

Dated the Effective Date
[as amended and restated on 8 December 2011](#)

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)

and

THE SIGNATORIES
(as defined in this Agreement)

CLAIM RESOLUTION AGREEMENT

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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 [on the Effective Date](#), Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmann and Derek Anthony Howell 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

[Subject as provided in Clause 6.6, 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.

6.6 Transfer of Agreed Claims

Nothing in this Agreement shall restrict any Signatory from Transferring an Agreed Claim to another person (whether Signatory or Non-Signatory) where such Transfer is made in accordance with the transfer provisions agreed between the Company and the relevant Signatory in relation to such Agreed Claim. The Company, acting in good faith, shall choose the order in which the Company agrees any Agreed Claims with any Claimant as the Company sees fit, in its sole discretion. For the avoidance of doubt, the transfer of an Agreed Claim to a Non-Signatory shall not have the effect of making such a person a Signatory.

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 sub-paragraph (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

If a TA Signatory who has received a Claim Amount Notice, but not a related Dispute Trigger Notice, disagrees with its Individual Claim Amount specified in such Claim Amount Notice, it must Notify the Company by way of a written Notice (the "**Counterclaim Notice**") to be received by the Company on or before 5.00 p.m. (London time) on the Counterclaim Notice Deadline specifying its Alleged TA Claimant Amount. Notwithstanding any provisions to the contrary in Part 16, if a TA Signatory submits a Counterclaim Notice and subsequently issues a Dispute Notice in relation to the relevant Claim Amount Notice, it may not specify an Alleged TA Claimant Amount higher than the amount specified in the Counterclaim Notice.

Any TA Signatory who fails to serve a Counterclaim Notice within the time period specified within this Agreement (except where Clause 67.4 applies) shall be deemed to have accepted the Individual Claim Amount specified in the relevant Claim Amount Notice and to have given up any rights of objection or Dispute in relation to the same, whether under this Agreement or otherwise. No subsequent Dispute may be raised by the TA Signatory in respect of that Claim Amount Notice if it does not serve a Counterclaim Notice in respect of that Claim Amount Notice, except where Clause 67.4 applies.

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 Counterclaim 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 a Dispute Notice Deadline or 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 the case of (b) 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 55.1.2, 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**”); ~~and/or~~

59.1.4 its Cash Payment Amount (for a TA Signatory only).

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 fifteenth 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(ii) 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 and (iii) all Cash Payment Amounts paid to the Company in accordance with Clause 59.12 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~~59.3 and whenever a TA Signatory pays a Cash Payment Amount to the Company in accordance with Clause 59.12, 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.

59.12 Cash Payment Amount

59.12.1 A TA Signatory may elect to collateralise all, or part of, its Net Financial Liability (such election, a "Cash Payment Election") by giving not less than five Business Days' Notice, or such other notice period as agreed with the Company, (such Notice, the "Cash Payment Election Notice") to the Company. The Cash Payment Election Notice shall show the amount and the proposed payment date of such Payment and give details of the relevant account from which any amount for such Payment will be paid.

59.12.2 Upon receipt by the Company of a Payment of a cash amount in accordance with a Cash Payment Election Notice, such amount shall constitute a "Cash Payment Amount" of the TA Signatory.

59.12.3 If the TA Signatory fails to pay any cash amount in accordance with a Cash Payment Election Notice, the TA Signatory shall be deemed not to have made a Cash Payment Election and the Cash Payment Election Notice in relation to such cash amount shall be deemed not given. If the Company incurs any costs and expenses as a result of the TA Signatory's failure to make such Payment in accordance with a Cash Payment Election Notice, such costs and expenses shall be a Non-Financial Contract Liability in respect of such TA Signatory.

59.12.4 The aggregate amount of all Cash Payment Amounts of the TA Signatory shall increase the Collateral Amount which shall be applied as a Distribution Asset in the priority of payment under Clause 60.8.

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 is a Cash Payment Election and there is no further Asset Allocation in respect of such TA Signatory~~ or (d) (for a TA Signatory) the Collateralisation Election falls within ~~both~~ two or more of (a) ~~and~~ (b) and (c) and all the applicable criteria set out in both (a) and (b) and (c), as relevant, 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**”.

For the purposes of Part 10 and this Clause 67, a Dispute shall also refer to a submission of a Counterclaim Notice by a TA Signatory by the Counterclaim Notice Deadline.

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.

67.3 Dispute Trigger Notice

Within a reasonable time after the Company determines that it can not, or does not expect to be able to, resolve a Dispute in relation to a Counterclaim Notice, the Company shall send a Notice to that effect (a “**Dispute Trigger Notice**”) to the TA Signatory that delivered the Counterclaim Notice.

67.4 Combining a Claim Amount Notice and a Dispute Trigger Notice

The Company may also combine a Claim Amount Notice with a Dispute Trigger Notice or issue a subsequent Dispute Trigger Notice in respect of a Claim Amount Notice before receipt of a related Counterclaim Notice. If it does so and the recipient TA Signatory wishes to raise a Dispute with respect to such Claim Amount Notice, such TA Signatory may not issue a Counterclaim Notice and must issue a Dispute Notice as provided in Clause 68.1, which Dispute Notice must specify the relevant Alleged TA Claimant Amount.

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, provided that a TA Signatory may only raise a Dispute in the case of a Claim Amount Notice after it has received a Dispute Trigger Notice in respect of that Claim Amount Notice. 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. Subject to the provisions of Clause 50, 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, 8 December 2011 , are Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmann and Derek Anthony Howell, Paul David Copley and Russell Downs of PricewaterhouseCoopers LLP, Plumtree Court 7 More London Riverside , London EC4A 4HT <u>SE1 2RT</u> , 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
<u>“Agreed Claim”</u>	<p><u>means:</u></p> <p><u>(i) any Ascertained Claim determined in accordance with the terms of this Agreement and the quantum of which has been agreed by the Company and the Claimant in writing;</u></p> <p><u>(ii) any Claim to which Clauses 4 and 5 of this Agreement are not applicable and the quantum of which has been agreed by the Company and the Claimant in writing; and</u></p> <p><u>(iii) any combination of Claims that would have fallen in (i) and/or (ii) above, if their individual quantum was agreed in writing, the aggregate quantum of which has been agreed by the Company and the Claimant in writing, whether or not the quantum of each individual Claim in this combination of Claims has then been agreed or is subsequently agreed,</u></p> <p><u>and for the purposes of this definition of “Agreed Claim”, the quantum of a Claim will only be regarded as being agreed in writing if set out in a Closing Statement or in a deed or other agreement executed on behalf of the Company by an Administrator and, for the avoidance of doubt, amounts specified in a Determination Notice will not be Agreed Claims.</u></p>
“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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) the first date on which both: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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”	<ul style="list-style-type: none"> (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;

	<ul style="list-style-type: none"> (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 Laurifer Limited, a company incorporated under the laws of Jersey, having its registered office at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG
“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”	<ul style="list-style-type: none"> (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

	<p>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</p> <p>(iv) in the case of any country, a day on which banks are open for general business in such country</p>
“CAPCO”	Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America
<u>“Cash Payment Amount”</u>	<u>has the meaning set out in Clause 59.12</u>
<u>“Cash Payment Election”</u>	<u>has the meaning set out in Clause 59.12</u>
<u>“Cash Payment Election Notice”</u>	<u>has the meaning set out in Clause 59.12</u>
“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”	<p>a claim in law or in equity of whatsoever nature:</p> <p>(i) including for (but not limited to) breach of contract, tort, restitutionary claims and breach of trust;</p> <p>(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</p> <p>(iii) for, amongst other things, the enforcement of any right to, or any liability in respect of a right to:</p> <p>(a) seek or enforce judgment;</p> <p>(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</p> <p>(c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever,</p> <p>and “Claimant”, “to Claim” and “Claiming” shall be construed</p>

	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 and which was, or ought to have been, held by the Company
“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”	<ul style="list-style-type: none"> (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”	<p>(i) where the Acceptance Date for a TA Signatory falls on a date on or prior to the end of the Initial Offer Period:</p> <p>(a) in respect of a TA Signatory that is a Pure Custody Signatory, 0.75 per cent.; and</p>

	<ul style="list-style-type: none"> (b) in respect of a TA Signatory that is not a Pure Custody Signatory, 1.00 per cent.
	<ul style="list-style-type: none"> (ii) where the Acceptance Date for a TA Signatory falls on a date after the end of the Initial Offer Period: <ul style="list-style-type: none"> (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"	<ul style="list-style-type: none"> (i) in respect of each TA Signatory, the difference as determined by the Company between: <ul style="list-style-type: none"> (a) the Costs Amount determined as at the last Distribution Value Date; less (b) the relevant Costs Amount Percentage of the sum of: <ul style="list-style-type: none"> (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
"Counterclaim Notice Deadline"	the twenty-fifth Business Day after the date the Claim Amount Notice is given by the Company
"Counterclaim Notice"	has the meaning set out in Clause 39.1
"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”	<p>(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</p> <p>(ii) a Claim against the Company in respect of any Derived Asset relating to (a) or (b) above that is money.</p> <p>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</p>
“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”	<p>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:</p> <ul style="list-style-type: none"> (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, <p>and, when used in relation to a particular Security, any Asset that is so derived from that Security</p>
“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 Dispute Trigger 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
“Dispute Trigger Notice”	has the meaning set out in Clause 67.3
“Disputing Parties”	has the meaning set out in Clause 67
“Distributable Trust Assets”	<p>at any time, any Trust Assets which fulfil each of the following criteria at such time:</p> <ul style="list-style-type: none"> (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, <p>provided that:</p> <ul style="list-style-type: none"> (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”	<p>from time to time, any Claim:</p> <ul style="list-style-type: none"> (i) that is an Ownership Claim 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, <p>provided that no Claim under paragraph (ii) above in respect of, or connected or related to, a Financial Contract shall be an Excluded Claim</p>
“Excluded Party”	has the meaning set out in Clause 2.3
“Excluded Property”	<p>at any time:</p> <ul style="list-style-type: none"> (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”	<p>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:</p> <ul style="list-style-type: none"> (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. <p>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</p>

	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”	<p>(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</p> <p>(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.</p> <p>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</p>
“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”	<p>(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</p> <p>(ii) a Claim against the Company in respect of any Derived Assets relating to (a) or (b) above that is money.</p> <p>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</p>
“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 or money 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”	<p>with respect to an Asset in the possession or custody of a person (the “holder”), a Claim by another (the “ownership claimant”) that:</p> <ul style="list-style-type: none"> (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, <p>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)</p>

“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”	<p>any Claim by the Signatory in relation to Post-Administration Client Money including:</p> <ul style="list-style-type: none"> (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 Contract”	at any time in relation to a person, any Financial Contract (or 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”	<p>a Pre-Agreement Contract pursuant to which:</p> <p>(i) Pre-Agreement Provisionally Returned Assets were distributed, transferred or delivered; and</p> <p>(ii) such Assets or other assets may be required to be redelivered, delivered or paid to the Company,</p> <p>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</p>
“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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) Lehman Brothers Holding Inc.; (ii) Lehman Brothers Inc.; (iii) Lehman Brothers Bankhaus AG; (iv) any other Affiliate of LBIE; and (v) CAPCO, shall not be Released Parties for the purpose of Clause 4.2 whether or not they are Signatories
“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

“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”	<p>in respect of a Signatory, any Securities:</p> <ul style="list-style-type: none"> (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, 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 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”	<p>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:</p> <ul style="list-style-type: none"> (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, <ul style="list-style-type: none"> (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”	<p>in relation to the Company or its Holding Company, any company, corporation or other legal entity:</p> <ul style="list-style-type: none"> (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, <p>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</p>
“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”	<p>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:</p> <p>(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</p> <p>(ii) by operation of Clause 19,</p> <p>and “terminate” and “termination” shall be construed accordingly</p>
“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: <ul style="list-style-type: none"> (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”	<p>in respect of each Signatory, 30 Business Days after its relevant Open Contract Termination Date, unless the Company has:</p> <ul style="list-style-type: none"> (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, <p>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</p>
“Value”	<p>unless otherwise specifically provided in this Agreement:</p> <ul style="list-style-type: none"> (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, <p>and “Valuation” and “Valued” shall be construed accordingly</p>
“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.

☐

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:

(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

☐

(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.

Document comparison by Workshare Professional on 08 December 2011
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Input:	
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Document 2 ID	file:///H:/My Documents/Latest_A13977166 v2 0 LBIE CRA as amended 08_12_11.doc
Description	Latest_A13977166 v2 0 LBIE CRA as amended 08_12_11
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	129
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	286