guidance document should be read in conjunction with the [Client Asset Update for Transfer of Trust Asset Claims](#). This guidance document gives further detail on the process and the issues for consideration should a trust asset counterparty (“**Transferor**”) wish to make a request to transfer a trust asset claim to a third party (“**Transferee**”).

The guidance set out below is intended to assist an interested person to understand the process for transferring a trust asset claim. It is intended as general guidance only and should not be regarded as advice. This document is not a legal document and is not intended to create legal relations or to form the basis of any contract or agreement.

For parties wishing to become a signatory to the Claim Resolution Agreement (“**CRA**”) in respect of affecting a transfer, there are a number of specific points to take into account, which are described in section 4 below.

### **1. Process:**

The Transferor should provide Lehman Brothers International (Europe) (“**LBIE**”) with a written transfer request (a “**Transfer Request**”) along with all supporting information and documentation (as described below) to commence the review process. [A PDF version of the form that must be used to submit a Transfer Request is attached here](#) (the “**TRF**”). Please send this request to [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com).

Following receipt of a Transfer Request, LBIE will undertake due diligence of a commercial, legal and compliance nature. Please note that this may take time and LBIE may ask for further information during the process.

Following LBIE’s due diligence review of the documents, the Transferor will receive either (i) a letter setting out the terms and conditions on which LBIE will agree to recognise the transfer (which will need to be executed by both the Transferor and the Transferee) (the “**Recognition Letter**”) or (ii) an email notification rejecting the Transferor’s Transfer Request.

A Recognition Letter may state various requirements, including but not limited to, a requirement for representations, indemnities and certain undertakings (e.g. concerning confidentiality) of the Transferor and Transferee. It will also require certain documents (including the executed Recognition Letter) to be sent to LBIE by a date specified in the Recognition Letter. If a party is to accede to the CRA, this will be undertaken through the Recognition Letter.

The executed Recognition Letter constitutes 1) LBIE’s recognition of the transfer; and 2) any accession required of the Transferee to the CRA (in respect of the transferred claim). Points 1 and 2 in this paragraph will automatically take effect

two business days after LBIE receives back the executed hard copy of the Recognition Letter and the documents specified therein.

## **2. Information and documentation to be provided with the Transfer Request:**

The Transferor should use the TRF to provide the following information to allow LBIE to consider the Transfer Request in full. Please note that this list is not exhaustive and LBIE may ask for further information.

- \* The identity of each party including the Transferor's GAC code associated with the relevant claim(s).
- \* Details of the claims (including any amounts the Transferor considers may qualify for Client Money protection under the terms of the FSA's Client Money Rules) and agreements to which the transfer relates.
- \* Evidence that the Transferor and Transferee have executed a binding agreement with respect to the Transfer Request.
- \* Evidence that the Transferor has obtained the consent of any third parties, if necessary, on all agreements to which the transfer relates.
- \* Details of any contractual arrangements either party has with any other Lehman Brothers entity.
- \* Details of any liabilities which may give rise to an entitlement on the part of LBIE to withhold an amount of assets that are the subject of the Transfer Request.
- \* If applicable, a Form of Acceptance ([available here](#)) to join the CRA identifying the Transfer Request to which it relates (including the GAC).

## **3. Points to note in relation to all Transfer Requests:**

- \*For reasons of confidentiality, until recognition LBIE will only communicate with the Transferor in respect of a request to transfer a trust asset claim.
- \*LBIE will only recognise a transfer which represents either (i) the entirety of the Transferor's claims, rights, obligations and liabilities with LBIE (whether pursuant to contractual arrangements or otherwise) (and which have not been duly discharged); or, (ii) where the transferred claims have been acquired by the Transferor in accordance with (i) following the date of administration, all those claims, rights, obligations and liabilities with LBIE so acquired in a single transaction (and which are not duly discharged), as the case may be.
- \* The Transferor must ensure it **complies with all provisions concerning transfers as stated in its pre-administration contractual agreements with LBIE**, in addition to all applicable laws including, US insolvency laws. In particular, the Transferor should consider:
  - \* where an agreement contains a guarantee by a Lehman Brothers entity that the benefit of that guarantee is transferred too; and
  - \* where any of the underlying agreements require, the Transferor to obtain the consent of a third party (including other Lehman Brothers entities) to

transfer the claims, rights, obligations and liabilities arising out of or in connection with such agreement. Transferors and Transferees should note that the aforementioned consent of parties (other than LBIE) is generally required on the Customer Account Agreement and the Margin Lending Agreement.

- \* LBIE will consider in its review the degree to which trust asset returns have been progressed in respect of such positions.
- \* Transferees should note that there are costs associated with asset returns.
- \* Please note that prior to any recognition by LBIE of a Transfer Request, LBIE shall only make any and all payments, distributions and/or other benefits to the Transferor.
- \* Transferors and Transferees should also note that LBIE may:
  - \* charge fees for recognising a Transfer Request where the work and costs involved are unusually onerous;
  - \* recognise a Transfer Request only where the Transferor or (upon completion of the proposed transfer) the Transferee, is a net creditor (exc. assets outside the control of LBIE) to LBIE of at least a 'de minimus' level, such level to be determined in LBIE's sole discretion; and
  - \* reject a Transfer Request where LBIE is close to returning trust assets to the Transferor.
- \* Please note that if the Transfer Request is recognised by LBIE, a new GAC code will then be allocated to that claim in order for LBIE to be able to distinguish it as now being held by the Transferee.

Given the complexity and uncertainties that exist with regards to the underlying documents it may not be in the best interests of the administration estate to recognise the transfer of a claim, in particular in relation to claims involving a Customer Account Agreement and/or a Margin Lending Agreement. LBIE is aware that certain claimants have adopted alternative mechanisms (e.g. sub-participation) to achieve the commercial objectives of a transfer which do not require the assignment of legal title, thereby avoiding the necessity of involving LBIE and following the processes set out in this document.

Please note that by providing this information neither LBIE, its administrators, their firm, employees nor their representatives is giving a recommendation, referral, or providing advice. This information should not be relied on as such. Transferors and Transferees must make their own independent decision on such matters based upon their own judgement and upon advice from such advisers as deemed necessary.

#### **4. Points to note in relation to the CRA:**

- \* A signatory to the CRA must ensure it **complies with all provisions of the CRA concerning transfers**. More generally, Transferors and Transferees should familiarise themselves with the terms of the CRA and take their own legal advice as

they deem necessary to ensure they fully understand the obligations they will undertake.

\*Accession to the CRA for the purpose of any Transfer Request will only be in respect of the relevant transferred Entire Position (as defined in the CRA). Consequently, in respect of a further Transfer Request, the Transferee would again be acceded to the CRA in respect of the new transferred Entire Position (as defined in the CRA).

\* Accession to the CRA is at LBIE's discretion in accordance with the terms and conditions of the CRA.

Should you have any queries regarding this guidance document, please contact LBIE's Communications and Counterparty Management team at [claimresolutionagreement@lbia-eu.com](mailto:claimresolutionagreement@lbia-eu.com). The Joint Administrators will continue to communicate with you through this website on all matters relating to the administration of LBIE.