

Dated 28 February 2013

LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)

and

OSA CONSENTING BENEFICIARIES
(as defined in this Agreement)

OMNIBUS SETTLEMENT AGREEMENT

Linklaters

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Ref A15823421

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This Omnibus Settlement Agreement (this “**Agreement**”) is made on 28 February 2013 between:

- (1) **LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**, a company incorporated in England and Wales with registered number 2538254, whose registered address is Level 23, 25 Canada Square, Canary Wharf, London E14 5LQ, acting by its Administrators (such company being the “**Company**”); and
- (2) each OSA Consenting Beneficiary.

Background:

- (A) Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis, each a partner of PricewaterhouseCoopers LLP, were appointed to act as joint administrators of the Company on the Administration Date pursuant to the Administration Order. On 30 November 2009, Derek Anthony Howell, and on 2 November 2011, Paul David Copley and Russell Downs, each a partner of PricewaterhouseCoopers LLP, were also appointed to act as joint administrators of the Company. On 2 November 2011, Michael John Andrew Jervis and Dan Yoram Schwarzmann resigned as joint administrators of the Company.
- (B) The Company has entered into the Settlement Agreement dated 21 February 2013 with LBI in relation to, among other things, the Omnibus Claim.
- (C) The Company wishes to enter into a consensual arrangement with relevant Customers as to the settlement of their claims in relation to LBI Assets and other related matters, as well as the manner in which the Company shall allocate and distribute the LBI Distributions.
- (D) The consensual arrangement will be effected pursuant to this Agreement or the Amended and Restated CRA, as applicable, and the Common Terms. The Common Terms will be incorporated into:
 - (i) the Amended and Restated CRA by way of a modification to the terms of the CRA affecting all CRA Omnibus Beneficiaries, which modification will be effected by the passing of the Resolution; and
 - (ii) this Agreement.
- (E) Each OSA Consenting Beneficiary agrees a settlement of all of its LBI Asset Claims upon the terms and conditions set out in the Common Terms.
- (F) The Company shall allocate, distribute and appropriate any LBI Distributions upon the terms and conditions set out in the Common Terms.

It is agreed as follows:

1 Interpretation and Construction

1.1 Interpretation

In this Agreement, unless indicated otherwise, capitalised terms have the meaning set out in the Common Terms (notwithstanding that the Common Terms Effective Date may not yet have occurred) and:

“**Common Terms**” mean the terms set out in Schedule 2 (*Common Terms*).

“Complete Position” has the meaning set out in Clause 5.2.1.

“Majority OSA Consenting Beneficiary Consent” means, at any given time, a vote, written consent or resolution approved by three-quarters by USD Value of the aggregate of the Best Claims of all Relevant OSA Consenting Beneficiaries, provided that, for the purpose of this definition, the Best Claim of any one of the Relevant OSA Consenting Beneficiaries will be that identified in its then most recent Information Pack.

“OSA Acceptance Notice” means a Notice given by the Company to:

- (i) an OSA Eligible Offeror in which its OSA Offer is accepted by the Company; or
- (ii) an OSA Eligible Offeror in which its OSA Accession Deed is accepted by the Company, which Notice may be by the Company’s counter-signature of the relevant OSA Accession Deed.

“OSA Acceptance Period” means the period from the date of the Information Memorandum until 5.00 p.m. (London time) 20 Business Days after the Common Terms Effective Date.

“OSA Accession Deed” means a duly completed accession deed substantially in the form attached as Schedule 1 (*OSA Accession Deed*).

“OSA Documents” means this Agreement, the Information Memorandum, any Information Packs, any OSA Acceptance Notices and any OSA Accession Deeds.

“OSA Eligible Offeror” means any LBI Asset Claim Customer who is not acting in the capacity of a CRA Signatory and has received an OSA Invitation from the Company (together with any other LBI Asset Claim Customer which the Company may invite (at its absolute discretion) from time to time to make an OSA Offer or to accede to this Agreement).

“OSA Invitation” has the meaning set out in Clause 3.1.1.

“OSA Offer” has the meaning set out in Clause 3.1.1.

“OSA Offer Period” means the period from the date of the Information Memorandum until 5.00 p.m. (New York time) on 26 March 2013 or until such later time and/or date as may apply under Clause 3.1.3.

“OSA Revised Invitation” has the meaning set out in Clause 4.1.2.

“OSA Revised Offer” has the meaning set out in Clause 4.1.2.

“Relevant OSA Consenting Beneficiaries” has the meaning set out in Clause 4.4.1.

1.2 Construction

1.2.1 Unless a contrary indication appears, references in the body of this Agreement to Clauses and Schedules are to clauses and schedules of the body of this Agreement.

1.2.2 References to this Agreement, the CRA or the Amended and Restated CRA include any schedule attached thereto.

1.2.3 References to the **“Administrators”** shall be construed as being to the Administrators both jointly and severally and to any other person who is appointed

as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Administrators.

- 1.2.4 Unless the context otherwise requires, any reference to the “**OSA Invitation**”, “**OSA Acceptance Period**” or “**OSA Offer Period**” includes any revision or variation to or extension of the same made in accordance with this Agreement.

1.3 Interpretation

1.3.1 Unless the context otherwise requires or unless otherwise expressly provided, the interpretation provisions set out in clause 55 (other than clause 55.1.1) of the Common Terms are hereby incorporated into this Agreement and references to the Common Terms in such interpretation provisions shall be treated as also referring to this Agreement, notwithstanding that the Common Terms Effective Date may not yet have occurred.

1.3.2 References to any specified provision of this Agreement shall be construed as references to that provision subject to any amendment, addition or condition approved or imposed pursuant to Clause 4.

2 Effect of this Agreement and the Common Terms

2.1 Consenting Beneficiary Accession Date

2.1.1 This Agreement shall be binding on each OSA Consenting Beneficiary from the time that it receives an OSA Acceptance Notice from the Company in accordance with clause 42 of the Common Terms, notwithstanding that the Common Terms Effective Date may not yet have occurred.

2.1.2 Prior to the Common Terms Effective Date, the notice provisions in clause 42 of the Common Terms and the representations and warranties referred to in clauses 17.1, 17.2.1(i) (where applicable) to 17.2.1(iii) and 17.8 of the Common Terms shall be binding on those who have received an OSA Acceptance Notice in accordance with clause 42 of the Common Terms, notwithstanding that the Common Terms Effective Date has not yet occurred.

2.2 Common Terms Effective Date

This Agreement incorporates the Common Terms. Subject to Clause 2.1.2, the Common Terms will become effective and binding as between the Company and the OSA Consenting Beneficiaries as of the Common Terms Effective Date.

2.3 Notification of Common Terms Effective Date

The Company shall Notify each OSA Consenting Beneficiary (together with any other OSA Eligible Offerors who have either made an OSA Offer which has not been rejected or lapsed, or not made an OSA Offer but remain able to do so during the OSA Offer Period) of the occurrence of the Common Terms Effective Date as soon as reasonably practicable after it has occurred.

3 OSA Offer

3.1 Terms of OSA Invitation and OSA Offer

- 3.1.1 The Company has invited (each such invitation being an “**OSA Invitation**”) each OSA Eligible Offeror to make an offer (an “**OSA Offer**”) to the Company, on the terms and subject to the conditions set out in this Agreement, to enter into and be bound by this Agreement.
- 3.1.2 OSA Eligible Offerors may make an OSA Offer at any time during the OSA Offer Period electronically via, and in accordance with the instructions contained in, the Portal and in accordance with the provisions of Clause 3.4.
- 3.1.3 The OSA Offer Period may be extended from time to time to any date on or prior to 30 June 2013, by the Company, in its absolute discretion, provided that the OSA Eligible Offerors are Notified by the Company of such extension prior to the expiry of the OSA Offer Period.

3.2 Acceptance of OSA Offer by the Company

- 3.2.1 The Company may, in its absolute discretion:
 - (i) accept any OSA Offer by way of an OSA Acceptance Notice given by it during the OSA Acceptance Period;
 - (ii) accept OSA Offers on one or more dates in the OSA Acceptance Period; and
 - (iii) choose not to accept an OSA Offer of an OSA Eligible Offeror (whether or not it accepts or has already accepted an OSA Offer of any other OSA Eligible Offeror).
- 3.2.2 Upon the Company accepting an OSA Offer of any OSA Eligible Offeror, such OSA Eligible Offeror agrees that it will:
 - (i) automatically be bound by this Agreement; and
 - (ii) thereby become a party to this Agreement together with:
 - (a) any other OSA Eligible Offeror which has already become a party to this Agreement; and
 - (b) any other OSA Eligible Offeror, as from the time of its Consenting Beneficiary Accession Date, which has made an OSA Offer that the Company subsequently accepts or which the Company permits to accede pursuant to Clause 8.
- 3.2.3 Unless and until such time as any OSA Offer of an OSA Eligible Offeror is accepted by way of an OSA Acceptance Notice, such OSA Eligible Offeror shall be treated as a Non-Consenting Beneficiary.

3.3 Termination of OSA Invitation, OSA Offers and this Agreement

If:

- (i) the Resolution has not been passed or the threshold in paragraph (ii) of the definition of Common Terms Effective Date is not satisfied, in each case within 28 days after the end of the OSA Offer Period; or
- (ii) the Settlement Agreement is terminated prior to the Effective Time (as defined in the Settlement Agreement),

then:

- 3.3.1 the Company shall Notify the OSA Eligible Offerors of the same;
- 3.3.2 this Agreement shall terminate, save for this Clause 3.3 and Clauses 9 and 13 each of which shall survive;
- 3.3.3 each OSA Invitation will be deemed withdrawn;
- 3.3.4 any OSA Offer which at that time has been made but not yet been accepted by the Company, will lapse and cease to be capable of acceptance; and
- 3.3.5 subject to Clause 3.3.2 and without prejudice to Clauses 9 and 13, to the extent any OSA Offer at that time has been accepted by the Company, the parties to this Agreement will cease to be bound by or party to it and any rights and obligations which such parties had under this Agreement will cease to exist.

3.4 Submission of OSA Offer

- 3.4.1 Each OSA Eligible Offeror (other than an OSA Eligible Offeror who has acceded to this Agreement by way of an OSA Accession Deed) hereby acknowledges that it has:
 - (i) made (or authorised the making of) its OSA Offer to the Company via the Portal; and
 - (ii) in making such OSA Offer, confirmed the accuracy of the information which it has submitted, or which was submitted on its behalf, via the Portal, in relation to its OSA Offer including:
 - (a) the confirmation as to whether:
 - (I) it was acting as principal on its own behalf in making its OSA Offer; or
 - (II) it was acting through an authorised agent or attorney that was making the OSA Offer on behalf of such OSA Eligible Offeror and with authority to bind such OSA Eligible Offeror to this Agreement;
 - (b) the confirmation as to whether:
 - (I) it will not (and, if it is already in dispute, will promptly cease to) dispute any Information Pack Figure in which case, on the Common Terms Effective Date, all figures in its Information Pack shall become final and binding in accordance with the Common Terms; or
 - (II) it is disputing one or more of its Information Pack Figures by completing and uploading an Information Pack Challenge Form and uploading any supporting evidence; and
 - (c) any other documents or evidence (including powers of attorney, signing authorities and Representation disclosures) which it (or its authorised signatory on its behalf) submitted at or about the time of submission of its OSA Offer via the Portal; and

- (iii) accurately completed and signed any U.S. Withholding Tax Forms which it has submitted and has sent two originals of such forms to the Company for the attention of the Tax Department.

3.4.2 Without prejudice to any other provision in this Agreement, the Company shall have and reserves the right:

- (i) to accept an OSA Offer as being validly made to the Company even if the OSA Offer is not entirely in order or complete or is not received in the manner stated in this Agreement; or
- (ii) to require evidence of power and authority of an OSA Eligible Offeror or any person acting on its behalf in respect of such OSA Offer or any supporting documentation or supplementary information (including in relation to anti-money laundering checks) and/or relevant tax forms (including U.S. Withholding Tax Forms), if any, from any person who makes an OSA Offer to the Company.

3.5 Representations

3.5.1 Each OSA Eligible Offeror by whom or on whose behalf an OSA Offer (or OSA Accession Deed, if applicable) is made or executed irrevocably undertakes, represents and warrants, and agrees with the Company, as at its Consenting Beneficiary Accession Date (so as to bind such person and its personal representatives, heirs, successors and assignees):

- (i) that such OSA Eligible Offeror shall execute any documents and give any further assurances as may be reasonably requested by the Company in order to implement this Agreement;
- (ii) on the terms set out in clauses 17.1, and 17.2.1(i) (where applicable) to 17.2.1(iii), and 17.8 of the Common Terms; and
- (iii) that, except in accordance with Clause 5, such person shall not Transfer its Common Terms Claims, in whole or in part, on or after its Consenting Beneficiary Accession Date.

3.5.2 A Consenting Beneficiary will not be in breach of any representation or warranty or liable for any failure to comply with any covenant set out in Clause 3.5.1 to the extent that:

- (i) prior to the date for making any such representation or warranty or complying with such covenant, it has disclosed by Notice to the Company:
 - (a) any facts, matters or circumstances which, but for the operation of this provision, would have resulted in such Consenting Beneficiary being in breach of such representation or warranty or failing to comply with such covenant; and
 - (b) such representations, warranties and/or covenants against which such disclosure is being made; and
- (ii) the Company has Notified the Consenting Beneficiary in writing that it accepts such disclosure as absolving the Consenting Beneficiary of any

Legal Liability in respect of such representations, warranties and/or covenants with respect to the facts, matters or circumstances so disclosed.

4 Amendment of this Agreement

4.1 Amendment or withdrawal by the Company of OSA Invitation and OSA Offer

- 4.1.1** The Company reserves the right from time to time to amend or withdraw the terms of any one or more OSA Invitations at any time before the Common Terms Effective Date.
- 4.1.2** If, prior to the Common Terms Effective Date, the Company Notifies the OSA Eligible Offerors of an amendment of any term of any one or more OSA Invitations (which may include the revision of the OSA) (the “**OSA Revised Invitation**”), then any OSA Offer made after the time at which that Notice is received or deemed received will be automatically treated as reflecting the OSA Revised Invitation (such amended OSA Offer being the “**OSA Revised Offer**”).
- 4.1.3** If an OSA Revised Invitation is issued, then any earlier outstanding OSA Offer from any OSA Eligible Offeror (whether or not such earlier outstanding OSA Offer was accepted) shall be automatically revoked upon the issue of such OSA Revised Invitation. The effect of any such revocation will be to cause such OSA Eligible Offeror to cease to be a Consenting Beneficiary and not to have any rights or obligations under this Agreement, save under Clauses 9 and 13. If such OSA Eligible Offeror subsequently makes an OSA Revised Offer, any acceptance of such OSA Revised Offer by the Company shall be on the basis of the provisions of the OSA Revised Offer.

4.2 Amendment of this Agreement before the Common Terms Effective Date

- 4.2.1** Without prejudice to Clause 4.1, prior to the Common Terms Effective Date and subject to Clauses 4.5.2 and 4.6, no amendment, modification or waiver in respect of this Agreement (or any agreement supplemental to it), including to the proposed Common Terms, shall be effective unless in writing and approved by:
- (i) the Company; and
 - (ii) if any OSA Consenting Beneficiary is a party to this Agreement, a Majority OSA Consenting Beneficiary Consent.

4.3 Amendment of this Agreement (other than Common Terms)

Subject to Clauses 4.5 and 4.6, on and after the Common Terms Effective Date no amendment, modification or waiver in respect of this Agreement (excluding the Common Terms) (or any agreement supplemental to it) shall be effective unless in writing and approved by:

- 4.3.1** the Company; and
- 4.3.2** a Majority OSA Consenting Beneficiary Consent.

4.4 Powers of amendment of the Company

In furtherance of Clauses 4.2 and 4.3:

- 4.4.1 the Company may certify that it has determined, as it may do in its absolute discretion, that any such amendment, modification or waiver will materially affect some (but not all) of the OSA Consenting Beneficiaries. In that event, “**Relevant OSA Consenting Beneficiaries**” shall be certified by the Company as those who will be materially affected for the purposes of such amendment, modification or waiver (and, in particular, for the purposes of determining whether or not such amendment, modification or waiver has been approved by a Majority OSA Consenting Beneficiary Consent). Absent any such certification by the Company in respect of any particular proposed amendment, modification or waiver in respect of the Common Terms, the Relevant OSA Consenting Beneficiaries shall be all the OSA Consenting Beneficiaries as at the time set by the Company (in its sole discretion) for the purpose of such vote, written consent or resolution to approve such amendment, modification or waiver;
- 4.4.2 the Company is hereby authorised to agree for and on behalf of the OSA Consenting Beneficiaries, all amendments, modifications or waivers, if so directed by a Majority OSA Consenting Beneficiary Consent; and
- 4.4.3 the Company shall not be responsible for having acted in good faith on a resolution purporting to have been passed by a Majority OSA Consenting Beneficiary Consent (either in writing or, if at a meeting, in respect of which minutes of such meeting have been made) even if it is later found that there was a defect in the vote or consent or the constitution of the meeting or the passing of the resolution or that the vote, consent or resolution was not valid or binding on the OSA Consenting Beneficiaries.

4.5 Amendment of Common Terms

- 4.5.1 Any amendment of the Common Terms proposed after the Common Terms Effective Date may only be made by the Company as provided for in clause 41 of the Common Terms.
- 4.5.2 No amendment, modification or waiver of the Common Terms proposed before the Common Terms Effective Date pursuant to Clause 4.2 shall be effective unless also approved by the Resolution or in accordance with the Amended and Restated CRA.

4.6 Minor, technical or not materially prejudicial amendments

The Company may, without the consent of any of the OSA Consenting Beneficiaries, amend, modify or waive any term or condition of this Agreement (or any agreement supplemental to it) other than any of the Common Terms after the Common Terms Effective Date, where such amendment, modification or waiver is, in its opinion:

- 4.6.1 of a formal, minor or technical nature, or to correct a manifest error; or
- 4.6.2 not materially prejudicial to the interests of any OSA Consenting Beneficiary.

4.7 Notice of outcome

The Company shall Notify (in accordance with clause 42 of the Common Terms) the OSA Consenting Beneficiaries (together with any other OSA Eligible Offerors who have either made an OSA Offer which has not been rejected or lapsed, or not made an OSA Offer but remain able to do so during the OSA Offer Period) of any amendment of this Agreement made in accordance with this Clause 4.

5 Transfers

5.1 Transfers

Unless expressly permitted by the terms of this Agreement, no OSA Consenting Beneficiary may assign any of its rights or transfer any of its obligations under this Agreement.

5.2 Transfer to an OSA Consenting Beneficiary

5.2.1 Subject to Clause 5.3, an OSA Consenting Beneficiary may Transfer in whole (but not in part) its rights under this Agreement in respect of its Common Terms Claims to another OSA Consenting Beneficiary provided that, save as otherwise agreed by the Company in writing:

- (i) it obtains the prior consent of the Company (such consent not to be unreasonably withheld) to such Transfer;
- (ii) no Common Terms Dispute or other Proceedings are pending, threatened or on-going between any Released Person and the transferring OSA Consenting Beneficiary under or in connection with any Consenting Beneficiary Agreement; and
- (iii) subject to the further proviso below, it novates to that OSA Consenting Beneficiary at the same time:
 - (a) all its other Legal Claims against the Company; and
 - (b) all Legal Liabilities owing by it to the Company (provided that it shall remain liable for any Legal Liability already incurred by it in respect of any obligation under this Agreement),

(such Legal Claims and Legal Liabilities, along with such Common Terms Claims, the "**Complete Position**"),

and further provided that nothing in this Clause 5.2.1 shall require the Transfer of an unsecured Legal Claim or Client Money Legal Claim that has been agreed with the Company under a CDD and, if any such Legal Claim is not Transferred, the Complete Position shall be construed as not including such Legal Claim.

5.2.2 Following such novation and without prejudice to any Legal Liability already incurred by it in respect of any obligation under this Agreement, the Trust Entitlement Transferor shall cease to be an OSA Consenting Beneficiary in respect of such Common Terms Claims but without prejudice to any consents, releases and waivers which it has previously given pursuant to this Agreement and/or any obligation for it to turnover pursuant to clause 25 of the Common Terms any receipts or recoveries in connection with the Complete Position.

5.3 Transferred Common Terms Claims separate

In the event of any Transfer under Clause 5.2, the Complete Position so Transferred shall be treated as separate from any other Legal Claims and Legal Liabilities (including any other Complete Positions) of the Trust Entitlement Transferee for the purposes of:

- 5.3.1 calculating the rights, Legal Claims and Legal Liabilities of an OSA Consenting Beneficiary under this Agreement;
- 5.3.2 any subsequent Transfer by such Trust Entitlement Transferee of that Complete Position; and
- 5.3.3 none of the Complete Positions which have been acquired by the Trust Entitlement Transferee shall be aggregated with and/or netted off and/or set off against any rights or Legal Claims against, and/or Legal Liabilities owed to, the Company by that Trust Entitlement Transferee (including any other Complete Position).

5.4 Transfers from a Non-Consenting Beneficiary to an OSA Consenting Beneficiary

5.4.1 An OSA Consenting Beneficiary may accept a Transfer from a Non-Consenting Beneficiary of the LBI Asset Claims of that Non-Consenting Beneficiary in whole (but not in part), provided that, save as otherwise agreed by the Company in writing:

- (i) it obtains the prior consent of the Company to such Transfer; and
- (ii) subject to the further proviso below, it acquires by novation at the same time all of that Non-Consenting Beneficiary's other Legal Claims against and Legal Liabilities owing to the Company,

and further provided that nothing in this Clause 5.4.1 shall require the Transfer of an unsecured Legal Claim or Client Money Legal Claim that has been agreed with the Company under a CDD.

5.4.2 Upon such Transfer and acquisition, the acquired LBI Asset Claims shall be treated without any further action on the part of any person as if they:

- (i) were the claims of a Non-Consenting Beneficiary who had become an OSA Consenting Beneficiary immediately before the time of completion of such acquisition; and
- (ii) were then acquired under Clause 5.1 by the Trust Entitlement Transferee from an OSA Consenting Beneficiary at the time of such acquisition.

6 Conflict

If there is a conflict or inconsistency between the provisions of this Agreement, the Companies Act, the Insolvency Act, the Insolvency Rules or the FSA Rules, for the purposes of this Agreement (including their application following a Liquidation Event), and to the extent such acts and/or rules permit, then the provisions of this Agreement shall prevail.

7 Liquidation Event

If the Company shall become subject to a Liquidation Event, this Agreement shall not terminate and shall (subject to the terms of this Agreement) continue in full force and effect.

8 Accession as Consenting Beneficiary after the OSA Offer Period

8.1 The Company may, at its absolute discretion, allow any Non-Consenting Beneficiary to accede to this Agreement after the OSA Offer Period.

8.2 An accession under Clause 8.1 shall be effected by the Non-Consenting Beneficiary executing and delivering an OSA Accession Deed and the Company countersigning the same.

9 No personal liability on the Administrators

9.1 The Administrators have entered into this Agreement as agents for and on behalf of the Company and none of the Administrators, the Advisers and/or their firms and in each case their and their firms' members, agents, partners, officers, directors, employees or representatives shall incur any personal liability whatever:

9.1.1 in respect of any of the obligations undertaken or assumed by the Company; or

9.1.2 in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or

9.1.3 under or in relation to any associated arrangements or negotiations; or

9.1.4 under any document or assurance made pursuant to this Agreement.

9.2 The exclusion of liability set out in this Clause 9 shall arise and continue notwithstanding the termination of the agency of the Administrators and shall operate as a waiver of any Legal Claims in law. Each of the Administrators, the Advisers and their firms and in each case their and their firm's members, agents, partners, officers, directors, employees and representatives shall be able to rely on this Clause 9 as if they were a party to this Agreement.

10 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Agreement under the law of that jurisdiction or any other shall in any way be affected or impaired thereby.

11 Option for Company to execute deed poll

The Company shall be entitled at any time to execute and deliver a confirmation under this Agreement in the form of a deed poll of any of its obligations set out in this Agreement, including any declaration of trust required to constitute or evidence the trusts over the LBI Distributions and other Trust Financial Assets constituting the Omnibus Trust by the Company.

12 Third Party rights

- 12.1** The Administrators and any subsequent supervisor, liquidator or other office holder of the Company shall be entitled to enforce any term of this Agreement purporting to confer a benefit on them, as if they were parties to this Agreement.
- 12.2** Subject to Clause 12.1 and except as provided for in Clauses 9 and 13.4.1 and as provided for in clause 32 of the Common Terms, nothing in this Agreement or any other OSA Document is intended to, nor should it be construed as purporting to, confer any rights on, or to be enforceable by, any Third Party.
- 12.3** Any term of this Agreement which may be amended or waived in accordance with Clause 4 may be amended without the consent of any person named or described in Clauses 9 and 13.4.1 and this Clause 12 and clause 32 of the Common Terms.

13 Governing law, jurisdiction and moratorium

13.1 Governing law

The OSA Documents and any non-contractual obligations arising out of or in connection with them shall be governed by, and construed in accordance with, English law.

13.2 Exclusive jurisdiction

The OSA Consenting Beneficiaries hereby agree that the courts of England shall (save as otherwise provided in the Common Terms and save as provided in Clause 13.3 and Clause 13.4) have exclusive jurisdiction to hear and determine any dispute, claim or Proceedings arising out of or in connection with or in relation to the OSA Documents, the LBI Distributions, the LBI Assets, the Trust Financial Assets and the Omnibus Trust and the OSA Consenting Beneficiaries hereby submit to the exclusive jurisdiction of the courts of England for such purposes. The OSA Consenting Beneficiaries also waive any objections to Proceedings in the courts of England that are based on the grounds of the venue or that the Proceedings have been brought in an inconvenient forum.

13.3 Proceedings in other jurisdictions

Notwithstanding the provisions of Clause 13.2, the Company has the right to bring Proceedings in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

13.4 Moratorium in advance of Common Terms Effective Date

- 13.4.1** No OSA Consenting Beneficiary shall be entitled to take, commence or continue any Proceedings against the Company, the Administrators, the Advisers or their firms, or in each case their or their firms' members, agents, partners, officers, directors, employees or representatives, in any jurisdiction whatsoever in relation to any dispute, claim or Proceedings arising out of or in connection with or in relation to the OSA Documents, the LBI Distributions, the LBI Assets, the Trust Financial Assets and the Omnibus Trust except as expressly agreed by the Company.
- 13.4.2** This moratorium shall be of no further effect from the date of the Common Terms Effective Date when clause 7 of the Common Terms shall apply or after the termination of this Agreement under Clause 3.3.

13.4.3 Notwithstanding the foregoing provisions of this Clause 13, prior to the Common Terms Effective Date the Company and any OSA Consenting Beneficiary shall be entitled to:

- (i) settle any dispute and/or claim arising out of or in connection with or in relation to the OSA Documents, the LBI Distributions, the LBI Assets, the Trust Financial Assets and the Omnibus Trust on terms agreed between the Company and the OSA Consenting Beneficiary; and/or
- (ii) enter into any dispute resolution process to resolve any dispute and/or claim arising out of or in connection with or in relation to the OSA Documents, the LBI Distributions, the LBI Assets, the Trust Financial Assets and the Omnibus Trust.

SCHEDULE 1
OSA ACCESSION DEED

To: Lehman Brothers International (Europe) (in administration), (the “**Company**”)
[Level 23, 25 Canada Square,
Canary Wharf,
London E14 5LQ,]
United Kingdom

From: *[Name of proposed OSA Consenting Beneficiary]*

Dated: []

Dear Sirs

Omnibus Settlement Agreement (the “OSA”)

- 1** We refer to the OSA. This is an OSA Accession Deed. Terms defined in the OSA have the same meaning in this OSA Accession Deed.
- 2** *[Name of proposed OSA Consenting Beneficiary]*:
 - 2.1** agrees to be bound by the OSA as an OSA Consenting Beneficiary pursuant to Clause 8 of the OSA;
 - 2.2** agrees that it will not dispute all or any part of the relevant Information Pack (including its attachments), save as agreed by the Company in its absolute discretion;
 - 2.3** undertakes to execute any further documents, give any evidence of power and authority or supporting evidence, supplementary evidence or any further assurances as may be reasonably requested by the Company in order to implement the OSA;
 - 2.4** makes the Initial Representations and Information Representations as defined in the Common Terms; and
 - 2.5** undertakes that, except in accordance with the OSA, it shall not Transfer its Common Terms Claim, in whole or in part, on or after its Consenting Beneficiary Accession Date.
- 3** This OSA Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

Executed [as a deed] by:

[Name of proposed OSA Consenting Beneficiary]

The Company agrees to the above.

[Lehman Brothers International (Europe) (in administration)]

SCHEDULE 2
COMMON TERMS

COMMON TERMS

between

THE COMPANY

and

CONSENTING BENEFICIARIES

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PART 1 – OPERATION OF THE COMMON TERMS

1 Background to the Common Terms

- 1.1** The Common Terms are incorporated into and form part of the Omnibus Settlement Agreement and, on the Common Terms Effective Date, the Amended and Restated CRA (each a “**Consenting Beneficiary Agreement**”).
- 1.2** Notwithstanding any of the other terms of the Consenting Beneficiary Agreements, if there is a conflict or inconsistency between any such terms and the provisions of the Common Terms, then the provisions of the Common Terms shall prevail. In the case of the Amended and Restated CRA, the provisions of the Common Terms shall not prevail in relation to Legal Claims other than LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of Clause 13.1.3(ii).

2 Timing

2.1 Effectiveness of the Common Terms

The Common Terms will become effective and binding as between the Company and the Consenting Beneficiaries as of the Common Terms Effective Date, save to the extent that it is provided in the OSA or in the Resolution that certain of the Common Terms shall bind the Consenting Beneficiaries at an earlier date.

2.2 Notification of Common Terms Effective Date

The Company shall Notify each Consenting Beneficiary of the occurrence of the Common Terms Effective Date.

PART 2 – ENTITLEMENT TO COMMON TERMS CLAIMS AND RELEASE OF OTHER LEGAL CLAIMS

3 Common Terms Claims generally

3.1 Each Consenting Beneficiary is entitled to:

3.1.1 a Proprietary Claim as set out in Clause 4; and

3.1.2 its 19/9 Shortfall Claim as set out in Clause 5,

(such claims as described in this Clause 3.1 being its “**Common Terms Claims**”).

3.2 In return for its Common Terms Claims, each Consenting Beneficiary gives the releases, waivers and undertakings as set out in Clause 6.

4 Proprietary Claims

4.1 Each Consenting Beneficiary shall have a beneficial interest in a share of the Omnibus Trust (its “**Proprietary Claim**”).

4.2 Each Consenting Beneficiary’s share of the Omnibus Trust shall be calculated based on its Best Claim. A Consenting Beneficiary’s “**Best Claim**” is the higher of:

4.2.1 its 19/9 Value; and

4.2.2 its Aggregate Market Value,

and shall be the amount so specified in a Consenting Beneficiary’s Information Pack (as may be amended pursuant to Clause 13.1.2).

4.3 The Proprietary Claim of each Consenting Beneficiary set out in this Clause 4 shall be satisfied only out of its Cumulative Gross Allocation as set out in Clause 9.8.1.

4.4 If the total Cumulative Gross Allocation of any Consenting Beneficiary at the time of the final Common Terms Distribution is less than the Best Claim of that Consenting Beneficiary then, save to the extent an unsecured 19/9 Shortfall Claim is permitted under Clause 5, no Legal Claim in respect of such insufficiency or any loss caused directly or indirectly thereby shall be made by any Consenting Beneficiary against the Company or any other Released Person.

5 19/9 Shortfall Claim

5.1 19/9 Shortfall Claim

5.1.1 Each Consenting Beneficiary shall have an unsecured claim against the general estate of the Company in the amount of its 19/9 Shortfall (if any) (its “**19/9 Shortfall Claim**”, which may be zero) in accordance with and subject to the terms and conditions of this Clause 5.

5.1.2 Each 19/9 Shortfall Claim shall be deemed to have arisen upon the Administration Date.

5.2 Shortfall Claims Determination Notice

The amount (if any) of the 19/9 Shortfall Claim, the Net 19/9 Shortfall Claim and Capped Net 19/9 Shortfall Claim of a Consenting Beneficiary shall be ascertained by the Company and specified (together with such supplementary information as the Company considers

appropriate in its absolute discretion) in a statement (the “**Shortfall Claims Determination Notice**”), which shall be final and binding on each Consenting Beneficiary, and delivered by the Company to that Consenting Beneficiary once the Company is satisfied that no further Common Terms Distributions are to be made.

5.3 19/9 Shortfall set-off rights

If a Consenting Beneficiary has a 19/9 Shortfall Claim notified to it pursuant to Clause 5.2, the 19/9 Shortfall Claim shall:

5.3.1 in the case of any OSA Consenting Beneficiary, be set off against any indebtedness owing at the time of the Shortfall Claims Determination Notice by such Consenting Beneficiary to the Company (on the same basis as, and in accordance with, any other unsecured claim against the Company under general insolvency law); and

5.3.2 in the case of any CRA Omnibus Beneficiary, be applied in accordance with, and only to the extent provided for in, clause 60.11 of the Amended and Restated CRA,

in each case, the 19/9 Shortfall Claim as reduced (if at all) by Clauses 5.3.1 or 5.3.2 being referred to as its “**Net 19/9 Shortfall Claim**”.

5.4 Shortfall Claim Cap

5.4.1 If the aggregate amount of all Consenting Beneficiaries' Net 19/9 Shortfall Claims exceeds the amount of the Shortfall Claim Cap, then each Consenting Beneficiary's Net 19/9 Shortfall Claim shall be reduced *pro rata* such that, when aggregated with each other Consenting Beneficiary's Net 19/9 Shortfall Claim so reduced, the aggregate amount equals the Shortfall Claim Cap (the Net 19/9 Shortfall Claim of any Consenting Beneficiary as and to the extent (if at all) so reduced being referred to as its “**Capped Net 19/9 Shortfall Claim**”).

5.4.2 Notwithstanding anything to the contrary in these Common Terms, the amount of the 19/9 Shortfall Claim which can be admitted as a claim of a Consenting Beneficiary against the Company is limited to its Capped Net 19/9 Shortfall Claim.

6 Releases and waivers of other Legal Claims

6.1 Legal Claims released by Consenting Beneficiaries

6.1.1 Subject to Clause 6.2, each Consenting Beneficiary hereby releases (to the maximum extent permissible in law) the Company, the Company's Common Terms Delegate, LBI, all other Consenting Beneficiaries, the Company-Related Released Parties and the members of the Creditors' Common Terms Committee Group (being together the “**Released Persons**”) from all Legal Claims to or arising out of or in respect of the LBI Assets, the Trust Financial Assets, the LBI Distributions and the Omnibus Trust, or arising out of or in connection with the preparation, negotiation, entry into, execution, operation, performance or content of any Consenting Beneficiary Agreement, the Resolution, the Information Memorandum, any Information Pack or the Settlement Agreement (and, to the extent (if at all) such Legal Claims are not released, each Consenting Beneficiary waives, renounces and surrenders them (to the maximum extent permissible in law) as against the Released Persons), including:

- (i) any such Legal Claim to the legal or beneficial ownership of any asset comprised in any LBI Distribution or any LBI Asset;
- (ii) any LBI Duplicate Claim;
- (iii) any such Legal Claim for or in respect of or in connection with any shortfall in value or property;
- (iv) any such Legal Claim for or in respect of or in connection with the loss, dilution, deferral or any other change in any Common Terms Claim, Cumulative Gross Allocation, or Gross Distribution as a result of any Legal Liabilities;
- (v) any such Legal Claim for or in respect of or in connection with any amount or property being held as Reserves in accordance with the Common Terms or as a result of any insufficiency in or any release, or payment out, of any amount being held as Reserves;
- (vi) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with any Corporate Action or Corporation Event;
- (vii) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with a sale or decision to sell for cash consideration any Security held in the Omnibus Trust or in connection with a conversion or decision to convert money held in the Omnibus Trust;
- (viii) any such Legal Claim for or in respect of or in connection with any action (or omission to act) in connection with any right of the Company under the Settlement Agreement to delay all or part of any LBI Distribution; and
- (ix) any such Legal Claim in respect of anything done or suffered to be done by any Consenting Beneficiary in reliance on the Information Memorandum, (together, the “**Released Common Terms Claims**”).

6.1.2 Subject to Clauses 6.2 and 26, each Consenting Beneficiary hereby agrees not to make, pursue, litigate, commence, continue or prosecute any Proceedings in any jurisdiction in respect of Released Common Terms Claims against any Released Person.

6.1.3 The Company hereby acknowledges and relies on the release and other agreements of each Consenting Beneficiary set out in this Clause 6.1.

6.2 Qualifications to release

The Released Common Terms Claims shall not include:

- 6.2.1** any Proprietary Claim;
- 6.2.2** any 19/9 Shortfall Claim;
- 6.2.3** any Legal Claims against the Company or its Common Terms Delegate for breach of any of the terms of the relevant Consenting Beneficiary Agreement or for any failure on the part of the Company or its Common Terms Delegate to discharge its obligations under the relevant Consenting Beneficiary Agreement, in each case

only to the extent attributable to the fraud of the Company or its Common Terms Delegate;

- 6.2.4 any LBHI Guarantee Claim;
- 6.2.5 any Legal Claim against CAPCO;
- 6.2.6 any Legal Claim against any Non-Consenting Beneficiary; or
- 6.2.7 any unsecured Legal Claim against the Company:
 - (i) relating to Securities or Money that would have entitled a Consenting Beneficiary to an LBI Asset Claim but for the adjustments referred to in paragraph (iii) of the definition of LBI Asset; or
 - (ii) to the extent not already included in Clause 6.2.7(i), which results from a recalculable pending transaction being subject to recalculation by the Company in accordance with a CDD, in light of the 19/9 Position having been determined.

6.3 Release and reassignment of Security Interest

Each Consenting Beneficiary releases, and (if applicable) reassigns, or agrees to procure such release or reassignment of, any Security Interest or other encumbrance or assignment which was created or made in its favour that would or might prevent or restrict any Net Distributions or Permitted Deductions, the creation or payment out of any Reserve or the sale of any Trust Financial Asset.

6.4 Release of Client Money claims

- 6.4.1 Each Consenting Beneficiary:
 - (i) waives, renounces and surrenders:
 - (a) all rights it might otherwise have for any LBI Asset Claim or Trust Financial Asset or all or any part of the Omnibus Trust, any LBI Distribution or its Gross Distribution to be treated as Client Money (whether held at the Time of Administration or received thereafter) or proceeds of Client Money; and
 - (b) any beneficial interest it may have in respect of its LBI Asset Claim or Trust Financial Asset or all or any part of the Omnibus Trust, any LBI Distribution or its Gross Distribution under the statutory trust of Client Money arising under Chapter 7 of the CASS Rules; and
 - (ii) directs that any LBI Asset, Trust Financial Asset or part of the Omnibus Trust, any LBI Distribution or its Gross Distribution which is (or but for this Clause 6.4.1 would be) Client Money or its proceeds shall be held by the Company on the trust set out in these Common Terms.
- 6.4.2 If the Company becomes aware that any money or other property comprised in any Trust Financial Asset is (i) Post-Administration Client Money or (ii) the proceeds of Post-Administration Client Money, in each case held for a Non-Consenting Beneficiary, then notwithstanding any provision to the contrary in the Common Terms the Company shall hold and deal with such money or property in accordance with rule 7.9 or, if relevant, Chapter 7A of the CASS Rules (as

applicable to the Company at the relevant time) and each Consenting Beneficiary consents to such treatment.

7 Moratorium

7.1 No Proceedings against Released Persons

Save as provided in Part 10, no Consenting Beneficiary shall be entitled to take, commence or continue any Proceedings against the Company or any other Released Person, or take or seek to take any action to enforce or attach against any property or rights in any jurisdiction whatsoever, in relation to any OSA Document, LBI Distribution, LBI Assets, Trust Financial Assets, the Omnibus Trust, or any Common Terms Claim except as expressly agreed by the Company or the relevant Released Person.

7.2 No double counting

If and to the extent that a Consenting Beneficiary obtains against the Company in relation to any OSA Document, LBI Distribution, LBI Assets, Trust Financial Assets, the Omnibus Trust, or any Common Terms Claim, an order, judgment, decision or award of a court or tribunal in contravention of Clause 7.1 or any other provision of any Consenting Beneficiary Agreement, such order, judgment, decision or award shall not give rise to any Trust Entitlement for the purposes of these Common Terms and, subject to Clause 25, shall be either disregarded when determining, or (at the Company's absolute discretion) applied in or towards discharge or reduction of, any Common Terms Claim or other Legal Liability of the Company owed to that Consenting Beneficiary under any relevant Consenting Beneficiary Agreement.

7.3 Enforcement by Company

Nothing in any relevant Consenting Beneficiary Agreement shall preclude the Company from taking, commencing or continuing any Proceedings against a Consenting Beneficiary.

PART 3 – OMNIBUS TRUST AND RESERVES

8 Omnibus Trust

8.1 Definition of Omnibus Trust

Subject to Clause 6.4.2, all LBI Distributions and any other Trust Financial Assets received by the Company shall, until applied or distributed in accordance with the Common Terms, be held by the Company as trustee for the benefit of all persons with a Trust Entitlement and shall be held, managed, dealt with, applied and distributed by the Company under and in accordance with the provisions of the Common Terms. The trust referred to in this Clause 8.1 shall be referred to as the “**Omnibus Trust**” in these Common Terms.

8.2 Reserves

8.2.1 The Company may at any time and from time to time establish, re-evaluate, adjust, maintain and/or release the amount of reserves (“**Reserves**”) it then considers prudent in respect of the actual or alleged Trust Entitlements of any person or persons to all or any part of the Omnibus Trust. Amounts held as Reserves shall constitute part of the Omnibus Trust but shall not, for so long as they are so held, be available for application by way of a Permitted Deduction or distribution to Consenting Beneficiaries. In calculating what Reserves should at any time be held, the Company shall (without limitation) make provision (the amount of such provision being at the absolute discretion of the Company) in relation to:

- (i) any Securities or Money claimed or which may be claimed by a Non-Consenting Beneficiary or a person purporting to be an LBI Asset Claim Customer in respect of its Trust Entitlement (including any Trust Entitlements that may have been assigned to or acquired by the Company);
- (ii) any Securities not yet liquidated;
- (iii) any Trust Entitlement of any Consenting Beneficiary whose Best Claim is not at that time determined or whose Trust Entitlement or Best Claim is at that time disputed;
- (iv) any dispute under or in connection with the Common Terms;
- (v) any Trust Entitlement of any Consenting Beneficiary who is at that time for any reason ineligible to participate in a Common Terms Distribution (including because of a failure to satisfy any of the conditions in Clause 9.4); and
- (vi) amounts in respect of any part of any Tax Burden Liability (which amounts the Company may hold in an escrow account) (any Reserve formed pursuant to this Clause 8.2.1(vi) being a “**Tax Reserve**”).

8.2.2 The Consenting Beneficiaries agree that:

- (i) the Reserving of any amount by the Company shall not, merely by virtue of such Reserve, be taken to be evidence of the admission by the Company of any claim or right of any person to such amounts;
- (ii) the Reserving of any Trust Financial Asset does not create any proprietary interest in any such Trust Financial Asset in favour of any person in respect of whom an amount has been Reserved; and

- (iii) the Reserving of any amount does not give rise to any entitlement to payment for loss of profit or other Legal Liability in respect thereof.

8.2.3 The Company may at any time and from time to time:

- (i) designate (or otherwise treat):
 - (a) any Reserve (or any part of any Reserve) as an “**Attributable Reserve**” in respect of:
 - (I) a particular Consenting Beneficiary to the extent it considers such Reserve (or the Legal Liabilities in respect of which such Reserve is held) as attributable to that individual Consenting Beneficiary; or
 - (II) more than one Consenting Beneficiary to the extent that the Company considers that such Reserve (or the Legal Liabilities in respect of which such Reserve is held) is attributable to them and allocate such Reserve amongst them on such basis as the Company considers appropriate given the facts giving rise to the creation or maintenance of that Reserve;
 - (b) any payment or discharge of an obligation (or any part of an obligation) made out of the Omnibus Trust (including any Reserve but excluding any payment or discharge as a result of distributing or applying any Gross Distribution) as an “**Attributable Payment**” where such payment or discharge is in respect of or attributable to:
 - (I) an individual Consenting Beneficiary as an Attributable Payment in respect of that Consenting Beneficiary; or
 - (II) more than one Consenting Beneficiary as an Attributable Payment in respect of those Consenting Beneficiaries to the extent that the Company considers that such payment or discharge out of the Omnibus Trust pays or discharges an obligation of each of them or otherwise allocate the payment or discharge amongst those Consenting Beneficiaries on such basis as the Company considers appropriate given the facts giving rise to the creation, maintenance, payment or discharge in question; and
- (ii) change the Company’s designation (or treatment) or attribution of any Reserve (or any part of any Reserve) or of any payment or discharge of an obligation (or any part of an obligation) as an Attributable Reserve or Attributable Payment (as applicable) in respect of any one Consenting Beneficiary to an Attributable Reserve or Attributable Payment (as applicable) in respect of any other or of more than one Consenting Beneficiary or of none,

in each case as the Company (including any entity appointed pursuant to Clauses 18.7, 21.7 or 34.1) considers appropriate (in its absolute discretion, subject to Clause 18.4.3), provided that no amount shall be taken into account more than once at any time.

8.2.4 Each Consenting Beneficiary agrees that it shall not be entitled to dispute (and any attempt to do so shall be of no effect), whether pursuant to a Common Terms Dispute or otherwise, (i) any establishment, re-evaluation, adjustment, maintenance or release of any Reserve, or (ii) any designation, attribution or treatment, or any change in relation thereto, of any Reserve as an Attributable Reserve.

8.3 Reserves of Money and Securities

8.3.1 The Company may hold in respect of any Reserve either Money or Securities.

8.3.2 The Company shall not be required to sell any such Securities so Reserved but may do so if it (in its absolute discretion) considers such a sale appropriate.

8.3.3 Upon the release of Money or Securities from any Reserve, such Money or Securities shall continue to be held by the Company as part of the Omnibus Trust, save that the Company may, and each Consenting Beneficiary hereby authorises the Company to:

(i) pay any such Money, or deliver any such Securities, to a Non-Consenting Beneficiary, a Tax Authority or other person; and/or

(ii) otherwise apply such Money or Securities,

including in each case towards any purpose for which any Reserve is permitted to be held if the Company considers it necessary or desirable to do so and, if the Company does so, then the obligation which was the subject of the Reserve shall be discharged *pro tanto* by the amount of Money or Securities (as the case may be) so paid, delivered or otherwise applied.

8.4 No segregation of Reserves

Subject to Clause 19.1, notwithstanding any other provision contained in the Common Terms, the Company shall not be obliged, but shall have the power, to segregate and maintain separate accounts for any Available Funds and/or any Reserves (or any element of any of them).

PART 4 – COMMON TERMS DISTRIBUTIONS OUT OF OMNIBUS TRUST

9 Dispositions out of Omnibus Trust

9.1 Overview

For ease of reference, this Clause 9.1 provides an overview of Clause 9 but shall not be legally binding and shall not affect the interpretation of the operative provisions in the remainder of Clause 9 or the precise meaning of the definitions used therein. Clause 9 sets out the terms on which Money in the Omnibus Trust is to be allocated among the Consenting Beneficiaries. In summary:

9.1.1 Each Consenting Beneficiary can expect its Gross Distributions to:

- be made on each Distribution Date provided that it is eligible on that date as a Qualifying Consenting Beneficiary;
- result in a Net Distribution to be paid to it as a Qualifying Consenting Beneficiary and/or a Permitted Deduction to be applied by the Company to pay out a third party, or to be appropriated by the Company;
- be calculated as a portion of the available cash in the Omnibus Trust (after any Reserves) - its portion will be a *pro rata* share based on its Best Claim after adjustment to take account of its previous Gross Distributions, as well as its Attributable Reserves and Attributable Payments.

9.1.2 Clauses 9.2 to 9.4 set out the timing and number of Common Terms Distributions, and identify when Consenting Beneficiaries will be eligible to participate in a Common Terms Distribution. In particular, it is only those Consenting Beneficiaries who are Qualifying Consenting Beneficiaries on a Distribution Date who will be entitled to have Common Terms Distributions distributed to, or otherwise applied in respect of, them on that date.

9.1.3 Clauses 9.6 to 9.8 set out the method of calculation of Common Terms Distributions to be distributed to, or otherwise applied in respect of, Qualifying Consenting Beneficiaries.

9.1.4 Clause 9.6 defines Available Funds which is broadly all the cash held in the Omnibus Trust less any of that cash which is held as Reserves on the Distribution Date. It is these Available Funds which will be the cash allocated to Qualifying Consenting Beneficiaries as a Gross Distribution in Clause 9.8.

9.1.5 Clause 9.7 then adds to Available Funds an amount equal to all previous Gross Distributions of the Qualifying Consenting Beneficiaries (not all Consenting Beneficiaries generally) and the aggregate Attributable Amounts attributable to them, as at the Distribution Date. This sum is effectively that part of the Omnibus Trust which all the Qualifying Consenting Beneficiaries as a group on that Distribution Date will have had distributed to, or applied or reserved in respect of, them up to and including that Distribution Date. This aggregate amount is referred to as the Adjusted Available Funds.

9.1.6 Clause 9.8 calculates the Gross Distribution in three stages:

- (i) first, the Adjusted Available Funds are allocated as between the Qualifying Consenting Beneficiaries *pro rata* to their Best Claims giving each of them a Cumulative Gross Allocation;
- (ii) secondly, the Attributable Amounts and previous Gross Distributions which are attributable to a Qualifying Consenting Beneficiary and which were in each case added to Available Funds under Clause 9.7 are now deducted from that Qualifying Consenting Beneficiary's Cumulative Gross Allocation on an "individual" basis; and
- (iii) thirdly, each Qualifying Consenting Beneficiary who has a positive balance left from its Cumulative Gross Allocation will receive a share of the Available Funds *pro rata* to all such positive balances of Qualifying Consenting Beneficiaries on that Distribution Date and this is its Gross Distribution for that Distribution Date.

9.1.7 The final proviso to Clause 9.8 provides for a catch up mechanism in respect of those Qualifying Consenting Beneficiaries who at the Distribution Date may have received less benefit overall relative to other Qualifying Consenting Beneficiaries.

9.1.8 Clause 9.9 then provides for the Gross Distribution remaining, after all Permitted Deductions have been applied out of such Gross Distribution in accordance with Clause 10, to be paid to the Qualifying Consenting Beneficiary as its Net Distribution.

9.2 Timing of Common Terms Distribution

As and when the Company determines (in its absolute discretion) that there are sufficient Available Funds in order to make a meaningful Common Terms Distribution, then:

9.2.1 the Company shall nominate a proposed "**Distribution Date**" and a "**Cut-Off Date**" in relation to such Common Terms Distribution, each such date to be a Business Day but otherwise being in the absolute discretion of the Company to nominate; the Company shall send a Notice of Intended Distribution pursuant to Clause 14.1 setting out the proposed Distribution Date and Cut-Off Date;

9.2.2 following the Cut-Off Date, the Company shall calculate the amount of Reserves which as at the proposed Distribution Date need to be retained in the Omnibus Trust and which will not form part of the Available Funds on the proposed Distribution Date; and

9.2.3 the Company shall send a Notice of Distribution pursuant to Clause 14.2,

provided that, notwithstanding the provisions of Clause 14, the Company shall be able to delay any of the matters set out in Clauses 9.2.1 to 9.2.3 and the making of any Common Terms Distribution if it considers this reasonable taking into account all relevant factors.

9.3 Number of Common Terms Distributions

The Company may make Common Terms Distributions on more than one Distribution Date and, subject to Clause 9.4 and the other Common Terms, shall be obliged to make a Common Terms Distribution within a reasonable amount of time following the date upon which the Company determines that no further amounts are likely to become Available Funds. If after such determination, further Available Funds become available, then the Company shall make further Common Terms Distributions at such time as it considers

appropriate (in its absolute discretion) and in any event no later than the date on which the Company would otherwise be required under the Settlement Agreement to return to LBI any Trust Financial Assets not applied or distributed to or in respect of LBI Asset Claim Customers.

9.4 Conditions to participation in a Common Terms Distribution

9.4.1 Each Consenting Beneficiary agrees that, as a condition to its participation in a Common Terms Distribution, it shall be required to meet (to the satisfaction of the Company in its absolute discretion) all of the following conditions by no later than the Cut-Off Date (at such time as the Company may specify) in respect of that Common Terms Distribution and to continue to meet them (to the satisfaction of the Company in its absolute discretion, subject to the proviso in Clause 9.5.2) at the Distribution Date, unless agreed otherwise by the Company:

- (i) none of its Permitted Deductions (excluding any Costs Liability, Tax Burden Liability or Costs Amount) remain uncertain or unascertained;
- (ii) it has no actual or potential unsecured Legal Claims against or Legal Liabilities owing to the Company, the existence or quantum of which cannot at that time be determined because the contract pursuant to which such Legal Claims or Legal Liabilities may arise:
 - (a) has not been terminated;
 - (b) does not specify an appropriate valuation date or methodology and the Company and the Consenting Beneficiary have neither reached a binding agreement as to the valuation date or methodology to be used nor otherwise resolved how to determine such Legal Claims or Legal Liabilities; or
 - (c) specifies a valuation date or methodology which is materially uncertain in its terms and the Company and the Consenting Beneficiary have neither reached a binding agreement nor otherwise resolved how to determine such Legal Claims or Legal Liabilities;
- (iii) in relation to CRA Omnibus Beneficiaries, the conditions set out in clause 56.1.1 of the Amended and Restated CRA have been satisfied;
- (iv) it has no Common Terms Dispute (or other dispute under or in connection with the Common Terms) which has not been finally determined or agreed;
- (v) no disposition which may be made to it is or may be subject to a Security Interest or other encumbrance of a Third Party that in the opinion of the Company may prevent or restrict a disposition in accordance with any Consenting Beneficiary Agreement;
- (vi) it is not in breach of any obligation under its Consenting Beneficiary Agreement where that breach is continuing unremedied and unwaived; and
- (vii) the Company has, prior to that disposition, received all documentation which the Company considers necessary for the Company to comply with any anti-money laundering, tax information reporting or similar laws or regulations applicable to it.

9.5 Qualifying Consenting Beneficiary

9.5.1 If a Consenting Beneficiary meets (to the satisfaction of the Company) the conditions set out in Clause 9.4.1, both on (i) the Cut-Off Date applicable to the Common Terms Distribution and (ii) the Distribution Date, then it shall be treated as a **“Qualifying Consenting Beneficiary”** in relation to that Common Terms Distribution on that Distribution Date.

9.5.2 The Company may amend the Eligibility Status of any Consenting Beneficiary at any time, provided that any such amendment made between a Cut-Off Date and any disposition to which that Cut-Off Date applies may only be made if the Company considers it appropriate (acting reasonably having regard to whether that Consenting Beneficiary meets, or continues to meet, the conditions set out in Clause 9.4.1).

9.6 Available Funds

The funds available from which to make a Common Terms Distribution on a Distribution Date (the **“Available Funds”**) are equal to:

9.6.1 the aggregate of the Money denominated in US dollars held in the Omnibus Trust on that Distribution Date (provided that if any such funds comprise Money denominated in US dollars received by the Company after the Cut-Off Date set out in the Notice of Intended Distribution applicable to such Common Terms Distribution, then such funds shall not be included in Available Funds save to the extent that the Company determines (in its absolute discretion) that they should be so included); **less**

9.6.2 the aggregate of all Reserves (including all Attributable Reserves) on the Distribution Date and any Money (other than Money held as Reserves or excluded by the proviso to Clause 9.6.1) which is held in the Omnibus Trust and for any reason (including as a result of being held in a time deposit or likely to give rise to an extra cost as a result of it being made available) is not (or is not likely to be) considered by the Company to be freely available for disposition on the Distribution Date.

9.7 Adjusted Available Funds

The **“Adjusted Available Funds”**, for the purpose of determining the Common Terms Distribution on a Distribution Date, shall be the amount of Money denominated in US dollars as is equal to the aggregate of:

9.7.1 the Available Funds calculated in respect of that Distribution Date; **plus**

9.7.2 the aggregate of all Attributable Amounts on that Distribution Date attributable to the Qualifying Consenting Beneficiaries on that Distribution Date; **plus**

9.7.3 the aggregate of all Gross Distributions made to such Qualifying Consenting Beneficiaries prior to that Distribution Date; **less**

9.7.4 the aggregate amount of any Catch-Up Distributions on that Distribution Date to be made to such Qualifying Consenting Beneficiaries pursuant to the proviso set out in Clause 9.8.3(iii).

9.8 Calculation of Gross Distributions

The amount of the **“Gross Distribution”** to be made in respect of a Qualifying Consenting Beneficiary on a Distribution Date shall be computed by the Company as:

- 9.8.1 the portion of the Adjusted Available Funds attributable to that Qualifying Consenting Beneficiary (its “**Cumulative Gross Allocation**”) calculated by multiplying the Adjusted Available Funds by a fraction the numerator of which is the Best Claim of such Qualifying Consenting Beneficiary and the denominator of which is the aggregate amount of the Best Claims of all Qualifying Consenting Beneficiaries on that Distribution Date; **less**
- 9.8.2 all Attributable Amounts on that Distribution Date attributable to such Qualifying Consenting Beneficiary; **less**
- 9.8.3 the aggregate of all Gross Distributions made to such Qualifying Consenting Beneficiary prior to that Distribution Date,

provided that:

- (i) if the amount of the Gross Distribution of such Qualifying Consenting Beneficiary so computed is calculated to be less than zero, it shall be deemed to be zero;
- (ii) subject to, and following the operation of, Clause 9.8.3(iii), if the aggregate of the Gross Distributions to be made on a Distribution Date to, or in respect of, all Qualifying Consenting Beneficiaries (after taking into account the operation of the previous proviso set out in Clause 9.8.3(i), if applicable) would not equal the amount of the Available Funds on that Distribution Date, then the amount of the Gross Distribution of each Qualifying Consenting Beneficiary shall be varied *pro rata* to their Gross Distributions (after taking into account the operation of the previous proviso set out in Clause 9.8.3(i), if applicable) so that the aggregate of the Gross Distributions so varied equals the Available Funds in respect of that Distribution Date; and
- (iii) if the operation of the above provisions of this Clause 9.8 (before the operation of the proviso set out in this Clause 9.8.3(iii)) in respect of a particular distribution to, or application in respect of, any Qualifying Consenting Beneficiary (the “**Catch-Up QCB**”) would, if that Gross Distribution were made to that Catch-Up QCB, result in:
- (a) the proportion which (A) the Cumulative Gross Allocation of that Catch-Up QCB (after taking into account on a *pro forma* basis the Gross Distribution which would be made (before the operation of this Clause 9.8.3(iii)) to that Catch-Up QCB under that relevant distribution or application) bears to (B) his Best Claim being less than
- (b) the highest proportion which (A) the Cumulative Gross Allocation of any other Qualifying Consenting Beneficiary participating in that distribution or application (the “**Comparative QCB**”) (after taking into account on a *pro forma* basis the Gross Distribution which legitimately would be made (before the operation of this Clause 9.8.3(iii)) to that Comparative QCB under that relevant distribution or application) bears to (B) the Best Claim of that same Comparative QCB,

then the Company may in priority to any other distribution or application to be made by it to or in respect of any other Qualifying Consenting

Beneficiary make such distribution or application (a “**Catch-Up Distribution**”) to, or in respect of, the Catch-Up QCB and any other Catch-Up QCBs participating in that distribution or application as will, for all Qualifying Consenting Beneficiaries participating in that distribution or application, result in the proportion which (A) the Cumulative Gross Allocation of each Qualifying Consenting Beneficiary (after taking into account on a *pro forma* basis the Catch-Up Distribution) bears to (B) the Best Claim of that Qualifying Consenting Beneficiary being the same (or as close to the same as is possible given that there may be insufficient Available Funds to catch up in full and prioritising, amongst those Catch-Up QCBs relative to each other, those who have the lowest comparative Cumulative Gross Allocation at that time).

9.9 Net Distribution

On each Distribution Date, the Company shall make to each Qualifying Consenting Beneficiary a distribution of Money in US dollars equal to its Net Distribution calculated as described in Clause 10.1.

9.10 Order of settlement

Unless expressly notified to the contrary by the Company, it shall be assumed that dispositions made by the Company in relation to a Consenting Beneficiary pursuant to the Common Terms shall be made in settlement of:

9.10.1 first, Legal Claims for Money (if any) (excluding Income Amounts (if any));

9.10.2 then, Legal Claims for Securities (if any); and

9.10.3 lastly, Income Amounts (if any),

in each case, by reference to the basis upon which a Consenting Beneficiary’s Best Claim is calculated.

10 Deductions from Gross Distributions in respect of Qualifying Consenting Beneficiaries

10.1 The Company shall be entitled in its absolute discretion, but is not obliged, to deduct and withhold from the amount of any Gross Distribution in respect of a Qualifying Consenting Beneficiary the full amount of any Permitted Deductions as described in Clause 10.3 and to pay amounts so deducted over to the person entitled thereto or (in respect of amounts due or owing to the Company in any capacity) appropriate to itself the amounts so deducted. The net amount (if any) after any such deduction, withholding or appropriation from that Gross Distribution is that Qualifying Consenting Beneficiary’s “**Net Distribution**”.

10.2 Without prejudice to the right of the Company to sue in respect of any Legal Liability owed to it by any Consenting Beneficiary, the Company shall make no applications or distributions out of the Gross Distributions (or Net Distributions) of any Qualifying Consenting Beneficiary, save for those set out in this Clause 10.

10.3 The amounts which may be applied by the Company from any Gross Distribution are:

10.3.1 in respect of any OSA Consenting Beneficiary:

- (i) any Costs Liability payable out of its Gross Distribution in accordance with Clause 40;

- (ii) any Tax Burden Liability which the Company is permitted to deduct or withhold from its Gross Distribution in accordance with Clause 18 to the extent such Tax Burden Liability:
 - (a) is not part of any Attributable Reserve and has not been paid or discharged by any Attributable Payment in respect of that OSA Consenting Beneficiary; and
 - (b) does not form part of a general Reserve held pursuant to Clause 8.2.1(vi) at the time the Permitted Deduction under this Clause 10.3 is made;
- (iii) any Recoverable Turnover Value pursuant to Clause 25.1.1; and
- (iv) its OSA Distribution Liabilities; and

10.3.2 in the case of a CRA Omnibus Beneficiary:

- (i) any Tax Burden Liability which the Company is permitted to deduct or withhold from its Gross Distribution in accordance with Clause 18 to the extent such Tax Burden Liability:
 - (a) is not part of any Attributable Reserve and has not been paid or discharged by any Attributable Payment in respect of that CRA Omnibus Beneficiary; and
 - (b) does not form part of a general Reserve held pursuant to Clause 8.2.1(vi) at the time the Permitted Deduction under this Clause 10.3 is made;
- (ii) any Recoverable Turnover Value pursuant to Clause 25.1.1; and
- (iii) Distribution Liabilities (as defined in the Amended and Restated CRA) in accordance with the relevant waterfall set out in clause 60 of the Amended and Restated CRA,

(all such applications being "**Permitted Deductions**"). In respect of any application, Permitted Deductions shall be deemed to have been made as of the relevant Cut-Off Date in respect of that Gross Distribution.

10.4 Each Consenting Beneficiary hereby authorises the Company:

- 10.4.1** to make any Permitted Deduction out of any Gross Distribution that would otherwise be payable to it;
- 10.4.2** to apply any Permitted Deduction as provided for in these Common Terms or the Amended and Restated CRA, as the case may be, including in or towards discharge of any obligation owed to a third party; and
- 10.4.3** where any Permitted Deduction is to be applied in or towards discharge of any obligation owed to the Company, to appropriate that Permitted Deduction in or towards such discharge,

and, if the Company so applies any Permitted Deduction, then it shall thereby discharge the obligation which was the subject of the Permitted Deduction *pro tanto* by the amount of the Gross Distribution so applied.

11 Miscellaneous disposition provisions

11.1 Method of cash distributions

Any distribution to be made by the Company pursuant to the Common Terms will be in US dollars and may be made, at the absolute discretion of the Company, by draft, cheque, wire transfer, other electronic means or as otherwise required or provided in any relevant agreement or applicable law.

11.2 Dispositions on non-Business Days

Any disposition due on a day other than a Business Day shall be made, without interest, on the next Business Day.

11.3 Disposition of excess funds

The Company shall comply with its obligations under section 2.03(c) of the Settlement Agreement to return to LBI any property in the Omnibus Trust which has not been distributed or applied as a Permitted Deduction or applied in a similar manner in respect of Non-Consenting Beneficiaries, or applied towards the discharge of liabilities of LBI Asset Claim Customers as permitted by the Settlement Agreement, it being acknowledged that such assets are not required for application or distribution for the benefit of Consenting Beneficiaries or Non-Consenting Beneficiaries and therefore, with the benefit of information not available to the Company and LBI on execution of the Settlement Agreement, should not have been distributed by the LBI Trustee to LBIE.

12 Distributions to Non-Consenting Beneficiaries

12.1 The Company shall be entitled at any time and from time to time to make a distribution of any property in the Omnibus Trust in or towards the satisfaction of the Trust Entitlements of a Non-Consenting Beneficiary.

12.2 The Company shall be entitled but not obliged at any time and from time to time to take any action in relation to making any distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary (whether in aggregate in excess of what would be the Best Claim of the relevant Non-Consenting Beneficiary or not), including seeking:

12.2.1 an agreement as between the Company and any Non-Consenting Beneficiary;

12.2.2 a Final Order, which may determine whether the Company has to make a distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary;

12.2.3 a Final Order in respect of any distribution of any property in the Omnibus Trust to a Non-Consenting Beneficiary; and/or

12.2.4 a Final Order, the effect of which is to afford the Company protection from liability in its capacity as trustee of the Omnibus Trust or any LBI Distribution.

12.3 The Company is hereby permitted:

12.3.1 not to distribute to the Non-Consenting Beneficiary but instead to deduct, withhold, or otherwise Reserve, an amount in respect of any Tax Burden Liability which the Company believes (in its absolute discretion) it is obliged or which it is prudent to deduct, withhold or Reserve from any distribution to a Non-Consenting Beneficiary and the Company may, but is not obliged to, seek an agreement or terms contained in a Final Order to that effect;

12.3.2 not to distribute to the Non-Consenting Beneficiary but instead to deduct or withhold from the assets otherwise distributable to such Non-Consenting

Beneficiary and appropriate out of that distribution for itself or pay over to the person properly entitled thereto any amounts which are properly recoverable by and for the benefit of the Company or for some other person and which are permitted under the Settlement Agreement to be deducted, withheld or appropriated;

- 12.3.3** to seek to recover by agreement or by a Final Order by way of deduction or withholding any amount which the Company considers it is or should be entitled to recover from any Non-Consenting Beneficiary and appropriate for itself out of amounts which would otherwise be distributed to that Non-Consenting Beneficiary (including amounts in reimbursement of costs and expenses incurred by the Company and amounts in or towards discharge of indebtedness owed to the Company) in each case to the extent permitted under the Settlement Agreement to be deducted, withheld or appropriated; and
- 12.3.4** to make any such deduction, withholding, Reserve, payment or appropriation from assets that would otherwise be distributed to that Non-Consenting Beneficiary from the Omnibus Trust.

PART 5 – INFORMATION

13 Production of Information Packs

13.1.1 Each Consenting Beneficiary hereby acknowledges that:

- (i) it has received from the Company an information pack (such information pack (including its Explanatory Notes) as may be revised pursuant to Clause 13.1.2, the “**Information Pack**”); and
- (ii) its Information Pack included:
 - (a) its 19/9 Position and 19/9 Value;
 - (b) its Aggregate Market Value; and
 - (c) its Best Claim.

13.1.2 All figures in the Information Pack are final and binding on the Consenting Beneficiary and the Company, save to the extent the Company may make an adjustment:

- (i) by agreement between the Consenting Beneficiary and the Company;
- (ii) pursuant to a final resolution or settlement of a Common Terms Dispute in accordance with the Common Terms;
- (iii) to exclude Securities that were included in the 19/9 Position but which the Company determines should not have been recorded as LBI Assets because they never became held by LBI, provided that:
 - (a) no adjustments shall be made pursuant to this Clause 13.1.2(iii) that would reverse any adjustments made under paragraph (iii) of the definition of LBI Assets; and
 - (b) any adjustments pursuant to this Clause 13.1.2(iii) shall only be made where the Company acknowledges that the Customer has, instead of an LBI Asset Claim, a Legal Claim against the Company with respect to those Securities or their proceeds, which is not released under Clause 6 of these Common Terms; or
- (iv) to correct a manifest error.

13.1.3 Without limiting, and subject to, Clause 13.1.2, each Consenting Beneficiary agrees that it shall not be entitled to dispute (and any attempt to do so shall be of no effect), whether pursuant to a Common Terms Dispute or otherwise:

- (i) its 19/9 Position (which it acknowledges and accepts may reflect the exclusion of certain items as set out in paragraph 10.17 of Part III of Section I of the Information Memorandum), which shall be final and binding upon each Consenting Beneficiary;
- (ii) without prejudice to the generality of Clause 13.1.3(i) and notwithstanding any dispute resolution mechanism set out in a CDD, the Company's determination as set out in the 19/9 Position as to whether or not any trade relating to an LBI Asset had settled prior to 19 September 2008, which shall be final and binding upon each Consenting Beneficiary for the purposes of

not only Common Terms Claims and Legal Liabilities arising pursuant to the Common Terms but also for the purposes of any unsecured Legal Claim by or against the Company;

- (iii) the terms of the corporate actions policy described in the explanatory notes provided with the Information Pack (the “**Explanatory Notes**”) as the “**Corporate Actions Policy**” that is used to establish its Aggregate Market Value which Corporate Actions Policy shall be final and binding upon it, provided that nothing in this Clause 13.1.3(iii) is intended to limit the ability of a Consenting Beneficiary to raise a Common Terms Dispute, in respect of an Information Pack Figure, as to whether the terms of such Corporate Actions Policy have been correctly applied by the Company; and
- (iv) the Information Pack Figures, or any other information in or relating to the Information Pack, of any other Consenting Beneficiary or other Customer.

13.1.4 Any information (including Explanatory Notes) provided in or in connection with an Information Pack shall be based on or contain such statements, estimates, projections, assumptions and determinations as the Company may consider necessary or desirable in its absolute discretion (acting in good faith).

13.1.5 Prior to any adjustment to any Information Pack Figures in accordance with Clause 13.1.2, the Company shall, for the purposes of these Common Terms, be entitled to rely and act upon the then current Information Pack Figures.

14 Notices relating to Common Terms Distributions

14.1 Notice of Intended Distribution

14.1.1 If the Company intends to make any Common Terms Distribution to Consenting Beneficiaries it shall, prior to the Cut-Off Date applicable to that Common Terms Distribution, issue a notice (a “**Notice of Intended Distribution**”) Notifying each Consenting Beneficiary of the Company’s intention to make such Common Terms Distribution.

14.1.2 A Notice of Intended Distribution shall contain such information as the Company may consider appropriate (in its absolute discretion) in relation to such Common Terms Distribution but, in any event, shall state the proposed Cut-Off Date and proposed Distribution Date applicable to such Common Terms Distribution.

14.2 Notice of Distribution

14.2.1 No later than seven Business Days prior to the date on which the Company makes a Common Terms Distribution, the Company shall issue a Notice (a “**Notice of Distribution**”) to each Qualifying Consenting Beneficiary.

14.2.2 The Notice of Distribution for each Qualifying Consenting Beneficiary shall contain the following information:

- (i) the name of the Qualifying Consenting Beneficiary and its GAC Code;
- (ii) the intended Distribution Date;
- (iii) the expected Available Funds to be applied or distributed on the Distribution Date;
- (iv) the amount of the Best Claim of that Qualifying Consenting Beneficiary;

- (v) the amount of the Attributable Reserves and Attributable Payments in respect of or attributable to that Qualifying Consenting Beneficiary;
- (vi) the amount of the Gross Distribution of that Qualifying Consenting Beneficiary;
- (vii) the expected amount of the Permitted Deductions of that Qualifying Consenting Beneficiary; and
- (viii) the expected amount of the Net Distribution of that Qualifying Consenting Beneficiary,

together with such other background information and calculations in relation to the items in Clauses 14.2.2(v) to 14.2.2(viii) as the Company may include, in its absolute discretion.

14.2.3 The Company may, but will not be obliged to, for the purposes of a particular Common Terms Distribution:

- (i) issue to any Consenting Beneficiary which is ineligible to be a Qualifying Consenting Beneficiary at the Cut-Off Date in respect of such Common Terms Distribution a Notice of Distribution indicating its ineligibility; and
- (ii) provide via the Portal from time to time to any Consenting Beneficiary which is ineligible to be a Qualifying Consenting Beneficiary such information in relation to any intended Common Terms Distribution as the Company considers appropriate (in its absolute discretion).

14.2.4 All information contained in a Notice of Distribution, with the exception of any Notice of Distribution Figure (where applicable) shall be final and binding on each Consenting Beneficiary.

14.2.5 If:

- (i) there are not matching payment instructions in place at the time of the intended distribution in respect of any Qualifying Consenting Beneficiary; or
- (ii) the Company elects not to make the distribution to some but not all Qualifying Consenting Beneficiaries pursuant to Clause 14.2.6,

then the Company shall not be obliged to increase any of the amounts to be applied or distributed to any other person on that Distribution Date.

14.2.6 The Company shall have the right in its absolute discretion:

- (i) not to proceed with any Common Terms Distribution, in part or in full, whether or not a Notice of Intended Distribution or Notice of Distribution has been issued;
- (ii) not to make a Common Terms Distribution to, or in respect of, one or more Qualifying Consenting Beneficiaries or any Consenting Beneficiary which is or becomes ineligible to be a Qualifying Consenting Beneficiary in relation to such disposition; and
- (iii) not to make a Common Terms Distribution to, or in respect of, any Qualifying Consenting Beneficiary that has not provided two originals of any properly and accurately completed and executed original U.S.

Withholding Tax Form or, to the extent any such Tax form has become obsolete or incorrect or the relevant Qualifying Consenting Beneficiary has not provided such other information as may otherwise be requested by the Company, until such U.S. Withholding Tax Form or other information has been duly or correctly provided, provided that this Clause 14.2.6(iii) shall not apply to the extent that the Company has received a confirmation from such Qualifying Consenting Beneficiary that it does not intend to provide to the Company, or update, any such U.S. Withholding Tax Form or other Tax form.

14.2.7 The Company may make any Net Distribution to a Qualifying Consenting Beneficiary by payment to any bank account (including a bank account where the account holding bank is the Company) of that Qualifying Consenting Beneficiary, details of which have been Notified to the Company via the Portal prior to the Notice of Distribution.

14.2.8 Any Notice of Intended Distribution or Notice of Distribution is issued without any liability (absent fraud) on the part of the Company. The Company shall not be obliged to:

- (i) proceed with the proposed Common Terms Distribution on the basis of the information contained in any Notice of Intended Distribution or Notice of Distribution, or at all; or
- (ii) send any updated notice relating to any such Common Terms Distribution to any Consenting Beneficiary irrespective of whether the details relating to such Common Terms Distribution have subsequently changed.

14.3 Timing and basis of Common Terms Distributions

14.3.1 Without prejudice to any requirement to Notify Consenting Beneficiaries of the intended Distribution Date, the Company may make a disposition to or in respect of one or more Qualifying Consenting Beneficiaries on a date other than the intended Distribution Date if it considers it appropriate (in its absolute discretion).

14.3.2 In making a Common Terms Distribution, the Company may, but is not obliged to, take into account any information which it has become aware of prior to the Distribution Date.

15 Bi-annual statements

15.1.1 The Company will Notify to each Consenting Beneficiary a summary update of the Money and Securities in the Omnibus Trust and the dispositions of Money out of the Omnibus Trust (in such summary form and detail and as at such date as in each case it considers appropriate in its absolute discretion) on a bi-annual basis, provided that:

- (i) the obligation to make available a summary update on a bi-annual basis will not start until 30 June 2014 and will end after the delivery of the Shortfall Claims Determination Notice; and
- (ii) there shall be an interval of no more than 35 weeks between consecutive summary updates.

15.1.2 Any summary update referred to in Clause 15.1.1 shall be provided to Consenting Beneficiaries on a non-reliance basis for information purposes only and shall not be subject to challenge by any Consenting Beneficiary.

16 Confidentiality

16.1 Waiver of confidentiality by Consenting Beneficiaries

16.1.1 Notwithstanding the terms of any other agreement with the Company, all Consenting Beneficiaries authorise the Company to disclose to any person any information which the Company is required to disclose or which it considers to be necessary or desirable to disclose to enable the Consenting Beneficiary Agreements (including the Common Terms) to be administered (including enforced) effectively and/or for the purposes of disclosure as set out in Clauses 13, 14, 15, 16, 18.2 and 42, including:

- (i) any disclosure to any Tax Authority in respect of the identity and other information of any Consenting Beneficiary as may be required by law or otherwise necessary or prudent to be disclosed in order for the Company to avoid or minimise the imposition of any penalties or withholding or otherwise in connection with the Tax affairs of the Company (as well as any disclosure authorised by Clause 18.2);
- (ii) any other disclosure made by the Company to a Tax Authority pursuant to Clause 18.2 or in connection with the Taxation affairs of the Company or any Taxation consequences affecting a Cumulative Gross Allocation, Gross Distribution or Net Distributions of, or Permitted Deductions from, Trust Financial Assets (including any disclosures related to amounts that represent Tax Burden Liabilities held as a Tax Reserve);
- (iii) any disclosure required by law or by any court of competent jurisdiction, the rules and regulations of any regulatory body or stock exchange or any enquiry or investigation or any disclosure required or requested (whether formally or informally) by any governmental, official or regulatory body of a competent jurisdiction which is lawfully entitled to require such disclosure;
- (iv) any disclosure by the Company to CAPCO of any information received or generated by the Company pursuant to the Common Terms;
- (v) any disclosure by the Company to a person against whom Proceedings in any court of competent jurisdiction have been brought, as to whether the person bringing such Proceedings is a Consenting Beneficiary;
- (vi) any disclosure by the Company of details in connection with any Securities held in the Omnibus Trust including Reserved Securities;
- (vii) any disclosure to LBI, the LBI Trustee, SIPC or pursuant to or in connection with the Settlement Agreement (including any Onward Distribution Report as defined in the Settlement Agreement);
- (viii) any disclosure to any Released Person; and
- (ix) any disclosure to an entity appointed pursuant to Clause 18.7.

16.1.2 Notwithstanding the terms of any other agreement with the Company, all Consenting Beneficiaries authorise:

- (i) any disclosure by the Administrators to any subsequent supervisor, liquidator or other officeholder of the Company;
- (ii) any disclosure or use required in the exercise of the statutory duties of the Administrators or to the extent required by current insolvency practice or to enable the Administrators to carry out properly the duties of their office; and
- (iii) any disclosure by the Company to a third party storage provider that provides disaster recovery or data back-up services to the Company or to the Administrator's firm.

16.2 Restricted information

Subject to Clauses 16.1.1(v) and 18.6, no Consenting Beneficiary shall have any right pursuant to the Common Terms to obtain from the Company any information regarding:

16.2.1 any other person which is held by the Company; or

16.2.2 the identity, quantity or any other details of any Security forming part of (or which may form part of) any LBI Distribution including Reserved Securities, and each Consenting Beneficiary hereby confirms and agrees that it has no right to obtain disclosure to it or to any other person of any such information relating to such Securities.

PART 6 – REPRESENTATIONS AND UNDERTAKINGS

17 Provision of representations and warranties, and certain covenants

17.1 Initial Representations

Each Consenting Beneficiary represents and warrants to the Company that as at the date its OSA Offer is made (if applicable) and its Consenting Beneficiary Accession Date (save to the extent that the Company otherwise agrees in accordance with Clause 17.6):

- 17.1.1** it is duly organised and validly existing under the laws of its jurisdiction of incorporation, or (if not applicable) under the laws of which it is established, and in good standing and has full power and authority to conduct its business activities;
- 17.1.2** it has (or, in respect of completed actions, at the relevant time had) the power to execute and deliver the relevant Consenting Beneficiary Agreement (and, if applicable, submit electronically or otherwise any Consenting Beneficiary Accession Document) and any documentation relating to the relevant Consenting Beneficiary Agreement to which it is a party (including any evidence of due authority, evidence in relation to any Common Terms Dispute and any Tax form or document) and to perform its obligations under the relevant Consenting Beneficiary Agreement and any documentation relating to the relevant Consenting Beneficiary Agreement to which it is a party and has taken all necessary action to authorise such execution, delivery, submission and performance;
- 17.1.3** such execution, delivery, submission and performance does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any term or provision of any agreement or instrument binding on or affecting it or any of its assets, and will not result in a breach of, or constitute a default or termination event under, any such agreement or instrument;
- 17.1.4** all actions or things required to be taken, fulfilled or done (including the obtaining of any consent or licence or the making of any filing or registration) by it with respect to the relevant Consenting Beneficiary Agreement (and, if applicable, any Consenting Beneficiary Accession Document) have been taken, fulfilled or done and are in full force and effect and all conditions of any such consents have been complied with;
- 17.1.5** its obligations under the relevant Consenting Beneficiary Agreement (and, if applicable, any Consenting Beneficiary Accession Document) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in proceedings in law));
- 17.1.6** it has made any statements and/or certifications required to be made by it on any Tax form or document delivered by it under Clause 18.5 and all such statements and/or certifications made by it pursuant to Clause 18.5 are true and correct and not misleading in any way; and
- 17.1.7** there is not pending or, to its knowledge, threatened against it any Proceedings that are likely to affect the legality, validity or enforceability against it of the relevant

Consenting Beneficiary Agreement or its ability to perform its obligations under the relevant Consenting Beneficiary Agreement,

(each an “**Initial Representation**”).

17.2 Information Representations

17.2.1 Each Consenting Beneficiary represents and warrants to the Company (save to the extent that the Company otherwise agrees in accordance with Clause 17.6) that:

- (i) the details of the Common Terms Dispute (if any) which it has supplied with its Consenting Beneficiary Accession Document or, if applicable, at a later point in time in accordance with Part 10 of the Common Terms are to the best of its knowledge and belief true, complete, accurate and not misleading;
- (ii) it is the legal owner of each LBI Asset Claim set out in its Information Pack and the beneficial owner, or acting with the authority of the beneficial owner, of each LBI Asset Claim set out in its Information Pack, free of any Security Interest (other than a Security Interest (if any) in favour of the Company or any of its Affiliates);
- (iii) it has received no recoveries from or on behalf of LBI in respect of or in connection with its LBI Asset Claims or Trust Entitlements; and
- (iv) it believes, after making due and careful enquiries, that any further information provided by it to the Company in accordance with the relevant Consenting Beneficiary Agreement, whether in response to requests for information from the Company or the Common Terms Dispute Expert, or otherwise, is true, complete, accurate and not misleading.

17.2.2 Each Consenting Beneficiary represents and warrants to the Company that it has validly released or will have validly released by the Common Terms Effective Date irrevocably and unconditionally any LBI Duplicate Claim which it has or may have remaining as of the Common Terms Effective Date (the representation and warranty in this Clause 17.2.2, together with those in Clause 17.2.1, being an “**Information Representation**”).

17.2.3 The Information Representations are made:

- (i) in the case of the representations in Clauses 17.2.1(i) (in respect of the details of a Common Terms Dispute (if any) which has been supplied with a Consenting Beneficiary Accession Document) to 17.2.1(iii), as at the date an OSA Consenting Beneficiary’s OSA Offer is made (if applicable) and as at the relevant Consenting Beneficiary Accession Date;
- (ii) in the case of the representation in Clause 17.2.1(iv), as at the time of submission of any information requested by the Company or the Common Terms Dispute Expert in respect of any Common Terms Dispute set out in its Common Terms Dispute Notice; or
- (iii) in the case of the representation in Clause 17.2.2, on the Common Terms Effective Date.

17.3 Repetition

Each Consenting Beneficiary shall be deemed to repeat in full the Representations contained at Clauses 17.2.1(ii) and 17.2.1(iii) on the Common Terms Effective Date and each Distribution Date.

17.4 Covenant to Notify incorrect or misleading Representations

Each of the Consenting Beneficiaries undertakes that, if it becomes aware that any Representation given by it under this Clause 17 was incorrect or misleading in any material respect when made or repeated, it shall Notify the Company of this as soon as reasonably practicable.

17.5 Legal Claim for breach of Representation

The Company may make a Legal Claim for damages against any Consenting Beneficiary for breach of any of the Representations or failure to comply with any covenants set out in this Clause 17, whether or not the relevant facts, matters or circumstances giving rise to the breach of any Representations were known to the Company, or could have been discovered (whether by any investigation made by or on behalf of the Company or otherwise) save as agreed in accordance with Clause 17.6.

17.6 Disclosure

A Consenting Beneficiary will not be in breach of any Representation or liable for any failure to comply with any covenant set out in this Clause 17 to the extent that:

17.6.1 prior to the date for making any Representation or complying with such covenant, it has disclosed to the Company in writing:

- (i) any facts, matters or circumstances which, but for the operation of this provision, would have resulted in such Consenting Beneficiary being in breach of a Representation or failing to comply with such a covenant; and
- (ii) the Representations and/or such covenants against which disclosure is being made; and

17.6.2 the Company has notified the Consenting Beneficiary in writing that it accepts such disclosure as absolving the Consenting Beneficiary of any Legal Liability in respect of such Representations and/or covenants with respect to the facts, matters or circumstances so disclosed.

17.7 No inducement

Each Consenting Beneficiary:

17.7.1 acknowledges that it has not been induced to enter into any Consenting Beneficiary Agreement by any representation, warranty, promise or assurance by the Company or any other person, save for those (if any) contained in the relevant Consenting Beneficiary Agreement; and

17.7.2 agrees that, except in respect of fraud, it has no right or remedy in respect of any representations, warranties, promise or assurance save for those rights and remedies specifically contained in the relevant Consenting Beneficiary Agreement.

17.8 Withholding tax acknowledgment

Each Consenting Beneficiary acknowledges on its Consenting Beneficiary Accession Date that:

- 17.8.1** it may, but is not obliged to, deliver to the Company two originals of any Tax forms (including any U.S. Withholding Tax Form) referred to in Clause 18.5 at the time of the OSA Offer or of approval or non-approval of the Resolution, or at a later point in time, to the extent not delivered at the time of the OSA Offer or of approval or non-approval of the Resolution, or to the extent such Tax forms have become obsolete or incorrect or may otherwise be requested by the Company;
- 17.8.2** the Company may, in its absolute discretion, elect to defer any disposition in accordance with Clause 14.2.6(iii);
- 17.8.3** withholding or deduction in respect of U.S. withholding taxes, U.S. backup withholding or FATCA may be required from dispositions, if any, made to or in respect of it whether or not it has submitted (or in the future submits) a U.S. Withholding Tax Form, unless that U.S. Withholding Tax Form is correct and complete and the Company is entitled based on such U.S. Withholding Tax Form to make such disposition without reduction for U.S. withholding taxes, U.S. backup withholding, or FATCA withholding tax, as appropriate; and
- 17.8.4** if it does not provide the relevant form or does not do so in a timely fashion, dispositions to or in respect of it will be reduced by the amount of any applicable U.S. withholding tax, U.S. backup withholding, or FATCA withholding tax or any other applicable U.S. Tax as may be determined by the Company or its agents to be appropriate.

PART 7 – TAX

18 Tax

18.1 Power to withhold Tax

The Company may, in its absolute discretion, deduct, withhold or Reserve any amounts:

- 18.1.1 for or on account of any Tax due or payable to a Tax Authority, whether required by law or pursuant to any agreement binding on the Company; or
- 18.1.2 which in the reasonable opinion of the Company may be prudent to deduct, withhold or retain (including as part of a Tax Reserve),

in each case, in relation to:

- (i) any LBI Distribution, any Cumulative Gross Allocation, any Gross Distribution, any Permitted Deductions, any Net Distribution or any payment made, to be made, or deemed to be made in the process of implementing and/or operating the relevant Consenting Beneficiary Agreement; or
- (ii) any payment which the Company is treated as making for any Tax purposes (including circumstances where a payment is made, or treated as being made, because a Legal Claim against the Company is set off against a Legal Liability which is owed to the Company).

18.2 Disclosure to Tax Authorities and Released Persons

Irrespective of whether it is required to do so by law and in addition to its rights under Clause 16.1.1, the Company may make any disclosures or reports to any Tax Authority or Released Person which it considers (in its absolute discretion) are either necessary or desirable to make in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of any relevant Consenting Beneficiary Agreement.

18.3 Tax certificates

Save as required by law and subject to Clause 18.6, the Company is not obliged to provide any Tax certificates in respect of any dividends or other payments made or received in respect of any Securities forming the basis of a Consenting Beneficiary's LBI Asset Claim or any LBI Distribution or the Omnibus Trust, and the Company shall have no liability for any withholding or deduction made in respect of any such dividend or other payment as a result of the Company not providing any such Tax certificate.

18.4 Tax liabilities

18.4.1 An amount equal to:

- (i) any actual or reasonably anticipated Tax liability (and any interest or penalties in respect of such Tax liability) of any LBI Asset Claim Customer or the Company (in any capacity, including as trustee of the Omnibus Trust), other than any Tax liability of the Company imposed on the Company's actual net income, profits or gains beneficially earned and received by the Company (as opposed to the Omnibus Trust or the Company's agents); and

- (ii) any amounts for or on account of Tax which are required to be deducted, withheld or retained by the Company or, which in the reasonable opinion of the Company may be prudent to deduct, withhold or retain (including as part of a Tax Reserve), in the process of implementing and operating the relevant Consenting Beneficiary Agreement (or otherwise administering the Trust Financial Assets), including any Tax liabilities or related costs arising from:
 - (a) receipt of any LBI Distributions;
 - (b) the management, holding and/or sale of Trust Financial Assets;
 - (c) the application of amounts in respect of, or payment of distributions to, Qualifying Consenting Beneficiaries or Non-Consenting Beneficiaries (including as directed in accordance with the Common Terms); and
 - (d) capital or income earned or received (or deemed to be earned or received for any Tax purposes) on any Trust Financial Asset, and any other Taxes arising as a result of receiving, holding or causing to be applied or distributed any part of the Trust Financial Assets,

(such Tax liabilities, amounts and costs collectively, the “**Tax Burden Liability**”) shall be borne by the Consenting Beneficiaries in accordance with Clauses 8, 9 and 10 and this Part 7 (except to the extent any part of such Tax Burden Liability is properly allocable to and borne by any Non-Consenting Beneficiary pursuant to any relevant agreement between the Company and such Non-Consenting Beneficiary or any Final Order in relation to a Non-Consenting Beneficiary’s Trust Entitlement or in accordance with applicable law) whether chargeable directly or primarily against, or attributable directly or primarily to, the Consenting Beneficiaries (or to Cumulative Gross Allocations of, or Gross Distributions made to, Consenting Beneficiaries) or any other person.

18.4.2 The Company shall be entitled:

- (i) to Reserve for, and/or to reduce, any Cumulative Gross Allocation or any Gross Distribution or other payment or discharge that may ultimately be made out of the LBI Distributions and other Trust Financial Assets constituting the Omnibus Trust by, the amount of such Tax Burden Liability (or any part thereof) in accordance with Clauses 8, 9 or 10 and subject to Clause 18.4.3;
- (ii) to be indemnified on an after-Tax basis out of amounts held in the Omnibus Trust (including any Tax Reserve) in respect of any Tax Burden Liability borne or payable by the Company in its capacity as trustee of the LBI Distributions (whether held in the Omnibus Trust (including any Tax Reserve) or otherwise); and
- (iii) subject to Clause 18.4.3, otherwise to deduct and/or retain amounts from any Gross Distribution or other amounts in satisfaction (or partial satisfaction) of such Tax Burden Liability.

18.4.3 To the extent the Company reasonably considers that any part of the Tax Burden Liability for which it is making:

- (i) a Reserve is attributable to one or more Consenting Beneficiaries, it may treat it as an Attributable Reserve in accordance with and subject to Clause 8.2.3;
- (ii) a payment or discharge of an obligation made from the Omnibus Trust (including any Reserve) is attributable to one or more Consenting Beneficiaries, it may treat it as an Attributable Payment in accordance with and subject to Clause 8.2.3; and
- (iii) a Permitted Deduction is attributable to one or more Consenting Beneficiaries, it may allocate that portion of the Tax Burden Liability as Permitted Deductions to such Consenting Beneficiaries in the same manner as that described in Clause 8.2.3, and, to the extent the Company reasonably considers that any part of the Tax Burden Liability for which it is making Permitted Deductions cannot be so allocated, it may allocate that portion of the Tax Burden Liability to all Consenting Beneficiaries *pro rata* to each Consenting Beneficiary's Trust Entitlement.

18.4.4 If any part of the Tax Burden Liability was applied by way of a Permitted Deduction pursuant to Clause 10, but such amount represents a Tax Burden Liability that the Company, in its absolute discretion, determines will not become due or payable to any Tax Authority, on a Distribution Date following the date on which the Company makes such a determination, and to the extent this amount has not previously been distributed by the Company, such amounts will be distributed to the relevant Qualifying Consenting Beneficiary in accordance with the calculations in Parts 3 and 4 or otherwise Reserved by the Company (in its absolute discretion, subject to Clause 18.4.3).

18.4.5 If the Company determines, in its absolute discretion, that any part of the Tax Burden Liability in any Tax Reserve represents an amount that will not become due or payable to any Tax Authority, such part of the relevant Tax Reserve may (at the absolute discretion of the Company) cease to be held as a Reserve or instead Reserved for some other purpose.

18.5 Tax obligations

A Consenting Beneficiary will:

18.5.1 upon becoming a Consenting Beneficiary; and

18.5.2 as soon as reasonably practicable after any written request by the Company,

deliver to the Company at Trust Property Level 23, 25 Canada Square, Canary Wharf, London E14 5LQ, United Kingdom (marked for the attention of Tax Department) two originals of any U.S. Withholding Tax Forms (to the extent such Consenting Beneficiary would like to claim any available exemption from, or reduction in the rate of, U.S. withholding tax, backup withholding, or FATCA withholding tax on dispositions under these Common Terms) or such other document or information:

- (i) which might enable the Company or any other Consenting Beneficiary to mitigate any liability to Tax or to reclaim any amount deducted or withheld,

whether by the Company or any other person, for or on account of any Tax;
or

- (ii) in order to allow the Company to make a payment in accordance with the relevant Consenting Beneficiary Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate,

in each case with any such form, document or other information necessary for such U.S. Withholding Tax Forms or such other document or information to be accurate and completed in a manner reasonably satisfactory to the Company.

18.6 Non-confidential information

The Company will, at the expense of a Consenting Beneficiary, pass on to that Consenting Beneficiary any non-confidential information (if any) that is in the Company's possession or control which that Consenting Beneficiary might reasonably request to assist that Consenting Beneficiary in reclaiming any Tax, or claiming credit or other relief in respect of amounts for or on account of any Tax withheld or deducted by the Company or any other person.

18.7 Withholding agent

The Company may, but shall not be required to, appoint:

18.7.1 a U.S. person that is a "financial institution" within the meaning of US Treasury Regulations § 1.1441-1(b)(2)(ii); or

18.7.2 any person that is a "qualified intermediary" within the meaning of US Treasury Regulation § 1.1441-1(e)(5)(ii),

to receive any LBI Distribution and to deal with the Trust Financial Assets as appropriate, including paying any Net Distributions, making any Reserves or payment out of Reserves, withholding, deduction, disclosure or reporting permitted by this Clause 18 in respect of any amounts received or to be received for or on account of any Consenting Beneficiary or Non-Consenting Beneficiary and in respect of any amounts paid or credited to the account of any Consenting Beneficiary or any Non-Consenting Beneficiary and the Company shall be deemed to have satisfied its duty of care in selecting a custodian, nominee, agent or other person referred to in Clause 21.7.1 if it appoints such a person as custodian, nominee or otherwise as contemplated by Clause 21.7.1.

PART 8 – MANAGEMENT OF TRUST FINANCIAL ASSETS BY COMPANY

19 Segregation

19.1 Segregation of the Omnibus Trust

The property held in the Omnibus Trust from time to time shall be:

19.1.1 segregated, and held separate from the assets of the Company forming part of the general estate of the Company available to its general unsecured creditors; and

19.1.2 held in one or more accounts by or on behalf of the Company in its capacity as trustee for the benefit of the relevant Consenting Beneficiaries and any other person (if any) entitled in law to any such property.

19.2 Segregation where Company treated as a Consenting Beneficiary

Where the Company is entitled to be treated as a Consenting Beneficiary pursuant to Clause 28, the Company shall continue to maintain the segregation of the Omnibus Trust (including any part attributable to the Company in its capacity as a Consenting Beneficiary) from the assets of the Company forming part of the general estate of the Company available to its general unsecured creditors, save to the extent any such part attributable to the Company in its capacity as a Consenting Beneficiary is applied as permitted by Clause 10.2 or paid to the Company as a Net Distribution in accordance with the Common Terms.

19.3 Holding and investment of Trust Financial Assets

Any Money or Securities (including Derived Financial Assets) resulting from the deposit or reinvestment of a Trust Financial Asset shall, when they are received and after any Tax deducted at source, be added to and treated as part of the Omnibus Trust and held on trust in accordance with Clause 8.1.

20 Sale of LBI Distribution

20.1 Sale for cash

Subject to Clauses 20.3 and 20.4, the Company may sell for cash consideration, in the manner and in the timescale set out in this Clause 20, any Security held in the Omnibus Trust which is not already held in the form of US dollar denominated cash. Sale for the purpose of this Clause 20 includes any conversion or exchange of non-US dollar denominated sale proceeds or Money into US dollar denominated cash. The Company shall be entitled to convert such proceeds or Money (as applicable) into US dollars at a rate of exchange for the purchase of US dollars with such currency available to the Company at the time of receipt of such proceeds or Money (as applicable), or on such other date as the Company may select at its absolute discretion.

20.2 Consent and authority to sell

Each Consenting Beneficiary hereby authorises, consents and unconditionally agrees to the Company:

20.2.1 having the power to deal with any Security or Money from time to time held in the Omnibus Trust including the power to sell and give good receipt for any sale proceeds in respect thereof; and

20.2.2 providing any assurance to any person in its capacity as trustee of the Omnibus Trust or on behalf of the Consenting Beneficiaries as to the Company's entitlement

to deal with such Securities and Money and the validity of any sale process in respect of such Securities and Money.

20.3 Proceeds of sale

The Company shall hold the proceeds from the sale of any assets comprised in the Omnibus Trust on trust as part of the Omnibus Trust.

20.4 Timescale of sale

The Company may in its absolute discretion choose not to sell at all or for a period of time any Trust Financial Asset consisting of a Security and, in particular, the Company shall have an absolute discretion to delay, not delay and/or stagger sales as it considers appropriate (in its absolute discretion).

20.5 No liability with respect to timing of sale

The Company shall have no liability (absent fraud) to any Consenting Beneficiary for any loss alleged to be attributable to a delay in selling any Security or otherwise with respect to the timing of the sale of any Security.

20.6 Protection from fall in value of Securities

If the Company has Reserved or considers that it may in the future Reserve specific Securities in relation to Legal Claims, then the Company may, but shall be under no obligation to, seek and/or arrange insurance, indemnities or other protections from third parties in respect of any change in the value of those Securities.

20.7 General power

The Company may sell any Security to any person under a sale effected in accordance with this Clause 20 including to a person who is or may be a Customer.

21 Role of the Company with regard to Trust Financial Assets

21.1 Duties

Each of the Consenting Beneficiaries agrees that the Company shall have only those duties, obligations and responsibilities with respect to the Trust Financial Assets as are expressly specified in the relevant Consenting Beneficiary Agreement (and no others shall be implied).

21.2 Instructions

Each Consenting Beneficiary agrees that the Company is irrevocably authorised and instructed:

21.2.1 to act or not to act (at the Company's absolute discretion) in relation to the Trust Financial Assets including in connection with the management, segregation, sale and investment of Trust Financial Assets as contemplated by the Common Terms; and

21.2.2 generally, to exercise any power, discretion or authority relating to Trust Financial Assets as is expressed in or contemplated by or in connection with the Common Terms,

in each case without any further authority or instruction of any kind from any Consenting Beneficiary and even if any contrary authority or instruction is or is purported to be given by or on behalf of any Consenting Beneficiary.

21.3 Standard of care of the Company

21.3.1 Subject to Clause 6.1 and this Clause 21.3 and the other provisions of the Common Terms, the Company shall act in accordance with the standard of care imposed on a reasonable trustee in respect of the management, sale and investment of the Trust Financial Assets.

21.3.2 The Consenting Beneficiaries agree that the Company shall have no liability to any of them in connection with its duties set out in Clause 21.1 and this Clause 21.3 and any other provision of either Consenting Beneficiary Agreement, absent fraud on the part of the Company.

21.3.3 Having regard to the duties of the Company relating to the Common Terms but subject to the qualifications in Clauses 6.1 and 21.3.2 and any other provision of the Common Terms, the Company:

- (i) shall not, save as permitted by the Common Terms:
 - (a) take, or (to the extent that, in its capacity as trustee, it has the power to control) permit another person to take, any action which would result in any Trust Financial Assets ceasing to be Trust Financial Assets but this shall not limit the Company's ability to sell any Trust Financial Asset (on terms that the proceeds of such sale become Trust Financial Assets), make distributions and applications and to account to the person beneficially entitled thereto in accordance with the Common Terms; and
 - (b) omit to take, or (to the extent that, in its capacity as fiduciary, it has the power to control) permit another person to omit to take, any action the omission of which would result in Trust Financial Assets ceasing to be Trust Financial Assets;
- (ii) may, but shall not be obliged to, pending any sale, distribution and/or application in respect of any Trust Financial Asset pursuant to Clause 10.2:
 - (a) deposit prudently any Trust Financial Assets; and/or
 - (b) invest any Trust Financial Assets in any Money or Securities as it considers appropriate (in its absolute discretion) and vary, re-invest or sell any such Money or Securities.

21.3.4 However, notwithstanding Clauses 21.1, 21.3.1 and 21.3.3 or any other term of any Consenting Beneficiary Agreement:

- (i) nothing in any Consenting Beneficiary Agreement shall impose on the Company any obligation to any person other than any party to any Consenting Beneficiary Agreement;
- (ii) the Company shall not be obliged to take any action, or refrain from taking any action, or to procure the same in respect of any other person (to the extent it has power to do so):

- (a) if it would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty or duty of confidentiality; and
- (b) until the Company has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with any Consenting Beneficiary Agreement;
- (iii) nothing in any Consenting Beneficiary Agreement shall require any interest, penalty or return (howsoever described) to be paid by the Company on any sum owing to such Consenting Beneficiary whether such interest, penalty or return (howsoever described) is referable to a delay, deferral, dispute or otherwise; and
- (iv) nothing in any Consenting Beneficiary Agreement shall restrict the Company from entering into a settlement with any Non-Consenting Beneficiary.

21.3.5 Section 1 of the Trustee Act 2000 shall not apply to the duties of the Company in relation to the trusts constituted by or referred to in the relevant Consenting Beneficiary Agreement (including any trust referred to in Clause 8.1 for the benefit of Consenting Beneficiaries). Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of the relevant Consenting Beneficiary Agreement, the provisions of the relevant Consenting Beneficiary Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of any relevant Consenting Beneficiary Agreement shall constitute a restriction or exclusion for the purposes of that Act.

21.3.6 Notwithstanding any other provision of the Common Terms, any liability for fraud shall not be excluded.

21.4 The Company's duty to collect in Trust Financial Assets

Subject to the right of the Company to elect to have LBI or the LBI Trustee defer any LBI Distribution pursuant to Section 8.02(c)(A) of the Settlement Agreement, the Company shall, to the extent that it is able to do so in its capacity as trustee, use reasonable endeavours to collect from LBI the Securities and/or Money comprised in the LBI Distributions and to remove any impediment on any Security or Money so received being Trust Financial Assets, provided that the Company shall not be required to transfer any asset to which the Company is absolutely entitled nor to expend any amount on discharging any Legal Liability attaching to or associated with any Security or Money. If there is any such Legal Liability then the cost of discharging it shall be borne by the Omnibus Trust.

21.5 Right of the Company to make appropriations

The Company shall not appropriate for itself any Trust Financial Assets save in accordance with, and to the extent of, its rights to make a Permitted Deduction or receive Net Distributions pursuant to the Common Terms or pursuant to Clause 12.

21.6 Reliance on advice and services

The Company may engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, investment banks or other experts or professional advisers (whether obtained by the Company or by any other person) whose advice or

services may at any time seem necessary, expedient or desirable including in connection with the valuation, receipt, holding, investment or sale of any asset forming part of or derived or converted from any property in the Omnibus Trust.

21.7 Appointment of custodians, nominees and agents

21.7.1 The Company may appoint and pay any person to act as a custodian, nominee or agent on any terms in relation to any Trust Financial Assets as the Company may determine, including for the purpose of depositing with a custodian any document relating to any trust contemplated by the relevant Consenting Beneficiary Agreements and the Company shall not be responsible (absent fraud) under or in connection with the relevant Consenting Beneficiary Agreement for any loss or Legal Liabilities incurred or in respect of any Legal Claim or any proceedings brought by reason of the misconduct, omission or default on the part of any person appointed by it or be bound to supervise the proceedings or acts of any such person.

21.7.2 Without prejudice to any right on the part of the Company itself to take action against any such custodian, nominee, agent or other person appointed by or on behalf of the Company which right shall not be excluded by any term of any Consenting Beneficiary Agreement, such custodian, nominee, agent or other person shall be entitled to benefit (absent fraud) from the exculpatory provisions in Clause 21.3 as if it were the Company.

21.8 Indemnity insurance

The Company may, but shall be under no obligation to, purchase and maintain, indemnity insurance against any future Legal Liability in connection with any LBI Asset Claim, Trust Entitlement or Trust Financial Asset.

21.9 Hedging

The Company may, but shall be under no obligation to, enter into hedges in connection with one or more Trust Financial Assets. If it does so, then the Company will obtain advice from a reputable investment adviser on the form and pricing of the hedge. The benefit and the burden of any such hedge shall accrue to and be borne by the Omnibus Trust.

22 Corporation Events, Corporate Actions and Derived Financial Assets

22.1 No obligation on the Company

The Company may but shall be under no obligation to take any steps with regard to any Corporate Action or Corporation Event in relation to Securities which are held in the Omnibus Trust and each Consenting Beneficiary agrees that, except in the case of fraud, the Company shall not be liable to it by virtue of taking or failing to take any steps with regard to any Corporate Action or Corporation Event.

22.2 Derived Financial Assets form part of Trust Financial Assets

To the extent that any Derived Financial Assets (including any income) are actually received by the Company as a result of the occurrence of a Corporate Action or a Corporation Event relating to a Trust Financial Asset, such Derived Financial Assets will be held in the Omnibus Trust.

23 Conflict of interest

Each Consenting Beneficiary hereby authorises the Company to act under the Consenting Beneficiary Agreements (including the Common Terms) notwithstanding that the Company, or any of its Affiliates, may have a material interest in the Omnibus Trust and Settlement Agreement or that the Company may have a conflict of duty or interest.

24 Settlement Agreement

The Company shall, having regard to the Common Terms Claims of the Consenting Beneficiaries, as a whole, comply with its obligations under the Settlement Agreement as they relate to the Omnibus Trust and take such action as may be reasonable in all circumstances to enforce its rights under the Settlement Agreement as they relate to the Omnibus Trust, where any non-compliance or failure to take such action, respectively, could impact materially and adversely on the LBI Distributions.

PART 9 – MISCELLANEOUS

25 Turnover

25.1 Recoveries by Consenting Beneficiaries

25.1.1 If a Consenting Beneficiary receives or recovers from any person (whether on, prior to or after the Consenting Beneficiary Accession Date) any amount relating to its LBI Asset Claim, the LBI Distributions, the Omnibus Claim or its Trust Entitlement (subject to the provisos below, each a “**Turnover Recovery**” and the USD Value of such Turnover Recovery, as at the date of receipt or recovery, being its “**Recoverable Turnover Value**”), then it shall immediately Notify the Company of such Turnover Recovery following the later of the Common Terms Effective Date and the date of such Turnover Recovery and (whether or not it Notifies the Company) (at the Company’s election):

- (i) the subsequent Gross Distribution(s) of such Consenting Beneficiary shall be reduced accordingly by the Recoverable Turnover Value; or
- (ii) following the later of the Common Terms Effective Date and the date of such Turnover Recovery such Consenting Beneficiary shall pay in cash immediately to the Company for the account of the Omnibus Trust (subject to any withholdings or deductions such Consenting Beneficiary is required by law to make from such payment to the Company) the Recoverable Turnover Value or such amount as would leave such Consenting Beneficiary in no better or worse after-tax position than it would be in had it not received such Turnover Recovery,

provided that, in respect of both Clauses 25.1.1 and 25.1.1(ii), if the Recoverable Turnover Value constitutes or may result in any “Customer Double Recovery” as defined in the Settlement Agreement, then notwithstanding any other provision of any Consenting Beneficiary Agreement:

- (a) the Company shall be entitled to apply the proceeds of such Customer Double Recovery in accordance with Section 2.06(b) of the Settlement Agreement; and
- (b) the Consenting Beneficiary shall co-operate and do all that is necessary or desirable in the opinion of the Company to enable the prompt compliance by the Company with its obligations under and in connection with the Settlement Agreement in connection with any such Customer Double Recovery, and

further provided that the following receipts or recoveries shall be excluded from the definition of Turnover Recovery and Recoverable Turnover Value:

- (I) a permitted recovery pursuant to any Consenting Beneficiary Agreement;
- (II) a recovery pursuant to any CAPCO policy or LBHI guarantee of the Company’s or LBI’s obligations; or
- (III) a recovery (other than a recovery described in paragraph (II) above) under a Third Party Support Obligation in respect of a Legal Claim but, for the purpose of this paragraph (III), only

that part of any such recovery which, when aggregated with all other recoveries in respect of such Legal Claim, does not exceed such Legal Claim.

25.1.2 Amounts to be turned over in accordance with Clause 25.1.1 include any amount received or recovered from any person:

- (i) in relation to any Released Common Terms Claim or from LBI in relation to any LBI Duplicate Claim; and
- (ii) whether in satisfaction of an order, judgment, decision or award of a court or tribunal, whether in contravention of Clause 7.1 or otherwise, or a settlement or otherwise.

25.2 Covenants in relation to Intermediary Consenting Beneficiary Distribution

Each Consenting Beneficiary undertakes to the Company, as at the Common Terms Effective Date, that where the Consenting Beneficiary:

25.2.1 has received an Intermediary Consenting Beneficiary Distribution on or prior to the Consenting Beneficiary Accession Date, promptly after the later of the Common Terms Effective Date and its relevant Consenting Beneficiary Accession Date; or

25.2.2 receives an Intermediary Consenting Beneficiary Distribution after the Consenting Beneficiary Accession Date, promptly following the later of the Common Terms Effective Date and the receipt of such Intermediary Consenting Beneficiary Distribution,

the Consenting Beneficiary shall:

- (i) provide Notice of such Intermediary Consenting Beneficiary Distribution to the Company, together with information in reasonable detail about it; and
- (ii) (whether or not it Notifies the Company) turn over to the Company such Intermediary Consenting Beneficiary Distribution to the extent required in accordance with Clause 25.1 (assuming for the purpose of this Clause 25.2 that any reference to the Recoverable Turnover Value in Clause 25.1.1 includes a reference to such Intermediary Consenting Beneficiary Distribution).

26 Third Party Support Obligations

26.1 Surviving Third Party Supported Claims

If:

26.1.1 the release by a Consenting Beneficiary of a Legal Claim which it has against any Released Claim Party pursuant to Clause 6.1 would affect a guarantee, indemnity or other obligation given by a Third Party (excluding any Released Claim Party) in respect of that Legal Claim (a "**Third Party Support Obligation**"), such that the Third Party Support Obligation would be extinguished by such release; and

26.1.2 no Legal Liability (including by reason of any subrogation or counter-indemnity) on the part of any Company-Related Released Party to such Third Party or any other person might arise or subsist under or in connection with any such Third Party Support Obligation,

then, notwithstanding Clause 6.1, that Released Common Terms Claim (a “**Surviving Third Party Supported Claim**”) shall not be released by the Consenting Beneficiary but shall continue to exist to the extent necessary for the Third Party Support Obligation to remain effective.

26.2 No entitlement to enforce Surviving Third Party Supported Claims

Notwithstanding Clause 26.1, no Consenting Beneficiary shall be entitled to make, enforce or prove any Legal Claim against any Released Claim Party in respect of such Surviving Third Party Supported Claim, whether in any legal proceedings, by way of proof in any insolvency proceedings affecting any Released Claim Party or by way of set-off, netting, counterclaim or attachment or against any person who may derive a Legal Claim in respect of a Surviving Third Party Supported Claim, whether by reason of subrogation or otherwise.

26.3 Consenting Beneficiaries’ rights in respect of Surviving Third Party Supported Claims

Surviving Third Party Supported Claims shall be treated as Released Common Terms Claims and shall not be taken into account by the Company for the purposes of calculating the Common Terms Claims of the relevant Consenting Beneficiary.

26.4 Discharge of Surviving Third Party Supported Claims

Satisfaction by any person of a Common Terms Claim in respect of a Surviving Third Party Supported Claim of the Consenting Beneficiary shall constitute a valid discharge *pro tanto* of the Surviving Third Party Supported Claim against any Company-Related Released Party.

26.5 Limited recourse

No person shall have any recourse in respect of a Surviving Third Party Supported Claim, other than against the Third Party with the relevant Third Party Support Obligation.

27 Effect of the Common Terms on Legal Claims

Save as regards any reduction in Legal Liability as a result of any appropriation by way of Permitted Deductions in accordance with the Common Terms, nothing in the Common Terms shall:

- 27.1.1 release any Legal Claims of the Company against any person or discharge or affect any existing or future Legal Liability of any Consenting Beneficiary to the Company; or
- 27.1.2 save for the Released Common Terms Claims, release any claim of any Consenting Beneficiary against the Company or discharge or affect any existing or future Legal Liability of the Company to a Consenting Beneficiary.

28 Transfer of Trust Entitlement Positions to the Company

28.1 Transfers to the Company

28.1.1 Nothing in either Consenting Beneficiary Agreement shall:

- (i) restrict any Consenting Beneficiary from Transferring (in whole or in part) its rights and obligations under or in respect of any relevant Consenting Beneficiary Agreement, LBI Asset Claims, Common Terms Claim or Best

Claim (a “**Transferrable Interest**”) to the Company or entering into any other agreement or arrangement pursuant to which the Company can take the benefit of the rights (whether in whole or in part) of that Consenting Beneficiary under or in respect of its Transferrable Interest for such consideration as may be agreed between the Company and such Consenting Beneficiary; or

- (ii) otherwise restrict the transfer or assignment of all or part of any Transferrable Interest to the Company.

28.1.2 The Company shall be entitled to accept a Transfer or any other agreement or arrangement referred to in Clause 28.1.1(i) and may accept a Transfer or any other agreement or arrangement referred to in Clause 28.1.1(i) from any Consenting Beneficiary or other Customer upon such terms and at such a price as the Company and such Consenting Beneficiary or other Customer may agree in respect of all or any part of its Transferrable Interest.

28.2 Company as Consenting Beneficiary

To the extent the Company holds or is otherwise entitled to, or there is a Transfer to the Company of (in each case whether before or after the Common Terms Effective Date) all, or part, of any Transferrable Interest:

28.2.1 the Company shall be treated as a Consenting Beneficiary in respect of that Transferrable Interest (or that part thereof) for the purpose of benefiting from and preserving and enforcing its rights (including its voting rights in respect of any amendment, acceptance or approval threshold, subject to the proviso to the definition of Common Terms Effective Date) in connection with all, or part, of its Transferrable Interest (subject to any deductions for any Costs Liability or Tax Burden Liability attributable to such rights of the Company);

28.2.2 the Company in its capacity as a Consenting Beneficiary under each Consenting Beneficiary Agreement shall not be subject to any obligation under or in connection with any Consenting Beneficiary Agreement;

28.2.3 the Company in its capacity as Consenting Beneficiary under each Consenting Beneficiary Agreement shall benefit from such Consenting Beneficiary Agreement without the need for any further accession to such Consenting Beneficiary Agreement or the taking of any other action;

28.2.4 the Company in its capacity as a Consenting Beneficiary under each Consenting Beneficiary Agreement shall be treated as having received from, and (where applicable) delivered to, the Company any Information Pack or other relevant Notice, communication or document which the Company considers appropriate (in its absolute discretion) and without the need for the Company in any capacity to fulfil any requirements of Clause 42 in connection with any such receipt or delivery; and

28.2.5 any reference to “**Consenting Beneficiary**” for the purpose of any relevant Consenting Beneficiary Agreement shall be construed to exclude the Company, save to the extent that the Company determines it necessary or desirable (in its absolute discretion) from time to time for such exclusion not to apply (in whole or in part).

29 No effect on Non-Consenting Beneficiaries

29.1.1 Unless and until a Non-Consenting Beneficiary becomes a Consenting Beneficiary by acceding to a Consenting Beneficiary Agreement, nothing in the Common Terms is intended to or shall have the effect of or be deemed to have the effect of:

- (i) modifying any Legal Claim of any such Non-Consenting Beneficiary against the Company or any other person or against or in respect of any LBI Distribution;
- (ii) affecting or adjusting the Trust Entitlements (if any) of any such Non-Consenting Beneficiary;
- (iii) affecting the Legal Claims of the Company or any other person against such Non-Consenting Beneficiary; or
- (iv) making such Non-Consenting Beneficiary or other Customer a party to or bound by the Common Terms or providing rights or benefits to such Non-Consenting Beneficiary (except that CRA Signatories who are not CRA Omnibus Beneficiaries shall be bound but not affected).

29.1.2 Nothing in the Common Terms shall operate so as to place the Company under any obligations to Non-Consenting Beneficiaries and the Company shall have no greater rights, powers or duties in respect of Non-Consenting Beneficiaries than it has in law before the entry into a Consenting Beneficiary Agreement incorporating the Common Terms.

30 General override

Notwithstanding any of the other terms of the Consenting Beneficiary Agreements (including any of the Common Terms), nothing in such terms is intended to or shall have the effect of or be deemed to have the effect of requiring the Company to act or refrain from acting in breach of any law (including any Final Order). This Clause 30 is for the Company's benefit alone and may, in any particular instance or circumstances, be waived by the Company in its absolute discretion.

31 No proprietary Legal Claims

31.1.1 The terms of the Omnibus Trust, as set out in these Common Terms do not, to the extent such trust is in favour of the Consenting Beneficiaries, at any time create or give rise to any proprietary interest of any nature whatsoever of any individual Consenting Beneficiary in any specific Security or Money comprised therein. The interest of the Consenting Beneficiaries in and to the Omnibus Trust is an interest in a share in the pool of property comprised in that trust, such share being as determined under the Common Terms.

31.1.2 The Company shall not be obliged under the Common Terms to recognise any interest of any person claiming through a Consenting Beneficiary into the trusts of the LBI Distributions constituted under the Common Terms or arising at law unless that person is a valid Trust Entitlement Transferee of that Consenting Beneficiary under and in accordance with the relevant Consenting Beneficiary Agreement.

31.1.3 No Consenting Beneficiary shall have any proprietary interest in or Legal Claim in relation to the Omnibus Claim or LBI Distributions other than its Proprietary Claim.

32 Third party rights

32.1 Mutual enforcement of rights (including third party beneficiary rights)

32.1.1 Where the Common Terms require the Company to perform obligations or discharge duties under a Consenting Beneficiary Agreement to Consenting Beneficiaries generally (including Consenting Beneficiaries party to the other Consenting Beneficiary Agreement), then each Consenting Beneficiary party to such Consenting Beneficiary Agreement may only enforce its rights against the Company under the Consenting Beneficiary Agreement to which such Consenting Beneficiary is party.

32.1.2 Where the Common Terms require any Consenting Beneficiary ("**Relevant Customer**") to perform obligations or discharge duties under a Consenting Beneficiary Agreement ("**Relevant Agreement**") for the benefit of all Consenting Beneficiaries generally, and not just those who are a party to that Consenting Beneficiary Agreement, then the Relevant Customer shall be obliged to perform such obligations and discharge such duties for the benefit of each Consenting Beneficiary party to the other Consenting Beneficiary Agreement who shall have rights as a third party beneficiary of the Relevant Agreement to enforce its rights as a Consenting Beneficiary against the Relevant Customer, provided that such Consenting Beneficiary:

- (i) is not in breach of its own obligations to the Company and to each Consenting Beneficiary party to the Relevant Agreement to perform its equivalent obligations in favour of Consenting Beneficiaries party to the Relevant Agreement; and
- (ii) shall be bound by the provisions of any jurisdiction clause in the Relevant Agreement as if it were a Consenting Beneficiary party to the Relevant Agreement in order to rely upon or enforce any of its rights as a third party beneficiary.

32.1.3 Where under these Common Terms any proprietary or beneficial interest is created in any property for the benefit of Consenting Beneficiaries generally, that interest is for the benefit of all Consenting Beneficiaries under each Consenting Beneficiary Agreement in accordance with and subject to the provisions of these Common Terms.

32.2 Third Party rights

32.2.1 The Administrators and any subsequent supervisor, liquidator or other officeholder of the Company shall be entitled to enforce any term of the Consenting Beneficiary Agreements purporting to confer a benefit on them, as if they were parties to the Consenting Beneficiary Agreements.

32.2.2 Subject to Clause 32.2.1 and except as provided for in Clauses 4.4, 6, 7, 16.1.2, 21.7.2, 26.2, 26.5, 32.1.2, 34.2, 36, 37 and 52.3, nothing in the Common Terms is intended to, nor should it be construed as purporting to, confer any rights on, or to be enforceable by, any Third Party.

32.2.3 Any provision of the Common Terms which may be amended or waived in accordance with Clause 41 may be amended without the consent of any person

named or described in Clauses 4.4, 6, 7, 16.1.2, 21.7.2, 26.2, 26.5, 32.1.2, 34.2, 36, 37 and 52.3.

33 Authority

Each Consenting Beneficiary irrevocably authorises the Company to make such Legal Claims against, give such release or discharge to, sign or execute any agreement or instrument with, and/or take all such action (in each case, as the Company may reasonably consider appropriate) in relation to, any Intermediary, in the name of, and on behalf of, the Consenting Beneficiary for the purpose of establishing, pursuing or enforcing any distribution of, or any Legal Claim for the distribution of, any Security or Money from an Intermediary to the Company.

34 Power of the Company to delegate

34.1 Delegation

The Company shall (without prejudice to the full terms of the relevant Consenting Beneficiary Agreement) have the right, to the extent that such rights are necessary or desirable for or reasonably incidental to the implementation of such relevant Consenting Beneficiary Agreement or these Common Terms, to:

34.1.1 employ and remunerate accountants, actuaries, lawyers and/or other professional advisers or agents (including any custodian, nominee or agent appointed pursuant to Clause 21.7); and

34.1.2 delegate in writing to any person (including any custodian, nominee or agent appointed pursuant to Clause 21.7) all or any of the functions, rights, obligations, authorities, powers and discretions conferred upon the Company under such relevant Consenting Beneficiary Agreement, and from time to time to revoke any such delegation, provided that the Company itself shall not be responsible (absent fraud on the part of the Company itself) for any act or omission of any such delegate (being in respect of the OSA, an OSA delegate and, in respect of the Amended and Restated CRA, a CRA delegate and in each case being a “**Common Terms Delegate**”).

34.2 No challenge to the validity of acts of the Company or its Common Terms Delegates

Subject to any mandatorily applicable provision of the Insolvency Act, no Consenting Beneficiary shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Company, or any Common Terms Delegate, in pursuance of its functions or duties under the relevant Consenting Beneficiary Agreement, or the exercise or non-exercise by the Company or any Common Terms Delegate, in good faith, of any power or discretion conferred upon it for the purposes of the relevant Consenting Beneficiary Agreement, and neither the Company nor any Common Terms Delegate shall be liable for any loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless such loss is attributable to the fraud of the Company or to the fraud of any Common Terms Delegate.

35 Consenting Beneficiaries to co-operate

The Consenting Beneficiaries shall:

35.1.1 co-operate with and render such assistance to the Company as it may reasonably require, including the provision of information and documents, in connection with

their LBI Asset Claims and the operation of the relevant Consenting Beneficiary Agreement;

- 35.1.2 provide such assistance as the Company may reasonably require in connection with gathering in any Trust Financial Assets, removing any impediments upon Security or Money being Trust Financial Assets or enforcing obligations owed to the Company under or in respect of any Consenting Beneficiary Agreement; and
- 35.1.3 use all reasonable endeavours to ensure that maximum effect is given to the relevant Consenting Beneficiary Agreement.

36 No liability for information

- 36.1.1 Neither the Company, nor any other Company-Related Released Party, nor any member of Creditors' Common Terms Committee Group shall have any obligation, responsibility or Legal Liability (absent fraud) for any loss or damage arising directly or indirectly from any incorrect, misleading or omitted information (including any estimates or valuations) in connection with the LBI Assets or any Trust Entitlement, whether in the Books of the Company, the Information Memorandum, any Information Pack or any related communication or notice.
- 36.1.2 Each Consenting Beneficiary agrees that its sole remedy (if any) in respect of any such loss or damage arising from such incorrect, misleading or omitted information is to challenge any such incorrect, misleading or omitted information pursuant to Part 10 of these Common Terms.
- 36.1.3 Each Consenting Beneficiary agrees to hold harmless and indemnify the Company, each other Company-Related Released Party and each member of the Creditors' Common Terms Committee Group for any Legal Liability which any Company-Related Released Party or member of the Creditors' Common Terms Committee Group may suffer arising from or in connection with a dispute with that Consenting Beneficiary over any incorrect, misleading or omitted information in such information.

37 Non-reliance on Information Memorandum

- 37.1 So far as permitted by law and except in the case of fraud, each Consenting Beneficiary agrees that neither the Company nor any other Released Persons shall be liable in respect of anything done or suffered by a Consenting Beneficiary in reliance on the Information Memorandum. The Consenting Beneficiary confirms that it made its own independent decision to enter into its Consenting Beneficiary Agreement and/or approve the Resolution and as to whether that Consenting Beneficiary Agreement is appropriate or proper for it based upon its own judgment and upon advice from its own advisers as it has deemed necessary. The Consenting Beneficiary confirms that it did not rely on any communication (written or oral) of or from the Company or any other Released Persons, including the Information Memorandum, as a recommendation or an inducement to enter into its Consenting Beneficiary Agreement and/or approve the Resolution, it being understood that information and explanations relating to the Common Terms and the Consenting Beneficiary Agreements in the Information Memorandum were not relied upon or treated as a recommendation or an inducement to enter into any Consenting Beneficiary Agreement.
- 37.2 Nothing in any Consenting Beneficiary Agreement has or will exclude any liability the Company may have under the regulatory system (as defined in the FSA Rules) which may not be excluded or restricted thereunder.

38 Amendment of foreign law contracts or arrangements

Where the Common Terms purport to amend any contract or other arrangement (including any trust) which is governed by a law other than English law, the amendment will be effective to the maximum extent permitted under the proper law of the contract or arrangement. Each Consenting Beneficiary undertakes to the Company to take all actions that the Company requests (including executing such instruments or entering into such agreements, in each case governed by the relevant proper law) to perfect any amendments to such contracts or arrangements in order to ensure that such amendments are effective to the fullest extent possible under such governing law.

39 Further Assurances

Each Consenting Beneficiary agrees, so far as permitted by applicable law, to sign and execute all such documents and do all such further acts and things as may be necessary, in the opinion of the Company, to give effect to the modification and releases contemplated by the Common Terms.

40 Costs Liability

40.1 Each Consenting Beneficiary agrees to pay to the Company:

40.1.1 in the case of each OSA Consenting Beneficiary, the Costs Liability attributable or otherwise allocated to it, such payment being due on notice from the Company including pursuant to a Notice of Distribution and, whether or not so notified, permitted to be deducted from any Gross Distribution to that OSA Consenting Beneficiary pursuant to Part 4; and

40.1.2 in the case of each CRA Omnibus Beneficiary, the Costs Amount applicable to it, to the extent required pursuant to the Amended and Restated CRA.

41 Amendment of Common Terms

41.1 Consent to amend Common Terms

41.1.1 Subject to Clauses 41.3 and 41.5, no amendment, modification or waiver in respect of the Common Terms shall be effective unless in writing and previously approved by:

- (i) the Company; and
- (ii) a Majority Consenting Beneficiary Consent; and
- (iii) an Extraordinary Resolution under and as defined in the Amended and Restated CRA,

where:

“Majority Consenting Beneficiary Consent” means a vote, written consent or resolution approved by three-quarters by USD Value of all the Best Claims of Relevant Consenting Beneficiaries, the amount of each such Best Claim to be determined as at the date of the request for consent to the amendment, modification or waiver (or such other date as the Company may determine and, for the purpose of this Clause 41, if the amount of any such Best Claim is in dispute at such time, the Best Claim shall be the amount as provided by the Company in the Information Pack at that time),

and, for the purpose of determining whether the threshold of three-quarters by USD Value of all the Best Claims of Relevant Consenting Beneficiaries set out in this Clause 41.1.1 is satisfied, any approval pursuant to an Extraordinary Resolution under and as defined in the Amended and Restated CRA of an amendment, modification or waiver in respect of the Common Terms shall also be treated under this Clause 41.1.1 as an approval of such amendment, modification or waiver on the part of the relevant CRA Omnibus Beneficiaries which voted for (or otherwise expressly approved) such Extraordinary Resolution.

41.1.2 Notwithstanding Clause 41.1.1, any amendment, modification or waiver in respect of the Common Terms that affects the rights or obligations of any CRA Signatory that is not a Consenting Beneficiary will not be effective unless, to the extent an Extraordinary Resolution is required under and as defined in the Amended and Restated CRA, the amendment, modification or waiver is approved by the Company and by such an Extraordinary Resolution in respect of which such CRA Signatory is eligible to vote.

41.2 Powers of amendment of the Company

In furtherance of Clause 41.1:

41.2.1 the Company may certify for the purpose of a vote, written consent or resolution pursuant to Clause 41.1, that it has determined, as it may do in its absolute discretion, that any such amendment, modification or waiver will materially affect some (but not all) of the Consenting Beneficiaries. In that event, “**Relevant Consenting Beneficiaries**” shall be those Consenting Beneficiaries certified by the Company as being those who will be materially affected for the purposes of such amendment, modification or waiver (and, in particular, for the purposes of determining whether or not such amendment, modification or waiver has been approved by a Majority Consenting Beneficiary Consent). Absent any such certification by the Company in respect of any particular proposed amendment, modification or waiver in respect of the Common Terms, the Relevant Consenting Beneficiaries shall be all the Consenting Beneficiaries as at the time set by the Company (in its sole discretion) for the purpose of such vote, written consent or resolution to approve such amendment, modification or waiver;

41.2.2 the Company is hereby authorised to agree for and on behalf of Consenting Beneficiaries, all amendments, modifications or waivers, if so directed by a Majority Consenting Beneficiary Consent; and

41.2.3 the Company shall not be responsible for having acted in good faith on a resolution purporting to have been passed by a Majority Consenting Beneficiary Consent (either in writing or, if at a meeting, in respect of which minutes of such meeting have been made) even if it is later found that there was a defect in the vote or consent or the constitution of the meeting or the passing of the resolution or that the vote, consent or resolution was not valid or binding on the Consenting Beneficiaries.

41.3 Amendment of Consenting Beneficiary Agreements

Notwithstanding Clause 41.1, any amendment of any Consenting Beneficiary Agreement but not the Common Terms shall be made in accordance with the amendment provisions of such Consenting Beneficiary Agreement.

41.4 Amendment of Settlement Agreement

The Company shall not agree to any modification of the Settlement Agreement after the Common Terms Effective Date in a manner which would be materially prejudicial to the rights of the Consenting Beneficiaries (taken as a whole), unless such modification is consented to or required by:

41.4.1 a Majority Consenting Beneficiary Consent and an Extraordinary Resolution under and as defined in the Amended and Restated CRA; or

41.4.2 a Final Order.

41.5 Minor, technical or not materially prejudicial amendments

The Company may, without the consent of the Consenting Beneficiaries, amend, modify or waive any term or condition of the Common Terms which is, in its opinion:

41.5.1 of a formal, minor or technical nature, or to correct a manifest error;

41.5.2 to enable compliance with a Final Order in respect of the Common Terms; or

41.5.3 not materially prejudicial to the interests of any Consenting Beneficiaries.

41.6 Notice of outcome

The Company shall inform the Consenting Beneficiaries, by written Notice in accordance with Clause 42, of any amendment of the Common Terms made in accordance with this Clause 41.

42 Notices

42.1 Notices to the Company

42.1.1 Subject to Clause 42.1.2, any Notice or other communication to be given, or document to be sent to the Company, pursuant to a Consenting Beneficiary Agreement, except where the relevant Consenting Beneficiary Agreement otherwise expressly provides, shall be in writing in English and shall be delivered by the relevant Consenting Beneficiary by:

(i) being uploaded to the Portal, the address of which is https://dm.pwc.com/LBIE_CIP/; and/or

(ii) sending via electronic mail to the e-mail address specified in Clause 42.6.

42.1.2 The following communications shall be in writing in English and shall be sent by the Consenting Beneficiary to the Company by being uploaded to the Portal only, unless otherwise agreed by the Company (such agreement not to be unreasonably withheld for so long as the Portal is disabled or unavailable for more than one Business Day):

(i) any approval or non-approval of the Resolution;

(ii) any OSA Offer; and

(iii) any Information Pack Challenge Form and supporting evidence.

42.1.3 Without prejudice to Clauses 42.1.1 and 42.1.2, a Consenting Beneficiary shall only be permitted to submit any Notice, or other communication or send documents in writing in English to the Company by:

- (i) registered pre-paid post or air mail, to the postal address specified in Clause 42.6; or
- (ii) courier using an internationally recognised courier company, to the address specified in Clause 42.6,

with the prior written consent of the Company (which consent is hereby given in relation to the delivery of any original U.S. Withholding Tax Form).

42.2 Notices to Consenting Beneficiaries

The Company may give any Notice or other communication or send any document under or in connection with a Consenting Beneficiary Agreement to any Consenting Beneficiary by:

42.2.1 uploading the same to the Portal (in which case the Company shall Notify the Consenting Beneficiary, otherwise than via the Portal, that a Notice, communication or document has been (or will be) uploaded to the Portal);

42.2.2 electronic mail, airmail, registered pre-paid post or courier, to the relevant address specified in accordance with Clause 42.7; or

42.2.3 publishing it on the Website,

where “**address**” includes any electronic mail address or postal address used for the purposes of such communications.

42.3 Notices by Portal

Any Notice, communication or document given via the Portal shall be deemed to have been received when it is first uploaded to the Portal or, if later, when the recipient is deemed (otherwise than via the Portal) to have received notice of the fact that it is (or will be) available on the Portal. For these purposes, if such deemed receipt would otherwise occur on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, the relevant Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

42.4 Notices by electronic mail

Any Notice or communication given or document sent by electronic mail shall be deemed to have been received:

42.4.1 if sent by the Company, at the time as recorded by the Company that the electronic mail was sent; and

42.4.2 if sent by any other person, at the time of receipt recorded on the computer of the person to whom the electronic mail is addressed,

provided that, if such deemed receipt would otherwise occur on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

42.5 Notices by registered post or courier

42.5.1 Subject to Clause 42.5.2, any Notice or communication given or document sent by registered pre-paid post, air mail or courier shall be deemed to have been received

at the time of delivery at the relevant address specified in or to be specified pursuant to this Clause 42.

42.5.2 If such receipt occurs on a day which is not a Business Day in London or after 5.00 p.m. (London time) on any Business Day in London, such Notice, communication or document shall be deemed to have been received at 9.30 a.m. (London time) on the next Business Day in London.

42.6 Addresses for Notices to the Company (given otherwise than via the Portal)

42.6.1 Any Notice, communication or document given via electronic mail to the Company is to be sent to generalqueries@lbia-eu.com;

42.6.2 Any Notice, communication or document given via registered pre-paid post, air mail or courier (using an internationally recognised courier company) to the Company is to be sent to the address notified to it by the Company from time to time.

42.7 Addresses for Notices to Consenting Beneficiaries (given otherwise than via the Portal)

42.7.1 Any Notice, communication or document given via electronic mail, registered pre-paid post, air mail or courier to a Consenting Beneficiary shall be sent to the relevant Consenting Beneficiary's electronic mail account or postal address (as applicable) as set out on the Portal, as amended from time to time by the relevant Consenting Beneficiary.

42.7.2 Each Consenting Beneficiary shall maintain such electronic mail account and postal address at its own risk and shall be responsible for informing the Company (via the Portal) of any changes to the electronic mail or postal address and/or providing an alternative address (as appropriate).

42.8 Authority to sign Notices and documents

In the case of a Notice, communication or document, including any Consenting Beneficiary Accession Document, which is signed or made (including by submission electronically) on behalf of a Consenting Beneficiary, the Company shall not be required to make enquiry as to the authority of the signatory of that Notice, communication or document to sign or make such Notice, communication or document on behalf of such Consenting Beneficiary.

42.9 General notifications and advertisements

The Company may also, in its absolute discretion, publish any information in respect of the relevant Consenting Beneficiary Agreement (including relevant dates pursuant to the relevant Consenting Beneficiary Agreement and communications from the Company), and any other Notice, communication or document required to be or capable of being given or sent under the relevant Consenting Beneficiary Agreement, on the Website.

42.10 Notices on Website

Any Notice, communication or document which is published on the Website shall be deemed to have been received when the material was first made available on the Website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the Website.

42.11 Accidental failure to send communication by the Company

Accidental failure by the Company to send any Notice, communication or other document to any Consenting Beneficiary in accordance with this Clause 42 shall not be considered a breach of its obligations pursuant to the relevant Consenting Beneficiary Agreement. The Company shall not be liable to any Consenting Beneficiary for such failure, or the non-receipt of any such Notice, communication or document by any relevant Consenting Beneficiary or any other person, and such failure or non-receipt shall not affect the provisions of the relevant Consenting Beneficiary Agreement as regards that Consenting Beneficiary or at all.

PART 10 – COMMON TERMS DISPUTE RESOLUTION MECHANISM

43 Common Terms Disputes and Common Terms Disputing Parties

43.1 Subject to Clause 52.3, the dispute resolution mechanism (the “**Common Terms Dispute Resolution Mechanism**”) contained in this Part 10 of the Common Terms shall govern the resolution of any and all disputes between the Company on the one hand and a Consenting Beneficiary on the other hand (together the “**Common Terms Disputing Parties**”) as regards:

43.1.1 the accuracy of the 19/9 Value figure and/or the Aggregate Market Value figure contained in an Information Pack of such Consenting Beneficiary (each an “**Information Pack Figure**”);

43.1.2 the accuracy of any Permitted Deductions or any designation or treatment as an Attributable Payment as set out in any Notice of Distribution of such Consenting Beneficiary which has not, prior to the date of that Notice of Distribution, been finally determined or agreed (a “**Notice of Distribution Figure**”);

43.1.3 the status of such Consenting Beneficiary as either eligible or otherwise to participate in any Common Terms Distribution to be made by the Company in accordance with Part 4 of the Common Terms, as determined in accordance with Clause 9.4 of the Common Terms and as indicated on the Portal (or as otherwise indicated by the Company) from time to time (the “**Eligibility Status**” of such Consenting Beneficiary); and

43.1.4 subject to the provisions of these Common Terms, any other dispute arising out of or in relation to the interpretation of and/or the parties’ performance of any obligations arising under the OSA or the Common Terms,

each a “**Common Terms Dispute**” and each Information Pack, Notice of Distribution and Eligibility Status being a “**Common Terms Determination Notice**”.

43.2 For the avoidance of doubt, this Common Terms Dispute Resolution Mechanism does not apply to disputes between the Company and Consenting Beneficiaries as to Legal Liabilities between them other than Legal Liabilities of any Consenting Beneficiary to the Company arising pursuant to the OSA or Common Terms.

44 Settlement of Common Terms Disputes

For the avoidance of doubt, nothing in Clauses 43 to 52 of the Common Terms precludes the Common Terms Disputing Parties from entering into a compromise, arrangement or settlement of a Common Terms Dispute at any stage, whether by mediation or otherwise, nor precludes the Company from entering into a compromise, arrangement or settlement with any Consenting Beneficiary or person who claims to be a Consenting Beneficiary or a Non-Consenting Beneficiary.

45 Common Terms Dispute Notice

45.1 If a Consenting Beneficiary wishes to raise a Common Terms Dispute, it must:

45.1.1 in respect of any disputed Information Pack Figure have made an OSA Offer or approved or not approved the Resolution (as applicable) and, at the time of doing so:

- (i) Notified the Company via the Portal by selecting “Yes and add attachments” to the question “Do you dispute your 19/9 Value and/or Aggregate Market Value set out in the Best Claim statement contained in your Information Pack?” (set out at the “Information Pack Disputes” subsection of the “Documents for submission” section on the LBI Omnibus Settlement page of the Portal); and
 - (ii) completed and uploaded the Information Pack Challenge Form (if the accuracy of both the 19/9 Value figure and the Aggregate Market Value figure are being challenged, the Consenting Beneficiary must have completed two forms, one for each challenge), each such form to have included:
 - (a) the figure that the Consenting Beneficiary considers to be the true amount of its 19/9 Value and/or Aggregate Market Value (as applicable) (each an “**Alleged Information Pack Figure**”);
 - (b) reasonable details of the nature and basis of the challenge and an explanation as to how its Alleged Information Pack Figure has been calculated; and
 - (c) if the Consenting Beneficiary is neither resident, nor has its principal place of business in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute; and
 - (iii) uploaded via the Portal any supporting evidence with the Information Pack Challenge Form;
- 45.1.2** in respect of each disputed Notice of Distribution Figure, Notify the Company, by uploading via the Portal within five Business Days of receipt of the relevant Notice of Distribution, that it disputes that Notice of Distribution Figure, that Notice to include:
- (i) in respect of each disputed Notice of Distribution Figure, the figure that the Consenting Beneficiary considers to be the true amount of the disputed Notice of Distribution Figure (an “**Alleged Notice of Distribution Figure**”);
 - (ii) reasonable details of the nature and basis of the challenge and an explanation as to how each Alleged Notice of Distribution Figure has been calculated; and
 - (iii) if the Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute;
- 45.1.3** in respect of its Eligibility Status, Notify the Company that it has a dispute, that Notice to include:
- (i) an explanation as to why the Consenting Beneficiary considers its Eligibility Status to be inaccurate, such explanation to include reasonable details of the nature and basis of the challenge; and

- (ii) if the Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute; and

45.1.4 in respect of any other dispute, Notify the Company that it has a dispute, that Notice to include:

- (i) reasonable details of the nature and basis of the dispute; and
- (ii) if the Consenting Beneficiary is neither resident, nor has its principal place of business in England or Wales, details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute,

each such Notice under Clauses 45.1.1 to 45.1.4 (together with any Notice by the Company pursuant to Clause 45.2) being a “**Common Terms Dispute Notice**” and each such Alleged Information Pack Figure and Alleged Notice of Distribution Figure being an “**Alleged Figure**”.

45.2 The Company may raise a Common Terms Dispute with any Consenting Beneficiary in respect of any matter falling within the scope of Clause 43.1.4. If the Company wishes to do so, it must Notify the relevant Consenting Beneficiary of the subject matter of the dispute, setting out in writing reasonable details of the dispute (such Notice also being a Common Terms Dispute Notice). Upon receipt of such a Common Terms Dispute Notice, if the relevant Consenting Beneficiary is neither resident, nor has its principal place of business, in England or Wales, it must (within 10 Business Days) Notify to the Company details of, and appointment of, an agent to accept service of process in England and Wales in respect of any legal action or proceedings arising out of or in connection with the Common Terms Dispute.

45.3 If a Common Terms Dispute raised in accordance with Clause 45.1.3 has not been finally resolved (whether by agreement or in accordance with the terms of this Part 10) in the Consenting Beneficiary’s favour by any Cut-Off Date specified in any relevant Notice of Intended Distribution issued by the Company while the Common Terms Dispute is outstanding, then:

45.3.1 the Consenting Beneficiary’s Eligibility Status in respect of the relevant intended Common Terms Distribution, as indicated on the Portal (or as otherwise indicated by the Company) as at the date of the relevant Notice of Intended Distribution, shall (subject to Clause 9.5) become final and binding as at the Cut-Off Date for the purposes of that Common Terms Distribution;

45.3.2 the Consenting Beneficiary shall be deemed to have accepted the same; and

45.3.3 the Common Terms Dispute shall for the purpose of future Common Terms Distributions continue to be determined in accordance with the terms of this Part 10.

46 Amicable Resolution

Upon receipt by the Company (or delivery by the Company) of a Common Terms Dispute Notice, at the Company’s election the Common Terms Disputing Parties shall, for a period

of 20 Business Days or such other period as the Company may specify, seek to resolve the Common Terms Dispute amicably. Where the Common Terms Dispute Notice is in respect of an Information Pack Figure, for the purposes of this Clause 46, such Common Terms Dispute Notice is deemed to be received on the Common Terms Effective Date.

47 Referral of Common Terms Dispute by Company

47.1 Where the parties are unable to resolve the Common Terms Dispute amicably within the time period referred to in Clause 46, or the Company elects pursuant to Clause 46 that the amicable resolution period referred to therein shall not apply, the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Common Terms Dispute relates, whether the Common Terms Dispute should be referred to:

47.1.1 an independent expert (the “**Common Terms Dispute Expert**”); or

47.1.2 the Court.

For the avoidance of doubt, nothing in Clauses 43 to 52 precludes the Company from referring a Common Terms Dispute, at its sole discretion, to the Court.

47.2 Following its determination in accordance with Clause 47.1, the Company shall Notify the Consenting Beneficiary of its decision in writing (a “**Common Terms Dispute Forum Notice**”) and shall thereafter at a time determined by it in its commercially reasonable discretion (having regard to any other disputes to which the Company is party) take any necessary steps to commence the dispute resolution process. Subject to Clauses 50.9 and 50.14.5, the Company’s decision as regards the forum for resolving the Common Terms Dispute pursuant to Clause 47 shall be final and binding.

48 Most favourable award

Irrespective of whether a Common Terms Dispute is referred to a Common Terms Dispute Expert or the Court pursuant to Clause 47, in respect of any disputed figure, the Common Terms Disputing Parties hereby agree that the outcome of any dispute cannot be more favourable to a Consenting Beneficiary than would have resulted from the Company and the Consenting Beneficiary having agreed to use the Alleged Figure (where applicable). The Consenting Beneficiary irrevocably waives any rights it may have to, and undertakes not to bring, a Legal Claim which would result in an outcome more favourable to it than would have resulted from using the Alleged Figure in any determination under these Common Terms.

49 The Court

Where the Company determines pursuant to Clause 47.1.2 that the Court shall determine a Common Terms Dispute, the Court shall have exclusive jurisdiction to settle that Common Terms Dispute. Such Proceedings shall be commenced by the Company and not by the relevant Consenting Beneficiary.

50 The Common Terms Dispute Expert

50.1 Exclusive jurisdiction of the Common Terms Dispute Expert

If a Consenting Beneficiary delivers to the Company (or the Company delivers to a Consenting Beneficiary) a Common Terms Dispute Notice, then the Company may in accordance with Clause 47 refer the Common Terms Dispute to a Common Terms Dispute

Expert and such Common Terms Dispute Expert shall, subject to Clauses 50.9 and 50.14.5, have exclusive jurisdiction to settle that Common Terms Dispute.

50.2 Confidentiality

50.2.1 Subject to Clauses 16 and 50.2.2 and unless otherwise agreed by the Common Terms Disputing Parties, the Common Terms Disputing Parties shall keep confidential any information obtained during the process of determining the Common Terms Dispute, including the Common Terms Dispute Expert's decision.

50.2.2 No Consenting Beneficiary shall distribute, publish, reproduce or disclose such confidential information to any other person other than:

- (i) if and to the extent required by law or for the purposes of any judicial or arbitral proceedings;
- (ii) if and to the extent required by any securities exchange, regulatory or governmental body (including Tax Authority) to which that Common Terms Disputing Party is subject, wherever situated, whether or not the requirement for the information has the force of law;
- (iii) to its professional advisers and auditors; and/or
- (iv) to its direct shareholders and investors.

50.2.3 Upon final determination or settlement of a Common Terms Dispute, and upon request by the Company, the Consenting Beneficiary shall:

- (i) promptly return to the Company all documents and information made available to it by the Company in connection with the Common Terms Dispute (the "**Common Terms Dispute Documentation**") without retaining any copies; and/or
- (ii) promptly destroy the Common Terms Dispute Documentation. Where the Common Terms Dispute Documentation is to be destroyed, the Consenting Beneficiary shall Notify the Company of the destruction of the Common Terms Dispute Documentation within 10 Business Days of the Company's destruction request (or, if subject to any law or regulation preventing them from doing so, Notify the Company of such requirement).

50.3 Settlement of the Common Terms Dispute by a Common Terms Dispute Expert

If the Company determines, pursuant to Clause 47, that a Common Terms Dispute Expert shall settle the Common Terms Dispute, then the Company shall provide in writing to the Consenting Beneficiary the names of two candidates willing to act as Common Terms Dispute Expert in relation to the Common Terms Dispute, together with contact details for those candidates.

50.4 Attributes of the Common Terms Dispute Expert

Each Common Terms Dispute Expert shall, as considered appropriate by the Company (in its absolute discretion):

50.4.1 be an individual with one or more of the following attributes:

- (i) an individual who in the reasonable opinion of the Company has the appropriate financial or other expertise in relation to the subject matter of the Common Terms Dispute; and/or
- (ii) an individual who is a member of the English bar and has been appointed Queen's Counsel;

50.4.2 in the reasonable opinion of the Company, be capable of discharging the functions and powers of the Common Terms Dispute Expert under the Common Terms, with the appropriate expertise having regard to the nature of the Common Terms Dispute; and

50.4.3 confirm that he has no conflict of interest in accepting the appointment, provided that having previously acted as a Common Terms Dispute Expert or a Valuation Expert or Adjudicator (as defined in the Amended and Restated CRA) shall not of itself be considered a conflict of interest.

50.5 Election of the Common Terms Dispute Expert

Within five Business Days of receipt of the names of two candidates in accordance with Clause 50.3, the Consenting Beneficiary shall Notify the Company which of the candidates it elects to act as the Common Terms Dispute Expert, following which the Company shall take steps to confirm his appointment and to agree the terms of such appointment. Such election shall, subject to Clauses 50.9 and 50.14.5 be final and binding.

50.6 Powers of the Common Terms Dispute Expert

The Common Terms Dispute Expert shall have the powers, rights and duties conferred upon him by these Common Terms. The Common Terms Dispute Expert shall act as an expert and not as an arbitrator.

50.7 Terms of appointment of the Common Terms Dispute Expert

The Common Terms Dispute Expert shall be retained on such reasonable terms as may be agreed by the Company.

50.8 Acceptance of appointment by the Common Terms Dispute Expert

As soon as reasonably practicable, the Common Terms Dispute Expert shall notify the Common Terms Disputing Parties in writing that he has accepted the appointment and provide account details for payment of the Deposit.

50.9 Failed appointment of the Common Terms Dispute Expert

If the Common Terms Dispute Expert chosen by the Consenting Beneficiary is unable or unwilling to accept the appointment, or is unable to agree the terms of his appointment to the satisfaction of the Company:

50.9.1 the Company shall, as soon as reasonably practicable, provide in writing to the Consenting Beneficiary a new Common Terms Dispute Forum Notice; and

50.9.2 Clause 47.2 and the remainder of this Common Terms Dispute Resolution Mechanism shall apply accordingly.

50.10 Provision of certain documents and a Deposit to the Common Terms Dispute Expert

Within 10 Business Days of the receipt of confirmation given by the Common Terms Dispute Expert pursuant to Clause 50.8, the Consenting Beneficiary shall, in relation to any

Common Terms Dispute raised by the Consenting Beneficiary pursuant to Clause 43, provide to the Common Terms Dispute Expert (copied simultaneously to the Company in respect of Clauses 50.10.1 and 50.10.2):

50.10.1 a copy of the relevant Common Terms Dispute Notice together with any supporting documents provided with the Common Terms Dispute Notice;

50.10.2 if applicable, a copy of the relevant Common Terms Determination Notice and/or any other document provided by the Company to the Consenting Beneficiary relating to the Common Terms Dispute; and

50.10.3 a deposit of US\$50,000 on account of the Common Terms Dispute Expert's fees (the "**Deposit**"). No referral to the Common Terms Dispute Expert may proceed without payment of the Deposit and the Deposit shall be payable in respect of each Common Terms Dispute Notice. The Consenting Beneficiary shall simultaneously Notify the Company that the Deposit has been provided to the Common Terms Dispute Expert.

50.11 Where the Company has raised a Common Terms Dispute pursuant to Clause 45.2, the Company shall, within 10 Business Days of receipt of confirmation given by the Common Terms Dispute Expert pursuant to Clause 50.8, provide to the Common Terms Dispute Expert (copied simultaneously to the Consenting Beneficiary) the documents referred to in Clause 50.10.1 and any other documents it considers appropriate (in its absolute discretion).

50.12 Provision of information to the Common Terms Dispute Expert

The Common Terms Disputing Parties shall, within 20 Business Days of the receipt by the Common Terms Dispute Expert of the documents and (if applicable) the Deposit in accordance with Clauses 50.10 and/or 50.11, provide the Common Terms Dispute Expert with written submissions setting out details of their respective positions (including, in the case of a valuation dispute, valuations and assumptions behind those valuations), together with any additional documentation or information that they wish to be taken into account by the Common Terms Dispute Expert.

50.13 Determination of the Common Terms Dispute on the basis of documents already supplied

The Common Terms Dispute Expert shall be entitled, but not obliged, to rely exclusively upon the documents supplied to him pursuant to Clauses 50.10 to 50.12 when determining the Common Terms Dispute.

50.14 Provision of additional documentation and timetable

50.14.1 Following the receipt of the documents supplied pursuant to Clauses 50.10 to 50.12, the Common Terms Dispute Expert shall, as soon as reasonably practicable and in any event within 20 Business Days:

- (i) Notify the Common Terms Disputing Parties in writing of whether he requires additional evidence or representations to be provided to him; and
- (ii) provide details of any further procedure and timetable he wishes to adopt for resolving the Common Terms Dispute.

50.14.2 The Common Terms Dispute Expert shall, in his absolute discretion, consider such matters as he thinks fit in making his determination. The Common Terms Dispute

Expert shall be entitled to consult with such advisers, including legal advisers and experts, and to take into account such information or evidence obtained from these sources, as he may deem appropriate. Subject to Clause 48, the Common Terms Dispute Expert shall be entitled (but is not obliged) to substitute his own valuation for those provided by the Common Terms Disputing Parties.

- 50.14.3** Each Common Terms Disputing Party shall respond promptly (and, subject to Clause 51.4 at its own expense) to all reasonable requests for information and other assistance that the Common Terms Dispute Expert requests in connection with making his determination.
- 50.14.4** The Common Terms Dispute Expert may, but is not obliged to, require the Common Terms Disputing Parties to appear before him and address him on any matters, in which case the Common Terms Disputing Parties shall appear on such date and at such place as the Common Terms Dispute Expert shall reasonably prescribe. If the Common Terms Dispute Expert requires the parties to appear before him, the Common Terms Dispute Expert shall be entitled to prescribe and lay down such reasonable procedures or provisions as he, in his absolute discretion, deems appropriate for the purposes of assisting him in reaching his determination.
- 50.14.5** If, in the course of considering the Common Terms Dispute, the Common Terms Dispute Expert considers that the Common Terms Dispute gives rise to matters outside his area of expertise (and in respect of which he does not consider himself able to rely on advisers pursuant to Clause 50.14.2), he shall notify the Common Terms Disputing Parties that he no longer considers himself capable of determining the Common Terms Dispute (a “**Common Terms Appointment Cessation Notice**”). Upon receiving a Common Terms Appointment Cessation Notice from the Common Terms Dispute Expert the Company shall determine in good faith but otherwise in its absolute discretion, and notwithstanding anything to the contrary in any contract to which the Common Terms Dispute relates, whether the Common Terms Dispute should be referred in accordance with Clause 47 to the Court for determination or whether the Company should refer the Common Terms Dispute to an alternative Common Terms Dispute Expert to determine the dispute. The Company shall Notify the Consenting Beneficiary of its decision in writing within five Business Days of receipt of a Common Terms Appointment Cessation Notice, following which the election and appointment procedure set out in Clause 47 or Clause 50.3 (as the case may be) and the remainder of this Part 10 shall be followed as if such notice was a Common Terms Dispute Forum Notice.
- 50.14.6** Upon the conclusion of the procedure adopted pursuant to this Clause 50, the Common Terms Dispute Expert shall, as soon as reasonably practicable, inform the Common Terms Disputing Parties in writing of his decision. The Common Terms Dispute Expert shall not be obliged to give reasons, unless requested by the Company in its absolute discretion, for his decision as if such Notice was a Common Terms Dispute Forum Notice.
- 50.14.7** The Common Terms Disputing Parties and the Common Terms Dispute Expert will use their reasonable endeavours to ensure the determination of the Common Terms Dispute within 60 Business Days of the appointment of the Common Terms Dispute Expert.

51 Appeals and costs

51.1 Right of appeal and liability

The decision of the Common Terms Dispute Expert on any Common Terms Dispute referred to him in accordance with the Common Terms shall, insofar as the law allows, be final and binding. There shall be no right of appeal therefrom, nor shall there be any right to make any claim against the Common Terms Dispute Expert in respect thereof, save in the case of any loss arising from the Common Terms Dispute Expert's fraud.

51.2 Rate of remuneration

The Common Terms Dispute Expert shall be entitled to be remunerated at such reasonable rate as may be agreed by the Company and to be reimbursed his reasonable fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) in carrying out his duties under the Common Terms.

51.3 Apportionment of remuneration of the Common Terms Dispute Expert

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) incurred by the Common Terms Dispute Expert in respect of a Common Terms Dispute shall be apportioned between the Common Terms Disputing Parties in such proportions as the Common Terms Dispute Expert may determine in his absolute discretion taking into account: (i) the degree to which he deems either of the Common Terms Disputing Parties' positions to have been lacking in reasonable foundation; and (ii) their conduct during the course of the dispute resolution process, and shall be paid in accordance with Clauses 51.5 and 51.6.

51.4 Apportionment of costs of the Common Terms Disputing Parties

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) reasonably incurred by the Common Terms Disputing Parties, from the date of receipt of a Common Terms Dispute Notice by the Company or Consenting Beneficiary (as applicable), in respect of a Common Terms Dispute determined by the Common Terms Dispute Expert, shall be apportioned between the Common Terms Disputing Parties in such proportions as the Common Terms Dispute Expert may determine in his absolute discretion taking into account: (i) the degree to which he deems either of the Common Terms Disputing Parties' positions to have been lacking in reasonable foundation; and (ii) their conduct during the course of the dispute resolution process, and shall be paid in accordance with Clauses 51.5 and 51.6.

51.5 Costs borne by a Consenting Beneficiary

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) directed by the Common Terms Dispute Expert to be borne by a Consenting Beneficiary shall be borne in full by that Consenting Beneficiary. Any Deposit paid pursuant to Clause 50.10 shall be applied against this amount and then, if there is a shortfall, the Consenting Beneficiary shall be liable to the Company to discharge such shortfall in full without set-off, deduction, defence to payment or counterclaim. Any amount of the Deposit not applied against obligations of the Consenting Beneficiary shall be returned by the Common Terms Dispute Expert to the Consenting Beneficiary.

51.6 Costs borne by the Company and/or the Administrators

Any fees (including any VAT thereon), costs, charges and expenses (including third party costs, together with any applicable irrecoverable VAT) directed by the Common Terms Dispute Expert to be borne by the Company and/or the Administrators shall be borne by the Company and paid as an expense of the Administration.

52 Miscellaneous dispute issues

52.1 Failure by Consenting Beneficiary to comply with Common Terms Dispute Resolution Mechanism

If the Consenting Beneficiary fails to:

52.1.1 comply with any time limit (as amended in accordance with Clause 52.4, as applicable); or

52.1.2 otherwise take any step or action in the manner,

specified by any provision of this Part 10 (including Clauses 45.1.1, 45.2, 50.5, 50.10, 50.12 and 50.14), then it shall be deemed:

- (i) irrevocably to have abandoned the relevant Common Terms Dispute;
- (ii) to have accepted the relevant Common Terms Determination Notice or, as applicable, the Company's position in relation to the matter raised in a Common Terms Dispute; and
- (iii) to have given up any rights subsequently to raise a dispute in relation to the same subject matter.

Subject to Clause 13.1.2, any disputed Common Terms Determination Notice (or, as applicable, the Company's position in relation to the matter raised in the Common Terms Dispute) is then final and binding.

52.2 Exclusivity of Common Terms Dispute Resolution Mechanism

52.2.1 The Common Terms Dispute Resolution Mechanism shall be the exclusive method for determining any Common Terms Dispute and Consenting Beneficiaries shall be barred from bringing any other proceedings in any jurisdiction in respect of the Common Terms Dispute.

52.2.2 Where the Common Terms provide that a Notice, determination or other matter is final and binding (including in Clauses 5.2, 8.2.4, 13.1.2, 13.1.3, 14.2.4, 45.3.1, 47.2, 50.5, 51.1 and 52.1), such Notice, determination or matter shall not be capable of dispute by any Consenting Beneficiary, whether pursuant to the Common Terms Dispute Resolution Mechanism or otherwise.

52.3 Jurisdiction of the Court

Notwithstanding the foregoing, nothing in these Common Terms prevents the Court from having jurisdiction to hear applications for directions brought by the Administrators in the Administration or prevents the Administrators from bringing such applications.

52.4 Extension of time limits of the Common Terms Dispute Resolution Mechanism

Save in respect of Clause 45.1 (the time limit for which may not be extended), any of the time limits in this Common Terms Dispute Resolution Mechanism may be extended:

52.4.1 by written agreement between the Common Terms Disputing Parties; or

52.4.2 by the Common Terms Dispute Expert.

PART 11 – REGULATORY STATUS

53 Regulatory status

53.1 FSA as regulator

53.1.1 The Company is authorised and regulated by the FSA.

53.1.2 The Common Terms are supplemental to the standard terms of business of the Company. In the event of an irreconcilable conflict between any provision of the Common Terms and the standard terms of business of the Company, the Common Terms shall prevail except where that would give rise to a failure to comply with FSA Rules, in which case the standard terms of business shall prevail to the extent necessary (but no more than is strictly necessary) in relation to that provision only.

53.1.3 No Consenting Beneficiary will have an individual entitlement to any particular Trust Financial Asset. On that basis, the Company does not consider that the sale of the Trust Financial Assets will amount to execution of a customer order and will not be subject to FSA Rules on best execution. The provisions of Clause 21.3 are, however, designed to provide comparable protections reflecting the interests of Consenting Beneficiaries as a whole.

53.2 Professional client

The sale of any part of any LBI Distribution by the Company pursuant to Clause 20 of the Common Terms shall be performed on the basis that each Consenting Beneficiary is a “professional client” and following such categorisation processes as are required under the rules of the FSA. Each Consenting Beneficiary acknowledges and agrees that it will keep the Company informed of any change that could affect its categorisation pursuant to the FSA Rules.

53.3 Retail client

53.3.1 Although each Consenting Beneficiary would be entitled to request that the Company treats it as a “retail client” subject to additional levels of client protection under FSA Rules, each Consenting Beneficiary confirms to the Company that it does not wish to be so treated.

53.3.2 Each Consenting Beneficiary acknowledges and agrees that professional clients are entitled to fewer protections under the FSA Rules than “retail clients”. In particular:

(i) Communications with retail clients and financial promotions

In relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a retail client, the Company must ensure that information:

- (a) includes the Company’s name;
- (b) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

- (c) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (d) does not disguise, diminish or obscure important items, statements or warnings.

This requirement does not apply in the case of professional clients.

When the Company communicates advertisements and other financial promotions to retail clients, the Company is required to ensure that certain form and content requirements are included and that certain internal approval and record-keeping procedures are followed. Most of these rules are inapplicable to financial promotions to professional clients.

The Company is, however, in addition required to ensure that all information provided to both retail and professional clients is clear, fair and not misleading.

(ii) Suitability

If the Company makes a personal recommendation or manages investments for a professional client, the Company is entitled to assume that, in relation to the products, transactions and services for which the professional client is so classified, the client has the necessary level of experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio. In the case of a retail client, this assumption may not be made and the Company would be required to satisfy itself that the retail client does have the necessary level of experience and knowledge.

(iii) Appropriateness

When assessing appropriateness for a professional client, the Company may assume that the professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client. In the case of a retail client, this assumption may not be made and the Company would be required to satisfy itself that the retail client does have the necessary level of experience and knowledge.

(iv) Reporting to clients

The Company's obligations to report to clients in respect of transactions (including trade confirmations and periodic statements) are more stringent and detailed in the case of retail clients.

(v) Training and competence requirements

More stringent requirements as to training and competence of a firm's staff apply to certain staff that provide services to retail clients.

(vi) Complaints handling

The FSA's rules on the handling of client complaints generally apply only to eligible complainants (as defined) and sometimes only to retail clients. Professional clients are generally not eligible complainants. Accordingly, by electing to be treated as a professional client, each Consenting Beneficiary will lose the protection of FSA's client complaint handling rules.

(vii) Financial Ombudsman Service

As professional clients, the Consenting Beneficiaries will also normally lose the right of access to the Financial Ombudsman Service.

53.3.3 To the extent that the Company is providing a service to the Consenting Beneficiaries in selling any part of any LBI Distribution, each Consenting Beneficiary confirms that the Company is entitled to assume and does so assume that each Consenting Beneficiary has the necessary knowledge and experience to enable it to comprehend, analyse and confirm the appropriateness of the actions being undertaken by the Company in providing that service and, in particular, any decision to sell any part of any LBI Distribution.

PART 12 – DEFINITIONS AND INTERPRETATION

54 Definitions

In these Common Terms, unless inconsistent with the subject or context, the following expressions bear the following meanings:

- “19/9 Position”** means, in respect of any LBI Asset Claim Customer, the Securities positions as at 19 September 2008 shown in its Information Pack
- “19/9 Shortfall”** means, in respect of a Consenting Beneficiary, the USD Value of the amount (if positive and zero otherwise) by which:
- (i) the 19/9 Value of that Consenting Beneficiary,
- is greater than,
- (ii) the Cumulative Gross Allocation allocated to such Consenting Beneficiary at the time of the final Common Terms Distribution
- “19/9 Shortfall Claim”** has the meaning set out in Clause 5.1.1
- “19/9 Value”** means, in respect of any LBI Asset Claim Customer the USD Value as at 19 September 2008 of:
- (i) its 19/9 Position;
 - (ii) its SIPA Cash; and
 - (iii) Money derived from mergers, maturities and redemptions between 15 September 2008 and 19 September 2008 in respect of Securities listed in its Information Pack
- “Adjusted Available Funds”** has the meaning set out in Clause 9.7
- “Administration”** means the administration of the Company under the Administration Order
- “Administration Date”** means 15 September 2008
- “Administration Order”** means the order of the Court dated 15 September 2008 made under paragraph 12 of Schedule B1 of the Insolvency Act under which Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jarvis were appointed joint administrators of the Company
- “Administrators”** means the persons from time to time serving as joint administrators in the Administration who, as at the date of the Information Memorandum, are Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, United Kingdom
- “Advisers”** means:
- (i) Linklaters LLP; and

"Affiliate"	(ii) any other professional advisers to the Administrators means, in relation to the Company, any Subsidiary, a Holding Company or any other Subsidiary of that Holding Company
"Aggregate Market Value"	means, in respect of any LBI Asset Claim Customer, the aggregate of: <ul style="list-style-type: none"> (i) the USD Value on the Fixing Date of its SIPA Cash; (ii) the USD Value on the Fixing Date of its 19/9 Position, provided that: <ul style="list-style-type: none"> (a) to the extent that any Security which was comprised in the 19/9 Position of that LBI Asset Claim Customer has been replaced by any Money or other Securities as a result of maturities, redemptions, mergers, reclassifications, reorganisations or other Corporate Actions and/or Corporation Events occurring between 15 September 2008 and the Fixing Date, then the USD Value of such Securities shall be deemed to be the USD Value of such Money or other Securities on the Fixing Date; and (b) to the extent that during the period from 15 September to the Fixing Date there was any payment of Money in respect of principal, maturities, redemptions or capital payments in respect of any Security which was comprised in the 19/9 Position of that LBI Asset Claim Customer (or other Securities in lieu thereof as described in paragraph (ii)(a) of this definition), then, to the extent that it is not already included in paragraph (ii)(a) of this definition, the USD Value of such Money; and (iii) its Income Amount, provided that there shall be no double counting in the calculation of the Aggregate Market Value of any LBI Asset Claim Customer
"Alleged Figure"	has the meaning set out in Clause 45.1
"Alleged Information Pack Figure"	has the meaning set out in Clause 45.1.1(ii)(a)
"Alleged Notice of Distribution Figure"	has the meaning set out in Clause 45.1.2(i)
"Amended and Restated CRA"	means the CRA as further amended and restated following the passing of the Resolution and the satisfaction of the conditions in the Resolution
"Attributable Amount"	means, in respect of any Consenting Beneficiary, any

	Attributable Reserve or Attributable Payment in each case in respect of that Consenting Beneficiary
“Attributable Payment”	means, in respect of any Consenting Beneficiary, any payment or discharge of an obligation (or any part of any obligation) made out of the Omnibus Trust where such payment or discharge is determined by the Company under Clause 8.2.3(i)(b) to be an Attributable Payment in respect of that Consenting Beneficiary
“Attributable Reserve”	means, in respect of any Consenting Beneficiary any Reserve determined by the Company under Clause 8.2.3(i)(a) to be an Attributable Reserve in respect of that Consenting Beneficiary
“Available Funds”	has the meaning set out in Clause 9.6
“Best Claim”	has the meaning set out in Clause 4.2
“Books”	means books, records or other information in any form, including paper, electronically stored data, magnetic media, film and microfilm. For the avoidance of doubt, the Books in respect of the Company shall not include books, records or other information: <ul style="list-style-type: none"> (i) owned by persons other than the Company but to which the Company has access (whether full or partial); or (ii) which the Company cannot locate or access
“Business Day”	means: <ul style="list-style-type: none"> (i) a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York; (ii) in the case of an obligation to be performed in a country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; (iii) in the case of the determination of an event or circumstance required to be calculated by reference to a day in any country other than the United Kingdom or the United States of America, a day on which banks are open for general business in such country; or (iv) in the case of any country, a day on which banks are open for general business in such country
“CAPCO”	means Customer Asset Protection Company, an insurance company licensed by the state of Vermont, United States of America
“Capped Net 19/9 Shortfall Claim”	has the meaning set out in Clause 5.4
“CASS Rules”	means the rules set out in Chapters 7 and 7A of the FSA’s Client Assets Sourcebook (as amended)
“Catch-Up Distribution”	has the meaning set out in Clause 9.8.3(iii)

“Catch-up QCB”	has the meaning set out in Clause 9.8.3(iii)
“CDD”	means a claims determination deed or similar agreement between the Company and an LBI Asset Claim Customer in which, in whole or in part, the Customer’s unsecured Legal Claims against the Company are agreed between the LBI Asset Claim Customer and the Company and by which the Customer’s rights in respect of or in connection with any LBI Asset Claim are preserved
“Client Money”	means Money which is client money pursuant to and as defined in the FSA Rules and which was, or ought to have been, held by the Company
“Code”	means the United States Internal Revenue Code of 1986, as amended
“Common Terms”	means the common terms set out in this Schedule
“Common Terms Appointment Cessation Notice”	has the meaning set out in Clause 50.14.5
“Common Terms Claims”	has the meaning set out in Clause 3.1
“Common Terms Delegate”	has the meaning set out in Clause 34.1
“Common Terms Determination Notice”	has the meaning set out in Clause 43.1
“Common Terms Dispute”	has the meaning set out in Clause 43.1
“Common Terms Dispute Documentation”	has the meaning set out in Clause 50.2.3(i)
“Common Terms Dispute Expert”	has the meaning set out in Clause 47.1.1
“Common Terms Dispute Forum Notice”	has the meaning set out in Clause 47.2
“Common Terms Dispute Notice”	has the meaning set out in Clause 45.1
“Common Terms Dispute Resolution Mechanism”	has the meaning set out in Clause 43.1
“Common Terms Disputing Parties”	has the meaning set out in Clause 43.1
“Common Terms Distribution”	means, in respect of any Distribution Date or prospective Distribution Date, all and any of the distributions and other applications to be made on that Distribution Date or prospective Distribution Date, respectively, by the Company in accordance with these Common Terms
“Common Terms Effective Date”	means the first date on which all of the following have occurred: <ul style="list-style-type: none"> (i) the Resolution is passed; (ii) OSA Offers are received and accepted (and not revoked) by the Company pursuant to the OSA in

respect of Best Claims of OSA Eligible Offerors sufficient to equal or exceed 40 per cent. of the aggregate of Best Claims of all OSA Eligible Offerors; and

- (iii) all conditions to the effectiveness of the Settlement Agreement have been satisfied or waived in accordance with the terms thereof, such that the Settlement Agreement is fully effective, provided that, the "100% Conditions" as defined in Section 11.06(b)(i) of the Settlement Agreement are satisfied and not waived,

and, in and for the purpose of this definition only, any reference to any **"Best Claim"**:

- (a) is to the Best Claim as set out in the original Information Pack issued with the Information Memorandum to each OSA Eligible Offeror; and
- (b) shall exclude the Best Claim of the Company in its capacity as a Consenting Beneficiary

"Companies Act"

means the Companies Act 2006

"Company"

means Lehman Brothers International (Europe) (in administration), incorporated in England and Wales with registered number 2538254

"Company-Related Released Party"

means each of the Company (including any Common Terms Delegate), the Administrators, the Advisers and their firms and in each case their and their firms' members, agents, custodians, nominees, partners, officers, directors, employees and representatives

"Comparative QCB"

has the meaning set out in Clause 9.8.3(iii)(b)

"Consenting Beneficiary"

means any OSA Consenting Beneficiary or, following the passing of the Resolution, any CRA Omnibus Beneficiary (in each case as construed in accordance with Clause 28.2)

"Consenting Beneficiary Accession Date"

means, in respect of:

- (i) any OSA Consenting Beneficiary, the date of its OSA Acceptance Notice; and
- (ii) any CRA Omnibus Beneficiary, the date on which the Resolution is passed

"Consenting Beneficiary Accession Document"

means, in respect of:

- (i) any OSA Consenting Beneficiary either:
 - (a) its OSA Offer (which without limitation may be in the form of an electronic confirmation or file howsoever described); or
 - (b) its OSA Accession Deed; and
- (ii) any CRA Omnibus Beneficiary, its approval or non-

	approval of the Resolution (if any), together with any ancillary document thereto (including any power of attorney) and any Information Pack Challenge Form of any such Consenting Beneficiary
“Consenting Beneficiary Agreements”	means the OSA and the Amended and Restated CRA, and “Consenting Beneficiary Agreement” means either of them
“Corporate Action”	means a subscription rights issue, a tender offer (such as a takeover offer, exchange offer or other similar offer or proposal) which may be of a security for a security, cash, any other securities or assets, or any combination of these, a scheme of arrangement pursuant to Part 26 of the Companies Act, a security subdivision/security split, a reverse security split, a bonus issue or a bonus rights issue, an exercise of voting rights, an exercise of conversion rights in relation to convertible bonds/warrants, a capital reorganisation, a merger, an election in relation to dividends (whether for cash or securities), and any other analogous or similar action
“Corporation Event”	means: <ul style="list-style-type: none"> (i) payment of a dividend; (ii) payment of a coupon; (iii) payment of a redemption amount; (iv) an exchange of a security for a security, of a security or cash for cash, of cash or a security for any other securities or assets, or of a security for any combination of these; and (v) any other analogous or similar event, in each case, where the relevant event would not qualify as a Corporate Action
“Costs Amount”	has the meaning set out in the Amended and Restated CRA
“Costs Liability”	means, in respect of an OSA Consenting Beneficiary, an amount on each Distribution Date equal to: <ul style="list-style-type: none"> (i) the relevant Costs Liability Percentage, multiplied by, (ii) the Cumulative Gross Allocation to that Consenting Beneficiary up to and including that Distribution Date (but without double-counting any portion of the Cumulative Gross Allocation to which the Costs Liability Percentage has previously been applied), <p>(plus VAT on the underlying costs and expenses, if applicable), provided that such Costs Liability shall not exceed US\$2,500,000 (plus VAT on the underlying costs and expenses, if applicable) for a Consenting Beneficiary taking into</p>

	account any costs already paid by that Consenting Beneficiary to the Company with respect to the disposition of assets by the Administrators
“Costs Liability Percentage”	means 1.00 per cent
“Court”	means the High Court of Justice in England and Wales
“CRA”	means the Claim Resolution Agreement between the Company and the Signatories (as defined therein) dated 29 December 2009 as amended and restated on 8 December 2011
“CRA Omnibus Beneficiaries”	means all LBI Asset Claim Customers which are CRA Signatories and “CRA Omnibus Beneficiary” means any such person
“CRA Signatory”	means a Signatory as defined in the Amended and Restated CRA
“Creditors’ Common Terms Committee Group”	means the members of the Creditors’ Committee as defined in the Amended and Restated CRA, including any sub-committees thereof and any person co-opted onto or otherwise treated as a member of the Creditors’ Committee as defined in the Amended and Restated CRA (whether formally or not), and their investment managers and investment managers’ affiliates, and each of their respective advisers, firms, members, agents, custodians, nominees, partners, officers, directors and employees, at all times only in their respective capacities described in this definition, which ultimately derive from the role of the Creditors’ Committee as defined in the Amended and Restated CRA and, where the context requires, means them individually or collectively
“Cumulative Gross Allocation”	has the meaning set out in Clause 9.8.1
“CUSIP number”	means the number assigned to a Security by the Committee on Uniform Securities Identification Procedures
“Customer”	means a person accepted by the Company as being a customer (howsoever described) of the Company pursuant to a legal agreement, standard terms of business or practice
“Customer Name Securities”	means Securities registered in the name of a Customer but does not include Securities registered in the name of the Customer which, by endorsement or otherwise, are in negotiable form
“Cut-Off Date”	means, in respect of a Common Terms Distribution or proposed Common Terms Distribution, the Cut-Off Date nominated by the Company pursuant to Clause 9.2.1
“Deposit”	has the meaning set out in Clause 50.10.3
“Derived Financial Asset”	means any Security or Money (including any income) received by or on behalf of the Company arising out of any Omnibus Settlement Assets (including any LBI Distribution or out of any other Derived Financial Asset) and shall include the sale

proceeds (net of any UC DP Expenses as defined in the Settlement Agreement) received by the Company of any Security which is a Trust Financial Asset sold under Clause 20 and the proceeds of any hedging permitted by Clause 21.9

“Distribution Date”

means, in respect of a Common Terms Distribution or proposed Common Terms Distribution, such date or dates as the Company may nominate pursuant to Clause 9.2.1 as the proposed Distribution Date for such Common Terms Distribution

“Eligibility Status”

has the meaning set out in Clause 43.1.3

“Explanatory Notes”

has the meaning set out in Clause 13.1.3(iii)

“FATCA”

means:

- (i) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (ii) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (i) above; or
- (iii) any agreement pursuant to the implementation of paragraph (i) or (ii) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction

“Final Order”

means an order made by a court of competent jurisdiction, whose rulings are binding on the Company, provided that:

- (i) the order is in full force and effect; and
- (ii) either:
 - (a) the order is not capable of being appealed; or
 - (b) the relevant time period for lodging an appeal (or seeking permission to appeal) has passed and no such appeal has been lodged (or permission sought)

“Financial Instrument”

means any financial instrument, including any share, instrument creating or acknowledging indebtedness, instrument creating or acknowledging entitlements to investments, warrant or unit in a collective investment scheme, that is capable of being credited to an account of the Company with an Intermediary, excluding money

“Fixing Date”

means 30 November 2012

“FSA”

means the Financial Services Authority of the United Kingdom

“FSA Handbook”

means the handbook containing rules, principles and guidance made by the FSA under powers given to it by the FSMA as modified, amended or revised from time to time

“FSA Rules”

means the FSMA and the FSA Handbook

“FSMA”	means the Financial Services and Markets Act 2000 and, to any extent relevant, the Financial Services Acts 2010 and 2012
“GAC Code”	means the “Global Account Code” number assigned for identification purposes to a portfolio of a Customer of the Company
“Gross Distribution”	has the meaning set out in Clause 9.8
“Holding Company”	means, in relation to the Company, any other company, corporation or legal entity in respect of which it is a Subsidiary
“Income Amount”	means, in respect of any LBI Asset Claim Customer, the amount of income which would have been earned (before tax and without any reinvestment of income) on the Securities comprised in that LBI Asset Claim Customer’s 19/9 Position during the period from 15 September 2008 to the Fixing Date and taking into account any change in the amount or nature of those Securities as a result of capital redemptions, Corporate Actions or Corporation Events during that period but not including any amount of capital payment referred to at paragraph (ii)(a) or (ii)(b) of the definition of Aggregate Market Value)
“Information Memorandum”	means the information memorandum issued by the Company in relation to the OSA and the Resolution
“Information Pack”	has the meaning set out in Clause 13.1.1
“Information Pack Challenge Form”	means the challenge form in the form provided with the Information Pack
“Information Pack Figure”	has the meaning set out in Clause 43.1.1
“Information Representation”	has the meaning set out in Clause 17.2
“Initial Representation”	has the meaning set out in Clause 17.1
“Insolvency Act”	means the Insolvency Act 1986
“Insolvency Rules”	means the Insolvency Rules 1986
“Intermediary”	means a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of Securities or Post-Administration Client Money) on behalf of or to the order of the Company, and which has a direct contractual or fiduciary relationship with the Company in relation to those assets
“Intermediary Consenting Beneficiary Distribution”	means any asset or benefit received by a Consenting Beneficiary on or after the Administration Date from LBI or its custodians or depositories, by way of delivery of Security, payment of Money, set-off or otherwise equivalent to a Permitted Deduction or a Net Distribution under the relevant Consenting Beneficiary Agreement, in or towards satisfaction of an LBI Asset Claim of that Consenting Beneficiary, as determined by the Company

For the avoidance of doubt, "Intermediary Consenting Beneficiary Distribution" includes any such assets or benefits received by a Consenting Beneficiary between the Administration Date and its Consenting Beneficiary Accession Date

- "IRS"** means the United States Internal Revenue Service
- "ISIN"** means International Securities Identification Number
- "LBHI Guarantee Claim"** means a Legal Claim against Lehman Brothers Holding Inc. under a guarantee granted by it of the Company's obligations to Customers
- "LBI"** means Lehman Brothers Inc.
- "LBI Asset"** means any Securities or Money which was recorded in the Books of the Company at the Time of Administration:
- (i) as being held in a segregated manner for Customers of the Company separately from other property held by the Company which other property is available to the unsecured creditors of the Company; and
 - (ii) as being:
 - (a) held in physical form by LBI for the Company's Customers provided that it is:
 - (i) not a Customer Name Security; and
 - (ii) segregated from other property held in physical form by LBI which is not held in the account of a customer of LBI; or
 - (b) if not held in physical form by LBI, held in an account designated in the Books of LBI as an account in the name of the Company held by the Company for the benefit of Customers,
- subject to:
- (iii) adjustments subsequently made by the Company so as to:
 - (a) exclude Securities and Money that, following the Time of Administration, ceased to be so held or credited by LBI; and
 - (b) include Securities and Money that became so held or credited,
- in either such case as a result of a sale, purchase, rehypothecation, return from rehypothecation, or other transfer instruction given by the Company to LBI before the Time of Administration and implemented by LBI prior to commencement of the SIPA Liquidation Proceedings and as shown in the adjusted Books of the Company

“LBI Asset Claim”	means, in respect of a Customer, a Legal Claim (other than an unsecured claim against the Company) whether such claim ranks <i>pari passu</i> or in priority or as an administration expense in the Company’s general estate in relation to any LBI Asset
“LBI Asset Claim Customer”	means a Customer with an LBI Asset Claim
“LBI Distribution”	means any receipt of Omnibus Settlement Assets by the Company from LBI but excluding any Customer Name Securities in favour of a Customer
“LBI Duplicate Claim”	means the “Duplicative Claims” as defined in the Settlement Agreement
“LBI Trustee”	means James W. Giddens in his capacity as trustee of LBI in the SIPA Liquidation Proceedings
“Legal Claim”	means a claim existing in law (whether present or future and whether presently known or unknown) of whatsoever nature, including: <ul style="list-style-type: none"> (i) a proprietary claim, a claim for breach of contract, tort, restitution and/or breach of trust (ii) a claim for loss of market value, income or interest; (iii) a claim for damages for special, indirect, incidental and/or consequential loss, punitive or economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise; (iv) the ability to enforce any right to: <ul style="list-style-type: none"> (a) seek or enforce judgment; (b) exercise any remedy (for damages or otherwise, including damages for special, indirect, incidental and/or consequential loss, punitive or economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise); (c) seek an indemnity and/or contribution, whether for losses (including special, indirect, incidental, consequential loss, punitive or economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), fees (including any VAT thereon), costs, charges or expenses (including third party costs, together with any applicable irrecoverable VAT)

of any nature; or

- (d) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever,

whether arising by, amongst other things, reason of insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise

“Legal Liabilities”

means all liabilities, costs, losses, expenses, demands, duties and obligations of every description, existing in law, whether present or future, actual or contingent, ascertained or unascertained or disputed and whether owed or incurred severally or jointly or as principal or surety, and **“Legal Liability”** means any one of them

“Liquidation Event”

means either an order by the Court to compulsorily wind up the Company or the commencement of a creditors’ voluntary winding-up in respect of the Company (both pursuant to the Insolvency Act and the Insolvency Rules)

“Majority Consenting Beneficiary Consent”

has the meaning set out in Clause 41.1

“Money”

means any cash or cash equivalents in any currency other than any Security, including a positive cash balance reflected in any account or ledger, but shall not include any Pre-Administration Client Money

“Net 19/9 Shortfall Claim”

has the meaning set out in Clause 5.3

“Net Distribution”

has the meaning set out in Clause 10.1

“Non-Consenting Beneficiary”

means any LBI Asset Claim Customer who is not a Consenting Beneficiary

“Notice”

means any notice given in accordance with Clause 42, and **“Notify”**, **“Notifying”** and **“Notified”** shall be construed accordingly

“Notice of Distribution”

has the meaning set out in Clause 14.2.1

“Notice of Distribution Figure”

has the meaning set out in Clause 43.1.2

“Notice of Intended Distribution”

has the meaning set out in Clause 14.1.1

“Omnibus Claim”

means the omnibus customer property claim filed by the Company on behalf of itself and its Customers in the SIPA Liquidation Proceedings of LBI docketed as claim numbers: 900005782/900005953, and 900007955/900007941 and 900008199 (and the LBIE Failed Trade Claim (as defined in the Settlement Agreement) to the extent it relates to claims identified by such claim numbers), as supplemented, modified or amended from time to time up to the date of the Settlement

	Agreement
“Omnibus Settlement Assets”	means any Security or Money distributed to or for the account of the Company by the LBI Trustee in accordance with the Settlement Agreement in respect of the Allowed Omnibus Claim (as defined in the Settlement Agreement) being: <ul style="list-style-type: none"> (i) the Omnibus Securities, the Omnibus Cash in Lieu Payment and the Omnibus Cash Payment; (ii) the Omnibus Shortfall Claim; and (iii) the Specified Post-Filing Income, in each of paragraphs (i) to (iii) above, as defined in the Settlement Agreement
“Omnibus Trust”	means the trust under which the LBI Distributions and any other Trust Financial Assets (including any Reserves) are held as described in Clause 8.1 and, as the context may require, the assets constituting the trust property thereof
“OSA” or “Omnibus Settlement Agreement”	means the Omnibus Settlement Agreement between the Company and the OSA Consenting Beneficiaries
“OSA Acceptance Notice”	has the meaning set out in clause 1.1 of the OSA
“OSA Accession Deed”	has the meaning set out in clause 1.1 of the OSA
“OSA Consenting Beneficiary”	means: <ul style="list-style-type: none"> (i) any OSA Eligible Offeror who has received an OSA Acceptance Notice; and (ii) any OSA Eligible Offeror which accedes to the OSA in accordance with clause 8 of the OSA
“OSA Distribution Liability”	means, in respect of any OSA Consenting Beneficiary and any Gross Distribution to be made on a Distribution Date, the aggregate of: <ul style="list-style-type: none"> (i) the final ascertained amount of the outstanding indebtedness (if any) of such Consenting Beneficiary owing to the Company; (ii) any amount which the Company is under a legal obligation to retain out of the Gross Distribution of the Consenting Beneficiary for the account of any other person claiming by or through such Consenting Beneficiary; and (iii) any other outstanding Legal Liabilities which such Consenting Beneficiary from time to time agrees with the Company that the Company may satisfy from any Gross Distribution <p>provided that no amount due under Clauses 17.5, 18.6 or 51.5 shall be treated as an OSA Distribution Liability</p>
“OSA Documents”	has the meaning set out in clause 1.1 of the OSA

“OSA Eligible Offeror”	has the meaning set out in clause 1.1 of the OSA
“OSA Offer”	has the meaning set out in clause 1.1 of the OSA
“Permitted Deductions”	has the meaning set out in Clause 10.3
“Pledgor”	means in relation to any Security Interest, the party over whose assets the Security Interest has been created
“Portal”	means a secure online facility made available by the Company to Customers
“Post-Administration Client Money”	means any Client Money which is received by the Company after the Time of Administration and for which the Company remains accountable, but, for the avoidance of doubt, shall not include Pre-Administration Client Money or Pre-Administration Client Money Claims (as such term is defined in the Amended and Restated CRA but replacing references to “Signatory” with “Consenting Beneficiary”)
“Pre-Administration Client Money”	means any Client Money which was received or held by the Company prior to the Time of Administration and for which the Company remained accountable at the Time of Administration and any money earned or arising at any time in respect thereof, whether before or after the Time of Administration
“Proceedings”	means any process, action, legal or other proceeding, including any administrative, judicial or quasi-judicial proceeding, any regulatory process, arbitration, alternative dispute resolution, mediation, judicial review, adjudication, forfeiture, re-entry, seizure, distraint, execution, enforcement of judgment or any other step taken for the purpose of creating or enforcing a lien
“Proprietary Claim”	means, in respect of each Consenting Beneficiary, its proprietary claim as set out in Clause 4.1
“Qualifying Consenting Beneficiary”	has the meaning set out in Clause 9.5.1
“receipt”	means, in respect of the receipt of any LBI Distribution or Omnibus Settlement Asset, any part of any LBI Distribution or Omnibus Settlement Asset being received, which receipt occurs when any LBI Distribution or Omnibus Settlement Asset is unconditionally transferred by the LBI Trustee to or to the order of the Company and the property received is the property actually so paid or transferred, after the application of any withholding or deduction, cost, expense, transfer or registration fee or any other deduction or withholding of any nature whatsoever made before it comes into the hands or control of the Company and “ receive ” and “ received ” shall be construed accordingly
“Recoverable Turnover Value”	has the meaning set out in Clause 25.1.1
“Released Claim Party”	means, in respect of a Consenting Beneficiary, each Company-Related Released Party together with each other Consenting

	Beneficiary.
	For the avoidance of doubt:
	(i) Lehman Brothers Holding Inc.; and
	(ii) CAPCO,
	shall not be Released Claim Parties for the purpose of Clause 6
“Released Common Terms Claims”	has the meaning set out in Clause 6.1
“Released Persons”	has the meaning set out in Clause 6.1
“Relevant Consenting Beneficiaries”	has the meaning set out in Clause 41.2.1
“Relevant Qualifying Consenting Beneficiaries”	has the meaning set out in Clause 9.7
“Representation”	means any Initial Representation or Information Representation
“Reserves”	has the meaning set out in Clause 8.2 and “Reserve” , “Reserved” and “Reserving” shall be construed accordingly
“Reserved Securities”	means any Securities set aside in any Reserve from time to time
“Resolution”	means an Extraordinary Resolution (under and as defined in the CRA) proposed by the Company, providing for the amendment of the CRA in order to incorporate the Common Terms into the CRA
“Security” or “Securities”	means any Financial Instrument or any right in respect of any Financial Instrument against a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of assets) on behalf of or to the order of a person who holds such Financial Instrument
“Security Claim”	means any Legal Claim asserted by a Security Interest Claimant that it has a Security Interest
“Security Interest”	means any legal, equitable or possessory interest (or equivalent under a legal system outside England) of a person (a “Security Interest Claimant”) in an identified or identifiable asset that is in the nature of a lien, pledge or security that encumbers the entitlement of the Pledgor to that asset until one or more obligations of the Pledgor to the Security Interest Claimant are discharged in full
“Security Interest Claimant”	has the meaning set out in the definition of “Security Interest”
“Settlement Agreement”	means the settlement agreement dated 21 February 2013 between the Company and the LBI Trustee with respect to, among other things, the Omnibus Claim
“Shortfall Claim Cap”	means US\$ 200,000,000
“Shortfall Claims Determination”	has the meaning set out in Clause 5.2

Notice”

“SIPA” means the U.S. Securities Investor Protection Act of 1970

“SIPA Cash” means, for any LBI Asset Claim Customer, Money representing the net sale proceeds attributable to the settlement of Securities transactions for the sale of long and rehypothecated positions and short sales between 15 September 2008 and 19 September 2008

“SIPA Liquidation” means the SIPA liquidation of LBI commenced pursuant to an order of the United States District Court, Southern District of New York dated 19 September 2008

“SIPA Liquidation Proceedings” means the liquidation proceedings under the Securities Investor Protection Act 1970 commenced against LBI as of 19 September 2008

“SIPC” means the Securities Investor Protection Corporation, all of its past and present employees, professionals and advisers and its successors, assigns and personal representatives

“Statutory Trust” means the statutory trust created by the CASS Rules

“Subsidiary” means, in relation to the Company or its Holding Company, any company, corporation or other legal entity:

- (i) which is controlled, directly or indirectly, by the Company or its Holding Company;
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the Company or its Holding Company; or
- (iii) which is a subsidiary of another Subsidiary of the Company or its Holding Company,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body

“Surviving Third Party Supported Claim” has the meaning set out in Clause 26.1

“Tax” or “Taxation” means all forms of taxation, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments in respect of or on account of such forms of taxation, in each case whether of the United Kingdom or elsewhere in the world, whenever imposed and whether chargeable directly or primarily against or attributable directly or primarily to the Company, a Consenting Beneficiary or any other person

“Tax Authority” means any taxing or other authority competent to impose any liability in respect of Tax, or responsible for the administration and/or collection of Tax or enforcement of any law in relation to Tax

“Tax Burden Liability”	has the meaning set out in Clause 18.4.1
“Tax Reserve”	has the meaning set out in Clause 8.2.1(vi)
“Third Party”	means, in relation to any contract, a person who is not a party to that contract
“Third Party Support Obligation”	has the meaning set out in Clause 26.1.1
“Time of Administration”	means 7.56 a.m. (London time) on the Administration Date
“Transfer”	means, in relation to any asset or liability, the assignment, novation, sale or any other form of transfer (including any succession in title arising by operation of insolvency or any other law), which is effective to transfer the title to, rights of and obligations under such asset or liability, as the case may be, from one person to another and “Transferred” and “Transferring” shall be construed accordingly
“Trust Entitlement”	means: <ul style="list-style-type: none"> (i) in respect of each Consenting Beneficiary, its Proprietary Claim; and (ii) in respect of any Non-Consenting Beneficiary, its proprietary rights in respect of its LBI Assets to the extent that such rights subsist (if at all) in law or are agreed by the Company
“Trust Entitlement Transferee”	means any Consenting Beneficiary to whom one or more Common Terms Claims have been Transferred
“Trust Entitlement Transferor”	means any Customer who makes a Transfer of its Common Terms Claims to a Consenting Beneficiary
“Trust Financial Assets”	means: <ul style="list-style-type: none"> (i) any Omnibus Settlement Assets which are received by the Company from the LBI Trustee (including any LBI Distribution) from time to time; and (ii) any Derived Financial Asset
“Turnover Recovery”	has the meaning set out in Clause 25.1.1
“US dollars”, “USD” or “US\$”	means the lawful currency of the United States of America
“U.S. Person”	means any person that is a “United States person” as defined in Section 7701(a)(30) of the Code
“U.S. Withholding Tax Form”	means: <ul style="list-style-type: none"> (i) in the case of any person that is treated as a U.S. Person for U.S. federal income tax purposes, an IRS Form W-9 certifying that such person is a U.S. Person and is not subject to U.S. federal backup withholding tax; (ii) in the case of any person that is not a U.S. Person, whichever of the following is applicable:

- (a) if such person is treating all payments received (or to be received) by it as (A) effectively connected to a U.S. trade or business or (B) attributable to a permanent establishment in the United States of America pursuant to any applicable treaty, an IRS Form W-8ECI;
 - (b) if such person is acting as principal, is the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it, and is claiming an exemption from U.S. federal withholding tax pursuant to Section 892 of the Code, an IRS Form W-8EXP;
 - (c) if such person is acting as principal, is the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it, an IRS Form W-8BEN that, if applicable, claims the benefits of an income tax treaty to which the United States of America is a party and establishes any exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty which such person is claiming; or
 - (d) to the extent such person is not acting as principal, is not the beneficial owner for U.S. federal income tax purposes of any payments received (or to be received) by it or is an entity treated as a partnership for U.S. federal income tax purposes, an IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8EXP, IRS Form W-8BEN, IRS Form W-9, and/or other certification documents from each principal or beneficial owner, as applicable; and
- (iii) any other U.S. federal tax form requested by the Company that:
- (a) might enable the Company or any other Consenting Beneficiary to mitigate any liability to Tax or to reclaim any amount deducted or withheld, whether by the Company or any other person, for or on account of any Tax; or
 - (b) is required in order to allow the Company to make a payment in accordance with the relevant Consenting Beneficiary Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate

“USD Value”

means, in relation to a Consenting Beneficiary, unless

otherwise specifically provided in the Common Terms, in respect of any Security or Money at a particular time, the value in US dollars of such Security or Money as set out in the Information Pack

“VAT”

means value added tax as provided for in the (UK) Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental to it or in any primary or subordinate legislation promulgated by the European Union or any body or agency thereof and any Tax similar or equivalent to value added tax imposed by any country other than the United Kingdom and any similar sales or turnover Tax replacing or introduced in addition to any of the foregoing

“Website”

means the Company's site on the website of PricewaterhouseCoopers LLP at:

<http://www.pwc.co.uk/business-recovery/administrations/lehman/lehmans-stakeholder-client-assets.jhtml>

55 Interpretation

55.1 Construction

In the Common Terms, unless the context otherwise requires or unless otherwise expressly provided:

- 55.1.1** references to any specified provision of the Common Terms shall be construed as references to that provision subject to any amendment, addition or condition approved or imposed pursuant to Clause 41;
- 55.1.2** references to any agreement or instrument are a reference to that agreement or instrument as amended, novated, supplemented, extended, restated or replaced as permitted or not prohibited by the Common Terms;
- 55.1.3** references to the **“Company”** shall include (except to the extent the context requires otherwise and, for the purpose of this definition of **“Company”**, excluding the Administrators) any agent, custodian, depositary, nominee or representative (howsoever described) of the Company, including any entity appointed pursuant to Clause 18.7, 21.7 or 34 (so that, for the avoidance of doubt and without limitation, any references in these Common Terms to the Company making a payment, distribution, application, disposition, withholding or deduction include any payment, distribution, application, disposition, withholding or deduction made by any such person acting on behalf of the Company);
- 55.1.4** references to a **“person”** include any company, unincorporated association or partnership, whether or not having separate legal personality, and references to a company include any company, corporation or body corporate, wherever incorporated;
- 55.1.5** references to the **“Administrators”** shall be construed as being to the Administrators both jointly and severally and to any other person who is appointed

as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Administrators;

55.1.6 the "**Company**", any "**Consenting Beneficiary**", any "**OSA Eligible Offeror**", any "**LBI Asset Claim Customer**", any "**Non-Consenting Beneficiary**" or any other person shall be construed (subject to Clause 28.2) so as to include its successors in title, permitted assigns and permitted transferees;

55.1.7 references to an "**application**":

- (i) are to the act of:
 - (a) deduction, withholding or appropriation (or where the context so admits, to the money or value so deducted, withheld or appropriated) of all or any part of a Gross Distribution by way of a Permitted Deduction pursuant to Clause 10.1; or
 - (b) paying money or transferring value (or where the context so admits to the money or value so paid or transferred) from the Company to any person; and
- (ii) include any appropriation or other application out of a Gross Distribution and any payment or transfer of value described in Clause 55.1.7(i)(b),

and "**apply**" and "**applied**" shall have a similar meaning, unless the context otherwise requires;

55.1.8 references to an "**appropriation**" are to the Company retaining for itself for its own benefit any money or value and "**appropriate**" and "**appropriated**" shall have a similar meaning, unless the context otherwise requires;

55.1.9 references to a "**disposition**" are to any distribution or application;

55.1.10 references to a "**distribution**":

- (i) are to the act of paying money or transferring value (or where the context so admits, to the money or value so paid or transferred) from the Company to a Consenting Beneficiary or a Non-Consenting Beneficiary in respect of that person's Trust Entitlement; and
- (ii) include the payment of a Net Distribution out of a Gross Distribution pursuant to Clause 9.9,

and "**distribute**" and "**distributed**" shall have a similar meaning, unless the context otherwise requires;

55.1.11 references to an asset being "**held**" shall be construed to include it being "custodied" and "**hold**" shall be construed in the same manner;

55.1.12 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;

55.1.13 words importing the plural shall include the singular and vice versa and words importing one gender shall include all genders;

55.1.14 headings are for ease of reference only and shall not affect the interpretation of the Common Terms;

- 55.1.15 references to Clauses and Parts are to Clauses and Parts of the Common Terms;
- 55.1.16 if there is any ambiguity, inconsistency, discrepancy or conflict between the Common Terms and any other part of the Information Memorandum, the Common Terms shall prevail;
- 55.1.17 the language which governs the interpretation of the Common Terms is the English language. All notices to be given by the Company or any Consenting Beneficiary and all other communications and documentation, which notices, communications or documentation are in any way relevant to the Common Terms or the performance or termination of the Common Terms, shall be in the English language;
- 55.1.18 the words “**include**”, “**includes**”, “**including**” and “**such as**” are to be construed without limitation;
- 55.1.19 references to “**indebtedness**” include any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of Money (including any interest), whether present or future, actual or contingent;
- 55.1.20 references to a right, claim, benefit, entitlement, interest, duty or obligation existing, or which a person has, “**in law**” shall include any of the foregoing (whether proprietary or personal, whether present or future, whether ascertained or unascertained or disputed, whether severally or jointly, whether as principal or surety, whether actual, contingent or prospective in nature and howsoever arising) or any similar chose in action or property existing under contract or any rule of equity or law or under other binding and enforceable rule of law or regulation;
- 55.1.21 references to a “**judgment**” include any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- 55.1.22 references to a “**law**” include common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and “**lawful**” and “**unlawful**” shall be construed accordingly);
- 55.1.23 no personal liability shall attach to any of the Administrators, the Advisers and/or their firms and in each case their and their firms’ members, agents, partners, officers, directors, employees or representatives for any representation or statement made by such a person in any certificate, notice, document or other communication given by or on behalf of the Company by any such person save in the case of fraud, in which case liability (if any) shall be determined in accordance with applicable law;
- 55.1.24 references to “**Proceedings against the Company**” include any of the following actions other than actions to enforce any rights or obligations under the Common Terms after at least 20 Business Days’ notice to the Company of such intended enforcement and the grounds for it:
- (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;

- (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;
- (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Company, the Omnibus Trust, any Company-Related Released Party or any of their property;
- (iv) asserting any right of set-off, directly or indirectly, against any obligation due to the Company, the Omnibus Trust, any Company-Related Released Party or any of their property, except as contemplated or allowed by the Common Terms;
- (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Common Terms; and
- (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to the Common Terms.

55.2 Action which is “reasonably practicable”

In determining whether any action is “**reasonably practicable**” for the Company for the purposes of the Common Terms, regard shall be had to:

- 55.2.1** the fact that the Company is in administration;
- 55.2.2** the fact that the Company is not operating as an investment bank whose business includes prime brokerage services;
- 55.2.3** the actual limitations on access to the Books of the Company and other resources;
- 55.2.4** the materiality of the likely impact of such action on the Company’s aim to control costs and to deal with matters arising under the Common Terms expeditiously; and
- 55.2.5** any other matters of order or more general application.