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***LB Holdings  
Intermediate 2 Limited  
– In Administration***

Joint Administrators' progress  
report for the period 14 January  
2014 to 13 July 2014

12 August 2014

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# **Section 1 Purpose of the Joint Administrators' progress report**

## **Introduction**

This is the eleventh 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 their appointment, with particular focus on the progress made in the six months to 13 July 2014.

## **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 key issues which materially affect the extent of LBHI2's total assets and liabilities:

- Continued uncertainty in relation to a potential pension liability;
- Whether, and if so, to what extent LBHI2 may be required to contribute to the debts and liabilities of Lehman Brothers International (Europe) ("LBIE"), by virtue of LBHI2's position as shareholder of LBIE (an unlimited company); and
- 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 interest or non-provable claims otherwise arising.

These issues are discussed further in Section 2 of this report.

## **Extension to the Administration**

As previously reported, the Administrators applied to Court for an order to extend the Administration, and the Court has granted an extension until 30 November 2015.

## **Future reports**

The Administrators' next progress report to creditors will be sent in approximately six months or the end of the Administration, whichever is sooner.

Signed:



DA Howell  
Joint Administrator  
LB Holdings Intermediate 2 Limited

*DA Howell, AV Lomas, SA Pearson, GE Bruce and JG Parr 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, SA Pearson, GE Bruce and JG Parr are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales.*

*The Joint Administrators 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.*

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## ***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***

Following the Supreme Court judgment in July 2013, to which we referred in our last report, the stay which had been in force for the Upper Tribunal proceedings came to an end.

The Upper Tribunal has the role of deciding whether a Financial Support Direction ("FSD") should be made, and against which entities. LBHI2 is one of the potential targets of a FSD. The Upper Tribunal has set a date in February 2015 for a substantive hearing.

Also, since their previous progress report, the Administrators have participated in a High Court application relating to the maximum quantum of any Contribution Notice ("CN"). The High Court held that the aggregate liability under potential CNs issued to more than one target company could exceed the amount of the total scheme deficit of £119m. This judgment is being appealed.

In light of the activity set out above, the risk of LBHI2 having a liability to the pension scheme under a FSD remains, and the Administrators continue to monitor the position and take steps as appropriate.

#### ***LBHI2 claims transaction***

As reported previously, LBHI2 filed a proof of debt for its claims against LBIE for £1,292,255,510. This comprised a claim for £1,254,165,598 (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") and a non-subordinated claim for £38,089,911 (the "Senior Claims").

The Administrators entered into a joint venture with Elliot Management Corporation ("EM") and King Street Capital Management, L.P ("KS") in connection with the claims of LBHI2 in the estate of LBIE ("the Joint Venture").

As a result of the Joint Venture, LBHI2 received approximately £650m along with the right to receive future contingent sums, for its economic interests in its senior and subordinated claims against LBIE.

The Joint Venture also includes a joint recovery pool which entitles LBHI2 to certain claims against the LBIE estate held jointly with EM and KS dependent on realisations from LBIE.

As a result of the "Waterfall" and "Waterfall II" applications discussed further below, the quantum and timing of any future contingent returns for LBHI2 via the Joint Venture remains uncertain.

#### ***"Waterfall" application***

As reported previously, the Administrators applied to the High Court jointly with the Administrators of LBIE and Lehman Brothers Limited ("LBL") for directions in relation to the potential liability of LBL and LBHI2 in respect of shares held in LBIE, and in relation to subordinated debt owed by LBIE to LBHI2. The application was heard in November 2013.

In March 2014, the Waterfall judgment was handed down; the key aspects of the judgment are set out below:

- Subordinated debt is subordinate to provable, post-administration statutory interest and non-provable claims of other creditors;
- Currency conversion claims exist as non-provable claims to be paid after ordinary unsecured claims and post-administration statutory interest thereon; and
- The obligation of shareholders to contribute under section 74(1) of the Insolvency Act extends not only to provide for proved debts but also for post-administration statutory interest on those debts and non-provable liabilities.

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The Administrators have been given permission to appeal certain aspects of the judgment, such appeal is likely to be heard in early 2015.

A further update will be provided in the Administrators' next progress report.

### ***“Waterfall II” application***

Clarity in some areas has been brought by the recent Waterfall judgment but uncertainties still remain in several key areas which will affect both the quantum of the claims and their realisable value in LBIE.

As a consequence, the Administrators of LBIE have made a second application seeking further clarification of these uncertainties, which is expected to be heard in early 2015. The Joint Venture is participating in the trial as a respondent, therefore the outcome of the hearing will also affect any future returns for the Joint Venture.

### ***Tax***

LBHI2 realised £1,103 through the sale of tax losses in the period.

### ***Debtors***

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.

Since the Administrators' last report, a further dividend of c.\$15.1m has been received from LBHI. To date, dividends received total \$63.7m.

## Section 3 Statutory and other Information

<i>Court details for the Administration:</i>	High Court of Justice, Chancery Division, Companies Court - Court Case 429 of 2009
<i>Full name:</i>	LB Holdings Intermediate 2 Limited
<i>Trading name:</i>	LB Holdings Intermediate 2 Limited
<i>Registered number:</i>	05957878
<i>Registered address:</i>	Level 23, 25 Canada Square, London E14 5LQ, United Kingdom
<i>Company directors:</i>	D Gibb (resigned 17/07/09), IM Jameson (resigned 17/07/09) and AJ Rush (resigned 17/07/09)
<i>Company secretary:</i>	P Dave (resigned 25/01/10) and ESE Upton (resigned 25/01/10)
<i>Shareholdings held by the directors and secretary:</i>	None of the directors own shares in the Company
<i>Date of the Administration appointment:</i>	14 January 2009
<i>Administrators' names and addresses:</i>	DA Howell, AV Lomas, JG Parr, SA Pearson and GE Bruce of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT. DY Schwarzmann and MJA Jervis ceased to act as Administrators on 22 March 2013.
<i>Appointer's name and address:</i>	The directors, 25 Bank Street, London E14 5LE
<i>Objective being pursued by the Administrators:</i>	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)
<i>Division of the Administrators' responsibilities:</i>	The current Joint Administrators of LBHI2 are AV Lomas, SA Pearson, DA Howell, GE Bruce and JG Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT. 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.
<i>Details of any extensions of the initial period of appointment:</i>	The High Court of Justice has granted four successive extensions to the Administration period to: 30 November 2010; 30 November 2011, 30 November 2013 and most recently 30 November 2015.
<i>Proposed end of the Administration:</i>	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.
<i>Estimated dividend for unsecured creditors:</i>	It is too early to estimate the likely dividend for unsecured creditors.
<i>Estimated values of the prescribed part and LBHI2's net property:</i>	Not applicable as there is no qualifying floating charge.
<i>Whether and why the Administrators intend to apply to court under Section 176A(5) IA86:</i>	Not applicable as there is no prescribed part.
<i>The European Regulation on Insolvency Proceedings (Council Regulation(EC) No. 1346/2000 of 29 May 2000):</i>	The European Regulation on Insolvency Proceedings does apply to this Administration and these are the main proceedings.

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## ***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.

Details of the Administrators' time costs for the period between 14 January 2009 and 31 December 2013 have been provided in previous reports. Attached at Section 6 of this report, is a summary of the Administrators' time costs incurred from 1 January 2014 to 30 June 2014, 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 January 2014 to 30 June 2014 are £726,943, representing 1,298, hours at an average hourly rate of £560.

To date, the Administrators have drawn remuneration of £2,417,229, plus VAT in respect of timecosts incurred in the period 14 January 2009 to 31 May 2014.

### ***Receipts and payments account***

An account of the receipts and payments in the Administration showing movements for the six months to 13 July 2014 is set out overleaf.

As part of the LBHI2 claims transaction, LBHI2 provided a share of funding to meet the expenses of the Joint Venture, including costs of the Waterfall appeal and other associated litigation.

Under the Joint Venture, LBHI2 will recover all of its legal costs incurred in respect of the Waterfall appeal from 30 September 2013 onwards.

## Section 5 Receipts and Payments Account

	GBP			USD		
	As at 14-Jul-14	Movements In Period	As at 13-Jan-14	As at 14-Jul-14	Movements In Period	As at 13-Jan-14
<b>Receipts</b>						
Dividends received	-	-	-	63,737,592	15,092,980	48,644,612
Sale of subordinated debt and senior claims in LBIE	649,992,000	649,992,000	-	-	-	-
Joint Venture contribution to Waterfall costs	2,720,711	2,720,711	-	-	-	-
Sale of tax losses	9,032,513	1,103	9,031,410	-	-	-
Contribution to pension club deal	300,000	-	300,000	-	-	-
Gross interest received	1,091,100	961,047	130,053	-	-	-
<b>Total Receipts</b>	<b>663,136,324</b>	<b>653,674,861</b>	<b>9,461,463</b>	<b>63,737,592</b>	<b>15,092,980</b>	<b>48,644,612</b>
<b>Payments</b>						
Contribution to pension club deal	300,000	-	300,000	-	-	-
Net Tax function costs	123,845	-	123,845	-	-	-
Legal Fees and disbursements	5,172,791	2,101,487	3,071,304	-	-	-
Loans and advances to Joint Venture	3,333,333	3,333,333	-	-	-	-
Gross wages & salaries	1,763	-	1,763	-	-	-
Statutory costs	384	-	384	-	-	-
IT Costs	5,741	-	5,741	-	-	-
Bank charges	-	-	-	127	40	87
Office holders' fees	2,417,229	1,748,481	668,748	-	-	-
Office holders' disbursements	34,223	32,025	2,198	-	-	-
VAT paid	1,491,744	754,269	737,475	-	-	-
<b>Total Payments</b>	<b>12,881,053</b>	<b>7,969,595</b>	<b>4,911,458</b>	<b>127</b>	<b>40</b>	<b>87</b>
<b>Intracompany transfers</b>						
Receipts	39,763,421	9,107,550	30,655,871	-	-	-
Payments	-	-	-	63,736,440	15,092,940	48,643,500
<b>Net Position</b>	<b>690,018,692</b>	<b>654,812,816</b>	<b>35,205,876</b>	<b>1,025</b>	<b>-</b>	<b>1,025</b>
<b>Cash Balances</b>						
HSBC	273,585	(34,932,291)	35,205,876	1,025	-	1,025
Money markets	689,745,107	689,745,107	-	-	-	-
<b>Total Cash</b>	<b>690,018,692</b>	<b>654,812,816</b>	<b>35,205,876</b>	<b>1,025</b>	<b>-</b>	<b>1,025</b>

Note: The total GBP equivalent cash in hand at the exchange rate on 13 July 2014 is £ 690,019,291.80. Funds are invested on the money markets to generate interest and reduce risk.



## *Section 6 Joint Administrators' time costs for the period 1 January 2014 to 30 June 2014*

Classification of work	Partner / Director		Senior Manager / Manager		Senior Associate		Associate / Support Staff		Total hours	
	Hours	£	Hours	£	Hours	£	Hours	£	Hours	£
Accounting and Treasury	5.60	3,741	23.10	10,167	50.95	16,030	55.80	12,778	135.45	42,716
Strategy and Planning	235.38	196,633	377.40	190,669	25.50	9,151	10.75	2,462	649.03	398,915
Asset Realisations	-	-	-	-	1.95	702	-	-	1.95	702
Statutory and Compliance	4.70	3,488	12.85	5,587	17.40	6,259	8.20	1,878	43.15	17,212
Tax and VAT	157.60	150,010	35.10	17,659	178.90	67,320	21.65	3,047	393.25	238,036
Pensions	12.94	9,167	17.82	7,971	10.12	3,647	5.45	1,248	46.33	22,033
Creditors	-	-	0.40	172	0.90	324	3.00	687	4.30	1,183
LBL / LBIE Recharges	0.65	386	3.13	1,400	2.53	572	18.20	3,788	24.51	6,146
<b>Grand Total</b>	<b>416.87</b>	<b>363,425</b>	<b>469.80</b>	<b>233,625</b>	<b>288.25</b>	<b>104,005</b>	<b>123.05</b>	<b>25,888</b>	<b>1,297.97</b>	<b>726,943</b>
<b>Average Hourly Rate</b>		<b>872</b>		<b>497</b>		<b>361</b>		<b>210</b>		<b>560</b>

Current charge out rates	Business Recovery Services	Specialist	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 0.05 of an hour.
Grade	Max £/hr	Max £/hr	
Partner	873	1,167	* 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 give 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.
Director	665	1,076	
Senior manager	512	905	
Manager	431	660	
Senior Associate	360	490	
Associate/Support Staff	229	228	

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# ***Narrative of the Joint Administrators' time costs for the period 1 January 2014 to 31 June 2014***

## **Accounting and Treasury - £ 42,716**

- Preparation of receipts and payments accounts 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 - £ 702**

- Reviewing intercompany position against affiliate companies.

## **Statutory and Compliance - £17,212**

- Preparation of Administrators' tenth progress report;
- Circulation of progress report to creditors;
- Statutory filings at Companies House and Court;
- Preparation of detailed remuneration summary;
- Liaising with Administrators on statutory issues;
- Managing information available on website; and
- Maintaining case records and database.

## **Strategy and Planning - £ 398,915**

As well as discussions regarding strategy for the wider Administration and updating of strategy documentation, a significant amount of time was spent on taking steps to complete and execute the Joint Venture in respect of the claims against LBIE. This included:

- Meetings and correspondence with tax and legal advisors, Elliott and KS, in respect of the Joint Venture;
- Extensive correspondence with relevant parties regarding negotiations and finalisation of the Joint Venture;
- Execution of the final documentation;
- Dealing with the Waterfall application and commencing the appeal process in the Court of Appeal;
- Setting, reviewing and discussing strategy for the Joint Venture with the Joint Venture Partners and LBHI;
- Reviewing LBIE's CVA proposal and discussing strategy with the Joint Venture partners;
- Agreeing strategy for the supplemental Waterfall II application and implementation of same;
- Reviewing additional delegation and other side documents required for the administration of the Joint Venture;
- Liaison with our nominated director for the Luxembourg Special Purpose Vehicles and their appointed counsel;
- Attendance at board meetings to represent LBHI2 as corporate director of a number of companies in the Joint Venture; and
- Reviewing financial information from the Joint Venture.

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### **Tax and VAT- £ 238,036**

A significant amount of tax analysis was undertaken in this regard in respect of LBHI2's tax position both as vendor and participant in the Joint Venture structure. This included:

- Continued tax analysis in respect of the disposal and the proposed Joint Venture structure including input from specialists covering corporate tax, VAT and Stamp Duty;
- Attending meetings with tax and legal representatives of other parties to the Joint Venture to refine the structure so as to mitigate any tax leakage in LBHI2 within the context of the commercial agreement between the parties;
- Consulting with Tax Counsel on technical matters and tax risks arising from the initial analysis prepared internally to obtain further comfort;
- Preparing for the Joint Administrators of LBHI2 and its legal advisers a report on the key tax issues arising from the proposed Joint Venture structure;
- Reviewing legal documents prepared by the legal advisers to all parties to the transactions;
- Attending various calls and meetings with the various principals and their tax and legal advisers in connection with the proposed transactions and Joint Venture agreement;
- Tax planning for group companies; and
- Dealing with tax and VAT queries.

### **Pensions - £ 22,033**

- Discussions with Lawyers regarding pension issue;
- Analysis of financial information relating to pensions issue;
- Preparing for upper tribunal pensions hearing; and
- Participating in discussions to try and resolve the pension issue.

### **Creditors - £ 1,183**

- Reviewing claims submitted; and
- Dealing with creditor queries.

### **LBL / LBIE recharges – £ 6,146**

- This is an apportionment of the costs incurred by Lehman Brothers Limited and Lehman Brothers International (Europe) associated with the administration companies.