Company No. 2538254

THE COMPANIES ACT 1985

UNLIMITED COMPANY WITH SHARES

MEMORANDUM OF ASSOCIATION

of LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(amended up to and including 5th November 2002)

1. The name of the Company is "LEHMAN BROTHERS INTERNATIONAL (EUROPE)". (Note)

2. The registered office of the Company is to be situated in England and Wales.

3. The Company's objects are:-

(A) (1) To carry on all or any of the business of brokers, underwriters and sub-underwriters of, and dealers in, shares, stocks, bonds, debentures, debenture stocks, loans, warrants, options, rights, receipts or other securities or obligations issued or guaranteed by any company, government or authority supreme, municipal, local or otherwise and brokers of, and dealers in, commodities, foreign exchange and currencies of every kind, general brokers and commission agents;

(2) To carry on the business of, and to act as, bankers, merchant bankers, financiers, capitalists, concessionaires, commercial agents, mortgage brokers, financial agents and advisers; to advance and borrow money, securities and property, accept and take deposits, negotiate loans and lend money for any purpose or object, with or without security, including the lending of money to finance hire purchase agreements, leasing and renting agreements in respect of any property or assets and to grant or provide credit and any form of financial accommodation to any person and to draw, accept, issue, endorse, buy, sell, negotiate, discount or otherwise deal in promissory notes, bills of exchange, debentures, bonds, warrants, coupons, scrip and other negotiable instruments and securities;

(3) To purchase or otherwise acquire, undertake, take over and carry on, wholly or in part, as a going concern or otherwise, businesses, property, goodwill, assets, liabilities, options, rights, privileges, lands, buildings, leases, underleases, shares, stocks, bonds, debentures, debenture stocks, loans, warrants and other securities and obligations of any person, including of any subsidiary of the Company or of any holding company of the Company or of another subsidiary of any

holding company of the Company or otherwise associated with the Company, whether by purchase, lease, contract, assignment, novation, exchange, licence, participation or otherwise as the Company shall deem fit, and

(4) To carry on investment business (within the meaning of the Financial Services Act 1986).

(B) To purchase, lend, borrow, subscribe for, repurchase or otherwise acquire and hold and deal with any shares, stocks, bonds, debentures, debenture stocks, loans, warrants, options, rights, receipts or other securities or obligations issued or guaranteed by any company, government or authority supreme, municipal, local or otherwise.

(C) To issue, place, underwrite or guarantee the subscription of, or concur or assist in the issuing or placing, underwriting or guaranteeing the subscription of shares, stocks, bonds, debentures, debenture stocks, loans, warrants, options, rights, receipts or other securities or obligations, issued or guaranteed by any company, government or authority supreme, municipal, local or otherwise at such times and upon such terms and conditions as to remuneration and otherwise as may be agreed upon.

(D) To transact risk management business of every kind whatsoever and, in particular (but without prejudice to the generality of the foregoing), to enter into, whether as principal or as agent, and to advise upon, interest rate swaps, currency swaps, forward rate agreements, interest rate futures, gilt futures, interest rate options, options on interest rate futures, options on gilt futures, OTC futures and OTC options and all forms of derivative instruments.

(E) To act as trustees of any kind and to undertake and execute any trusts the undertaking whereof may seem desirable, either gratuitously or otherwise, and in particular (without prejudice to the generality of the foregoing) to act as depositary of any shares or securities and as agents or brokers for the investment, loan, payment, transmission or collection of money and the purchase, sale, improvement, or development and management of property for any person.

(F) To aid or procure assistance for, or participate in aiding or procuring assistance for, any person with capital, credit, means or resources for the prosecution of any works, undertakings, projects or enterprises or for any other purpose.

(G) To acquire and assume for any estate or interest and to take options over, construct, develop or exploit any property real or personal, and rights of any kind and the whole or any part of the undertaking, assets and liabilities of any person and to act and carry on business as a holding company, and to enter into, assist, or participate in financial, commercial, mercantile, industrial and other transactions, undertakings and businesses of every description, and to establish, carry on, develop and extend the same or sell, dispose of or otherwise turn the same to account, and to co-ordinate the policy and administration of and carry on any business of any companies of which the Company is a member or which are in any manner controlled by, or connected with, the Company.

(H) To manufacture, process, import, export, deal in and store any goods and other things and to carry on the business of manufacturers, processors, importers, exporters and storers of, and dealers in, any goods and other things.

(I) To acquire and exploit lands, mines and mineral rights and to acquire, explore for and exploit any natural resources and to carry on any business involving the ownership or possession of land or other immovable property or buildings or structures thereon and to construct, erect, install, enlarge, alter and maintain buildings, plant and machinery and to carry on business as builders, contractors and engineers.

(J) To provide services of all descriptions and to carry on business as advisers, consultants, brokers and agents of any kind.

(K) To advertise, market and sell the products of the Company and of any other person and to carry on the business of advertisers or advertising agents or of a marketing and selling organisation or of a supplier, wholesaler, retailer, merchant or dealer of any kind.

(L) To provide technical, cultural, artistic, educational, entertainment or business material, facilities or services and to carry on any business involving any such provision.

(M) To invest money of the Company in any investments and to hold, sell or otherwise deal with such investments, and to carry on the business of a property or investment company.

(N) To enter into any arrangements with any government or authority or person and to obtain from any such government or authority or person any legislation, orders, rights, privileges, franchises and concessions and to carry out, exercise and comply with the same

(O) To secure or discharge any debt or obligation in any manner and, in particular (without prejudice to the generality of the foregoing), by mortgages of, or charges upon, all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by the creation and issue of securities.

(P) To enter into any guarantee, contract of indemnity or suretyship and, in particular (without prejudice to the generality of the foregoing), to guarantee, support or secure, with or without consideration, whether by personal obligation or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by both such methods or in any other manner, the performance of any obligations or commitments of, and the repayment or payment of the principal amounts of and any premiums, interest, dividends and other moneys payable on, or in respect of, any securities or liabilities of, any person, including (without prejudice to the generality of the foregoing) any company which is for the time being a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company.

(Q) To amalgamate or enter into partnership or any profit-sharing arrangement with, or to co-operate or participate in any way with, or to take over or assume any obligation of, or to assist or subsidise any person.

(R) To apply for and take out, purchase or otherwise acquire any trade and service marks and names, designs, patents, patent rights, inventions and secret processes and to carry on the business of any inventor, designer or research organisation.

(S) To sell, exchange, mortgage, charge, let on rent, share of profit, royalty or otherwise, grant licences, easements, options, servitudes and other rights over, and in any other manner deal with, or dispose of, all or any part of the undertaking, property and assets (present and future) of the Company for any consideration and in particular (without prejudice to the generality of the foregoing) for any securities.

(T) To issue and allot securities of the Company for cash or in payment or part payment for any real or personal property purchased or otherwise acquired by the Company or any services rendered to the Company or as security for any obligation or amount (even if less than the nominal amount of such securities) or for any other purpose.

(U) To give any remuneration or other compensation or reward for services rendered or to be rendered in placing or procuring subscriptions of, or otherwise assisting in the issue of, any securities of the Company or in or about the formation of the Company or the conduct or course of its business, and to establish or promote, or concur or participate in establishing or promoting, any company, fund or trust and to carry on the business of company, fund, trust or business promoters or managers and to act as director of, and as secretary, manager, registrar or transfer agent for, any other company.

(V) To pay all the costs, charges and expenses preliminary or incidental to the promotion, formation, establishment and incorporation of the Company, and to procure the registration or incorporation of the Company in or under the laws of any place outside England

(W) To grant pensions, annuities, gratuities and superannuation or other allowances and benefits, including allowances on death, to any directors, officers or employees or former directors, officers or employees of the Company or any company which at any time is or was a subsidiary or a holding company of the Company or another subsidiary of a holding company of the Company or otherwise associated with the Company or of any predecessor in business of any of them, and to the relations, connections or dependants of any such persons, and to other persons whose service or services have directly or indirectly been of benefit to the Company or who the Company considers have any moral claim on the Company or to their relations, connections or dependants, and to establish or support any associations, institutions, clubs, schools, building and housing schemes, funds and trusts, and to make payments towards insurances or other arrangements likely to benefit any such persons or otherwise advance the interests of the Company or of its Members, and to subscribe,

guarantee or pay money for any purpose likely, directly or indirectly, to further the interests of the Company or of its Members or for any national, charitable, benevolent, educational, social, public, general or useful object.

(X) To purchase and maintain for any director or other officer or any auditor of the Company insurance against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

(Y) To cease carrying on or wind up any business or activity of the Company, and to cancel any registration of, and to wind up, or procure the dissolution of, the Company in any state or territory.

(Z) To distribute any of the property of the Company among its creditors and Members in specie or kind.

(AA) To do all or any of the things or matters aforesaid in any part of the world and either as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others.

(BB) To carry on any other business or activity and do anything of any nature which in the opinion of the Company is or may be capable of being conveniently carried on or done in connection with the above, or calculated, directly or indirectly, to enhance the value of, or render more profitable, all or any part of the Company's undertaking, property or assets or otherwise to advance the interests of the Company or of its Members.

(CC) To do all such other things as, in the opinion of the Company, are or may be incidental or conducive to the attainment of the above objects or any of them

AND it is hereby declared that "company" in this clause, except where used in reference to this Company, shall include any partnership or other body of persons, whether incorporated or not incorporated, and whether formed, incorporated, domiciled or resident in the United Kingdom or elsewhere, "person" shall include any company as well as any other legal or natural person, "securities" shall include any fully, partly or nil paid or no par value share, stock, unit, debenture, debenture or loan stock, deposit receipt, bill, note, warrant, coupon, right to subscribe or convert, or similar right or obligation, "and" and "or" shall mean "and/or" where the context so permits, "other" and "otherwise" shall not be construed ejusdem generis where a wider construction is possible, and the objects specified in the different paragraphs of this clause shall not, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company, but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate, distinct and independent company.

Note

The Company's name was changed from Lehman Brothers International Limited to Lehman Brothers International (Europe) by special resolution passed on 18th December 1992.

WE, the subscribers to this memorandum of association, wish to be formed into a Company pursuant to this Memorandum of Association, and we agree to take the number of Shares set opposite our respective names.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS	Number of Shares taken by each Subscriber
Alistair F. Bird 15 Denbigh Terrace London W11 2QJ Solicitor	1
Colleen A. Harney 119 Basildon Road London SE2 ORJ Legal Assistant	1
Total Shares taken:	2

DATED 28th August 1990

WITNESS to the above Signatures:-

RICHARD J.R. BUNCE
50 Hartley Old road
Purley
Surrey CR2 4GH

Trainee Solicitor

Company No. 2538254

THE COMPANIES ACT 1985

UNLIMITED COMPANY WITH SHARES

ARTICLES OF ASSOCIATION

of LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(amended up to and including 29th February 2008)

TABLE A

1. The regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended at the date of adoption of these Articles, ("Table A) shall except where the same are excluded or varied by or inconsistent with these Articles apply to the Company. No regulations (other than those contained in Table A) set out in any statute or statutory instrument concerning companies shall apply as regulations of the Company. Regulations 3, 32, 34 and 35 of Table A shall not apply to these Articles.

INTERPRETATION

2. In these Articles unless the context otherwise requires:-

"these Articles" means these Articles of Association in their present form or as from time to time altered;

"the Companies Acts" means every statute from time to time in force concerning companies insofar as the same applies to the Company;

"Member" means a member of the Company;

every reference in Table A to "the Act" shall be construed as if the reference were to the Companies Acts,

any words or expressions defined in the Companies Acts in force at the date when these Articles or any part thereof are adopted shall bear the same meaning in these Articles or such other part (as the case may be);

where for any purpose an ordinary resolution of the Company is required, a special or extraordinary resolution shall also be effective, and where an extraordinary resolution is required a special resolution shall also be effective.

AUTHORISED SHARE CAPITAL

3. The authorised share capital of the Company is US$18,100,000,000 divided into US$10,850,000,000 ordinary shares of US$1.00 par value per share, US$150,000,000 Preference Shares of US$0.01 par value per share ("Preference Shares"), 2,000,000 5% redeemable preference shares of US$1,000 par value per share ("5% Redeemable Preference Shares") and 5,100,000 5% redeemable preference shares of US$1,000 par value per share ("Class B Redeemable Preference Shares").

UNISSUED SHARE CAPITAL

4. Subject to the provisions of the Companies Acts and these Articles and to any direction to the contrary which may be given by ordinary or other resolution of the Company, any unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Directors who may offer, allot, grant options over or grant any right or rights to subscribe for such shares or any right or rights to convert any security into such shares or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Directors may determine.

5. For the purposes of section 80 of the Companies Act 1985, the Directors are generally and unconditionally authorised to exercise all the powers of the Company to, without limit, allot relevant securities as defined in the said section. This authority may be previously revoked or varied by the Company in general meeting and may from time to time be reviewed by the Company in general meeting for a further period not exceeding five years. The Company may make any offer or agreement before the expiry of this authority that would or might require relevant securities to be allotted after this authority has expired and the Directors may allot relevant securities in pursuance of any such offer or agreement as if this authority had not expired.

ALTERATION OF SHARE CAPITAL

6. The Company may by special resolution:-

   (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;

   (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

(c) sub-divide its shares or any of them, into shares of a smaller amount than its existing shares;

(d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(e) reduce its share capital and any share premium account in any way.

TRANSFER OF SHARES

7. No transfer of any share or any interest therein shall be made or registered without (a) the previous written consent of all of the Members of the Company and (b) the sanction of the Directors (who may in their absolution and unfettered discretion, without assigning any reason, refuse to give such sanction). If sanction shall not be given within eight weeks after the transfer is lodged for registration the sanction shall be deemed to have been refused at the expiration of such period and the Company shall notify the proposed transferee of such refusal. Regulation 24 of Table A shall not apply. Notwithstanding the above, some or all of the Preference Shares may be transferred without restrictions and without requiring any such sanction to either (i) to the trustee or trustees of any trust for beneficiaries including or comprising employees of any of Lehman Brothers Holdings Inc. and any one or more of its subsidiaries; or (ii) any other subsidiary of Lehman Brothers Holdings Inc, and for this purpose the term "subsidiary" shall have the same meaning as in section 736 Companies Act 1985

7A The rights attaching to the Preference Shares of the Company shall be as follows:

(a) The Preference Shares shall not confer the right to receive notice of or attend or vote at any general meeting of the Company whether on a show of hands or on a poll upon the Registered holder thereof except on any resolution to modify the rights attaching to the Preference Shares when the registered holder of any such Preference Share shall be entitled to attend any meeting at which such a resolution is proposed and shall be entitled to one vote for each Preference Share held whether on a show of hands or on a poll at such meeting.

(b) On any winding-up of the Company each Preference Share shall confer a right to receive out of the assets of the Company the return of capital subscribed in respect of such Preference Share and the Registered holders of Preference Shares shall have no other rights to participate in any distribution of the assets of the Company in any winding-up.

(c) No Preference Share may be pledged charged hypothecated or in any manner used as security for any loan, borrowing, deferral of any financial obligation or other financial accommodation.

(d) Some or all of the Preference Shares shall be redeemable at any time either (i) by the Company; or (ii) by the registered holder of the affected Preference Share at any time at a fixed price of US$100.00 per share.

(e) The Company may redeem any of its Preference Shares from its profits available for distribution as dividends or from the proceeds of a fresh issue of its shares or from its share premium account and from any other financial resources of the Company

(f) On any redemption of any Preference Share the Registered holder of the Preference Share being redeemed shall be bound to deliver to the Company the certificates (if any) for the Preference Shares so redeemed on that Redemption Date. For the purposes hereof "Redemption Date" shall mean the third day following either (i) delivery to the last known address of the registered holder of the Preference Shares to be redeemed of notice of redemption in the case of redemption at the instance of the Company; or (ii) delivery to the Company of notice of redemption in the case of redemption at the instance of the registered holder.

(g) On any redemption of any Preference Share the registered holder thereof shall be entitled to receive the redemption price per Preference Share and the registered holder of those Preference Shares shall be bound to deliver to the Company any certificates for the Preference Shares so redeemed on the applicable Redemption Date.

(h) As from a Redemption Date in respect of any Preference Share and the amendment of the register of members to reflect the redemption, the Preference Share shall be treated as having been redeemed, whether or not the certificates therefor have been delivered to the Company and the redemption monies paid and such redemption monies if unpaid shall constitute a debt of the Company subject to all the provisions of these Articles relating to monies payable in or in respect of a Preference Share.

(i) If the registered holder of the relevant Preference Share shall fail or refuse to deliver up any certificate held by him at the time fixed for the redemption of such Preference Share or shall fail or refuse to accept payment of the redemption monies payable in respect thereof the redemption monies payable to such registered holder shall be set aside and paid into an interest bearing account with the Company's bankers and such setting aside shall be deemed for all purposes to be a payment to the registered holder and all the registered holder's rights as registered holder of the Preference Share shall cease and determine as from the relevant Redemption Date fixed for the redemption of such Preference Shares and the Company shall thereby be discharged from all obligations in respect thereof. The Company shall not be

responsible for the safe custody of the monies so placed on deposit or for interest thereon except such interest as the said monies may earn while on deposit less any expenses incurred by the Company in connection therewith

(j) The receipt of the registered holder for the time being of the Preference Share or in the case of joint registered holders the receipt of any of them for the monies payable on redemption thereof shall constitute an absolute discharge to the Company in respect thereof.

(k) The registered holder of a Preference Share shall not take any steps to prevent the registered holders of ordinary shares of the Company from petitioning the Court for an order that the Company be wound up on the grounds that it would be just and equitable to wind up the Company if any such registered holders of ordinary shares take steps to do so and they shall not take any steps to oppose any such petition.

7B The rights attaching to the 5% Redeemable Preference Shares of the Company shall be as follows:

(a) Income

(i) profits which the Company may decide to distribute in respect of any financial year or other period for which its accounts are made up shall be applied in paying to each holder of a 5% Redeemable Preference Share in priority to any payment to the holders of ordinary shares and pari passu with Parity Obligations, a fixed non-cumulative preferential dividend (the preferential dividend) at the rate of 5% per annum on the amount for the time being paid up on that preference share,

(ii) preferential dividend accrues from day to day and is payable half-yearly in equal amounts on 1 May and 1 November in each year (each a preference dividend payment date) (or if any dividend payment date is a Saturday, a Sunday or a day which is a public holiday in England on the next day which is not such a day) in respect of the half-year ending on those respective dates;

(iii) subject to and notwithstanding the availability of distributable profits, preferential dividend is payable to holders only when, as and if declared by the Company's board of directors;

(iv) for the purposes of this article 7B the following terms shall have the meanings set out below:

Junior Obligation means the ordinary shares of the Company, any shares ranking below the 5% Redeemable Preference Shares and any other obligation of the Company expressed to

rank junior as to distributions on an ongoing basis or as to capital to the 5% Redeemable Preference Shares of the Company;

Parity Obligation means:

(i) any other series of preference shares issued by the Company ranking equally as to dividends with the 5% Redeemable Preference Shares; or

(ii) any security issued by a subsidiary of the Company which benefits from a guarantee or other contractual support undertaking of the Company which guarantee or contractual support undertaking ranks equally as to dividends or other income distributions with the 5% Redeemable Preference Shares; or

(iii) any other security, instrument or preferred security issued by the Company ranking equally as to dividends or other income distributions with the 5% Redeemable Preference Shares; and

(b) Capital

On a return of capital on a winding up (or otherwise) the assets of the Company available for distribution to its members shall be applied in paying to each holder of a 5% Redeemable Preference Share pari passu in all respects with the holders of a Parity Obligation and in priority to any payment to the holders of ordinary shares or holders of Junior Obligations, a sum equal to all arrears and accruals (if any) of the preferential dividend whether or not the preferential dividend has been earned or declared, calculated down to and including the date of the commencement of the winding-up or the date of the return of capital together with a sum equal to the capital paid up on that 5% Redeemable Preference Share.

(c) Redemption

The Company may redeem in whole, but not in part only, the 5% Redeemable Preference Shares in accordance with the following provisions:

(i) subject, if required by the Financial Services Authority, to the Financial Services Authority indicating it has no objection to such redemption on 1 November 2011;

(ii) if not redeemed on 1 November 2011, on 1 November 2016 subject to the requirements of the Companies Act;

(iii) at a price per 5% Redeemable Preference Share of $1,000 plus any preferential dividends accrued since the immediately preceding preference dividend payment date.

(d) Voting

(i) Each 5% Redeemable Preference Share entitles the holder to receive notice of, but does not entitle the holder to attend and vote at, general meetings of the Company unless:

(A) at the date of the notice convening the meeting, the preferential dividend or any part of it is six months or more in arrears (for which purpose the preferential dividend is deemed to be payable on each preference dividend payment date), or

(B) the business of the meeting includes the consideration of a resolution for winding-up the Company or any resolution directly or indirectly varying, altering or abrogating any of the rights, privileges, limitations or restrictions attached to the 5% Redeemable Preference Shares,

(ii) if a holder is entitled to attend and vote as a result of subparagraph (i)(A) above, he may vote in respect of any resolution considered at the meeting;

(iii) if a holder is entitled to attend and vote as a result of subparagraph (i)(B) above only, he may vote in respect of a resolution referred to in subparagraph (i)(B) above only;

(iv) (A) on a show of hands, each holder of 5% Redeemable Preference Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, not being himself a member, shall have one vote; and

(B) on a poll, each holder of 5% Redeemable Preference Shares who (being an individual) is present in person or by a proxy, not being himself a member, shall have one vote for every 5% Redeemable Preference Share held by him.

(e) Form

The 5% Redeemable Preference Shares shall be issued in definitive registered form.

7C The rights attaching to the Class B Redeemable Preference Shares of the Company shall be as follows:

(a) Income

(i) profits which the Company may decide to distribute in respect of any financial year or other period for which its accounts are made up shall be applied in paying to each holder of a Class B Redeemable Preference Share in priority to any payment to the holders of ordinary shares and pari passu with Parity Obligations, a fixed non-cumulative preferential dividend (the preferential dividend) at the rate of 5% per annum on the amount for the time being paid up on that preference share;

(ii) preferential dividend accrues from day to day and is payable half-yearly in equal amounts on 1 May and 1 November in each year (each a preference dividend payment date) (or if any dividend payment date is a Saturday, a Sunday or a day which is a public holiday in England on the next day which is not such a day) in respect of the half-year ending on those respective dates;

(iii) subject to and notwithstanding the availability of distributable profits, preferential dividend is payable to holders only when, as and if declared by the Company's board of directors;

(iv) for the purposes of this article 7C the following terms shall have the meanings set out below.

Junior Obligation means the ordinary shares of the Company, any shares ranking below the Class B Redeemable Preference Shares and any other obligation of the Company expressed to rank junior as to distributions on an ongoing basis or as to capital to the Class B Redeemable Preference Shares of the Company;

Parity Obligation means:

(i) the 5% Redeemable Preference Shares and any other series of preference shares issued by the Company ranking equally as to dividends with the Class B Redeemable Preference Shares; or

(ii) any security issued by a subsidiary of the Company which benefits from a guarantee or other contractual support undertaking of the Company which guarantee or contractual support undertaking ranks equally as to dividends or other income distributions with the Class B Redeemable Preference Shares; or

(iii) any other security, instrument or preferred security issued by the Company ranking equally as to dividends or other income distributions with the Class B Redeemable Preference Shares, and

(b) Capital

On a return of capital on a winding up (or otherwise) the assets of the Company available for distribution to its members shall be applied in paying to each holder of a Class B Redeemable Preference Share pari passu in all respects with the holders of a Parity Obligation and in priority to any payment to the holders of ordinary shares or holders of Junior Obligations, a sum equal to all arrears and accruals (if any) of the preferential dividend whether or not the preferential dividend has been earned or declared, calculated down to and including the date of the commencement of the winding-up or the date of the return of capital together with a sum equal to the capital paid up on that Class B Redeemable Preference Share.

(c) Redemption

The Company may redeem, in whole, but not in part only, the Class B Redeemable Preference Shares in accordance with the following provisions:

(i) subject, if required by the Financial Services Authority, to the Financial Services Authority indicating it has no objection to such redemption on 1 May 2012;

(ii) if not redeemed on 1 May 2012, on 1 May 2017 subject to the requirements of the Companies Act;

(iii) at a price per Class B Redeemable Preference Share of $1,000 plus any preferential dividends accrued since the immediately preceding preference dividend payment date.

(d) Voting

(i) Each Class B Redeemable Preference Share entitles the holder to receive notice of, but does not entitle the holder to attend and vote at, general meetings of the Company unless:

(A) at the date of the notice convening the meeting, the preferential dividend or any part of it is six months or more in arrears (for which purpose the preferential dividend is deemed to be payable on each preference dividend payment date); or

(B) the business of the meeting includes the consideration of a resolution for winding-up the Company or any

resolution directly or indirectly varying, altering or abrogating any of the rights, privileges, limitations or restrictions attached to the Class B Redeemable Preference Shares;

(ii) if a holder is entitled to attend and vote as a result of subparagraph (i)(A) above, he may vote in respect of any resolution considered at the meeting;

(iii) if a holder is entitled to attend and vote as a result of subparagraph (i)(B) above only, he may vote in respect of a resolution referred to in subparagraph (i)(B) above only;

(iv) (A) on a show of hands, each holder of Class B Redeemable Preference Shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, not being himself a member, shall have one vote; and

(B) on a poll, each holder of Class B Redeemable Preference Shares who (being an individual) is present in person or by a proxy, not being himself a member, shall have one vote for every Class B Redeemable Preference Share held by him.

(e) Form

The Class B Redeemable Preference Shares shall be issued in definitive registered form.

PROCEEDINGS AT GENERAL MEETINGS

8. The words "at least seven clear days' notice" shall be substituted for the words "at least fourteen clear days' notice" in regulation 38 of Table A.

9. No business shall be transacted at a meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, being a Member or a proxy for a Member or a duly authorised representative of a corporation, shall be a quorum. Regulation 40 shall not apply.

10. At any general meeting a poll may be directed by the Chairman or demanded by any Member present in person or by proxy and Regulation 46 of Table A shall be varied accordingly.

11. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every Member present in person and every person present as a proxy for a Member or Members shall have one vote, and on a poll every Member shall have one vote for each share of which he is the holder. Regulation 54 of Table A shall not apply

VOTES OF MEMBERS

12. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the registered office of the Company (or at such other place in the United Kingdom as is specified for that purpose in the notice of meeting or any instrument of proxy sent by the Company in relation to the meeting) not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or handed to the Chairman of the meeting or adjourned meeting before the commencement of such meeting, and, in default, the instrument of proxy shall not be treated as valid. Regulation 62 of Table A shall not apply.

POWERS OF DIRECTORS

13. The Company may exercise all the powers conferred by the Companies Acts with regard to having any official seal, and such powers shall be vested in the Directors. Any instrument to which an official seal is affixed shall be signed by such persons, if any, as the Directors may from time to time determine.

ALTERNATE DIRECTORS

14. An alternate Director may be paid expenses and shall be entitled to be indemnified by the Company to the same extent mutatis mutandis as if he were a Director but shall not be entitled to receive from the Company any fee in his capacity as an alternate Director except only such part (if any) of the remuneration otherwise payable to the Director appointing him as such Director may by notice in writing to the Company from time to time direct and Regulation 66 of Table A shall be varied accordingly.

DELEGATION OF DIRECTORS' POWERS

15. The Directors may delegate any of their powers to committees consisting of such person or persons (whether Directors or not) as they think fit. The Directors may also entrust to and confer upon any Director any of the powers exercisable by them. Any such delegation may be made upon such terms and conditions and with such restrictions as they may think fit, and either

collaterally with or to the exclusion of their own powers, and the Directors may from time to time revoke, withdraw, alter or vary all or any of such powers. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by these Articles regulating the proceedings of Directors so far as they are capable of applying. Regulation 72 of Table A shall not apply

APPOINTMENT AND RETIREMENT OF DIRECTORS

16. Without prejudice to any other provisions of or incorporated in these Articles governing the appointment and removal of Directors, any Member or Members holding a majority in nominal value of such of the issued share capital for the time being of the Company as carries the right of attending and voting at general meetings of the Company may by memorandum in writing signed by or on behalf of him or them and delivered to the registered office of the Company or tendered at a meeting of the Board, or of the Company in general meeting, at any time and from time to time appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors or remove any Director from office howsoever appointed.

17. The Directors and the Company by ordinary resolution shall each have power at any time and from time to time to appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors. Any Director so appointed shall (subject to Regulation 81 of Table A and to the provisions of the Companies Acts) hold office until he is removed pursuant to these Articles.

18. Regulations 73 to 80 (inclusive), Regulation 81(e) and the last sentence of Regulation 84 of Table A shall not apply

DIRECTORS' GRATUITIES AND PENSIONS

19. The Directors on behalf of the Company may exercise all the powers of the Company to grant pensions, annuities, gratuities and superannuation or other allowances and benefits in favour of any person including any Director or former Director or the relations, connections or dependants of any Director or former Director. A Director or former Director shall not be accountable to the Company or the Members for any benefit of any kind conferred under or pursuant to this Article and the receipt of any such benefit shall not disqualify any person from being or becoming a Director of the Company.

DIRECTORS INTERESTS

20. Subject to the provisions of these Articles and provided a Director shall have disclosed such interest in accordance with Regulation 85 of Table A, a Director shall be entitled to vote in respect of any transaction, contract,

arrangement or agreement with the Company in which he is in any way, whether directly or indirectly, interested and if he shall do so his vote shall be counted and he shall be taken into account in ascertaining whether a quorum is present. For the purpose of this Article, an interest of a person who is, for any purpose of the Act, connected with a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director without prejudice to any interest which the alternate Director has otherwise.

PROCEEDINGS OF DIRECTORS

21. Subject to the provisions of these Articles, the Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Meetings may be held in any part of the world. At any time any Director may, and the Secretary on the requisition of a Director shall, summon a meeting of the Directors. Notice of any meeting of the Directors may be given by telephone, facsimile or telex. It shall not be necessary to give notice of a meeting of Directors to any Director for the time being absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of equality of votes, the Chairman shall have a second or casting vote. A Director who is also an alternate Director shall be entitled, in the absence of his appointor, to a separate vote on behalf of his appointor in addition to his own vote. Regulation 88 of Table A shall not apply.

22. A Director shall be treated as present at a meeting of the Directors if he is in telephonic communication with the meeting. The quorum necessary for the transaction of the business of the Directors may be fixed from time to time by the Directors and, unless so fixed at any other number, shall be two. A person who holds office only as an alternate Director shall, if his appointor is not present, be counted in the quorum. Regulation 89 of Table A shall not apply. A meeting of the Directors at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the Directors. Regulations 94 to 98 of Table A shall not apply.

SPECIAL DIRECTORS

23. The Board may from time to time appoint any person to any office or employment having a designation or title including the word "Director" or attach to any existing office or employment with the Company such a designation or title and may at any time determine any such appointment or the use of any such designation or title. The inclusion of the word "Director" in the designation or title of any such office or employment with the Company shall not imply that the holder thereof is a Director of the Company nor shall such holder thereby be empowered in any respect to act as a Director of the Company or be deemed to be a Director for any of the purposes of these Articles.

NOTICES

24. Any notice or other document (including a share certificate) may be served on or delivered to any Member by the Company either personally or by sending it through the post in a prepaid letter addressed to such Member at his registered address as appearing in the Register of Members, or by delivering it to or leaving it at such registered address, addressed as aforesaid, or by any other means provided such other means have been authorised in writing by the Member concerned. In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed a sufficient service on or delivery to all the joint holders. Any notice or other document served or delivered in accordance with these Articles shall be deemed duly served or delivered notwithstanding that the Member is then dead or bankrupt or otherwise under any legal disability or incapacity and whether or not the Company had notice thereof. Any such notice or other document, if sent by first-class post, shall be deemed to have been served or delivered on the day after the day when the same was put in the post, and in proving such service or delivery it shall be sufficient to prove that the notice or document was properly addressed, stamped and put in the post.

25. Notice of every general meeting shall be given in any manner authorised by or under these Articles to all Members other than such as, under the provisions of these Articles or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, provided that any Member may in writing waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him. Regulations 112, 115 and 116 of Table A shall not apply.

INDEMNITY

26.

(a) The Company shall indemnify to the fullest extent permitted under and in accordance with the Act any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, trustee, employee or agent of or in any other capacity with another company, partnership, joint venture, trust or other enterprise, against expenses (including solicitors' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Company) or may (in the case of any action, suit or proceeding against an officer, trustee, employee or agent) be paid by the Company in advance of the final disposition of such action, suit or proceeding as authorised by a meeting of the Directors of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorised in this Article.

(c) The indemnification and other rights set forth in this Article 26 shall not be exclusive of any provisions with respect thereto in the Articles of Association or any other contract or agreement between the Company and any officer, director, employee or agent of the Company.

(d) Neither the amendment nor repeal of this Article 26, Section (a), (b) or (c), shall eliminate or reduce the effect of this Article 26, Sections (a), (b) and (c) in respect of any matter occurring prior to such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article 26, Section (a), (b) or (c), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted

(e) No director shall be personally liable to the Company or any Member for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director (a) shall be liable under Section 310 of the Act or any amendment thereto or successor provision thereto, or (b) shall be liable by reason that, in addition to any and all other requirements for liability, he:

(i) shall have breached his duty of loyalty to the Company or its Members;

(ii) shall not have acted in good faith or, in failing to act, shall not have acted in good faith,

(iii) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law; or

(iv) shall have derived an improper personal benefit.

(f) Regulation 118 in Table A shall not apply to the Company.

NAMES, ADDRESSES AND DESCRIPTIONS OF SUBSCRIBERS

Alistair F Burd
15 Denbigh Terrace
London
W11 2QJ

Solicitor

Colleen A Harney
119 Basildon Road
London
SE2 0RJ

Legal Assistant

DATED 28th August 1990

WITNESS to the above signatures:-

RICHARD J.R. BUNCE
50 Hartley Old Road
Purley
Surrey CR2 4HG

Trainee Solicitor

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Company No. 2538254

THE COMPANIES ACT 1985

UNLIMITED COMPANY WITH SHARES

Memorandum

and

Articles of Association

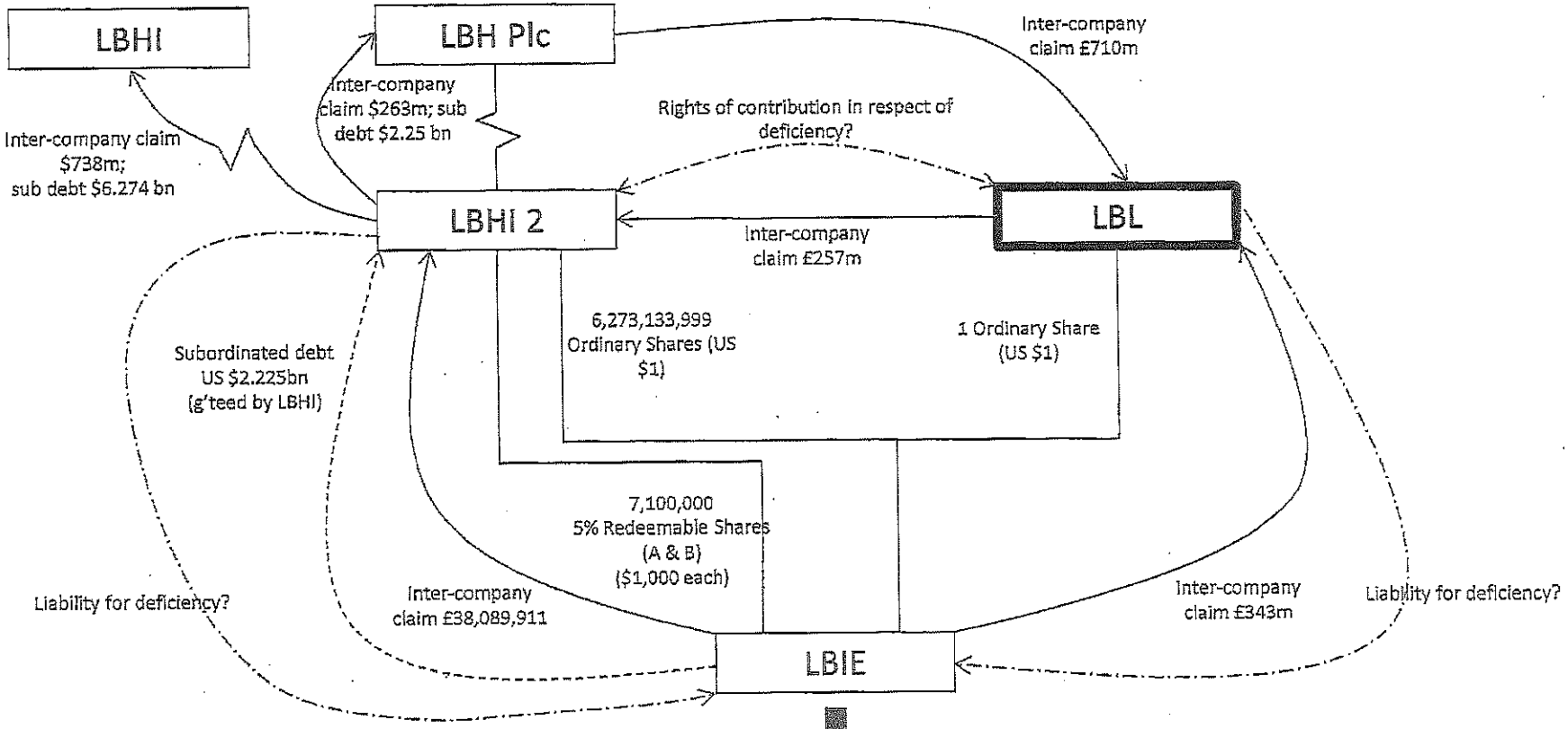
of

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

(amended up to and
including 29th February 2008)

Incorporated on the 10th September 1990

LBL, LBHI 2 and LBIE



Note: All claim values are subject to review and adjudication

Lehman Brothers International (Europe) – In Administration

Joint Administrators' eighth progress report for the period from 15 March 2012 to 14 September 2012

12 October 2012

pwc

Important notice

Creditors will note that this report provides data relating to certain estimated future costs, recoveries and creditor claim amounts. Please note that significant facts may severely impact any or all of these estimates and, in turn, the dividend prospects for Lehman Brothers International (Europe) creditors. In certain instances, the Administrators have not disclosed material matters to creditors in this report for reasons of commercial sensitivity, confidentiality and/or legal privilege.

Accordingly, material uncertainties continue to exist regarding the ultimate value realisable from assets, the timing of asset recoveries, future costs and the eventual level of admissible creditors' claims. These will all have a significant effect on the timing and quantum of any dividends.

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

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

While amounts included in this report are stated in sterling, a material but reduced proportion of the assets and liabilities continues to be denominated in currencies other than sterling.

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

Contents

Appendices

Section 1:
Purpose of the Administrators' report

This report has been prepared by the Joint Administrators of Lehman Brothers International (Europe) under Rule 2.47(3) of the Insolvency Rules 1986 (the "Insolvency Rules").

This is the eighth such formal update to unsecured creditors and it provides details of progress for the six-month period 15 March 2012 to 14 September 2012. The statutory receipts and payments accounts for the same period are attached at Appendix B.

Two important events (relating to LBI and LB Lux) occurred on 4 October 2012, subsequent to the period end. The narrative and financial update in this report both reflect these material developments.

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

The Administrators plan to host a one-hour webinar on Monday 12 November 2012, giving creditors an opportunity to hear a summary of recent developments and to participate in a Question and Answer session. Details of the webinar will be posted on the above website in the near future.

Objective of the Administration

The Administrators continue to pursue the objective of achieving a better result for LBIE's creditors as a whole than would be likely if LBIE were to have been wound up without first being in Administration.

The specific aims of the Administration are to:

- recover and/or realise all House assets, including cash, securities and in-the-money financial contracts, on a managed basis;
- admit unsecured creditors' claims and make distributions to creditors; and
- recover Client Assets and Client Money, assess the claims to such property and return all such property to its rightful owners on a systematic basis.

Creditors' Committee

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

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

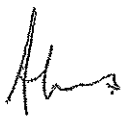
Details of the Committee members are listed in Section 10. During the period, one member resigned from the Committee.

Future report and updates

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

In the interim, we will provide *ad hoc* updates in the event of any material developments including the scheduled first dividend to unsecured creditors, through the website, or by other means, as appropriate.

Signed:



AV Lomas
Joint Administrator
Lehman Brothers International (Europe) –
in Administration

Section 2:
Executive summary

Significant developments

There have been many significant developments across a wide range of matters over the past six months, with the emphasis of our efforts being placed on a number of very material value items that will influence our first interim distribution plans for later this year. The most important of these were:

- LBIE's unsecured claims filing date was brought forward to 31 July 2012. In the period since the last report and prior to the filing date, 806 further Street claims (total: c.£6.7bn) and 85 further Affiliate claims (total: c.£35.1bn) were filed;
- amongst LBIE's Affiliates claims, LBF and LBEF filed Proofs of Debt which were substantially higher than previously expected by the Administrators (c.£11.2bn and c.£8.8bn respectively). LBIE considers both of these claims to be significantly overstated;
- LB Lux filed claims of c.£11.8bn, of which c.£11.5bn was characterised as an Administration expense claim, intended to rank in priority to general unsecured creditors. The Administrators worked urgently with the LB Lux liquidators with a view to resolving this matter on a consensual basis, and on 4 October 2012 a conditional withdrawal of all but c.£0.1bn of the claims was achieved (and that c.£0.1bn is to be an unsecured claim). As a precautionary measure, the Administrators have separately issued proceedings in the UK High Court to seek a determination on the Administration expense claim status, in the event that the settlement does not become unconditional in time to pay a first interim dividend as planned in November 2012;
- significant progress has been made in settlement discussions with LBI to resolve LBIE's House and Omnibus claims against LBI, resulting in the signing of non-binding heads of terms on 4 October 2012. Incorporated within the heads of terms is a binding reserving agreement which immediately caps the recoveries that each Affiliate can make in the other's estate, in the event that consensual settlement is never in fact completed in due course;
- although settlement discussions have also further advanced with LBF, formal agreement appears to remain some way off, albeit we will endeavour to agree with LBF a reduced claim number for reserving purposes. If agreed in time, this could materially assist the Administrators in maximising the first interim distribution to unsecured creditors. Separately, an agreement has been signed to govern the realisation of certain assets custodied at LBIE and claimed by LBF;
- our rejection of significant aspects of the c.£9.2bn LBB claim together with initiation of legal proceedings to adjudicate those aspects of the claim, resulted in LBB consensually reducing the continuing quantum of its claim to c.£0.6bn;
- c.£0.9bn further cash has been realised from House assets;
- a further 525 Claims Determination Deeds were issued to creditors with an aggregate value of c.£2.3bn (c.£6.5bn to date) and 377 claims (c.£1.3bn) were agreed in the period (732 claims totalling c.£3.9bn to date);
- the BTB proceedings were heard and judgment was handed down, which was found against LBIE. An appeal has been lodged and will be heard in December 2012. Should LBIE be successful on appeal and the BTB side letter be held to be valid, then LBIE will be entitled on certain 'back-to-back' trades to settle with LBF at the same value that it settles the Street trade, thereby being able to recover further indebtedness from LBF, unless previously settled consensually between the parties;
- preparation was made for the Extended Liens UK High Court application, which commenced on 27 September 2012. Judgment is now awaited. These proceedings could have a material impact on LBIE's own recoveries, as well as on recoveries by certain Affiliates whose assets are currently held by LBIE;
- c.1,100 lines (c.£0.3bn) of Client Assets were returned in the period (c.£13.5bn combined returns and collateral releases to date);
- our CME principles were published following the UK Supreme Court judgment and we began to issue CM Determinations in respect of specific counterparty positions;
- our reassessment of LBIE's Tracing obligations following the UK Supreme Court judgment and development of the Administrators' CME principles together with counterparties' initial reactions to these has enabled the Administrators to reduce the dollar and euro amounts being retained with potential Tracing 'taint'. Therefore, significant dollar and euro funds have been converted to sterling in the period. As a result of this further work, we are also now able to provide an illustrative range for the potential Client Money impact in our indicative financial outcome statement; and
- a Small Claims Settlement Offer was made to provide the option of a one-off payment to eligible creditors, in full and final settlement of their unsecured claims.

Financial update

The updated indicative financial outcome set out in this report includes illustrative claims and recoveries relating to Affiliates and to aspects of Client Assets and Client Money, which continue unresolved, but which will ultimately have a material impact on the outcome for creditors.

Subject to the very important caveats and assumptions set out in this report, the potential range of House recoveries that could eventually be available for distribution to unsecured creditors is estimated to be between c.£8.1bn and c.£14.2bn and the potential range of ordinary unsecured claims is estimated to be between c.£15.0bn and c.£54.6bn.

In the period since our last six-monthly report, the Low case scenario has deteriorated significantly due to:

i. the large and unanticipated increase in Affiliate claims, the majority of which LBIE would hope to be able to deny in due course;

ii. an increase in third party claims caused by the large number of Proofs of Debt filed immediately before the 31 July 2012 bar date; and

iii. the impact of Client Money.

The High case scenario shows a marginal overall increase in outcome for ordinary unsecured creditors. This reflects an updated estimate of the negotiated LBI settlement terms (increased recoveries and reduced Client Assets claimant shortfalls), offset in large part by an increase in certain other Affiliate creditors' claims.

Readers of this report should be aware that there remains upside and downside sensitivity to these outcome ranges, particularly arising from Affiliate relationships.

In the High case scenario, when assessed on a percentage recovery basis for ordinary unsecured creditors, the potential recovery has moved closer to par. Multiple, simplifying assumptions have been made in deriving this illustrative outcome and because of the significant resulting uncertainty around there eventually being such a high level of recovery, we intend to consider the relative ranking of interest on unsecured claims versus subordinated debt at a future point in time, when the range of potential outcomes for unsecured creditors has narrowed significantly.

As before, we caution readers that the Low case indicative outcome does not represent the prospective amount of a first interim dividend.

Critical Administration work streams

The three most critical work streams continue to be:

Affiliates – agreeing claims between LBIE and its Affiliates.

Creditors' claims agreement – agreeing non-Affiliate claims against LBIE.

Client Money – establishing CME, recovering Client Money funds and distributing these to claimants.

Against these priorities, the focus of the Administrators is to facilitate first interim distributions for unsecured creditors and Client Money claimants as soon as possible. In the case of unsecured creditors, we are targeting to do this on or around 30 November 2012, albeit no guarantee of this can be given until the settlement on the LB Lux Administration expense claim becomes unconditional. A first interim distribution to Client Money claimants is likely to take place in the first half of 2013.

Court update

Litigation in the UK and in certain overseas jurisdictions necessarily remains a central aspect of the Administration.

During the reporting period, the BTB matter has been heard at first instance and an appeal has been made by LBIE. Preparation has also been made for the Extended Liens hearing, which was begun in late September (see Appendix C) and concluded on 4 October 2012.

Currencies and investment policies

Volatility in the financial markets has not abated in the last six months and our investment policies continue to focus on keeping the estates' funds secure, utilising a combination of money market deposits and appropriate government securities.

As previously reported, following the UK Appeal Court Client Money ruling in 2010, the Administrators halted the conversion of House recoveries into sterling, mindful of the potential need to trace into House funds in order to recover Client Money in due course. Following the subsequent UK Supreme Court ruling, the Administrators' establishment and publication of a set of CME policies and the further review of monies recovered during the course of the Administration, we were able to conclude that we could convert further amounts of dollars and euros into sterling. This exercise was completed in early September and a notice to that effect was published on the website on 14 September 2012.

Major currency holdings that are still retained by LBIE and a summary of the Administrators' investment policies is set out at Appendix B.

Human resources

As at 14 September 2012, the LBIE staff and contractor headcount was 506 (503 at 14 March 2012).

Route to first interim distributions

As previously reported, we applied to the UK High Court on 2 May 2012 and it ordered that the last date for proving in respect of the first distribution to unsecured creditors be brought forward to 31 July 2012 (the bar date), and that the Administrators declare a first interim distribution to unsecured creditors within five months of the bar date.

Despite a number of earlier requests for creditors to file their claims ahead of time, there were many Proofs of Debt filed immediately prior to the bar date (712 over the course of July 2012 alone). Work is ongoing to review and engage with as many of these claimants as possible ahead of the cut-off for declaring the first dividend. Only claims admitted by 31 October 2012 will qualify for the first interim dividend.

There is currently no CM Bar Date. We are keeping this matter under review and if, at some future point in time, we consider that there will be material benefit to the eventual resolution of the Client Money issues by the introduction of a CM Bar Date, then an application will be made to the UK High Court. We will provide further guidance on this matter in due course.

Progress with the $1 billion+ issues

At Appendix D to this report, we set out a brief summary of the current status of the $1 billion+ issues on which we have previously reported to creditors. Given that the priorities of the Administrators have evolved significantly since their first publication, we do not intend to report on these issues in this way in future reports.

Section 3:
Financial update

Indicative outcome and basis of preparation

For the purposes of this report, in the table on page 9 we have provided indicative outcome ranges for the House Estate on a basis consistent with that included in our last report, save for the inclusion now of estimates for the impact of Client Money on the House Estate.

The indicative financial outcome has been prepared on a generally prudent basis. There continue to be three particularly significant issues that are likely to have a defining impact on the timing and value of the eventual recovery that unsecured creditors will make.

1. LBI

LBIE originally filed Omnibus (on behalf of clients) and House Customer claims against LBI in early 2009. These claims have been subject to contemporaneous litigation and settlement discussions. LBI formally filed its own claim against LBIE, in the sum of c.£7.7bn (including an amount in respect of Client Money) ahead of the 31 July 2012 bar date.

Heads of terms were signed on 4 October 2012, incorporating a binding claims reserve agreement which enables LBIE and LBI to reduce their overall reserve for claims from each other. Over the coming weeks, a detailed settlement agreement will be negotiated between the Administrators and the LBI Trustee.

In the indicative financial outcome Low case scenario, we have reflected improvements derived from the reserving agreement and in the High case scenario we have reflected an updated estimate of the impact of the outline terms of settlement that are set out in the heads of terms.

The negotiated settlement includes:

i. a very significant quantity of securities, the value of which remains at risk;

ii. a major LBI General Estate claim, the dividend on which is uncertain; and

iii. a major potential Client Money claim, the value of which is uncertain.

Accordingly, our estimation of the full financial impact of the settlement will remain subject to change until these various issues crystallise in due course. See Sections 6, 8 and 9 of this report for further information relating to LBI.

We wish to emphasise that the indicative financial outcome is based on the heads of terms, which are non-binding at this stage, other than with regard to the reserving impact.

2. Other Affiliates

Withdrawal of the majority of the LBB claim in the period and eventual resolution of the claims made by LBF, LBEF, LBB, LBI and LB Lux will have a material impact on the final outcome. Very large claims were made by each of these and significant progress has subsequently been made towards reducing or withdrawing some of these. Further details of the filed claims are included in Section 6.

3. Client Money

For the first time in our communication with creditors, we include an assessment of the potential impact that issues relating to pre-Administration CME might have on funds that will be available to unsecured creditors and on the quantum of unsecured claims against those funds. It is important to know that these estimates are subject to continuing uncertainties in determining CME and Tracing which will remain until there is further legal clarification or consensual resolution between the affected parties.

In the Low case scenario, we assume a significant taint on House cash recoveries, offset in part by a reduction in unsecured claims. In the High case scenario, we assume a net impact of immaterial value to the House.

Summary

The Low case scenario indicative outcome has materially worsened since our previous report, largely because of the effects of Client Money and the unexpectedly high claims that were lodged by certain Affiliates, ahead of the 31 July 2012 bar date. Until these claims are agreed at a reduced amount, fully withdrawn or successfully rejected, provision is made for them in full, in this scenario.

The High case outcome indicates a marginal improvement on the position reported six months ago reflecting the LBIE/LBI settlement terms, offset in part by increased claims from other Affiliates.

We repeat the warning given elsewhere in this report that creditors should not use this information alone as a basis of valuing their claim for recovery purposes, or to predict the quantum of the first interim distribution to unsecured creditors.

Indicative financial outcome

We set out in the table below a high level analysis showing our current view of the Low and High case financial outcome scenarios. This is an indicative financial outcome, subject to change, and should be read in conjunction with the narrative and assumptions set out in this report.

Page	House Estate	Notes	Low £bn	High £bn
42	Cash deposits and short-dated government bonds		11.0	11.0
	Net Client Money impact	1	(1.6)	–
	Projected future recoveries			
14	Third party debtors		0.2	1.6
17	Affiliate debtors		0.1	1.5
15	House depot securities		0.4	0.5
	Client Assets claimant debtors	2	–	0.8
	Other	3	–	0.2
	Total projected recoveries		10.1	15.6
	Priority claimants	4	(0.5)	(0.2)
	Future estimated costs	5	(1.5)	(1.2)
	Funds available for unsecured creditors		8.1	14.2
	Creditors			
22	Unsecured creditors		(17.4)	(12.4)
29	Client Assets claimant shortfalls	6	(2.8)	(0.5)
17	Affiliate creditors		(35.4)	(2.1)
	Net Client Money impact	1	1.0	–
	Total ordinary unsecured claims		(54.6)	(15.0)
	Subordinated debt	7	(1.7)	(1.7)
	Total creditors		(56.3)	(16.7)

Movements in current indicative financial outcome

The table below provides an overview of the movements in the indicative outcome from those shown in our last report.

Movements in indicative financial outcome March 2012 – September 2012	Low £bn	High £bn
Deficiency for ordinary unsecured claims at March 2012	(38.4)	(1.3)
Deficiency for ordinary unsecured claims at September 2012	(46.5)	(0.8)
(Worsening)/improvement in outcome	(8.1)	0.5
Represented by:		
Cash deposits and bonds	0.2	0.2
Net Client Money impact (not previously quantified)	(0.6)	–
Projected future recoveries	(0.3)	0.7*
Priority claimants & future estimated costs	0.3	(0.1)
Affiliate creditors	(6.6)	(1.0)
Unsecured creditors	(1.1)	–
Client Assets claimant shortfalls	–	0.7*
(Worsening)/improvement in outcome	(8.1)	0.5

* The majority of these improvements relate to the settlement terms negotiated with LBI.

Notes to Indicative financial outcome

1. Net Client Money impact

This has been included in our indicative financial outcome for the first time.

Low case scenario

The deduction of c.£1.6bn from House funds represents amounts that have been identified as potential Client Money currently held in the House account. These funds are held in the currency of receipt, pending clarification of their ultimate beneficial ownership. At the date of this report, these amounts were c.€1.2bn, c.$0.5bn and c.£0.3bn.

The Low case scenario also reflects the corresponding benefit of the transfer of certain claims out of the House Estate and into the Client Money estate, following the UK Supreme Court ruling. This benefit is offset to some degree by an assumed Client Money shortfall claim that will fall back into the House Estate. This shortfall is based on the following indicative financial outcome for the Client Money estate.

Client Money balance sheet Low case scenario	$bn	Potential impact on House Estate £bn
Recoveries		
Within LBIE control	1.1	–
LBHI guarantee	0.2	–
Tracing into House Estate	2.6	(1.6)
Potentially available for return	3.9	–
CME		
Entitlements following the UK High Court ruling	(1.6)	–
Potential increase in entitlements following the UK Supreme Court ruling	(3.5)	2.0*
Potential CME	(5.1)	–
Potential shortfall following UK Supreme Court ruling	(1.2)	(0.7)
Offset by:		
Shortfalls reserved in House Estate post UK High Court ruling	–	0.3
Client Money claims not previously reserved as House creditors	–	(0.6)*
Net impact on House creditors	–	1.0

* In general, post UK Supreme Court CME claim increases result in identical reduction to unsecured House claims. However for c.£0.6bn of claims, this is not the case.

High case scenario

The High case scenario has been compiled using assumptions for LBI and LBF that are consistent with those used elsewhere in this report. In addition, we have assumed CME is determined in accordance with LBIE's principles and that LBIE is successful in its efforts to recover under its claims into the LBB estate.

In this scenario, our estimates indicate that the Client Money pool would hold sufficient funds to allow claimants with a valid CME to be paid in full with an immaterial net impact on unsecured creditor claims amounts and on House funds available for distribution.

The Administrators will continue to review and update these estimates as progress is made in the resolution of pre-Administration Client Money, including the agreement of CM Determinations.

2. Client Assets claimant debtors

A certain level of House recoveries is expected to arise from liens over assets that would otherwise be returned to Client Assets claimants. These assets are principally held by LBI.

3. Other

Other future recoveries largely represent potential further refunds of tax paid in periods prior to commencement of the Administration. No provision has been included for any corporation or income tax payable in the Administration period, on the assumption that any liabilities arising from the Affiliate settlement agreements or post-Administration income will be sheltered by tax losses. The tax losses position is based on available LBIE records and is subject to agreement with HMRC.

4. Priority claimants

Priority claimants include the potential pension fund deficit liability, certain indemnities given post-Administration and other potential claims that might crystallise in certain circumstances and rank for payment in priority to ordinary unsecured creditors. The LB Lux claim is reflected in the Low case scenario only, where it is treated as an unsecured claim rather than as an expense, although following the recent conditional settlement agreement, our expectation is that this amount will be removed, save for a c.£0.1bn unsecured claim, in the near future.

5. Future estimated costs

The progress made over the past six-month period has enabled us to refine further our planning of future Administration activities and related effort, specifically with respect to resolution of issues relating to LBI, Client Money, unresolved debtors and creditors, and potential litigation. We have also considered plans for infrastructure, resource and property rationalisation, as we continue to drive simplification and eventually start to scale down the Administration.

The Low case scenario costs have reduced marginally since the last progress report (although this is not apparent in the indicative financial outcome statement after rounding), and the difference between the Low and High case outcomes has reduced, reflecting a more detailed forecast based on developments with regards to the major issues.

6. Client Assets claimant shortfalls

Pending the return of assets from LBI, there is the potential for material shortfalls on Client Assets returns. Reflecting this, many claimants have filed cautionary, unsecured claims for anticipated shortfalls, ahead of the 31 July 2012 bar date. We have used our own prudent assumptions to estimate the shortfalls that might arise in due course, for the purpose of the Low and High case scenario outcomes that are set out in this report to creditors.

7. Subordinated debt

This relates to amounts claimed by LBL (c.£0.4bn) and LB Holdings Intermediate 2 Limited (c.£1.3bn). The increase in subordinated debt reflects Proofs of Debt filed in the period.

The Administrators will consider the relative ranking of subordinated debt and interest on unsecured claims in due course, to the extent necessary, once the range of estimated outcomes has narrowed considerably.

Section 4:
First interim distributions

Introduction

We outlined in our seventh progress report the steps that the Administrators and counterparties would need to take ahead of a declaration of first interim distributions to both unsecured creditors and Client Money claimants.

Progress and developments in the past six months are set out below. Significant resource continues to be deployed in order to advance the process and to maximise the population of counterparties eligible to participate in due course.

Unsecured creditors

Timing for filing of Proof of Debt submissions

Following an application on 2 May 2012, the UK High Court granted the Administrators' requests to:

- bring forward the bar date for the first interim distribution to 31 July 2012;
- extend the period during which the first interim dividend must be declared from within two months of the bar date, to within five months of the bar date; and
- extend the period during which the Administrators are required to admit, reject or make provision for Proofs of Debt submitted by unsecured creditors from a period of seven days after the bar date, to three months after the bar date.

The bar date for the first interim distribution has now passed and a significant increase in the filing of Proofs of Debt occurred in July 2012.

The claims agreement process

The Administrators have much work remaining to agree and admit the unsecured claims lodged prior to the bar date. The submission of a compliant Proof of Debt by the bar date does not guarantee that the claim will be capable of determination and/or agreement prior to the first interim distribution. In particular, as previously reported, where creditors have rejected offers under the Consensual Approach, these are highly unlikely to be resolved before the first interim distribution.

Efforts are continuing to resolve certain large claims from Affiliates where the Administrators consider them to be materially overstated.

Assuming that the LB Lux Administration expense claim issue is resolved, from a logistical perspective, the last practical date for agreement of claims for inclusion in the first interim distribution will be 31 October 2012. Any claims admitted after this date will be likely to miss the first interim distribution and will need to wait for a 'catch up' dividend of the same rate but paid later. Further guidance on timing will be given in due course.

Declaration of a dividend

By 31 October 2012, for all compliant Proofs of Debt received by the bar date, the Administrators will either admit, reject or make an appropriate reserve for claims which remain under consideration. Reserves will also be made for other relevant contingencies, including any relating to Client Money issues, such as Tracing.

It is currently anticipated that the first interim dividend will be paid on, or around, 30 November 2012 to creditors with admitted claims.

Pursuant to the Insolvency Rules, all unsecured creditors who have proved their debts will receive a written notice of declaration of a dividend prior to the distribution, setting out certain matters including the dividend rate, the total amount of dividend being distributed to admitted claims and the level of reserves for unsettled claims.

Key issues impacting the level of the dividend

The level of the dividend has yet to be determined in order to allow as much time as possible to progress claims. This particularly reflects the continuing uncertainties regarding:

- the success of our efforts to reduce the remaining material inbound Affiliate claims; and
- the level of reserves required for other claims not yet agreed.

Client Money claimants

The Administrators also continue to prepare for the payment of a first interim dividend to Client Money claimants, albeit this is dependent upon resolving CME. Efforts continue to recover Client Money from certain third parties, which would enhance the recovery to Client Money claimants.

Further guidance on the process for the filing and agreement of Client Money claims will be provided in due course, and the Administrators hope to be able to make a first interim distribution of Client Money in the first half of 2013.

Section 5:
House Estate

Highlights

- Settlement of a further 109 debtor groups (c.£0.1bn collected), including six in the 'top 150'.
- Realised c.£0.3bn, which includes c.£0.2bn from the sale of House securities.

House third party debtors

Debtors (excluding Affiliates) within the House Estate comprise the following:

	Cpty No.	Recoveries to date £bn	Indicative future recoveries Low £bn	Indicative future recoveries High £bn
Street counterparties	1,691	5.8	0.2	1.5
Exchanges	37	1.3	–	0.1
Client Assets claimants	110	0.1	–	–
Total	1,838	7.2*	0.2	1.6

* In the period, there were adverse exchange rate movements of c.£0.2bn on balances previously recovered in foreign currencies (c.£0.1bn Street counterparties; c.£0.1bn Exchanges).

Street debtors are discussed below.

Receivables from Exchanges principally relate to funds receivable from a Taiwanese counterparty (see overleaf).

Receivables from Client Assets claimants represent amounts due to LBIE in excess of those secured by Client Assets liens. Recoveries under liens are included in the indicative financial outcome with Client Assets claimant debtors.

Street counterparties

Focus

The primary focus in relation to Street debtors continues to be the resolution of outstanding issues in relation to the 60 remaining 'top 150' groups, targeting those counterparties where it is believed there is significant additional cash to collect.

In addition to prioritising debtors based on value, the Administrators have progressed other Street counterparties, who have submitted Proofs of Debt.

Indicative future recoveries from Street counterparties are summarised as follows:

	Cpty No.	Group No.	Mid mkt LBIE value £bn	Cash rec'd £bn	Required adjustments Low £bn	Required adjustments High £bn	Indicative future recoveries Low £bn	Indicative future recoveries High £bn
Top 150 groups:								
Completed	274	90	5.0	(3.8)	(1.2)	(1.2)	–	–
Not completed	224	60	4.6	(1.6)	(2.8)	(1.5)	0.2	1.5
Other Street debtors:								
Completed	518	377	0.3	(0.3)	–	–	–	–
Not completed	675	581	0.3	(0.1)	(0.2)	(0.2)	–	–
Total	1,691	1,108	10.2	(5.8)	(4.2)	(2.9)	0.2	1.5

The indicative future recoveries in the table above provide LBIE's current view of the mid-market value as at the termination date, where terminated, or an estimate of the value in respect of any remaining live positions.

Required adjustments represent revisions for bid/offer spreads, credit charges, pricing variances, bad debt provisions and other commercial differences arising during negotiations.

Progress

As at 14 September 2012, c.£5.8bn of cash and other collateral had been recovered from Street debtors. Of this amount, c.£4.1bn has been recovered from settled counterparties and c.£1.7bn had been received on-account where final settlement negotiations or litigation is ongoing.

A total of c.£0.1bn of cash was recovered during the period, offset by adverse exchange rate movements of c.£0.1bn on balances previously recovered in foreign currencies. The amounts recovered in local currency are re-translated to sterling every reporting period.

Settlements were reached in the period with six 'top 150' debtor groups and further settlements were reached with 103 other groups.

Litigation

1. Non-mutual set-off

As stated in the last progress report, LBIE was preparing to commence legal proceedings against counterparties in relation to disputes over non-mutual set-off.

No proceedings have yet commenced, as the Administrators have continued over the period to seek consensual resolution of the issue where it has arisen. To date, LBIE has achieved a number of such settlements, in part because of the strength of its legal arguments, and in part assisted by the seemingly robust secondary market in LBIE unsecured

claims, which has meant counterparties have become more willing to consider 'unwinding' non-mutual set-off and then trading the resulting unsecured claim(s). The Administrators continue to pursue this issue, but it is unclear whether litigation will be required to resolve any remaining disputes.

2. ISDA Section 2(a)(iii)

Following the UK Appeal Court judgment regarding payment obligations on certain live derivative positions, during the period the respondents applied for leave to appeal to the UK Supreme Court, with a decision still pending. In the period, LBIE agreed a commercial settlement with one of the respondents. The Administrators are seeking commercial solutions with other respondents where possible.

3. Korea and Taiwan

LBIE continues to face a number of legal challenges in Korea and Taiwan from counterparties who are effectively seeking to 'pierce the corporate veil' in an attempt to recover from LBIE their losses incurred in dealing with other Affiliates. Whilst the Administrators continue to pursue and defend litigation in these territories, they are also seeking consensual settlements where possible. Across Korea and Taiwan, some c.£0.6bn of assets are at risk, comprising:

- Street receivables – c.£0.2bn (assumed £nil recoveries on a Low case outcome, c.£0.2bn in a High case);
- Exchange receivables – c.£0.1bn (assumed £nil recoveries on a Low case outcome, c.£0.1bn in a High case); and
- House assets – c.£0.3bn (assumed £nil recoveries on a Low case outcome, c.£0.1bn in a High case).

4. AG Financial Products Inc

In the six months ended 14 April 2012, the Administrators commenced litigation against AG Financial Products Inc, relating to an OTC derivatives valuation dispute (amount claimed: c.$1.4bn/c.£0.9bn). Preparations for substantive hearings in late 2012 and 2013 have continued in the last six-month period. On a Low case outcome, no recovery is assumed, in a High case c.£0.9bn.

5. Other litigation

A small number of other, less material disputes are currently being litigated by the Administrators. In addition, for the majority of the 'top 150' debtor groups that have not yet been settled, significant and complex issues remain to be addressed. For a number of these, preparation to commence legal proceedings is underway. The Administrators are mindful that commencing litigation in these cases will result in extended timescales and costs, and therefore this will only occur once all other reasonable routes to settlement have been exhausted.

House securities

Focus

LBIE's primary focus in respect of House securities continues to be the risk management and orderly realisation of assets available for sale.

In addition, LBIE continues to pursue the recovery of assets held by third party and Affiliate custodians.

Progress

As at 14 September 2012, House securities can be categorised as follows:

	Note	Mar 12 £bn	Sep 12 £bn	Indicative financial outcome Low £bn	Indicative financial outcome High £bn
Available for sale	1	0.7	0.5	0.4	0.4
Held subject to client disputes	2	0.2	0.1	–	–
Held subject to Affiliate disputes	2	1.0	1.2	–	–
Residual assets held at Citibank	3	0.2	0.2	–	0.1
Total claims		2.1	2.0	0.4	0.5

1. c.£0.2bn was realised from the sale or redemption of 'available for sale' securities.
2. Assets held subject to client or Affiliate disputes are securities to which a client or an Affiliate has an ownership claim, notwithstanding the fact that they were held by LBIE in a 'House' account prior to insolvency. Movements in the period reflect returns to clients and Affiliates, pricing changes and re-classifications of assets between 'available for sale' and held subject to client/ Affiliate disputes.
3. Principally relates to the dispute in Taiwan referred to alongside.

The indicative financial outcome estimates for available for sale and assets held in Taiwan reflect adjustments for illiquid and potentially irrecoverable assets. The assumption underlying the estimates for securities held subject to client/ Affiliate disputes is that the majority will be returned to the third parties.

Section 6: Affiliates

Highlights

- Substantially increased engagement with LBI in settlement discussions, whilst meeting pre-trial discovery obligations in relation to LBIE's objections to the LBI Determination. Non-binding heads of terms and binding agreement on reserving reached with LBI on 4 October 2012.
- Continued progress with LBF to settle its overall relationship resulting in signing of an interim management agreement to cover c.£0.6bn of assets custodied by LBIE. LBF also filed a c.£11.2bn claim ahead of the July 2012 bar date.
- The Luxembourg entities filed claims in July 2012 totalling c.£20.6bn, including c.£11.5bn asserted to be an Administration expense claim. A conditional withdrawal of this Administration expense claim was secured on 4 October 2012.
- Additional resource deployed on a twin-track basis to address the unexpected Affiliate claims by:
  - initiating discussions to explore the scope for consensual reduction of claims; and
  - assessing and implementing expedited adjudication of claims through the UK High Court.
- Partial settlement achieved with LBB to withdraw c.£8.6bn from its inbound claim of c.£9.2bn.
- The BTB and Extended Liens litigation progressed, with judgments expected within the next six months.
- c.£0.1bn of first interim dividends received from LBHI and its US debtor affiliates.

Focus

LBIE continues to focus on resolution of the material Affiliate relationships, including the return of assets and/or the agreement of inbound or outbound claims.

Priority areas are:

- progressing LBI settlement discussions to a conclusion, whilst maintaining the US litigation option;
- settlement negotiations with the Luxembourg liquidators to agree the withdrawal of the LBEF and LB Lux unsecured and Administration expense claims;
- discussions with LBF to reach a consensual settlement, whilst progressing the BTB legal proceedings in the event settlement cannot be achieved (whereas the Extended Liens matter will proceed regardless of settlement with LBF) and to secure a material reduction in LBF's newly-filed claim;
- agreeing the asset entitlements of Affiliates, in anticipation of returning assets and calculating unsecured shortfall claims thereon; and
- engaging with as many other Affiliate claimants as possible to agree their claims and thereby maximise the qualifying population that is able to participate in the first interim distribution to unsecured creditors.

Progress

A number of significant Affiliate inbound claims were filed against LBIE during July 2012, immediately prior to the bar date for the first interim distribution.

LBIE was a key operating company within the Lehman group and certain Affiliates would appear to be asserting reliance upon that role in an effort to hold LBIE accountable for the obligations of others. With the LBIE bar date looming, those Affiliates have filed exaggerated claims against LBIE.

Several of these claims filed would appear to be misguided, or speculative and, in one case, to have only tenuous links to LBIE.

In certain instances, LBIE, under contract, provided limited services to these and other Affiliates. Certain of these Affiliates' insolvency officeholders have filed antecedent transaction claims and/or 'corporate responsibility' claims against LBIE. The Administrators believe these claims are opportunistic and lacking in credibility.

LBIE continues to review how it can manage these claims in the most effective way, in order to minimise the disruption that they might cause to the planned first distribution to unsecured creditors.

In the event that adequate progress cannot be made ahead of 31 October 2012, then the first interim distribution to unsecured creditors could be dramatically reduced or delayed to allow sufficient time for these claims to be resolved.

The tables overleaf illustrate LBIE's current view of the range of outcomes from its Affiliate relationships as debtors and creditors as at 14 September 2012.

Debtors

Affiliate debtors comprise settled and unresolved relationships, with an indicative range of financial recovery outcomes (i.e. eventual recoveries from claims against other Affiliate estates) as summarised below.

Outbound claims	Mar 12 Low £bn	Sep 12 Low £bn	Sep 12 High £bn
Unresolved relationships (note 1)	**0.8**	**1.9**	**4.9**
Settled relationships (note 2)			
LBHI (note 3)	0.7	0.7	0.7
LBHK (note 4)	0.6	0.6	0.6
Total claims	2.1	3.2	6.2
Estimated recoveries	0.2	0.1	1.5

1. Relationships with those Affiliates where settlement discussions are at various stages of progress.
2. Relationships with those Affiliates where settlement terms have been agreed, finalised and ratified by the relevant parties. Agreed claims reflect the terms of the settlements reached.
3. For the purposes of the table above, LBHI includes its US debtor affiliates which were also formerly in Chapter 11, except for Merit LLC.
4. LBHK includes seven entities set out in Appendix A.

Debtors – unresolved relationships

The unresolved relationship claim amounts have been revised to reflect LBIE's view of these amounts, taking into account prospective heads of terms and settlement agreements as they are currently contemplated. Accordingly, the spread of claims in the period has narrowed as compared to the prior period of c.£0.8bn and c.£11.6bn. LBI is shown as an unresolved relationship in respect of LBIE's House claim.

Debtors – settled relationships

LBHI and its US debtor affiliates formerly in Chapter 11

On 17 April 2012, LBHI and certain of its US debtor affiliates paid their first dividend to unsecured creditors. LBIE received c.£0.1bn.

Based on information previously filed by the entities, LBIE estimates that it may realise a further c.£0.1bn from these sources in due course. Further smaller interim dividends were paid on 1 October 2012, albeit it is expected to take some considerable time before all realisations have been made.

LBHK

As previously reported, the return of assets from LBHK to LBIE (c.£0.6bn) remains contingent on the outcome of the UK High Court Extended Liens application and LBHK's own local proceedings regarding the same matter.

Creditors

Affiliate creditors comprise settled and unresolved relationships, with an indicative range of financial outcomes (i.e. admitted claims) as summarised below.

Inbound claims (note 1)	Mar 12 Low £bn	Sep 12 Low £bn	Sep 12 High £bn
Unresolved relationships (note 2)			
LB Lux	(7.9)	(11.8)	(0.1)
LBEF	–	(8.8)	(0.1)
LBF (note 3)	(2.0)	(11.2)	–
LBB (note 4)	(8.6)	(0.6)	–
LBJ	(0.3)	(0.3)	(0.3)
Others	(0.8)	(1.5)	(0.9)
Settled relationships (note 5)			
LBI (note 6)	(8.8)	–	–
LBHI (note 7)	(0.1)	(0.1)	(0.1)
LBHK (note 8)	(0.2)	(1.0)	(0.5)
LBS	(0.1)	(0.1)	(0.1)
Total claims	(28.8)	(35.4)	(2.1)

1. Inbound claim balances in currencies other than sterling are translated at exchange rates as at 15 September 2008.
2. Relationships with those Affiliates where settlement discussions are at various stages of progress.
3. The March 2012 Low case estimate of c.£2.0bn was LBIE's own estimate of a claim for LBF. The September 2012 Low case estimate is the claim value as filed.
4. The LBB September 2012 Low case estimate reflects the benefits achieved in withdrawal of the majority of its claim. c.£0.6bn represents its Client Money related counterclaim, which remains unresolved.
5. Relationships with those Affiliates where settlement terms have been agreed, finalised and ratified by the relevant parties. Agreed claims reflect the terms of the settlements reached.
6. The LBI September Low case estimate reflects the benefits achieved in the binding reserving agreement on 4 October 2012.
7. For the purposes of the table above, LBHI includes its US debtor affiliates which were also formerly in Chapter 11, except for Merit LLC.
8. LBHK includes seven entities set out in Appendix A.

Creditors – unresolved relationships

Luxembourg entities

LB Lux

Creditors may recall that the significance of LBIE's outbound litigation against LB Lux in respect of the dispute over the OSLA changed following the settlement concluded with LBHI last year. Since then, we have engaged constructively with LB Lux and LBHI.

As a necessary step in this process, we have also worked with LB Lux to agree the terms upon which our litigation may be concluded. In the interim, the LB Lux counterclaim remains in place. The Proof of Debt filed by LB Lux in July 2012 in response to the imminent bar date includes the counterclaim plus an additional claim of c.£8.1bn. This new claim relates to the alleged post-Administration failure of LBIE to continue with the pre-Administration provision of services to LB Lux. c.£11.5bn of the claims is asserted by LB Lux to be an expense claim in the Administration, but with no meaningful explanation provided to date. If valid, this claim would need to be paid in priority to unsecured creditor claims.

LBIE considers this claim would be a provable debt rather than an Administration expense claim, if it was valid at all. Notwithstanding the otherwise good progress made towards resolution of the many matters outstanding in the LB Lux estate, our energies have more recently been diverted to achieving a consensual withdrawal of these claims against LBIE before the first interim distribution. The parties agreed a form of conditional settlement (with LB Lux substantially withdrawing its claims) that requires approval of LB Lux's creditors and its supervisory court before it becomes unconditional and effective. Notices to this effect have been given and the Administrators are monitoring developments closely. If the planned timeline is met and no objections are made, the settlement should become effective on or around 31 October 2012. Regrettably, LB Lux states that it is unable to withdraw unilaterally its Administration expense claim ahead of the settlement becoming unconditional. Accordingly, the Administrators have issued proceedings in the UK High Court to challenge the claim, filed as an Administration expense claim, as a precaution in the event that the settlement is delayed.

As part of the settlement, LBIE has agreed to admit LB Lux as an unsecured creditor for c.£61m (subject to preserving the right of LB Lux to claim for Trust Property). Under the terms of the LBHI settlement, LBIE could recover in the region of c.£0.2bn indirectly from LB Lux in due course.

The resolution of the LB Lux Administration expense claim above is a critical step to being able to pay a first interim distribution within the proposed timetable.

LBEF

Prior to the final date for proving, LBEF was considered to be a minor Affiliate with minimal interaction with LBIE, but without any meaningful notice, LBEF filed a Proof of Debt of c.£8.8bn in July 2012. This claim principally represents the full nominal value of unfunded warrants issued by LBEF that were outstanding at the date of its insolvency. A smaller balance of c.£1.1bn relates to a purported derivatives exposure.

The information available to the LBEF officeholders was apparently limited and therefore their approach was to file a protective claim and then seek to engage with LBIE to understand better the relationship and the quantum of claim, if any. The Administrators are assisting LBEF in understanding its position, with a view to securing an early withdrawal of the claim.

LBIE understands that the claim mainly relates to a series of equity warrants that were outstanding at the date of the LBIE Administration. Approximately half of these warrants were arranged through LBIE and the balance through LBI. LBEF has claimed against LBIE in respect of all of the warrants, regardless of the arranger.

At this stage, given the overlap of officeholders for both Luxembourg entities, the greater significance of the LB Lux Administration expense claim and the potentially adverse impact that claim could have on the planned distribution, we have requested that the Luxembourg liquidators focus on resolution of the LB Lux claims rather than the LBEF claim.

Once the LB Lux claims are resolved, consensually or otherwise, the Administrators will seek a consensual settlement that sees the return or cancellation of the LBEF warrants within LBIE's control, leading to removal of the associated LBEF claim, and the immediate withdrawal of the LBI-related claim component. LBEF has given provisional support to this way forward. A small residual balance of less than c.£0.1bn may remain to be considered as a claim against LBIE in due course. In the event that it becomes clear that this course of action looks unlikely to succeed, then formal steps to reject the vast majority of the claim would be commenced.

Accordingly, it is highly likely that this claim will be unresolved at the time of calculation of the first interim distribution and, as such, appropriate provision will be made for it.

LBF

LBIE's relationship with LBF is amongst the most complex of any of LBIE's counterparties. During the period, LBIE continued with its dual strategy of progressing its claims by litigation of the BTB and Extended Liens matters, while increasing the dialogue with LBF to develop a framework for an overall settlement.

After a series of interactions, it seemed likely that we would be able to develop a workable approach to an overall settlement. There have been a number of challenges faced subsequently in finalising the agreement that has been reached in principle. The due diligence needed to be undertaken by LBF has been comprehensive given the high number and complexity of the transactions requiring investigation, and this activity is presently nearing finalisation. The approval process and consents needed from LBF's creditors have also required careful planning. Progress has not been as rapid as either side would have wished, but the parties continue to work through the necessary steps to finalise an agreement. As a positive step in this process, an interim management agreement was signed in September 2012 to enable the assets custodied by LBIE to be realised pending distribution between the parties.

When it became clear that a settlement was unlikely to be reached ahead of LBIE's final date for proving claims, LBF began discussing the components of a claim that it would need to file as a protective measure. LBIE's view was that the claim should be limited to the open issues of its financing and other trading relationships, but LBF decided that the scope for the claim should be widened to include heads of claim connected with an alleged breach of corporate duties (in part under formal contracts for provision of services and in part for other more general heads of claim). LBF filed a Proof of Debt of c.£11.2bn in July 2012, which LBIE contends includes a number of duplicated items and some heads of claim that are not provable at this time or at all.

LBIE has reprioritised its focus and engagement with LBF to ensure that appropriate priority is given to reducing the value of the filed claim or agreeing a significantly lower amount, whilst also seeking to progress the settlement.

LBB

After lengthy negotiations with LBB, LBIE has entered into a partial settlement agreement pursuant to which a number of very significant claims between the parties have been withdrawn. This has enabled the LBB inbound claim as submitted of c.£9.2bn to be reduced by c.£8.6bn.

The settlement agreement does not affect the LBIE Client Money outbound claim or the LBB counterclaim of c.£0.6bn (discussed in Section 9), which are still subject to German court proceedings.

LBIE will continue to work with LBB to agree the final net unsecured balance between them, which LBIE anticipates will be in its favour.

LBJ

Following extensive negotiations, progress has been made towards agreement in principle as to the terms and related indemnity required to enable the return of the final tranche of Japanese stock-lending assets (c.£0.1bn). However the lack of waivers from two entities which have asserted earlier claims against LBJ is an obstacle to concluding the agreement.

Creditors – settled relationships

LBI

Settlement discussions

LBI interfaces with LBIE in the House Estate, through the LBIE House Customer claim and the LBI inbound claim, and in the Trust Estate, through the LBIE Omnibus Customer claim and the LBI inbound Client Money claim.

LBIE's approach in its dealings with LBI is coordinated across these different heads of claim, with the individual components being managed and controlled by separate work streams in the Administration.

Considerable progress has been made in the period in terms of continuing to prepare for the planned litigation for LBIE's outbound House and Omnibus Customer claims and in terms of leveraging the opportunity to explore and develop settlement discussions for both of these as well as for the inbound claims from LBI. To this end, on 4 October 2012, the parties were able to take a critical first step in agreeing non-binding heads of terms covering how a settlement might be effected during the next year and how the key value items in the proposed settlement would impact the various interested parties.

Additionally, recognising each estate's important shared ambition to make first interim distributions, the parties have agreed, on a binding basis, to limit the maximum recoveries that each will make in the other's estate hereafter, in the event that a consensual settlement is not eventually completed and the respective claims need to be resolved through litigation. This measure will enhance distributions to other creditors in both estates through a reduction in the quantum of required reserves otherwise needed if the

parties had continued to assert claims to their full filed value without set-off or net equity adjustments.

A summary of the key LBIE House-related items is set out below:

Non-binding heads of terms

- LBIE's House claims stipulated on the basis of a $0.5bn Customer Property claim and a $4.0bn General Estate claim; and
- The LBIE House Estate is also to benefit indirectly from an assignment of LBI's Client Money claim and from retention of certain assets (subject to Extended Liens) custodied at LBIE (value: c.£0.1bn).

Binding reserving agreement

- $2.5bn recovery reserve agreed on LBIE House Customer claim against LBI;
- £1 reserve agreed on the c.£7.7bn filed LBI inbound claim against LBIE; and
- $1bn recovery reserve agreed on LBI Client Money claim against LBIE.

LBIE's priority is to work up the heads of terms into definitive settlement documentation and then to work with LBI and other interested parties to procure its approval through the relevant courts.

Litigation

As previously reported, LBIE had a document discovery deadline of 16 May 2012 in respect of its US litigation with LBI. During the period, the Administrators substantially completed document discovery in line with the scheduling order, producing significant volumes of documentation and relevant data.

The same delivery obligations applied to LBI and, as a result, we received many new documents from LBI throughout the period. We have made significant progress with an initial review of these documents and data. Work has also continued on preparing for depositions, consulting with expert witnesses and other litigation-related activity.

Following the signing of heads of terms, formal litigation activity has been stayed, albeit certain of our own preparations continue, in order that there is no unnecessary further delay prosecuting the claims in the US Bankruptcy Court, should the need arise in due course.

Over the past six months, the parties have been before the presiding judge in the US Bankruptcy Court and in private conferences, updating him in respect of the above litigation and associated settlement discussions. We expect this to continue in the months ahead.

Inbound claim

On 31 July 2012 we received a Proof of Debt from LBI in relation to its inbound claim of c.£7.7bn. LBI reserved its right to file claims for additional sums in due course.

This claim superseded the draft provisional claim that LBI had filed in June 2011, although there were many similarities in the basis of its preparation.

Under the binding agreement reached on reserving, LBI has agreed that this claim be admitted by LBIE for a nominal £1 in order to reduce the reserve that would otherwise be needed against the filed claim.

Omnibus Customer claim

The Omnibus Customer claim is being pursued primarily for the benefit of Client Assets claimants and is discussed in Section 8.

LBHK

LBIE has continued its work to resolve certain complex post-settlement adjustments required to finalise the inbound claim of LBHK. The submission of further claims by LBHK in July 2012 has enabled detailed work by LBIE and a revision to the indicative financial outcome previously reported, reflecting increased claims for asset shortfalls on custodied positions when assessed on a more prudent basis. This work is ongoing and a range of potential claim outcomes remains.

LBS

LBIE is still awaiting final confirmation from the court of the Netherlands Antilles (where LBS is domiciled) that there are no further inbound claims to be filed against LBIE. A court hearing is expected in November 2012.

UK Affiliates

All the major UK Affiliates expected to file claims against LBIE have done so and significant progress has been made in agreeing the balances.

A settlement agreement was concluded in the period with LB UK RE, which enabled the return of c.£0.2bn of custodied funds to it. A further settlement agreement will allow the return of a further c.£0.4bn of custodied assets to LBEL in the near future.

Other Affiliates

A settlement agreement was concluded in the period with LCI, which enabled the return of c.£0.1bn of custodied funds to it.

LBIE continued its engagement with other Affiliates, with the objective of encouraging submission of Proofs of Debt in advance of the bar date and maximising the number of claims agreed.

Excluding the Affiliates specifically referred to above, a total of 75 Affiliates have formally lodged claims in the Affiliate Claims Portal and, to date, the Administrators have admitted four of these claims with a total value of c.£12m.

Prudent, specific reserves for claims received have been included in the High and Low indicative financial outcome cases.

Litigation

The current status of legal proceedings is set out below.

BTB

The UK High Court handed down its judgment on 27 April 2012. The judgment was not in LBIE's favour and is now subject to appeal by LBIE.

Should LBIE be successful on appeal and the BTB side letter be held to be valid, then LBIE will be entitled on certain 'back-to-back' trades to settle with LBF at the same value that it settles the trade with its Street counterparty.

The appeal is due to be heard in December 2012, unless the proposed settlement agreement is reached with the respondent, LBF, in the meantime.

Extended Liens

LBIE continued to prepare for the substantive hearing of this matter by the UK High Court in late September 2012.

Custodied assets have been returned in the period to Affiliates that satisfied the necessary release conditions set by the UK High Court in 2011, where no relevant agreement existed. Other Affiliates are at various stages of this process.

These proceedings could have a material impact on LBIE's recoveries of its assets held by Affiliates, as well as on LBIE's ability to appropriate assets in LBIE's control to settle Affiliates' indebtedness to LBIE.

Section 7:
Unsecured creditors

Highlights

- On 2 May 2012, the UK High Court ordered that the bar date for the submission of Proofs of Debt be brought forward to 31 July 2012. At that date, Proofs of Debt totalling c.£17.9bn had been received from 3,178 non-Affiliate unsecured claimants.
- The Administrators have made significant progress in the period to value and agree creditors' claims. During the six months:
  - claims totalling c.£1.3bn were agreed with 377 counterparties;
  - LBIE Determinations with a total value of c.£2.3bn were provided to 525 counterparties; and
  - further LBIE Determinations in respect of 770 counterparties (totalling c.£1.8bn) were finalised and have been, or are in the process of being, offered to claimants.
- Cumulatively, as at 14 September 2012, LBIE Determinations totalling c.£6.5bn have been prepared and offered to 1,539 counterparties, with 732 claims totalling c.£3.9bn having been agreed.
- In May 2012, the Administrators launched the Small Claims Settlement Offer such that creditors have the opportunity to receive a one-off payment in full and final settlement of their unsecured claims against LBIE. There has been significant interest in this initiative, with creditors actively engaging with the Administrators to formalise acceptance of this offer ahead of the 31 October 2012 deadline.
- In the period, the Administrators commenced the process to agree bilaterally certain creditors' claims. Where creditors formally rejected the offer made under the Consensual Approach, the Administrators have started to communicate with creditors, outlining the additional evidentiary documentation required in support of their claims.

Focus

During the six months, the main areas of focus have been:

- **Street Creditors** – agreeing and admitting claims under the Consensual Approach and commencing bilateral negotiations where offers were rejected by creditors;
- **Client Assets claimants** – making further substantial progress in agreeing the unsecured element of claims from Client Assets claimants, whilst isolating uncertainties arising from potential claims arising from Client Assets shortfalls and trades which were pending in respect of assets held at LBI at the time of LBIE's insolvency;
- **Other third party creditors** – agreeing non-trading claims and those from LBIE's former branch employees; and
- **Small Claims Settlement Offer** – launching an initiative under which certain creditors (whose agreed claims do not exceed £150,000, or who elect to limit their agreed claim to that amount) will be offered the opportunity to receive a one-off payment of 90% of their agreed claim in full and final settlement.

As at 14 September 2012, the estimated value of LBIE's liabilities was as follows. This excludes claims from Affiliates or those arising in respect of Client Assets shortfalls:

		Indicative financial outcome	
Unsecured claimants	Cpty No.	Low £bn	High £bn
Where Proofs of Debt have been filed:			
Street Creditors	2,244	(11.2)	(8.3)
Client Assets claimants* – with LBI pending trades	169	(3.1)	(2.3)
Client Assets claimants* – no LBI pending trades	335	(2.4)	(1.5)
Other third party creditors	430	(0.2)	(0.1)
Where Proofs of Debt have not been filed:			
Street Creditors	1,036	(0.3)	(0.1)
Client Assets claimants* – with LBI pending trades	12	–	–
Client Assets claimants* – no LBI pending trades	269	–	–
Other third party creditors	105	(0.2)	(0.1)
Total	4,600	(17.4)	(12.4)

* This excludes additional contingent unsecured claims that might arise from any Client Assets shortfalls. However, in some cases the Low outcome does include elements of such claims, to the extent that creditors have not separated these from the rest of their claim.

The above summary does not take account of the potential impact of the UK Supreme Court judgment on the classification of LBIE's liabilities as either unsecured or subject to Client Money protection.

Where the Proofs of Debt have been filed:

Low outcome:

- for Street Creditors, Client Assets claimants with no LBI pending trades and other third party creditors – the aggregate of the higher of the values of (a) filed Proofs of Debt and (b) the Consensual Approach, except where claims have been agreed with creditors at lower levels; and
- for Client Assets claimants with LBI pending trades – the aggregate of the value of all filed Proofs of Debt.

High outcome: prepared on the same basis as the Low scenario, adjusted for certain elements of creditors' claims which are, at this stage, considered to be unsubstantiated or will likely be agreed at lower levels.

Where no Proofs of Debt have been filed: the Low outcome represents the Consensual Approach value; the High outcome includes a modest provision to allow for a proportion of creditors who may yet lodge claims against LBIE.

Progress

Proofs of Debt

Under UK insolvency legislation, creditors wishing to claim against an insolvent estate must submit a Proof of Debt, which is statutorily compliant. Throughout the course of the Administration, there have been a number of campaigns designed to encourage counterparties to submit their Proofs of Debt.

As noted above, on 2 May 2012 the Administrators applied to the UK High Court to bring forward the date by which creditors must prove their claims against LBIE in respect of the first interim distribution from 31 December 2012 to 31 July 2012 (the bar date).

As a consequence, in July 2012 alone, 712 creditors submitted claims with a value of c.£5.3bn against LBIE. As at 31 July 2012, the number and value of known submitted claims (excluding those from Affiliates) was:

Unsecured claimants	Cpty No.	Claims £bn
Street Creditors	2,244	(12.2)
Client Assets claimants*	504	(5.5)
Other third party creditors	430	(0.2)
Total	3,178	(17.9)

Consistent with previous reports, the above summary is after an initial review of the claims received by LBIE and includes c.£0.2bn of apparently duplicate Proofs of Debt, which are considered redundant.

* A number of creditors have incorporated (in many cases, incorrectly) within their total unsecured claim, contingent claims arising from Client Assets shortfalls. This element has not been disaggregated at this stage. However, claims correctly disclosed as contingent unsecured claims have been excluded from the above table.

Although the level of non-Affiliate claims of c.£17.9bn exceeds the top end of the range estimated in our previous progress report, this includes:

- Proofs of Debt totalling c.£3.9bn that have subsequently been agreed at c.£3.1bn;
- c.£0.4bn in respect of Proofs of Debt which have been filed against LBIE and where the Administrators consider the claimant may be a debtor; and
- £0.9bn in respect of Proofs of Debt for damages claims for which LBIE had no provision in its balance sheet.

LBIE Determinations

Street Creditors

In the period, the Administrators made significant progress in reconciling and valuing counterparties' trading positions under the Consensual Approach. Specifically:

- due diligence reviews have been concluded for 1,170 claims, largely in respect of the significant number of claims lodged in July 2012. This has included amongst other matters the re-mapping of trades and account balances, and processing of assignment of claims or master agreements;
- continued extensive counterparty engagement resulting in 162 offers (totalling c.£1.0bn) being made under the Consensual Approach;
- in-depth discussions resulting in 306 claims being agreed, totalling c.£1.1bn; and
- following clarification by the UK Supreme Court of counterparties' entitlements to Client Money protection, the Administrators have worked diligently to assess for those counterparties with agreed claims which elements constitute an unsecured liability (and therefore rank for dividend) and which aspects are entitled to Client Money protection. Accordingly, in the period, of the agreed claims 252 claims (totalling c.£0.7bn) were admitted as unsecured claims, and are now eligible for inclusion in the first interim distribution.

Client Assets claimants

As described in the previous report, increasingly the Administrators' focus is on agreeing the complex claims received from Client Assets claimants.

There are often significant issues affecting this population of claimants (for example, contingent Client Assets shortfall claims) which prevent the Administrators from determining, at this stage, the full extent of their unsecured claims. Nevertheless, by focusing on the portion of their claim that is unaffected by these issues, the Administrators have been able to make further substantial progress.

During the period, the Administrators have:

- further developed the range of legal agreements to deal with specific issues/complexities of each creditor's claim; and
- made 270 offers to Client Assets claimants (LBIE value of c.£1.3bn), with 40 claims (LBIE value of c.£0.2bn) being agreed.

Other third party creditors

Over the last six months, a further area of focus has been the reconciliation and agreement of claims from other third party creditors.

The Administrators have developed a standardised process to agree these claims in an efficient manner, leveraging experiences from agreeing claims of Street Creditors.

Of the 430 claims received to date, 105 offers have been made to creditors, with 43 claims being agreed and admitted. The Administrators are in correspondence with a material proportion of the remaining claimants where, it appears, the claim should be addressed to another Lehman entity or that it was settled some time ago (such as, say, by an overseas LBIE branch).

Offers to creditors

As shown below, as at 14 September 2012 the Administrators had agreed 732 claims against the House Estate totalling c.£3.9bn:

Claimants where Proofs of Debt have been filed	Total population		Offers made		Claims agreed	
	No.	High £bn	No.	£bn	No.	£bn
Street Creditors	2,244	(8.3)	1,143	(4.8)	635	(3.3)
Client Assets claimants – with LBI pending trades	169	(2.3)	25	(0.8)	4	(0.1)
Client Assets claimants – no LBI pending trades	335	(1.5)	266	(0.9)	50	(0.5)
Other third party creditors	430	(0.1)	105	–	43	–
Total	3,178	(12.2)	1,539	(6.5)	732	(3.9)

A large proportion of the claims agreed with creditors included those where, owing to uncertainty as to claimants' CME, claims were agreed in quantum but were not able to be admitted as unsecured claims in order to rank for dividend purposes.

During the period, much work was undertaken to interpret the UK Supreme Court ruling in respect of CME. This, combined with significant system enhancements and due diligence work, has enabled LBIE to commence issuing CM Determinations to counterparties, such that it can seek to quantify the unsecured elements of agreed claims.

Small Claims Settlement Offer ("SCSO")

In May 2012, the Administrators launched the SCSO, providing creditors with the opportunity to receive a single payment (of 90% of their agreed claim amount) in full and final settlement of their unsecured claims against LBIE. The SCSO is available to all creditors with an agreed claim of £150,000 or less (or where a creditor is willing to cap their agreed claim at this level).

In order to participate creditors must, as well as having their claim agreed by the Administrators, enter into a separate agreement with LBIE accepting the SCSO in full and final settlement. As previously advised, these conditions must be met by 31 October 2012.

Creditors with agreed claims that do not wish to participate in the SCSO will, once their claim is admitted, rank for dividend in the normal course.

Bilateral claims agreement

The Administrators continue to focus on dealing with all eligible counterparties under the Consensual Approach, before seeking to agree their claims through bilateral negotiation (or indeed ultimately dispute resolution).

Nevertheless, the Administrators understand that, given the complexities of creditors' positions, a number of counterparties are likely to prefer to have their claims reviewed in detail on a bilateral basis.

As a result, the Administrators have now commenced a bilateral claims agreement process with creditors being required to reject firstly any offer made by LBIE under the Consensual Approach.

In most instances, this process will require substantial further evidentiary documentation. Consequently, the time to agree (and admit) claims under this approach will largely depend on the level of additional documentation to be provided, the complexity of the claim and the number of creditors seeking claims agreement through this approach. It therefore seems probable that the majority of counterparties seeking to have their claims agreed through bilateral negotiation will not participate in the first interim distribution.

Section 8:
Client Assets

Highlights

- Substantially increased engagement with LBI in settlement discussions, whilst meeting pre-trial discovery obligations in relation to LBIE's objections to the revised LBI Determination.
- Development of a distribution protocol concept that will be used to govern returns to clients from recoveries made from LBI in due course.
- Client Assets with a value of c.£0.3bn were returned during the period, across more than 1,100 individual client holdings.
- To date, a total of c.£13.5bn of Client Assets comprising c.5,700 individual client holdings have been returned to counterparties.
- Further Over-Claims of c.£0.4bn were materially resolved and/or reconciled during the period.

Focus

The current areas of specific focus are to progress:

- satisfactory resolution of LBIE's Omnibus claim against LBI;
- developing the basis for a return of recovered Omnibus claim assets from LBI to clients;
- recovery of Client Assets custodied by other overseas Affiliates on behalf of LBIE's clients;
- resolution of Over-Claims, Extended Liens and other issues which restrict the addressable population of Client Assets available for return;
- continued return of Client Assets to LBIE's counterparties through the CRA or bilateral agreement; and
- recovery or collateralisation of debts owed by Client Assets claimants to the House Estate.

Progress

LBI – Omnibus Customer claim

Settlement discussions

The progress made with LBI leading to the announcement of non-binding heads of terms is potentially very significant for the c.300 clients whose US-custodied positions were held through LBIE. In our previous reports, and more particularly in our last report, we outlined the complexity surrounding the mismatch of securities and cash that we believed were due to LBIE under the Omnibus claim as compared to the LBI Determination given by the LBI Trustee. Creditors may recall that LBIE's view of the total value of client entitlements for client positions was c.$7.6bn, whereas in the LBI Determination only c.$1.9bn might be usable for LBIE's clients. After meaningful and frequent interaction with LBI, the difference under the outline terms of settlement has narrowed very substantially, although significant individual securities differences continue to exist on a line-by-line basis.

In order to curtail litigation between the parties, LBIE is now able to accept a further revised LBI Determination which reflects the LBI Trustee's reappraisal of the Omnibus claim as per LBI's books. The LBI Trustee is now prepared to release the entire LBI Determination to LBIE in due course, subject to an undertaking that all of these proceeds (save for costs and lien recoveries) will flow to clients. LBIE will distribute the recovery to clients on an allocation basis yet to be agreed. In overcoming these fundamental issues, the parties have been able to explore how the recovery will be constituted (a mix of securities and cash) and what LBIE's claim for post-filing income accumulated by LBI will be.

Making progress in these key areas has enabled LBIE to build a clearer view of what the actual securities and cash recovery from LBI would be and to start assessing how these recoveries may be allocated to underlying clients.

The key financial information is set out below.

LBIE view of securities and cash	£bn	$bn
Securities position	3.4	5.3
Client cash position	1.4	2.3
LBIE view of client positions	4.8	7.6

Note: Securities entitlements referred to above are valued by LBIE as at 19 September 2008.

The key provisions of the non-binding heads of terms for the Omnibus claim are as follows:

- Omnibus claim of LBIE allowed in the LBI estate in the sum of $7.5bn (at 19 September 2008 value);
- the Omnibus claim to be settled in cash and specified securities;
- the Omnibus claim to benefit from $0.6bn of post-filing income;
- all recoveries less costs and lien retentions to go to customers;
- a reserve in LBIE's estate for Omnibus claim recoveries to be capped at $9.0bn immediately on a binding basis;
- LBIE's other Omnibus claims to be withdrawn; and
- LBI and LBIE to coordinate activities to ensure clients claim only once, with duplicate claims being subjected to expungement orders.

Allocation and return issues

The heads of terms represent (subject to eventual legal agreement and court approval) a major step forward in the overall satisfaction of the Omnibus claim made on behalf of LBIE customers. Ultimately, complete resolution of the Omnibus claim will only be achieved once recoveries are fully allocated and distributed to those underlying customers. In parallel with the ongoing settlement negotiations, LBIE has been developing an approach to address these client-side aspects, in respect of which several key challenges need to be tackled:

- notwithstanding the aggregate value of the Omnibus claim settlement, the mix of securities and cash that will be delivered by LBI will be substantially different to the mix of individual entitlements that has been computed by LBIE and previously reported on client statements;
- the legal analysis of the nature of client entitlements to the aggregate recovery from LBI is not straightforward. Moreover, there is no clear precedent for the basis of allocation of the recovery between the underlying Omnibus claim customers; and
- the original individual client portfolios of assets and cash locked up in the LBI estate have, at least notionally, achieved different market returns in the period since September 2008, and this has driven a range of client expectations as to the size of any eventual LBI allocation.

Because Omnibus claim clients have waited for over four years to achieve a recovery of value, our approach to allocation and distribution must place a premium on speed of execution.

Having taken all the above matters into account, LBIE will be proposing a resolution mechanism with the following as likely attributes:

- a consensual contractual proposal;
- a consistent treatment of LBI-related positions of all Omnibus claim clients, CRA signatories or otherwise, based on those clients' claims against LBIE;
- an orderly liquidation of the securities when received from LBI;
- an allocation mechanism for cash proceeds that is value-driven i.e. taking into account the notional gains and losses on securities that might have been held by clients since 19 September 2008;
- a prudent reserving mechanism for any non-accepting clients with a subsequent process to seek judicial determination in the UK; and
- elimination of any remaining duplicate claims or Over-Claims in the LBIE and LBI estates.

Further details of the LBIE proposal, when concluded, will be provided to Omnibus claim clients in the coming weeks. In the meantime, clients will also receive an updated and rolled forward LBI statement. Previous statements issued to clients reported the client cash and securities positions as at 19 September 2008. The revised statements will use June 2012 valuations and capture the impact of corporate actions and income arising in the period. This information will likely impact the ultimate allocation of the Omnibus claim recoveries. We encourage clients to review the statements and the accompanying guidance notes carefully when they are received, and to provide feedback as soon as possible.

Ongoing litigation

In conjunction with settlement discussions, LBIE has continued to progress the litigation against LBI in respect of the Omnibus Customer claim in the period.

As previously reported, LBIE filed an objection to the revised LBI Determination on 31 October 2011. LBIE also filed a response to the LBI position statement on 24 February 2012 and we refer you to the last progress report for further details of the specific issues.

In respect of this litigation, document discovery was substantially completed on 16 July 2012 in line with a scheduling order.

The current focus of the litigation preparation is on depositions and witnesses interviews, obtaining expert witness opinions, and the review of materials supplied by LBI through the document discovery process. This activity has been stayed until December 2012 pursuant to the LBI heads of terms.

Client Assets analysis (excluding LBI)

Movements in the client depot (excluding LBI-controlled assets) during the period were as follows:

	£bn
Reported as at 14 March 2012	1.3
Returned to clients in the period	(0.3)
Revaluation, exchange rate and other adjustments	(0.2)
Redemptions	(0.1)
Client Assets as at 14 September 2012	0.7^

^net of c.£0.1bn estimated shortfall on LBIE-controlled assets.

Client Assets currently comprise:

	£bn
In LBIE-controlled depots*:	
CRA claimants	0.3
Non-CRA claimants	0.3
Total	0.6
LBHK^	0.1
Client Assets as at 14 September 2012	0.7

* LBIE-controlled assets are valued as at 14 September 2012.

^Assets controlled by other entities are valued as at 19 March 2010.

Client Assets returns

In the six-month period, over 1,100 individual Client Assets holdings were returned to counterparties representing a total asset value of c.£0.3bn. The cumulative total of Client Assets returned since the CRA bar date is c.5,700 holdings.

The majority of remaining non-CRA Client Assets remain blocked by LBI-related issues. A number of counterparties continue to suffer from competing claims from LBI, whereby LBI is asserting that certain LBIE-controlled assets are the property of LBI and should be returned to it. The Administrators actively continue to work with LBI to resolve this issue consensually and a further supplemental agreement was reached on 12 June 2012 to allow progress on c.100 additional assets. The remainder of these assets will be dealt with under the provisions of the recently announced heads of terms with LBI.

Client Assets claimant debtors

Certain of LBIE's Client Assets claimants are also debtors of the House Estate, and recovery of these debts will be impacted by the level of any offsetting Client Assets shortfalls. Many of the larger of these Client Assets debtors have Client Assets entitlements held by LBI. The agreement of heads of terms with LBI has enabled us to reassess the value of these debtor recoveries.

During the period, recoveries of less than £0.1bn in the form of cash collateral (which is not yet available for distribution, principally pending recovery of securities from LBI) were achieved.

Excess segregated Client Assets

The process to review securities held in the segregated client depot to identify over-segregated assets continues. No material transfers were made to the House depot in the period (c.£0.4bn has been transferred to date).

Over-Claims and ring-fencing

In a number of cases, LBIE has received multiple counterparty claims for the same Client Assets. Until these Over-Claims are resolved, the impacted Client Assets cannot be returned to their rightful claimants. To the extent that LBIE holds the equivalent securities in its House Estate, then, as a precautionary measure, such securities are ring-fenced and excluded from the House Estate.

An analysis of Over-Claims is set out below:

	£bn
Over-Claims at 14 March 2012	1.5
Over-Claims resolved or reconciled in the period	(0.4)
Total Over-Claims at 14 September 2012	1.1
Comprising:	
Over-Claims asserted for assets within LBIE's control	0.1
Over-Claims asserted for assets outside LBIE's control	1.0

In the period, Over-Claims on assets within and outside of LBIE's control each reduced by c.£0.2bn.

Client Assets claimant shortfalls

	Sep 12 Low £bn	Sep 12 High £bn
Estimated Client Assets claimant shortfalls	(2.8)	(0.5)

c.£0.1bn of the estimated Client Assets shortfalls above relate to assets within LBIE's control. The remaining element of the estimated shortfalls relates to Client Assets controlled by other entities, which are subject to a range of unresolved issues, most notably with LBI. The eventual level of asset recovery will impact the value of unsecured claims admitted for Client Assets shortfalls and the value of assets that LBIE will be able to appropriate from Client Assets claimants that are indebted to it.

LBHK

LBHK has not yet released any Client Assets held for LBIE clients pending resolution of the Extended Liens dispute (see Section 6).

Feedback received from affected clients on holding differences, based on details of Hong Kong depot holdings shared with them in the period, has been passed onto LBHK.

Section 9:
Client Money

Highlights

- Following the UK Supreme Court ruling, a set of principles for the determination of Client Money based on contractual entitlement was established and communicated to counterparties in May 2012.
- A CM Determinations process for entitlements has been developed and implemented.
- Discussions continued with LBF and LBI to quantify and further reduce or extinguish their CME and assess the scope for including their Client Money claim as part of an overall settlement.
- LBI's recoveries for its CME have now been capped at $1bn.
- The German court ruled that the c.$1bn LBIE claim into LBB should rank *pari passu* with other unsecured creditors. LBB have appealed this judgment.
- c.£0.1bn of post-Administration Client Money was returned to clients.

Focus

The aim of the work stream is to bring clarity to a range of complex issues to facilitate the return of pre- and post-Administration Client Money.

The focus in the period has been on:

- finalising the pre-Administration CME principles and preparing CM Determinations for individual counterparties;
- engaging with major Affiliates, specifically LBF and LBI, with a view to agreeing the quantum of their CME;
- continuing to pursue recovery of Client Money from LBB; and
- identifying and resolving the complex legal issues that continue to prevent the return of post-Administration Client Money.

Progress

Pre-Administration Client Money

Client Money entitlement

The UK Supreme Court pre-Administration judgment of 29 February 2012 provided clarity with regard to the broad principles to be applied, but not issues of detail.

In the last progress report, we outlined our provisional strategy to progress the Client Money issues based upon our preliminary assessment of the judgment. We have further reflected on the judgment and have concluded on an approach to seek a consensual resolution to CME.

In outline, the plan to facilitate an interim distribution from the Client Money pool comprises the following steps:

- formulate and publish a view on the principles that should be applied by LBIE to calculate CME;
- prepare and distribute CM Determinations for individual counterparties based on these principles;
- monitor counterparties' responses to the CM Determinations;
- once the exercise is sufficiently advanced, consider a CM Bar Date application; and
- operationally prepare for a Client Money interim distribution in the first half of 2013.

Principles

The Administrators have formulated a view on the principles we will apply to calculate CME. This view is based on the forms of contract used by LBIE, the contents of the UK Supreme Court judgment and comments made by certain interested parties. The principles were communicated to counterparties on 24 May 2012, and are available on LBIE's website.

CM Determinations

There are c.6,200 financial trading counterparties in LBIE's records. Based on the transaction types and forms of contract, we currently anticipate that c.5,600 counterparties will require CM Determinations, being those counterparties with the potential to have a CME. Of these, we estimate there are c.1,200 counterparties that have a CME, with the remainder likely to be confirmed as nil balances.

In the period, significant progress has been made in preparing CM Determinations which will be communicated to the relevant counterparties over the coming weeks. The Administrators expect to have substantially completed the process of preparing CM Determinations by the end of 2012.

It is too early to draw conclusions as to the likely outcome of the approach in terms of acceptance of the principles. We would note, however, that there have been no material objections to the principles to date and we are encouraged by the responses to date on the CM Determinations made.

The Administrators will publish an update describing the number and value of agreed CM Determinations when the agreement process is sufficiently advanced.

Affiliates

In contrast to third party counterparties, LBIE typically did not segregate funds for, or in some cases use, written contracts with Affiliates.

The Administrators have identified 233 Affiliates where a review is required to determine whether that Affiliate has a CME. At 14 September 2012, CM Determinations had been prepared for 59 of these Affiliates.

LBI

The recently-announced heads of terms include a binding reserving agreement, with LBI agreeing to a maximum Client Money recovery of $1bn.

If the settlement with LBI concludes on the terms contemplated, the Client Money claim of LBI will be assigned to a nominee of LBIE. With the nominee holding the Client Money claim for LBIE and LBIE assessing the remaining exposure to contribute funds by way of Tracing, there may be scope to simplify the resolution of the Client Money fund in a way that expedites recoveries for other Client Money claimants.

In the period, BarCap filed what appears to be a competing claim in respect of LBI's Client Money claim of c.$1bn, which links back to US-based litigation with LBI. LBIE has recently commenced a dialogue with BarCap.

LBF

Settlement discussions have progressed with LBF. An agreement has been reached in principle under which LBF will also assign its Client Money claim to LBIE's nominee as part of an overall settlement.

As with LBI, if LBF's Client Money claim is assigned under a final settlement, then scope may exist to expedite and simplify the resolution of the Client Money estate.

For further commentary on LBI and LBF, please see Section 6.

Recoveries

The pre-Administration Client Money pool at 14 September 2012 was c.£0.7bn. This balance will be potentially increased by recoveries from:

Tracing in the House Estate

The UK Supreme Court judgment confirmed that the Administrators are required to find any Client Money, wherever held, and to place such funds in the Client Money pool.

In order to comply with this requirement the Administrators will need to:

- complete the CM Determinations process to identify the gross Client Money amount which should have been segregated;
- determine to what extent the gross Client Money amount has already been segregated (and is therefore no longer traceable); and
- trace that element of the gross Client Money amount that has not yet been segregated.

This detailed Tracing exercise can only be undertaken, on a cost-effective basis, once the first of these steps is substantially complete. In the intervening period, the Administrators are continuing to analyse the House transaction accounts in preparation for the detailed Tracing exercise.

During the period, the Administrators have undertaken a review of the recoveries in the House Estate. That exercise has identified c.£1.6bn of assets, principally cash in bank accounts or amounts recovered from trading exchanges, which represent potentially traceable Client Money.

The amounts that have been identified as representing potential client funds are held in the currency of receipt, pending the clarification of their ultimate beneficial ownership. At the date of this report, these amounts were c.€1.2bn, c.$0.5bn and c.£0.3bn.

LBB/LBHI

The Administrators are continuing proceedings in the German courts to recover c.$1bn of pre-Administration Client Money held by LBB. On 3 May 2012, a German court ruled in LBIE's favour determining that its claim should be admitted to rank for dividend *pari passu* with other unsecured creditors and should not be subordinated in favour of non-Affiliate creditors.

LBB has appealed this judgment and filed the grounds for its appeal in September 2012. LBIE's reply will be filed in the near future. An appeal is unlikely to be heard before early 2013.

To the extent that LBIE is unable to recover all of the Client Money lodged with LBB pre-Administration, LBIE has a guarantee claim against LBHI. Whilst this contingent claim has been agreed with LBHI, there will be no payments made by LBHI until the position between LBB and LBIE has been resolved.

The counterclaim raised by LBB against the above claim has still to be listed for a hearing by the German appeal court.

Other recoveries

The small outstanding balance payable to LBIE relating to BarCap (c.£10m) is being addressed as part of the global settlement discussions with LBI.

We continue to pursue a small number of outstanding Client Money balances (total c.£25m), principally in Korea and Taiwan. The return of these funds remains dependent upon regulatory clearances and the resolution of local court cases.

Post-Administration Client Money recoveries and returns

c.£0.1bn of post-Administration Client Money was returned to clients in the period, with c.£0.8bn remaining to be returned.

The return of remaining funds is principally linked to the resolution of remaining Client Assets returns, which are impacted by LBI-related factors and legal disputes including Extended Liens (see Section 8).

Section 10:
Statutory and other information

Statutory information

Court details for the Administration:	High Court of Justice, Chancery Division, Companies Court. Court case number 7942 of 2008.
Full name:	Lehman Brothers International (Europe)
Trading name:	Lehman Brothers International (Europe)
Registered number:	02538254
Registered address:	Level 23, 25 Canada Square, London E14 5LQ.
Date of the Administration appointment:	15 September 2008
Administrators' names and addresses:	AV Lomas, SA Pearson (both appointed 15 September 2008), DA Howell (appointed 30 November 2009), and PD Copley and R Downs (both appointed 2 November 2011) of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT. MJA Jervis and DY Schwarzmann ceased to act on 2 November 2011.
Appointor's name and address:	High Court of Justice, Chancery Division, Companies Court on the application of LBIE's directors.
Objective being pursued by the Administrators:	Achieving a better result for LBIE's creditors as a whole than would be likely if LBIE were wound up (without first being in Administration).
Division of the Administrators' responsibilities:	In relation to paragraph 100(2) of Schedule B1 to the Insolvency Act, during the period for which the Administration is in force, any act required or authorised under any enactment to be done by either or all of the Administrators may be done by any one or more of the persons for the time being holding that office.
Details of any extensions for the initial period of appointment:	The UK High Court on 2 November 2011 granted an extension of the Administration to 30 November 2016.
Proposed end of the Administration:	The Administrators have yet to determine the most appropriate exit.
Estimated dividend for unsecured creditors:	The first interim distribution is planned for November 2012. Creditors are referred to Section 3 for the illustrative range of outcomes.
Estimated values of the prescribed part and LBIE's net property:	The estimated value of LBIE's net property is uncertain, but is expected to exceed the maximum threshold for the prescribed part. Accordingly, the value of the prescribed part is estimated at £600,000.
Whether and why the Administrators intend to apply to court under Section 176A(5) of the Insolvency Act:	Such an application is considered unlikely.
The European Regulation on Insolvency Proceedings (Council Regulation (EC) No. 1346/2000 of 29 May 2000):	The European Regulation on Insolvency Proceedings does not apply to this Administration as LBIE is an investment undertaking.

Other statutory matters

Changes to the constitution of the Committee

The Committee members as at 14 September 2012 were:

1. Lehman Commercial Paper Inc.
2. Ramius Credit Opportunities Master Fund Limited
3. GLG European Long Short Fund
4. Lehman Brothers Asia Holdings Ltd

During the period, Société Générale resigned from the Committee.

Administrators' remuneration

Background

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

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

The remuneration information contained in this report is extracted from the Q1 and Q2 2012 data packs which have been provided to the Committee and its Adviser. Consistent with our previous reports to creditors, we have not sought to separately analyse remuneration information for the period between the last quarter end (Q2) and the date of this report (14 September 2012). In due course, this information will be incorporated within the Q3 data pack which will be provided to the Committee and its Adviser for their review.

Approvals by the Creditors' Committee

As previously reported, the Committee approved the 2012 remuneration arrangements for the Administrators earlier in the year, including the deferral of a significant proportion of the Administrators' 2012 time costs to be considered for approval in early 2013.

The Committee has been provided with Category 2 disbursement information relating to the six-month period to 30 June 2012 amounting to £701,429, which it has duly approved for payment.

Analysis of time costs

In the six months to 30 June 2012, time costs of £77,998,206 have accrued, totalling 241,083 hours at an average hourly rate of £324 (previously £312).

The Administrators' time costs for the first half of 2012 have increased marginally compared with the second half of 2011, primarily reflecting the increased resource utilised on CM Determinations and on unsecured creditor claims agreement.

Cumulative time costs accrued to 30 June 2012 are c.£548m. Total Administrators' remuneration and disbursements paid to 14 September 2012 are c.£563m.

Analysis of Administrators' remuneration

The table below provides an analysis of the Administrators' total hours incurred and the associated cost by staff grade, in respect of the period 1 January 2012 to 30 June 2012.

	Period 1 January 2012 to 30 June 2012	
Grade	Hours	£'000
Partner	9,742	7,199
Director	13,446	8,149
Senior Manager	35,825	16,037
Manager	66,098	22,176
Senior Associate	77,204	17,901
Associate	38,768	6,536
Total	241,083	77,998

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

		Period 1 January 2012 to 30 June 2012	
Activity*		Hours	£'000
Counterparties	Street	22,363	8,543
	Trust	40,603	12,481
	Affiliates	41,441	13,270
	Valuations	17,897	5,678
	Branches	3,487	1,483
Middle Office	Middle Office	23,493	7,417
Transaction Processing and Control	Transaction Processing and Control	25,172	7,977
COO	Administrators	8,144	3,995
	Chief operating officers	8,656	2,941
	Performance improvement and control	11,723	3,820
	Treasury	7,389	2,170
Functions	Tax	1,801	1,146
	Regulatory and compliance	1,229	317
	Information technology	23,844	5,561
	LBL recharges (see below)	3,841	1,199
Total		241,083	77,998

* Previously separately disclosed forensic investigation costs are now analysed within the work activity to which they relate.

	Period 1 January 2012 to 30 June 2012	
LBL recharges	Hours	£'000
Employees	1,088	415
Estate accounting	641	193
Group services management	2,112	591
Total	3,841	1,199

Appendices

Appendix A:
Glossary of terms

Abbreviation	Term	Definition
Administration	Administration	UK corporate insolvency process governed by the Insolvency Act 1986
Administrators	Joint Administrators	AV Lomas and SA Pearson were appointed as Joint Administrators of LBIE on 15 September 2008. DA Howell was appointed on 30 November 2009. PD Copley and R Downs were appointed on 2 November 2011. All are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales and are partners of PricewaterhouseCoopers LLP
Adviser	Adviser	An adviser retained to assist the Committee in considering the Administrators' remuneration requests
Affiliates	Affiliate entities	Various subsidiaries and affiliates of Lehman Brothers Holdings Inc.
Affiliate Claims Portal	Affiliate Claims Portal	A secure, structured system for Affiliates to electronically submit details of their claims against LBIE accessible through the CIP
BarCap	Barclays Capital Inc.	Investment banking business of Barclays Bank PLC
BTB	Back-to-Back derivative side letters	Intercompany derivative side letters which provide hedges to LBIE
Category 2 disbursements	Administrators' Category 2 disbursements	Costs that are directly referable to the Administration but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the Administration on a proper and reasonable basis
CIP	Client Information Portal	A secure, structured framework that provides access for counterparties to relevant LBIE sub portals (Affiliate Claims Portal, LBIE Creditors Portal and CRA creditors portal). Access is provided by a unique user name and password only
Citibank	Citibank, N.A.	Subsidiary of Citigroup Inc., an LBIE counterparty with significant business relationships governed by various trading and custody agreements
Claims Determination Deed	Claims Determination Deed	A standardised legal document for agreeing claims under the Consensual Approach
Client Assets	Client Assets	Client securities which LBIE should have held as at 15 September 2008
Client Money	Client Money	Client cash balances held by LBIE as at 15 September 2008 or received thereafter by LBIE and which are in each case subject to the UK FSA's client money rules and/or applicable client money distribution rules
CM Bar Date	Client Money Bar Date	The date by which Client Money claims must be lodged to be eligible for inclusion in a first interim distribution of pre-Administration Client Money
CM Determinations	Client Money Determinations	The Administrators' assessments of the quantum of Client Money Entitlement of a financial trading counterparty based on published principles
CME	Client Money Entitlement	The entitlement to receive a distribution from the pre-Administration Client Money pool
Committee	Creditors' Committee	Creditors voted to represent the general body of creditors of LBIE to assist the Administrators in discharging their functions set out in the Insolvency Act 1986
Consensual Approach	Consensual Approach	A framework developed for the expedient resolution of the unsecured claims of financial trading counterparties
COO	Chief Operating Officers	Responsible for managing the operations of the organisation, allocating resources and supporting the other teams within the operating model
CRA	Claim Resolution Agreement	An innovative and practical claim resolution framework which governs the return of Client Assets. The CRA was proposed by the Administrators to clients in November 2009 and was accepted by over 90% of eligible Client Assets claimants
Customer Property	Customer Property as defined in SIPA	A combination of claims to securities and certain cash amounts relating to securities, as defined in SIPA
Extended Liens	Extended Liens	Assertion by certain Affiliate claimants to benefit from the rights conferred on LBIE to assert lien and other security entitlements over securities held by LBIE on behalf of other Affiliates, in order for the Affiliate claimants to recover debts owed to them by other Affiliates
FSA	Financial Services Authority	Regulator of providers of certain financial services in the UK

Abbreviation	Term	Definition
General Estate	General Estate as defined in SIPA	Claims to a certain pool of assets available to satisfy general non-Customer Property creditors' claims including any potential deficiencies in Customer Property claims
HMRC	HM Revenue and Customs	Organisation of the British Government primarily responsible for the collection of taxes
House Customer claim (also referred to as the House claim)	House Customer claim	Element of LBI SIPA Customer claim relating to LBIE House positions
House Estate (also referred to as House)	House Estate	Dealings that relate to LBIE's general unsecured estate
Insolvency Act	Insolvency Act 1986	Statutory legislation that provides the legal platform for matters relating to personal and corporate insolvency in the UK
Insolvency Rules	Insolvency Rules 1986	Statutory rules that provide the legal platform for matters relating to personal and corporate insolvency in the UK
ISDA	International Swaps and Derivatives Association	Global trade association for OTC derivatives and maintainers of the industry standard ISDA documentation
LB Lux	Lehman Brothers (Luxembourg) S.A.	Affiliate entity subject to insolvency proceedings in Luxembourg
LBB (also referred to as Bankhaus)	Lehman Brothers Bankhaus A.G.	Affiliate entity subject to insolvency proceedings in Germany
LBEF	Lehman Brothers (Luxembourg) Equity Finance S.A.	Affiliate entity subject to insolvency proceedings in Luxembourg
LBEL	Lehman Brothers Europe Limited	Affiliate entity subject to insolvency proceedings in the UK
LBF	Lehman Brothers Finance S.A. (Switzerland)	Affiliate entity subject to insolvency proceedings in Switzerland
LBHI	Lehman Brothers Holdings Inc.	Ultimate parent of the Lehman group, incorporated in the US and formerly subject to Chapter 11 bankruptcy protection from 15 September 2008. The Plan became effective on 6 March 2012
LBHK	Lehman Brothers Hong Kong	Collective group of affiliate entities subject to insolvency proceedings in Hong Kong: Lehman Brothers Asia Holdings Ltd, Lehman Brothers Commercial Corporation Asia Ltd, Lehman Brothers Asia Capital Company Ltd, Lehman Brothers Securities Asia Ltd, Lehman Brothers Futures Asia Ltd, Lehman Brothers Asia Ltd and Lehman Brothers Nominees (H.K.) Ltd
LBI	Lehman Brothers Inc.	US broker-dealer affiliate entity, incorporated in the US which entered SIPA trusteeship on 19 September 2008
LBI Determination	Letters of Determination	Letters of Determination issued by LBI on 16 September 2010 and subsequent revisions in respect of LBIE's House and Omnibus Customer claims against LBI
LBIE (also referred to as the Company)	Lehman Brothers International (Europe) - In Administration	Private unlimited UK subsidiary of LBHI, acting as its main European broker dealer, subject to an administration order dated 15 September 2008
LBIE Creditors Portal	LBIE Creditors Portal, previously referred to in earlier progress reports as the Claims Portal	A secure, structured system for counterparties to submit details of their unsecured claims against LBIE accessible through the CIP
LBIE Determination	LBIE Determination	Agreement of eligible claims using a value determined by LBIE, derived from LBIE's own valuation methodology
LBI Trustee	LBI Trustee	James W. Giddens, of Hughes Hubbard & Reed LLP, Trustee for the SIPA Liquidation of LBI
LBJ	Lehman Brothers Japan Inc.	Affiliate entity subject to insolvency proceedings in Japan
LBL	Lehman Brothers Limited	UK service entity for the Lehman Administration Companies. LBL was placed into Administration on 15 September 2008

Abbreviation	Term	Definition
LBS	Lehman Brothers Securities N.V.	Affiliates subject to insolvency proceedings in Curacao, Kingdom of the Netherlands
LB UK RE	LB UK RE Holdings Limited	Affiliate entity subject to insolvency proceedings in the UK
LCI	Lehman (Cayman Islands) Ltd	Affiliate entity subject to insolvency proceedings in the Cayman Islands
Omnibus Customer claim (also referred to as the Omnibus claim)	Omnibus Customer claim	Element of LBI SIPA Customer Property claim relating to LBIE client positions
OSLA	Overseas Securities Lending Agreement	A securities lending agreement which has now been superseded by the Global Master Securities Lending Agreement
OTC	Over-the-counter	A market in which securities, or other financial products, are traded by direct dealer-to-dealer communications
Over-Claims	Over-Claims	Proprietary claims made for or in respect of securities in an amount which exceeds the amount which appears as the claim entitlement to securities of that type as documented in LBIE's books and records
Plan	Plan of Reorganisation	Document filed by LBHI and its US debtor affiliates formerly in Chapter 11 with the US Bankruptcy Court, proposing an economic solution for creditors designed to achieve resolution of the Chapter 11 proceedings. The Plan was approved on 6 March 2012
Proof of Debt	Proof of Debt or Statement of Claim	A formal document prescribed by the Insolvency Rules 1986 submitted to the Administrators by a creditor wishing to prove their claim. The form is made in writing or electronically under the responsibility of a creditor and signed by an authorised person
RASCALS	Regulation and Administration of Safe Custody and Local Settlement	A series of securities secured financing transactions between LBIE and certain Affiliates as recorded in Lehman's books and records
SCSO	Small Claims Settlement Offer	An initiative for creditors with agreed claims up to £150,000 to be offered a one-off payment of 90% of their agreed claim in full and final settlement
SIP 9	Statement of Insolvency Practice 9	Rules issued by the Joint Insolvency Committee which provide guidance to insolvency practitioners and creditors' committees in relation to the remuneration of, inter alia, administrators
SIPA	Securities Investor Protection Act 1970	A US legal proceeding for handling the liquidation of a broker-dealer
SPV	Special purpose vehicle	A legal entity set up for purposes of the Trust Property return scheme
Street	Street counterparties	Third party counterparties consisting of financial institutions including asset managers, custodians and banks, and non-banking financial institutions including pension funds and corporate entities
Street Creditors	Street Creditors	Unsecured creditors with financial trading claims without Client Assets
Tracing	Tracing	Identification of unsegregated Client Money (or its substitute) within the House Estate
Trust Estate	Trust Estate	Refers to both Client Assets and Client Money
Trust Property	Trust Property	Refers to both Client Assets and Client Money
UK Affiliates	Lehman Administration Companies	UK Lehman entities in Administration
UK Appeal Court	Court of Appeal of England and Wales	The second most senior court in the English legal system for civil cases. Permission to appeal is required, either from the lower court or the Court of Appeal itself
UK High Court	High Court of England and Wales	Court of England and Wales which deals with all high value and high importance cases, and also has a supervisory jurisdiction over all subordinate courts
UK Supreme Court	Supreme Court of the United Kingdom	This is the court of last resort and highest appellate court in the United Kingdom for civil cases
VAT	Value Added Tax	A consumption tax levied on the sale of goods and services in the UK

Appendix B: Receipts and payments: six months to 14 September 2012

House Estate receipts and payments: six months to 14 September 2012

	Notes	GBP £m	EUR €m	USD $m	Various currencies £m	Total (GBP equivalent) at 14 September 2012 £m
Receipts						
Depot securities	1	29	156	278	155	481**
Counterparties	2	8	84	298	(10)	250
Client Money for onward distribution	3	2	14	29	4	35
Other income	4	36	8	98	23	126**
Total receipts for the period		75	262	703	172	892
Payments						
Affiliate settlement	5	(60)	(140)	(188)	–	(289)
Administrators' remuneration	6	(67)	–	–	–	(67)
Distribution of Client Money	7	(2)	(14)	(29)	(4)	(35)
Legal costs	8	(16)	–	(23)	–	(31)
Payroll and employee costs	9	(24)	–	–	–	(24)
Building and occupancy costs	10	(12)	–	(2)	–	(13)
Other payments	11	(22)	(8)	(47)	(11)	(68)
Total payments for the period		(203)	(162)	(289)	(15)	(527)
Net movement in the period		(128)	100	414	157	365
Balance at bank as at 14 March 2012 as previously reported		5,986	3,488	4,897	171*	11,987*
Net inter-currency transfers for six-month period to 14 September 2012		3,803	(2,081)	(3,140)	(186)	4
Total balances as at 14 September 2012	12	9,661	1,507	2,171	142	12,356
Less: Funds held subject to potential third party claims	13					(1,312)
Total House Estate cash and bonds (see Section 3)						11,044^

*Balances for 'Various currencies' and 'GBP equivalent' above are translated as at 14 September 2012. Balances were c.£169m and c.£12,175m respectively if translated at 14 March 2012 exchange rates.

**Includes an aggregate amount of c.£162m arising in the period which is potentially subject to Affiliate or other third party claims.

^Total House cash and bonds are subject to any Client Money Tracing rights that might exist.

Notes to House Estate receipts and payments accounts

General

The transactions within the LBIE estate in the period:

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

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

1. Depot securities – sales and related income

Realisations of c.£0.5bn relate to the disposal or redemption of securities and derived income from depot holdings.

2. Counterparties

Receipts of c.£0.1bn related to financing, prime brokerage and OTC derivatives. A dividend receipt of c.£0.1bn from LBHI and its US debtor affiliates was also received in the period.

3. Client Money for onward distribution

Under some client agreements, certain Trust Property is transferred from the Trust Estate account to an SPV. Under a separate agreement, funds are transferred from the SPV to the House account. The House makes a separate payment to the client to give value for its Trust Property under the client agreements (see note 7).

4. Other income

Other income includes:

- c.£46m of recovered or redirected funds which were mistakenly paid (by third parties) into House accounts (see other payments)
- c.£41m collateral received from Client Assets claimants;
- c.£19m of corporation tax-related repayments;
- c.£16m of bank and bond interest received; and
- c.£4m of other realisations.

5. Affiliate settlements

c.£0.3bn payments made in accordance with asset return agreements with two Affiliates.

6. Administrators' remuneration and expenses

Payment deferral terms, as agreed with the Committee and referred to on page 36 of this report, account for differences between costs incurred and payments made in the period.

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

7. Distribution of Client Money

Relates to returns to clients under the Trust Property return scheme (see note 3 above).

8. Legal costs

International legal advisers' costs relate to advice given and court proceedings and litigation conducted in numerous jurisdictions in connection with various complex issues across the Administration.

9. Payroll and employee costs

Payments relate to salary and employee-related benefits for UK-based employees and third party contractors.

10. Building and occupancy costs

This relates to occupancy and infrastructure costs, primarily related to the Canary Wharf offices occupied by LBIE.

11. Other payments

Includes the following:

- repayment of c.£46m of recovered or redirected funds which were mistakenly paid (by third parties) into House accounts (see other income);
- c.£19m of VAT paid on invoices; and
- c.£3m of other sundry payments.

12. Investment profile

Current investment strategy

LBIE invests in short-dated government securities only to the extent that a positive yield net of fees is generated. Otherwise, the funds are invested in money market deposits to achieve the same objective.

Total balances

House Estate	Notes	GBP equivalent £m
Government bonds – short-dated		6,370
Short-term deposit	1	5,655
Interest-bearing accounts		331
Total		12,356

1. Average rate of return for six months ending 14 September 2012 of EUR 0.11%, GBP 0.33% and USD 0.10%.

Cash management and investment policy

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

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

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

Yields are measured against appropriate benchmarks.

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

Instruments used in the period

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

Policy for interest-bearing accounts and short-term deposits

Permitted banks must meet four key criteria:

- be headquartered in a sovereign where the average long-term ratings from S&P, Moody's and Fitch are AA+ or above;
- have a blended average long-term rating from S&P, Moody's and Fitch at AA- or above;
- have a five year CDS price below a specified (prudent) threshold; and
- have a minimum market capitalisation above a specified (prudent) threshold.

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

Short-term deposits are placed for a maximum duration of four weeks.

Policy for government bonds

Eligible investments for the bond portfolios are short-dated government debt issued by the UK, Germany, France, the Netherlands and the US.

Bond portfolios are managed on a day-to-day basis by independent fund managers.

13. Funds held subject to potential third party claims

House Estate	£m
Funds held subject to potential Affiliate claims	988
Funds held subject to potential other third party claims:	
Ring-fenced for Trust Property claimants	48
Cash collateral from Client Assets claimant debtors	126
Reserve for Post-Administration Client Money	150
Total	1,312

Trust Estate receipts and payments: six months to 14 September 2012

	Notes	GBP £m	EUR €m	USD $m	Various currencies £m	Total (GBP equivalent) at 14 September 2012 £m
Receipts						
Redemptions, coupons, dividends and investment income		5	15	316	21	233
Funds received in error		–	–	9	–	6
Total receipts for the period		5	15	325	21	239
Payments						
Transfers to House	1	(5)	(6)	(77)	(57)	(115)
Transfers to clients		(2)	(15)	(43)	(15)	(56)
Return of funds received in error		–	–	(9)	–	(6)
Total payments for the period		(7)	(21)	(129)	(72)	(177)
Net movement in the period		(2)	(6)	196	(51)	62
Balance at bank as at 14 March 2012 as previously reported		112	305	1,243	376*	1,500*
Total balances as at 14 September 2012	2	110	299	1,439	325	1,562
Comprising:						
Pre-Administration Client Money balance		9	26	1,115	4	720
Post-Administration Client Money balance		101	273	324	321	842
Total balances as at 14 September 2012		110	299	1,439	325	1,562

* Balances for 'Various currencies' and 'GBP equivalent' above are translated as at 14 September 2012. Balances were £382m and £1,540m respectively if translated at 14 March 2012 exchange rates.

1. Transfers to House

In the House Estate, corresponding receipts are included within depot securities and other income.

2. Investment profile

Trust Estate	GBP equivalent £m
Short-term deposit	1,367
Interest-bearing accounts	195
Total	1,562*

* Client Money is held in original currencies, the majority being USD.

Cash management and investment policy for client funds

The Client Money investment policy for short-term deposits and interest-bearing accounts is based on that used for the House Estate, modified to comply with the additional Client Money regulatory requirements.

Client Money is not eligible for investment in government bonds.

Appendix C: Court update

Summary of major court proceedings involving LBIE in the reporting period:

Q2 2012	*UK High Court*	BTB judgment received
		Extended Liens application pre-trial review
	UK Appeal Court	ISDA (2)(a)(iii) judgment received
Q3 2012	*UK High Court*	Extended Liens trial

Summary of major court proceedings involving LBIE in future reporting periods:

Q4 2012	*UK High Court*	Extended Liens judgment expected
		LB Lux Administration expense claim hearing
	UK Appeal Court	BTB appeal hearing
	UK Supreme Court	Decision expected on whether ISDA 2(a)(iii) appeal will be heard
	German Higher Regional Court, Frankfurt	LBIE's appeal pleadings in the LBB Client Money proceedings are due; there is no indication as to when an oral hearing will take place or when a decision of the appeal court might be expected
Q1 2013	*UK Appeal Court*	Appeal by other Lehman companies (LBIE not a party) seeking to maintain Pensions Regulator's decision not to impose a financial support direction against them (pension scheme is seeking to overturn that decision)
Q2 2013	*UK Supreme Court*	Pension scheme deficit appeal re insolvency status of liabilities under a financial support direction imposed by Pensions Regulator
	US Bankruptcy Court	House and Omnibus Customer claim substantive hearings on LBI
Unknown	*UK Upper Tribunal (Tax and Chancery)*	Reference by LBIE and others to the Upper Tribunal of a decision by the Pensions Regulator that a financial support direction should be imposed on them (stayed pending outcome of UK Supreme Court case above)
	German Higher Regional Court, Frankfurt	LBB Client Money proceedings: in the counterclaim proceedings there is still no indication as to when an oral hearing might take place and when the court of appeal might take its decision

Note that the above tables exclude certain Street counterparty actual or potential litigation which is referred to in Section 5.

Appendix D:
Progress with the $1 billion+ issues

A summary of the issues and the material progress made on each of these is set out below:

No.	Issue	Status as at 14 September 2012
1	Resolve Citibank	Substantially done
2	Resolve other major Institution	Good progress made
3	Resolve Over-Claims and ring-fenced assets	Good progress made
4	Recover assets from Asian custodians	c.£0.5bn remaining
5	Recover Client Money from LBB	Litigation ongoing
6	Affiliate legal disputes	BTB appeal due December 2012
7	Assets and cash returns from Affiliates	LBI, LBHK and LBJ outstanding Extended Liens hearing conducted. Judgment awaited
8	Agree Affiliate claims	LBF c.£11.2bn filed claim – negotiations continue LBI £1 reserve agreed on c.£7.7bn filed claim $1bn recovery reserve agreed on Client Money claim LB Lux c.£11.8bn filed claim – conditional withdrawal of all except a potential residual c.£0.1bn unsecured claim agreed LBEF c.£8.8bn filed claim – negotiations continue LBB Client Money claim discussions continue
9	Quantify CME and Client Money Tracing	Substantially progressed
10	Resolve contingent claims	Ongoing

Appendix E:
LBIE contact details

General queries	*generalqueries@lbia-eu.com*
Employee claims queries	*LBIEHRqueries@lbia-eu.com*
Counterparty contact information	
Counterparty contact*	*counterpartycontacts@lbia-eu.com*
Termination notices and valuation statements	*unsecuredcreditors@lbia-eu.com*
Unsecured creditors queries	*unsecuredcreditors@lbia-eu.com*
LBIE Creditors Portal access requests	*logons@lbia-eu.com*
Standard Settlement Instruction queries	*SSI@lbia-eu.com*
Trust Property claimants	
Client Assets (CRA signatories and Non-CRA clients)	*claimresolutionagreement@lbia-eu.com*
Client Money	*clientpositionresponses@lbia-eu.com*

* Email is still the preferred method of communication and remains the most efficient manner to contact counterparties, both in terms of time and accuracy. If you have not provided your email address to the Administrators, it is essential that you do so as soon as possible.

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pwc

Neutral Citation Number: [2010] EWHC 3010 (Ch)

Case Nos: 542, 550 552, 553, 554, 535, 549, 537, 538, 540, 547, 551, 544, 548, 541, 539 of 2009 and 7942, 7943, 8243 and 8445 of 2008

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 10/12/2010

IN THE MATTERS OF:

NORTEL GMBH, NORTEL NETWORKS NV, NORTEL NETWORKS S.P.A., NORTEL NETWORKS BV, NORTEL NETWORKS POLSKA SP.Z.O.O., NORTEL NETWORKS HISPANIA S.A., NORTEL NETWORKS INTERNATIONAL FINANCE & HOLDINGS BV, NORTEL NETWORKS (AUSTRIA) GMBH, NORTEL NETWORKS SRO, NORTEL NETWORKS ENGINEERING SERVICE KFT, NORTEL NETWORKS PORTUGAL S.A. NORTEL NETWORKS SLOVENSKO S.R.O., NORTEL NETWORKS FRANCE SAS, NORTEL NETWORKS AB, NORTEL NETWORKS (IRELAND) LIMITED, NORTEL NETWORKS S.A.

AND IN THE MATTERS OF

LEHMAN BROTHERS INTERNATIONAL (EUROPE) (in administration)
LEHMAN BROTHERS EUROPE LIMITED (in administration)
LEHMAN BROTHERS HOLDINGS PLC (in administration)
LEHMAN BROTHERS UK HOLDINGS LIMITED (in administration)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:
MR JUSTICE BRIGGS

Between:
(1) ALAN ROBERT BLOOM (2)
ALAN MICHAEL HUDSON
(3) CHRISTOPHER JOHN WILKINSON HILL
(4) STEPHEN JOHN HARRIS
(5) DAVID MARTIN HUGHES — Applicants

- and -

(1) THE PENSIONS REGULATOR
(2) BOARD OF THE PENSION PROTECTION FUND
(3) NORTEL NETWORKS UK PENSION TRUST LIMITED — Respondents

And Between

(1) ANTHONY VICTOR LOMAS
(2) STEVEN ANTHONY PEARSON
(3) MICHAEL JOHN ANDREW JERVIS
(4) DAN YORAM SCHWARZMANN (5)
DEREK ANTHONY HOWELL — Applicants

- and -

(1) THE PENSIONS REGULATOR
(2) BOARD OF THE PENSION PROTECTION FUND
(3) PETER ANTHONY GAMESTER
(4) BRIAN SEWARD (5)
PETER SHERRATT
(6) THOMAS PAUL BOLLAND
(7) LEHMAN BROTHERS HOLDINGS INCORPORATED
(8) NEUBERGER BERMAN EUROPE LIMITED
(formerly Lehman Brothers Asset Management (Europe) Limited) — Respondents

Hearing dates: 24th, 25th, 26th, 29th & 30th November 2010

Approved Judgment

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

.....
Mr Justice Briggs

Appearances

Mr William Trower QC, Mr Tom Smith and Mr Andrew Mold (instructed by **Herbert Smith LLP**) for the Nortel Administrators

Mr Robin Dicker QC, Mr Paul Newman QC and Mr Daniel Bayfield (instructed by **Linklaters LLP**) for the Lehman Administrators

Ms Raquel Agnello QC, Mr Jonathan Hilliard and Mr Thomas Robinson (instructed by **The Pensions Regulator**)

Mr Richard Sheldon QC, Mr Michael Tennet QC, Ms Felicity Toube and Mr Edward Sawyer (instructed by **Hogan Lovells International LLP**) for Nortel Networks UK Pension Trust Limited and the Board of the Pension Protection Fund)

Mr Gabriel Moss QC, Mr Nicolas Stallworthy and Mr David Allison (instructed by **Travers Smith LLP**) for the Trustees of the Lehman Brothers Pension Scheme and the Board of the Pension Protection Fund

Mr Barry Isaacs and Mr Richard Hitchcock (instructed by **Weil, Gotshal & Manges**) for Lehman Brothers Holdings Incorporated and Lehman Brothers Asset Management (Europe) Limited

Mr Justice Briggs:

INTRODUCTION

1. There are before the court applications for directions by the administrators of twenty companies in two groups, all of which raise the same common questions as to the effect of the Financial Support Direction ("FSD") regime created by the Pensions Act 2004 upon companies in administration or insolvent liquidation. The answers to the common questions depend entirely upon issues as to the interpretation of a number of interrelated statutory provisions both in the pensions legislation and the insolvency legislation and, in particular, an understanding of the way in which Parliament intended that those two regimes should interact.

2. It is common ground that the answers to those questions are likely to be of very great significance, to the administrators, to the unsecured creditors of the companies concerned, to the trustees of the two pension schemes concerned, and to the schemes' members whose interests are designed to be protected by the FSD regime. Furthermore, an understanding of the interrelationship of the two statutory regimes (pensions and insolvency) is likely to be essential in the proper exercise by the Pensions Regulator ("the Regulator") of the important discretions conferred upon it by the FSD regime. The answers to the common questions are also likely to be of real importance in the context of the fulfilment of the objectives of the rescue culture which now lies at the heart of the insolvency code, and in particular that part of it intended to be achieved by administration.

3. In bare outline, the common questions are as follows. The FSD regime enables the Regulator in specified circumstances to impose, by the issue of an FSD to associated companies of a corporate employer, an obligation to provide reasonable financial support to the under-funded occupational pension scheme of the employer, and to deal with non-compliance with that obligation by imposing, by Contribution Notice ("CN"), a specific monetary liability payable by the associated company to the trustees of the employer's pension scheme. I shall refer to the associated company, in accordance with the established jargon, as the target in relation both to an FSD and a CN.

4. The question for determination is whether, in circumstances where an FSD or a CN is first issued after the target company has gone into administration or liquidation, it imposes any and if so what obligation on the target company and its office-holders. The critical issue is whether the cost of complying with an FSD, or the monetary obligation imposed by a CN, ranks in the administration or liquidation of the target as a provable debt, or as an expense, or neither of those, so that it is recoverable only in the very unlikely event that there is a surplus otherwise available for distribution to members after all creditors have been paid in full.

5. Subject to one timing point, no one has suggested that the outcome of these applications is in any way fact specific, in the sense that it depends upon particular facts about the twenty administrations before the court, or about the particular relationship between the two employer companies and the target companies, or even the size of the pension scheme deficits or the particular facts about each company's insolvency, such as the amount of its available assets, and the number and value of its creditors' claims. All those matters are however likely to be relevant factors in the

decision-making processes which the FSD regime imposes both on the Regulator and on those responsible for the management of the target companies.

6. There has not in fact yet been issued either an FSD or a CN to any of the target companies before the court, although the Regulator has moved a considerable distance along the potentially lengthy road which may (but not necessarily will) in due course lead to the issue of one or more of either type. Nonetheless the questions are by no means academic, precisely because a proper understanding of the effect of an FSD and a CN upon companies in administration or liquidation is a fundamental part of the equipment which both the Regulator and the target companies' office-holders will need to bring to bear upon the decision-making processes to which the FSD regime gives rise. Since the questions themselves are, as is common ground, purely matters of statutory construction which are not themselves dependent upon particular facts about any target company's insolvency, it is both convenient and in my judgment necessary for those questions to be determined, and (if possible) any appeals from this judgment also determined, before the Regulator and the office-holders can reasonably be expected to be able to carry out that decision-making responsibly and effectively.

THE FSD REGIME

7. The FSD regime together with the Scheme Specific Funding regime, introduced by the Pensions Act 2004 ("the 2004 Act") represented a further stage in a series of statutory interventions designed to protect employees from the adverse consequences of under-funded occupational pension schemes, following on from the Minimum Funding Requirement ("MFR") and statutory debt regimes under the Pensions Act 1995 ("the 1995 Act"), which were perceived to be inadequate in a number of important respects.

8. Both the MFR regime and the FSD regime were introduced against the backdrop of European Directives, and in particular Council Directive 80/987/EEC and, in the case of the FSD regime, Directive 2003/41/EC, but it has not been suggested that the requirements of those Directives significantly affect the issues of interpretation raised by these applications, other than in the general sense that they require member states to take the necessary measures to protect the interests of employees or ex-employees in relation to pension rights in the event of their employer's insolvency.

9. One aspect of the 1995 Act is however of central importance to an understanding of the effect of the FSD regime upon insolvent targets. Section 75 of the 1995 Act provides that upon the happening of certain events (described as "relevant events"), an amount equivalent to any shortfall in the assets of an occupational pension scheme as against its liabilities existing immediately prior to the relevant event is to become a debt due from the employer to the trustees of the scheme. One of those relevant events, described as an "insolvency event", consists of the employer going into insolvent liquidation. Section 75(8) provided that a debt due by virtue only of section 75 (generally known as a "section 75 debt") was not to be regarded as a preferential debt for the purposes of the Insolvency Act 1986 ("the Insolvency Act").

10. Section 75 was amended in two relevant respects by the 2004 Act. First, it provided by subsection (4A) that where a relevant event consisted of an insolvency event, the section 75 debt was to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the insolvency event. This repeated a similar provision in the original version of section 75, but arose

from a decision by Parliament, after extensive consultation in 2004, not to promote the priority of the section 75 debt above that of the unsecured creditors of the employer. By section 75 (6A)(a) and (6C)(a) of the 1995 Act (as amended) and section 121 of the 2004 Act, an insolvency event was defined so as to include administration as well as insolvent liquidation. Taken together, these two provisions ensured that the section 75 debt would be a provable (but non-preferential) debt in any insolvency process applied to the employer, both by liquidation and by administration which, as a result of the Enterprise Act 2002, had been modernised so as to permit proof of debt and distribution to creditors to take place in relation to a company in administration, without it having first to be placed in liquidation. In either case, the provision that the section 75 debt was deemed to arise immediately before the relevant insolvency event was the mechanism by which, for the purposes of the definition of provable debt in rule 13.12(1) of the Insolvency Rules 1986 ("the Rules"), the section 75 debt would qualify as provable.

11. One of the principal employee protection measures introduced by the 2004 Act was the Pension Protection Fund ("the PPF"), financed from levies upon occupational pension schemes. It operates by assuming the assets and liabilities of a deficient scheme, and then paying its members compensation at a prescribed rate (generally less than the full rate promised under the relevant scheme) using the industry-wide levies for the purposes of meeting the shortfall between the deficient scheme's assets and the prescribed level of compensation.

12. Those responsible for framing the 2004 Act perceived a risk (generally known as a moral hazard) that the creation of the PPF might incline employers to arrange their affairs in such a way as to throw the burden of pension scheme deficiencies upon the PPF, to an extent which would unfairly burden other occupational pension schemes by a consequential increase in the amount of the required levies. One example of that moral hazard related to groups of companies, and in particular groups which, in the context of a group-wide business, arrange for a single company to employ and then provide employees generally for the activities of all or most other group companies. In the event that the group's business does not prosper, the risk to the employees' pension rights would be aggravated if, by comparison with the resources of other group companies, the resources available from an insolvent employer company to meet a section 75 debt were disproportionately low.

13. The FSD regime was designed as the antidote to this moral hazard. I have already described how the regime works in bare outline at the beginning of this judgment. The detailed provisions of the FSD regime are to be found in sections 43 to 51 of the 2004 Act, and in the Pensions Regulator (Financial Support Directions etc) Regulations 2005 ("the FSD Regulations"). It is on any view a novel and unusual regime, giving rise to legal obligations of a type with which (if applicable to targets in an insolvency process) the existing rules as to priority in insolvency have not previously had to contend.

14. Since the FSD regime depends for its effect on any target upon the exercise of a series of discretionary administrative powers by the Regulator, an understanding of its effect in relation to insolvent companies requires, at the outset, an appreciation of the Regulator's functions and objectives. The Regulator is a body corporate established by section 1 of the 2004 Act, consisting of a chairman, chief executive and at least five other persons appointed by the Secretary of State (section 2). By section 4 it is

given wide regulatory functions, and by section 5(1) its main objectives in exercising its functions are defined as follows:

> "(a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
>
> (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
>
> (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2).
>
> (d) to promote, and to improve understanding of, the good administration of work-based pension schemes."

Financial Support Directions - FSDs

15. Section 43 begins by identifying the ambit of the regime, in relation to the types of scheme to which it applies, the circumstances in which an FSD may be imposed, and the persons to whom it may be issued. Thus section 43(1) extends the regime to all occupational pension schemes other than money purchase schemes and certain other prescribed schemes. Subsection 2 provides as follows:

> "(2) The Regulator may issue a financial support direction under this section in relation to such a scheme if the Regulator is of the opinion that the employer in relation to the scheme—
>
> (a) is a service company, or
>
> (b) is insufficiently resourced,
>
> at a time determined by the Regulator which falls within subsection (9) "(the relevant time)."

By subsection (9) and the FSD Regulations, the relevant time is defined as any time within a period of two years before the date of the determination of the Regulator to issue the FSD in question. I shall adopt the jargon which refers to that time as "the look-back date".

16. The expression "service company" is defined in section 44(2) as being a company within a group of companies which, by reference to its turnover, can be seen to be principally engaged in providing the services of its employees to other member companies in the group. The definition of an employer which is "insufficiently resourced" is much more complicated, and contained in section 44(3) to (5), augmented by the FSD Regulations. It is sufficient for present purposes to summarise it. Aspects of the detail of it may be in issue between some of the parties to these applications, and this summary should not therefore be taken as resolving those issues of detail.

17. At the outset, an employer is insufficiently resourced only if the value of its resources is less than 50% of the estimated section 75 debt in relation to the relevant scheme. The amount by which the value of the employer's resources falls short of that 50% is defined as "the relevant deficit".

18. An employer with a relevant deficit is nonetheless only insufficiently resourced if one of two alternative conditions (described as A and B) is met. Condition A is that there exists a person with resources of a value not less than the relevant deficit who or which is either an associate of an employer who is an individual, or a person connected with, or an associate of a corporate employer: see section 44(3A) and section 43(6)(b) and (c). Condition B is met if, in outline, there are two or more persons, satisfying the association or connection test in relation to the employer, with aggregate resources which are not less than the relevant deficit.

19. Section 44(4), together with the FSD Regulations, make detailed provision for the manner in which a person's resources are to be identified, valued and verified. The detail does not matter, save that whereas the resources of an employer are incapable of being defined as having a negative value, the resources of persons associated or connected with the employer may be so defined: compare and contrast Regulations 8(2) and (3). The formula for determining whether the insufficiently resourced condition is satisfied is commonly called the "rich man / poor man test".

20. I will refer to the condition for the issue of an FSD imposed by section 43(2), as amplified by section 44, as the "employer condition". It operates entirely by reference to the look-back date chosen by the Regulator. It says nothing about the circumstances which must prevail at the time when the FSD is issued ("the issue date"), still less about the identity of the persons to whom or to which an FSD may be issued. Thus for example, an employer may have ceased to have been a service company by the issue date, and it is not a requirement of the rich man / poor man test that either condition A or B in section 44 is still met as at the issue date. Thus it is not a requirement of the "insufficiently resourced" condition in relation to a corporate employer that there are at the issue date one or more associated companies of the employer with the requisite aggregate resources valued in an amount not less than the relevant deficit. As Ms Agnello QC put it for the Regulator, the employer condition is only concerned with aspects of the manner in which, historically, the group of which the employer forms part has arranged its affairs.

21. The second condition to the issue of an FSD may be called the "target condition". Section 43(4) provides that an FSD in relation to a scheme may be issued to one or more persons, but subsection (5)(a) limits the issue of an FSD to persons falling within subsection (6) at the relevant time (i.e. the look-back date). Subsection (6), to which I have already referred, limits that class, in the context of a corporate employer, to the employer itself and to "a person, other than an individual, who is connected with or an associate of the employer".

22. Thus, again, the target condition need only be satisfied at the look-back date. It is for that purpose irrelevant that the association or connection between the corporate target and the corporate employer has been broken by the issue date. It is thus irrelevant, for example, that by that date the potential target may have been sold out of the employer's group or that, because the employer is in liquidation, any relevant control test for the purposes of connection or association has ceased by then to be satisfied. It is also irrelevant that, by the issue date, one or more targets which had the requisite net worth to satisfy the rich man part of the rich man / poor man test as at the look back date may no longer be solvent. They may all have gone into an insolvency process, but they remain potential targets. Nor does section 42(5)(a) even limit the range of potential targets to those used to satisfy the rich man part of the rich man / poor man test as at the look-back date.

23. The final and, for present purposes, most important condition for the issue of an FSD to a particular target is that, pursuant to section 43(5)(b), the Regulator must be "of the opinion that it is reasonable to impose the requirements of the direction on that person". I shall refer to this as the "reasonableness condition". This is the first of two reasonableness conditions in the FSD regime. The second relates to the issue of a Contribution Notice under section 47. A thorough understanding of the nature of these two reasonableness conditions is central to the issues raised by this application. They are in many respects similar, but not identical.

24. The starting point is to understand what are "the requirements of the direction" (i.e. the FSD) within the meaning of section 43(5)(b). These are to be found in section 43(3), section 45 and in FSD Regulation 4. Section 43(3) provides as follows:

> "(3) A financial support direction in relation to a scheme is a direction which requires the person or persons to whom it is issued to secure—
>
> (a) that financial support for the scheme is put in place within the period specified in the direction,
>
> (b) that thereafter that financial support or other financial support remains in place while the scheme is in existence, and
>
> (c) that the Regulator is notified in writing of prescribed events in respect of the financial support as soon as reasonably practicable after the event occurs."

The phrase "prescribed events" in subsection (3)(c) includes insolvency events affecting the employer and any target, and any failure to comply with arrangements put in place pursuant to the FSD: see FSD Regulation 4.

25. Section 45 defines "financial support" as follows:

> "(1) For the purposes of section 43 (financial support directions), "financial support" for a scheme means one or more of the arrangements falling within subsection (2) the details of which are approved in a notice issued by the Regulator.
>
> (2) The arrangements falling within this subsection are—
>
> (a) an arrangement whereby, at any time when the employer is a member of a group of companies, all the members of the group are jointly and severally liable for the whole or part of the employer's pension liabilities in relation to the scheme;
>
> (b) an arrangement whereby, at any time when the employer is a member of a group of companies, a company (within the meaning of section 1159 of the Companies Act 2006 (c. 6)) which meets prescribed requirements and is the holding company of the group is liable for the whole or part of the employer's pension liabilities in relation to the scheme;

> (c) an arrangement which meets prescribed requirements and whereby additional financial resources are provided to the scheme;
>
> (d) such other arrangements as may be prescribed.
>
> (3) The Regulator may not issue a notice under subsection (1) approving the details of one or more arrangements falling within subsection (2) unless it is satisfied that the arrangement is, or the arrangements are, reasonable in the circumstances."

Subsection (4) explains that the phrase in subsection (2) "the employer's pension liabilities" includes, although it is not limited to, the employer's section 75 debt.

26. The references in section 45(2)(b) and (c) to an "arrangement ... which meets prescribed requirements" are, by FSD Regulation 13, explained as meaning that the arrangement must (if involving two or more parties) be a legally binding agreement and (in any event) made subject to the jurisdiction of the courts of England and Wales. Similarly Regulation 14 explains that section 45(2)(d) means arrangements of any kind which are legally binding and subject to the jurisdiction of those courts. It follows that section 45(2), as supplemented by Regulations 13 and 14, contemplates a potentially infinite variety of arrangements for financial support for the scheme, subject only to the controlling requirement that they be approved in a notice issued by the Regulator, and (because a notice may not otherwise be issued) are reasonable in the circumstances.

27. The reference in subsection (1) to the details having to be approved rather than for example specified in such a notice makes it clear that an FSD will not itself either contain or be accompanied by a specification of reasonable arrangements. The FSD will simply require that the target secures that financial support for the scheme is put in place. It is for the target (alone or in conjunction with other targets) to propose reasonable arrangements for written approval by the Regulator. The only variable to be specified in the FSD itself is, pursuant to section 43(3)(a), the period within which financial support for the scheme is to be put in place. By contrast, the period during which that support is to remain in place is, by reference to subsection (3)(b) and subsection (10), the whole of the period until the scheme is wound up.

28. Nothing in sections 43 or 45 provides any express guidance, either to the Regulator or to the management of a target, when formulating proposed arrangements for approval by the Regulator, as to what are or are not reasonable arrangements in the circumstances. In this respect the reasonableness test for arrangements in section 45(3) is to be contrasted with the reasonableness condition for the issue of an FSD to a particular target in section 43(5)(b), and the reasonableness condition for the issue of a CN in section 47, in respect of both of which the Act sets out a non-exhaustive list of potentially relevant considerations which I shall shortly describe. Nonetheless, since the decision to give or withhold written approval of proposed arrangements under section 45 is a function of the Regulator, it is affected by its obligation, under section 100, to "have regard to":

> "(a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and

> (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise."

29. Since a target is plainly affected by the decision of the Regulator to grant or withhold approval of proposed arrangements after the issue of an FSD, and since its interests are, generally speaking, likely to be opposed to the interests of the members of the scheme, I consider it reasonable to suppose (as Ms Agnello submitted) that the question whether proposed arrangements are reasonable in the circumstances involves some element of weighing up of the competing interests of the employees on the one hand, and of the target on the other. That concept makes workable sense in relation to solvent targets. The question whether and if so how it works in relation to targets in an insolvency process is one to which I shall return.

30. Returning to section 43, subsection (7) provides the following assistance to the Regulator in addressing the reasonableness condition for the issue of an FSD to a particular target:

> "(7) The Regulator, when deciding for the purposes of subsection (5)(b) whether it is reasonable to impose the requirements of a financial support direction on a particular person, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
>
> (a) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986 (c. 45), whether the person has or had had control of the employer within the meaning of subsection (10) of that section),
>
> (b) in the case of a person falling within subsection (6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,
>
> (c) any connection or involvement which the person has or has had with the scheme,
>
> (d) the financial circumstances of the person, and
>
> (e) such other matters as may be prescribed."

No "other matters" have been prescribed under sub-subsection (e) thus far. Since the decision whether or not to issue an FSD is another function of the Regulator, the general requirement to have regard to the interests of both the employees and the target is also engaged.

31. Although the list of potentially relevant considerations is not exclusive, the emphasis of three out of the four of them is upon the relationship of the target with the employer (where the target is not the employer itself) and with the relevant scheme, both at the issue date and previously. The focus may therefore be upon an ongoing

relationship which is expected to continue, or upon a purely historic relationship which has ended.

32. It will be evident from my summary of the FSD regime thus far that, in a corporate context at least, it is potentially applicable to almost any company within the employer's group and that, in relation to a seriously under-funded scheme, potential target companies are thereby exposed to a risk of the imposition upon them of financial or economic liabilities which may be very large, and the amount of which may be impossible to predict in advance. For example, the present deficit affecting the Nortel Scheme is said to exceed £2 billion. The danger that those consequential contingent liabilities may undermine the financial stability of potential targets is to an extent catered for by provision for the obtaining of clearance statements from the Regulator, pursuant to section 46 of the 2004 Act. Application may be made for clearance statements to the effect that, in the opinion of the Regulator, in the circumstances described in the application:

> "(a) the employer in relation to the scheme would not be a service company for the purposes of section 43,
>
> (b) the employer in relation to the scheme would not be insufficiently resourced for the purposes of that section, or
>
> (c) it would not be reasonable to impose the requirements of a financial support direction, in relation to the scheme, on the applicant."

Once issued, such a clearance statement binds the Regulator in relation to the power to issue an FSD unless there has been a relevant change of circumstances from those described in the application. I was told that a large number of such clearance statements have been applied for and given, although the applications to which these proceedings relate concern only the second and third occasions upon which an FSD has either been issued, or is imminent.

Contribution Notices - CNs

33. The contribution notice provisions form part of the FSD regime and are set out in sections 47 to 50 of the 2004 Act. For present purposes, the important provisions are in sections 47 and part of 49. The starting point is that the power of the Regulator to issue a CN depends upon there having been non-compliance with an FSD. That is stated as an objective test in section 47(1) rather than one which depends upon the Regulator's opinion. Secondly, whereas a single FSD is issued in relation to a scheme (albeit to one or more targets), CNs are only to be issued on a target by target basis. Section 47(4)(d) expressly contemplates that a CN may be issued to one target, where others have proposed arrangements in response to a FSD which have received the Regulator's approval.

34. Section 47(3) imposes a reasonableness condition upon the issue of a CN to a particular target. Potentially relevant considerations are listed in subsection (4). All those which I have described as listed in section 43(7) are broadly replicated: see sub-subsections (b) (c) (e) and (f). Two further considerations are added. They are:

> "(a) whether the person has taken reasonable steps to secure compliance with the financial support direction,

> (d) the relationship which the person has or has had with the parties to any arrangements put in place in accordance with the direction (including, where any of those parties is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986, whether the person has or has had control of that company within the meaning of subsection (10) of that section."

35. Again, since the power to issue a CN is a function of the Regulator, the requirement to have regard to the competing interests of the employees of the scheme, and of the target, imposed by section 100 is also imported.

36. Finally, section 47(5) prohibits the issue of CNs once the PPF has assumed responsibility for the scheme, a process aptly summarised by counsel as "launching the lifeboat". Provision for the assessment period prior to that launch make it clear that Parliament's intention was that the FSD regime should be allowed to run its course, as a means of achieving as far as possible the objective of reducing the risk of situations leading to compensation being payable from the PPF, in section 5(1)(c) of the 2004 Act.

37. By contrast with an FSD, a CN is required to be specific as to the amount payable by the target. By section 47(2) the notice must state that the target is under a liability to pay the scheme trustees or managers a specified sum. By section 48, that sum is to be either the whole or a specified part of what is referred to as the "shortfall sum" in relation to the scheme, which by subsection (2) means either the section 75 debt (if by then crystallized) or the Regulator's estimate of what it would be if it crystallized at that time.

38. Section 49(3) provides that:

> "The sum specified in the notice is to be treated as a debt due from the person to the trustees or managers of the scheme."

Provision is then made for the Regulator or, in specified circumstances, the Board of the PPF, to exercise any powers of the trustees or managers to recover the debt. Further provision is made for the issue of CNs to two or more targets, in such a way as to create joint and several liability for a specified amount. Section 50 enables the Regulator to restrain the trustees or managers of the scheme from pursuing recovery of the section 75 debt while, at the same time, a CN is being enforced and ensures that any payments under a CN are treated as reducing the amount of the section 75 debt. Finally, section 50(9) enables the Regulator, on application, to reduce the amount specified in a CN where, for example, there have in the meantime been payments of part of the section 75 debt, or payments by other targets under CNs in respect of the same FSD.

Procedure

39. The 2004 Act and the FSD Regulations lay down an elaborate procedural code for the implementation of functions of the Regulator, including the FSD regime. It is unnecessary to describe it in detail. In summary, the functions of the Regulator are divided between ordinary functions, which are exercisable by its executive arm, and reserved functions, which must be exercised by its Determinations Panel ("the DP"), which is a committee of the Regulator. Decisions to issue an FSD and a CN are both

reserved functions. The decision whether to give written approval to proposed arrangements under section 45 is not.

40. Although the Regulator has a degree of discretion as to its procedure, it must in relation to the FSD regime comply with what is called in section 96 the "standard procedure" pursuant to subsection (2). This involves, as a minimum:

> "(a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a "warning notice"),
>
> (b) those persons to have an opportunity to make representations,
>
> (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
>
> (d) giving of notice of the determination to such persons as appear to the Regulator to be directly effected by it (a "determination notice"),
>
> (e) the determination notice to contain details of the right of referral to the Tribunal ...."

The issue of an FSD and a CN must each be subjected separately to this procedure. The Tribunal in question is now the Upper Tribunal (Tax and Chancery Chamber), from which an appeal lies to the Court of Appeal. By section 103(4) the Tribunal must, on a reference, "determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it". It is common ground that the result of that phraseology is to require the Tribunal to approach the matter afresh rather than by way of review or appeal so that, in practice, the Tribunal procedure begins with a requirement upon the Regulator to state its case.

41. Before implementing the standard procedure, the Regulator must by then already have identified the pension fund at risk, and conducted, from a standing start, all the research necessary to enable it to know whether the conditions for the implementation of the FSD regime are satisfied, and to address all those matters relevant to the exercise, in particular, of the reasonableness condition for the issue of an FSD to each potential target. In relation to a large group scheme such as both of those before the court, the process of research, coupled with the carrying through of the standard procedure, is likely to take many months and, if it goes all the way to the issue of a CN, in all probability more than a year. Furthermore, the procedure involves at least five stages at which the target and any other persons directly interested are enabled to make representations. The first is, following receipt of a warning notice, before a determination whether to issue an FSD. The second is, upon receipt of a determination, by taking the matter to the Tribunal. The third, if an FSD nonetheless follows, is by representations as to what financial support is reasonable in the circumstances, before the Regulator decides whether to approve proposed arrangements. The fourth is upon receipt of a warning notice that a CN may be issued. The fifth is, upon a determination that it should be, by taking the matter to the Tribunal. Finally the procedure contemplates that, even after the issue of a CN, the target may nonetheless apply for an adjustment or reduction in the light of payments

on account of the section 75 debt, or payments by other targets. At every stage in that process, the Regulator (and by necessary implication the Tribunal) is required to have regard to the interests of the target as a person directly affected.

THE FACTS

42. It is convenient at this point to summarise the factual background to the two impending FSDs which have led to this application. Before that, I shall briefly refer to the only occasion where the FSD regime has, thus far, run its course, namely the FSD issued to members of the Sea Containers group. The successful outcome of that process is instructive in relation to a main submission of the Administrators in these applications, namely that if the application of the FSD regime to insolvent companies creates expense liabilities, it will be fatal to the achievement of the objectives of the rescue culture.

Sea Containers

43. The Sea Containers group was headed by a Bermuda based holding company called Sea Containers Limited. It had a UK subsidiary called Sea Containers Services Limited which was both a service company and the employer and sponsor of two UK pension schemes.

44. Following receipt of information as to its financial plight, the Regulator issued a warning notice to the parent company in October 2006. In the same month the parent applied for protection under Chapter 11 of the US Bankruptcy Code in a Delaware court. The combined section 75 debt owed by the UK service company was approximately £91 million. After considering written representations, and an oral hearing in June 2007, the DP issued a determination notice later that month identifying the parent company as the target for a FSD. That determination was referred by the target to the Tribunal (then the Pensions Regulator Tribunal) with the consequence that the FSD process was automatically stayed. The reference was in the event withdrawn and an FSD was issued against the parent company in February 2008.

45. After negotiations between the parent company, the Regulator and the trustees of the pension schemes, the Regulator approved an arrangement whereby the scheme trustees were issued with 25% of the shares in the company (Sea Co Limited) which inherited the containers business of the parent company under a business rescue plan approved by the Delaware court in the Chapter 11 proceedings. The shareholding was worth less than the amount of the section 75 debt, but was regarded by the Regulator as reasonable financial support in the circumstances. The arrangement was itself approved by an order of the Delaware court on 19th September 2008, despite the opposition of the committee of unsecured creditors of the parent company.

46. It is not clear to me whether the questions raised by this application were ventilated during the FSD process affecting Sea Containers. In any event, they were not decided.

Lehman Brothers

47. Chronologically, the second implementation of the FSD regime arose in connection with the Lehman Brothers group, which collapsed on 15th September 2008, the main London based group companies being placed into administration on that day. The

ultimate parent company of the Lehman group is Lehman Brothers Holdings Inc. ("LBHI"), a company incorporated in Delaware USA, now under Chapter 11 proceedings in the US Bankruptcy Court for the Southern District of New York The main UK operating or "hub" company is Lehman Brothers International (Europe) ("LBIE"), an unlimited company. The principal Lehman employer company within the UK, providing employees on secondment for most of the group's European activities, based in London, is Lehman Brothers Limited ("LBL"). It is a service company within the meaning of section 43(2)(a) of the 2004 Act. It went into administration on 15th September 2008, thereby crystallizing a section 75 debt in relation to the Lehman Brothers Pension Scheme of approximately £140 million. LBL is a shareholder in LBIE, and therefore liable without limit for LBIE's liabilities. Both LBIE and Lehman Brothers Europe Limited ("LBEL"), the other main London operating company, are subsidiaries of Lehman Brothers Holdings plc ("LBH") which is itself wholly owned by Lehman Brothers UK Holdings Limited ("LBUKH"), which is in turn a indirect subsidiary of LBHI.

48. Beginning shortly after the Lehman group crash, the Regulator began investigations, obtaining information from the Administrators of the Lehman applicant companies ("the Lehman Administrators") pursuant to notices under section 72 of the 2004 Act. The question whether FSD processes constituted legal process within the meaning of paragraph 43(6) of Schedule B1 to the Insolvency Act was sidestepped by the Administrators consenting to the institution of those processes, without prejudice as to whether their consent was required. Warning notices were issued to a number of Lehman group companies commencing from 24th May 2010 and, after an oral hearing on 8th and 9th September 2010 (at which the Lehman Administrators' solicitors attended to observe, but made no submissions) a determination was issued on 13th September 2010 that an FSD should be issued against six targets, namely LBHI, LBIE, LBEL, LBH, LBUKH and Lehman Brothers Asset Management (Europe) Limited ("LBAM") which is a UK based Lehman company not in any form of insolvency process. The FSD process in relation to the Lehman companies is now automatically stayed by reason of a reference of that determination to the Tribunal.

Nortel

49. Prior to its collapse in January 2009, the Nortel group carried on a very substantial telecommunications, computer network and software business, in Canada, the USA, Europe and elsewhere. Its ultimate parent company is Nortel Networks Corporation ("NNC") based in Canada. Its main Canadian operating company was Nortel Networks Limited ("NNL") and its substantial USA business was headed by Nortel Networks Inc. ("NNI"), a direct subsidiary of NNL.

50. The group's principal operating company in the UK was Nortel Networks UK Limited ("NNUK") which is also a direct subsidiary of NNL. Since June 2000 it has been the principal Nortel employer in relation to the Nortel Networks UK Pension Plan ("the Nortel Scheme"). NNUK had a number of subsidiaries incorporated in various European countries. In addition, the European business was also carried on by certain European subsidiaries of NNL, including the applicants Nortel Networks SA, Nortel Networks France SAS and Nortel Networks (Ireland) Limited.

51. There are approximately 42,000 members of the Nortel Scheme, of whom about 20,000 are already receiving pension benefits. At the time of the group's collapse in

January 2009 NNUK's section 75 debt crystallized in the amount of approximately £2.1 billion.

52. Upon the group's collapse, NNC and NNL sought protection under Canadian bankruptcy law, namely the Companies' Creditors Arrangement Act, to facilitate the reorganisation of the group for the benefit of its creditors. On the same day NNI was placed into Chapter 11 bankruptcy in the United States, whilst NNUK, sixteen of its subsidiaries and the three European subsidiaries of NNL to which I have just referred were placed into administration in England, on the basis that the centre of main interests of all nineteen companies was in England, so that the English administrations of those companies are main insolvency proceedings as defined in Article 3(1) of the EC Regulation on Insolvency Proceedings.

53. The English administrators of the nineteen Nortel companies ("the Nortel Administrators") are, in cooperation with other Nortel group office-holders worldwide, in the process of selling the Europe, Middle East and Africa ("EMEA") businesses of the group along business rather than corporate demarcation lines and, thus far, realisations of approximately US$3.1 billion have been made.

54. The Regulator's investigations into the Nortel Scheme began in early 2009, with the benefit of information provided by the Nortel Administrators pursuant to section 72 of the 2004 Act. No objection was taken that the FSD regime constituted legal process, and a Warning Notice was issued on 11th January 2010 to targets which included all the Nortel companies named as applicants in these proceedings. Like the Lehman companies they attended but took no part in an oral hearing before the DP on 2nd June 2010, following which the DP issued a determination notice on 25th June deciding that an FSD should be issued to the applicant Nortel companies, together with certain other targets. Following a reference to the Tribunal, the automatic stay of the FSD process means that no FSD has yet been issued. There is a pending application in the Tribunal for a stay of the Tribunal proceedings until after the outcome of these applications.

Representation

55. In order that the court might be assisted by adversarial argument on the questions raised by these applications, both the Regulator and the PPF have been joined, as well as the trustees of the Lehman and Nortel Pension Schemes. In addition, LBHI and LBAM, both of which are targets for a proposed FSD in relation to the Lehman scheme, have been joined at their request. The Regulator is not itself actively seeking the court's directions.

56. Although seeking directions, the Lehman Administrators and the Nortel Administrators (collectively "the Administrators") have taken it upon themselves to argue for a minimalist interpretation of the effect of the FSD regime upon companies in an insolvency process, thereby avoiding the need for the joinder (for example) of a representative of the unsecured creditors of any of the applicant companies.

57. The court has therefore been very considerably assisted by the written and oral submissions of no less than six substantial legal teams. The full representation sufficiently appears from the heading to this judgment. It is sufficient for present purposes to identify the team leaders, who were as follows: Mr William Trower QC for the Nortel Administrators, Mr Robin Dicker QC for the Lehman Administrators, Ms Raquel Agnello QC for the Regulator, Mr Richard Sheldon QC and Mr Michael

Tennet QC for the Nortel Trustees, Mr Gabriel Moss QC for the Lehman Trustees and Mr Barry Isaacs for LBHI and LBAM. The PPF obtained, in effect, dual representation through those appearing for the two sets of pension trustees. Counsel very sensibly shared the burden of presenting submissions on issues about which more than one team were in accord.

THE ISSUES

58. The court was presented with a range of four alternative theories as to the effect of the FSD regime upon companies in an insolvency process where, (as here) the target goes into administration or liquidation prior to the issue of an FSD. Each theory was focused on the financial consequences of compliance with an FSD or a CN. In descending order of effectiveness, they were as follows:

A. That the cost of complying with an FSD or a CN was an expense of the administration or liquidation.

B. That the cost of compliance was a provable debt within the administration or liquidation.

C. That the court should direct compliance by the relevant office-holders under the principle in ex parte James (1874) 9 Ch App at 609.

D. That an FSD or a CN created a non-provable claim against the target company, payable (if at all) only out of any surplus available after payment in full of all unsecured creditors.

59. The Regulator, the scheme trustees, the PPF and LBHI/LBAM all contended for A, with a fallback upon B, although Mr Moss for the Lehman Trustees expressed no preference as between them. Mr Isaacs for LBHI/LBAM was alone in contending for a further fallback by way of recourse to ex parte James. For their part, the Administrators contended simply for D, taking the view that by doing so there would be sufficient adversarial argument about all possible alternatives. It was nonetheless implicit in the submissions of both Mr Trower and Mr Dicker that, if faced with a choice between A and B alone, the Administrators would naturally prefer B, for reasons which will become apparent. Nonetheless, no-one specifically argued that B was preferable to A although the Nortel Administrators reserved their position to argue this in a higher court. As will appear however, I have specifically considered that question, and at some length.

60. Leaving aside the ex parte James solution, it was common ground that the choice between the other three alternatives was, ultimately, a question of statutory interpretation. In its simplest form, the question is which of those alternative levels of priority did Parliament intend to confer upon the financial consequences of the FSD regime? Most of the legislature's thinking about issues as to priority of claims in the insolvency process is of course now to be found in the Insolvency Act and Rules, to the detail of which I must shortly turn. But it needs to be borne constantly in mind that the intention of the legislature about the priority in insolvency of a particular kind of financial obligation is not necessarily to be found there alone. In Haine v. Day [2008] EWCA Civ 626 [2008] BCC 845, at paragraph 7, the Court of Appeal said that to treat the issue as to the priority of an employee's claim against his insolvent employer purely as "a technical problem of insolvency law" may be altogether too blinkered an approach.

61. In abstract theory, Parliament may, when imposing for the first time a new form of financial obligation which is capable of affecting a company in an insolvency process (whether or not primarily aimed at such companies), take three alternative courses in relation to the priority of the new obligation in the insolvency process. First, it may simply make no specific provision, leaving the outcome purely dependent upon the application of technical insolvency law. This is what Parliament must be supposed to have chosen to do, for example, in relation to rates. Secondly, it may make specific provision, for example as to the date upon which a relevant financial obligation is to be deemed to fall due, so that the application of technical insolvency law to that financial obligation automatically produces the result that it has a specific level of priority. This is, quite plainly, what Parliament chose to do in relation to the section 75 debt, both in the Pensions Act 1995 and, when amending section 75, in the 2004 Act. This is also what Parliament must be supposed to have done in relation to corporation tax where, by expressly providing that the relevant financial obligation was to be paid by a company in liquidation, and specifying the liquidator as the responsible officer for that purpose, it achieved the result that, by the application of technical insolvency law (specifically the Toshoku principle) that obligation had the super-priority of a liquidation expense.

62. Finally, Parliament may make specific provision as to the priority of a financial obligation in the insolvency of the corporate obligor in the legislation which imposes that obligation in the first place. Thus it may provide whether a statutory debt is to be preferential, or provable, or an expense. It may do so either expressly or by necessary implication. If it does, that specific provision will necessarily override the generalities of the technical insolvency law as to priority in insolvency. Again, a relevant example is the 1995 Act, which expressly provides that the section 75 debt is not to be preferential.

63. If those are the choices available to Parliament when creating a specific statutory financial obligation, then it must be assumed (even if doubtful in fact) that Parliament knows and understands what would be the consequences of the applicable technical insolvency law, in the event that it makes no specific provision of its own as to the priority of that obligation in the obligor's insolvency. That body of technical insolvency law is therefore the necessary backdrop to a proper understanding of the FSD regime in relation to the priority (if any) in insolvency which its newly created financial obligations were intended to have. It is necessary to address the question of Parliamentary intention as to priority by considering both the insolvency legislation and the legislation creating the financial obligations in question as a whole, rather than in isolated parts. In the present case, the financial obligations in question are those arising from pensions legislation, which I have already sufficiently summarised. I therefore turn to the highly technical insolvency law as to priority.

THE INSOLVENCY LEGISLATION

Overview

64. At the heart of the insolvency legislation lies the implementation of the public policy objective that the assets of an insolvent person (whether individual or corporate) should be realised and distributed *pari passu* among that person's creditors, in proportion to the amount of their claims. The *pari passu* principle is a fundamental principle of justice, equity and fairness, with application in a wide variety of circumstances. Nowhere is it more fundamental than in the insolvency code.

65. Any workable process of *pari passu* distribution requires the identification, quantification and, if necessary, valuation of the creditors' claims, by reference to a particular date ("the cut-off date"). For the purposes of distribution in insolvency the cut-off date is the date upon which the person is first subjected to the relevant insolvency process. Subject to a puzzling sub-issue in cases where, for example, an administration is immediately followed by a liquidation, the cut-off date in relation to a company is the date when it goes into administration or into liquidation.

66. Since the mid-19th century a succession of Bankruptcy and Insolvency Acts have sought to establish a wide and inclusive definition of claims qualifying for *pari passu* treatment, by providing that provable debts are to include both debts and liabilities, and to extend to debts and liabilities which are, at the cut-off date, both present, future and contingent. In relation to personal bankruptcy, the underlying policy is not merely that creditors should be fairly treated *inter se*, but that the bankrupt should receive as full as possible a discharge from his debts. In relation to corporate insolvency, the requirement for the fair treatment of the company's creditors is sharpened by the fact that, (save in exceptional cases) the company will be dissolved at the end of the insolvency process so that, if the claim is not subjected to *pari passu* treatment by that process, it will not be met at all. It will fall down what was described in argument as a black hole. For a claim to qualify for *pari passu* treatment it must be a provable debt. Generally speaking, although the precise nature of this requirement has been the subject of intense debate at the hearing, provable debts arise only out of matters which have occurred, or have begun to occur, prior to the cut-off date.

67. A company does not cease to exist merely because it becomes subject to an insolvency process. Financial liabilities have to be incurred for the benefit of the process. Furthermore, Parliament has in specific areas (such as corporation tax) expressly provided for non-provable liabilities to be payable by companies in liquidation regardless whether they arise from anything done for the benefit of the process. In other circumstances, such as rates, the courts have concluded, albeit in the absence of an express statutory provision, that Parliament intended that certain types of non-provable debt, usually arising from matters occurring after the cut-off date, should nonetheless be paid by the company in an insolvency process. This is usually because the statute creating the liability has used criteria for liability which do not distinguish between persons which are, or are not, in an insolvency process. The criteria are insolvency neutral.

68. In Re Toshoku Finance plc (In liquidation) [2002] 1 WLR 671 the House of Lords concluded (in relation to a company in liquidation) that such statutory liabilities constituted liquidation expenses because they were "necessary disbursements" of the liquidator, for the simple reason that, as Lord Hoffmann put it at paragraph 30:

> "There would be little point in a statute which specifically imposed liabilities upon a company in liquidation if they were payable only in the rare case in which it emerged with all other creditors having been paid."

The Toshoku analysis has been applied to companies in administration, mainly because of the creation after that decision of a similar expenses regime for such companies: see Exeter City Council v. Bairstow [2007] BCC 236.

The Priority Issues

69. The primary case of the Regulator and its supporters (namely that liabilities arising from the FSD regime were payable as a liquidation or administration expense), was therefore as follows:

i) Nothing in the FSD regime excluded companies in an insolvency process from being made targets for the purposes of an FSD or a CN. The criteria for liability were insolvency neutral. Therefore Parliament intended that liabilities arising from an FSD and a CN should be paid by such companies.

ii) Financial liabilities triggered by an FSD or a CN issued after the insolvency cut-off date are not provable debts.

iii) Therefore, since Parliament nonetheless intended that they should be paid, they must rank as expenses under the Toshoku principle. Otherwise they would fall into a black hole.

70. The Administrators challenge this simple analysis in the following way:

i) Although they shrank from suggesting that the FSD regime was wholly inapplicable to a company in administration or liquidation, they submitted that the regime was primarily aimed at solvent corporate targets, that the statutory language made no express reference to targets in an insolvency process, and that Parliament cannot have intended that the priority to be afforded to an FSD or CN liability in the target's insolvency should be higher than the ordinary provable debt priority afforded to the section 75 debt in the insolvency of the employer. To give super-priority to such potentially large and uncertain liabilities would be fatal to the rescue culture.

ii) But they acknowledged, and indeed asserted, that liabilities arising from FSDs or CNs issued after the insolvency cut-off date could not be provable debts.

iii) They submitted that the Toshoku principle was not so inflexible as to require every non-provable statutory liability to be recoverable as an expense. Rather, they submitted, the true principle to be derived from Toshoku was that a statutory liability was an expense if, but only if, Parliament intended that it was not merely a liability of a company in an insolvency process, but a liability which the office-holder was obliged to discharge.

iv) Since for a variety of reasons Parliament could not have intended FSD liabilities to have the super-priority of being expenses, it must have been content for them to be payable only after all provable debts had been paid in full.

71. It is no small irony that the primary cases of both camps depended upon an assertion that financial liabilities arising from post cut-off date FSDs and CNs are not provable debts, and that the alternative case of the Regulator and its supporters depended upon asserting the exact opposite. On any view, the question whether such liabilities are provable debts lies at the heart of all the competing alternatives, and the vigour with which Mr Sheldon and Mr Moss in particular pursued the submission that they were provable debts lost none of its force or enthusiasm from the fact that success in that submission would be fatal to their clients' primary case. In fact, as I have noted, the

Lehman Trustees were content to be neutral as between expense and provable debt, even though the Regulator and its other supporters were not.

72. The above is only a summary of the issues. In particular, it is not a necessary conclusion that the priority afforded to a CN must be the same as that to be afforded to the financial consequences of an FSD. Furthermore, the facts of the cases before the court require the determination of the puzzling issues arising, in relation to insolvency processes which (like these) began before 5th April 2010, where an administration is, or may be, immediately followed by a liquidation.

73. Nor is there any single logical order in which to address the various overlapping questions. Ultimately, the court's task is to weigh up the pros and cons of each of the rival interpretations and to reach a conclusion as to which should be preferred. In that process, although policy plays an important part in a purposive construction of statute, responsibility for balancing the policy objectives of the insolvency and pension regimes is, to the extent that they appear to conflict, a matter for Parliament rather than the court.

74. I have nonetheless found that the difficult process of balancing the rival interpretations is considerably simplified by addressing first the detailed rival arguments about the effect of the provisions in the Insolvency Act and Rules about provable debts, and then by identifying the precise meaning and effect of what I have called the Toshoku principle, in relation to expenses.

Provable Debts

75. The primary statutory provision defining what are provable debts is Rule 13.12 of the Insolvency Rules 1986. It has been the subject of a number of amendments, and the version of the Rule in force for the purposes of the insolvency processes of all the relevant Nortel and Lehman applicant companies is as follows:

> "13.12.— "Debt", "liability" (winding up)
>
> (1) "Debt" in relation to the winding up of a company, means (subject to the next paragraph) any of the following—
>
> (a) any debt or liability to which the company is subject at the date on which it goes into liquidation;
>
> (b) any debt or liability to which the company may become subject after that date by reason of any obligation incurred before that date; and
>
> (c) any interest provable as mentioned in Rule 4.93(1).
>
> (2) For the purposes of any provision of the Act or the Rules about winding up, any liability in tort is a debt provable in the winding up, if either—
>
> (a) the cause of action has accrued at the date on which the company goes into liquidation; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of reference in any provision of the Act or the Rules about winding up to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

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

(5) This Rule shall apply where a company is in administration and shall be read as if references to winding-up were a reference to administration."

76. The following points need to be made about the amendments. First, sub-rule (2) about tort liabilities was introduced in 2006 specifically to reverse, on policy grounds, the outcome of Re T & N Limited (No 2) [2005] EWHC 2870 (Ch). Prior to that amendment sub-rule (2) provided as follows:

> "In determining for the purposes of any provision of the Act or the Rules about winding up, whether any liability in tort is a debt provable in the winding up, the company is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued."

The result in T & N was that the claims of those who had suffered actionable damage from asbestosis only after the cut-off date could not prove in T & N's liquidation, even though the alleged negligence which gave rise to their exposure to that condition occurred many years previously. Their common law claims fell, however tragically, down a black hole.

77. Secondly, sub-rule (5) was introduced in 2003 specifically for the purpose of extending the definition of provable debts to administration, following the introduction by the Enterprise Act 2002 of the new style administration which, for the first time, permitted administrators to call for proof and to make distributions to those with provable debts. Thirdly, sub-rules (1), (2) and (5) have all been substantially amended in 2010, but without retrospective effect upon insolvency processes first instituted before 5th April 2010, so as to provide in clear terms that, where a liquidation is immediately preceded by an administration, the cut-off date for provable

debts in the liquidation is the date of the commencement of the administration, rather than of the liquidation (and *vice versa*).

78. Rule 13.12(1), (3) and (4) are substantially derived from the similar provisions for personal bankruptcy in section 382(1), (3) and (4) of the Insolvency Act, being re-enactments of a formula dating back originally to the Bankruptcy Act 1869.

79. Two issues as to the interpretation and application of Rule 13.12 to the FSD regime fall for determination. The first issue is, in the context of an FSD or CN which (as in the present cases) is issued after the onset of administration of the target company, whether any financial obligation arising from either of them is capable of being a provable debt in that administration. The second issue, which arises if the first is answered in the negative, is if after the issue of an FSD while the target is in administration it then goes into liquidation before being issued with a CN, the financial obligation arising from the CN is a provable debt within the meaning of Rule 13.12 in that subsequent liquidation. It is common ground that, at least at first instance and probably in the Court of Appeal, the outcome of the first issue depends upon whether, within the meaning of sub-rule (1)(b), the target incurred a relevant obligation before the onset of the administration.

80. Put shortly, the alternative case of the Regulator and its supporters is that each target company incurred a relevant obligation before the cut-off date because the FSD regime is designed to require financial assistance where group structures have historically been such as to leave the employer with insufficient resources to meet its pension obligations, by comparison with better resourced companies within the same group, and in particular where the target company has received benefits from the services of the employees of the employer greater in value than the amounts paid to the employer for the use of those services: see in particular section 43(7)(b) of the 2004 Act. The real objective, so it was submitted, was to require groups to provide that support in the first place, so that the FSD regime could not be applied to them, and then to apply the FSD regime only to groups which fell short of that obligation in the first place.

81. For the Administrators Mr Dicker submitted that this analysis failed on two grounds. Firstly, nothing in the historic circumstances which might trigger the application of the FSD regime constituted a legal obligation, or a breach of a legal obligation, of the type required by Rule 13.12(1)(b). Secondly, he submitted that since, in any event, the imposition of a financial obligation under the FSD regime always depended upon the exercise by the Regulator of one or more broad discretions, this was on settled authority sufficient on its own to prevent any consequential financial obligation from being a provable debt.

82. I therefore turn to the authorities, which begin with Re Smith; ex parte Edwards (1886) 3 Morrell 179. That was a case on the substantially identical language of section 37 of the Bankruptcy Act 1883. The debtor became bankrupt after entering into an arbitration agreement with the creditor which provided that the costs of the arbitration were to be in the discretion of the arbitrator. After the debtor became bankrupt, the arbitrator made an award, including a costs award, in favour of the creditor. The Divisional Court held, reversing the County Court judge, that the costs award was provable in the bankruptcy, identifying the contractual submission of the debtor to the arbitrator's costs discretion as a sufficient pre-cut-off date legal obligation.

83. In Glenister v.Rowe [2000] Ch 76 the debtor obtained an order striking out a claim by the creditor for breach of trust. The creditor filed a notice of appeal, following which the debtor was made bankrupt. Shortly after the debtor's discharge, the creditor's appeal was allowed, with costs. The creditor then sought to serve a statutory demand on the debtor for the taxed costs, which the debtor resisted on the grounds that it was a debt provable in his earlier bankruptcy, from which he had therefore been discharged. The Court of Appeal ruled in favour of the creditor. The Deputy Judge had ruled that the creditor's claim had been a contingent liability at the commencement of the debtor's bankruptcy within section 382(1)(a) of the Insolvency Act, but rejected a claim in the alternative based on prior obligation under section 382(1)(b). The case was therefore argued in the Court of Appeal under section 382(1)(a), and a last ditch attempt by the debtor to rely upon section 382(1)(b) was refused, as being too late: see page 85 C to D per Mummery LJ. Nonetheless he observed, but without hearing argument on its merits, that the point would in any event have failed.

84. The main bone of contention in the Court of Appeal was therefore whether, regardless of the presence or absence of a pre-cut-off date obligation, there existed a liability within sub-subsection (a) of a future or contingent nature (within the meaning of subsection (3)) as to which the debtor unsuccessfully relied upon the majority opinion of the House of Lords in Re Sutherland Dec'd [1963] AC 235, to the effect that contingent liability did not necessarily depend upon an antecedent obligation.

85. Re T&N (No2) (*supra*) was a case of corporate rather than personal insolvency, in which a conclusion that a common law liability was not a provable debt meant that it fell down what I have referred to as a black hole, rather than (had the debtor been an individual) being available for enforcement after the bankrupt's discharge. The lengthy and painstakingly careful judgment of David Richards J may be summarised for present purposes as follows:

i) A conclusion that a non-statutory liability of a company was not provable in its liquidation left open only the prospect of its payment out of any surplus otherwise available for shareholders: paragraphs 106 to 107. It was not suggested that the common law liability was an expense.

ii) Although the conclusion that a debt was not provable risked a greater injustice to the creditors of companies than to the creditors of individuals, that did not justify a different interpretation of provable debts in corporate insolvency from that laid down by the authorities on provable debts in bankruptcy: see in particular paragraphs 140 to 141.

iii) Contingent liabilities were a creature of Rule 13.12(1)(b) rather than (a). In this respect the judge followed Glenister v. Rowe.

iv) While the negligence of the company might have given rise to a relevant obligation under Rule 13.12(1)(b), sub-rule (2) in its then form conclusively postponed the incurring of any obligation in tort until the accrual of the cause of action.

86. Two days later, the Court of Appeal gave judgment in R (Steele) v. Birmingham City Council [2005] EWCA Civ 1824, [2006] 1 WLR 2380, in which a discharged bankrupt sought judicial review of a decision by the Secretary of State under section 71(1) of the Social Security Administration Act 1992 to recover an overpayment of jobseeker's allowance which had occurred before his bankruptcy. His case was that

the Secretary of State's determination was a contingent liability at the date of his bankruptcy, and therefore a provable debt from which he had been discharged. The case appears to have been argued mainly under section 382(1)(a) of the Insolvency Act, but with an alternative case under sub-subsection (b): see per Sir Martin Nourse, referring to counsel's submissions, at paragraphs 10 and 16 respectively.

87. The Court of Appeal rejected the case under section 382(1)(a) following Glenister v. Rowe. As to the alternative case, the court held that any original common law liability to repay the overpaid jobseeker's allowance was not the origin of the liability being pursued after discharge, which was itself created entirely as a result of the discretionary decision of the Secretary of State to pursue recovery under section 71(1) of the 1992 Act: see per Sir Martin Nourse at paragraph 16 and per Arden LJ at paragraph 28.

88. Pausing there, a common feature of both Glenister and Steele was that the liabilities in question arose as a result of the exercise of a discretion, in the first case by a court, and in the second by the Secretary of State. In neither case was it preceded by, still less incurred by reason of, an obligation incurred by the debtor before his bankruptcy for which the discretionary power was created as a means of enforcement, or as a remedy for breach. Both liabilities arose by reason of the exercise of discretions conferred otherwise than by contract. By contrast, in ex parte Edwards, although the liability also arose from the exercise of a general discretion, that discretionary power had been conferred by a private arbitration contract to which the debtor was a party.

89. The critical importance of a pre-cut-off date legal obligation, as the precondition for proving a contingent debt, was emphasised by the High Court of Australia in relation to the substantially similar provisions of section 82 of the Bankruptcy Act 1966 in Foots v. Southern Cross Mine Management Pty Ltd [2007] HCA 56, [2007] BPIR 1498, at paragraphs 35 to 36. In that case the debtor had fought and lost an action at trial before becoming bankrupt, but the (probably inevitable) costs order was only made after his bankruptcy. The High Court held that even fighting and losing at trial gave rise to no relevant pre-cut-off date obligation.

90. A different conclusion was reached by the Court of Appeal in Haine v. Day [2008] EWCA Civ 626, [2008] BCC 845, in which a company had, shortly before going into administration, dismissed forty of its employees without prior consultation, contrary to section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. By section 189 the employees were entitled to complain of the lack of consultation to an employment tribunal which, if it found the complaint well-founded "shall make a declaration to that effect and may also make a protective award". Administration had intervened, and been followed by liquidation, before the employees made their complaints and obtained their protective awards. The question was whether those awards gave rise to provable debts. The judge, Sir Donald Rattee, concluded, following Steele, that the employer's failure to consult gave the employees no legal right to a protective payment. Rather, the protective award depended upon the exercise of a discretion by the Employment Tribunal.

91. The Court of Appeal allowed the employees' appeal on two grounds. The first was that the pre-liquidation breach of the obligation to consult was a sufficient legal obligation under Rule 13.12(1)(b) to give rise to a contingent liability as at the cut-off date, the relevant contingency consisting of the Tribunal later making the protective award. The second was that, on the facts, the Tribunal could only exercise its

discretion in favour of the making of an award, such that it had no real discretion to refuse to do so: see paragraph 55. The court distinguished both Glenister and Steele on those grounds and, at paragraph 87, specifically approved the decision in ex parte Edwards, citing Baron Pollock's reference to the arbitration agreement as containing the necessary pre-cut-off date obligation.

92. I have already noted that Haine v. Day is of particular importance in the present context because of the clear recognition by the Court of Appeal of the need to address questions as to the provability of a debt not merely as a technical problem of insolvency law, but in the context of the whole of the relevant legislation, including that which creates the liability, and any underlying EU Directive. At paragraph 7 the Court said this:

> "7 Although the problem arises in the context of insolvency, it is essentially one of employment law, and particularly employment law in the context of an EU Directive. It seems that before Sir Donald the case was argued primarily as a technical problem of insolvency law rather than in the context of legislation intended to implement an EU Directive. Had the case been argued before him in the way in which it was argued before us, we think it at the lowest possible and, in reality probable, that he would have reached a different conclusion."

93. In Casson v. Law Society [2009] EWHC 1943 (Admin) the Administrative Court (Richards LJ and Maddison J) sought to reconcile Glenister, Steele and Haine v. Day in relation to a liability of a solicitor to pay compensation to a client for pre-bankruptcy inadequate professional services, made the subject of a compensation award by an adjudicator after his discharge. At paragraph 36 Maddison J (with whom Richards LJ agreed) said this:

> "The cases of *Glenister* and *Steele*, though inevitably based on their own facts, established a consistent principle of general application that where a court or tribunal has a discretion whether or not to make an award, any sum awarded in the exercise of that discretion does not exist as a debt or liability until the award is made. That principle was not affected by the decision of the Court of Appeal in *Haine*. The Court of Appeal in that case was concerned that principles of EU law in relation to collective redundancies should be implemented by the law of the UK. It considered it unreal to describe the making of a protective award in the circumstances of that case as depending on the exercise of a judicial discretion. The Court of Appeal carefully distinguished the cases of *Glenister* and *Steele*, and left untouched the general principle emerging from those cases to which I have referred."

94. For completeness, I should mention that in El Ajou v. Stern [2006] EWHC 3067 (Ch) Kitchin J held, applying Glenister, that a claim based upon a post bankruptcy award of interest under section 35A of the Supreme Court Act 1981 did not create a provable debt in the bankruptcy, while in T&N (No 3) [2006] EWHC 1447 (Ch) David Richards J decided that a discretionary assessment of the amount of contribution pursuant to section 2 of the Civil Liability (Contribution) Act 1978 was discretionary

only as to quantum, so that it did not prevent the contribution liability from being a provable debt: see paragraphs 71-2.

95. The most recent decision (so far as counsel were aware) on the meaning of provable debts is Unite (the Union) v. Nortel Networks UK Limited [2010] EWHC 826 (Ch), [2010] BCC 706, a decision about the administration of NNUK which began on 14th January 2009. On 30th March 2009 the Administrators terminated the employment of a number of NNUK's employees, and 37 of them commenced proceedings in the Industrial Tribunal in Northern Ireland, for protective awards, unfair dismissal, breach of contract and discrimination. On a contested application for permission to pursue the claims during the administration moratorium, it was relevant for the judge (Norris J) to decide whether those claims constituted provable debts. He decided that all of them did. The breach of contract claim arose out of the obligation in each contract of employment, even though the breach occurred after the cut-off date. The claims for unfair dismissal and discrimination were analysed as claims based on statutory obligations imposed on NNUK in favour of each employee from the moment of the commencement of his or her employment, it being, again, irrelevant that the breaches of those statutory obligations all occurred after the cut-off date: see paragraph 25(b) to (d) inclusive. After a concise review of Glenister, Steele, Haine v. Day and Casson, the judge continued, at paragraph 33 as follows:

> "I am not in any doubt about the matter: but if I were, I think the court should incline towards restricting the category of claims which are not provable. The consequence of the claims not being provable in bankruptcy in *Glenister* (above) *Steele* (above) and *Casson* (above) was that the claims could still be pursued against the discharged bankrupt. But a company does not survive its liquidation: so if a claim is not provable in the liquidation it is completely irrecoverable. It does not seem to me desirable (especially in relation to employees) to create a category of claim which cannot be dealt with in the insolvency process and is otherwise irrecoverable."

96. It is difficult to treat that considerable line of authority as speaking entirely with one voice. In particular, it is difficult to see how there can be a "consistent principle of general application that where a court or tribunal has the discretion whether or not to make an award, any sum awarded in the exercise of that discretion does not exist as a debt or a liability until the award is made" (Casson) in the light of the approval given in Haine v. Day to the decision in ex parte Edwards, in which the arbitral tribunal's costs discretion was just as general as the court's discretion as to costs in Glenister. Similarly, it is difficult to see how Norris J's view that the creation of an employment relationship by contract means that, from then on, all the employer's statutory obligations are sufficient to render claims arising from a post cut-off date breach of them provable debts, squares with the much more guarded analysis in Haine v. Day, in which it was the pre-cut-off date breach of the employer's statutory obligation which was treated as the relevant obligation for the purposes of Rule 13.12(1)(b), rather than the mere existence of the obligation.

97. It is however clear (and not in dispute) that the combined effect of Glenister and Steele is that without a qualifying legal obligation under sub-paragraph (b), there can be no contingent liability under sub-paragraph (a) sufficient to constitute a provable

debt, short of an appeal to the Supreme Court based upon the analysis of the majority in Re Sutherland.

98. Mr Sheldon for the Nortel Trustees sought valiantly to persuade me that both Glenister and Steele were cases only about the bankruptcy equivalent of Rule 13.12(1)(a), so that nothing in either of those cases binds this court in relation to the analysis of a qualifying obligation under sub-rule (b). While I agree with him in relation to Glenister, I consider that Steele clearly is binding authority because it dealt with the alternative case there advanced under section 382(1)(b). Both Sir Martin Nourse (at paragraph 16) and Arden LJ (at paragraph 28) rejected the case advanced under subsection (b). More generally, and in particular when Arden LJ's observations at paragraphs 22 to 24 are taken into account, I consider it clear that the obligation to which recourse may be had under Rule 13.12(1)(b) must be both a legal obligation (whether contractual or statutory), and one which gives rise to the liability relied upon. It must, on any interpretation of sub-rule (b) be an obligation owed by the insolvent person itself.

99. Mr Sheldon submitted that the circumstances which would ordinarily justify the imposition of the FSD regime constituted an *a fortiori* case of pre-cut-off date obligation, by comparison even with Unite (the Union) v. NNUK. The beneficiaries of the pension fund, to the trustees of which a debt arises under the FSD regime, are all pre-cut-off date employees of the group, and it is conduct by the employer and the target companies prior to the onset of insolvency (such as the under-funding of, and receipt of benefits from, the employer) which ordinarily justifies the imposition of an FSD. The FSD regime implements two European Directives.

100. That may be so, but there are in my judgment at least two fatal obstacles to the recognition of any qualifying obligation under Rule 13.12(1)(b) in such circumstances. The first is that, pending the issue of an FSD, the only obligations, contractual or statutory, owed to the employee beneficiaries of the pension scheme, or to the scheme trustees, are owed by the employer. It is indeed precisely because of the absence of any equivalent contractual or statutory obligations owed by the target companies that the novel FSD regime was created to plug the gap. The first ground upon which the Court of Appeal in Haine v. Day distinguished Glenister and Steele is therefore absent. At the very highest there was, perhaps, a moral obligation on the targets to provide proper support to the employer in connection with the pension scheme, or a commercial incentive to do so by way of minimising the risk of being subjected to the FSD regime in the future, but not a legal obligation.

101. The second obstacle is that by no stretch of the imagination can the complex and sophisticated discretionary process created by the FSD regime be described as one in which the Regulator has no real discretion not to issue an FSD or a CN against a target. Accordingly the second ground by which the Court of Appeal in Haine v. Day distinguished both Glenister and Steele is equally missing.

102. I have not reached that conclusion without an acute sense of discomfort. There is to my mind real force in Norris J's analysis of the purpose of the provable debt regime in the paragraph from Unite (the Union) which I have quoted, in particular if the inability to recognise, as provable debts, claims arising out of the pre-cut-off date conduct of an insolvent company means that those claims fall into a black hole. Furthermore, Norris J's conclusion that provable debts should be given as wide an interpretation as possible is nothing new. As long ago as 1871 James LJ described the

policy behind the widening of the definition of provable debt in the Bankruptcy Act 1869 as follows, in Re Hyde (1871) LR 7 Ch App 28 at 31-32:

> "The broad purview of this Act is, that the bankrupt is to be a freed man – freed not only from debts, but from contracts, liabilities, engagements and contingencies of every kind. On the other hand, all the persons from whose claims, and from liability to whom he is so freed are to come in with the other creditors and share in the distribution of the assets."

103. One view of the many cases which have sought to establish an intelligible and clear dividing line between provable and non-provable debts since then is that the desire for certainty has over many years come to obscure that policy objective. It is, for example, incomprehensible on any purposive view why a post cut-off date costs award arising from a trial lost by the debtor before the cut-off date should not be a provable debt, whereas a costs award by an arbitrator should be, even where the arbitration was itself conducted after the onset of the debtor's bankruptcy. But these are, alas, matters to be addressed either by Parliament, by the Insolvency Service (which initiates changes to the Rules), or by a higher court.

104. My conclusion that an FSD issued after the commencement of the applicant companies' administration cannot give rise to a provable debt in that administration pursuant to the insolvency regime makes it necessary to consider the question whether an FSD issued to a target while in administration would give rise to a provable debt in any subsequent liquidation of the target which followed that administration. The case of the Regulator and its supporters that it would do so runs along the following lines:

i) In relation to that subsequent liquidation, the issue of the FSD would impose a pre-cut-off date legal obligation on the target.

ii) A CN issued after the commencement of that subsequent liquidation would be a means of enforcement of that obligation on a recalcitrant FSD target.

iii) Therefore a CN debt created after the liquidation cut-off date would be a contingent liability as at the cut-off date itself, under Rule 13.12(1)(b).

iv) Nothing in Rule 13.12, in the form applicable to any subsequent liquidation of the applicant targets would have effect such that the cut-off date for those liquidations was any earlier than the onset of those liquidations.

v) The post April 5th 2010 version of Rule 13.12 would have precisely that effect, but the transitional provisions in Schedule 4 to the Insolvency (Amendment) Rules 2010/686 provide at paragraph 1(7) that they do not apply to a liquidation occurring after April 2010, even if it is immediately preceded by an administration taking effect prior to that date.

105. To that formidable (if technical) argument Mr Dicker for the Administrators advanced two obstacles. The first was that even the issue of a CN depends upon the exercise of a general discretion by the Regulator: see section 47(3) and (4) of the 2004 Act, thereby falling foul of the supposed general principle established in Glenister and Steele, and recognised in Casson. The second obstacle is that the amendments to Rule 13.12 designed to replace the liquidation date with the administration date as the cut-off date for a liquidation immediately preceded by an administration were only

omitted from the earlier amendments in 2003 by an obvious mistake, which the court can and should itself deal with by a purposive construction of the pre-2010 version of Rule 13.12, so that, in effect, it should be read and construed as if it had always contained, from 2003, provisions substantially the same as those belatedly introduced in 2010.

106. In my judgment, if an FSD is issued to a target company while in administration, and a CN is issued to the same target after the administration had been immediately followed by a liquidation, then the CN would create a provable debt in that target's liquidation. My reasons follow.

107. First, I do consider that the issue of an FSD imposes a legal obligation, albeit of an unusual kind, upon the target company of which the beneficiaries are the scheme members employed by the associated employer company, represented by the scheme trustees. The legal obligation is to secure the provision of financial support for the scheme by arrangements which are reasonable in the circumstances: see sections 43(3) and 45(3) of the 2004 Act. The FSD is, in short, precisely that which converts what may have been a previous moral obligation or commercial incentive into a legal obligation of the requisite type for the purposes of Rule 13.12(1)(b).

108. Secondly, I am not persuaded that the undoubted discretion whether or not to issue a CN, conferred on the Regulator by section 47(3) of the 2004 Act is sufficient to deprive what section 49(3) describes as the consequential "debt due from the person to the trustees or managers of the scheme" of the status of a provable debt. In my judgment it comes on the same side of the difficult dividing line as is occupied by the arbitrator's costs discretion in Re Edwards and the Tribunal's discretion in Haine v. Day. This is not so much because it is a discretion only capable of being exercised one way, but because the discretion is in terms about how to deal with a previous non-compliance with the pre-existing legal obligation: see section 47(1) of the 2004 Act. While it is true that, read literally, section 47(1) speaks in terms of non-compliance with an FSD generally, rather than necessarily by the intended target of the CN, I consider it clear from a reading of sections 47 to 50 as a whole that the Regulator's focus in relation to the contemplated target of a CN will inevitably be upon the extent of that target's non-compliance with the FSD: see in particular section 47(4)(a) and (d), section 49(8) and section 50(9).

109. Put another way, I consider that the two grounds given in Haine v. Day for distinguishing both Glenister and Steele are each self-sufficient. Where, as in Haine v. Day and the present case, the discretion arises in the context of the enforcement of compliance, or the provision of a remedy for non-compliance, with a pre-existing legal obligation, then Rule 13.12(1)(b) is satisfied. Where by contrast it is the affirmative exercise of the discretion which first creates any legal obligation of the relevant type (as in Glenister, Steele and Foots v. Southern Cross) then its existence necessarily prevents a provable debt arising under Rule 13.12, even if the discretion is exercised by reference to matters which occurred prior to the cut-off date. I also consider that this analysis plainly better serves the underlying rationale for the provable debt regime, as explained by Norris J in Unite (the Union) v. NNUK.

110. I do not consider that I am bound by Glenister or Steele, still less by Casson, to reach a contrary conclusion. In Glenister there was no pre-cut-off date legal obligation. In Steele the only possible legal obligation was a pure common law duty to make restitution which was not the obligation which gave rise to the liability in question.

To the extent that my conclusion is incompatible with the analysis in Casson of the ratio of Glenister and Steele, I am not bound by it and, with great respect, I do not agree with it.

111. Mr Dicker's submission that I should construe the pre-2010 version of Rule 13.12 as if it had always provided for an administration cut-off date in the context of proof of debts in an immediately following liquidation calls for further analysis. Proof of debt and distribution to creditors within administration was introduced by the Enterprise Act 2002. This led directly to the amendment of Rule 13.12 by the addition of sub-paragraph (5), to which I have already referred. The Enterprise Act also introduced the facility for a company to move from administration into liquidation, and from liquidation into administration. This led to further amendments to the regime for quantification and proof of debt, in the Insolvency (Amendment) Rules 2005 (SI 2005 No 527).

112. In an Explanatory Note, described in its heading as not being part of the Rules, the Insolvency Service said this:

> "As a result of the changes made to the law on administration by the Enterprise Act 2002 (c.40) a company can move between liquidation and administration or between administration and liquidation. Both of these procedures enable creditors to prove their debts at the date of the administration or liquidation respectively. By way of clarification of the existing rules, the amendments provide that the relevant date is the date of the first insolvency procedure commenced. The Rules affected are:-
>
> • Rules 2.86, 2.87, 2.88, 2.89, 4.91, 4.92, 4.93 and 4.94"

Part 2 of the Rules concerns administration procedure. Part 4 concerns winding up. Rules 2.86 and 4.91 both concern the debts in foreign currency, and provide for conversion into sterling on the relevant cut-off date. Rules 2.87 and 4.92 concern periodic payments, which are provable in relation to amounts due and unpaid up to the relevant cut-off date. Rules 2.88 and 4.93 concern interest, and prohibits proof of interest in respect of any period after the relevant cut-off date. Rules 2.89 and 4.94 concern future debts, and enable a creditor to prove for such a debt even if not due on the relevant cut-off date. In each case, the amendments introduced in 2005 do, as the Explanatory Note states, provide that, in relation to any proof of debt in an insolvency process (be it liquidation or administration) which is immediately preceded by the other type of insolvency process (administration or liquidation) the cut-off date is that applicable to the first of those two consecutive insolvency processes.

113. Foreign currency, periodical payments, interest and future debts may fairly be described as subordinate parts of the proof of debt regime. Inexplicably, the 2005 Amendments made no equivalent adjustment to the main rule concerning proof of debt, which is of course buried away in the interpretation section, at Rule 13.12. It took five years before an equivalent amendment was made to Rule 13.12, in the form of Schedule 1 to the Insolvency (Amendment) Rules 2010, to which I have already referred. Furthermore, although many of the amendments introduced in 2010 were, by the transitional provisions in paragraph 2 of Schedule 4, made applicable quasi-retrospectively to all insolvencies, even if commenced before April 2010, the

amendments to Rule 13.12 were made applicable only where the first of two consecutive insolvency processes commenced after that date.

114. The failure to amend Rule 13.12 in 2005, coupled with the non-retrospectivity of the 2010 amendment, is at least odd in relation to companies first going into successive insolvency processes between those two dates. Rule 13.12 unmistakably contemplates that, in the subsequent process, the relevant cut-off date is the commencement of that process, whereas the 2005 Amendments contemplate that, for particular aspects of the process of proof and quantification, the relevant cut-off date is that applicable to the earlier process. I can think of no obvious reason for having two different cut-off dates in relation to the same process of proof.

115. Mr Dicker for the Administrators suggested that I should take the bull by the horns and construe Rule 13.12, as from 2005, as if it had always contained the amendment introduced non-retrospectively in 2010, on the ground that the failure to introduce it earlier was an obvious drafting mistake. He referred me to the following passage in Lord Nicholls's speech in Inco Europe Limited v. First Choice Distribution [2000] 1 WLR 586, at 592:

> "It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words. Some notable instances are given in Professor Sir Rupert Cross's admirable opuscule, *Statutory Interpretation*, 3rd ed. (1995), pp. 93-105. He comments, at p. 103:
>
> > "In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role."
>
> This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question.; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross

> the boundary between construction and legislation: see per Lord Diplock in *Jones v. Wrotham Park Settled* Estates [1980] A.C. 74, 105-106. In the present case these three conditions are fulfilled.
>
> Sometimes, even when these conditions are met, the court may find itself inhibited from interpreting the statutory provision in accordance with what it is satisfied was the underlying intention of Parliament. The alteration in language may be too far-reaching. In *Western Bank Ltd v.* Schindler [1977] Ch. 1, 18, Scarman L.J. observed that the insertion must not be too big, or too much at variance with the language used by the legislature. Or the subject matter may call for a strict interpretation of the statutory language, as in penal legislation."

116. Sorely tempted though I am to accede to Mr Dicker's invitation, I do not consider that it would be a permissible exercise of the court's interpretative function. My reasons follow.

117. First, while I think it probable that the failure to amend Rule 13.12 in 2005, in the form subsequently achieved in 2010, was a mistake, the result was that, viewed as a distinct (and very important) provision in the Rules, Rule 13.12 was simply not amended at all in 2005. On its face, it continued to make exactly the same provision as to cut-off date both in administration and liquidation as it had done since 2003, when sub-paragraph (5) was added. The conclusion that the omission of any amendment was a mistake derives only from an appreciation of the purpose behind the amendments to Parts 2 and 4 of the Rules, as explained by the Explanatory Note. This is not therefore a question of correcting a drafting mistake in an amendment actually made to Rule 13.12, but rather the insertion of a whole new and important provision which is, quite simply, not there.

118. Secondly, the alteration in language required by Mr Dicker is, as is apparent from the widespread amendments to Rule 13.12 actually introduced in 2010, very far reaching in its effect. Rule 13.12 is the primary rule governing the identification of the cut-off date for the purposes of proof in insolvency processes. To construe the primary rule as having been implicitly amended by reference to amendments made only to subsidiary aspects of the same regime would be, to my mind, to allow the tail to wag the dog.

119. Thirdly, although I think that the omission was probably a mistake, I am by no means "abundantly sure" of that, which is the requisite standard laid down by Lord Nicholls. It may be that the very experienced and sophisticated draftsman of the 2005 Amendments (within the Insolvency Service) thought it sensible first to prescribe a unified cut-off date in relation to particular aspects of the proof of debt regime, and leave a wholesale amendment of the primary rule to be decided upon after reviewing the feedback about the cautious start, in the light of experience.

120. Fourthly, there is in my view a subtle dividing line between dealing with drafting mistakes by construction, which is a task for the court, and dealing with them by subsequent amendment, which is a task for the legislature. In my judgment the present task falls clearly on the legislative side of that dividing line. The statutory provisions in question consist of important parts of a highly sophisticated and

technical code set out in rules which have to be applied on a daily basis by busy insolvency practitioners who ought, in principle, to be entitled to read the rules and apply them in accordance with their language, at least where it is unambiguous. Rule 13.12, in its pre-April 2010 form, is unambiguous in that respect. It clearly provides that the cut-off date in a liquidation, and in an administration, is in each case the date of the commencement of that insolvency process. No ordinary process of construction would lead to the conclusion that, where for example liquidation immediately follows an administration, proof in that liquidation is governed by the administration cut-off date. On the contrary, a careful comparison between Rule 13.12 and the amended rules in Parts 2 and 4 to which I have referred would suggest that the legislature had quite deliberately made a cautious and limited alteration to the general principle, in relation only to specific aspects of the proof regime.

121. I have no doubt that there will have been numerous cases between 2005 and 2010 of administrations followed by liquidation, in which the liquidators have dealt with creditors' claims upon the basis that the relevant cut-off date was the commencement of the liquidation, as unambiguously described by Rule 13.12 in its then form. The decision not to make the 2010 Amendments to Rule 13.12 applicable to existing insolvency processes demonstrates to me that the draftsman (and therefore the legislature) must have thought so as well, and proceeded on the basis that, from 2005 until 2010, Rule 13.12 did indeed mean what it clearly said.

122. To treat Rule 13.12 as having always contained, since 2005, the 2010 Amendments would, in relation to such intervening insolvency processes, cause an unacceptable degree of potential chaos. In particular, creditors to whom distributions were made on an assumption that their common law claims satisfied Rule 13.12 because they flowed from obligations incurred before the liquidation cut-off date, might find themselves subjected to recovery claims by reference to a conclusion about construction which, by backdating the cut-off date to the commencement of any immediately prior administration, left them out in the cold. Similarly, statutory creditors whose claims were, under the Toshoku principle, converted from provable claims to expense claims (such as local authority rates creditors) upon the cut-off date, but who received a small dividend in respect of liabilities falling due between the onset of administration and the commencement of a subsequent liquidation, would be enabled to claim that the earlier administration cut-off date now declared to be applicable to their claims, as a matter of necessarily retrospective construction of Rule 13.12, meant that they had all been underpaid. The non-retrospectivity of the 2010 Amendments neatly deals with all those difficulties. It would in my judgment be irresponsible for the court, by a process of construction, now to interfere with that sensible result.

123. Mr Dicker submitted that orthodox principles of construction required the 2005 Amendments, and their effect on the Insolvency Rules as a whole, to be addressed without regard to what the legislature later did in 2010. That may be strictly true, but the legislature's approach to the 2010 Amendments demonstrates to my mind, even if only by way of example, why there is that dividing line between the court's and the legislature's responsibilities in relation to the correction of mistakes.

124. I have thus far set out in detail what I conceive to be the relevant technical insolvency rules as to provable debt, both now and (since they have not significantly changed since 1865) in 2004. They form the main part of the necessary backdrop to the insolvency priority aspect of the interpretation of the FSD regime. I have also described, as the second part of that necessary backdrop, the consequences, from a

technical insolvency perspective, of a debt being neither provable nor an expense. As described by David Richards J in T & N (No 2), it could be pursued only in the very unlikely event that there was a surplus available after payment in full to all unsecured creditors. That is what I have called the black hole, although on analysis it might perhaps better be described as a dark grey hole.

125. Since no one suggests that financial liabilities arising from the FSD regime could possibly be preferential debts, the remaining part of the necessary backdrop is that part of the technical insolvency regime which deals with liquidation expenses. As to this, there was also a keen and protracted debate between counsel as to the precise meaning and effect of the House of Lords' decision in Toshoku. That decision was handed down in February 2002, and must be taken to have formed a relevant part of Parliament's understanding of the technical insolvency legislation when formulating the FSD regime in 2004.

THE TOSHOKU PRINCIPLE

126. The issue between counsel may be summarised as follows. For the Regulator and its supporters, it was submitted that the House of Lords laid down a clear and simple rule that, wherever statute created a monetary liability which applied either expressly to a company in liquidation, or to a company regardless whether it was or was not in liquidation (and now, after Exeter v. Bairstow, administration), then if that obligation was not a provable debt, it must be a liquidation (or administration) expense.

127. For the Administrators Mr Trower and Mr Dicker both submitted that the true principle was narrower than that. It was not sufficient that the statutory liability should merely be a liability of a company in an insolvency process, and not provable. It must also be capable of being described as a "necessary disbursement". It will be an expense of that type if, but only if, Parliament can be shown to have intended that the debt should not merely be a liability of a company in an insolvency process, but also payable by the company while in that insolvency process, and therefore payable by the office-holder (liquidator or administrator) with all the super-priority consequences that would flow from that analysis. The Administrators maintain that this has been identified as the true ratio of Toshoku by two subsequent first instance cases in the Companies Court, namely re Allders Department Stores Limited [2005] EWHC 172 (Ch); [2005] BCC 289 by Lawrence Collins J and Exeter v. Bairstow (*supra*) by David Richards J. It is submitted that I should therefore follow those two decisions, unless convinced that they are wrong.

128. The issue in Toshoku was whether the list of liquidation expenses in Rule 4.218(1) was determinative of what was a liquidation expense (as the Crown submitted) or was merely an "outer envelope within which expenses were contained" (as submitted for the liquidators): see and contrast paragraphs 5 and 12. It was common ground in the House of Lords (but not in the courts below) that, as a matter of construction, the relevant liability to corporation tax fell within Rule 4.218(1)(m): see paragraphs 10 and 11. The question was whether this compelled the liquidator to pay that tax as an expense, or merely gave rise to a second question, namely whether it also had to pass a judge-made test which Nicholls LJ in Re Atlantic Computer Systems plc [1992] Ch 505, at 520, called the "liquidation expenses" principle: see again paragraph 12. The House of Lords held that no such second question arose, expressly overruling Re Atlantic Computer Systems plc (on this point) and Re Kentish Homes Limited [1993] BCLC 1375.

129. The statutory liability under review in Toshoku was one of that type in relation to which, as I have already described, Parliament expressly directed its mind to the question whether the liability should be paid by a company in liquidation. So was the liability to pay corporation tax on chargeable gains arising in the winding up, reviewed in Re Mesco Properties Limited [1979] 1 WLR 558 by Brightman J which, at paragraph 42 in Toshoku, Lord Hoffmann adopted as the basis for his opinion. He continued:

> "The statute expressly enacts that a company is chargeable to corporation tax on property of gains arising in the winding up. It follows that the tax is a post-liquidation liability which the liquidator is bound to discharge and it is therefore a "necessary disbursement" within the meaning of the Insolvency Rules."

I consider that Lord Hoffmann used the expression "post-liquidation liability" as meaning a liability which, because it arose after the cut-off date, was not a provable debt within the meaning of Rule 13.12. Thus far, Lord Hoffmann's speech is consistent with either of the rival interpretations of it advanced before me.

130. But Lord Hoffmann's reasoning deserves closer inspection. The Crown's submission was that: "it is a sum which by statute is payable by a company in respect of profits or gains arising during a winding up. The liquidator is obliged to pay it. It is therefore a "necessary disbursement" which the liquidator has to make in the course of his administration. That is an end of the matter." (paragraph 7). At paragraph 8 Lord Hoffmann described that approach as supported by high authority, beginning with Re Mesco Properties Limited. At paragraphs 29 and 30 he identified from Exhall Coal Mining Co Ltd 4 De G J & S 377 and Lundy Granite Co LR6 Ch App 462 a principle which was:

> "One which permits, on equitable grounds, the concept of a liability incurred as an expense of the liquidation to be expanded to include liabilities incurred before the liquidation in respect of property afterwards retained by the liquidator for the benefit of the insolvent estate."

He continued, in paragraph 30:

> "It was not, however, a general test for deciding what counted as an expense of the liquidation. Expenses incurred after the liquidation date need no further equitable reason why they should be paid. Of course it will generally be true that such expenses will have been incurred by the liquidator for the purposes of the liquidation. It is not the business of the liquidator to incur expenses for any other purpose. But this is not at all the same thing as saying that the expenses will necessarily be for the benefit of [*the*] estate. They may simply be liabilities which, as liquidator, he has to pay. For example, there will be the fees payable to fund the Insolvency Service, ranking as paragraph (c) in Rule 4.218(1), where the benefit to the estate may seem somewhat remote. There would be little point in a statute which specifically imposed liabilities upon a company in liquidation if they were payable only in the rare

> case in which it emerged with all other creditors having been paid."

131. At paragraphs 31 to 34 he tested that analysis by reference to established authorities on rates, where liability depends upon rateable occupation, pursuant to statutory criteria which make no express reference to whether a company is, or is not, in liquidation. He noted that the decision of Kay J in Re Watson Kipling & Co (1883) 23 Ch D 500 that liability for post cut-off date rates depended on the Lundy Granite principle had been overruled in Re National Arms and Ammunition Co (1885) 28 Ch D 474, at 480 and 482 which was itself followed in Re Blazer Fire Lighter [1895] 1 Ch 402. At paragraph 34 he concluded, by reference to examples of cases in which a company had remained, after the cut-off date, in rateable occupation otherwise than for the benefit of the insolvent estate that:

> "The rates would have been an obligation incurred after the liquidation which (unlike the rent) was not provable and was therefore payable in full." (my underlining)

132. He concluded his analysis of the authorities by reference to Re Kentish Homes (*supra*) in which the liability in question was a post-liquidation liability to community charge on empty flats. Again, the statute made no express reference to whether the liability was payable by a company in liquidation, but it was common ground in Re Kentish Homes that the company was the chargeable person in respect of the relevant flats for the period in question (paragraph 40), and that this was the criterion for liability. Applying the Lundy Granite principle, Sir Donald Nicholls V-C concluded that, because the flats were merely owned by the company, and had not in any sense been retained or used for the benefit of the liquidation, the community charge was not a liquidation expense. In concluding that Re Kentish Homes should be overruled, Lord Hoffmann said this at paragraph 41:

> "In the first place, the question of whether the community charge should count as an expense of the liquidation was not a matter for the judge's discretion. It depended upon whether it came within one of the paragraphs of Rule 4.218. In my opinion if, as was common ground, the company was the chargeable person, it was a necessary expense which came within (m). If, therefore, the liquidator had sufficient assets after satisfying the liabilities coming within paragraphs (a) to (l), he was obliged to pay it. Secondly, the *Lundy v. Granite Co* principle had no relevance. The liability did not arise out of a pre-liquidation obligation. If it came within the language of paragraph (m), it was a liquidation expense."

133. I consider that in overruling Re Kentish Homes, Lord Hoffmann clearly did not regard the question whether a statutory liability was a necessary disbursement, and therefore an expense, as turning on the question whether the statutory language imposing the liability made express reference to it being payable by a company in liquidation. It was sufficient for Lord Hoffmann's analysis that the statute imposing the community charge, like the statutes imposing a liability for rates, merely defined the person liable, without any reference to liquidation, as the person chargeable by virtue of its ownership of the property (community charge) or the person in rateable occupation

(rates). It was enough that the statute imposed a liability on a company, whether or not in liquidation.

134. Lord Hoffmann concluded with a comment upon the submission of counsel for the liquidators that, both in the instant case and more generally, the imposition of post-liquidation liabilities as liquidation expenses was capable of causing injustice. At paragraph 45 he said:

> "The injustice, if any, does not arise because liabilities imposed upon a company in liquidation have priority as expenses of the liquidation, but because it may be unjust to impose certain liabilities upon companies in liquidation."

After reference to liabilities under environmental legislation, and by reference to Re Mineral Resources Limited [1999] 1 All ER 746, he concluded at paragraph 46:

> "In my opinion, the question of whether such liabilities should be imposed upon companies in liquidation is a legislative decision which will depend upon the particular liability in question."

135. Pausing there, my reading of Lord Hoffmann's speech is that, although on the particular facts in Toshoku the statutory liability was imposed expressly on a company in liquidation, he regarded the "necessary disbursements" category of liquidation expense as including all statutory liabilities imposed on a company in liquidation whether expressly, or by a criterion for liability (such as rateable occupation or property ownership) which made no distinction between companies which were, and were not, in liquidation. It remains to consider whether my interpretation is to be displaced by the analysis in Allders, and in Exeter v. Bairstow.

136. The question in Allders (*supra*) was whether, if administrators of companies in a group terminated contracts of certain company employees, the consequential redundancy and unfair dismissal liabilities imposed by statute would be expenses of the administration. Mr Trower and Mr Sheldon, both of whom appeared in Allders, told me that the administrators needed, and indeed obtained, the court's directions as a matter of urgency. The administrators had only been appointed on 26th January and 4th February 2005 respectively, and judgment was delivered on 16th February 2005.

137. At paragraph 20 Lawrence Collins J noted that, pursuant to paragraphs 9 to 16 of Schedule 6 to the Insolvency Act, certain liabilities to employees are treated as preferential debts, (including protective awards), but only in respect of the period of four months before the cut-off date. At paragraph 21 he noted that liabilities payable by virtue of paragraph 99 of Schedule B1 to the Insolvency Act in priority to the administrators' expenses are those liabilities adopted by the administrators after fourteen days from appointment and which are "wages or salary". He concluded that neither the redundancy nor unfair dismissal payments were wages or salary.

138. He then decided the question before him in paragraph 24, almost every sentence of which is relied upon by the Administrators in their various submissions, and it is therefore worth quoting in full:

> "I do not consider that the statutory liabilities for redundancy payments or unfair dismissal claims would be "necessary

> disbursements" for the purposes of r.2.67(1)(f). First, it would be inconsistent with the scheme of the legislation if the payments referred to in Sch.6 were to be treated as preferential, and yet all other employee-related payments are to be paid as an expense of the administration. That would be to give the Sch.6 payments (which include protective awards) a lesser priority than other types of payments, when the policy appears to have been to give them a greater priority. Secondly, there is nothing in my judgment in Re Toshoku Finance (UK) plc [2002] B.C.C. 110; [2002] 1 WLR 671 which requires a different conclusion. It is not the *ratio* of that case that any liability imposed on a company which is not provable as a debt is thereby rendered a "necessary disbursement". The context in which Lord Hoffmann referred to the fact that certain debts could not be proved shows that he was justifying the treatment of certain debts as expenses, and not offering a definition of what liabilities were disbursements. Even if that were the crucial test for winding up, there would be no reason to apply it to administration. Although the current regime envisages a distribution to secured and preferential creditors without a subsequent liquidation, in the normal case of an administration which does not succeed in rescuing the company, the company will go into liquidation and the statutory payment obligation will be a provable debt under r. 13.12. Finally, a construction of r.2.67(1)(f) which applied it to statutory redundancy payment liabilities and other statutory liabilities would have such adverse policy consequences on the administration regime that it is impossible to see that such a result could have been intended."

139. A number of points emerge from that paragraph. The first is that Lawrence Collins J was certainly not assuming that the redundancy and unfair dismissal liabilities would, if not administration expenses, fall down the black hole which would follow from them not being provable debts either. On the contrary, he appears to have assumed, (by an interpretation of Rule 13.12 in its then form with which, after lengthy analysis, I concur), that a post administration dismissal immediately followed by a liquidation would mean that the liabilities arising from the dismissal would be provable debts in the subsequent liquidation. He noted that distribution could be made in the administration itself, but regarded distribution in a subsequent liquidation as the "normal case".

140. Secondly, his decision preceded by some years Norris J's much simpler conclusion in Unite (the Union) that redundancy and unfair dismissal payments resulting from a post cut-off date dismissal were always provable debts, even in the insolvency process in which the dismissal occurred, because they arose out of statutory obligations incurred by the company from the moment when it employed the relevant employees. Thirdly, it is literally true that it was not the ratio of Toshoku that "any liability imposed on a company which is not provable as a debt is thereby rendered a necessary disbursement" because, as appears from examples provided by David Richards J in Exeter v. Bairstow, there was, at least then, a major class of common law liability which was neither provable as a debt nor recoverable as a liquidation

expense, namely contingent liability in tort where the cause of action accrued after the cut-off date.

141. Fourthly, it is also true that, if the ratio of a case is identified by reference to that which it specifically decided, Toshoku was in fact a case about a statutory liability where Parliament expressly declared it to be payable by a company in liquidation. Fifthly, Lawrence Collins J's view that there would be no reason to apply the Toshoku principle to administration has, of course, since been rejected, by David Richards J in Exeter v. Bairstow, at least where the language of the relevant administration expenses rule is substantially the same as that used in the corresponding rule for liquidation. In that context Rule 2.67(1)(f) (for administration) is substantially identical to Rule 4.218(1)(m) (for liquidation), in relation to necessary disbursements. Finally, it is undoubtedly correct that the issue in Toshoku did not require a comprehensive definition of all types of liability which might constitute disbursements.

142. Nonetheless, I have not been persuaded by anything in Allders that I am wrong in my analysis that the route by which Lord Hoffmann reached his decision in Toshoku stemmed from his conclusion that the "necessary disbursements" category of expense is applicable to all cases in which statute imposes a liability on a company in liquidation, regardless whether the legislation in question did so expressly, or merely by using a criterion for liability that did not distinguish between companies which are, or are not, in an insolvency process.

143. In Exeter City Council v. Bairstow (*supra*) the question was whether non-domestic rates in respect of premises occupied by a company in administration were payable as an administration expense. The central issue was whether the Toshoku principle, derived from a case about liquidation, had any application to administration. David Richards J's conclusion was that it did, at least where the language of both expense regimes was the same. He made two relevant references to Toshoku. First, at paragraph 77, having quoted most of paragraph 24 of Lawrence Collins J's judgment in Allders, he continued:

> "77 It appears to me that the principal basis of the decision was that because of the special treatment of certain categories of employment-related claims under para.99 and under Sch.6, it would be inconsistent to treat further categories as expenses under r.2.67. I concur with that analysis. I also concur with the view that it is not the ratio in Re Toshoku Finance (UK) Plc that any liability imposed on a company which is not provable as a debt is thereby rendered a necessary disbursement. Examples of liabilities which fall into neither category are liabilities in tort where the cause of action arises after the liquidation (see Re T&N Ltd [2005] EWHC 2870; [2006] 1 W.L.R. 1728, subject now to the limited exception in r.13.12(2)(b)) and, it would seem, orders for costs made after the commencement of liquidation in respect of pre-liquidation litigation (Glenister v Rowe (Costs) [2000] Ch. 76, a decision on the rules for proof in bankruptcy)."

Secondly, after concluding in paragraph 83 that, both in liquidation and in administration, rates were payable by the company, he said, at paragraph 84:

> "The observations on rates, as being necessary disbursements within r.4.218(1)(m), in Re Toshoku Finance (UK) Plc may, strictly speaking, be obiter but all members of the House of Lords concurred in Lord Hoffmann's speech and Mr Briggs did not suggest they were wrong. Just as rates are payable in a liquidation as a necessary disbursement, so in my judgment they are payable in an administration."

144. In relation to paragraph 77 it is to be noted that neither of the examples there given of non-provable liabilities which are nonetheless not expenses (and which therefore fall into a black hole unless rescued by a subsequent insolvency process) were cases of statutory liability. The first was a common law liability in tort, and the second was a liability to pay a costs order ordered by the Court of Appeal. As to paragraph 84, David Richards J's analysis broadly accords with my own, in relation to what Lord Hoffmann said about rates. Furthermore, the judge's decision in Exeter v. Bairstow was that rates, a liability imposed by reference to a criterion that did not distinguish between a company which was or was not in an insolvency process, was nonetheless payable as an administration expense, pursuant to the Toshoku principle. It follows that I read David Richards J's judgment in Exeter v. Bairstow as confirming, rather than detracting from, my own analysis of Lord Hoffmann's reasoning in Toshoku, even if that part of the reasoning may, strictly, not have been part of the ratio.

145. Before leaving Exeter v. Bairstow, I note that David Richards J went out of his way to acknowledge that, when construing legislation for the purpose of understanding whether a particular form of liability is imposed as an expense upon a company in an insolvency process, it will be appropriate to have regard to the underlying objectives of the modern insolvency code, including in particular the rescue culture: see in particular paragraphs 56 to 59. In that case the judge acknowledged that, in the light of substantial evidence deployed by Mr Nicholas Briggs as advocate to the court, his conclusion that rates were indeed an expense would probably have an adverse effect on the rescue culture in at least some cases: see paragraph 68. Nonetheless, this did not dissuade him from that conclusion. There may be circumstances where one public policy (not limited to that which underpins rates) comes into collision with the policy objectives of the insolvency legislation. It is for the legislature, not the courts, to decide how that collision is to be resolved.

146. I therefore conclude that the Toshoku principle does indeed establish as a general rule that where by statute Parliament imposes a financial liability which is not a provable debt on a company in an insolvency process then, unless it constitutes an expense under any other sub-paragraph in the twin expenses regimes for liquidation and administration, it will constitute a necessary disbursement of the liquidator or administrator. That is the general rule, whether the statute expressly refers to companies in an insolvency process as being subject to the liability, or whether the statute achieves the same result by using a criterion for liability which is insolvency neutral. Any other conclusion would in my judgment attribute an excessive weight to the linguistic method by which different legislation achieved the same result, namely that the statutory obligation in question is a liability of a company in an insolvency process.

147. Nonetheless, an understanding that this is in general the consequence of the technical provisions of insolvency legislation, and that the imposition of the liability as an expense may be detrimental to the achievement of the rescue objective behind that

legislation, will be material to any process of statutory construction designed to ascertain whether the statutory provisions, taken as a whole, do impose liability on a company in an insolvency process and, if they do, the priority thereby afforded to that liability.

148. It is worth noting in passing that, so far as I have been able to ascertain, in no decided case has it actually been concluded that a statutory liability imposed on a company in an insolvency process nonetheless falls down the black hole constituted by it being neither an expense nor a provable debt. The costs liabilities in Glenister and Foots v. Southern Cross were not, in any real sense, statutory. They arose from court orders, even though the jurisdiction of the relevant courts to make those orders may have been codified in statute. The liabilities in Steele and Casson v. The Law Society were statutory, but they could only be imposed on individuals rather than companies, with no consequential black hole. The liability in Allders was (or at least turned out to be) a provable debt. No case has yet confounded Lord Hoffmann's commonsense view that there would be little point in statute imposing liabilities on a company in liquidation if they were payable only in the rare case in which it emerged with all other creditors having been paid.

PRIORITY UNDER THE 2004 ACT

149. I therefore approach the construction of the FSD regime on the necessary (albeit hypothetical) assumption that Parliament must have been aware when imposing it that, if it intended to impose financial liabilities on a target company in an insolvency process, but left the question as to the priority of that obligation in the insolvency to be decided by the technical provisions of the Insolvency Act and the Rules, then:

i) if the FSD was issued before the onset of the insolvency process, all financial consequences, both of the FSD and any subsequent CN would create debts provable in the insolvency of the target to which they were issued,

ii) if the FSD was issued after the onset of the insolvency process, the financial consequences of that FSD and any subsequent CN would not rank as provable debts in that insolvency process, so that, as a general rule,

iii) such liabilities would rank as necessary disbursements, and therefore expenses in that insolvency process, with a super-priority as against the claims of any unsecured creditors, and indeed floating charge holders, but that,

iv) if an FSD were issued to a company in one type of insolvency process (say, an administration) which was then followed immediately by another (say, liquidation), then a CN subsequently issued would rank as a provable debt rather than as an expense in the second process.

150. I have described that assumption about Parliament's knowledge of the law as hypothetical because, in reality, the FSD regime was almost certainly drafted by pensions experts rather than insolvency experts, and the complete failure of the 2004 Act to make any reference to the effect of the regime upon insolvent companies suggests that issues as to priority of consequential financial obligations of a target company in an insolvency process may never have crossed the draftsman's mind. A number of the relevant cases on the subject had yet to be decided. Even if he had sought and obtained advice as to the effect of leaving the consequences of such issues to the technical provisions of the insolvency legislation, and received advice along the

lines that I have just described, he might well be forgiven for having found it difficult to suspend his disbelief since, on any view, the matters giving rise to the imposition of the FSD regime upon a target would almost inevitably have occurred, as I have explained, during a period when the target was a going concern, as part of a group which included the under-funded employer or service company.

151. My analysis thus far suggests that the outcome of the central questions in this case turns on the answers to the following two questions, asked consecutively:

i) Does the FSD regime apply to target companies in an insolvency process, so as to make its financial consequences liabilities of the insolvent target?

ii) If so, does the 2004 Act make specific provision (by implication, since none is expressed) as to the priority within that insolvency process of any financial obligations thereby imposed on the insolvent target, or simply leave those questions to be decided by the technical provisions of the Insolvency Act and Rules?

I shall address each of those questions in turn.

1. Does the FSD regime apply so as to impose financial liabilities on target companies in an insolvency process?

152. In my judgment, this first question is clearly to be answered in the affirmative, and counsel for the Administrators did not, at least with any vigour, argue the contrary. Rather, their submission was that the FSD regime was primarily focused upon solvent targets, as a stepping stone towards their submission that the 2004 Act, by implication, left any consequential financial obligations of an insolvent target to fall down a black hole, being neither expenses nor provable debts.

153. In my judgment, the FSD regime is a paradigm example of legislation which imposes, as criteria for corporate liability, matters which do not distinguish between companies which are, and which are not, in an insolvency process. As I have described in detail, section 43 of the 2004 Act imposes conditions upon the power to issue an FSD at all, by reference to essentially historic facts about the employer and its relationship with other group companies, as at the look-back date: see section 43(2) and section 44. It imposes a further condition in relation to the issue of an FSD to a particular target which is also historical, by reference to the same look-back date, namely whether it was then either the employer in relation to the scheme, or (in a corporate context) a company which was then connected with, or an associate of, the employer: see section 43(5)(a) and (6)(a) and (c). The critical provision is that this condition needs to be satisfied at "the relevant time" which is the look-back date. Even at the look-back date, it is not necessarily fatal that either the employer or the target might be in an insolvency process, least of all in administration, when its business may still be being carried on under the direction of its administrators. More importantly, since the look-back date may be as much as two years before the determination by the Regulator to issue the FSD, in the context of a group which has attracted the Regulator's attention because of its financial difficulties, it is eminently possible that it will have moved from being a going concern at the look-back date to a state of multiple insolvency processes by the FSD issue date. That is, in fact, what happened in all three of the only cases in which, thus far, the Regulator has determined to issue an FSD.

154. It would to my mind be quite bizarre to attribute to Parliament an intention that, for example, an FSD process embarked upon by the Regulator in relation to a group in apparent financial difficulty could be rendered wholly ineffective by the targets' descent into insolvency processes before the Regulator had conducted the necessary research, issued warning notices, considered representations from directly interested parties, held a determination hearing, and survived a reference to the Tribunal, so as to be in a position for the first time to issue an FSD.

155. Furthermore, the fact that potential targets might by then be in an insolvency process by no means leads to the conclusion that, in order to achieve the objective of protecting the PPF from excessive exposure, the target's assets should not be made available to an extent reasonable in all the circumstances for the purposes of securing financial support to the under-funded scheme. A target may, for example, be in administration due to commercial insolvency arising from illiquidity of assets, while nonetheless balance sheet solvent, with a view to the creation of a moratorium during which the liquid assets can be realised at full value for the purpose of paying its creditors in full. Secondly, the target may, even if unable to pay its creditors in full, have a much greater asset base with which to meet creditors' claims than the employer has, with which to meet its creditors' claims, including the section 75 debt.

156. Furthermore, as the Regulator alleges is the case in relation both to Nortel and Lehman, the targets may have received benefits from the employer which are disproportionate to the staff costs recharged to the target by the employer. That sort of situation was described by Ms Agnello for the Regulator as giving rise to a windfall for the unsecured creditors of the target. While I would expect most creditors of an insolvent company to regard themselves as victims rather than the recipients of a windfall, the underlying point that the creditors may receive distributions which are, in the context of the moral hazard at which the FSD regime is aimed, in a sense obtained at the expense of the employer's pension scheme, is nonetheless a point of real substance.

157. The only factor sensitive to insolvency employed in the criteria which identify those companies which may be made the targets of an FSD is the requirement, as part of the reasonableness condition in section 43(5)(b) and (7)(d), to consider the financial circumstances of the target, and, perhaps, subject to the analysis which follows, the interests of its creditors, under section 100. But this aspect of the reasonableness condition comes nowhere near imposing a blanket ban on the issue of an FSD to a target in an insolvency process. It is simply one of a potentially limitless number of factors of infinitely variable relevance which the Regulator is directed to consider.

2. Does the 2004 Act make specific provision as to the priority of the financial obligations imposed by the FSD regime on a target in an insolvency process, or leave that question to be decided by the Insolvency Act and Rules?

158. This is the question to which a careful weighing up of the pros and cons is both appropriate and necessary. Specifically, the alternatives are:

i) That, by leaving priority to be decided by the insolvency legislation, the financial obligations are expenses, save in the unusual case where, starting before April 2010, the order of events is administration, FSD, liquidation, CN.

ii) That the 2004 Act specifically prescribes that the financial obligations are an expense.

iii) That the 2004 Act specifically prescribes that the financial obligations are a provable debt.

iv) That the 2004 Act specifically prescribes that the financial obligations are none of those, so that they fall down a black hole.

Subject to the glitch where administration is immediately followed by liquidation, alternatives (i) and (ii) produce the same result, albeit by a different route.

159. It is convenient at the outset to deal with what I regard as the least attractive alternative, namely (iv). The argument in its favour was essentially that, since the FSD regime was focused primarily on solvent targets, it would not be surprising to find it implicit in the 2004 Act that Parliament was content for the financial consequences of the imposition of the FSD regime on a target in an insolvency process to be such that it would be ineffective save in most unusual circumstances, where all unsecured creditors were first paid in full. The Administrators' case was based upon an interpretation of Toshoku which I have rejected, that statutory liabilities of a company in an insolvency process which are not provable debts are nonetheless only expenses if the statute expressly requires the company actually to pay them while in an insolvency process, rather than merely exposing the company to a liability. If the statute in question fell short of that prescription, then, counsel argued, the only remaining issue was whether the liabilities were a provable debt or fell down a black hole, and their submission that they did exactly that was based upon their analysis of the case law on provable debts with which I have in the event largely agreed.

160. The Administrators supported that submission by pointing, with the benefit of evidence, to the fact that a conclusion that the liabilities were expenses would have a gravely damaging effect, both in the present cases and generally, upon the rescue culture. Their submission was that if an administrator of a potential target was faced with the prospect of an expense liability having priority under Rule 2.67(1)(f) higher even than that of the remuneration of the administrators and their employees (under (g) and (h)), then the administrators would be fatally hampered in making any of the financial judgments and predictions necessary for the achievement either of the rescue of the company itself or, more realistically, of the rescue of all or part of its business, or even its beneficial realisation. The potential FSD and CN expense liability would hang like an enormous sword of Damocles above the administration, paralyzing it in all relevant respects.

161. The evidence of Mr Bloom, who is a highly experienced insolvency practitioner, as to the general effect upon the rescue culture of a conclusion that the FSD regime imposed financial obligations by way of expense may be summarised as follows:

i) Pending any decision by the Regulator as to quantum (either when considering whether to approve proposed arrangements or upon the issue of a CN) the administrators would be faced by a contingent liability with super-priority of an indeterminate but potentially crippling amount.

ii) That would in practice disable him from any informed judgment as to the choice between the alternative statutory objectives of administration, which would, in turn, disable him from the beneficial management of the company's business and affairs.

iii) An administrator would not know whether any dividend would be payable to unsecured creditors, nor even whether he would be able to discharge administration expenses in full.

iv) The uncertainty as to quantum, in the case of a substantial section 75 debt owed the employer, might make it impossible for the administrator of the target properly to determine that its business should continue to be traded.

v) Potential administrators might be put off from accepting office in relation to associated companies of an under-funded employer in a group with a pension scheme in substantial deficit, because of the propensity for FSD obligations to impinge upon his ability to pay either himself, or his employees, remuneration.

vi) The recent strengthening of the rescue culture by the EU Insolvency Regulation in relation to associated group companies with centres of main interests in the United Kingdom would be undermined if, in cases like Nortel, it was perceived that companies under an English insolvency process were uniquely, or particularly, prone to attrition by the financial consequences of the FSD regime.

162. In relation to the ongoing Nortel administrations Mr Bloom gave a detailed description of the adverse effect of the uncertainty constituted by the impending FSD, if its financial consequences were to rank as administration expenses. He pointed to the maximum estimated exposure of £2.1 billion (the full estimated section 75 debt owed by the Nortel employer to the scheme trustees) and suggested that if the FSD and/or any subsequent CN were to impose financial liabilities as expenses of that magnitude, there might well be an expenses deficiency within the administration, in the context that there is already in place a business sale process which involves the incurring of substantial ongoing expenses in order, in particular, for transitional services to be provided to purchasers. He said that if a potential expense liability of that magnitude cannot be ruled out, then the consequence will be to put the present administrations on hold.

163. To this undoubted tale of woe counsel for the Administrators added the submission that, in practice, the clearance procedure under section 46 of the 2004 Act offered no real solution, save in cases (unlike the present) where it could easily be shown that the employer was neither a service company nor insufficiently resourced within the meaning of sections 43(2) and 44. In real life, it was submitted, administrators needed to be able to resolve uncertainties of that magnitude much more quickly than the Regulator could be expected to do the necessary research and decision-making sufficient to be able to give clearance under section 46(2)(c), namely that it would not be reasonable to impose the requirements of an FSD on the target seeking clearance. I accept that submission.

164. The Regulator and its supporters sought to meet the Administrators' case about the damage which the FSD regime would do to the rescue culture, if its financial consequences constituted administration expenses, by two main submissions. The first was that it was nothing short of alarmist to suggest that financial consequences of anything approaching the full £2.1 billion section 75 debt would be visited upon a target in administration. The target's liability was no more than to provide reasonable financial support, having regard to the circumstances, including its financial condition. Section 100 required the Regulator to have regard to the interests of the

insolvent target's creditors, so that the Regulator would be unlikely to impose financial obligations at a level, or at a time, which would prevent a beneficial business rescue, and thereby kill the goose that might still lay the golden egg. Any threatened failure on the part of the Regulator to act sensibly could be controlled by a reference to the Tribunal.

165. Secondly, the Regulator and its supporters submitted that the Companies Court could in any event intervene, on an application by the Administrators, to prevent uncertainties of the type feared by Mr Bloom from disrupting an otherwise beneficial administration, by altering the priority of any expenses created by the FSD regime so as to ensure that the expenses needing to be incurred in promoting and implementing a successful business rescue were not thereby put at risk. Rule 2.67(2) and (3) provide that the court may, in the event of the assets being insufficient to satisfy the expense liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just. Any such order overrides the *prima facie* order of priorities laid down in Rule 2.67(1). Similar provision is made in relation to liquidation by Rule 4.220(1) and section 156 of the Insolvency Act.

166. Mr Trower submitted, but without much enthusiasm, that the language of those provisions did not enable the court to make a prospective order altering expense priorities, but only an order once, at the end of the day, it was shown that there was an expenses shortfall. If the power of the court was thus confined as he submitted, then I agree that it would do little to assist administrators in dealing with the crippling uncertainties identified by Mr Bloom.

167. But in my judgment the court can make a prospective order under Rule 2.67(3). Altering expense priorities only matters if there is an expenses shortfall. Thus, an order made prospectively altering expense priorities will cause no injustice if it turns out that the assets are sufficient to pay the expenses in full. It requires only a slightly purposive reading of Rule 2.67(3) to conclude that the court may make an order that "in the event of the assets being insufficient to satisfy the liabilities, the expenses incurred by reason of the implementation of the FSD regime against the company are to be paid only out of such surplus as shall remain after all other expenses have been paid".

168. I suggested to Mr Trower during argument that a prospective priority order of that kind might largely solve the uncertainties and other serious problems identified by Mr Bloom's evidence. It would have the effect of placing the Scheme Trustees, as the obligees of any financial obligations imposed by the FSD regime upon the target, at the head of the queue of creditors awaiting distribution of the proceeds of any successful business rescue, without in any way putting at risk the expenditure needing to be incurred to bring that rescue to a successful conclusion. Mr Trower could offer no persuasive argument that this analysis was wrong, and I consider it to be correct.

169. It will not, of course, be every administration threatened by an FSD in which the court will make such a prospective priority order. The question whether the threat of an FSD is sufficient to undermine the beneficial conduct of an administration is likely to be a fact sensitive question in every case. There will be some cases, and the Lehman administration may well be one of them, where even the maximum quantum of a threatened FSD may pale into relative insignificance when measured against the battalions of other troubles affecting the administrators. By contrast, the very large

section 75 debt in the Nortel administrations may, upon examination, lead to the opposite conclusion.

170. There is also much force in the first of the Regulator's submissions, in the sense that the obligation imposed on a target by an FSD is only to provide that level of financial support to the scheme as is reasonable in all the circumstances. Nonetheless the breadth of the regulator's discretion is such that a mere probability that the financial obligation imposed by the FSD regime on a particular target in administration will be very much less than the theoretical maximum does little of substance to resolve the uncertainties to which Mr Bloom tellingly refers. This submission is, to my mind, of greater relevance when addressing other aspects of the priority question than those thrown up by the effect of the FSD regime upon the rescue culture, and I will therefore return to address it in more detail in due course.

171. My conclusion in relation to the submission based upon the threat to the rescue culture is that the FSD regime does indeed have a potentially adverse impact but, because it can to a large extent be kept under control by the making of prospective priority orders in appropriate cases, the adverse effect is by no means sufficient to force the court to a conclusion that Parliament must have intended that the financial obligations imposed by the FSD regime should be neither an expense nor a provable debt, so that they fall down a black hole. Even if the choice was between priority as an expense, and subordination to the provable debts of unsecured creditors, I would still not regard the black hole case as made out. In my judgment the prospect that an otherwise powerful case for the implementation of the FSD regime upon a particular target could be rendered a complete *brutum fulmen* by the onset of that target's insolvency seems to me to fly in the face of commonsense, and Parliament cannot possibly have intended thus to legislate in vain.

172. I consider that the real and much more difficult choice therefore lies between priority as an expense, and priority as a provable debt. I have already referred to the irony that, in this context, all the parties' primary cases involved the assertion that the FSD regime did not create provable debts, an assertion which (save in the pre-April 2010 administration followed by liquidation context) I have found to be correct, if Parliament intended when making the Pensions Act 2004 to leave all issues of priority in insolvency processes to be resolved by reference to the insolvency legislation.

173. There are nonetheless powerful considerations pointing to a conclusion that Parliament did not intend that the financial consequences of the FSD regime should be to afford the pension trustees super-priority in the administration or liquidation of a target. The starting point is that, as between the pension trustees and the employer, and after consultation and careful thought, it was decided that the ordinary provable debt priority given to the section 75 debt by the 1995 Act (and its predecessor) should not be upgraded in 2004. I was shown ministerial statements made during debate on the 2004 Pensions Bill which demonstrated beyond doubt that the retention of the section 75 debt's ordinary priority as a provable debt was both deliberate and carefully thought through, despite submissions at the time from the majority of the Government's consultees that it should be promoted.

174. There was, in particular, no suggestion in 2004 that the Regulator should be given a discretionary power to promote the priority of that debt by issuing an FSD or a CN for an amount similar to the section 75 debt to an insolvent employer, so as by a side-wind to achieve substantially that result, for example by making the debt payable as

the result of the issue of a CN an expense in the employer's liquidation. Nonetheless section 43(6)(a) of the 2004 Act makes it clear that an FSD and a CN may be issued to an insolvent employer and, if the consequence is that the financial obligation or debt thus created is an expense in the employer's insolvency process, that is the outcome which would be produced as a result of that interpretation.

175. The Administrators submitted that it was even more extraordinary that Parliament should have intended to confer a higher priority for FSD obligations imposed on a target, than the priority given to the section 75 debt in the insolvency of the employer. This is, at least at first sight, a formidable reason for searching for any avenue of construction which would avoid that result.

176. A further peculiarity inherent in a conclusion that the FSD regime, if applied to targets in an insolvency process, will give rise to the super-priority inherent in expense liabilities is that it would produce an entirely different result to that which would flow from the issue of an FSD to the same target at any time (however short) before the commencement of its insolvency process. For reasons which I have set out in full, once an FSD has been issued to a target, it creates a qualifying legal obligation under Rule 13.12(1)(b) such that any subsequent consequences, including the debt which would flow from the issue of a CN, would be provable debts. Why, it may be asked, should the Regulator be able to promote the priority of the financial obligations imposed by the FSD regime above those which would flow from its application before insolvency, by waiting for the onset of insolvency before issuing an FSD? It might, furthermore, be a matter of happenstance which of the two occurred first, in a case where, for example, the Regulator's preparatory steps were being taken while the group of which the target formed part was veering towards collapse.

177. The force of this point is, if anything, strengthened by the fact that the general description of the invariable requirements imposed by the issue of an FSD under section 44(3) are more readily applicable to a target which is a going concern, with a business future, than to a target which is in the death throes normally associated with being in an insolvency process. It is in that context no answer for the Regulator to point to the fact that, thus far, all cases of the implementation of the FSD regime have occurred after the collapse into insolvency of the target group. My reading of the FSD regime, taken as a whole, is that Parliament expected it to be applied, if possible, to targets which, because they were still trading, had some prospect of being able to provide ongoing support to the relevant pension scheme during the rest of the scheme's natural life. The fact that the Regulator's resources and access to relevant information may make that a difficult task in practice, does not significantly impinge upon the perception to be derived from section 43(3).

178. It is at this point that Ms Agnello's submission that, when considering whether to approve proposals by an insolvent target, and whether to impose a CN in the absence of acceptable proposals, the Regulator must have regard to the interests of the target's creditors, takes on critical significance. Her submission, fully supported by Mr Tennet, was that it by no means follows from a conclusion that the financial obligations flowing from the FSD regime are an expense rather than a provable debt that the creditors of the insolvent target will thereby be unfairly prejudiced, or that the lower priority afforded to the section 75 debt is thereby undermined. The Regulator both can and should, they submitted, identify a level of financial support which properly takes account of the creditors' claims and which may, in an appropriate case, be set at a level which achieves broad equity between the pension trustees on the one

hand, and the other creditors of the target on the other. Parliament had, they said, entrusted that balancing exercise to the Regulator, and conferred an unfettered right on any person whose interests were directly affected to refer the matter for a complete re-evaluation before the Upper Tribunal, which may turn out to be presided over by a Chancery judge. By contrast the section 75 debt was automatically imposed, in full, upon the employer.

179. In reply, Mr Trower made three points. First, he submitted that since the Regulator's relevant objectives (under section 5(1)) were to protect pension benefits and, in particular, reduce the risk of situations which may lead to compensation being payable from the PPF, it followed that in any such balancing exercise attempted by the Regulator, the dice would from first to last be heavily loaded against the creditors. An obligation to "have regard" to the interests of persons while pursuing specific objectives which are likely to be adverse to their interests is not the same as an obligation to balance those interests as against the interests of the pension scheme members, in a neutral or even-handed fashion, by reference to the *pari passu* principle.

180. Second, he submitted that it was by no means clear whether, and if so how, section 100(2)(b) of the 2004 Act worked in relation to companies in an insolvency process. Third, he submitted that the scope for reference to the Upper Tribunal afforded no real protection, since the Tribunal's duty to determine under section 103(4) of the 2004 Act what is the appropriate action for the Regulator to take must be equally referable to the Regulator's objectives.

181. Mr Trower bolstered his submissions by reference to the fact that, in all the available texts whereby the Regulator had, thus far, given reasons for determinations to issue FSDs (in the Sea Containers, Nortel and Lehman cases) there was not to be found any indication of the carrying out of a balancing exercise between the interests of the pension scheme members and the interests of the insolvent target's creditors, nor had any such creditor or even class of creditors ever been served with a warning notice, as required in relation to a person whose interests are directly affected by the proposed regulatory action. In fairness, a balancing exercise of the type in question will arise more directly at the stages where the Regulator considers the reasonableness of proposed arrangements, or whether and if so in what amount to issue a CN, than whether to include a particular company as the target of the FSD. No written reasons as to those later processes have yet been published. Mr Trower submitted that the Regulator was, in any event, not qualified to carry out the potentially daunting task of striking such a balance, by comparison either with administrators, or the Companies Court, on an application for directions.

182. In choosing between these powerful submissions, the starting point is, in my view, a closer examination of the operation of section 100 in relation to a target in an insolvency process. Mr Trower submitted that any analysis of the FSD regime which (whether by way of imposing expense liabilities or provable debts) was capable of defeating or diminishing recoveries by creditors of the target, directly affected each and every creditor's rights under insolvency law, so that section 100(2)(b) would mean that every creditor was a person whose interests were directly affected by any implementation of the FSD regime against the target. The purpose of that submission was of course to fortify the Administrators' case that the financial consequences of the FSD regime did not in any way affect creditors of an insolvent target, but I have, after giving due consideration to section 100 as part of that submission, rejected it.

183. I accept that Mr Trower's analysis of the creditors' rights is strictly correct, but I consider it inconceivable that Parliament intended to confer upon every one of the potential army of creditors of an insolvent target a separate and distinct right to be served warning notices, to make representations, and to make references to the Tribunal. It was precisely to exclude armies of that kind from participation in those processes that section 100(2)(b) is limited to the interests of persons "directly" affected by the exercise of the relevant regulatory function.

184. While it is, from a strict insolvency perspective, probably correct to say that, once a company enters into an insolvency process, its interests are for the most part replaced by direct interests of its creditors, I consider it implicit in section 100 that a target in an insolvency process remains the person "directly affected" by the proposed exercise of the FSD regulatory powers against it, but that precisely because it is an insolvency process, that requires the Regulator to have regard to the interests of its creditors as a body. Generally speaking, those interests will be sufficiently represented by the office-holders, in any process of seeking and obtaining representations, and in any reference to the Tribunal.

185. There may, as Mr Trower submitted, occasionally be cases where the interests of particular classes of creditors are differentially affected by a proposed application of the FSD regime, so as to place the office-holder in real difficulty. In my judgment, such cases would have to be met by the application of procedural common-sense, so as to permit representatives of differentially affected classes to have their say. I therefore accept the broad thrust of the Regulator's submission that section 100 does require the Regulator (or the Tribunal on any reference) to have regard to the interests of an insolvent target's creditors as a body, not because each of them is a person directly affected, but because their interests are, collectively, to be taken as the interests of the insolvent target.

186. That analysis diminishes, but by no means wholly removes, the force of the Administrators' submissions that the Regulator's objectives (transferred to the Tribunal on any reference) afford an unsatisfactory basis for a conclusion that the interests of an insolvent target's creditors will be fairly or neutrally balanced with those of the members of the relevant pension scheme, merely because of an obligation to have regard to them. The question is not however whether I regard that outcome as an unsatisfactory way of balancing competing policy objectives (i.e. pension scheme protection as against *pari passu* distribution to creditors), but whether it is so obviously unsatisfactory that Parliament cannot have intended it when creating the FSD regime, bearing in mind that the resolution of such policy clashes is a matter for Parliament, rather than for the court.

187. The first question is whether any alternative interpretation than an expense priority is obviously more satisfactory for that purpose. Having dispensed with the Administrators' black hole solution, the only remaining candidate is an interpretation that, for all purposes, and regardless of any insolvency cut-off date, the FSD regime creates provable debts when applied to an insolvent target.

188. That solution would, to my mind, undoubtedly produce a less unsatisfactory resolution of the policy clash. Once the Regulator had decided, either by approving proposals or by issuing a CN, upon a specified quantum of financial support which the target company ought to provide, if otherwise financially able to do so, the inclusion of that amount as a debt provable by the scheme trustees would

automatically qualify on a *pari passu* basis in the distribution of the assets of the target company, after payment of expenses, preferential debts, and secured creditors. There would, to that extent, be an automatic balancing of the interests of the scheme members and the unsecured creditors, and the Regulator would be, to that extent, relieved of a formidable task for the performance of which its pension objectives make it a less than impartial arbiter. It would also avoid any significant impact on the rescue culture. A solution which required the scheme members to share *pari passu* with the unsecured creditors would, as Mr Moss memorably described it in argument, be "a gut-feel fair solution". It is in fact the solution that arises under insolvency law whenever the FSD is issued before the target's insolvency cut-off date.

189. If, in the Pensions Act 2004, Parliament left the priority of the financial consequences of the FSD regime upon an insolvent target to be resolved by reference to the insolvency legislation, then if the FSD is issued after the cut-off date, for the reasons which I have described in detail, that gut-feel fair solution is not achieved. The question therefore, is has Parliament expressly or by necessary implication nonetheless legislated for that solution in the 2004 Act?

190. I make it clear at this stage that I would very much have preferred to be able to reach the conclusion that it did just that. Indeed, mindful of the difficulties which I expected to encounter in concluding that the application of Rule 13.12 to the FSD regime could lead to that result, I invited all counsel to consider whether a provable debt outcome could be identified as a matter of construction of the 2004 Act itself. Formally, but without any evident enthusiasm, counsel for the Regulator and its supporters submitted that it could. Nonetheless their detailed submissions in favour of the provable debt solution were entirely focused upon the routes, all of which I have rejected, whereby it might be found by way of analysis of Rule 13.12 and the substantial case law by which it has been interpreted.

191. Notwithstanding that a provable debt solution is, to my mind, obviously fairer as between scheme members and unsecured creditors and preferable as a means of resolving the underlying policy clash, I find myself driven with reluctance to the conclusion that, when formulating the 2004 Act, Parliament did in fact choose to leave the priority questions which would inevitably flow from the application of the FSD regime to companies in an insolvency process to be resolved purely by the insolvency legislation. My reasons follow.

192. First, as Mr Dicker submitted, Parliament must be taken to have been cognisant of that insolvency regime when enacting the 2004 Act, and of the ability, should it choose to do so, to define a pension-related obligation in such a way as to ensure that it would be a provable debt in the administration or liquidation of the corporate obligor regardless of the date of issue of the FSD. That is precisely what it did in reformulating by amendment section 75 of the 1995 Act so as to ensure that the section 75 debt was deemed to fall due immediately prior to an insolvency event. Parliament could have chosen to make similar specific provision in relation to financial obligations arising from the brand new FSD regime, either by a similar deeming provision, or by identifying some earlier pre-insolvency obligation for the purposes of Rule 13.12(1)(b). It did not do so.

193. More generally, there is simply not to be found anywhere in sections 43 to 50 of the 2004 Act, or in the FSD Rules, within which the statutory FSD regime is entirely contained, any reference to insolvency at all. This does not mean that the regime was

inapplicable to companies in an insolvency process, for reasons already given, but it does point strongly to a conclusion that Parliament was content that, to the extent that the regime was in fact applied in an insolvency context, the insolvency legislation would sufficiently deal with its consequences, in terms of priority.

194. Put even more simply, there is nothing in those sections to which a conclusion that, as a matter of construction, the FSD regime creates provable debts when first applied after an insolvency cut-off date can sensibly be attached, or from which such a conclusion can be derived. It is no answer to say that a promotion in priority where insolvency precedes the issue of the FSD is so illogical that it cannot have been intended. It may be illogical, but that is what happens for example in relation to corporation tax and rates, where there exists no discretion to reduce the amount payable so as to reduce or nullify the apparent unfairness of the promotion in priority. At least the discretion of the Regulator under the FSD regime gives scope for the mitigation of that unfairness.

Ex Parte James

195. The conclusions which I have reached on the main question thus far make it unnecessary to address Mr Isaacs' submissions based upon ex parte James (*supra*). They were designed to identify an escape from the black hole conclusion, in the event that the financial obligations flowing from the FSD process were neither expenses nor provable debts. I should add that, had I been of a different view on construction, namely that Parliament had been content that those obligations should fall down a black hole, I would have found it very difficult to attempt a court fashioned remedy via Mr Isaacs' escape route, imaginative though it was.

CONCLUSION ON THE MAIN QUESTION

196. I have therefore been driven to the conclusion, in conformity with the analysis of Rule 13.12 in repeated decisions by which I am bound, and in accordance with what I conceive to be the true principle in Toshoku, that this is a case in which Parliament has legislated to create financial obligations applicable to and payable by a company in an insolvency process which may be triggered (after the cut-off date) in such a way that, rather than creating provable debts, they create administration or liquidation expenses, as the case may be. That conclusion is likely to be to an extent an impediment to the achievement of the objectives of the rescue culture, but the ability of the court to make a prospective priority order will, I think, keep that potential for damage to a minimum, in cases where the uncertainties might otherwise be fatal.

197. The outcome is, in my view, likely to prove unfair to the creditors of an insolvent target, unless perhaps the Regulator and the Upper Tribunal treat the *pari passu* principle as a cardinal aspect of the very broad discretions which arise at the three consecutive stages of (1) the determination whether to issue an FSD to an insolvent target, (2) the decision whether particular proposals for financial support by the insolvent target are reasonable in all the circumstances, and (3) the decision whether to issue a CN to an insolvent target, and if so, in what amount. It may be that, by bearing in mind that a *pari passu* sharing would be the automatic result of any FSD issued before a target went into an insolvency process, this approach to the exercise of the discretion in post cut-off cases will actually occur, but it is no part of my task to bind either the Regulator or the Tribunal.

198. Obligations arising from the FSD regime are as far removed as it is possible to imagine from the types of liability which can have been in the minds of the draftsmen when, from 1865 onwards, creating the cut-off date based regime for the identification of provable debts now to be found in Rule 13.12. Nonetheless, Parliament has, either through deliberate intent or (I suspect in reality) inadvertence, legislated in such a way as to leave the priority problems associated with the implementation of the FSD regime on insolvent companies to be dealt with by a technical formula which was neither designed nor, in my view, fit for that special purpose. In the sharpest contrast with almost all other forms of administration or liquidation expense (which relate to matters arising after the cut-off date) financial obligations triggered by the FSD regime are justifiable in policy terms almost entirely by reference to matters which will have happened (by commission or omission) before the target's cut-off date. Furthermore the expense liabilities created by that regime are likely in many cases to exceed by orders of magnitude the expenses of any other type arising in a typical administration or liquidation.

199. I hope that a higher court may find a way through or around the existing authorities on Rule 13.12 which enables it to identify a sufficient pre-cut-off date obligation in the factors about the target's relationship with its group employer that qualifies under Rule 13.12(1)(b). That would produce a result consistent with the way in which the FSD regime works if the FSD itself is issued even a day before the cut-off date, and the way in which it will still work (because of the late introduction of the 2010 Amendments to Rule 13.12) if in the present cases an FSD precedes a transformation of the insolvency processes affecting its targets from the present administrations into liquidation. More than that, such a conclusion would produce fairness and justice out of what is, in my view, currently a legislative mess. It may be that the Insolvency Service or Parliament might wish to consider a suitable amendment, either to the Rules or to the 2004 Act, if persuaded as I have been that the conferring of super-priority as expenses upon the financial liabilities arising from the FSD regime is both potentially unfair to the target's creditors and inconsistent with a decision taken in 2004 not generally to elevate employees' pension claims above the claims of those creditors. That course would probably be both quicker and cheaper than further hugely expensive litigation on this issue, the cost of which will ultimately have to be borne either by the creditors or by the relevant schemes and their members, or both.

CONSEQUENCES

200. The specific questions framed in these applications, albeit in slightly different language, focus first upon the consequences of the issue of an FSD to the applicant target companies, and secondly upon the consequences of the subsequent issue of a CN. I shall now deal with them separately. It is convenient to deal first with a CN, because at the FSD stage the question whether a subsequent CN would create a provable debt or a liquidation expense may be of real importance in the Administrators' decision-making about the proposals by way of financial support that may be reasonable in the circumstances. The priority consequences of a CN are, in any event, simpler than those which may flow from the issue of an FSD, because a CN invariably creates a financial obligation in the form of a liquidated debt. By contrast, an FSD may give rise to a number of different types of financial obligation, or none at all, depending upon the Administrators' response to it.

The CN

201. If a CN comes to be issued to any of the applicant target companies while it is still in its present administration, then the cost of complying with it will be an administration expense. That does not necessarily mean that the Administrators should immediately cause it to be paid, or even that the Scheme Trustees should be allowed immediately to bring proceedings for its enforcement: see Toshoku (*supra*) at paragraph 39, where Lord Hoffmann said that:

> "The fact that a debt counts as an expense of the liquidation does not necessarily mean that the creditor should be allowed immediately to bring proceedings or levy execution. The order of priorities under Rule 4.218(1) may mean that if he is paid at once, the assets to satisfy prior expense claims may be insufficient. So the question of remedy is entirely a matter of discretion."

I can envisage no reason why that analysis is not fully applicable to a debt created by a CN under section 49(3) of the 2004 Act, although the point has not been argued.

202. If however the CN is issued to an applicant target company after it has moved from its present administration into liquidation, for non-compliance with an FSD issued while that target was in administration, then the amount specified in the CN will rank as a provable debt. This is because it will be a debt to which the target company has become subject after the cut-off date by reason of a legal obligation previously incurred by reason of the FSD, pursuant to Rule 13.12(1)(b). This is entirely the adventitious result of the lateness of the introduction of the 2010 Amendments to Rule 13.12 which, in relation to any company suffering an insolvency event after 5th April 2010, will provide for a single cut-off date in relation to all subsequent insolvency processes, namely the date of commencement of the first of them.

The FSD

203. It is contemplated by the terms of the Nortel Administrators' Application that the financial consequences of an FSD might vary, according to whether the FSD is issued before or after notice under Rule 2.95, or before or after a Nortel applicant target moved from administration into liquidation. In my judgment, the consequences are substantially the same, and are as follows. First, the issue of an FSD does not, of itself, create any immediate financial obligation. It imposes a legal obligation on the target company, to be performed at the direction of the Administrators, to secure that reasonable financial support for the pension scheme is put in place within the period specified in the FSD, either by that target acting alone, or by that target acting in cooperation with one or more of the other targets of the FSD. For that purpose the Administrators may need to consult their stakeholders, negotiate with the administrators of other insolvent targets, and the management of any solvent targets (such as LBAM), and no doubt communicate with the Regulator with a view to ascertaining what it might regard as reasonable in the circumstances. The Administrators may well wish to seek further directions from the court, and it would be inappropriate at this stage, and in the absence of any argument about the detail, for me to be any more specific as to the type of proposal which the Administrators ought to make.

204. Nonetheless, since the FSD regime contemplates a theoretically infinite variety of potentially reasonable proposals, it is appropriate to specify at this stage the priorities which would attach to certain particular kinds. Thus, if the Administrators proposed simply to make a payment of a sum of money, then the cost of making that payment would be an administration expense.

205. If, alternatively, the Administrators propose to enter into a legally binding contract with the pension scheme trustees for the provision of support, for example, by way of instalments, sums payable in respect of debts or liabilities arising out of that contract would, on the face of it, be chargeable upon the property of which the Administrators had custody immediately before leaving office, pursuant to section 99(4) of the Insolvency Act. If it was so, then those sums or liabilities would be payable in priority to any charge arising under section 99(3) in respect of the Administrators' remuneration and expenses.

206. As a further alternative, and as happened in Sea Containers, the office-holders might consider it reasonable to transfer, or promise to transfer in future, certain property to the scheme trustees, such as shares in a special purpose company formed for the purpose of carrying on a business rescued in the course of the administration. That would not of itself give rise to any form of purely financial obligation, although the incidental cost of making that transfer might be.

207. It would be understandable if the Administrators were to have regard, in addressing the question as to the reasonable proposals to be made, to the question whether any subsequent CN issued because the Regulator refused its approval would itself create a financial liability ranking as an expense, or as a provable debt. That possibility (the no doubt unintended consequence of the late introduction of the 2010 Amendments to Rule 13.12), gives rise to the question whether the Administrators should, for the protection of the target company's unsecured creditors, seek to arrange matters in a way calculated to maximise the chances that the CN would generate a provable debt in a subsequent liquidation, rather than an administration expense. Since the numerous ramifications of that potentially very complicated question have not been the subject of any argument before me, I propose to say no more than that they may arise for determination in the future, on a further application to the court for directions.

208. Finally, the Administrators may well wish, if the facts justify it, to seek a prospective priority order, so as to ensure that the uncertainties created by the ranking of any FSD financial obligations as an expense do not undermine the beneficial outcome of the present administrations.

31-01-98

THE COMPANIES ACT, 1948

846922

COMPANY LIMITED BY SHARES

Memorandum

and

Articles of Association

of

LEHMAN BROTHERS LIMITED

(as at 23rd December 1992)

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The Companies Act, 1948

COMPANY LIMITED BY SHARES

Memorandum of Association

LEHMAN BROTHERS LIMITED
(As at 23rd December 1992)

1.* The name of the Company is LEHMAN BROTHERS LIMITED.

2. The Registered Office of the Company will be situate in England.

3. The objects for which the Company is established are:-

(1) To provide persons or firms carrying on any profession, business, trade or occupation with accounting, secretarial, computer, and office services and all staff, premises, office furniture and equipment, office cleaning, repairs and decorations, lighting, heating, telephone service, cars, transport, books, periodicals, reports, photoprinting, general printing and stationery and all such services as may from time to time be required for the conduct and management of such profession, business, trade or occupation; and to carry on all or any of the businesses of secretaries, registrars, nominee shareholders, investment holders, general managers, administrators, advisors, accountants, book-keepers, agents, representatives, costing

* On the 25th of February 1977 the name of the Company was changed from H. Hentz & Co. Limited to Shearson Hayden Stone Limited. On the 20th December 1979 the name of the Company was changed from Shearson Hayden Stone Limited to Shearson Loeb Rhoades Limited. On 23rd October 1981 the name of the Company was changed from Shearson Loeb Rhoades Limited to Shearson/American Express Limited. On 6th July 1984 the name of the Company was changed from Shearson/American Express Limited to Shearson Lehman/American Express Limited. On 15th March 1985 the name of the Company was changed from Shearson Lehman/American Express to Shearson Lehman Brothers Limited. On 20th March 1989 the name of the Company was changed from Shearson Lehman Brothers Limited to Shearson Lehman Hutton Limited. On 31st December 1990 the name of the Company was changed from Shearson Lehman Hutton Limited to Lehman Brothers Limited.

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investigators, negotiators, intermediaries, business and efficiency experts, estimators, advertising managers, building society agents, insurance agents, estate agents and property managers, valuers, printers, publishers, and stationers, providers of office accommodation, and of all kinds of commercial intelligence and services, hire purchase and general financiers, company promoters and underwriters of capital issues, dealers in stocks and shares, tourist agents, social and business organisers, and dealers and contractors in and makers, importers and exporters of all kinds of goods and merchandise; and to institute, enter into, carry on, assist and participate in financial, promoting, dealing and other business works, contracts or operations of all kinds, to invest or procure the investment in, and to deal and operate in and with rights, securities, stocks, shares, debentures, bonds, articles and things of all kinds; and to undertake secretarial work and to supply or lend assistance or accommodation to or do any act or thing for companies, professional or businessmen or otherwise upon such terms as may be thought fit.

(2) To carry on any other business which may seem capable of being conveniently carried on in connection with any of the businesses aforesaid or otherwise calculated, directly or indirectly, to enhance the value of or render more profitable any of the Company's property or rights.

(3) To acquire for any estate or interest and to take options over, construct and develop any property, real or personal, or rights of any kind which may appear to be necessary or convenient for any business of the Company, including shares and other interest in any company the objects of which include the carrying on of any business or activity within the objects of this Company.

(4) To invest the moneys of the Company not immediately required for the purposes of the business of the Company in such investments (other than shares of the Company or of its holding company, if any) and in such manner as from time to time may be determined, and to hold, sell or otherwise deal with such investments.

(5) To guarantee either by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets present and future and uncalled capital of the Company, or by both such methods, the performance of the obligations and the payment of the capital or principal of, and dividends or interest on, any stocks, shares or securities of any company, firm or person, and in particular (but without limiting the generality of the foregoing) of any company which is for the time being the Company's holding company (as defined in Section 154 of the Companies Act, 1948) or any subsidiary (as defined in the said Section) of the Company's holding company, or otherwise associated with the Company in business.

(6) To lend money, or grant or provide credit or financial accommodation to any person or company in any case in which such grant or provision is

considered likely directly or indirectly to further any of the objects of the Company or the interest of its Members.

(7) To amalgamate with or enter into partnership or any joint purse or profit-sharing arrangement with, or to co-operate or participate in any way with, or assist or subsidise any company or person carrying on or proposing to carry on any business within the objects of the Company.

(8) To borrow and raise money and secure or discharge any debt or obligation of or binding on the Company in such manner as may be though fit, and in particular by mortgage of or charges upon the undertaking and all or any of the real and personal property (present and future), and the uncalled capital of the Company, or by the creation and issue of debentures, debenture stock or other obligations or securities of any description.

(9) To sell, exchange, mortgage, let on rent, share of profit, royalty or otherwise, grant licences, easements, options, servitudes and other rights over and in any other manner deal with or dispose of the undertaking, property, assets, rights and effects of the Company or any part thereof for such consideration as may be thought fit, and in particular for stocks, shares, debentures or other obligations or securities, whether fully or partly paid up, of any other company.

(10) To give any remuneration or other compensation or reward for services rendered or to be rendered in placing or procuring subscription of, or otherwise assisting in the issue of, any shares, debentures or other securities of the Company or in or about the formation of the Company or the conduct of its business.

(11) To establish or promote, or concur or participate in establishing or promoting, any company the establishment or promotion of which shall be considered desirable in the interests of the Company and to subscribe for, underwrite, purchase or otherwise acquire the shares, stocks and securities of any such company, or of any company carrying on or proposing to carry on any business or activity within the objects of the Company.

(12) To procure the registration or incorporation of the Company in or under the laws of any place outside England.

(13) To subscribe or guarantee money for any purpose which may be considered likely directly or indirectly to further the objects of the Company or the interest of its Members or for any national, charitable, benevolent, public, general or useful object, or for any exhibition.

(14) To grant pensions or gratuities to any officers or employers or ex-officers or ex-employees (including Directors and ex-Directors) of the Company or of its predecessors in business, or of its holding company or subsidiary, companies (if any), or to the relations, connections or dependants of any

such persons, and to establish or support any associations, institutions, clubs, building and housing schemes, funds and trusts which may be considered calculated to benefit any such persons or otherwise advance the interests of the Company or of its Members.

(15) To act as secretaries, managers, registrars, or transfer agents for any other company.

(16) To distribute any of the property of the Company among its Members in specie or kind.

(17) To do all or any of the things or matters aforesaid in any parts of the World, and either as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others.

(18) To do all such things as are incidental or the Company may think conducive to the attainment of the above objects or any of them.

And it is hereby declared that the word "company" in this Clause, except where used in reference to this Company, shall be deemed to include any partnership or other body of persons, whether incorporate or not incorporated, and whether domiciled in the United Kingdom or elsewhere, and that the objects specified in the different paragraphs of this Clause shall not, except where the context expressly so requires, be in anywise limited or restricted by reference to or inference from the terms of any other paragraph or in the name of the Company, but may be carried out in as full and ample a manner and shall be construed in as wide a sense as if each of the said paragraphs defined the objects of a separate, distinct and independent company.

4. The liability of the Members is limited.

5.* The share capital of the Company is £20,000,000 divided into 20,000,000 Ordinary Shares of £1 each and US$20,000,000 divided into 20,000,000 Ordinary Shares of US$1 each.

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*By a Special Resolution dated 5th March 1975 the authorised capital of the Company was increased to £100,000 by the creation of 50,000 shares of £1 each ranking pari passu in all respects with the existing shares of the Company.

By a Special Resolution dated 6th November 1981 the authorised capital of the Company was increased to £105,000 by the creation of 500,000 10% redeemable preference shares of 1p each.

By an Ordinary Resolution dated 20th August 1984 the authorised capital of the Company was increased to £125,000 by the creation of 20,000 shares of £1 each ranking pari passu in all respects with the existing shares of the Company.

By an Ordinary Resolution dated 20th August 1984 the 500,000 10% redeemable preference shares of 1p each were consolidated and converted into 5,000 Ordinary Shares of £1 each ranking pari passu in all respects with the existing shares of the Company.

By an Ordinary Resolution dated 23rd December 1992 the authorised capital of the Company was increased from £12,625,000 to £20,000,000 and US$ 20,000,000 by the creation of £7,375,000 Ordinary Shares of £1 each and 20,000,000 Ordinary Shares of US$ 1 each to rank pari passu in all respects with the existing Ordinary Shares of the Company.

31-01-98

WE, the persons whose names and addresses are hereunto subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

NAMES, ADDRESS AND DESCRIPTIONS OF SUBSCRIBERS	Number of Shares taken by each Subscriber
A.L. Boyce 18 Austin Friars London EC2 Solicitor	One
J.C. Jenkins 18 Austin Friars London EC2 Solicitor	One

DATED the 12th day of April 1965

WITNESS to the above signatures:-

Keith Miller
18 Austin Friars
London EC2
Solicitor's Articled Clerk

31-01-98

The Companies Act, 1948

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION
(as at 28th November 1997)

of

LEHMAN BROTHERS LIMITED

PRELIMINARY

1. The Company is a private company and accordingly no shares or debentures of the Company may be offered to the public.

2.
(A) Subject as hereinafter prescribed, the regulations contained or incorporated in Table A in the First Schedule to the Companies Act 1948, as amended (hereinafter called "Table A") shall apply to the Company.

(B) Regulations 2, 3, 4, 22, 25(A), 79, 80, 84(2) (4), 87 to 93 (inclusive) 95-99 (inclusive), 106, 107 and 131 of Table A shall not apply to the Company, but the Articles hereinafter contained, and the remaining regulations of Table A, subject to the modifications hereinafter expressed shall constitute the regulations of the Company.

BUSINESS

3. Any branch or kind of business which the Company is either expressly or by implication authorised to undertake may be undertaken by the Directors at such time or times as they shall think fit, and further may be suffered by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not, so long as the Directors may deem it expedient not to commence or proceed with the same.

SHARE CAPITAL

4. The share capital of the Company is £20,000,000 divided into 20,000,000 Ordinary Shares of £1 each and US$ 20,000,000 divided into 20,000,000 Ordinary Shares of US$ 1 each.

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SHARES

5. Without prejudice to any special rights for the time being attached to any existing class of shares (which special rights may be modified, varied or abrogated only in the manner provided by Section 32 of the Companies Act 1980) any share in the Company (whether forming part of the present capital or not) may be issued with any such preferred, deferred or other special rights or subject to such conditions or restrictions whether in regard to dividend, return of capital, voting or otherwise, as the Company may by Extraordinary Resolution direct.

6.

(A) Subject to the provisions of Section 14 of the Companies Act 1980 and of this Article, the shares shall be at the disposal of the Directors, who may allot, grant options over, or otherwise deal with or dispose of them to such persons, at such times and generally on such terms and conditions as they think proper, but so that no shares shall be issued at a discount.

(B) The Directors shall have authority (subject as aforesaid) for the period of five years after the date of adoption of these Articles to allot, without the need to obtain any consent or approval of the members, any shares or other securities of the Company (including relevant securities for the purpose of the said Section 14) up to the full amount of the authorised capital of the Company at the date of adoption of these Articles namely £12,625,000.

(C) All new shares shall have before issue be offered to the members holding Ordinary Shares in proportion as nearly as the circumstances admit to their existing holdings of such shares. The offer shall be made by notice in writing specifying the number of shares offered, and limiting a time (being not less than 21 days) within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or if earlier, on the receipt of an intimation from the member concerned that he declines to accept the shares offered the Directors may dispose of those shares in such manner as they think most beneficial to the Company. The Directors may likewise so dispose of any new shares, which (by reason of the ratio which the number of new shares bears to the number of Ordinary Shares held by the members) cannot in the opinion of the Directors be conveniently offered under this Article.

(D) Sub-sections (1), (6) and (7) of Section 17 of the Companies Act 1980 shall not apply to the Company.

7. Subject to the provisions of Section 45 of the Companies Act 1981 any Preference Shares may with the sanction of a Special Resolution be issued upon the terms that they are, or at the option of the Company are to be liable, to be redeemed.

PURCHASE OF SHARES

8. Subject to the provisions of the Companies Acts the Company may purchase its own shares (including any redeemable shares) and make a payment in respect of the redemption

or purchase of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

MODIFICATION OF RIGHTS

9. If any separate General Meeting convened pursuant to Regulation 1 of Table A shall be adjourned owing to the fact that the prescribed quorum was not present, and if at the adjourned Meeting the prescribed quorum shall not be present within half an hour from the time appointed for holding the Meeting, the holders of shares of the class in question present in person or by proxy at the adjourned Meeting shall constitute a quorum.

LIEN

10. The lien conferred by Regulation 11 of Part I of Table A shall attach to full paid up shares and to all shares registered in the name of any person indebted or under liability to the Company whether he is the sole registered holder thereof or one of several joint holders.

CALL ON SHARES

11. In the first sentence of Regulation 15 of Table A the words "except in so far as may be otherwise agreed between the Company and any Member in the case of any shares held by him" shall be inserted immediately after the words "provided that".

TRANSFER OF SHARES

12. The instrument of transfer of a share shall be signed by or on behalf of the transferor and (other than in the case of fully paid shares) by or on behalf of the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. All instruments of transfer, when registered, shall be retained by the Company.

PROXIES

13. In every notice convening a General Meeting of the Company there shall appear with reasonable prominence a statement that a Member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him and that a proxy need not be a Member.

PROCEEDINGS AT GENERAL MEETINGS

14. In Regulation 53 of Part I of Table A the words "provided that there be no less than two persons present" shall be inserted after the word "proxy".

15. Subject to the provisions of the Companies Act 1948, a resolution in writing signed by all the Members of the Company who would be entitled to receive notice of and to attend and vote at a General Meeting at which such resolution was to be proposed or by their duly appointed attorneys shall be as valid and effectual as if it had been passed at a

General Meeting of the Company duly convened and held. Any such resolution may consist of several documents in the like form each signed by one or more of the Members or their attorneys, and in the case of a body corporate which is a Member signature shall be sufficient if made by a director of that body corporate or by its duly appointed attorney.

VOTES OF MEMBERS

16. If at any General Meeting any vote shall be counted which ought not to have been counted or which might have been rejected, the error shall not vitiate the result of the voting unless it be pointed out at the same meeting and not in that case unless in the opinions of the Chairman of the Meeting it shall be of sufficient magnitude to vitiate the result of the voting.

DIRECTORS

17. Unless and until otherwise determined by the Company in general meeting, the directors shall be not less than two in number.

ALTERNATE DIRECTORS

18. Every Director shall have the power to appoint (1) any other Director or (2) any person approved for that purpose by a resolution of the Directors to act as alternate Director during his absence and at his discretion to remove such alternate Director, and on such appointment being made the alternate Director, except as regards remuneration and the power to appoint an alternate, shall be subject in all respects to the terms and conditions existing with reference to the other Directors of the Company, and every alternate Director, while so acting, shall exercise and discharge all the functions, powers and duties of the Directors whom he represents. Any Director acting as alternate shall have an additional vote for every Director for whom he acts as alternate.

19. Any instrument appointing or removing an alternate Director shall be effected by instrument in writing signed by the appointor and sent to or delivered at the registered office of the Company.

20. If any Director shall be called upon to perform extra services or make any special exertions in going or residing abroad or otherwise for any of the purposes of the Company the Directors may arrange with such Director for such extra remuneration for such services or exertions, either by way of salary, commission or the payment of a lump sum of money or otherwise as they shall think fit.

DIRECTORS' BORROWING POWERS

21. The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and subject to Section 14 of the Companies Act 1980, to issue and create mortgages, charges, memoranda of deposits, debentures, debenture stock and other securities whether outright or as security for any debts, liability or obligation of the Company or any third party.

POWERS AND DUTIES OF DIRECTORS

22. A Director who pursuant to Regulation 84(1) of Table A has declared at a meeting of the Directors the nature of his interest in a contract or proposed contract with the Company shall be entitled to vote in respect of that contract or proposed contract, and if he shall do so his vote be counted, and he may be taken into account in ascertaining whether or not a quorum is present at the meeting of the Directors at which the vote is taken.

PENSIONS AND ALLOWANCES

23. The Directors may grant retiring pensions or annuities or other allowances, including allowances on death, to any person or to the widow or dependants of any person in respect of services rendered by him to the Company as Managing Director, Assistant Managing Director or in any other executive office or employment under the Company or indirectly as an executive officer or employee of any subsidiary company of the Company or of its holding company (if any), notwithstanding that he may be or may have been Director of the Company, and may make payments towards insurances or trusts for such purposes in respect of such persons and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such person.

APPOINTMENT OF DIRECTORS

24. The holder or holders for the time being of a majority of the Ordinary shares at any time and from time to time by Memorandum in writing signed by him or them and sent to or left at the registered office for the time being of the Company, or the Company by resolution in General Meeting, may appoint any person to be a Director, either to fill a casual vacancy in the number of the Directors or as an additional Director.

ADDITIONAL DIRECTORS

25. Without prejudice to Article 24 the Directors shall have power at any time and from time to time appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these Articles.

DISQUALIFICATION OF DIRECTORS

26. No Director shall be required to retire by rotation but shall continue in office until his office is vacated by the occurrence of any of the following events:-

(1) If by notice in writing to the Company he resigns the office of Director.

(2) If he ceases to be a Director by virtue of Section 182 of the Companies Act 1948.

(3) If he commits any act of bankruptcy or enters into any arrangement with his creditors.

(4) If he is prohibited from being a Director by an order made under any of the provisions of Section 188 of the Companies Act 1948 or under Section 28 of the Companies Act 1976.

(5) If he becomes of unsound mind.

(6) If he ceases to be a Director by virtue of Section 185 of the Companies Act 1948.

27. Subject to Article 26, the Directors (howsoever appointed) shall remain in office until removed by Memorandum in writing signed by the holder or holders for the time being of a majority of the Ordinary Shares and sent to or left at the registered office for the time being of the Company or by resolution of the Company in General Meeting.

PROCEEDINGS OF DIRECTORS

28. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. The quorum necessary for the transaction of the business of the Directors shall be two Directors or their alternates. No resolution at any meeting of the Directors shall be effective unless passed by the affirmative vote of at least two Directors or their alternates.

29. A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Any such resolution may consist of several documents in the like form signed by one or more of the Directors or their alternates.

MANAGING DIRECTOR

30. The Directors may from time to time appoint one or more of their body to the office of Managing Director for such period and upon such terms as they think fit and, subject to the provisions of any agreement entered into in any particular case, may revoke such appointment and such appointment shall be automatically determined if a Director so appointed shall cease from any cause to be a Director but without prejudice to any claim he may have for damages for breach of any contract of service between him and the Company.

NOTICES

31. Every notice shall be given by the Company to every Member entitled to receive the same by sending it addressed to that Member at his registered address by post, except that in the case of a Member whose registered address is outside the United Kingdom of Great Britain and Northern Ireland every notice shall be sent by airmail if feasible. Every notice sent as aforesaid shall be deemed to have been received at the expiration of a period of 48 hours after it was posted or airmailed.

32. In regulation 133 of Table A the words "or, if appropriate and feasible, by airmail" shall be inserted after the word "post" and the words "within the United Kingdom" shall be deleted.

33. The whole of paragraph (a) in Regulation 134 of Table A which follows the word "member" shall be deleted.

SPECIAL DIRECTORS

34. The Board may from time to time appoint any person to any office or employment having a designation or title including the word "Director" or attach to any existing office or employment with the Company such a designation or title and may at any time determine any such appointment or the use of any such designation or title. The inclusion of the word "Director" in the designation or title of any such office or employment with the Company shall not imply that the holder thereof is a Director of the Company shall not imply that the holder thereof is a Director of the Company nor shall such holder thereby be empowered in any respect to act as a Director of the Company or be deemed to be a Director for any of the purposes of these Articles.

INDEMNITY

35 (a) The Company shall indemnify to the fullest extent permitted under and in accordance with the Act any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, trustee, employee or agent of or in any other capacity with another company, partnership, joint venture, trust or other enterprise, against expenses (including solicitors' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) Expenses incurred in defending a civil or criminal action, suit or proceeding shall (in the case of any action, suit or proceeding against a director of the Company) or may (in the case of any action, suit or proceeding against an officer, trustee, employee or agent) be paid by the Company in advance of the final disposition of such action, suit or proceeding as authorised by a meeting of the Directors of an undertaking by or on behalf of the indemnified person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorised in this Article.

(c) The indemnification and other rights set forth in this Article 35 shall not be exclusive of any provisions with respect thereto in the Articles of Association or any other contract or agreement between the Company and any officer, director, employee or agent of the Company.

(d) Neither the amendment nor repeal of this Article 35, Section (a), (b) or (c), shall eliminate or reduce the effect of this Article 35, Sections (a), (b) and (c) in respect of any matter occurring prior to such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right of indemnification or right to receive expenses pursuant to this Article 35, Section (a), (b) or (c), if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

(e) No director shall be personally liable to the Company or any Member for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director (a) shall be liable under Section 310 of the Companies Act 1985 or any amendment thereto or successor provision thereto, or (b) shall be liable by reason that, in addition to any and all other requirements for liability, he:

(i) shall have breached his duty of loyalty to the Company or its Members;

(ii) shall not have acted in good faith or, in failing to act, shall not have acted in good faith;

(iii) shall have acted in a manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law; or

(iv) shall have derived an improper personal benefit.

(f) Regulation 136 in Table A shall not apply to the Company.

31-01-98

NAMES, ADDRESS AND DESCRIPTIONS OF SUBSCRIBERS

A.L. Boyce
18 Austin Friars
London EC2

Solicitor

J.C. Jenkins
18 Austin Friars
London EC2

Solicitor

DATED the 12th day of April 1965

WITNESS to the above signatures:-

Keith Miller
18 Austin Friars
London EC2

Solicitor's Articled Clerk

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31-01-98

COMPANIES ACT 1948

COMPANY LIMITED BY SHARES

Memorandum

and

Articles of Association

of LEHMAN BROTHERS LIMITED

(as at 28 November 1997)

Incorporated the 27th April 1965

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Lehman Brothers Limited – In Administration

Joint Administrators' progress report for the period 15 March 2012 to 14 September 2012

10 October 2012

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Contents

Section 1 Purpose of the Joint Administrators' progress report

Introduction

This progress report has been prepared by the Joint Administrators (the 'Administrators') of Lehman Brothers Limited ('LBL' or the 'Company') under Rule 2.47(3)(a) of the Insolvency Rules 1986 (the 'Rules').

This is the eighth such progress report and provides an update on the work that the Administrators have undertaken, with particular focus on the progress made during the six months since 15 March 2012.

Objectives of the Administration

The Administrators are pursuing the objective of achieving a better result for LBL's creditors as a whole than would be likely if LBL were wound up (without first being in Administration).

The specific aims of this Administration are to:

- Realise all assets of LBL, where value may exist;
- Provide ongoing employee and infrastructure support to the other Group companies that are in Administration in exchange for appropriate reimbursement; and
- Mitigate, as far as possible, any further liabilities against LBL by the transfer or termination of contracts.

Creditors' Committee

The Administrators regularly meet with the Creditors' Committee (the 'Committee') and, to date, fourteen meetings of the Committee have taken place.

The meetings with the Committee provide the Administrators with the opportunity to explain in detail how the Administrators are dealing with key aspects of the Administration and to consult the Committee on critical issues.

Outcome for unsecured creditors

The Administrators are not in a position to give an estimate of the timing or quantum of any dividend to unsecured creditors.

However, creditors should be aware that LBL is a shareholder of Lehman Brothers International (Europe) - in Administration ('LBIE'), an unlimited company. LBL is therefore potentially liable for any shortfall to creditors of that estate. Clearly, this could have a significant impact on funds available to other creditors of LBL. Ongoing legal advice is being obtained and updated on this.

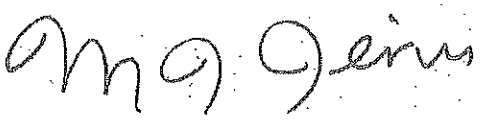
Extension of the Administration

As previously reported, on the application of the Administrators, the High Court granted an Order on 2 November 2011 to further extend the period of the Administration to 30 November 2013.

Future reports

The Joint Administrators' next progress report to creditors will be sent in approximately six months.

Signed:



MJA Jervis
Joint Administrator
Lehman Brothers Limited

Section 2 Joint Administrators' actions to date

As previously reported, LBL was pivotal to the operations of the Lehman Brothers Group of companies (the 'Group'), as it held most of the UK Groups' service contracts and employee contracts. LBL also maintained IT and general infrastructure to support the needs of the Group. It was also the head lessee of the former European headquarters at 25 Bank Street, Canary Wharf.

LBL has continued to provide services whilst in Administration to other UK based Lehman Brothers Companies in Administration (the 'Lehman Administration Companies') and has received cash to cover the associated costs of providing such services. LBL has been successful in reducing the number and value of creditor claims it will receive and over time LBL is continuing to reduce the level of services it provides by either discontinuing specific services or passing service provision to end users.

Since their appointment, the Administrators have used specialist teams from within PricewaterhouseCoopers LLP ('PwC'), working with retained LBL employees, to ensure that the operations of LBL are properly coordinated and the objective of the Administration is met.

The teams are currently formed around the following activities:

- Human Resources & Pensions;
- Corporation Tax and VAT;
- Intercompany;
- Affiliate company relationships; and
- Recharges.

The Administrators comment in more detail on the activities of the current teams in the following pages of this progress report.

As previously reported, LBL's assets primarily comprised fixtures, fittings, IT assets, tax refunds and inter-company receivables. The teams' responsibilities include the management and realisation of these assets for the benefit of the creditors of LBL, and minimising of obligations to creditors.

Key progress since 15 March 2012 includes:

- Further recoveries of corporation tax and VAT repayments on behalf of Group companies. During the period covered by this report, LBL has received corporation tax & VAT repayments of £20.7m on behalf of itself and other Group companies;
- A sustained steady workforce and continued progression in the collection of outstanding employee-related loan and tax amounts, with £1.99m being received in the period;
- As explained in our last progress report, costs incurred by LBL which are recharged to other Group companies under a cost recharge agreement are now limited to payroll and a small amount of ancillary costs. In the six months to 14 September 2012, total receipts under that recharge agreement amounted to £24.8m. Total receipts under the cost recharge agreement, including an element of third party receipts, now stands at £689.8m;
- Agreement of more than 50% of the possible former employee preferential claims. It is anticipated that payment of agreed preferential claims will commence within the next six months; and
- The receipts and payments account on page 10 shows cash held in the six month period reducing by £53.3m. This is primarily a result of corporation tax refunds received for other Group companies being paid over. In the period, cash held for LBL's own account has increased by £22.1m.

2.1 Human Resources and Pensions

Overview

Human Resources ("HR") is responsible for all matters relating to the provision of ongoing 'business as usual' HR support to c.500 LBL employees and contractors. The cost effective management of a stable workforce continues to be critical to achieving the objectives of the Lehman entities in Administration.

Highlights

We have retained a stable and flexible workforce to meet resourcing requirements. 60% of the workforce are engaged on on-going contracts, 25% are on Fixed Term Contracts and 15% are contractors.

Significant progress has been made in resolving former employees' preferential and non-preferential unsecured claims.

Progress

Notable areas of progress include:

- Completed the 2012 mid-year performance management process, with 100% compliance and individual performance assessed against objectives set;
- Developed the strategy for managing redundancy processes in 2013 and beyond;
- Finalised the 2013 reward package; first grant under the 2013 Retention Unit Awards to eligible employees meeting performance levels;
- Formal review of the Fixed Term Contract employees with extensions to contracts into 2013 offered to 103 employees;
- Continuation of employee development with 16 employees transferring to new roles in this period and 44% of employees attending formal Leadership & Development opportunities;
- Employee benefit renewals completed;
- Significant progress with HMRC to resolve pre and post-Administration PAYE / NIC reconciliations;
- Preparation and distribution of P11D information and finalisation of tax year end P60 and P35 reporting;
- Continued progress made in the recovery of outstanding loans due to LBL from former employees, either directly or in connection with expatriate tax loans, with £1.99m collected in this period; and
- Of the submitted preferential claims, 98% have been reviewed and admitted. However only 51% of the former employees have submitted a preferential claim. Efforts are being made to trace unresponsive former employees, who may have changed their address.

Issues and Challenges

The challenges to be faced by the HR workstream will be to maintain the right level of resource to meet the evolving requirements of the Administration's as objectives are met and workforce requirements reduce. Clear and open dialogue with the employee group is key.

Additional challenges for the next six months are:

- Retaining key employees;
- Maintaining employee focus through a period of change; and
- Pursuing former employees for claims and commencing with payments in respect of preferential claims admitted.

Pensions

There have been no developments in relation to the claim for £119m submitted by the Trustees of the Lehman Brothers Pension Fund in respect of the deficit in the Scheme. However, work is in progress seeking to establish whether LBL may be able to make recoveries in respect of the Trustees' claim from affiliate companies which benefitted from the employment of members of the Fund.

2.2 Corporation Tax and VAT

Overview

As Group Paying Agent of the Lehman UK tax Group and representative member of the VAT Group, LBL played an important and complex role in the Lehman UK tax affairs.

The primary objective of the tax team is finalising the timely repayment to the Group of up to £466m (excluding interest but subject to Crown set-off) of corporation tax.

Other key objectives include:

Compliance

- Ensuring tax compliance and statutory filing obligations are met.

Planning

- Minimising tax leakage from the UK Group.

HMRC Relationship

- Continuing to maintain a good relationship with HMRC to facilitate a pragmatic resolution of issues.

Progress

Specific progress in the period includes:

Corporation Tax

- To date, corporation tax repayments of £378m (including interest) have been received by LBL on behalf of the Group, of which £12m was received in the six months ended 14 September 2012;
- Two corporation tax repayments remain outstanding which may be subject to Crown set-off – whereby they will be reduced by other tax liabilities (e.g. PAYE) due to HMRC;
- Submission of 2010 Group loss position to HMRC, ensuring, by efficient usage of Group losses, no Group corporation tax liability in 2010; and
- Finalising 2011 accounts to enable preparation of 2011 tax returns to commence.

VAT

- LBL is part of a VAT group for which it is the representative member. All group VAT returns have been submitted up to the quarter ending May 2012. The August 2012 VAT return has been drafted and will be submitted shortly.
- LBL is due a VAT repayment of £470k for the November 2011, February 2012 and May 2012 quarters.

PAYE

- Several meetings have been held with HMRC to finalise agreement of the amount due to HMRC in respect of employment taxes to the date of Administration. Agreement now appears close and a further meeting is planned to finalise the amount and to discuss potential set off implications.
- With regards to the Employment Benefit Trusts, HMRC have asked for further information given the recent focus on such payroll planning.

Over the next six months the Tax team will focus on the following areas:

- Finalising and submitting to HMRC the 2011 corporation tax returns;
- In conjunction with HMRC, complete reconciliation and agreement of the pre-appointment employment tax liabilities. Once this is finalised HMRC will be in a position to release the two outstanding corporation tax repayments; and
- Projecting the 2012 taxable position of the Group, to determine the likelihood of tax leakage in 2012.

2.3 Intercompany

Overview

The global nature of the Lehman business, with highly integrated trading and non-trading relationships across the Group, led to a complex series of intercompany positions being outstanding at the date of Administration. These included 289 debtor and creditor balances between LBL and the rest of the Group representing, at book value, £1.2bn of receivables and £0.7bn of payables as at 15 September 2008. LBL has a high concentration of its overall Affiliate debtor balances (c.£1.1bn) in just 5 relationships. In addition LBL held guarantees from LBHI in respect of some claims against other group companies.

Progress

The Intercompany team has continued to make progress on a number of significant receivable balances:

- Pursuant to the Plan of Reorganisation of Lehman Brothers Holdings Inc ('LBHI') and the other Affiliates in US Chapter 11 proceedings ('the US Estates'), which became fully operational and binding on 6 March 2012, LBL received £11.1m ($17.6m) in first distribution payments on 17 April 2012. The total recovery from these claims remains uncertain but is anticipated to be in the region of $55m;
- Also pursuant to the settlement agreement with the US Estates, Lehman Brothers Luxembourg Investments SARL ('LBLIS') has agreed LBL's unsecured creditor claim in the sum of $225m and the principal US creditor of LBLIS has agreed to subordinate its claim behind LBL's claim. The quantum of any recovery from this claim remains contingent on the recovery LBLIS makes on its intercompany receivable and other balances;
- LBL is engaged in discussions with the US Affiliates that are not in Chapter 11 proceedings ('the non-Debtor Affiliates') with a view to settling with a group of these Affiliates where cash is currently available for distribution. LBL's receivable balances from this group of Affiliates is c.$9m; recovery, whilst difficult to predict accurately, is expected to be at least $2m;
- LBL's largest claim, for c.$1.2bn, is against Lehman Brothers Holdings Plc ('LBH Plc'), which is in Administration. LBH Plc has cash assets of c.£45m, and a possibility of some significant additional recoveries. LBL's overall recovery from LBH Plc remains difficult to assess at this stage; and
- LBL has submitted claims in the estate of Lehman Brothers Europe Limited and in the estate of LBIE and is currently in discussion with the Administrators of those estates.

The Intercompany team continues to proactively progress more than 100 smaller LBL Affiliate balances (out of c.250 identified at the commencement of the Administration) where there remains a reasonable prospect of future realisations, including engaging with the US Estates in relation to balances with smaller entities controlled by them and which are not subject to Chapter 11 or other insolvency proceedings.

2.4 Affiliate company relationships

Overview

LBL continues to provide data to overseas Lehman Affiliates under the terms of agreements designed to manage the risks, and to enable the costs of so doing (including a contribution to overheads) to be recovered. No new contracts have been entered into during the period and whilst there have been some further ad hoc requests, the number of new requests under the existing contracts has continued to decline. Considerable progress has been made in fulfilling the existing requests, notably in respect of the unstructured data and hardcopy documents for LB Bankhaus ('LBB').

Progress

LBHI

The Services Agreement with LBHI extends through to 16 December 2012. Only two unstructured requests have been made during the period, but LBHI has had continued access to nine IT applications. Total billing for the period amounted to £1.042m.

LBB

The data agreement with LBB was extended from 30 June to 30 September 2012 to allow completion of the unstructured and hardcopy projects which were ongoing. The request for 2008 email has now been completed. The request for 2007 email, and the hardcopy document project are both nearing completion, but a further short extension to the contract will be necessary to allow time for the resolution of queries. Total billing for the period amounted to £0.733m.

Issues and challenges

For LBL the release of data to other Lehman Affiliates is a risk management exercise, and the maintenance of a robust audit trail to show the work done is a significant challenge. LBHI is currently assessing its future requirements, but in the absence of further requests from Lehman Affiliates generally, this workstream will diminish over the coming months.

Section 3 Statutory and other Information

Court details for the Administration:	High Court of Justice, Chancery Division, Companies Court - Case 7945 of 2008
Full name:	Lehman Brothers Limited
Trading name:	Lehman Brothers Limited
Registered number:	846922
Registered address:	Level 23, 25 Canada Square, London E14 5LQ, United Kingdom
Company directors:	D Gibb (resigned 17/07/2009), CL Heiss (resigned 31/10/2008), IM Jameson (resigned 17/07/2009), AJ Rush (resigned 28/10/2008), PR Sherratt (resigned 06/10/2008)
Company secretary:	M Smith, P Dave, ESE Upton (all resigned 25/01/2010)
Shareholdings held by the directors and secretary:	None of the directors own shares in LBL
Date of the Administration appointment:	15 September 2008
Administrators' names and addresses:	AV Lomas, SA Pearson, DY Schwarzmann, MJA Jervis and DA Howell, of PricewaterhouseCoopers LLP, 7 More London Riverside, SE1 2RT
Appointer's name and address:	High Court of Justice, Chancery Division, Companies Court
Objective being pursued by the Administrators:	Achieving a better result for LBL's creditors as a whole than would be likely if LBL were wound up (without first being in Administration).
Division of the Administrators' responsibilities:	In relation to paragraph 100(2) Sch.B1 IA86, during the period for which the Administration is in force, any act required or authorised under any enactment to be done by either or all of the Joint Administrators may be done by any or one or more of the persons for the time being holding that office.
Details of any extensions of the initial period of appointment:	The Court has granted an extension of the Administration to 30 November 2013.
Proposed end of the Administration:	The Administrators are not yet in a position to determine the most likely exit route from the Administration and wish to retain the options available to them.
Estimated dividend for unsecured creditors:	It is too early to estimate the likely dividend for unsecured creditors.
Estimated values of the prescribed part and LBL's net property:	There is no qualifying floating charge holder, so there will be no prescribed part.
Whether and why the Administrators intend to apply to court under Section 176A(5) IA86:	Not applicable as there is no prescribed part.
The European Regulation on Insolvency Proceedings (Council Regulation(EC) No. 1346/2000 of 29 May 2000):	The European Regulation on Insolvency Proceedings applies to this Administration and the proceedings are the main proceedings.

Section 4 Joint Administrators' Remuneration

Background

This section sets out the process for setting and monitoring the Administrators' remuneration.

In this case, the Creditors' Committee is responsible for agreeing the basis and quantum of the Administrators' remuneration.

Insolvency Rules 1986

By way of context, the manner in which the Administrators' remuneration is determined and approved is set out in the Insolvency Rules 1986 (2.106-2.109).

There are two alternative bases under the Insolvency Rules 1986, either:

- A percentage of the value of the property with which the Administrator has to deal; or
- By reference to the time properly given by the Insolvency Practitioner and his staff in attending to matters arising in the Administration.

The Insolvency Rules also provide that in arriving at its decision on remuneration the Committee is required to consider the following matters:

- The complexity (or otherwise) of the case;
- Any responsibility of an exceptional kind or degree which falls on the Administrators;
- The effectiveness with which the Administrators appear to be carrying out, or to have carried out, their duties; and
- The value and nature of the property which the Administrators have to deal with.

Statement of Insolvency Practice No. 9 ('SIP9')

In addition to the Insolvency Rules, SIP9 provides guidance to insolvency practitioners and creditors' committees in relation to the remuneration of, inter alia, Administrators. The purpose of SIP9 is to:

- Ensure that Administrators are familiar with the statutory provisions relating to office holders' remuneration;
- Set out best practice with regard to the observance of the statutory provisions;
- Set out best practice with regard to the provision of information to those responsible for the approval of fees to enable them to exercise their rights under the insolvency legislation; and
- Set out best practice with regard to the disclosure and drawing of disbursements.

The Committee members have each been provided with a copy of SIP9.

When seeking agreement for remuneration, the Administrators are required to provide sufficient supporting information to enable those responsible for approving their remuneration ('the approving body') to form a judgement as to whether the proposed remuneration is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend upon:

- The nature of the approval being sought;
- The stage during the Administration of the case at which it is being sought; and
- The size and complexity of the case.

Remuneration review and approval process

As the remuneration is based on time costs the Committee has been provided with the time spent and the charge-out value, together with additional information setting out the approach to the project.

SIP9 guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning;
- Investigations;
- Realisation of assets;
- Trading;
- Creditors; and
- Any other case-specific matters.

The following categories are suggested by SIP9 as a basis for analysis by grade of staff:

- Partner;
- Manager;

- Other senior professionals; and
- Assistants and support staff.

In both cases the level of analysis and disclosure to the Committee has met or exceeded these standards.

SIP9 also suggests that an explanation of what has been done should include an outline of the nature of the assignment and the Administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent;
- The reasons for subsequent changes in strategy;
- Any comments on any figures in the summary of time being spent accompanying the request the Administrator wishes to make;
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement;
- Any existing agreement about fees; and
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

Each of these matters has been covered in some length in the sessions the Administrators have held with your Committee.

Members of the Committee are bound by a confidentiality undertaking as some of the matters the Administrators have covered with them are commercially sensitive and could impact the level of recoveries by creditors if disclosed.

Resolution of the Creditors' Committee

To pay costs on a 'time properly given' basis

Given the fundamental uncertainties about the value of the property with which the Administrators have to deal, the Committee resolved to use the 'time properly given' basis – i.e. an hourly billing basis.

Hourly rates

In accordance with SIP9, details of the hourly rates have been provided to the Committee.

Cost approvals to date

During the period covered by this progress report, the Committee has approved remuneration of £1,517,950 which comprises 5,620 hours at an average hourly rate of £270 in respect of the period 1 November 2011 to 30 April 2012.

Remuneration approved by the Committee includes £684,674 for work performed for and recoverable from Affiliate companies.

The table below provides an analysis of the total hours and cost by grade of staff:

Global Grade	Total hours	Total (£)
Partner	37	34,044
Director	152	134,242
Senior Manager	362	171,158
Manager	808	316,904
Senior Associate	1,984	530,488
Associate	2,277	331,114
Total	**5,620**	**1,517,950**
Less work recoverable from Affiliate companies		(684,674)
Net charge to LBL		**833,276**

The Committee has also resolved that the Administrators may draw 75% of their time costs on account to assist with the smoothing of working capital. All such costs are subject to detailed reporting to the Committee and are ultimately subject to their approval. In the six-month period from 15 March 2012 to 14 September 2012 the Administrators drew remuneration of £1,517,950.

Part of the net charge to LBL reported in previous periods relates to work on corporation tax and VAT issues on behalf of the Group and has been partially recovered from other Group companies in this and earlier periods. In addition, the disbursements drawn in the six month period from 15 March 2012 to 14 September 2012 have been fully recovered from Affiliate companies.

It is likely that significant levels of activity will be sustained for some time, but the Administrators expect that costs will begin to reduce in the coming months.

Section 5 Receipts and Payments to 14 September 2012

Amount in millions	GBP	EUR	USD	CHF	As at 14 Sept 2012 Total in GBP	As at 14 Mar 2012 Total in GBP	Movement
Receipts							
Contribution from third parties *	141.0	0.6	11.3	-	148.7	148.0	0.7
Building recharge receipts	129.4	-	-	-	129.4	129.4	-
Payroll recharge receipts	434.3	0.1	57.1	-	470.7	445.9	24.8
Other (including realisations and payments for other companies)	105.3	2.3	27.5	0.2	124.8	109.5	15.3
Tax related receipts	456.4	-	-	-	456.4	437.7	20.7
VAT received on invoices	7.0	-	-	-	7.0	7.0	-
Total receipts for period	1,275.4	3.0	95.9	0.2	1,339.0	1,277.5	61.5
Payments							
Building and occupancy cost	(178.5)	(0.3)	(62.8)	-	(218.7)	(218.7)	-
Payroll and employee costs	(460.9)	(2.8)	(45.2)	-	(482.0)	(457.2)	(24.8) ~
Other costs and payments	(61.5)	(0.2)	(1.2)	-	(62.4)	(56.0)	(6.4)
Other advisors' costs	(1.3)	-	-	-	(1.3)	(1.3)	-
Legal fees	(9.7)	-	-	-	(9.7)	(9.7)	-
Administrators' fees	(16.2)	-	-	-	(16.2)	(15.0)	(1.2)
Return of Corporation Tax to group companies	(338.0)	-	-	-	(338.0)	(256.0)	(82.0)
VAT related payments	(73.4)	-	-	-	(73.4)	(73.4)	-
VAT paid on invoices	(7.9)	-	(1.4)	-	(8.8)	(8.7)	(0.1)
Intercompany transfer	(1.5)	-	-	-	(1.5)	(1.5)	-
Total payments for period	(1,138.9)	(3.3)	(110.6)	-	(1,212.0)	(1,097.5)	(114.5)
Inter-currency transfers							
Receipts from inter-currency transfers	22.6	2.7	57.8	-	61.7	50.6	11.1
Payments from inter-currency transfers	(31.1)	(2.4)	(43.1)	(0.2)	(60.7)	(49.3)	(11.4)
Net inter-currency transfers	(8.5)	0.3	14.7	(0.2)	1.0	1.3	(0.3)
Net cash position	128.0	-	-	-	128.0	181.3	(53.3)
Bank balances							
Bank of England	-	-	-	-	-	-	-
HSBC	14.0	-	-	-	14.0	9.7	4.3
Money Market Funds	114.0	-	-	-	114.0	171.6	(57.6)
Net bank balance	128.0	-	-	-	128.0	181.3	(53.3)

* Includes elements of building & occupancy and payroll related recharges

~ Includes £0.1m of payroll costs attributable to Lehman Brothers Limited

GBP £ equivalent is for information purposes only.

Estate funds held on interest bearing accounts, excluding a contingent £1m held in non-interest bearing account

Rates used for conversion are Financial Times rates fixed on 14 March 2012.

1 USD = 0.6333 GBP

1 EUR = 0.8686 GBP

1 CHF = 0.7215 GBP

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LB Holdings Intermediate 2 Limited – In Administration

Joint Administrators' progress report for the period 14 July 2012 to 13 January 2013

12 February 2013

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Contents

Section 1 Purpose of the Joint Administrators' progress report

Introduction

This is the eighth progress report by the Joint Administrators (the "Administrators") of LB Holdings Intermediate 2 Limited ("LBHI2" or the "Company").

This report provides an update on the work the Administrators have undertaken and the progress made since our appointment, with particular focus on the progress made in the six months to 13 January 2013.

Objectives of the Administration

The Administrators are pursuing the objective of achieving a better result for LBHI2's creditors as a whole than would be likely if LBHI2 were wound up (without first being in Administration).

The Administrators will continue to manage the Administration in accordance with the proposals approved by creditors.

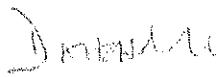
Outcome for creditors

The Administrators expect a distribution to be made to unsecured creditors in due course, however the quantum and timing of this distribution remains uncertain, principally due to three outstanding issues which affect the extent of LBHI2's total assets and liabilities. First a potential pension liability. Secondly, the extent to which LBHI2 may be required to contribute to the debts and liabilities of LBIE, by virtue of LBHI2's position as shareholder of LBIE (an unlimited company). Thirdly, in the event of there being a surplus in LBIE, whether LBHI2's right to prove in the LBIE estate in respect of a subordinated debt claim has priority over any claims for statutory interst otherwise arising. These issues are discussed further in section 2.

Future reports

The Adminstrators' next progress report to creditors will be sent in approximately six months.

Signed:



DA Howell
Joint Adminstrator
LB Holdings Intermediate 2 Limited

DA Howell, AV Lomas, MJA Jervis, SA Pearson and DY Schwarzmann were appointed as Joint Administrators of LB Holdings Intermediate 2 Limited to manage its affairs, business and property as agents without personal liability. DA Howell, AV Lomas, MJA Jervis, SA Pearson and DY Schwarzmann are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales.

DA Howell, AV Lomas, MJA Jervis, SA Pearson and DY Schwarzmann are Data Controllers of personal data as defined by the Data Protection Act 1998. PricewaterhouseCoopers LLP will act as Data Processor on their instructions. Personal data will be kept secure and processed only for matters relating to the Administrations.

Section 2 Joint Administrators' actions to date

Overview of the Company's business

LBHI2 holds the investment in Lehman Brothers International (Europe) ("LBIE").

As previously advised, LBHI2's investment in LBIE was principally financed by:

- The issue of $6.1bn floating rate notes;
- The issue of $730m of fixed rate notes; and
- A combination of long and short term loan facilities from Lehman Brothers Holdings Plc of which some $2.2bn remains due.

Administrators' actions

LBHI2's potential pensions liability

As noted in previous reports, the Pensions Regulator ("the Regulator") listed LBHI2 as one of the Lehman companies from which it was seeking a Financial Support Direction ("FSD") in relation to the Lehman Brothers Pension Scheme.

In September 2010 the Pensions Regulator's Determinations Panel (the "Panel") decided that an FSD should be issued against six Lehman group entities. LBHI2 was among 38 companies that the Panel decided should not be issued with an FSD.

The Panel's decision has been referred to the Upper Tribunal, with the Scheme Trustees asking the Upper Tribunal to overturn the Panel's decision and rule that the 38 companies (including LBHI2) should also be subject to an FSD. This means that LBHI2 is still at risk from this potential liability. LBHI2 (together with 36 other affected entities) applied to the Upper Tribunal, seeking an order that the Trustees' referral to the Upper Tribunal relating to a FSD should be struck out on the grounds that it is now no longer possible for the Regulator to impose a FSD against the Company. The Trustees and the Regulator opposed the strike-out application, and the hearing took place from 12 to 15 March 2012. Judgment was handed down on 14 June 2012 with the Upper Tribunal declining to strike out the Trustees' referral, meaning that LBHI2 is still at risk of a FSD. The Upper Tribunal's decision has been appealed to the Court of Appeal, and the hearing in the Court of Appeal has now been listed to begin on 29 April 2013.

The Administrators continue to keep the pensions issues under close review and are working to find an interim resolution.

LBHI2's potential liability for the debts and liabilities of LBIE

As sole shareholders of an unlimited company, Lehman Brothers Limited ("LBL") and LBHI2 have a potential liability to contribute to LBIE's assets in an amount sufficient for payment of LBIE's debts and liabilities.

The interplay between this potential liability, and the intercompany claims, is extremely complex.

The ranking of LBHI2's subordinated debt claim

LBHI2 has a subordinated claim against LBIE of £1,254,165,598.48 (c.$2,225,000,000) pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the "Subordinated Debt").

If there is a surplus in the LBIE estate, the relative ranking of the Subordinated Debt and any claims for statutory interest otherwise arising, raises extremely complicated legal issues.

The Administrators have retained SNR Denton UK LLP to advise on the issues between LBHI2 and LBIE, as well as Anthony Trace QC and Rosanna Foskett of counsel. The Administrators have been working with the administrators of LBL and LBIE, and their respective legal advisors, to find a resolution to these complex issues.

Tax

The Administrators have continued to review the tax position of LBHI2 in order to assess the potential value that may be realised through a sale of the tax losses to other Lehman Brothers group companies. In the period covered by this report, £1.6m has been recovered in payment for tax losses, bringing the total receipts from sale of tax losses to £9m.

Debtors

As previously reported, the Administrators entered into a settlement agreement with Lehman Brothers

Holdings Inc ("LBHI") on 11 October 2011. Pursuant to this agreement LBHI2 had its claim against LBHI agreed at $2.7m in respect of direct claims and $302m in respect of guarantee claims.

The first distribution from LBHI was made on 17 April 2012 and LBHI2 received $13.8m in regard to its agreed claims detailed above. A further distribution from LBHI was made on 1 October 2012 and LBHI2 received $9.3m. These funds were immediately exchanged to GBP to minimise the foreign exchange risk.

Further dividends from LBHI are expected in accordance with this settlement agreement, however the quantum and timing remain uncertain.

Section 3 Statutory and other Information

Court details for the Administration:	High Court of Justice, Chancery Division, Companies Court - Court Case 429 of 2009
Full name:	LB Holdings Intermediate 2 Limited
Trading name:	LB Holdings Intermediate 2 Limited
Registered number:	05957878
Registered address:	Level 23, 25 Canada Square, London E14 5LQ, United Kingdom
Company directors:	D Gibb (resigned 17/07/09), IM Jameson (resigned 17/07/09) and AJ Rush (resigned 17/07/09)
Company secretary:	P Dave (resigned 25/01/10) and ESE Upton (resigned 25/01/10)
Shareholdings held by the directors and secretary:	None of the directors own shares in the Company
Date of the Administration appointment:	14 January 2009
Administrators' names and addresses:	DA Howell, AV Lomas, SA Pearson, MJA Jervis and DY Schwarzmann of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT
Appointer's name and address:	The directors, 25 Bank Street, London E14 5LE
Objective being pursued by the Administrators:	Achieving a better result for LBHI2's creditors as a whole than would be likely if LBHI2 were wound up (without first being in Administration)
Division of the Administrators' responsibilities:	Statement of powers for the purposes of paragraph 100(2) of schedule B1 to the Insolvency Act 1986. The joint administrators will act jointly and severally so that all functions may be exercised by any or all of them.
Details of any extensions of the initial period of appointment:	The High Court of Justice has granted three successive extensions to the Administration period to: 30 November 2010; 30 November 2011 and most recently 30 November 2013.
Proposed end of the Administration:	The Administrators are not yet in a position to determine the most likely exit route from the Administration and wish to retain the options available to them.
Estimated dividend for unsecured creditors:	It is too early to estimate the likely dividend for unsecured creditors.
Estimated values of the prescribed part and LBHI2's net property:	Not applicable as there is no qualifying floating charge.
Whether and why the Administrators intend to apply to court under Section 176A(5) IA86:	Not applicable as there is no prescribed part.
The European Regulation on Insolvency Proceedings (Council Regulation(EC) No. 1346/2000 of 29 May 2000):	The European Regulation on Insolvency Proceedings does apply to this Administration and these are the main proceedings.

Section 4 Financial Information

Administrators' remuneration

At the meeting of creditors which was held by correspondence on 24 March 2009, creditors resolved that the Administrators' remuneration be fixed by reference to the time properly given by them and the various grades of their staff. The Administrators were also authorised to draw their remuneration from time to time.

A summary of the Administrators' time costs for the period 14 January 2009 to 30 June 2012 has previously been provided. Attached at section 6 of this report is a summary of the Administrators' time costs incurred from 1 July 2012 to 31 December 2012, presented in accordance with the Statement of Insolvency Practice 9 ("SIP9"), together with a narrative of the work performed.

The SIP9 summary shows that time costs for the period 1 July 2012 to 31 December 2012 are £92,679, representing 193.19 hours at an average hourly rate of £479.73.

To date, the Administrators have drawn remuneration of £233,742, plus VAT in respect of timecosts incurred in the period 14 January 2009 to 31 October 2012.

Receipts and payments account

An account of the receipts and payments in the Administration showing movements for the six months to 13 January 2013 is set out overleaf.

The largest receipts in the period, as discussed in Section 2, were £1.6m in respect of the sale of tax losses and a $9.3m dividend received from LBHI, equivalent to approximately £5.3m.

Section 5 Receipts and Payments Account

	As at 13 January 2013		Movements		As at 13 July 2012	
	GBP (£)	USD ($)	GBP (£)	USD ($)	GBP (£)	USD ($)
Receipts						
Dividends received	-	23,033,495	-	9,280,753	-	13,752,742
Sale of tax losses	9,031,410	-	1,553,916	-	7,477,494	-
Gross interest received	44,341	-	32,114	-	12,227	-
Total Receipts	9,075,751	23,033,495	1,586,030	9,280,753	7,489,721	13,752,742
Payments						
Net Tax function costs	166,124	-	957	-	165,167	-
Legal Fees	102,291	-	86,723	-	15,568	-
Gross wages & salaries	1,763	-	-	-	1,763	-
Statutory costs	384	-	-	-	384	-
IT Costs	5,741	-	5,741	-	-	-
Bank charges	-	47	-	-	-	47
Office holders' fees	233,742	-	70,519	-	163,223	-
Office holders' disbursements	2,198	-	-	-	2,198	-
VAT paid	61,490	-	31,448	-	30,042	-
Total Payments	573,733	47	195,388	-	378,345	47
Intracompany transfers						
Receipts	14,349,404	-	5,745,988	-	8,603,416	-
Payments	-	(23,031,700)		(9,280,000)		(13,751,700)
Net Position	22,851,422	1,748	7,136,630	753	15,714,792	995
Cash Balances						
HSBC	122,008	1,748	(640,485)	753	762,493	995
Money markets	22,729,414		7,777,115	-	14,952,299	-
Total Cash	22,851,422	1,748	7,136,630	753	15,714,792	995

Note: The total GBP equivalent cash in hand at the exchange rate on 13 January 2013 is £22,852,507. Funds are invested on the money markets to generate interest and reduce risk.

Section 6 Joint Administrators' time costs for the period 1 July 2012 to 31 December 2012

Classification of work	Partner/Director		Senior Manager/Manager		Senior Associate		Associate/Support Staff		Total Hours	
	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£
Accounting and Treasury	0.10	84	-	-	5.80	1,467	4.30	946	10.20	2,497
Asset Realisations	1.60	1,341	2.70	1,118	2.50	633	-	-	6.80	3,092
Creditors	-	-	4.30	1,780	-	-	-	-	4.30	1,780
Statutory and Reporting	-	-	3.60	1,490	21.80	5,515	-	-	25.40	7,005
Strategy and Planning	36.90	30,922	95.70	43,270	1.70	430	7.10	1,562	141.40	76,184
Tax and VAT	0.80	822	0.60	311	-	-	0.90	136	2.30	1,269
LBL Recharges	0.05	31	0.89	386	0.93	242	0.92	193	2.79	852
Grand Total	39.45	33,200	107.79	48,355	32.73	8,287	13.22	2,837	193.19	92,679

Current charge out rates	Business Recovery Services	Specialist
Grade	Max £/hr	Max £/hr
Partner	838	1,027
Director	639	932
Senior manager	492	869
Manager	414	634
Senior Associate	346	389
Associate/Support Staff	220	204

The Administrators' remuneration has been fixed by reference to the time properly given by the joint administrators and their staff in attending to matters arising in the administration. The maximum unit for time charged by the Joint Administrators and their staff is 0.1 of an hour.

* Specialist departments within PricewaterhouseCoopers LLP, such as Tax, VAT and Pensions, do sometimes charge a small number of hours, should we require their expert advice. Their rates do vary, however, the figures shown given an indication of the maximum rate per hour. In common with all professional firms, the scale rates used by the Joint Administrators from PricewaterhouseCoopers LLP may periodically rise (for example to cover annual inflation cost increase) over the period of the Administration. Any material amendments to these rates will be advised to the creditors in the next statutory report.

Narrative of the Joint Administrators' time costs for the period 1 July 2012 to 31 December 2012

Accounting and treasury - £2,497

- Preparation of receipt and payment account for statutory reporting;
- Preparation of receipts and payments vouchers;
- Managing investments on the money market;
- Mitigating risk on investments;
- Reconciliation of bank accounts; and
- Monitoring flow of funds into the bank accounts.

Asset Realisations - £3,092

- Ensuring LBHI dividend received; and
- Reviewing intercompany position against affiliate companies.

Creditors - £1,780

- Discussions and correspondence with creditors.

Statutory and reporting - £7,005

- Preparation of Administrators' seventh progress report;
- Circulate progress report to creditors;
- Statutory filings at Companies House and Court;
- Prepare detailed remuneration summary;
- Liaise with Administrators on statutory issues;
- Managing LBHI2 Administration website; and
- Maintaining case records and database.

Strategy and Planning - £76,184

- Preparing and attending group pension strategy meetings;
- Discussions regarding strategy for the Administration and updating the strategy documents; and
- Participating in discussions to resolve the pension issue;
- Workstreams relating to the potential liability for the debts and liabilities of LBIE, and the relative ranking of the Subordinate Debt and statutory interest if there is a surplus in LBIE, including discussions within the team, and with solicitors and counsel; and
- Setting, reviewing and discussing strategy on the relationship with LBIE.

Tax and VAT- £1,269

- Tax planning for group companies;
- Dealing with tax and VAT queries; and
- Preparing tax computations.

LBL recharges – £852

- This is an apportionment of the costs incurred by Lehman Brothers Limited associated with the administration companies.

IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

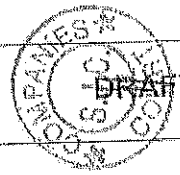
COMPANIES COURT

Before The Honourable Mr Justice Briggs

Monday the 30th day of November 2009

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986



DRAFT ORDER

UPON THE APPLICATION of Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Daniel Yoram Schwarzmann of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT (the "**Joint Administrators**"), the Joint Administrators of Lehman Brothers International (Europe) Limited ("**LBIE**"), made pursuant to paragraph 63 and/or paragraph 68(2) and paragraph 65(3) of Schedule B1 to the Insolvency Act 1986 (the "**Application**")

AND UPON HEARING Leading Counsel for the Joint Administrators

AND UPON READING the evidence

AND UPON the Joint Administrators undertaking to return to Court for directions prior to declaring a dividend and giving notice of that fact pursuant to rule 2.98 of the Insolvency Rules 1986

IT IS HEREBY ORDERED AND DIRECTED that:

1 The Joint Administrators be at liberty to give a notice pursuant to Rule 2.95(1) of the Insolvency Rules 1986 in the form set out in the schedule to the Order;

2 Pursuant to paragraph 65(3) of Schedule B1 to the Insolvency Act 1986 the Joint Administrators be permitted to make a distribution to LBIE's unsecured creditors;

3 Pursuant to Rule 7.31(5) of the Insolvency Rules 1986, the evidence filed and the skeleton argument lodged in support of the application be not open for inspection without the leave of the Court;

4 The costs of the Application be paid as an expense of LBIE's administration; and

5 There be liberty to any interested person to apply to vary or set aside this Order.

Schedule

LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)

NOTICE OF INTENDED DIVIDEND PURSUANT TO RULE 2.95 OF THE INSOLVENCY RULES 1986

Notice is hereby given pursuant to Rule 2.95 of the Insolvency Rules 1986 that the Joint Administrators of the above named company intend to make a distribution (by way of paying an interim dividend) to the preferential creditors (if any) and to the unsecured, non-preferential creditors of Lehman Brothers International (Europe) ("**LBIE**").

Proofs of debt may be lodged at any point up to (and including) 31 December 2010, the last date for proving claims, however, creditors are requested to lodge their proofs of debt at the earliest possible opportunity.

Persons so proving are required, if so requested, to provide such further details or produce such documentation or other evidence as may appear to the Joint Administrators to be necessary.

The Joint Administrators will not be obliged to deal with proofs lodged after the last date for proving but they may do so if they think fit.

The Joint Administrators intend to make such distribution within the period of two months from the last date for proving claims.

Proofs of debt should be sent to the Joint Administrators. Further details of the methods by which proofs of debt can be submitted will be posted on the website maintained by the Joint Administrators dedicated to the administration of LBIE at http://www.pwc.co.uk/eng/issues/lehmans_stakeholder_creditors.html.

Rule 2.95(2)(c) of the Insolvency Rules 1986 requires the Joint Administrators to state in this notice the value of the prescribed part of LBIE's net property which is required to be made available for the satisfaction of LBIE's unsecured debts pursuant to section 176A of the Insolvency Act 1986. The value of the prescribed part is £600,000.

Dated [...] December 2009

S A Pearson

Joint Administrator

Nos. 7942 and 7945 of 2008

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Before The Honourable Mr Justice Briggs

Monday the 30th day of November 2009

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

DRAFT ORDER

This Order was sealed by D Rowden
Associate (Tel: 020 7947 6179) to whom all enquiries should be made between the hours 9.00-10.15am. When corresponding with the Court please address the Court Manager, Rolls Building, Royal Courts of Justice (Fetter Lane/Strand) and quote the case number.

Linklaters LLP (Tony Bugg / Euan Clarke)
One Silk Street
London EC2Y 8HQ

Tel: (44-20) 7456 2000
Fax: (44-20) 7456 2222
Solicitors for the Applicants

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)

NOTICE OF INTENDED DIVIDEND PURSUANT TO RULE 2.95 OF THE INSOLVENCY RULES 1986

Notice is hereby given pursuant to Rule 2.95 of the Insolvency Rules 1986 that the Joint Administrators of the above named company intend to make a distribution (by way of paying an interim dividend) to the preferential creditors (if any) and to the unsecured, non-preferential creditors of Lehman Brothers International (Europe) ("LBIE").

Proofs of debt may be lodged at any point up to (and including) 31 December 2010, the last date for proving claims, however, creditors are requested to lodge their proofs of debt at the earliest possible opportunity.

Persons so proving are required, if so requested, to provide such further details or produce such documentation or other evidence as may appear to the Joint Administrators to be necessary.

The Joint Administrators will not be obliged to deal with proofs lodged after the last date for proving but they may do so if they think fit.

The Joint Administrators intend to make such distribution within the period of two months from the last date for proving claims.

Proofs of debt should be sent to the Joint Administrators. Further details of the methods by which proofs of debt can be submitted will be posted on the website maintained by the Joint Administrators dedicated to the administration of LBIE at http://www.pwc.co.uk/eng/issues/lehmans_stakeholder_creditors.html.

Rule 2.95(2)(c) of the Insolvency Rules 1986 requires the Joint Administrators to state in this notice the value of the prescribed part of LBIE's net property which is required to be made available for the satisfaction of LBIE's unsecured debts pursuant to section 176A of the Insolvency Act 1986. The value of the prescribed part is £600,000.

Dated 4 December 2009

S A Pearson

Joint Administrator

Lehman Brothers International (Europe) (in administration) Affiliates Portal

pwc

Username: CRHXFRVN
Legal Entity Name: LEHMAN BROTHERS LIMITED
Client Code: 7652

Home | Guidance Notes | Log out

Important Notice

As previously advised, on 2 May 2012, the UK High Court ordered that the last date for proving for the First Interim Dividend be set at 31 July 2012 (the "Bar Date"). Accordingly, you should note that the Bar Date has now passed. Nevertheless, we still encourage creditors to submit their Proofs of Debt through the Client Information Portal as soon as possible.

1. Creditor Information

Entity Name: LEHMAN BROTHERS LIMITED

GAC/OBS Code: 7652

Does this claim form part of an assignment? No

Claim Breakdown

Amounts due from LBIE i.e. in your favour, must be represented by a positive value. Amounts due to LBIE i.e. in LBIE's favour, must be represented by a negative value.

2. Claim relating to Financial Market Trading Agreements

Use this section to provide details if you believe you have a claim against LBIE relating to Financial Market Products. Each section of your Financial Market Trading claim in 2.1-2.5 below should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Please use the Edit button to enter the details of your financial market trading claim	Total Value of (GBP)	Please tick if you do not have a claim for this section	Please edit if you have a claim relating to this claim category
2.1 OTC Derivative Agreements	0.00	☑	Edit
2.2 Security Financing Agreements	0.00	☑	Edit
2.3 Prime Brokerage Agreements	0.00	☑	Edit
2.4 Failed Securities Trades	0.00	☑	Edit
2.5 Other Financial Products	0.00	☑	Edit
Subtotal Claim Relating to Financial Market Trading Agreements	0.00		

3. Claim relating to Non-Financial Products

Use this section if you believe you have a claim against LBIE relating to General Intercompany non-trading related claims. Please also include in this section any Intercompany Notes where indicated.

	Total Value of (GBP)	Please tick if you do not have a claim for this section	Please edit if you have a claim relating to this claim category
3.1 General Intercompany Unsecured Balance	362673397.76	☑	Edit
3.2 Intercompany Notes - Senior	0.00	☑	Edit
3.3 Intercompany Notes - Subordinated	0.00	☑	Edit
Subtotal Claim Relating to General Intercompany non-trading claims as at 15 September 2008 (This figure is sourced from sections 3.1-3.3)	362673397.76		

Total Unsecured Claim

362673397.76

4. Unsecured Claims arising out of Asset Claims

	Total Value of (GBP)	
Total Contingent Unsecured Claim arising out of Asset Claims	0.00	This figure is sourced from Section 2.3 Prime Brokerage Agreements - Contingent Claim field

Your unsecured claim arising out of Asset Claims shown above has been populated using the amount inputed by you in the contingent asset claim (i.e. secured asset position) contained in the Prime Brokerage section 2.3 of this Proof of Debt. Please note that this amount will not be included in your Total Unsecured Claim at this stage as it is a contingent claim and is therefore subject to change and is stated here for indicative purposes only.

The contingent unsecured claim arising out of Asset Claims amount is subject to change as you may have received or be entitled to receive a return of certain

assets from the assets LBIE holds which will decrease any residual unsecured claim arising out of those assets which have not been otherwise returned. As soon as all Asset Claims have been reconciled the Joint Administrators will be in a position to calculate the final amount of any remaining Asset Claim you may have and this amount will at that stage be confirmed as being part of your Total Unsecured Claim.

5. Statutory Requirements & General Claim Information

Total Amount of Set-Off Claimed	0.00	All claimants must provide details in this section
Claim not made pursuant to a Guarantee	☑	
No part of claim is preferential	☑	
No proprietary rights have been claimed (e.g. retention of title)	☑	
No payments have been received since 15 September 2008 in respect of any amount claimed	☑	
None of the balances claimed for on this form are shown net of any withholding or other taxes	☑	
No security held in respect of any amount claimed (other than that which may relate to Financial Trading Contracts)	☑	

I hereby declare that the information provided in this Proof of Debt is correct. I confirm that I am acting on my own behalf or as a signatory authorised to sign this Proof of Debt on behalf of the Legal Entity.

Please select the contact details of the submitter (i.e. a Primary User) of this Proof of Debt from the details that you have provided.

Jon Anderson

Status: Claim Submitted at Dec 21 2011 4:04PM Last Saved Date: 21/12/2011 16:04:35

Lehman Brothers International (Europe) – in administration ("LBIE")
Proof of Debt

1. Creditor Information			
Entity Name:	LEHMAN BROTHERS LIMITED		
Primary User Last Name:	Anderson	Primary User First Name:	Ian
DBS Code:	A0056	This Claim Has Been Assigned:	No
Registered Company Number:	00846922	Does this claim form part of an Agent/Principal relationship?	Not Set

Claim Breakdown

Positive value equates to a claim on the LBIE estate

2. Claims relating to Financial Market Trading Agreements	Total Value of (GBP)
2.1 OTC Derivative Agreements:	00.00
2.2 Security Financing Agreements:	00.00
2.3 Prime Brokerage Agreements:	00.00
2.4 Failed Securities Trades:	00.00
2.5 Other Financial Products:	00.00
Subtotal Claim Relating to Financial Market Trading Agreements	00.00

3. Claim relating to Non-Financial Products	Total Value of (GBP)
3.1 General Intercompany Unsecured Balance	362,673,342.99
3.2 Intercompany Notes - Senior	00.00
3.3 Intercompany Notes - Subordinated	00.00
Subtotal Claim Relating to General Intercompany non-trading claims as at 15 September 2008	362,673,342.99

4. Unsecured Claims arising out of Asset Claims	Total Value of (GBP)
Total Contingent Unsecured Claim arising out of Asset Claims	00.00

Total Unsecured Claim 362,673,342.99

5. Statutory Requirements & General Claim Information		
Total Amount of Set-Off Claimed	00.00	
- Claim not made pursuant to a Guarantee		☑
- No part of claim is preferential		☑
- No proprietary rights have been claimed (e.g. retention of title)		☑
- No payments have been received since 15 September 2008 in respect of any amount claimed		☑
- None of the balances claimed for on this form are shown net of any withholding or other taxes		☑
- No security held in respect of any amount claimed (other than that which may relate to Financial Trading Contracts)		☑

Claims relating to Financial Market trading Contracts
OTC Derivative Agreements

Over-The-Counter (OTC) derivatives are bespoke trades between two parties, the value of which is derived from the price of some underlying instrument or index. The trading of derivatives between parties is often executed under over-arching contracts or Master Agreements. The mark-to-market value of an OTC Derivative transaction is the present value of the expected future cash flows, forecasted and then discounted using the rates and prices prevailing in the market at the time of valuation. Your gross contractual OTC Derivative Agreement claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Financing Agreements

Securities Financing transactions are where a lending party has transferred to a borrowing party securities and/or financial instruments against the transfer of cash or other form of collateral, with a simultaneous agreement by the borrower to return to the lender equivalent securities on a fixed date, or on demand, against the return of their collateral plus interest.

It includes transactions where one party has agreed to sell to the other securities and financial instruments against the payment of the purchase price by the buyer to the seller, with a simultaneous agreement for the buyer to sell back the securities to the seller at an agreed repurchase price and date. This would include Repurchase (Repo) agreements.

Stock Loan agreements should also be included in this section.

Financing transactions executed with and/or through LBIE acting in the capacity of a potential creditor's prime broker pursuant to a prime brokerage agreement, and not pursuant to a Financing master agreement between LBIE and the creditor, should NOT be detailed in this claims category, but rather in the Prime Broker section of the portal.

Your gross contractual Financing Agreement claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Prime Brokerage Agreements

Prime brokerage should include all positions and balances which have occurred under Prime Brokerage Agreement such as an IPBA, CAA etc where LBIE has acted as prime broker, typically this includes securities lending, cash financing, securities held under title / rehypothecated and cash balances. Only CFD's held under a CFD Annex of a PB agreement should be included within this section, those held under an ISDA should be included in section 2.1. This should not include secured assets / cash, these should be submitted under a contingent asset claim. Your gross contractual Prime Brokerage Claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Failed Securities Trades

Failed securities trades include contracts to buy or sell security for agreed cash value that failed to settle on the contractual settlement date in the underlying settlement system. It includes trades executed on exchange (for example London Stock Exchange) and trades executed on the over-the-counter basis and not subject to exchange or settlement system default rules. Your gross contractual Failed Securities Trade Claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Other Financial Products

The administration expects that the vast majority of claims relating to financial products will fit into one of the previous sections. However, if you firmly believe that the nature of your financial product claim is outside of the product types covered in those previous sections, then you should complete this section, including any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules in relation to such other financial products. Please provide as much detail as possible to describe the product types your claim relates to.

Claims relating to Non-Financial Products

General Intercompany Unsecured Balance

The last trading day prior to Lehman Brothers Holdings Inc ('LBHI') or any of its subsidiaries entering insolvency proceedings was Friday 12 September 2008, when all normal operational practices were being carried out. During the weekend prior to Monday 15 September 2008 (the date on which LBIE was placed into administration at 7.56am), no material transactions took place and LBHI and its subsidiaries ceased to trade and function as a group.

The Global Close process, which produced a global set of books and records according to the normal monthly accounting process as of the close of business on 12 September 2008, was completed in January 2009 by global finance teams. For the entities that participated in the Global Close, which included LBIE, these records represent the best approximation of the financial position of the affiliates at the date of administration.

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
AED Global Close		AED	-3,047,154.00	-482,825.77
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
AUD Global Close		AUD	62,420.00	28,180.77
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
CAD Global Close		CAD	14,368.00	7,498.98
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
CHF Global Close		CHF	2,479,082.00	1,228,652.01
Comments	Per DBS			

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
CNY Global Close	CNY	299.00	24.34
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
CZK Global Close	CZK	-91,472.00	-2,995.07
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
DKK Global Close	DKK	4,421,500.00	469,059.97
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
EUR Global Close	EUR	48,671,988.00	38,503,274.27
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
GBP Global Close	GBP	341,650,053.00	341,650,053.00
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
HKD Global Close	HKD	33,797.00	2,417.51
Comments	Per DBS		

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
ILS Global Close	ILS	98,895.00	15,483.80
Comments	Per DBS		

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
JPY Global Close		JPY	71,253,181.00	374,119.28
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
NOK Global Close		NOK	9,163,238.00	884,106.94
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
NZD Global Close		NZD	4,283.00	1,578.81
Comments	per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
PLN Global Close		PLN	1,144,986.00	270,895.94
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
SEK Global Close		SEK	16,758,235.00	1,383,926.22
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
SGD Global Close		SGD	152,744.00	69,853.97
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
TRY Global Close		TRY	20,586.00	9,092.78
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
USD Global Close		USD	-39,222,464.00	-21,866,791.55
Comments	Per DBS			

Brief Description Of Claim		Currency of Claim	Debit and Credit Balances	Balance GBP
ZAR Global Close		ZAR	1,710,253.00	117,756.82
Comments	Per DBS			

Total Global Close Balance 362,673,342.99

Claims relating to Non-Financial Products

General Intercompany Unsecured Balance - Post Global Close Adjustments

These are defined as any adjustments to the Global Close Balance, for instance relating to corrections or reversals of erroneous journal postings. An example of this type of adjustment are the charges incurred in moving the amount claimed from an 'ongoing entity basis,' as reflected in the Global Close Balances, to one that reflects the fact that LBIE is now in administration.

Claims relating to Non-Financial Products
Intercompany Notes - Senior

This section should include balances created through the purchase of a bond or bonds issued by LBIE.

Distinction should be drawn between balances created by the purchase of 'senior notes' in which the purchased debt ranks pari passu with all other senior debt obligations of LBIE and balances created by the purchase of 'subordinated notes' in which the purchased debt is subordinated to all other debt claims against LBIE.

This section only contains senior notes.

Claims relating to Non-Financial Products
Intercompany Notes - Subordinated

This section should include balances created through the purchase of a bond or bonds issued by LBIE.

Distinction should be drawn between balances created by the purchase of 'senior notes' in which the purchased debt ranks pari passu with all other senior debt obligations of LBIE and balances created by the purchase of 'subordinated notes' in which the purchased debt is subordinated to all other debt claims against LBIE.

This section only contains subordinated notes.

Statutory Requirements and General Claim Information

The questions in this section relate either to the statutory requirements for a proof of debt as listed in Rule 2.72 of the Insolvency Rules 1986 or relate to requests for general information which will assist with the processing of your claim.

You are therefore required to provide responses to all questions in this section.

1. Proprietary Rights

Are you asserting any proprietary rights in respect of the whole or any part of your claim and which is not otherwise asserted in any other section of this unsecured claims portal? — No

Please provide details of any title / proprietary claim you are asserting (including any reservation of title or tracing claim to which the whole or part of your claim relates but excluding other proprietary interests, e.g. trust or client money claims).

2. Payments from LBIE

Since 15 September 2008 have you received a payment from LBIE (or any other party) in relation to your claim? — No

If yes, please state the amount received — Currency: --Please Select-- 00.00; Amount (GBP): 00.00

Please provide details of the payments received (name of payer, date of payment)

3. Application of Set-Off

Have you set off any amounts against your claim? — No

If yes, please state the amount set-off — Currency: --Please Select-- 00.00; Amount (GBP): 00.00

Please provide details of the amount set off (what it relates to and date set off was applied)

4. Preferential Claims

Is all or any part of the claim preferential as defined in the Insolvency Act 1986? — No

A preferential claim is a claim which relates to preferential debts as defined by section 386 and Schedule 6 the Insolvency Act 1986 (as amended by the provisions of section 251 of the Enterprise Act 2002). Subject to applicable statutory limits, these include claims for:

1. Contributions to Occupational Pension Schemes;
2. Remuneration owed to employees;
3. Accrued holiday pay of employees.

Total Value (details to be provided in the box below) — Currency: --Please Select-- 00.00; Total Preferential Claim (GBP): 00.00

If yes, please provide details below (where at is your preferential claim in respect of). Please attach supporting documents.

5. Security

Are you holding any security in respect of all or part of your claim that has not been disclosed in the section related to Financial Market Trading Contracts? — No

If yes, please provide details below (date of security granted, value of security, date valued). Please attach supporting documents.

6. Withholding Taxes

Does your claim or any part of it include any form of withholding tax? — No

Please do not include any other type of tax e.g. Value Added Tax.

If yes, please provide details below (specify amount and type). Please attach supporting documents.

7. Guarantees

Is your claim or any part of your claim being made pursuant to a guarantee given by LBIE? — No

If you have answered yes to the above question, please state the guaranteed amount of your claim. — Currency: --Please Select-- 00.00; Total Guarantee by LBIE (GBP): 00.00

If yes, please provide details of the guarantee (e.g. date of guarantee, details of guaranteed obligation(s)). Please attach supporting documents.

Is your claim, or any part of your claim, guaranteed by any party other than LBIE? — Yes

If you have answered yes to the above question, please state the guaranteed amount of your claim. — Currency: GBP 362,673,342.99; Total Guarantee by Non-LBIE Party (GBP): 362,673,342.99

If yes, please provide details of the guarantee (e.g. date of guarantee, parties, details of guaranteed obligation(s)). Please attach supporting documents.

Obligations of LBIE guaranteed by LBHI

Is your claim, or any part of your claim, the result of a right of subrogation?		No
If you have answered yes to the above question, please state the amount of your claim which is as a result of subrogation.	Currency --Please Select--	00.00
	Total Guarantee resulting from Subrogation (GBP)	00.00

If yes, please provide details of the guarantee (e.g. date of guarantee, parties, details of guaranteed obligation(s)). Please attach supporting documents.

8. Contingent Claims

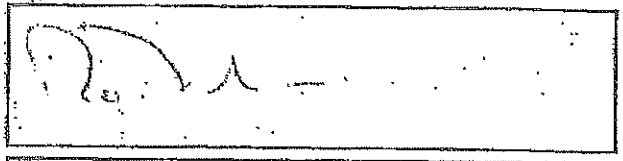
Is your claim, or any part of your claim, contingent? Please note that any contingent claim you may have should exclude (i) any contingent claim which may have been submitted in respect of an unsecured claim arising out of your contingent Asset Claim (displayed in section 4) and/or (ii) for the avoidance of doubt, should exclude any amounts which may benefit from Client Money protection which you have included within your gross Financial Market Trading claims submitted in section 2. No

If yes, please explain the nature of your contingency and whether the claim amount is likely to crystallise. Where you are able to provide a current estimate of the amount of your contingent claim, please state that amount and provide an explanation of how it has been calculated.

Proof of Debt Declaration

I hereby declare that the information provided in this Proof of Debt is correct. I confirm that I am acting on my own behalf or as a signatory authorised to sign this Proof of Debt on behalf of the creditor.

Signature of Creditor/person authorised to act on behalf of Creditor (strike through as appropriate)



Name in BLOCK CAPITALS

D. E. MUNN

Position with or relation to Creditor (e.g. director, company secretary, solicitor) if different to below

AUTHORISED SIGNATORY FOR JOINT ADMINISTRATORS

Company Name if acting on behalf of Creditor

LEHMAN BROTHERS LTD (IN ADMINISTRATION)

Contact details of the completer

First Name:	Ian	Number / Street:	25
Last Name:	Anderson	Street:	Canada Square
Telephone:	020 3036 2093	Town / City:	London
Position:	Employee	County / State:	London
Post Code / Zip:	E14 5LQ	Country:	UNITED KINGDOM
Email Address:	ian.anderson@lbia-eu.com		

Primary Creditor Contact Details

First Name:	Ian	Number / Street:	25
Last Name:	Anderson	Street:	Canada Square
Telephone:	020 3036 2093	Town / City:	London
Position:	Employee	County / State:	
Post Code / Zip:	E14 5LQ	Country:	UNITED KINGDOM
Email Address:	ian.anderson@lbia-eu.com		

From: robert.e.munn@uk.pwc.com [mailto:robert.e.munn@uk.pwc.com]
Sent: Thursday, September 13, 2012 5:57 PM
To: Trivedi, Asha
Cc: Trivedi, Asha; Munn, Robert (PwC); Di Lellio, Riccardo; Holmes, Richard; Munn, Robert
Subject: RE: LBL Claim into LBIE

Dear Asha

Thank you for your emails.

The claim submitted is exactly in accordance with the Global Close balance, converted as at 15 September 2008.

A review of essbase shows that the Global Close balance consists of;

- AP Expenses
- Payroll
- Tax
- Interest on intercompany balance

Full details of the underlying transactions are available to LBIE through essbase and other shared accounting systems as applicable. LBL can of course provide more detailed and extensive analysis but given that LBIE already has access to the relevant information, that would appear to be duplicative.

The Trustees of the Lehman Brothers Pension Fund ("the Fund") have submitted a claim against LBL for £119,000,000, representing the deficit claimable against LBL as the Principal Employer under section 75 of the Pensions Act 1975. The Trustees' claim against LBL in respect of the deficiency has not been finally adjudicated and may be subject to amendment.

LBL acted as the principal service company for the Lehman Brothers group in the UK and Europe, providing (inter alia) the services of employees to LBIE and other companies within the Lehman Brothers Group on condition that all costs incurred by LBL in providing such services would be reimbursed to LBL by the recipients of the relevant services, plus a margin as agreed. The deficit in the Fund now claimed against LBL is one of the costs incurred by LBL in providing services to LBL and is accordingly to be reimbursed to LBL by recipients of services provided by LBL.

LBL accordingly has reserved and reserves its right to make additional claims against LBIE in relation to the deficit in the Lehman Brothers Pension Fund claimed against LBL.

We understand Claims Determination Deeds (CDDs) are being issued by LBIE; would you please arrange for a CDD to be issued to LBB as above.

Kind regards

Robert

Robert E Munn ¦ Advisory ¦ PricewaterhouseCoopers LLP ¦7 More London Riverside, London, SE1 2RT, United Kingdom ¦ Email: robert.e.munn@uk.pwc.com ¦ Direct: + 44 207 212 6147 ¦ Mobile: + 44 78 94 39 35 99

Lehman Brothers International (Europe) – in administration ("LBIE")
Proof of Debt

Lehman Brothers International (Europe) – In administration ("LBIE")
Proof of Debt

1. Creditor Information			
Entity Name:	LB HOLDINGS INTERMEDIATE 2 LTD		
Primary User Last Name:	Lieberman	Primary User First Name:	Alison
DBS Code:	A01C6	This Claim Has Been Assigned:	No
Registered Company Number:		Does this claim form part of an Agent/Principal relationship?	Not Set

Claim Breakdown

Positive value equates to a claim on the LBIE estate

2. Claims relating to Financial Market Trading Agreements	Total Value of (GBP)
2.1 OTC Derivative Agreements:	00.00
2.2 Security Financing Agreements:	00.00
2.3 Prime Brokerage Agreements:	00.00
2.4 Failed Securities Trades:	00.00
2.5 Other Financial Products:	00.00
Subtotal Claim Relating to Financial Market Trading Agreements	00.00

3. Claim relating to Non-Financial Products	Total Value of (GBP)
3.1 General Intercompany Unsecured Balance	38,089,911.30
3.2 Intercompany Notes - Senior	00.00
3.3 Intercompany Notes - Subordinated	1,254,165,598.48
Subtotal Claim Relating to General Intercompany non-trading claims as at 15 September 2008	1,292,255,509.78

4. Unsecured Claims arising out of Asset Claims	Total Value of (GBP)
Total Contingent Unsecured Claim arising out of Asset Claims	00.00

Total Unsecured Claim 1,292,255,509.78

5. Statutory Requirements & General Claim Information		
Total Amount of Set-Off Claimed	00.00	
- Claim not made pursuant to a Guarantee		☑
- No part of claim is preferential		☑
- No proprietary rights have been claimed (e.g. retention of title)		☑
- No payments have been received since 15 September 2008 in respect of any amount claimed		☑
- None of the balances claimed for on this form are shown net of any withholding or other taxes		☑
- No security held in respect of any amount claimed (other than that which may relate to Financial Trading Contracts)		☑

Claims relating to Financial Market trading Contracts
OTC Derivative Agreements

Over-The-Counter (OTC) derivatives are bespoke trades between two parties, the value of which is derived from the price of some underlying instrument or index. The trading of derivatives between parties is often executed under over-arching contracts or Master Agreements. The mark-to-market value of an OTC Derivative transaction is the present value of the expected future cash flows, forecasted and then discounted using the rates and prices prevailing in the market at the time of valuation. Your gross contractual OTC Derivative Agreement claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Financing Agreements

Securities Financing transactions are where a lending party has transferred to a borrowing party securities and/or financial instruments against the transfer of cash or other form of collateral, with a simultaneous agreement by the borrower to return to the lender equivalent securities on a fixed date, or on demand, against the return of their collateral plus interest.

It includes transactions where one party has agreed to sell to the other securities and financial instruments against the payment of the purchase price by the buyer to the seller, with a simultaneous agreement for the buyer to sell back the securities to the seller at an agreed repurchase price and date. This would include Repurchase (Repo) agreements.

Stock Loan agreements should also be included in this section.

Financing transactions executed with and/or through LBIE acting in the capacity of a potential creditor's prime broker pursuant to a prime brokerage agreement, and not pursuant to a Financing master agreement between LBIE and the creditor, should NOT be detailed in this claims category, but rather in the Prime Broker section of the portal.

Your gross contractual Financing Agreement claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Prime Brokerage Agreements

Prime brokerage should include all positions and balances which have occurred under Prime Brokerage Agreement such as an IPBA, CAA etc where LBIE has acted as prime broker, typically this includes securities lending, cash financing, securities held under title / rehypothecated and cash balances. Only CFD's held under a CFD Annex of a PB agreement should be included within this section, those held under an ISDA should be included in section 2.1. This should not include secured assets / cash, these should be submitted under a contingent asset claim. Your gross contractual Prime Brokerage Claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Failed Securities Trades

Failed securities trades include contracts to buy or sell security for agreed cash value that failed to settle on the contractual settlement date in the underlying settlement system. It includes trades executed on exchange (for example London Stock Exchange) and trades executed on the over-the-counter basis and not subject to exchange or settlement system default rules. Your gross contractual Failed Securities Trade Claim submitted in this section should include any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules.

Claims relating to Financial Market trading Contracts (cont'd)

Other Financial Products

The administration expects that the vast majority of claims relating to financial products will fit into one of the previous sections. However, if you firmly believe that the nature of your financial product claim is outside of the product types covered in those previous sections, then you should complete this section, including any amounts which you consider may qualify for Client Money protection under the terms of the FSA's Client Money Rules in relation to such other financial products. Please provide as much detail as possible to describe the product types your claim relates to.

Claims relating to Non-Financial Products
General Intercompany Unsecured Balance

The last trading day prior to Lehman Brothers Holdings Inc ('LBHI') or any of its subsidiaries entering insolvency proceedings was Friday 12 September 2008, when all normal operational practices were being carried out. During the weekend prior to Monday 15 September 2008 (the date on which LBIE was placed into administration at 7.56am), no material transactions took place and LBHI and its subsidiaries ceased to trade and function as a group.

The Global Close process, which produced a global set of books and records according to the normal monthly accounting process as of the close of business on 12 September 2008, was completed in January 2009 by global finance teams. For the entities that participated in the Global Close, which included LBIE, these records represent the best approximation of the financial position of the affiliates at the date of administration.

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
DBS Entries inc. USD 730m fixed rate note 1980881HZ	USD	734,818,393.00	409,666,272.51
Comments			

Brief Description Of Claim	Currency of Claim	Debit and Credit Balances	Balance GBP
DBS entries inc. GBP 370m money market trade 2247458HZ	GBP	-371,576,361.21	-371,576,361.21
Comments			

Total Global Close Balance **38,089,911.30**

Claims relating to Non-Financial Products
General Intercompany Unsecured Balance - Post Global Close Adjustments

These are defined as any adjustments to the Global Close Balance, for instance relating to corrections or reversals of erroneous journal postings. An example of this type of adjustment are the charges incurred in moving the amount claimed from an 'ongoing entity basis,' as reflected in the Global Close Balances, to one that reflects the fact that LBIE is now in administration.

Claims relating to Non-Financial Products

Intercompany Notes - Senior

This section should include balances created through the purchase of a bond or bonds issued by LBIE.

Distinction should be drawn between balances created by the purchase of 'senior notes' in which the purchased debt ranks pari passu with all other senior debt obligations of LBIE and balances created by the purchase of 'subordinated notes' in which the purchased debt is subordinated to all other debt claims against LBIE.

This section only contains senior notes.

Claims relating to Non-Financial Products
Intercompany Notes - Subordinated

This section should include balances created through the purchase of a bond or bonds issued by LBIE.

Distinction should be drawn between balances created by the purchase of 'senior notes' in which the purchased debt ranks pari passu with all other senior debt obligations of LBIE and balances created by the purchase of 'subordinated notes' in which the purchased debt is subordinated to all other debt claims against LBIE.

This section only contains subordinated notes.

Brief Description Of Claim	Currency of Claim	Total Gross Claim	Total Gross Claim (GBP)
Subordinated Debt	USD	2,225,000,000.00	1,240,452,695.55
Comments			

Brief Description Of Claim	Currency of Claim	Total Gross Claim	Total Gross Claim (GBP)
Subordinated Debt Interest	USD	24,596,834.00	13,712,902.94
Comments			

Total Client valuation of Claim 1,254,165,598.48

Statutory Requirements and General Claim Information

The questions in this section relate either to the statutory requirements for a proof of debt as listed in Rule 2.72 of the Insolvency Rules 1986 or relate to requests for general information which will assist with the processing of your claim.
You are therefore required to provide responses to all questions in this section.

1. Proprietary Rights

Are you asserting any proprietary rights in respect of the whole or any part of your claim and which is not otherwise asserted in any other section of this unsecured claims portal? No

Please provide details of any title / proprietary claim you are asserting (including any reservation of title or tracing claim to which the whole or part of your claim relates but excluding other proprietary interests, e.g. trust or client money claims).

2. Payments from LBIE

Since 15 September 2008 have you received a payment from LBIE (or any other party) in relation to your claim? No

If yes, please state the amount received

Currency	--Please Select--	00.00
Amount (GBP)		00.00

Please provide details of the payments received (name of payer, date of payment)

3. Application of Set-Off

Have you set off any amounts against your claim? No

If yes, please state the amount set-off

Currency	--Please Select--	00.00
Amount (GBP)		00.00

Please provide details of the amount set off (what it relates to and date set off was applied)

4. Preferential Claims

Is all or any part of the claim preferential as defined in the Insolvency Act 1986? No

A preferential claim is a claim which relates to preferential debts as defined by section 386 and Schedule 6 the Insolvency Act 1986 (as amended by the provisions of section 251 of the Enterprise Act 2002). Subject to applicable statutory limits, these include claims for:

1. Contributions to Occupational Pension Schemes;
2. Remuneration owed to employees;
3. Accrued holiday pay of employees.

Total Value (details to be provided in the box below)

Currency	--Please Select--	00.00
Total Preferential Claim (GBP)		00.00

If yes, please provide details below (where at is your preferential claim in respect of). Please attach supporting documents.

5. Security

Are you holding any security in respect of all or part of your claim that has not been disclosed in the section related to Financial Market Trading Contracts? No

If yes, please provide details below (date of security granted, value of security, date valued). Please attach supporting documents.

6. Withholding Taxes

Does your claim or any part of it include any form of withholding tax? No

Please do not include any other type of tax e.g. Value Added Tax.

If yes, please provide details below (specify amount and type). Please attach supporting documents.

7. Guarantees

Is your claim or any part of your claim being made pursuant to a guarantee given by LBIE? No

If you have answered yes to the above question, please state the guaranteed amount of your claim.

Currency	USD	00.00
Total Guarantee by LBIE (GBP)		00.00

If yes, please provide details of the guarantee (e.g. date of guarantee, details of guaranteed obligation(s)). Please attach supporting documents.

Is your claim, or any part of your claim, guaranteed by any party other than LBIE? Yes

If you have answered yes to the above question, please state the guaranteed amount of your claim.

Currency	USD	2,309,336,815.00
Total Guarantee by Non-LBIE Party (GBP)		1,287,471,045.88

If yes, please provide details of the guarantee (e.g. date of guarantee, parties, details of guaranteed obligation(s)). Please attach supporting documents.

The total guarantee claim amount agreed with Lehman Brothers Holdings Inc for LB Holdings Intermediate 2 Ltd was $2,309,336,815 all of which related to LBIE as primary obligor. The settlement balance is $302,087,677.
By Resolution of the Executive Committee of the Board of Directors dated November 16, 1990 (the "November 1990 Blanket Corporate Guarantee"), LBHI (formerly Shearson Lehman Brothers Holdings Inc.) guaranteed the payment and performance of all liabilities, obligations and commitments of LBIE (formerly Lehman Brothers International Limited). By Unanimous Written Consent of the Executive Committee of the Board of Directors dated September24, 1991 (attached hereto, together with the November 1990 Blanket Corporate Guarantee, as Exhibit B11),LBHI ratified, confirmed and approved in all respects the Outstanding Guarantee Resolutions (as defined in Exhibit B11),including the November 1990 Blanket Corporate Guarantee.
Exhibit B7: June 2005 Blanket Corporate Guarantee
Exhibit B8: LBHI Assistant Secretary's Certificate dated November 22, 2006
Exhibit B9: Guarantee dated January 4, 2008 sent to Standard & Poor's ("S&P") Rating Services
Exhibit B10: LBHI issued a guarantee dated August 29, 2008 (the "August 2008 Blanket Corporate Guarantee")
Exhibit B11: By Unanimous Written Consent of the Executive Committee of the Board of Directors dated September 24, 1991 together with the November 1990 Blanket Corporate Guarantee

Is your claim, or any part of your claim, the result of a right of subrogation? No

If you have answered yes to the above question, please state the amount of your claim which is as a result of subrogation.

Currency	--Please Select--	00.00
Total Guarantee resulting from Subrogation (GBP)		00.00

If yes, please provide details of the guarantee (e.g. date of guarantee, parties, details of guaranteed obligation(s)). Please attach supporting documents.

8. Contingent Claims

Is your claim, or any part of your claim, contingent? Please note that any contingent claim you may have should exclude (i) any contingent claim which may have been submitted in respect of an unsecured claim arising out of your contingent Asset Claim (displayed in section 4) and/or (ii) for the avoidance of doubt, should exclude any amounts which may benefit from Client Money protection which you have included within your gross Financial Market Trading claims submitted in section 2. No

If yes, please explain the nature of your contingency and whether the claim amount is likely to crystallise. Where you are able to provide a current estimate of the amount of your contingent claim, please state that amount and provide an explanation of how it has been calculated.

Proof of Debt Declaration

I hereby declare that the information provided in this Proof of Debt is correct. I confirm that I am acting on my own behalf or as a signatory authorised to sign this Proof of Debt on behalf of the creditor.

Signature of Creditor/person authorised to act on behalf of Creditor (strike through as appropriate)	
Name in BLOCK CAPITALS	
Position with or relation to Creditor (e.g. director, company secretary, solicitor) if different to below	
Company Name if acting on behalf of Creditor	

Contact details of the completer

First Name:	Hannah	Number / Street:	25
Last Name:	Goodwin	Street:	Canada Square
Telephone:	07850 516673	Town / City:	London
Position:	Manager	County / State:	London
Post Code / Zip:	E14 5LQ	Country:	UNITED KINGDOM
Email Address:	hannah.e.goodwin@uk.pwc.com		

Primary Creditor Contact Details

First Name:	Alison	Number / Street:	25
Last Name:	Lieberman	Street:	Canada Square
Telephone:	0203 036 2319	Town / City:	Docklands
Position:	Senior Associate	County / State:	London
Post Code / Zip:	E14 5LQ	Country:	UNITED KINGDOM
Email Address:	alison.lieberman@lbia-eu.com		

November 2006

LB HOLDINGS INTERMEDIATE 2 LTD

AND

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

AGREEMENT

FOR

€ 3,000,000,000

LONG TERM

SUBORDINATED LOAN FACILITY

Long-Term Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

(1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and

(2) **the Borrower** (as defined in the Standard Terms).

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in **Schedule 2** to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

Schedule 1

B. Variable Terms

1.	**Date of Agreement**	1 November 2006
2.	**Effective Date**	1 November 2006
3.	**Lender**	LB Holdings Intermediate 2 Ltd
4.	**Address of Lender**	A company registered in England and Wales under number 5957878 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Lender") which term includes its permitted successors and assigns.
5.	**Borrower**	Lehman Brothers International (Europe)
6.	**Address of Borrower**	A company registered in England and Wales under number 2538254 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.

7. **The Facility**
With reference to paragraph 2 of the Standard Terms,

(1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in

Euros to the Borrower.

(2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed Euro 3,000,000,000 (Three Thousand Million Euros) or such other amount as may be agreed between the Borrower and Lender from time to time.

8. **Interest**
With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

(1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.

(2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.

(3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.

9. **Repayment**

With reference to paragraph 4 (2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment)and 5 (subordination) of the Standard Terms, the terms for repayment are -

(1)The Borrower may at any time prepay in whole or in part being an amount or integral multiple of Euro 25,000,000 (twenty five million Euros) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.

(2) The Borrower may reborrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.

(3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.

(4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.

(5)No amount may be drawn down under this Facility after the fifth anniversary of the Effective Date of this Agreement.

(6) The Repayment Date shall be the tenth anniversary of the Effective Date of this Agreement.

Notes to paragraph 9 –

1. The repayment date for the Loan must be one or more of -

   - a date not less than five years from the date of drawdown,
   - a date not less than five years from the Borrower giving notice in writing to the Lender and the FSA,

   or

   - a date not less than five years from the Lender giving notice in writing to the Borrower and the FSA.

2. Whereas this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.

10. **Additional terms**
With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

11. **Jurisdiction**
With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

For the attention of the Legal Director

Of

Lehman Brothers Limited

(b) by the Borrower -

For the attention of the Legal Director

Of

Lehman Brothers Limited

Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement -

"**Advance**" means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"**Borrower**" means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

"**Business Day**" means any day except Saturday, Sunday or a bank or public holiday in England;

"**Effective Date**" means the date on which this Agreeement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

"**Excluded Liabilities**" means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

"**Facility**" means the loan facility referred to in paragraph 2(2);

"**Financial Resources**" has the meaning given in the Financial Rules;

"**Financial Resources Requirement**" has the meaning given it in the Financial Rules;

"**Financial Rules**" means the rules in IPRU(INV) 10 in the FSA handbook;

"**Insolvency**" means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

"**Insolvency Officer**" means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

1 (1) "**Lender**" means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"**Liabilities**" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"**Loan**" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"**Partner**" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"**Senior Liabilities**" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"**Subordinated Liabilities**" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"**the FSA**" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

(2) Any reference to any rules of the FSA is a reference to them as in force from time to time.

(3) Reference to any gender includes a reference to all other genders.

(4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

The Loan or Facility

2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

(2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

(c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.

(3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

Interest

3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).

(2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -

(3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.

(b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.

(c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where –

(i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

(ii) before payment, the Insolvency fo the Borrower commences,

no such payment may be made without the prior written consent of the FSA.

(4) If in respect of the Loan or any Advance default is made for a period of –

(a) seven days or more in the payment of any principal due, or

(b) 14 days or more in the payment of any interest due,

the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days's prior written notice to the FSA of its intention to do so.

(5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

(6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -

(a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;

(b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and

(c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.

(7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

5 (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -

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

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

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

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

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

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

(b) the Excluded Liabilities.

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

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

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

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

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

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

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

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

Representations and undertakings of Borrower

6 From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -

(a) secure all or any part of the Subordinated Liabilities;

6 (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;

(c) amend any document evidencing or providing for the Subordinated Liabilities;

(d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

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

(f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not dnoe so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

(a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;

(b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;

7 (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;

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

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

(f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

7 other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

8 Where the Borrower is a partnership –

(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –

(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in tis Agreeement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and

(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;

(b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FSA and indemnity

10 The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

11 Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

12 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

13 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Notices to the FSA

14 A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

Law

15 This Agreement is governed by English law.

Jurisdiction

16 For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

Rights of the FSA

17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

D. Signature Page

SIGNED for and on behalf of
LB HOLDINGS INTERMEDIATE 2 LTD

By

Director

SIGNED for and on behalf of
LEHMAN BROTHERS INTERNATIONAL (EUROPE)

By

Director

NOVEMBER 2006

LB HOLDINGS INTERMEDIATE 2 LTD

AND

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

AGREEMENT

FOR

$4,500,000,000

LONG TERM

SUBORDINATED LOAN FACILITY

Long-Term Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

(1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and

(2) **the Borrower** (as defined in the Standard Terms).

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in **Schedule 2** to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

Schedule 1

B. Variable Terms

1. **Date of Agreement**	**1 November 2006**
2. **Effective Date**	**1 November 2006**
3. **Lender**	LB Holdings Intermediate 2 Ltd.
4. **Address of Lender**	A company registered in England and Wales under number 5957878 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Lender") which term includes its permitted successors and assigns.
5. **Borrower**	Lehman Brothers International (Europe)
6. **Address of Borrower**	A company registered in England and Wales under number 2538254 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.

7. **The Facility**
With reference to paragraph 2 of the Standard Terms,

(1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in

United States Dollars to the Borrower.

(2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed $4,500,000,000 (Four and a Half Thousand Million United States Dollars) or such other amount as may be agreed between the Borrower and Lender from time to time.

8. **Interest**

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

(1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.

2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.

(3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.

9. **Repayment**

With reference to paragraph 4 (2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment)and 5 (subordination) of the Standard Terms, the terms for repayment are -

(1)The Borrower may at any time prepay in whole or in part being an amount or integral multiple of $25,000,000 (twenty five million United States Dollars) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.

(2) The Borrower may reborrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.

(3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.

(4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.

(5)No amount may be drawn down under this Facility after the fifth anniversary of the Effective Date of this Agreement.

(6) The Repayment Date shall be the tenth anniversary of the Effective Date of this Agreement.

Notes to paragraph 9 –

1. The repayment date for the Loan must be one or more of -

   - a date not less than five years from the date of drawdown,
   - a date not less than five years from the Borrower giving notice in writing to the Lender and the FSA,

   or

   - a date not less than five years from the Lender giving notice in writing to the Borrower and the FSA.

2. Whereas this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.

10. **Additional terms**
With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

11. **Jurisdiction**
With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

For the attention of the Legal Director

Of

Lehman Brothers Limited

(b) by the Borrower -

For the attention of the Legal Director

Of

Lehman Brothers Limited

Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement -

"**Advance**" means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"**Borrower**" means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

"**Business Day**" means any day except Saturday, Sunday or a bank or public holiday in England;

"**Effective Date**" means the date on which this Agreeement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

"**Excluded Liabilities**" means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

"**Facility**" means the loan facility referred to in paragraph 2(2);

"**Financial Resources**" has the meaning given in the Financial Rules;

"**Financial Resources Requirement**" has the meaning given it in the Financial Rules;

"**Financial Rules**" means the rules in IPRU(INV) 10 in the FSA handbook;

"**Insolvency**" means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

"**Insolvency Officer**" means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

1 (1) "**Lender**" means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"**Liabilities**" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"**Loan**" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"**Partner**" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"**Senior Liabilities**" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"**Subordinated Liabilities**" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"**the FSA**" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

(2) Any reference to any rules of the FSA is a reference to them as in force from time to time.

(3) Reference to any gender includes a reference to all other genders.

(4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

The Loan or Facility

2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

(2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

(c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.

(3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

Interest

3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).

(2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -

(3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.

(b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.

(c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where –

(i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

(ii) before payment, the Insolvency fo the Borrower commences,

no such payment may be made without the prior written consent of the FSA.

(4) If in respect of the Loan or any Advance default is made for a period of –

(a) seven days or more in the payment of any principal due, or

(b) 14 days or more in the payment of any interest due,

the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days's prior written notice to the FSA of its intention to do so.

(5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

(6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -

(a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;

(b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and

(c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.

(7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

5 (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -

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

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

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

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

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

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

(b) the Excluded Liabilities.

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

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

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

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

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

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

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

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

Representations and undertakings of Borrower

6 From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -

(a) secure all or any part of the Subordinated Liabilities;

6 (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;

(c) amend any document evidencing or providing for the Subordinated Liabilities;

(d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

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

(f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

(a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;

(b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;

7 (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;

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

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

(f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

7 other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

8 Where the Borrower is a partnership –

(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –

(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in tis Agreeement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and

(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;

(b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FSA and indemnity

10 The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

11 Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

12 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

13 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Notices to the FSA

14 A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

Law

15 This Agreement is governed by English law.

Jurisdiction

16 For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

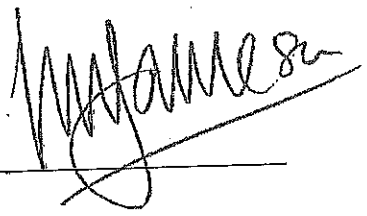
Rights of the FSA

17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

D. Signature Page

SIGNED for and on behalf of
LB HOLDINGS INTERMEDIATE 2 LTD

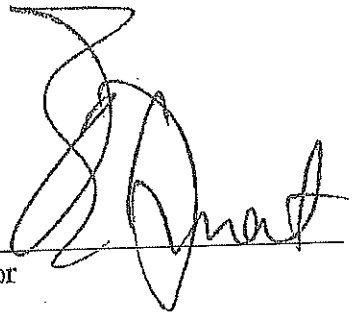
By



Director

SIGNED for and on behalf of
LEHMAN BROTHERS INTERNATIONAL (EUROPE)

By



Director

November 2006

LB HOLDINGS INTERMEDIATE 2 LTD

AND

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

AGREEMENT

FOR

$ 8,000,000,000

SHORT TERM

SUBORDINATED LOAN FACILITY

Short-Term Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in Schedule I to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

(1) **the Lender** (as defined in the Standard Terms set out in Schedule 2 to this Agreement), and

(2) **the Borrower** (as defined in the Standard Terms)

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in Schedule 2 to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms

Schedule 1

B. Variable Terms

1. **Date of Agreement**	**1 November 2006**
2. **Effective Date**	**1 November 2006**
3. **Lender**	LB Holdings Intermediate 2 Ltd
4. **Address of Lender**	A company registered in England and Wales whose registered office is situated at 25 Bank Street, London E145LE ("the Lender") which term includes its permitted successors and assigns
5. **Borrower**	Lehman Brothers International (Europe)
6. **Address of Borrower**	A company registered in England and Wales whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.

7. The Facility

With reference to paragraph 2 of the Standard Terms,

(1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in United States Dollars to the Borrower.

(2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed $8,000,000,000 (Eight Thousand Million United States Dollars) or such other amount as may be agreed between the Borrower and Lender from time to time.

8. Interest

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

(1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.

(2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.

(3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.

9. Repayment

With reference to paragraph 4(2) of the Standard Terms and subject always to 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are –

1)The Borrower may at any time prepay in whole or in part being an amount or integral multiple of $25,000,000 (twenty five million United States Dollars) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.

(2) The Borrower may re-borrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.

(3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.

(4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.

(5)No amount may be drawn down under this Facility after the first day of the third month prior to the fifth anniversary of the Effective Date of this Agreement.

(6) The Repayment Date shall be the fifth anniversary of the Effective Date of this

	Agreement.

Notes to paragraph 9.

1. The repayment date for the Loan must be one or more of –

   — a date not less than two years from the date of drawdown,

   — a date not less than two years from the Lender giving notice in writing to the Borrower and the FSA, or

   — a date not less than two years from the Borrower giving notice in writing to the Lender and the FSA.

2. Where the Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than two years from the date of drawdown, or be subject to not less than two years' notice or have and be subject to both.

10. Additional terms

With reference to paragraph 1 1 of the Standard Terms, the additional terms to this Agreement are –

This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement

11. Jurisdiction

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process

(a) by the Lender –

For the Attention of the Legal Director

Of Lehman Brothers Limited

(b) by the Borrower –

For the Attention of the Legal Director

Of Lehman Brothers Limited

Schedule 2

C. Standard Terms

Interpretation

(1) In this Agreement –

"**Advance**" means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"**Borrower**" means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

"**Business Day**" means any day except Saturday, Sunday or a bank or public holiday in England;

"**Effective Date**" means the date on which this Agreeement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

"**Excluded Liabilities**" means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

"**Facility**" means the loan facility referred to in paragraph 2(2);

"**Financial Resources**" has the meaning given in the Financial Rules;

"**Financial Resources Requirement**" has the meaning given it in the Financial Rules;

"**Financial Rules**" means the rules in IPRU(INV) 10 in the FSA handbook;

"**Insolvency**" means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

"**Insolvency Officer**" means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

(1) **"Lender"** means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"Loan" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"Partner" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"Senior Liabilities" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"the FSA" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

(2) Any reference to any rules of the FSA is a reference to them as in force from time to time.

(3) Reference to any gender includes a reference to all other genders.

(4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

he Loan or Facility

(1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

(2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the

Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

(c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.

(3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

Interest

Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

(1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).

(2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -

(3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.

(b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.

(c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where –

(i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

(ii) before payment, the Insolvency fo the Borrower commences,

no such payment may be made without the prior written consent of the FSA.

(4) If in respect of the Loan or any Advance default is made for a period of –

(a) seven days or more in the payment of any principal due, or

(b) 14 days or more in the payment of any interest due,

the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days's prior written notice to the FSA of its intention to do so.

(5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

(6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -

(a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;

(b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and

(c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.

(7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

(1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -

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

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

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

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

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

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

(b) the Excluded Liabilities.

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

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

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

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

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

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

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

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

Representations and undertakings of Borrower

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -

(a) secure all or any part of the Subordinated Liabilities;

(b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;

(c) amend any document evidencing or providing for the Subordinated Liabilities;

(d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

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

(f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

(a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;

(b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;

(c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;

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

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

(f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

Where the Borrower is a partnership –

(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –

(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in tis Agreeement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and

(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;

(b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FSA and indemnity

The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Notices to the FSA

A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

Law

This Agreement is governed by English law.

Jurisdiction

For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

Rights of the FSA

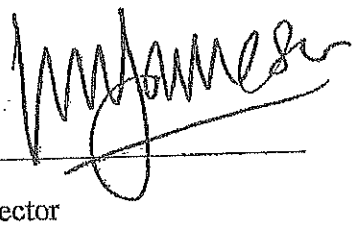
Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

D. Signature Page

SIGNED for and behalf of

LB HOLDINGS INTERMEDIATE 2 LTD

By

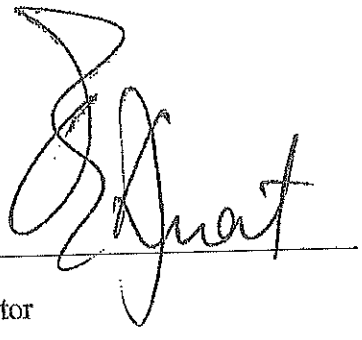


Director

SIGNED for and on behalf of

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

By



Director