



Party: Applicant  
Witness: Russell Downs  
Statement No: 15  
Exhibit: "RD15"  
Date: 28 November 2017

CR-2008-000012

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF  
ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**EXHIBIT "RD15" TO THE  
FIFTEENTH WITNESS STATEMENT  
OF RUSSELL DOWNS**

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This is the exhibit marked "RD15" referred to in the Fifteenth Witness Statement of Russell Downs dated 28 November 2017.

Signed .....

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# ***Lehman Brothers International (Europe) – In Administration***

Joint Administrators' eighteenth  
progress report, for the period from  
15 March 2017 to 14 September 2017

9 October 2017

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## *Important notice*

### **Status of Administration**

A Surplus arises in the Administration and rights to payment from that Surplus are currently being determined through the Waterfall court proceedings.

### **Size of the Surplus**

The precise amount of Surplus funds that will be available in due course remains uncertain. Due to commercial sensitivity, confidentiality and/or legal privilege, we are unable to provide detailed commentary on certain issues which will impact this.

### **Claims against the Surplus**

We reserve all rights concerning the relevance and calculation of all claims against the LBIE estate that might eventually share in the Surplus. No conclusion should be drawn or inferred from this report as to the way in which such claims will eventually be assessed or the allocation of the illustrative Surplus entitlements.

### **Waterfall proceedings – LBIE’s view**

No inference should be taken or assumption made from the matters included in this report as to a view, conclusion or belief held by the Administrators with regard to the Waterfall proceedings.

### **Reliance on data**

**We caution creditors against using data in this report as a basis for estimating the value of their claims or their likely eventual entitlement to payment from the Surplus. LBIE, the Administrators, their firm, its members, partners, staff and advisers accept no liability to any party for any reliance placed upon this report.**

### **Rights against third parties**

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

### **Currency risk**

Whilst amounts included in this report are primarily stated in sterling, certain elements of LBIE’s assets continue to be denominated in currencies other than sterling.

### **Rounding**

Unless it is clear otherwise, the figures within the report are now rounded to the nearest £1 million.

### **Definitions**

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





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# Contents

<b>Section 1:</b>	<i>Introduction</i>	4
<b>Section 2:</b>	<i>Executive summary</i>	5
<b>Section 3:</b>	<i>LBIE Surplus entitlements and Waterfall proceedings</i>	10
<b>Section 4:</b>	<i>LBIE 100p estate</i>	16
<b>Appendices</b>		
<b>Appendix A:</b>	<i>Receipts and payments: cumulative and 6 months to 14 September 2017</i>	22
<b>Appendix B:</b>	<i>Surplus-related court proceedings</i>	27
<b>Appendix C:</b>	<i>Other litigation summary</i>	31
<b>Appendix D:</b>	<i>Administrators' remuneration</i>	32
<b>Appendix E:</b>	<i>Statutory and other information</i>	34
<b>Appendix F:</b>	<i>Glossary of terms</i>	35

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# Section 1: Introduction

## **Introduction**

This report has been prepared by the Administrators of Lehman Brothers International (Europe) under Rule 18.3 of the Insolvency Rules.

This is the eighteenth such formal update to unsecured creditors and it provides details of progress made in the 6-month period from 15 March 2017 to 14 September 2017. The statutory receipts and payments accounts for the same period are attached at Appendix A.

Wherever possible, again, we have sought not to duplicate information disclosed to creditors in previous updates and reports. Copies of previous progress reports and other important announcements can be found at [www.pwc.co.uk/lehman](http://www.pwc.co.uk/lehman).

Creditors who do not have intimate knowledge of matters being dealt with in the Administration by virtue of involvement in the Waterfall court proceedings, and who desire to better understand these matters, are advised in the first instance to review our previous progress reports and other materials contained on the LBIE website where a significant amount of information has been posted for the benefit of all creditors.

We will host a 1-hour webinar on 26 October 2017, giving creditors an opportunity to hear a summary of the current circumstances of the Administration and activities that are planned for the next 6 months, and to participate in a question and answer session. Details of the webinar will be posted on the LBIE website in the usual way.

## **Objective of the Administration**

The Administrators continue to pursue the statutory objective and specific aims as set out in previous reports, which are summarised at Appendix E.

## **Creditors' Committee**

We continue to meet with Committee members to review progress and consult on major issues. The members continue to be assisted by an Adviser in approving the Administrators' fees and expenses requests and by two independent observers.

We remain grateful to all the participants of the Committee meetings for their continuing efforts in support of the Administration.

Details of the current Committee members are listed in Appendix E.

## **Future report and updates**

The next formal progress report to creditors will be in 6 months' time.

In the interim, we will provide ad hoc updates in the event of any material developments concerning entitlements to the Surplus or other significant matters, through the LBIE website or by other means as appropriate.

Signed:



**AV Lomas**  
Joint Administrator  
Lehman Brothers International (Europe)  
In Administration

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# Section 2:

## Executive summary

### ***Aims and priorities***

The following aims and priorities of the Administrators continue unchanged:

#### **LBIE Surplus estate**

To resolve entitlement disputes to the eventual Surplus through the Waterfall proceedings and other legal proceedings, if not otherwise settled through consensual resolution.

To distribute all or part of the Surplus funds either by way of an interim distribution subject to agreement with creditors or at the conclusion of the Waterfall and other related proceedings.

To maintain appropriate investment policies for LBIE's realised Surplus pending distribution.

#### **LBIE 100p estate**

To realise all remaining House Estate assets and pay outstanding unsecured claims and Administration expenses in order to determine the eventual quantum of the Surplus remaining by:

- recovering remaining amounts owing;
- realising the value of remaining House securities;
- agreeing and admitting the small number of pending Senior and Shareholder claims;
- managing out and, where appropriate, releasing provisions and indemnities; and
- winding down LBIE's operation.

#### **LBIE Trust Estate**

To settle outstanding CME issues (in particular BarCap's entitlement) in the Client Money estate and transfer residual funds to the House Estate.

To return remaining client securities after resolution of related House debtor litigation.

#### **LBIE costs**

To efficiently manage ongoing Administration costs.

### ***Waterfall proceedings***

There has been significant progress in various of the Waterfall legal proceedings in the period, as follows:

#### **Waterfall I Judgment**

The final Waterfall I Judgment was handed down by the UK Supreme Court on 17 May 2017, which upheld the junior ranking of the Subordinated Debt (c.£1.24bn) but, contrary to previous rulings, found that CCCs (c.£2.5bn including interest) do not exist.

The elimination of c.£2.5bn of CCC entitlements against the Surplus has removed a major uncertainty and, subject to the continuing Waterfall proceedings, this has materially increased the prospects that a significant amount of the Surplus will be available to fund repayment of the Subordinated Debt in due course, notwithstanding its confirmed junior status in payment priority.

The Waterfall I Judgment also greatly reduced the chances of a contribution claim arising against LBIE's Shareholders and has brought further clarity to certain of the Administrators' priorities as a result of which the following steps were taken shortly after its receipt:

- the basis of the Waterfall III proceedings was revisited, and a renewed focus was put on exploring an overall consensual settlement;
- LBIE's currency hedging positions were reviewed and a series of conversions into sterling were made;
- an active small deed offer was closed, as it was no longer viable given the UK Supreme Court's conclusion on CCCs; and
- an update was provided to all creditors in which, amongst other things, the Administrators clearly set out their position on the appropriateness of continuing with the Administration rather than seeking an early liquidation, which would extinguish all claims to Post-Administration Interest that have accrued in the Administration period but which have not been paid due to the ongoing Waterfall proceedings.

### **Waterfall III Application and related matters**

A UK High Court hearing of questions of law relating to contributory claims and other Affiliate matters was held in January 2017, with judgment reserved. The subsequent Waterfall I Judgment impacted both this application and the associated potential contribution claim settlement dialogue which had been reported to creditors, because, among other things, the UK Supreme Court held in the Waterfall I Judgment that:

- only a liquidator, not an Administrator, can prove in the estate of a Shareholder for a contribution claim;
- CCCs do not exist (and therefore could not form part of a contribution claim);
- there can be no contribution claim for unpaid Post-Administration Interest; and
- Post-Administration Interest accrued but not paid in the Administration would cease to be payable in any subsequent liquidation.

Due to the resulting limitations on the Administrators as to the quantum of a contribution claim and their ability to pursue such a claim, the interested parties no longer had any appetite to continue with the settlement terms that had been set out in the LBIE website update of 29 March 2017, and which included LBIE having access to a contribution recovery reserve of £913m.

Discussions continued in the period, to attempt to expeditiously settle the contribution claim matter and dismiss the associated Waterfall III proceedings. These ultimately resulted in an agreement which included all claims between LBIE and LBL being effectively withdrawn and LBHI providing a small capped indemnity in the unlikely event of a Surplus 'shortfall' arising. As part of the settlement transaction, the parties also agreed to the dismissal of the Waterfall III Application by consent upon the settlement becoming effective on 6 September 2017.

### **Waterfall II appeals**

#### ***Tranches A & B***

The Waterfall II tranches A and B appeal was held in early April 2017. The subsequent Waterfall I Judgment meant that certain of the matters being appealed fell away, primarily relating to CCCs, and the impact on certain other aspects of the Waterfall II appeal needed to be reconsidered in light of the rationale of the UK Supreme Court in reaching its decisions in Waterfall I. These other aspects were the subject of supplemental submissions by the parties to the UK Appeal Court during summer 2017.

The Waterfall II tranches A and B UK Appeal Court judgment is expected in the near future and should provide further clarification of the Bower v Marris dispute (£1.7bn+) and other issues in relation to the calculation of Post-Administration Interest.

Regardless of the appeal outcome, the Administrators expect the unsuccessful party will attempt to appeal it to the UK Supreme Court.

#### ***Tranche C***

Various court filings have continued in the period, albeit the UK Appeal Court hearing of Waterfall II tranche C is some time away (scheduled for July 2018). When eventually received, the UK Appeal Court's judgment may affect the assessment of the potential incidence and quantum of cost of funding higher than the judgment rate of 8% simple p.a., which could give rise to additional Post-Administration Interest entitlements.

Bringing finality to one or both of the Waterfall II tranche A and tranche C proceedings is an essential step for the Administrators to be able to make a material level of distribution from the Surplus because, together, the Bower v Marris and cost of funding issues have theoretical potential to increase entitlements to Post-Administration Interest significantly beyond judgment rate of 8% simple p.a.

### ***Illustrative Surplus entitlements***

In this report, we have updated and refined our illustrative Surplus entitlements analysis to:

- incorporate the impact of the Waterfall I Judgment;
- include Post-Administration Interest on the c.£36m Shareholder claim that was assigned to Wentworth by LBHI2 at the commencement of their joint venture; and
- distinguish between the amount of Surplus that would be available for distribution now (assuming majority creditor agreement) and the total amount of Surplus that might ultimately be available for distribution in due course when the Administration has run its full course.

On page 10 we provide an analysis of the Surplus available to admitted claimants, now and in due course, demonstrating that (on certain assumptions) there are sufficient funds already available in the LBIE 100p estate for c.£5.16bn of Post-Administration Interest to be paid, with c.£0.21bn remaining (rising to c.£2.40bn remaining when the Administration has run its full course, including resolution of the outstanding Client Money estate matters).

## Interim Surplus distribution

Outline terms of a CVA proposal, to facilitate an interim distribution of up to c.£4.5bn of Senior creditors' basic entitlements to Post-Administration Interest (i.e. at the judgment rate of 8% simple p.a.), were posted on the LBIE website on 29 March 2017. Following discussions, Wentworth confirmed it would not approve such a proposal. Because the SCG and Wentworth both have a blocking vote (i.e. aggregate claims held of greater than 25%, by value, of the total unsecured claims), the proposal could not proceed and so, by June 2017, it was withdrawn.

The respective appetites of these two groups for alternative terms to enable an interim distribution (via a Scheme of Arrangement) continue to be explored. We remain hopeful that the clarity and finality to certain matters that has been provided by the Waterfall I Judgment, together with the further clarity that should soon be provided to other matters by the UK Appeal Court judgment on Waterfall II tranches A and B, may help provide the necessary stimulus for the parties to agree alternative terms which would allow an interim distribution of Senior creditors' basic entitlements to Post-Administration Interest at least. Such an agreement could then leave disputes regarding enhanced entitlements to be determined at a later date.

Whilst Waterfall II matters remain unresolved (in particular Bower v Marris and higher rate cost of funding), any interim partial distribution of Post-Administration Interest which did not require majority (75%) creditor approval would likely require a very high level of reserves for potential Post-Administration Interest claims, that would cause any distribution to be relatively small. In the absence of any indication that the gap between the parties can be narrowed, we will continue to explore the possibility of making a first distribution from the Surplus without the need for majority creditor consent.

As noted on page 14, any distribution is likely to be impacted by deductions for withholding tax reserves.

## Surplus indicative financial outcome

On the basis that existing Waterfall judgments are all upheld on appeal, for illustrative purposes we estimate that c.£2.4bn Surplus will remain after payment of Post-Administration Interest entitlements to Senior creditors. For comparative purposes, in the table below, we estimate that no Surplus would remain if all Waterfall appeals were found in favour of the Senior creditors and c.£3.0bn Surplus would remain if all appeals were alternatively found in favour of Wentworth.

Surplus	All existing Waterfall II judgments upheld £m	Pro-Senior appeal judgments £m	Pro-Wentworth appeal judgments £m
Assumed Surplus <sup>1</sup>	7,692	7,692	7,692
<b>Post-Administration Interest</b>			
8% p.a. from later of ETD or 15/9/2008	(4,650)	(4,650)	(4,650)
8% p.a. from 15/9/2008 to ETD	(460)	(460)	-
Waterfall II tranche C cost of funds/Bower v Marris uplift	(180)	(2,582) <sup>2</sup>	-
<b>Senior claims recovery</b>	<b>(5,290)</b>	<b>(7,692)</b>	<b>(4,650)</b>
<b>Remaining Surplus</b>	<b>2,402</b>	<b>-</b>	<b>3,042</b>
<b>Wentworth junior claims</b>			
Subordinated Debt	(1,240)	-	(1,240)
Post-Administration Interest on Subordinated Debt <sup>3</sup>	(890)	-	(890)
Preferred and other equity <sup>4</sup>	(272)	-	(912)
<b>Wentworth junior claims recovery</b>	<b>(2,402)</b>	<b>-</b>	<b>(3,042)</b>

1. Assumes the best case potential final outcome of c.£8.10bn, discounted by 5%, and that there are no non-provable claims that might result in a contribution claim.
2. Illustrative uplift includes the potential impact of higher rate cost of funding and Bower v Marris, with the actual combined uplift likely to exceed any remaining Surplus.
3. Assumes Post-Administration Interest at judgment rate of 8% simple p.a. paid on 14 September 2017.
4. Preferred and other equity claims are limited to the residual Surplus for illustrative purposes.

The comparison demonstrates that notwithstanding the definitive conclusion of Waterfall I, there remains a material spread of potential outcomes between the classes of creditor based on the assumptions made.

## **LBIE 100p estate**

The Administrators' updated indicative financial outcome Low and High case scenarios indicate a potential range of Surplus outcomes of between c.£7.07bn and c.£8.10bn (previously c.£7.05bn and c.£8.21bn, respectively, on a comparable basis).

The indicative financial outcome now includes Shareholder claims of c.£36m against LBIE, following the certainty created by the contribution claim settlement in the period, but continues to take no account of any potential contribution claim recoveries by a subsequent LBIE liquidator, reflecting the now likely remote possibility of such a claim ever being made.

The c.£55m improvement (before Shareholder claims) in the indicative Low case outcome results from improved forecast recoveries and cost estimates, offset in part by adverse foreign exchange movements on future recoveries denominated in foreign currencies. The c.£80m reduction (before Shareholder claims) in the indicative High case outcome reflects a revised reserving policy for indemnities and other priority claim reserves and adverse foreign exchange movements on future recoveries denominated in foreign currencies, offset in part by improved forecast cost estimates and certain priority claim reserve releases.

### **Significant developments in the reporting period**

The settlement reached in the period in respect of the Waterfall III matters has resulted in (amongst other things):

- agreement of the quantum (but not yet the admission) of both the LBHI2 claim at c.£36m and the Subordinated Debt claim at c.£1.24bn;
- the withdrawal of material cost recharge claims by LBL against LBIE, allowing LBIE to avoid reserving for these;
- the benefit of a £62m indemnity from LBHI in the unlikely event of a Surplus 'shortfall' arising before payment of the Subordinated Debt and Post-Administration Interest thereon;
- LBH paying a c.£23m dividend to LBIE in respect of LBIE's admitted claim; and
- litigation cost savings.

The long-awaited recovery of c.£47m on finalisation of the LBIE Zurich branch liquidation was received in the period.

Agreement was reached with the IRS relating to certain of LBIE's US tax liabilities, with associated settlement payments of c.£17m. The final payment of c.£7m was made to the third party pension provider that has assumed the Lehman UK Pension Fund liabilities.

## **LBIE Trust Estate**

### **Client Assets**

LBIE still holds client securities (c.£50m combined value) relating to certain debtors, pending conclusion of litigation with those debtors which we continue to progress as quickly as we are able. These client securities will be released to the relevant third parties when LBIE's own debt claims against those parties are also resolved.

### **Client Money**

Unresolved CME claimants comprise:

- a potential BarCap claim (c.\$262m);
- 103 claims (c.\$6m) relating to non-engaging counterparties in respect of which a UK High Court application for directions will be required;
- 14 other CME claimants (with combined claims of c.\$4m) who have received a partial recovery of their CME from the Client Money estate. A settlement proposal developed by the House is currently on hold pending the outcome of the BarCap litigation; and
- 2 claims of nominal value relating to debtor counterparties that are subject to litigation.

The opportunity to expedite the resolution of the Client Money estate will continue to be explored, in parallel with ongoing attempts to prompt interim Surplus settlement discussions, in an attempt to increase the amount of funds that would be available for distribution in the near term.

## ***Foreign currency***

After several 6-monthly reporting periods of favourable unrealised currency gains (largely reflecting the steadily rising sterling equivalent value of significant amounts of US dollars held as Client Money), a c.£90m adverse movement (of which c.£60m is unrealised) in the High case outcome is reported in the current period, principally relating to the continued exposure to US dollars in the House Estate relating both to third party receivables and to the Client Money surplus.

In our last report, we highlighted our policy of holding US dollars in both the House Estate and the Client Money estate as a currency hedge against the value of CCCs predominantly denominated in US dollars (in the event they were ultimately found to be admissible).

Following the Waterfall I Judgment in the period, we determined that the currency hedge was no longer merited. Accordingly, commencing from June 2017, we exchanged the majority of LBIE's foreign currency balances to sterling, subject to maintaining c.\$270m to meet remaining potential future dollar payments.



# Section 3:

## LBIE Surplus entitlements and Waterfall proceedings

### Summary

In the absence of a commercial compromise, a series of UK court ('Waterfall') proceedings have been required with the objective of determining entitlements to the Surplus. Based on current judgments, claims against the Surplus rank in the following order:

- i. Post-Administration Interest on senior ranking, provable claims;
- ii. Non-provable claims (we are currently aware of none in the LBIE estate based on current judgments);
- iii. Subordinated Debt and Post-Administration Interest thereon;
- iv. Preferred equity; and
- v. Equity.

In the event that the Surplus is insufficient to pay in full all claims against it, the Waterfall I Judgment confirmed that only a LBIE liquidator would be able to make a contribution claim against its unlimited liability Shareholders, LBL and LBHI2, and then only for outstanding non-provable and Subordinated Debt claims.

In the period, two of the separate Waterfall proceedings were concluded:

**Waterfall I** – ranking of Subordinated Debt and existence of CCCs (litigation completed); and

**Waterfall III** – contribution claim (settled).

The matters of most material financial significance in the remaining Waterfall proceedings are as follows:

**Waterfall II tranche A** – Bower v Marris (allocation of LBIE's 100p estate distributions as either interest or principal) and Post-Administration Interest start date;

**Waterfall II tranche B** – waiver of non-provable claim entitlements (if any) by CRA and CDD contracts; and

**Waterfall II tranche C** – cost of funding – Post-Administration Interest entitlement above judgment rate of 8% simple p.a.

Potentially, these continuing Waterfall II proceedings could run their natural course, through to the UK Supreme Court if appropriate, before it will become clear what creditor entitlements to the Surplus are and before any significant distributions can be made from it.

### Illustrative Surplus entitlements

The Waterfall I Judgment was handed down in the period, which amongst other matters upheld the junior ranking of the Subordinated Debt but, contrary to previous rulings, found that CCCs do not exist. Potential entitlements of up to £2.5bn for CCCs were reflected in previous reports.

Accordingly, in the table below, for illustrative purposes only, we have revised our analysis to reflect this judgment and to present, firstly, the Surplus that would currently be available for distribution to admitted creditors (if agreement to that distribution could be agreed between them) and, secondly, the higher amount that might ultimately become available, allocated between different categories of claimant.

Surplus	Notes	Currently available (14 Sept. 2017) £m	Ultimately available £m
<b>Available Surplus</b>			
Low/High case Surplus outcome (see page 16)		7,073	8,097
Future recoveries reversed (see page 16)	1	(1,242)	-
Assumed discount (5%)	2	-	(405)
<b>Adjusted illustrative Surplus</b>		<b>5,831</b>	<b>7,692</b>
BarCap reserve	3	(414)	-
Accruing Post-Administration Interest reserve on 'pending' Senior/Shareholder claims	4	(50)	-
<b>Available Surplus to admitted creditors</b>		<b>5,367</b>	<b>7,692</b>
<b>Post-Administration Interest on admitted claims</b>			
BarCap claim	3	-	(90)
Shareholder claim (LBHI2)	5	-	(40)
Admitted claims as at 14 September 2017	5	(5,160)	(5,160)
		<b>(5,160)</b>	<b>(5,290)</b>
<b>Available to repay Subordinated Debt and Post-Administration Interest thereon</b>		<b>207</b>	<b>2,402</b>

The key assumptions used for this analysis are set out below.

#### Adjusted illustrative Surplus

**Note 1** - the 'currently available' scenario illustrates the funds potentially available as at the date of this report, being equivalent to the LBIE 100p estate Low case outcome estimated Surplus, revised to exclude all future forecast recoveries (including all future House recoveries from the Client Money estate).

**Note 2** - the 'ultimately available' scenario reflects the LBIE 100p estate High case outcome estimated Surplus, discounted by 5% consistent with the assumption used in previous reports.



### Note 3 - BarCap reserve

In deriving the LBIE 100p estate Low case outcome estimated Surplus of c.£7,073m, we assume that BarCap will have a CME claim (c.\$262m) and not an unsecured claim. However, for the purposes of illustrating how much of the Surplus would be available to pay admitted creditors at 14 September 2017 (assuming creditor agreement), we would need to reserve c.£414m relating to BarCap, representing the maximum theoretical entitlements of BarCap against the Surplus. This reserve in the 'currently available' scenario comprises:

- an asserted unsecured BarCap claim of c.£84m;
- Post-Administration Interest of c.£90m on the asserted unsecured claim of c.£84m (assuming admission and payment of the claim in 2022); and
- a further amount for the potential Post-Administration Interest of c.£240m relating to the unresolved issue of the \$777m paid directly by LBI to BarCap, against its LBIE claim.

The 'ultimately available' scenario assumes that BarCap pursues and is paid an admitted Senior claim of c.£84m/c.\$150m, being the full amount claimed less \$777m that it received from LBI. This admitted claim is included in deriving the LBIE 100p estate High case outcome estimated Surplus of c.£8,097m.

### Note 4 - Accruing Post-Administration Interest reserve on 'pending' Senior/Shareholder claims

The 'currently available' scenario assumes a reserve for accruing Post-Administration Interest on 'pending' unsecured claims, assuming admission and payment of the claims will occur in 2022, of:

- c.£40m Post-Administration Interest on the c.£36m Shareholder claim (LBH12); and
- c.£10m Post-Administration Interest on the other Low case outcome Senior claims totalling c.£11m.

The 'ultimately available' scenario assumes that all eligible claims have been admitted (including 'pending' other Senior claims at a significantly reduced amount) and thus the reserve for accruing Post-Administration Interest is included in Post-Administration Interest on admitted claims.

### Note 5 - Post-Administration Interest on admitted claims

In the 'ultimately available' scenario:

- illustrative Post-Administration Interest of c.£5,290m includes judgment rate of 8% simple p.a. for most admitted creditors (c.£5,110m) (including the assumed entitlements of c.£90m and c.£40m on future admitted claims of BarCap and LBH12 respectively) with only a small number able to claim a contractual cost of funding rate at an amount in excess of that (c.£180m); and

- it is assumed that no Post-Administration Interest will be paid on the \$777m amount that has already been received by BarCap from LBI. In the event that this assumption is incorrect, then the incremental claim against the Surplus by BarCap could be c.£240m.

In the 'currently available' scenario, the illustrative Post-Administration Interest of c.£5,160m relates to entitlements on admitted claims as at 14 September 2017, and also includes c.£180m relating to higher rate cost of funding entitlements.

### Other entitlement assumptions

For illustrative purposes it is also assumed in both scenarios that:

- all future Waterfall II appeals will be unsuccessful;
- Senior and Shareholder claims (excluding the Subordinated Debt) are c.£12.4bn and no new claims will be submitted or revisions made; and
- no new disputes to LBIE's creditor claim disaggregation will be raised by creditors.

### Contribution claim assumption

No account of contribution claim recoveries is included in the illustrative outcome scenarios, as:

- the Waterfall I Judgment found that only a liquidator, not an Administrator, can prove in the estate of a Shareholder for a contribution claim, and that a contribution claim cannot be made in relation to unpaid Post-Administration Interest;
- our updated analysis suggests no Surplus 'shortfall' will arise based on current judgments; and
- Post-Administration Interest accrued but not paid in the Administration would cease to be payable in any subsequent liquidation, with the effect that the Administrators will object to any premature liquidation proposal prior to such interest being paid.

### Settlement discussions

Discussions in the period with interested parties (certain Affiliates and Wentworth, on account of its interest in LBH12) initially concentrated on the contribution claim settlement terms as set out in the LBIE website update of 29 March 2017, which included LBIE having access to a contribution recovery reserve of £913m. Following the Waterfall I Judgment, the interested parties no longer sought to pursue this settlement proposal as the Administrators cannot pursue a contribution claim and the likelihood of LBIE moving into liquidation and any claim being made by a subsequent liquidator was considered to be very low.

Discussions resumed in summer 2017 to consider more restrictive settlement proposals. The commercial terms ultimately agreed included:

- LBL and LBIE to withdraw all claims against each other;
- LBHI to provide an indemnity to LBIE up to £62m in the unlikely event that a Surplus 'shortfall' arises before payment of the Subordinated Debt;
- the Subordinated Debt claim value to be agreed (though not admitted in the Administration) at c.£1.24bn, with associated Post-Administration Interest to be agreed in due course (if relevant);
- recourse in respect of the Subordinated Debt to be limited to the Surplus available after LBIE has made distributions in respect of all prior ranking claims;
- the transfer of LBL's single LBIE share to LBHI2 (agreed between the Shareholders); and
- an inter-Affiliate settlement (excluding LBIE) to allow distributions to creditors or shareholders in other estates without (in the case of LBL and LBHI2) reserving for a potential future contribution claim from LBIE, with LBIE not objecting to such distributions.

A settlement agreement and associated deeds containing the above terms were executed by the parties, which became fully effective on 6 September 2017.

### **Key Surplus entitlement uncertainties**

#### ***Waterfall II tranche A – Bower v Marris***

The allocation of LBIE's 100p estate distributions as Post-Administration Interest or principal has a significant impact on the total Post-Administration Interest potentially payable out of the Surplus. On the hypothetical assumption that the Surplus were to be distributed in September 2017 and that Post-Administration Interest is at the judgment rate of 8% simple p.a. for all claims, we estimate that, if distributions were ultimately to be treated as having related to Post-Administration Interest first (i.e. the Bower v Marris approach), then additional Post-Administration Interest entitlements of c.£1.7bn would arise. This additional amount would increase:

- by c.£0.4bn for every further year beyond September 2017 that the Surplus is not distributed; and
- potentially significantly, if some claims were also entitled to Post-Administration Interest at more than judgment rate of 8% simple p.a.

#### ***Waterfall II tranche C – cost of funding***

Of LBIE's total admitted Senior claims of c.£12.31bn, c.£4.55bn by value relates to ISDA Master Agreements or similar agreements. If, for such agreements, Post-Administration Interest entitlement is ultimately found to be significantly above judgment rate of 8% simple p.a., in isolation this could have a major impact on the total Post-Administration Interest potentially payable out of the Surplus.

By way of illustration, if a compound contractual rate of 12% p.a. were applicable to all such claims, then additional Post-Administration Interest entitlements of c.£2.3bn would arise.

If these two factors were to be combined, requiring a Bower v Marris approach to the calculation of Post-Administration Interest and a high compound contractual rate of interest payable to creditors with ISDA Master Agreements or similar agreements, this could have a material impact on reserving.

#### ***Certification of claims against the Surplus***

In May 2017, on the LBIE website we published our preliminary guidance and observations for creditors who may now wish to make a certification for a contractual interest rate arising under ISDA Master Agreements or similar agreements which is higher than judgment rate of 8% simple p.a.

The guidance, by counterparty type, covers:

- our observations on the rates which we expect could be certified by creditors;
- the process likely to be followed for making certifications, including supporting evidence expected to be provided by creditors; and
- the process likely to be followed by the Administrators in reviewing certifications and the circumstances in which they may challenge a certification.

The guidance is not intended to be prescriptive or exhaustive, and is subject to future revision in light of appeals to the Waterfall II tranche C judgment.

We have received a variety of feedback on our guidance from Waterfall respondents and other interested parties ranging from overall support and/or agreement with the stance taken, through to strong disagreement in a limited number of cases. Specific engagement with counterparties continues.

#### ***Small deed offer***

An offer via LBNL was made to a population of c.160, principally low value Senior claims each below £0.5m, to acquire their admitted claims. In the period, 24 creditors accepted the offer before its withdrawal, with total Surplus entitlements of c.£2m being transferred to LBNL as a result.

### ***Interim Surplus distribution***

The Administrators have continued to have conversations with the SCG and Wentworth to explore the prospect of an interim distribution or an overall resolution to the Waterfall proceedings that would unlock payments to creditors from the Surplus. The Administrators continue to believe that the interests of creditors as a whole would be best served by the resolution of the Surplus entitlement issues on consensual terms rather than through court judgments, with the inherent delay, risk and uncertainty that entails.

Following receipt of the Waterfall I Judgment, the Administrators increased engagement with Wentworth and the SCG to explore how a settlement (either interim, to facilitate a material payment of Post-Administration Interest, or overall, to conclude all matters) might proceed. It became clear early in these recent discussions that the gap between the parties currently remains too great to be conducive to developing a framework to settle all remaining issues. However, the exchanges usefully identified where some areas of common ground might exist that could eventually contribute to an agreement that would enable a payment of Post-Administration Interest. Whilst not conclusive, these discussions may be a helpful starting point to revisit once the UK Appeal Court judgment relating to *Bower v Marris* is received.

In high level terms, in these discussions the parties' attentions have focused on:

- a payment of Post-Administration Interest at judgment rate of 8% simple p.a. subject to withholding tax;
- an uplift on the Post-Administration Interest for holders of ISDA (and similar) claims to be paid to resolve those claims without certification and scrutiny of the cost of funding asserted;
- a material distribution on account in respect of the Subordinated Debt; and
- a continuing litigation of *Bower v Marris*.

In the event that sufficient of the Waterfall respondents were to be in favour of any consensual terms, we would be inclined to put them to the wider creditor community by way of a Scheme of Arrangement.

The Administrators will continue to assess what alternative bases might be feasible for making a distribution in the absence of a consensual resolution being reached. Such a distribution would likely be for a significantly lesser total Surplus amount than under a consensual resolution, given the necessary reserves for higher rate cost of funding claims and *Bower v Marris* that would be required to be made.

## ***Waterfall and other related court proceedings***

### **Waterfall I appeal – completed**

The UK Supreme Court appeal judgment was received in the period. Amongst other things, the ranking of the Subordinated Debt was confirmed as being junior to Post-Administration Interest and non-provable claims, and the status of CCCs was clarified (they do not exist).

### **Waterfall II appeals – in train**

The UK Appeal Court hearing of tranches A and B matters was held in April 2017. Supplemental submissions were made by the parties in summer 2017, including an oral hearing on 25 July 2017, relating to matters impacted by the rationale used by the UK Supreme Court in reaching its decisions on the Waterfall I appeal. Judgment is expected in the near future. The appeal of tranche C matters (cost of funding) is scheduled to be heard by the UK Appeal Court in July 2018. The UK High Court judgment on foreign law matters is no longer the subject of an appeal, this having now been terminated by consent.

### **Waterfall III Application – concluded by consent**

The first UK High Court hearing in respect of tranche A (questions of law) was held in January/February 2017 with judgment reserved, with the tranche B hearing scheduled for September 2017.

The Waterfall I Judgment impacted this application as:

- the removal of CCC entitlements reduced the likelihood of a Surplus 'shortfall' arising; and
- only a liquidator (not an Administrator) can prove in the estate of a Shareholder for a contribution claim, there can be no contribution claim for unpaid Post-Administration Interest and Post-Administration Interest accrued not paid in the Administration would cease to be payable in any subsequent liquidation.

Following a hearing in late July 2017, the UK High Court directed that the Waterfall III Application be adjourned and the tranche B hearing scheduled for September 2017 be vacated. Subsequently, a settlement agreement and associated deeds were executed by the parties which became fully effective on 6 September 2017, with the parties also agreeing to the dismissal of the Waterfall III Application by consent.

### **BarCap claims application – in train**

This court application relates to the treatment of BarCap's claims into the LBIE House and Client Money estates. Matters not heavily reliant on evidence will be subject to an 8-day hearing scheduled for April 2018, with evidence-heavy matters stayed, to be dealt with at a later hearing if required.

The issues to be considered include:

- whether, in respect of claim elements which have the benefit of CME, BarCap has an alternative unsecured claim and the basis on which such a claim should be valued (first hearing);
- whether for claim elements for which BarCap has both CME and unsecured claim status, it is entitled to pursue an unsecured claim to the exclusion of a CME claim (first hearing);
- the manner and date from which the \$777m LBI payment to BarCap is to be applied by way of reduction either to a CME claim or to an unsecured claim (first hearing);
- the extent to which BarCap has potential entitlements to claim against the Surplus (first hearing); and
- the 'threshold issue' (whether the debt claim that BarCap acquired from LBI in fact benefits from Client Money protection) and the status of Korean trades in the context of CME (later hearing).

### **UK withholding tax directions appeal – in train**

The HMRC appeal relating to the judgment that LBIE has no obligation to deduct UK withholding tax from payments of Post-Administration Interest is scheduled to be heard on 31 October/1 November 2017.

We emphasise that resolution of this matter is necessary before all Post-Administration Interest distributions to any party can be finalised, whether through a consensual arrangement or otherwise. If Post-Administration Interest distributions are made ahead of a final resolution, a withholding tax reserve of at least 20% will be necessary in most, if not all, cases.

### **Claim currency directions application – not being pursued**

Following the handing down of the Waterfall I Judgment in the period, this anticipated application has become unnecessary as it related to CCC issues.

## Court process timetable

Where appropriate, actual (**date**) and illustrative (half-year period) projected timelines are noted below for the Waterfall and other related court proceedings that are in train.

Matter	Key issues	Status	UK Appeal Court hearing	UK Supreme Court hearing <sup>1</sup>
Waterfall II tranches A & B	Application of unsecured dividends to principal or interest first Post-Administration Interest start date Release of non-provable liabilities by certain post-Administration contracts Supplemental questions on calculation of claims	Appealed by SCG/York Appealed by Wentworth Appealed by Wentworth  Appealed by Wentworth/ SCG/York	Decision awaited	H2 2019
Waterfall II tranche C	Impact of cost of funding on Post-Administration Interest claims	Appealed by SCG/ Goldman Sachs Int.	<b>3 July 2018</b>	H1 2020
BarCap claims	Treatment of claims from BarCap	UK High Court hearings commencing between <b>16-20 April 2018</b>	H1 2020	H1 2022
UK withholding tax	Tax treatment of Post-Administration Interest	Appealed by HMRC	<b>31 October 2017</b>	H2 2019

1. Assumes all matters will be ultimately determined by appeal to the UK Supreme Court.

In each of the proceedings, the earliest that judgments should be expected to be handed down is in a period 3 to 6 months after the respective hearing dates.

# Section 4:

## LBIE 100p estate

### Introduction

An updated summary of the indicative Low and High case financial outcome scenarios for unsecured creditors in the LBIE 100p estate is set out below. This should be read in conjunction with the assumptions and commentary set out overleaf.

### Summary

Page	House Estate at 14 September 2017	Notes	Low £m	High £m	Difference £m
22	<b>Total cash in hand</b>		<b>6,605</b>	<b>6,605</b>	-
	<b>Projected future movements</b>				
17	Net Client Money benefit to the House Estate	1	938	1,148	210
17	House receivables	2	269	751	482
18	House securities	3	35	54	19
	<b>Future recoveries expected</b>		<b>1,242</b>	<b>1,953</b>	<b>711</b>
18	Future estimated costs	4	(254)	(254)	-
19	Priority claims <sup>^</sup>	5	(473)	(85)	388
	<b>Total future cash expected to be recovered</b>		<b>515</b>	<b>1,614</b>	<b>1,099</b>
	<b>Funds available</b>		<b>7,120</b>	<b>8,219</b>	<b>1,099</b>
20	Pending Senior claims	6	(11)	(86)	(75)
20	Pending Shareholder claims	7	(36)	(36)	-
	<b>Surplus before Post-Administration Interest, non-provable claims, and the Subordinated Debt</b>		<b>7,073</b>	<b>8,097</b>	<b>1,024</b>

<sup>^</sup> Amounts included in priority claims do not rank for Post-Administration Interest.

Based on the aggregate c.£6.60bn cash deposits and government bonds in hand at 14 September 2017, less the c.£0.77bn Low case reserve for future costs, priority claims and pending claims, c.£5.83bn is the already realised Surplus that would be currently 'available' for distribution to admitted claims (if majority creditor agreement could be reached), subject to reserving both for the potential BarCap claim (included in the Client Money estate in the Low case) and for the accruing Post-Administration Interest entitlements on all pending claims. This 'available' Surplus would increase to c.£6.75bn if the pre-Administration Client Money estate were to be fully resolved and the surplus funds transferred to the House, consistent with the Low case outcome (excluding the assumed future Client Money recoveries).

### Low and High case movements in the period

The updated indicative Low and High case Surplus outcomes in the table above are c.£7.07bn and c.£8.10bn, respectively. The principal changes in the indicative outcomes over the reporting period are as follows:

	Low £m	High £m	Comments
<b>Indicative Surplus as at 14 March 2017</b>	<b>7,054</b>	<b>8,213</b>	Categories previously rounded to nearest £10m revised to nearest £1m
<b>Movements in the period</b>			
Net Client Money benefit to the House Estate	(23)	(45)	Mainly adverse realised foreign exchange movements
House receivables	37	(4)	Improved forecast future recoveries net of adverse unrealised foreign exchange movements
House securities	5	-	Unrealised market value movements on remaining securities
Future estimated costs	29	29	Mainly reduced Surplus litigation cost estimates
Priority claims	5	(62)	Tax, pension and indemnity releases net of reserve revisions
Other	2	2	Mainly interest and dividend receipts offset by foreign exchange translation differences
<b>Movement – before new claims</b>	<b>55</b>	<b>(80)</b>	
Pending Shareholder claims	(36)	(36)	New claims included following the Waterfall I Judgment
<b>Movement – after new claims</b>	<b>19</b>	<b>(116)</b>	
<b>Indicative Surplus at 14 September 2017</b>	<b>7,073</b>	<b>8,097</b>	

### Assumptions and commentary

The assumptions underlying indicative future cash recoveries/payments and the resolution of pending Senior and Shareholder claims are set out overleaf.



## Note 1 - Net Client Money benefit to the House Estate

	Low \$m	High \$m
<b>Pre-Administration Client Money estate</b>		
<b>Projected Client Money available to distribute<sup>1</sup></b>		
Funds held at 14 September 2017 <sup>2</sup>	1,484	1,484
LBHI/LBB future recoveries <sup>3</sup>	25	39
	<b>1,509</b>	<b>1,523</b>
<b>Less future third party distributions</b>		
Potential BarCap CME <sup>4</sup>	(262)	-
Future distributions of retained CME claims <sup>5</sup> and estimated funds to be paid to the UK High Court <sup>6</sup>	(8)	(8)
	<b>(270)</b>	<b>(8)</b>
<b>Projected future transfer to the House Estate (\$m)</b>	<b>1,239</b>	<b>1,515</b>
<b>(£m)</b>	<b>938</b>	<b>1,148</b>

1. It is assumed that the Administrators will not be required to trace and recover assets from the House Estate for the benefit of the Client Money pool.
2. Funds are predominantly now held in sterling, with c.\$270m retained in US dollars to meet potential future CME liabilities.
3. This represents the combined potential future dividends on LBIE's LBHI guarantee claim of c.\$1.01bn and LBB unsecured claim of c.€400m.
4. The potential BarCap CME claim is an assessment by LBIE as detailed below.
5. Future final distributions to 14 claimants with retained CME at a rate of 51.8% of total CME claims of c.\$4m.
6. Includes 103 non-engaging counterparties with total CME claims of c.\$6m and 2 counterparties subject to overseas court proceedings.

### Potential BarCap CME

The Low case outcome scenario continues to assume that the BarCap maximum CME claim will be in the region of c.\$262m. This amount represents an agreed and reconciled gross CME claim of c.\$1.04bn less the \$777m paid to BarCap by LBI. Included in the c.\$1.04bn claim is an amount of c.\$146m relating to transactions in Korea which may, or may not, be subject to Client Money protection.

In the High case outcome scenario, BarCap is assumed to hold a Senior claim rather than a CME claim.

A number of simplifying assumptions have been made for the illustrations above. Full details of the BarCap claims are set out in the UK High Court filings which can be found on the LBIE website.

## Note 2 - House receivables

House Estate receivables as at 14 September 2017, referred to below, are indicative only and significant matters remain unresolved, predominantly relating to litigation, which may materially impact this estimate.

	Rec'd in period £m	Indicative future recoveries	
		Low £m	High £m
<b>House receivables</b>			
<b>Litigation</b>			
AGR	-	-	364
Others	-	1	32
	<b>-</b>	<b>1</b>	<b>396</b>
<b>Affiliates and branches</b>			
MCF	-	240	290
Other Affiliates	24	28	42
LBIE Zurich branch	47	-	-
	<b>71</b>	<b>268</b>	<b>332</b>
<b>Client Assets claimants</b>	<b>-</b>	<b>-</b>	<b>23</b>
<b>Receivables at 14 September 2017<sup>1</sup></b>	<b>71</b>	<b>269</b>	<b>751</b>

1. Excluded from the above are:
  - 10 counterparties with an aggregate c.£69m owing to LBIE where payment is not forthcoming because of the ISDA Section 2(a)(iii) issue. LBIE continues to explore options for realising value from such claims; and
  - 2 claims with nominal values against insolvent/restructured debtors and 1 claim of c.£126m against another insolvent debtor, where the potential return to its creditors, including LBIE, is extremely uncertain.

### AGR litigation

As previously reported, AGR filed a dispositive motion seeking summary judgment in its favour and the decision of the Supreme Court of the State of New York on the motion still remains outstanding.

As noted in our last report, mediation commenced in April 2017. The Administrators' view is that the decision referred to above will need to be handed down before further discussions take place.

The indicative Low case outcome assumes nil recovery from AGR and the indicative High case outcome assumes c.£364m, which represents full recovery of the LBIE expert's valuation of c.\$498m (net of unpaid premiums), excluding judgment rate interest that could be due on any award.

No account is taken of AGR credit risk and accordingly no credit value adjustment is reflected. Should that become relevant, a pre-interest claim value in excess of c.\$200m (c.£152m) would be appropriate, in the view of LBIE's expert.

Absent a material movement of position by either side (none is expected), this matter is likely to be one of the last issues to be resolved in the Administration.

### Others in litigation

A Korean debtor is subject to recovery proceedings. A number of appeal hearings were held in the period and a judgment is awaited. The indicative Low case outcome assumes c.£1m recovery and the indicative High case outcome assumes c.£29m. In addition, enforcement of a favourable US court judgment against a debtor domiciled in Saudi Arabia is continuing. The indicative Low case outcome assumes nil recovery and the indicative High case outcome assumes c.£3m.

### MCF

MCF forecasts future recoveries, including from the run-off of the portfolio of mortgage-related assets in its solvent subsidiaries, which should give rise to future distributions to LBIE of between c.£240m and c.£290m.

LBIE and LBHI, together holding the majority interest in MCF, continue to jointly review progress on a periodic basis and explore opportunities to enhance the value or expedite the timing of this ongoing realisation process.

### LBIE Zurich branch

Following continued engagement with FINMA in the period, surplus funds of c.£47m were successfully recovered by LBIE relating to the liquidation of its Zurich branch.

### Other Affiliates

LBH paid a c.£23m distribution to LBIE following the Waterfall III settlement.

LBIE has provided funding of c.£4m via LBNL to acquire certain Senior claims under the small deed offer and the LBNL employee offer initiatives. The LBNL receivable will be recovered by LBIE principally upon receipt by LBNL of Post-Administration Interest from LBIE on the acquired claims.

Other expected future recoveries relate to further assumed distributions from LBSF and from other insolvent Affiliate estates.

### Client Assets claimants

The indicative High case outcome assumes recovery of debts that remain subject to ongoing litigation in a German court. A court hearing in June 2017 considered the issue of the quantum of the termination value owed to LBIE, and follow up briefing papers and expert witness nominations have been submitted.

### Note 3 - House securities

Securities	Low £m	High £m
Available for sale	16	35
Subject to litigation in Korea	19	19
<b>House securities at 14 September 2017</b>	<b>35</b>	<b>54</b>

All remaining securities 'available for sale' have specific issues attaching to them which remain to be resolved, albeit the majority of this remaining value rests in a single asset holding.

### Note 4 - Future estimated costs

Future costs	Legal £m	Admin. fees £m	Other £m	Total £m
<b>Estimated costs by year</b>				
2017 (6 months)	(10)	(11)	(11)	(32)
2018	(18)	(15)	(17)	(50)
2019	(23)	(12)	(16)	(51)
2020	(16)	(13)	(15)	(44)
2021	(8)	(18)	(14)	(40)
2022	(5)	(9)	(3)	(17)
	<b>(80)</b>	<b>(78)</b>	<b>(76)</b>	<b>(234)</b>
Costs accrued at 30 June 2017				(31)
Costs paid in period to 14 September 2017				11
<b>Future estimated costs at 14 September 2017</b>				<b>(254)</b>

The same assumptions have been made for the Low and High case outcomes reflecting continuing uncertainties regarding the future cost impact of the Waterfall proceedings, other counterparty litigation and the outcomes and timings of other matters.

On a calendar year basis, we prepare a detailed cost budget and a long-term forecast of the costs to complete the Administration. These forecasts are reviewed and updated at 6-monthly intervals and are discussed with the Committee.

The key assumptions underlying the costs estimate remain consistent with the last progress report, namely:

- the litigation required to resolve the remaining disputed receivables and creditor claims will require due legal processes, involving hearings at first instance, appeals, delays and cost awards;
- a full court appeal process will be required to settle the Surplus entitlements matter (Waterfall II) culminating at the UK Supreme Court;
- further Surplus-related directions hearings will be required; and
- the Administration and related processes will be completed by the end of 2022.



## Note 5 - Priority claims

These are claims which could crystallise in certain circumstances and would rank for payment in priority to unsecured creditors. The movements in the period are summarised below.

	Low £m	High £m
<b>Priority claims</b>		
Reported as at 14 March 2017	(502)	(47)
<b>Movements in the period</b>		
Tax payments	17	17
Tax provisions releases	28	5
Post-Administration indemnities	45	(40)
Pension Fund payments	7	7
Pension Fund provision releases	5	5
Other reserves	(80)	(34)
Foreign exchange movements	7	2
	<b>29</b>	<b>(38)</b>
<b>Priority claims at 14 September 2017</b>	<b>(473)</b>	<b>(85)</b>
<b>Comprising</b>		
Tax provisions	(173)	(8)
Post-Administration indemnities	(160)	(40)
Pension Fund provision	(3)	(3)
Other reserves	(137)	(34)
<b>Priority claims at 14 September 2017</b>	<b>(473)</b>	<b>(85)</b>

### Tax provisions

The Low case outcome assumes that the majority of LBIE's potential outstanding tax liabilities in various jurisdictions ultimately will become payable to the relevant taxing authorities.

In the High case outcome, the assumption is that the majority of these tax liabilities, ultimately, will not be assessed.

In the period, we have:

- agreed with the IRS penalties and interest relating to certain of LBIE's US income tax liabilities, with payments of c.£17m enabling us to release tax provisions of c.£28m and c.£5m in the Low case and High case, respectively;
- continued dialogue with the Italian and French tax authorities seeking to ultimately agree tax repayments to LBIE; and
- received correspondence from the German public prosecutor, on behalf of the German tax authorities, regarding transactions allegedly involving LBIE. We are liaising with the German authorities to obtain further information before considering our next steps.

### Post-Administration indemnities

Indemnities have been provided to:

- suppliers of post-Administration IT, valuation and property services to LBIE;
- third parties, branches and Affiliates in order to facilitate the release of assets to LBIE's Administrators;
- nominees of LBIE, acting on its behalf including in respect of the return of assets to counterparties; and
- LBNL in relation to the LBIE admitted claims auctions, LBNL employee offer and small deed offer.

In the period, an obligation fell away upon expiry of the term set out in the contract, enabling us to reduce provisions by c.£45m in the Low case outcome.

Pending finalisation of all exposures, we have revised our reserving policy and assume in the High case outcome that some claims against the indemnities will crystallise.

### Pension Fund provision

A final c.£7m payment was made to the third party pension provider that is assuming the pension liabilities, which enabled a release of c.£5m reserves. The third party has now taken direct responsibility for paying benefits to members.

Work is now focusing on winding up the Pension Fund itself, including the payment of residual outstanding trustee costs and effecting trustee liability insurance cover which is anticipated to be completed within the next reporting period.

### Other reserves

In the Low case outcome, other reserves relate to a range of litigious issues, the outcome of which remain uncertain including adverse litigation (non-Waterfall) cost exposures.

In the High case outcome, a new and more prudent reserving policy in line with that adopted for post-Administration indemnities has been applied.

## Note 6 - Pending Senior claims

The majority of pending Senior claims by value are subject to litigation, and their eventual outcome may materially impact the estimates below.

Senior claims	POD £m	Low £m	High £m
BarCap claim	(517)	-	(84)
Other creditors' claims	(21)	(11)	(2)
<b>Total</b>	<b>(538)</b>	<b>(11)</b>	<b>(86)</b>

### Proofs of Debt

11 creditors have submitted Proofs of Debt totalling c.£538m in response to which LBIE has yet to admit, reject or agree withdrawal. The largest claim relates to BarCap (c.£517m).

The other creditors' claims of c.£21m comprise:

- 2 claims that are subject to litigation either in the US or Italy (totalling c.£19m). Further details are provided at Appendix C;
- 7 claims in the aggregate sum of c.£2m from counterparties to which CME offers have also been made, but those counterparties are currently unresponsive. Accordingly, these claims may require an application to the UK High Court in order to finalise them; and
- 1 Affiliate claim (nominal claim value).

On 19 September 2017, the Administrators received notice of an application by Wentworth to inspect the Proof of Debt and challenge the admitted (and paid) claim value (c.£555m) of the largest single Senior creditor in the LBIE 100p estate. The Insolvency Rules make provision for any creditor to inspect Proofs of Debt lodged and also to challenge another creditor's admitted claim value.

### Reserves

The reserves for pending claims remain unchanged from our last progress report, including for the BarCap claim a nil value in the Low case (it is assumed to be withdrawn in favour of a CME claim) and a value of c.£84m in the High case (being the amount claimed, less the \$777m payment made directly by LBI to BarCap).

The reserves exclude any provision for a request made by Lehman Brothers Australia Limited to amend the value of its admitted claim (by a modest amount) which is subject to a UK High Court application. The application was heard on 30 June 2017 and judgment is awaited. Further details are provided at Appendix C.

## Note 7 - Pending Shareholder claims

With the certainty created by the Waterfall I Judgment and the subsequent contribution claim settlement, we have now included Shareholder claims in the financial outcome scenarios for the first time, as follows:

Shareholder claims	POD £m	Low £m	High £m
LBH12 Senior claim <sup>1</sup>	(38)	(36)	(36)
LBL claim <sup>2</sup>	(10,934)	-	-
<b>Total</b>	<b>(10,972)</b>	<b>(36)</b>	<b>(36)</b>

1. We are informed that LBH12 has assigned its Senior claim to Wentworth.
2. Whilst LBIE has considered LBL to be a significant debtor until recently, this has been an area of dispute with LBL. To facilitate a settlement, this claim was agreed at nil, subject to an indemnity of £62m being provided by LBH1 to LBIE in the event of a contribution claim arising due to a Surplus 'shortfall' to third parties before payment of the Subordinated Debt. No claim under the indemnity is assumed above, because such a 'shortfall' is not expected to arise based on the current Waterfall judgments.

### LBH12 claim

The c.£38m Proof of Debt value submitted by LBH12 included, in error, accrued pre-Administration interest relating to the Subordinated Debt. An adjusted unsecured claim value of c.£36m has now been agreed by LBIE. We expect that the claim will be admitted and paid in due course once it is clear that no contribution claim will arise.

LBIE's contingent contribution claim into LBH12 (£10bn) has been withdrawn, following the ruling in the Waterfall I Judgment that LBIE cannot pursue a contribution claim whilst in Administration.

Both of these matters were documented in the contribution claim settlement.

### LBL claim

LBL submitted to LBIE a revised Proof of Debt of c.£10.93bn in 2015 which included recharges of:

- LBIE's own contingent contribution claim into LBL (£10bn), which for the reasons above LBIE could not pursue whilst in Administration; and
- a third party landlord claim (c.£212m), which was resolved at a lesser amount following the settlement by LBL with its landlord.

The balance of the disputed LBL claim, c.£722m, was subject to the Waterfall III Application and subsequent settlement discussions between the parties. The subsequent contribution claim settlement provided for both LBIE and LBL to effectively withdraw their Proofs of Debt from each other's estate.

Also, LBL transferred its shareholding in LBIE (one share) to LBH12 on 7 September 2017 and LBL ceased to be a member of LBIE.

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# *Appendices*

# Appendix A:

## Receipts and payments: cumulative and 6 months to 14 September 2017

### House Estate receipts and payments: cumulative and 6 months to 14 September 2017

House Estate	Notes	Cumulative - 15 September 2008 to 14 March 2017 (GBP equivalent) £m	Period - 6 months to 14 September 2017 (GBP equivalent) £m	Cumulative - 15 September 2008 to 14 September 2017 (GBP equivalent) £m
<b>Receipts</b>				
Counterparties	1	12,292	71	12,363
Other receipts	2	13,476	14	13,490
<b>Total receipts for the period</b>		<b>25,768</b>	<b>85</b>	<b>25,853</b>
<b>Payments</b>				
Dividends paid		(12,306)	-	(12,306)
Administrators' remuneration and disbursements	3	(1,013)	(13)	(1,026)
Payroll and employee costs	4	(645)	(2)	(647)
Legal and professional costs	5	(401)	(8)	(409)
Pension Fund settlement	6	(115)	(7)	(122)
Other payments	7	(4,577)	(29)	(4,606)
<b>Total payments for the period</b>		<b>(19,057)</b>	<b>(59)</b>	<b>(19,116)</b>
<b>Net movement in the period</b>		<b>6,711</b>	<b>26</b>	<b>6,737</b>
Foreign exchange translation differences <sup>^</sup>		(127)	(5)	(132)
<b>Total balances</b>	<b>8</b>	<b>6,584</b>	<b>21</b>	<b>6,605</b>
Less: Funds held subject to third party claims	9	(1)	1	-
<b>Total House Estate cash deposits and government bonds</b>		<b>6,583<sup>~</sup></b>	<b>22</b>	<b>6,605<sup>#</sup></b>

<sup>^</sup> At this stage in the Administration, material receipts and payments in foreign currencies are converted to sterling as soon as practicable after receipt. Where currency sums are held for a short period, small translation differences can arise.

<sup>~</sup> Balances held in foreign currencies at 14 March 2017 were c.\$115m and various other currencies c.£11m (equivalent).

<sup>#</sup> Balances held in foreign currencies at 14 September 2017 were c.\$4m and various other currencies c.£1m (equivalent). The reduction in US dollars reflects conversion to sterling of balances previously held to provide a currency hedge against the value of CCCs.

### Statement of expenses incurred in the 6 months to 14 September 2017

The following table provides details of expenses incurred in the reporting period.

The table excludes the Pension Fund settlement payment (c.£7m) and overseas tax payments (c.£17m) as they relate to prior periods, recoverable VAT (c.£3m) and c.£4m of funding via LBNL of the employee offer and the small deed offer in the period.

Expenses	Movement in accruals in 6 months to 14 September 2017 £m	Paid in 6 months to 14 September 2017 £m	Incurred in 6 months to 14 September 2017 £m
Administrators' remuneration and disbursements <sup>1</sup>	2	(13)	(11)
Payroll and employee costs <sup>2</sup>	(1)	(2)	(3)
Legal and professional costs	-	(8)	(8)
Other payments	-	(5)	(5)
<b>Total</b>	<b>1</b>	<b>(28)</b>	<b>(27)</b>

Movement in accruals relates to:

1. Payment of 2016 deferred fees in the period.
2. Accrual of staff bonuses in the period.

## **Notes**

### **General**

Foreign currency transactions are reported in sterling at the rate prevailing on the relevant transaction date.

The transactions within the LBIE estate in the period:

- are reported on a cash receipts and payments basis and in accordance with the Insolvency Rules and best practice; and
- were completed in accounts established and controlled by the Administrators.

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

#### **1. Counterparties**

Receipts in the period principally comprise:

- c.£47m of recoveries from the LBIE Zurich branch;
- c.£23m distribution from LBH; and
- c.£1m of further distributions from LBSF.

#### **2. Other receipts**

Other receipts principally comprise:

- c.£5m of bank and bond interest received;
- c.£3m of realised gain following close-out of the interest rate hedge that was used to manage the Pension Fund deficit valuation risk;
- c.£2m of VAT repayments received from HMRC; and
- c.£4m of other realisations.

#### **3. Administrators' remuneration and disbursements**

Payment deferral terms (as agreed with the Committee and referred to on page 33 of this report) account for differences between costs incurred and payments made in the period.

Out-of-pocket disbursements of less than £1m were paid in the period.

#### **4. Payroll and employee costs**

Payments relate to salary and benefits for UK-based employees and third party contractors. This includes employee-related costs incurred on behalf of Affiliates, which are recovered by LBIE and included as other realisations.

#### **5. Legal and professional costs**

Legal and other advisers' costs relate to advice given, and to court proceedings and litigation conducted, in numerous jurisdictions by a number of professional firms in connection with a range of issues across the Administration.

#### **6. Pension Fund settlement**

Payments of c.£7m were made under the settlement agreement relating to the Pension Fund transfer to a third party.

#### **7. Other payments**

Other payments comprise:

- c.£17m of overseas tax payments;
- c.£5m of VAT paid on invoices;
- c.£4m to fund the employee offer and the small deed offer (and associated costs) via LBNL;
- c.£2m of occupancy and infrastructure costs; and
- c.£1m of other net sundry payments and reclassifications.

## 8. Investment profile

### *Current investment strategy*

For immediate liquidity requirements, LBIE invests in short-term money market deposits. For other requirements, investments are held in UK government, quasi-government debt securities and supranational debt.

### *Total balances*

	GBP equivalent £m
House Estate	
Short-dated bonds <sup>1</sup>	6,394
Short-term deposits <sup>2</sup>	201
Interest-bearing accounts	10
<b>Total</b>	<b>6,605</b>

1. Average rate of return on bonds yet to mature (net of fund manager fees) of 0.162%.
2. Average rate of return for 6 months ending 14 September 2017 of 0.15% for sterling deposits and 0.92% for US dollar deposits.

### *Cash management and investment policy*

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

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

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

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

### *Policy for interest-bearing accounts and short-term deposits/notice accounts*

Permitted banks must meet 4 key criteria:

- be headquartered in a sovereign state where the average long-term ratings from S&P, Moody's and Fitch are in the top 4 available tiers (AAA to AA-);
- be headquartered in a sovereign state within the top 3 tiers of the S&P banking industry country risk assessment;
- have a blended average long-term rating from S&P, Moody's and Fitch within the top 4 available tiers (AA to A); and
- be a Prudential Regulation Authority or European Banking Authority approved counterparty.

The counterparties are ranked in 3 tiers (1-3) based on their risk score (1 being least risky) which is calculated by assessing their 5-year credit default swap prices, bond yields, equity volatility, capital buffers and financial ratios. To ensure diversification, counterparty limits are based on the tier to which they belong:

- 20% of funds under management with any single tier 1 or tier 2 bank; and
- 15% of funds under management with any single tier 3 bank.

In the period, funds were placed on short-term deposits/notice accounts for a maximum duration of 12 weeks with tier 1 banks, 8 weeks with tier 2 banks and 4 weeks with tier 3 banks.

### *Policy for bond portfolio*

Eligible investments for the bond portfolios are short-dated government debt issued by the UK, supranational debt and quasi-government debt securities benefiting from an explicit, unconditional and irrevocable guarantee from the sovereign government.

The bond portfolio is managed on a day-to-day basis by an independent fund manager.

## 9. Funds held subject to third party claims

This reserve relates to unpaid dividends on admitted unsecured claims.

## Post-Administration Client Money receipts and payments: cumulative and 6 months to 14 September 2017

Post-Administration Client Money	Notes	Cumulative - 15 September 2008 to 14 March 2017 (USD equivalent) \$m	Period - 6 months to 14 September 2017 (USD equivalent) \$m	Cumulative - 15 September 2008 to 14 September 2017 (USD equivalent) \$m
<b>Receipts</b>				
Affiliate-related		724	-	724
Other receipts	1	7,057	1	7,058
<b>Total receipts for the period</b>		<b>7,781</b>	<b>1</b>	<b>7,782</b>
<b>Payments</b>				
Transfers to the House		(2,772)	-	(2,772)
Affiliate settlements		(1,544)	-	(1,544)
Other payments		(3,497)	-	(3,497)
<b>Total payments for the period</b>		<b>(7,813)</b>	<b>-</b>	<b>(7,813)</b>
<b>Net movement in the period</b>		<b>(32)</b>	<b>1</b>	<b>(31)</b>
Foreign exchange translation differences <sup>^</sup>		42	1	43
<b>Total third party balances<sup>∞</sup></b>	<b>2</b>	<b>10<sup>-</sup></b>	<b>2</b>	<b>12<sup>#</sup></b>

<sup>^</sup> The translation differences arise from translating other currencies into US dollars for reporting purposes.

<sup>∞</sup> Relating to clients subject to debt recovery litigation in Germany.

<sup>-</sup> Balances held in currencies other than US dollars at 14 March 2017 were c.€10m.

<sup>#</sup> Balances held in currencies other than US dollars at 14 September 2017 were c.€10m.

## Notes

### 1. Other receipts

Derived income on securities received directly into the post-Administration Client Money account.

### 2. Investment profile

#### Total balances

Post-Administration Client Money	USD equivalent \$m
Interest-bearing accounts	12
<b>Total</b>	<b>12</b>

#### Cash management and investment policies for client funds

The Client Money cash management policy for interest-bearing accounts is based on that used for the House Estate, modified to comply with the additional Client Money regulatory requirements. Client Money is not eligible for investment in government bonds and can be placed on money market deposits for a maximum duration of 30 days.

## Pre-Administration Client Money receipts and payments: cumulative and 6 months to 14 September 2017

Until recently, pre-Administration Client Money receipts have been retained in the currency of receipt. Originally, this was done on the basis that the funds would eventually need to be returned to Client Money claimants. As progressively more such claimants alternatively agreed unsecured claims against LBIE, it became apparent that these client monies would eventually be transferred to the House Estate, against which claims are made and paid in sterling. From that point on, we have continued to hold Client Money in US dollars as a hedge against potential future CCCs. Because the recent Waterfall I Judgment disallows CCCs, our need for a currency hedge is now limited largely to us needing to manage our currency exposure on the continuing claim by BarCap. As a result, during the period, a significant proportion of all Client Money was converted from foreign currency into sterling.

Because there continue to be a number of small, residual claims against the Client Money estate that are denominated in US dollars, we continue to present the receipts and payments account in US dollars for the time being, but will keep this under review.

Pre-Administration Client Money	Notes	Cumulative - 15 September 2008 to 14 March 2017 (USD equivalent) \$m	Period - 6 months to 14 September 2017 (USD equivalent) \$m	Cumulative - 15 September 2008 to 14 September 2017 (USD equivalent) \$m
<b>Receipts</b>				
Client Money pool recoveries	1	2,245	11	2,256
Funds received for the House		77	-	77
Interest		16	3	19
<b>Total receipts for the period</b>		<b>2,338</b>	<b>14</b>	<b>2,352</b>
<b>Payments</b>				
Client Money interim distribution		(675)	-	(675)
Funds paid to the House		(76)	-	(76)
Legal costs		(10)	-	(10)
<b>Total payments for the period</b>		<b>(761)</b>	<b>-</b>	<b>(761)</b>
<b>Net movement in the period</b>		<b>1,577</b>	<b>14</b>	<b>1,591</b>
Foreign exchange translation differences <sup>^</sup>		(172)	65	(107)
<b>Total balances</b>	<b>2</b>	<b>1,405<sup>-</sup></b>	<b>79</b>	<b>1,484<sup>#</sup></b>

<sup>^</sup> The cumulative translation differences principally arise from translating other currencies into US dollars for reporting purposes.

<sup>-</sup> Balances held in currencies other than US dollars at 14 March 2017 were c.£396m and c.€47m.

<sup>#</sup> Balances held in currencies other than US dollars at 14 September 2017 were c.£919m. The increase in sterling principally reflects conversion of US dollars previously held to provide a currency hedge against the value of CCCs.

## Notes

### 1. Client Money pool recoveries

Receipts in the period comprised a twelfth distribution from LBHI in respect of LBIE's guarantee claim and an eleventh distribution from LBB on LBIE's unsecured claim.

### 2. Investment profile

Pre-Administration Client Money	USD equivalent \$m
Short-term deposits <sup>^</sup>	1,484
<b>Total<sup>-</sup></b>	<b>1,484</b>

<sup>^</sup> Average rate of return for 6 months ending 14 September 2017 of 0.12% for sterling deposits and 0.93% for US dollar deposits.

<sup>-</sup> Balance includes funds of less than \$1m held on interest-bearing accounts.



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# Appendix B:

## Surplus-related court proceedings

### Waterfall I UK Supreme Court proceedings milestones

#### Milestones in the current reporting period:

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**17 May 2017** Judgment of the UK Supreme Court

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### Waterfall II UK Appeal Court proceedings milestones

#### Milestones in the current reporting period:

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**3 Apr. 2017** 7-day UK Appeal Court hearing on tranches A & B issues (including supplemental issues)

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**12 May 2017** Senior Creditor Group, Goldman Sachs and Hutchinson Investors, LLC filed their appellant's skeleton arguments (tranche C)

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**18 May 2017** CVI GVF (LUX) Master SARL and Hutchinson Investors, LLC filed their application to amend their appellant's notice (tranche C)

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**19 May 2017** Burlington Loan Management Ltd filed its application to amend its appellant's notice (tranche C)

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**25 Jul. 2017** Further UK Appeal Court hearing in relation to tranche A issues

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**28 Jul. 2017** LBIE Administrators and Wentworth filed their respondent's skeleton arguments (tranche C)

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#### Milestones expected in future reporting periods:

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**Q4 2017** Judgment of the UK Appeal Court to be handed down in respect of tranches A & B issues

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**Q1 2018** UK Supreme Court appeal notices to be filed in respect of tranches A & B issues, with decision from the UK Supreme Court whether to allow an appeal following c.3 months after submission

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**Jul. 2018** 3-day UK Appeal Court hearing on tranche C issues to commence

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## Waterfall III UK High Court proceedings milestones

### Milestones in the current reporting period:

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<b>17 Mar. 2017</b>	LBH Administrators filed position paper in respect of part B issues
<b>19 Apr. 2017</b>	LBL Administrators filed position paper in reply to LBH Administrators' position paper in respect of part B issues
<b>3 May 2017</b>	LBL Administrators filed witness evidence
<b>16 May 2017</b>	LBL Administrators filed expert evidence
<b>7 Jun. 2017</b>	Administrators of LBIE, LBHI2, LBEL and LBH filed witness evidence
<b>16 Jun. 2017</b>	LBIE Administrators filed expert evidence
<b>16 Jun. 2017</b>	Administrators of LBIE, LBHI2, LBEL, LBL and LBH filed skeleton arguments in advance of the procedural hearing on 19 June
<b>19 Jun. 2017</b>	Procedural hearing to discuss the future of the proceedings in light of the UK Supreme Court Waterfall I Judgment
<b>5 Jul. 2017</b>	LBL Administrators filed reply witness evidence
<b>24 Jul. 2017</b>	Hearing of applications by the Administrators of LBIE, LBHI2 and LBL in relation to the settlement of Waterfall III
<b>28 Jul. 2017</b>	Pre-trial review at which Mr Justice Hildyard was invited to adjourn the Waterfall III Application and vacate the part B trial listed for 11 September
<b>1 Aug. 2017</b>	Order made by Mr Justice Hildyard pursuant to the pre-trial review to adjourn the Waterfall III Application and vacate the part B trial listing
<b>3 Aug. 2017</b>	Judgment of Mr Justice Hildyard in relation to the settlement of the Waterfall III Application
<b>6 Sep. 2017</b>	LBIE Administrators filed order for dismissal by consent of the Waterfall III Application

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## UK withholding tax application UK Appeal Court proceedings milestones

### Milestones expected in future reporting periods:

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<b>31 Oct. 2017</b>	2-day UK Appeal Court hearing
<b>H1 2018</b>	Judgment of the UK Appeal Court

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## BarCap claims application UK High Court proceedings milestones

### Milestones in the current reporting period:

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<b>5 May 2017</b>	BarCap and Wentworth filed their position papers in respect of the initial issues
<b>30 Jun. 2017</b>	LBIE Administrators filed their reply position paper
<b>11 Aug. 2017</b>	LBIE Administrators and BarCap filed and exchanged witness statements from witnesses of fact

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### Milestones expected in future reporting periods:

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<b>15 Sep. 2017</b>	Parties (if so advised) to file and exchange reply witness statements
<b>27 Oct. 2017</b>	Parties to file their expert reports
<b>17 Nov. 2017</b>	Parties (if so advised) to file their supplemental expert reports
<b>15 Dec. 2017</b>	Parties' experts to file a joint memorandum identifying the points of agreement and disagreement
<b>16-20 Apr. 2018</b>	c.8-day UK High Court hearing to commence

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## Waterfall I Judgment received

UK Appeal Court judgment	UK Supreme Court judgment
Subordinated Debt ranks below Post-Administration Interest and non-provable claims	<b>Upheld</b>
Subordinated Debt can prove on a contingent basis, such proof to be valued at zero pending payment in full of Post-Administration Interest and non-provable claims	<b>Overtured:</b> Subordinated Debt is not permitted to prove unless and until Post-Administration Interest and non-provable claims have been paid in full
CCCs exist and rank below Post-Administration Interest and <i>pari passu</i> with other non-provable claims	<b>Overtured:</b> CCCs do not exist
Post-Administration Interest accrued but unpaid in an administration is payable in a subsequent liquidation from the Surplus held by a liquidator	<b>Overtured:</b> Post-Administration Interest accrued but unpaid in an administration will cease to be payable in a subsequent liquidation
Shareholders' contribution claim liability extends to Post-Administration Interest and non-provable claims	<b>Part overturned:</b> Shareholders' contribution claim liability extends to non-provable claims but not to Post-Administration Interest
LBIE in administration may prove in the respective estates of its Shareholders in respect of contributory claims	<b>Overtured:</b> LBIE in administration may not prove in the respective estates of its Shareholders in respect of contributory claims
The contributory rule does not apply – LBIE in administration cannot refuse to admit Shareholders' proofs on the basis of the contributory rule	<b>Overtured:</b> The contributory rule does apply – LBIE in administration can refuse to admit Shareholders' proofs on the basis of the contributory rule
Contributory claims can be set off against Shareholders' proofs	<b>Overtured:</b> In administration, prospective contributory claims cannot be set off against Shareholders' proofs

## Waterfall II tranches A & B appeal judgment pending

UK High Court judgment	UK Appeal Court judgment
<b>Tranche A – insolvency law matters</b>	
The rule in <i>Bower v Marris</i> is not applicable: Post-Administration Interest is not to be calculated on the basis of a notional allocation of dividends to interest first	<b>Pending</b>
Rule 2.88 provides a complete code for the payment of Post-Administration Interest on proved debts: there is no scope for a non-provable claim for further interest on a provable claim	<b>Pending</b>
Foreign judgment rate of interest is only available where a judgment was actually obtained pre-Administration	<b>Pending</b>
Applicable date for commencement of Post-Administration Interest on all debts including contingent debts and future debts is the date of administration	<b>Pending</b>
<b>Tranche B – post-Administration contract releases</b>	
Neither CRA nor CDD contracts have the effect of releasing non-provable claims (if any) as a matter of construction	<b>Pending</b>
If releases relating to claims for Post-Administration Interest were effective, the Court would direct administrators not to enforce such releases: under the principle in <i>Ex parte James</i> and Para. 74 of Schedule B1 of the Insolvency Act	<b>Pending</b>

# Appendix C:

## Other litigation summary

The following litigation is a matter of public record in the relevant legal jurisdiction noted below.

Counterparty	Claim amount/ (POD value)	Type	Commenced	Court	Court reference
AG Financial Products Inc.	\$500m/£(16)m	Debtor/Creditor	Nov. 2011	Supreme Court of the State of New York	653284/2011
Kumho Industrial Co. Limited	KRW71bn	Debtor	Jul. 2015	Seoul Central District Court	
Dietmar Hopp Stiftung GmbH	€26m	Trust debtors	Aug. 2010	German Supreme Court	BGH XI ZR 9/14
DH Besitzgesellschaft AG & Co KG					
Employee <sup>1</sup>	£(3)m	Creditor - rejection appeal	Dec. 2014	UK High Court	7942 of 2008
Lehman Brothers Australia Limited (in liquidation)	£(2)m	Creditor	Dec. 2016	UK High Court	7942 of 2008
Exotix Partners LLP	\$9m	Post-Administration claim	May 2017	UK High Court	1407 of 2017

1. The UK High Court proceedings have been stayed pending a determination by the Milan Labour Court. Various hearings have taken place in Milan in the period. Outline settlement terms have been recently agreed and are in the course of being finalised.

# Appendix D:

## Administrators' remuneration

### Analysis of Administrators' remuneration by grade and work activity

The basis of Administrators' remuneration approved by the Committee is by reference to the time properly given by the Administrators' or their staff in attending to matters arising in the Administration. The table below provides an analysis of the Administrators' total hours incurred and the associated cost by staff grade and work activity for the previous time reporting period (to 31 December 2016) and the current period (to 30 June 2017), together with the forecast for the current and next period (to 31 December 2017).

	Prior actual		Current actual		Current forecast		Future forecast	
	1 July 2016 to 31 December 2016		1 January 2017 to 30 June 2017		1 January 2017 to 30 June 2017		1 July 2017 to 31 December 2017	
	Hours	£'000	Hours	£'000	Hours	£'000	Hours	£'000
<b>By grade</b>								
Partner	1,542	1,403	1,614	1,482	1,460	1,325	1,767	1,623
Director	2,956	2,056	2,938	2,050	3,486	2,361	2,647	1,910
Senior Manager	7,232	3,831	6,435	3,309	7,173	3,679	5,885	3,117
Manager	5,351	2,166	5,094	2,090	5,399	2,252	4,978	2,132
Senior Associate	6,110	1,758	6,605	1,953	5,179	1,568	5,118	1,635
Associate	4,498	535	2,856	433	1,304	283	2,060	388
<b>Total</b>	<b>27,689</b>	<b>11,749</b>	<b>25,542</b>	<b>11,317</b>	<b>24,001</b>	<b>11,468</b>	<b>22,455</b>	<b>10,805</b>
<b>Average hourly rate</b>		<b>£424</b>		<b>£443</b>		<b>£478</b>		<b>£481</b>
<b>By work activity</b>								
Resolution of the LBIE 100p estate	826	536	781	525	874	599	655	467
Surplus	5,861	3,264	7,194	3,707	8,805	4,788	6,883	3,944
Finance and reporting	2,935	1,359	2,933	1,396	2,885	1,315	4,266	1,937
Infrastructure <sup>1</sup>	18,067	6,590	14,634	5,689	11,437	4,766	10,651	4,457
<b>Total</b>	<b>27,689</b>	<b>11,749</b>	<b>25,542</b>	<b>11,317</b>	<b>24,001</b>	<b>11,468</b>	<b>22,455</b>	<b>10,805</b>

1. Infrastructure includes specialist PwC resource relating to information technology, forensics, tax, pensions and certain other back office functions. In the period, these specialists settled certain tax exposures with the IRS and finalised transfer of the Pension Fund (together enabling Low case reserve releases of c.£33m), and forensic data support contributed to the eventual Waterfall III settlement.

### Staff profile

The table below provides a summary of the average staff numbers for the previous and current time reporting periods and the forecast average for the current and next time reporting periods.

	Actual		Forecast	
	Prior period ended 31 Dec. 2016	Current period ended 30 Jun. 2017	Current period ended 30 Jun. 2017	Future period ending 31 Dec. 2017
<b>Staff profile</b>				
LBIE staff (including contractors) <sup>1</sup>	42	30	30	24
PwC staff <sup>2</sup>	27	26	24	22
Ratio of LBIE to PwC staff	1.6	1.2	1.3	1.1

1. Staff numbers are shown on a full-time equivalent basis.

2. PwC staff numbers are calculated on the basis of 8 worked man-hours being equal to 1 full-time equivalent man-day.

In the 6 months to 30 June 2017, the LBIE resource reduced in line with forecast with the 8% additional PwC resource above forecast reflecting further specialist forensics PwC resource being required in support of the Waterfall III proceedings and prolonged pension liability transfer activity (not known at the time of the forecast preparation), offset by reduced Surplus support. PwC forensics support relating to the BarCap claims and other litigation is anticipated to continue for the remainder of 2017 and into 2018.

## **Administrators' remuneration in the current period**

In the current time reporting period to 30 June 2017, total hours reduced by 8% compared to the period ended 31 December 2016; total costs in the same period reduced by 4%. The lower cost reduction and higher average cost per hour reflects a change in grade mix principally as usage of junior forensic resource lessened in the period.

Actual hours and costs by work activity in the period are broadly in line with the forecast except for:

- Surplus, where anticipated additional resource forecast to manage the expected workload was avoided by efficient use of existing LBIE resource; and
- infrastructure, where additional junior forensic resource was required to support the Waterfall III proceedings, as discovery and disclosure demands exceeded expectations, together with additional pension and tax activity necessary to deal with close-out issues.

## **Administrators' remuneration forecast for the next period**

The forecast 6-monthly time reporting period to 31 December 2017 indicates a 12% reduction in hours and a 5% reduction in costs compared with the current period. This reflects a forecast:

- reduction in pensions activity and forensics work related to the BarCap claims and other litigation; offset in part by
- a temporary increase in reporting activity during a transition to an offsite reporting team structure.

The forecast increase of 9% in the average hourly rate predominantly reflects a grade mix change, as junior forensic resource utilised is forecast to reduce and a 4% increase in hourly charging rates, agreed with the Committee and effective from 1 July 2017.

## **Administrators' remuneration approval**

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

Total time costs incurred in the 6-month reporting period are c.£10.13m, which includes time costs incurred from 1 July 2017 to 14 September 2017, not reported in detail on page 32, of c.£3.6m. A full analysis of these costs will be included as part of the 6-month period to 31 December 2017 in the next progress report.

Cumulative time costs accrued to 30 June 2017 are c.£992m. Total Administrators' remuneration and disbursements paid to 14 September 2017 are c.£1.03bn.

We continue to provide the Committee and its Adviser with detailed information relating to our remuneration and to Category 2 disbursements, in accordance with SIP 9.

## **Creditors' rights**

Creditors have the right to ask for more information about remuneration or expenses within 21 days of receiving this report as set out in Rule 18.9 of the Insolvency Rules. Any request must be in writing. Creditors can also challenge remuneration and expenses within 8 weeks of receiving this report as set out in Rule 18.34 of the Insolvency Rules.

An explanatory note on the rights of creditors in relation to an administrator's remuneration and expenses and how to request further information can be found online at:

<https://www.icaew.com/-/media/corporate/files/technical/insolvency/creditors-guides/creditors-guide-administrators-fees-final.ashx?la=en>

This guide is for appointments on or after 1 November 2011 and whilst not all of the provisions apply to the LBIE Administration (which commenced on 15 September 2008) it is the most appropriate guide currently available following the changes made by the Insolvency (England and Wales) Rules 2016.

You can also get a copy free of charge by telephoning Lesley Bingham on 0203 036 2661.

## **Approvals by the Creditors' Committee**

In the period, the Committee approved remuneration arrangements for 2017, which again require deferral of a significant proportion of the Administrators' time costs that will be incurred in the calendar year to be considered for approval in 2018 based upon performance.

The Committee has been provided with Category 2 disbursements information relating to the 9-month period to 30 June 2017 amounting to £537,194, of which £209,128 has been approved for payment in the reporting period.

In addition, Category 1 disbursements of £191,373 were incurred in the 6-month period to 30 June 2017 and paid in the reporting period.

In total, c.£196,000 of Category 1 disbursements and c.£315,000 of Category 2 disbursements were incurred in the 6-month reporting period.

# Appendix E:

## Statutory and other information

<b>Court details for the Administration:</b>	High Court of Justice, Chancery Division, Companies Court Court case number 7942 of 2008
<b>Full name:</b>	Lehman Brothers International (Europe)
<b>Trading name:</b>	Lehman Brothers International (Europe)
<b>Registered number:</b>	02538254
<b>Registered address:</b>	Level 23, 25 Canada Square, London E14 5LQ
<b>Contact address:</b>	Lehman Brothers International (Europe) – in Administration, Level 23, 25 Canada Square, London E14 5LQ
<b>Contact telephone/email</b>	+44 (0)20 3036 2000/generalqueries@lbia-eu.com
<b>Date of the Administration appointment:</b>	15 September 2008
<b>Administrators' names and addresses:</b>	AV Lomas, SA Pearson (both appointed 15 September 2008), R Downs (appointed 2 November 2011) and JG Parr (appointed 22 March 2013) of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT. MJA Jervis and DY Schwarzmann ceased to act on 2 November 2011. DA Howell ceased to act on 22 March 2013. PD Copley ceased to act on 24 June 2016
<b>Appointor's name and address:</b>	High Court of Justice, Chancery Division, Companies Court on the application of LBIE's directors
<b>Objective being pursued by the Administrators:</b>	Achieving a better result for LBIE's creditors as a whole than would be likely if LBIE were wound up (without first being in Administration)
<b>Aims of the Administration:</b>	Recover and/or realise all House assets, including cash, securities and in-the-money financial contracts, on a managed basis Admit unsecured creditors' claims and make distributions to creditors including any Surplus Recover Client Assets and Client Money, assess the claims to such property and return all such property to its rightful owners on a systematic basis
<b>Division of the Administrators' responsibilities:</b>	In relation to paragraph 100(2) of Schedule B1 to the Insolvency Act, during the period for which the Administration is in force, any act required or authorised under any enactment to be done by either or all of the Administrators may be done by any one or more of the persons for the time being holding that office
<b>Details of any extensions for the initial period of appointment:</b>	The UK High Court on 4 November 2016 granted a further extension of the Administration to 30 November 2022
<b>Proposed end of the Administration:</b>	The Administrators have yet to determine the most appropriate exit
<b>Estimated dividend for unsecured creditors:</b>	Interim dividends paid to date at a cumulative rate of 100p/£1
<b>Estimated values of the prescribed part and LBIE's net property:</b>	The prescribed part is not considered to be relevant as all Senior admitted creditors have been paid or reserved for at a rate of 100p/£1
<b>Whether and why the Administrators intend to apply to court under Section 176A(5) of the Insolvency Act:</b>	Not applicable
<b>The European Regulation on Insolvency Proceedings (Council Regulation (EC) No. 1346/2000 of 29 May 2000):</b>	The European Regulation on Insolvency Proceedings does not apply to this Administration as LBIE is an investment undertaking
<b>Creditors' Committee members:</b>	Lehman Brothers Holdings Inc. Ramius LLC Lehman Brothers Commercial Corporation Asia Limited



# Appendix F:

## Glossary of terms

Abbreviation	Term	Definition
<b>Administration</b>	Administration	UK corporate insolvency process governed by the Insolvency Act 1986 applicable to LBIE following the granting of an administration order dated 15 September 2008
<b>Administrators</b>	Joint Administrators	AV Lomas and SA Pearson were appointed as Joint Administrators of LBIE on 15 September 2008. R Downs was appointed on 2 November 2011. JG Parr was appointed on 22 March 2013. All are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants in England and Wales
<b>Adviser</b>	Adviser	An adviser retained to assist the Committee in considering the Administrators' remuneration requests
<b>Affiliates</b>	Affiliate entities	Various subsidiaries and affiliates of Lehman Brothers Holdings Inc.
<b>AGR</b>	AG Financial Products Inc.	A US-based affiliate of Assured Guaranty Corp. which provided credit protection to counterparties under credit default swaps
<b>BarCap</b>	Barclays Capital Inc.	Investment banking business of Barclays Bank PLC
<b>Category 1 disbursements</b>	Administrators' Category 1 disbursements	Costs that are directly referable to the Administration supplied by and paid to external third parties
<b>Category 2 disbursements</b>	Administrators' Category 2 disbursements	Costs that are directly referable to the Administration but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the Administration on a proper and reasonable basis
<b>CCC</b>	Currency Conversion Claim	Non-provable claim derived from contractual rights to be paid in a currency other than sterling, where the value of sterling has declined as against the currency of the claim between the date of Administration and the date(s) of payment of distributions in respect of the claim
<b>CDD</b>	Claims Determination Deed	A standardised legal document for agreeing Senior claims
<b>Client Assets</b>	Client Assets	Client securities which LBIE should have held as at 15 September 2008
<b>Client Money</b>	Client Money	Client cash balances held by LBIE as at 15 September 2008 or received thereafter by LBIE and which are, in each case, subject to the UK Financial Conduct Authority's client money rules and/or applicable client money distribution rules
<b>CME</b>	Client Money Entitlement	The entitlement to receive a distribution from the pre-Administration Client Money pool
<b>Committee</b>	Creditors' Committee	Creditors voted to represent the general body of creditors of LBIE to assist the Administrators in discharging their functions set out in the Insolvency Act
<b>CRA</b>	Claim Resolution Agreement	The claim resolution framework which governs the return of Client Assets. The CRA was proposed by the Administrators to clients in November 2009 and was accepted by over 90% of eligible Client Assets claimants
<b>CVA</b>	Company Voluntary Arrangement	Insolvency procedure as set out in the Insolvency Act and Insolvency Rules which allows a company to come to an arrangement/compromise with its creditors over the payment of its debts
<b>ETD</b>	Early Termination Date	As defined in the close-out provisions of the standard ISDA documentation
<b>FINMA</b>	FINMA	Swiss Financial Market Supervisory Authority FINMA
<b>HMRC</b>	HM Revenue & Customs	Organisation of the UK government primarily responsible for the collection of taxes
<b>House Estate/House</b>	House Estate	Dealings that relate to LBIE's general unsecured estate
<b>Insolvency Act</b>	Insolvency Act 1986	Statutory legislation that provides the legal platform for matters relating to personal and corporate insolvency in the UK
<b>Insolvency Rules</b>	Insolvency (England and Wales) Rules 2016	Statutory rules that provide the legal platform for matters relating to personal and corporate insolvency in England and Wales
<b>IRS</b>	Internal Revenue Service	A bureau of the Department of the Treasury of the United States federal government with responsibility for collecting taxes and the interpretation and enforcement of the internal revenue code
<b>ISDA Master Agreement</b>	International Swaps and Derivatives Association Master Agreement	Global trade association for over-the-counter derivatives standard documentation
<b>LBB</b>	Lehman Brothers Bankhaus A.G.	Affiliate entity subject to insolvency proceedings in Germany
<b>LBEL</b>	Lehman Brothers Europe Limited	Affiliate entity subject to insolvency proceedings in the UK
<b>LBH</b>	Lehman Brothers Holdings plc	Affiliate entity subject to insolvency proceedings in the UK
<b>LBHI</b>	Lehman Brothers Holdings Inc.	Ultimate parent of the Lehman group, incorporated in the USA and formerly subject to Chapter 11 bankruptcy protection from 15 September 2008. The plan of reorganisation became effective on 6 March 2012

Abbreviation	Term	Definition
LBHI2	LB Holdings Intermediate 2 Limited	Affiliate entity subject to insolvency proceedings in the UK
LBI	Lehman Brothers Inc.	US broker-dealer affiliate entity, incorporated in the USA which entered Securities Investor Protection Act 1970 trusteeship on 19 September 2008
LBIE	Lehman Brothers International (Europe) – In Administration	Private unlimited UK subsidiary of LBHI, acting as its main European broker dealer, subject to an administration order dated 15 September 2008
LBL	Lehman Brothers Limited	UK service entity for the Lehman UK entities. LBL was placed into Administration on 15 September 2008
LBNL	Lehman Brothers Nominees Limited	UK Affiliate entity that is a wholly owned subsidiary of LBIE
LBSF	Lehman Brothers Special Financing Inc.	Affiliate entity subject to insolvency proceedings in the USA
MCF	Mable Commercial Funding Limited	Affiliate entity subject to insolvency proceedings in the UK
Pension Fund	Lehman Brothers Pension Scheme	Group pension scheme for employees of UK Lehman entities
Post-Administration Interest	Post-Administration Interest	Statutory interest payable pursuant to Rule 14.23(7) of the Insolvency Rules
Proof of Debt/POD	Proof of Debt or Statement of Claim	A formal document prescribed by the Insolvency Rules submitted to the Administrators by a creditor wishing to prove their claim. The form is made in writing or electronically under the responsibility of a creditor and signed by an authorised person
Scheme of Arrangement	Scheme of Arrangement	Statutory procedure under Part 26 of the Companies Act 2006 for a court-approved agreement between a company and its creditors
Senior	Senior unsecured creditor	Unsecured, non-preferential, non-Shareholder, not subordinated creditor
Senior Creditor Group/ SCG	Senior Creditor Group	Collectively 3 respondents to the Waterfall II Application: Burlington Loan Management Limited, CVI GVF (Lux) Master SARL and Hutchinson Investors, LLC
Shareholder(s)	Shareholder(s) of LBIE	Formerly LBL and/or LBHI2; LBL ceased to be a LBIE member on 7 September 2017
SIP 9	Statement of Insolvency Practice 9	Rules issued by the Joint Insolvency Committee which provide guidance to insolvency practitioners and creditors' committees in relation to the remuneration of, <i>inter alios</i> , administrators
Street	Street counterparties	Third party counterparties consisting of financial institutions, including asset managers, custodians and banks; and non-banking financial institutions, including pension funds and corporate entities
Subordinated Debt	Subordinated Debt	The subordinated liabilities arising pursuant to 3 intercompany loan agreements entered into between LBIE and LBHI2, each dated 1 November 2006, and which have been assigned by LBHI2 to Wentworth
Surplus	Surplus	Assets remaining after the payment in full of Senior claims and Shareholder claims but before Post-Administration Interest, non-provable claims, and the Subordinated Debt
Trust Estate	Trust Estate	Client Assets and Client Money
UK Appeal Court	Court of Appeal of England and Wales	The second most senior court in the English legal system for civil cases. Permission to appeal is required, either from the lower court or the Court of Appeal itself
UK High Court	High Court of England and Wales	Court of England and Wales which deals with all high value and high importance cases, and also has a supervisory jurisdiction over all subordinate courts
UK Supreme Court	Supreme Court of the United Kingdom	Court of last resort and highest appellate court in the United Kingdom for civil cases
VAT	Value Added Tax	A consumption tax levied on the sale of goods and services in the UK
Waterfall	Waterfall	Waterfall I, II and III legal proceedings
Waterfall I Application/ Waterfall I	Waterfall I Application	A joint application by LBIE, LBL and LBHI2 to the UK High Court issued on 14 February 2013 seeking a determination on statutory interest priority, contribution rights and other issues relating to LBIE and its Shareholders
Waterfall I Judgment	Waterfall I Judgment	Waterfall I appeal judgment handed down by the UK Supreme Court on 17 May 2017
Waterfall II Application/ Waterfall II	Waterfall II Application	An application to the UK High Court issued on 12 June 2014 seeking a further determination on issues that impact the rights of creditors to payment from the Surplus and the distribution of that Surplus in a timely manner
Waterfall III Application/ Waterfall III	Waterfall III Application	An application to the UK High Court issued on 25 April 2016 seeking a determination on issues relating to contributory claims

Abbreviation	Term	Definition
Wentworth	Wentworth Joint Venture	A joint venture between Elliott Management Corporation, King Street Capital Management L.P., LBHI and LBHI2 to align their interests in LBIE using vehicles including Wentworth Sons Sub-Debt S.a.r.l, a respondent to the Waterfall II Application, and Wentworth Sons Senior Claims S.a.r.l.
York	York	York Global Finance BDH, LLC, a respondent to the Waterfall II Application

[www.pwc.co.uk/lehman](http://www.pwc.co.uk/lehman)

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IN THE HIGH COURT OF JUSTICE

Nos 7942 and 7945 of 2008 and No. 429 of 2009

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)

AND IN THE MATTER OF LEHMAN BROTHERS LIMITED  
(IN ADMINISTRATION)

AND IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED  
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL  
(EUROPE) (IN ADMINISTRATION)

(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN  
ADMINISTRATION)

(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN  
ADMINISTRATION)

Applicants

-and-

(1) LEHMAN BROTHERS HOLDINGS, INC

(2) LYDIAN OVERSEAS PARTNERS MASTER FUND LIMITED

Respondents

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APPLICATION

---

**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and Russell Downs, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration) ("LBIE") (the "**LBIE Joint Administrators**"), Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Derek Anthony Howell and Dan Yoram Schwarzmann, in their capacity as the joint administrators of Lehman Brothers Limited

(in administration) (“**LBL**”), and Anthony Victor Lomas, Steven Anthony Pearson, Derek Anthony Howell, Dan Yoram Schwarzmann and Michael John Andrew Jervis, in their capacity as the joint administrators of LB Holdings Intermediate 2 Limited (in administration) (“**LBHI2**”), (together the “**Joint Administrators**”), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:-

Date: 2013

Time: .....

Place: Court , 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

For directions pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the “**Act**”) determining as the issues set out below:

1. Are the members of LBIE (being LBHI2 and LBL) (together the “**Members**”) entitled to prove in LBIE’s administration in respect of sums owed by LBIE to the Members (other than in respect of sums owed to LBHI2 pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the “**LBHI2 Subordinated Debt**”) notwithstanding that LBIE is an unlimited company and, in the event of LBIE being wound up, one or both of the Members may be called upon to contribute, pursuant to Section 74 of the Act, to LBIE’s assets an amount sufficient for payment of LBIE’s debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories amongst themselves (hereinafter defined in respect of each member as the “**Potential Liability as Contributory**”)? In particular, what (if any) is the effect of Section 74(2)(f) of the Act on each of the Members’ Potential Liability as Contributory?
2. If LBIE were wound-up, would the Members be entitled to prove in LBIE’s liquidation in respect of sums owed by LBIE to the Members (other than in respect of the LBHI2 Subordinated Debt). In particular, to what extent would the Members’ ability to prove in a winding-up of LBIE be affected by: (i) each of the Members’ Potential Liability as Contributory; and (ii) Section 74(2)(f) of the Act?
3. Is LBHI2 entitled to prove in LBIE’s administration, or would LBHI2 be entitled to prove in any subsequent liquidation of LBIE, in respect of the LBHI2 Subordinated Debt



notwithstanding: (i) the terms of the LBHI2 Subordinated Debt; and (ii) LBHI2's Potential Liability as Contributory? What (if any) is the effect of Section 74(2)(f) of the Act?

4. In the case of each of paragraphs 1 to 3 above, to the extent that there is an entitlement to prove, in so proving, is credit required to be given or is any deduction to be made in respect of each of the Members' Potential Liability as Contributory either: (i) by way of insolvency set-off (set out in rules 2.85 and 4.90 of the Insolvency Rules 1986 (the "Rules") as applicable); and/or (ii) pursuant to the rule in *Cherry v Boulton* 41 ER 171; and/or (iii) otherwise?
5. Is LBIE entitled to prove in the administrations (or would LBIE be entitled to prove in any subsequent liquidations) of the Members in respect of each of the Members' Potential Liability as Contributory?
6. If LBIE is entitled to prove in the Members' administrations (or any subsequent liquidations) as described in paragraph 5 above, what effect (if any) does:
  - 6.1 insolvency set-off have on the LBHI2 Subordinated Debt?
  - 6.2 insolvency set-off have on the Members' respective non-subordinated debt claims?
  - 6.3 the rule in *Cherry v Boulton* have on the LBHI2 Subordinated Debt?
  - 6.4 the rule in *Cherry v Boulton* have on the Members' respective non-subordinated debt claims?
  - 6.5 any other relevant form of set-off or deduction have on:
    - (a) the LBHI2 Subordinated Debt; and/or
    - (b) the Members' respective non-subordinated debt claims?
7. What (if any) is the effect of Section 149 of the Act on:
  - 7.1 any proof submitted by either of the Members in LBIE's administration or (if LBIE were wound-up) liquidation?
  - 7.2 any proof submitted by LBIE in either of the Member's respective administrations or (if either of the Members were wound-up) liquidations?
8. To the extent that LBIE is entitled to prove in respect of it, or it is required to be brought into the account on any proof which either of the Members is entitled to file in LBIE's administration or a subsequent liquidation, in circumstances in which each Member's Potential Liability as Contributory is contingent, is that Member's Potential Liability as

Contributory capable of being ascertained and quantified and, if so, how should the quantum of that Member's Potential Liability as Contributory be quantified?

9. Whether, and in what circumstances each of the Member's Potential Liability as Contributory extends to contributing to LBIE's assets an amount sufficient for payment of:
  - (a) interest provable and/or payable pursuant to Rule 2.88 of the Rules on the principal of the debts and liabilities owed to LBIE's creditors by LBIE; and/or
  - (b) the LBHI2 Subordinated Debt; and
  - (c) Currency Conversion Claims (as defined at paragraph 12 below), to the extent that paragraph 12 is answered in the affirmative.
  
10. In the event that the Members are obliged to contribute to the assets of LBIE pursuant to Section 74 of the Act, and in light of the fact that LBL owns one ordinary share of \$1 in LBIE, and LBHI2 owns 2 million 5% redeemable Class A preference shares of \$1000 each, 5.1 million 5% redeemable Class B shares of \$1000 each and 6,273,113,999 ordinary shares of \$1 each in LBIE:
  - (a) whether their obligations are joint, several or otherwise as against LBIE;
  - (b) whether they are entitled to seek a contribution or indemnity from one another in respect of any payments made pursuant to any such obligation and, if so, the nature and extent of such right of contribution or indemnity;
  - (c) to what extent any right to contribution or indemnity as referred to in sub-paragraph (b) above is affected by any other claims which LBHI2 and LBL have against one another.
  
11. In the event that there are sufficient funds in LBIE's administration to permit the LBIE Joint Administrators to make payment in full to LBIE's general, unsecured creditors in respect of the principal of the debts and liabilities owed to them by LBIE, in what order would the LBIE Joint Administrators be required to apply any surplus in discharging the following:
  - (a) interest payable on such debts and liabilities in respect of the periods during which they have been outstanding since LBIE entered administration pursuant to Rule 2.88(7) of the Rules;
  - (b) Currency Conversion Claims (as defined at paragraph 12 below), to the extent that paragraph 12 is answered in the affirmative;



- (c) to the extent that the Members have been unable to prove in respect of them, debts owed by LBIE to the Members (other than in respect of the LBH12 Subordinated Debt); and
  - (d) to the extent that LBH12 has been unable to prove in respect of it, the LBH12 Subordinated Debt.
12. Is an unsecured creditor, with a contractual entitlement to payment from LBIE in a currency other than sterling (the “**Contractual Currency**”), entitled, following payment in full of:
- (i) all creditors’ proved debts; and
  - (ii) interest on such debts in respect of periods during which they have been outstanding since LBIE entered administration pursuant to Rule 2.88(7) of the Rules,

to payment from LBIE in a sum equal to the difference between (a) the amount of its contractual entitlement to payment in the Contractual Currency and (b) the amount received by it in respect of its proved debt against LBIE, converted into the Contractual Currency as at the date of payment (such claim being referred to as a “**Currency Conversion Claim**”)?

13. Lydian Overseas Partners Master Fund Limited bear its own costs of the Application and is not liable, save to the extent that the Court orders otherwise, for the costs of any other party.

And for an Order that the Joint Administrators’ costs of this Application be paid as an expense of their respective administrations;

And for such further or other directions as the Court considers appropriate.

The grounds upon which the Joint Administrators seek such an Order are set out in the witness statement of Anthony Victor Lomas dated 14 February 2013 filed herewith.

Dated this ..... day of ..... 2013

Signed:.....	Signed.....	Signed.....
LBIE's Joint Administrators' solicitors: Linklaters LLP	LBL's Joint Administrators' solicitors: DLA Piper UK LLP	LBHI2's Joint Administrators' solicitors: SNR Denton
Position held: Partner	Position held: Partner	Position held: Partner
LBIE's Joint Administrators' address for service is:	LBL's Joint Administrators' address for service is:	LBHI2's Joint Administrators' address for service is:
Linklaters LLP One Silk Street London EC2Y 8HQ	DLA Piper UK LLP 3 Noble Street London EC2V 7EE	SNR Denton One Fleet Place London EC4M 7WS
Reference: Tony Bugg / Euan Clarke / Jared Oyston	Reference: Simon Neilson-Clark / Chris Parker	Reference: Nigel Barnett / Ben Olushola

It is intended to serve this Application on:

**Lehman Brothers Holdings, Inc, c/o Weil Gotshal**

**Lydian Overseas Partners master Fund Limited c/o Allen & Overy LLP**

Notice of this Application will be given to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

IF YOU DO NOT ATTEND, THE COURT MAY MAKE SUCH ORDER AS IT THINKS FIT.

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APPLICATION

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IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT  
IN THE MATTER OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)  
IN THE MATTER OF LEHMAN BROTHERS  
LIMITED  
(IN ADMINISTRATION)  
IN THE MATTER OF LB HOLDINGS  
INTERMEDIATE 2 LIMITED  
(IN ADMINISTRATION)  
AND IN THE MATTER OF THE INSOLVENCY  
ACT 1986  
BETWEEN

- (1) THE JOINT ADMINISTRATORS OF LEHMAN  
BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)  
(2) THE JOINT ADMINISTRATORS OF LEHMAN  
BROTHERS LIMITED (IN ADMINISTRATION)  
(3) THE JOINT ADMINISTRATORS OF LB  
HOLDINGS INTERMEDIATE 2 LIMITED (IN  
ADMINISTRATION)

Applicants

-and-

- (1) LEHMAN BROTHERS HOLDINGS, INC  
(2) LYDIAN OVERSEAS PARTNERS MASTER  
FUND LIMITED

Respondents

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

(1) ANTHONY VICTOR LOMAS

(2) STEVEN ANTHONY PEARSON

(3) PAUL DAVID COPLEY

(4) RUSSELL DOWNS

(5) JULIAN GUY PARR

(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION))



Applicants

-and-

(1) BURLINGTON LOAN MANAGEMENT LIMITED

(2) CVI GVF (LUX) MASTER S.À.R.L

(3) HUTCHINSON INVESTORS, LLC

(4) WENTWORTH SONS SUB-DEBT S.À.R.L

(5) YORK GLOBAL FINANCE BDH, LLC

Respondents

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APPLICATION

---

**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration) ("LBIE") (the "**Joint Administrators**"), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:-

Date: 25 June 2014

Time: NB 10:30

Place: Court , 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

For directions, pursuant to paragraph 63 of Schedule B1 of the Insolvency Act 1986, determining the following issues which are to be read with reference to the definitions contained in the Schedule hereto:

### **Statutory Interest**

#### *Construction of Rule 2.88*

1. Whether on the true construction of Rule 2.88(7) of the Rules, Statutory Interest is payable on a simple or compound basis where the rate applicable is the rate specified in section 17 of the Judgments Act 1838? If payable on a compound basis, with what frequency is it to be compounded?
2. Whether on the true construction of Rule 2.88(7) of the Rules, Statutory Interest is calculated on the basis of allocating dividends:
  - (i) first to the payment of accrued Statutory Interest at the date of the relevant dividends and then in reduction of the principal;
  - (ii) first to reduction of the principal and then to the payment of accrued Statutory Interest; or
  - (iii) on the basis of some other sequencing.



3. Whether the words "*the rate applicable to the debt apart from the administration*" in Rule 2.88(9) of the Rules refer:
  - (i) only to a numerical percentage rate of interest; or
  - (ii) also to a mode of calculating the rate at which interest accrues on a debt, including compounding of interest, such that where a creditor has a right (beyond any right contained in Rule 2.88) to be paid compound interest, whether under an Original Contract or otherwise, the creditor is entitled to compound interest under Rule 2.88(7).
  
4. Whether the words "*the rate applicable to the debt apart from the administration*" in Rule 2.88(9) of the Rules are apt to include (and, if so, in what circumstances) a foreign judgment rate of interest or other statutory interest rate.
  
5. Whether, for the purposes of establishing, as required under Rule 2.88(9) of the Rules, "*whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration*", the comparison required is of:
  - (i) the total amounts of interest that would be payable under Rule 2.88(7) based on each method of calculation; or
  - (ii) only the numerical rates themselves,and in either case, how the total amount of interest is calculated when the "*rate applicable to the debt apart from the administration*" varies from time to time.
  
6. Whether, for the purposes of establishing, as required under Rule 2.88(9) of the Rules, "*whichever is the greater of the rate specified under paragraph (6) and the rate applicable to the debt apart from the administration*", the amount of interest to be calculated based on the latter is calculated from:
  - (i) the Date of Administration;

- (ii) the date on which the debt became due; or
- (iii) another date.

*Period during which the debts "have been outstanding since LBIE entered administration" for the purposes of Rule 2.88(7)*

7. Whether Statutory Interest is payable in respect of an admitted provable debt which was a contingent debt as at the Date of Administration from:

- (i) the Date of Administration;
- (ii) the date on which the contingent debt ceased to be a contingent debt (including in circumstances where the contract was "closed out" after LBIE entered administration); or
- (iii) another date,

having regard to whether:

- (i) the contingent debt remained contingent at the time of the payment of:
  - a) the final dividend; or
  - b) Statutory Interest; and/or
- (ii) (to the extent applicable) the Joint Administrators revised their previous estimate of the contingent debt by reference to the occurrence of the contingency or contingencies to which the debt was subject.

8. Whether Statutory Interest is payable in respect of an admitted provable debt which was a future debt as at the Date of Administration from:

- (i) the Date of Administration;

- (ii) the date on which the future debt ceased to be a future debt; or
- (iii) another date,

having regard to whether the future debt remained a future debt at the time of the payment of:

- (i) the final dividend; or
- (ii) Statutory Interest.

9. Whether a creditor's accession to the CRA (and, in particular, the effect of clauses 20.4.3, 24.1, 25.1, 25.2 and 62.4 of the CRA) would impact upon the answers to questions 7 and 8 above, and if so, how.

### **Master Agreements**

#### ISDA.

10. Whether, on the true construction of the term "Default Rate" as it appears in the ISDA Master Agreement, the "relevant payee" refers to LBIE's contractual counterparty or to a third party to whom LBIE's contractual counterparty has transferred (by assignment or otherwise) its rights under the ISDA Master Agreement.
11. On the true construction of the term "Default Rate" as it appears in the ISDA Master Agreement, what meaning should be given to the expression "*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*"? In particular:
- (i) can this cost:
    - a) only be ascertained with reference to the actual or asserted cost of the payee to fund or of funding the relevant amount by borrowing the relevant amount (and if so whether such borrowing should be assumed to have recourse solely to the claim that it is funding or to the



rest of the relevant payee's unencumbered assets and, if the latter, whether the cost of funding should include the cost to the relevant payee of incurring additional debt against its existing asset base); or

b) be ascertained in other ways, including with reference to funds which might be raised by way of equity investment in the payee and, if so:

I. in what ways might the costs be ascertained; and

II. how would the cost be calculated in such circumstances?

(ii) should the cost of funds be calculated based on:

a) the cost to the relevant payee of funding a claim against LBIE;

b) an average cost of funding the relevant payee's asset base; or

c) (if different) the cost of raising general corporate funding?

12. Whether the "*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*" is to be calculated based on obtaining:

(i) overnight funding;

(ii) term funding to match the duration of the claim to be funded; or

(iii) funding on some other basis (and if so, what basis).

13. Whether the "*cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount*" should be calculated:

(i) by reference to the relevant payee's circumstances on a particular date; or

- (ii) on a fluctuating basis taking into account any changes in the relevant circumstances (and if so, whether the benefit of hindsight applies when taking into account such changes),

in each case, whether or not taking into account relevant market conditions.

14. Whether a relevant payee's certification of its cost of funding for the purposes of applying the "Default Rate" is conclusive and, if not, to what it is subject. In particular whether, in order for a payee's certification to be deemed conclusive, a relevant creditor is under any duty to act:
  - (i) reasonably;
  - (ii) in good faith and not capriciously or irrationally; or
  - (iii) otherwise than in its own interests.
15. If the answer to question 14 is that the relevant payee's certification of its cost of funding is not conclusive and one of the requirements (i) to (iii) set out in that question applies, where does the burden of proof lie in establishing, and what is required to demonstrate, that a relevant payee has or has not met such requirement?
16. Whether only the relevant payee (in accordance with the meaning of such term determined pursuant to question 10 above), or another party (whether authorised by the relevant payee or not) can provide certification of the cost of funding and, if the former, what the position should be if the relevant payee is not capable of providing such certification (for example because it has been wound up or dissolved).
17. In circumstances where a relevant payee has not incurred any actual costs, what principles should be applied in determining the asserted costs "*if it were to fund [...] the relevant amount*".
18. Whether the power of a party under section 7(b) of the 1992 form ISDA Master Agreement to transfer any amount payable to it from a Defaulting Party under Section

6(e) without the prior written consent of that party included the power to transfer any contractual right to interest under that agreement.

19. Whether the answer to questions 10 to 18 above (or any of them) is different if the underlying Master Agreement is governed by New York rather than English law.

German

20. Whether, in calculating the amount of interest due under section 3(4) of the German Master Agreement, it is possible (and if so, in what circumstances and to what extent) to include an amount in respect of "further claims for damages" ("**Damages Interest Claim**") so that this would constitute part of "*the rate applicable to the debt apart from the administration*" for the purposes of Rule 2.88(9).
21. If the answer to question 20 is that a further claim for damages can be included as part of the "*rate applicable to the debt apart from the administration*" for the purposes of Rule 2.88(9), how in such circumstances is the relevant rate to be determined? In particular:
- (i) in circumstances where the relevant claim under the German Master Agreement has been transferred (by assignment or otherwise) to a third party, is it the Damages Interest Claim which could be asserted by the assignor or the assignee which is relevant for the purposes of Rule 2.88(9)?
  - (ii) where the relevant claim under the German Master Agreement has been acquired by a third party, in what circumstances (if any) is such a third party precluded from asserting a Damages Interest Claim under principles of German law?
  - (iii) where does the burden of proof lie in establishing a Damages Interest Claim, and what is required to demonstrate, that a relevant creditor has or has not met such requirement?



FBF

22. Whether each of:

- (i) default interest pursuant to clause 9.1 of the FBF Master Agreement and the AFB Master Agreement;
- (ii) the "*Late Interest Rate*" as such term is defined in the AFTB Master Agreement; and/or
- (iii) "*Late Payment Interest*" as such term is defined in the AFTI Master Agreement,

are capable of being a "*rate applicable to the debt apart from the administration*" for the purposes of Rule 2.88(9).

23. Whether the "party" that receives the interest referred to in question 22 above pursuant to the FBF Master Agreement, the AFB Master Agreement, the AFTB Master Agreement and the AFTI Master Agreement refers to LBIE's original contractual counterparty or to a third party to whom LBIE's original contractual counterparty has transferred (by assignment or otherwise) its rights under the relevant agreement.

24. Whether the terms:

- (i) "*overnight financing rate of the Party*" in clause 9.1 as it appears in the FBF Master Agreement and the ABF Master Agreement;
- (ii) "*average overnight rates that would be offered to the beneficiary*" as it appears in the AFTB Master Agreement;
- (iii) "*the average of the daily rates to which the recipient of the payment has access during the relevant period*" as it appears in the AFTI Master Agreement,

should only be ascertained with reference to the actual or asserted cost of the payee or may be ascertained in other ways.

25. Whether only the "party" pursuant to question 23 or another party authorised to act on behalf of the "party" can provide determination and notification of its cost of funding.
26. What is the applicable standard, if any, by reference to which any statement by the party as to its "overnight refinancing rate", "average overnight rates" and "average of daily rates to which it has access" is constrained?

Status of Payee

27. Whether, and if so how, the answers to questions 10 to 26 would be impacted where the "relevant payee" is:
  - (i) a Credit Institution or Financial Institution;
  - (ii) a Fund Entity; or
  - (iii) a corporate or other type of counterparty.

**Currency Conversion Claims**

28. Whether, and if so how, the calculation of a Currency Conversion Claim should take into account the Statutory Interest paid to the relevant creditor by the Joint Administrators.
29. Whether there exists a non-provable claim against LBIE where the total amount of interest received by a creditor applying the Judgments Act Rate on a sterling admitted claim, when converted into the relevant foreign currency on the date of payment, is less than the amount of interest which would accrue applying the Judgments Act Rate to the original foreign currency claim.
30. Whether there exists a non-provable claim against LBIE where the total amount of interest received by a creditor applying a "rate applicable to the debt apart from the

*administration*" on a sterling admitted claim, when converted into the relevant foreign currency on the date of payment, is less than the amount of interest which would accrue applying the "rate applicable to the debt apart from the administration" to the original foreign currency claim.

31. Whether:

- (i) in relation to a GMSLA for which the "Base Currency" is a currency other than sterling, a Currency Conversion Claim can arise in respect of the "Base Currency" if the schedule to that agreement states that paragraph 10 of that agreement will only apply if LBIE's counterparty is the "Defaulting Party";
- (ii) in relation to a GMRA for which the "Base Currency" (as distinct from the "Contractual Currency") is a currency other than sterling, a Currency Conversion Claim can arise in respect of the "Base Currency" if the schedule to that agreement states that paragraph 10 of that agreement will only apply if LBIE's counterparty is the "Defaulting Party"; and
- (iii) in relation to other master agreements, a Currency Conversion Claim can arise if the relevant contractual terms state that the termination and close-out netting provisions which would result in a payment obligation in a non-sterling currency by one party to the other do not apply other than upon the default of LBIE's counterparty.

32. If the answer to question 31 (i), (ii) and/or (iii) is in the negative, whether a Currency Conversion Claim can arise (and if so in what circumstances) in respect of such a GMSLA, GMRA or other master agreements.

33. Whether a Currency Conversion Claim can be established by a creditor where the creditor's right is derived from a transfer (whether or not by way of legal assignment) by LBIE's original counterparty (or any assignee of the original counterparty) which only transferred:

- (i) the provable debt;

- (ii) the right to receive a dividend on the provable debt; or
- (iii) the Agreed Claim Amount defined as a numerical amount in a CDD

and if not, whether either the original counterparty or the assignee is capable of having a valid Currency Conversion Claim.

### **Effect of Post-Administration Contracts**

34. Whether a creditor's Currency Conversion Claim has been released in circumstances in which the creditor entered into either:
- (i) a Foreign Currency CDD incorporating a Release Clause;
  - (ii) a Sterling CDD incorporating a Release Clause; or
  - (iii) the CRA.
35. Whether a creditor's claim to Statutory Interest has been released in whole or in part in circumstances in which the creditor entered into either:
- (i) a CDD incorporating a Release Clause; or
  - (ii) the CRA.
36. If a CDD or the CRA has the effect of releasing a Currency Conversion Claim, Statutory Interest claim or other non-provable claims, whether such release(s) should in the circumstances be enforced.
37. How are claims to be calculated where a CDD (or any other agreement pursuant to which an unsecured claim is agreed or admitted) compromises a number of claims, with differing rates of interest applicable or in different currencies, without indicating



how the agreed or admitted claim amount in the CDD (or any other agreement) derives from and relates to those underlying claims?

38. Whether (and if so in what circumstances) Part VII of the CRA, which specifies that claims of acceding creditors are to be calculated in US dollars, is capable of giving rise to a Currency Conversion Claim.


**Compensation for Time Taken to Discharge Non-Provable Claims**

39. Whether a creditor entitled to Statutory Interest, Currency Conversion Claims and/or other non-provable claims is entitled to any form of compensation for or in respect of the time taken for such claim to be discharged and, if so, whether such compensation is taken into account as part of the correct methodology for calculating Statutory Interest and/or the distribution of the surplus, or should take the form of interest at the Judgments Act Rate, damages for loss, restitution or another form.

And for:

40. Such further or other relief as the Court thinks fit; and
41. An order that the Joint Administrators' costs of the Application be paid as an expense of the administration.

Dated this <sup>12<sup>th</sup></sup>..... day of June 2014

Signed:  EUAN CLARKE

Joint Administrators' solicitors: Linklaters LLP

Position held: Partner



The Joint Administrators' address for service is:  
Linklaters LLP, One Silk Street, London EC2Y 8HQ  
Reference: Tony Bugg / Euan Clarke / Jared Oyston

It is intended to serve this Application on:

**CVI GVF (Lux) Master S.à.r.l., c/o Freshfields Bruckhaus Deringer LLP**

**Hutchinson Investors LLC, c/o Ropes & Gray International LLP**

**Burlington Loan Management Limited, c/o Schulte Roth & Zabel LLP**

**Wentworth Sons Sub-Debt S.à.r.l., c/o Kirkland and Ellis International LLP**

**York Global Finance BDH, LLC, c/o Michelmores LLP**

**IF YOU DO NOT ATTEND, THE COURT MAY MAKE SUCH ORDER AS IT THINKS FIT.**

## SCHEDULE

### DEFINITIONS

<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Act</b>	The Insolvency Act 1986
<b>AFB Master Agreement</b>	French Derivatives Master Agreement
<b>AFTB Master Agreement</b>	French Repurchase Master Agreement
<b>AFTI Master Agreement</b>	French Securities Lending Master Agreement
<b>CDD</b>	A Claims Determination Deed entered into between LBIE and a creditor
<b>CRA</b>	The Claim Resolution Agreement which was declared effective on 29 December 2009 by LBIE in respect of certain of its clients and counterparties (as modified from time to time)
<b>Credit Institution</b>	As defined in the Capital Requirements Regulation
<b>Currency Conversion Claim</b>	A non-provable claim against LBIE arising out of the difference between: (i) the amount of the creditor's entitlement to payment in a foreign currency; and (ii) the amount received by it in respect of its proved debt, converted into the foreign currency as at the date of payment
<b>Date of Administration</b>	The date on which LBIE entered into administration, being 15 September 2008
<b>FBF Master Agreement</b>	French Banking Federation Master Agreement
<b>Financial Institution</b>	As defined in accordance with the Capital Requirements Directive (2006/48/EC and 2006/49/EC) but excluding a Fund Entity as defined herein
<b>Foreign Currency CDD</b>	A CDD in which the Agreed Claim Amount is expressed in a currency other than Pounds Sterling
<b>Fund Entity</b>	A fund or fund manager primarily operating hedge and credit fund strategies, including, but not limited to, Alternative Investment Funds (AIFs) and Alternative Investment Fund Managers (AIFMs) as defined

	in accordance with the Alternative Investment Fund Managers Directive (2011/61/EU)
<b>German Master Agreement</b>	The German Master Agreement for Financial Derivative Transactions
<b>GMRA</b>	Global Master Repurchase Agreement
<b>GMSLA</b>	Global Master Securities Lending Agreement
<b>ISDA Master Agreement</b>	The 1992 or 2002 International Swap Dealers Association Multicurrency-Cross Border Master Agreement
<b>Judgments Act Rate</b>	The interest rate of eight per cent. per annum set out in section 17 of the Judgments Act 1838
<b>Original Contract</b>	A contract entered into between LBIE and a creditor prior to LBIE's entry into administration
<b>Release Clause</b>	A clause in a CDD in, or materially in, the following form: " <i>the Creditor and (i) the Company and (ii) the Administrators are hereby each irrevocably and unconditionally released and forever discharged from any and all losses, costs, charges, expenses, Claims (including all Claims for interest costs and orders for costs), demands, actions, causes of action, Liabilities, rights and obligations (including those which arise hereafter upon a change in the relevant law) to or against each other and howsoever arising in equity or under common law or any statute or by reason of breach of contract or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether arising under the Creditor Agreements or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of the Creditor and/or the Company and/or the Administrators on the date hereof</i> "
<b>Rules</b>	The Insolvency Rules 1986
<b>Statutory Interest</b>	Interest payable pursuant to rule 2.88(7) of the Rules
<b>Sterling CDD</b>	A CDD in which the Agreed Claim Amount and/or the Admitted Claim Amount (as defined therein) are expressed in Pounds Sterling

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY  
ACT 1986

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APPLICATION

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Linklaters LLP  
One Silk Street  
London EC2Y 8HQ  
(Ref: Tony Bugg / Euan Clarke / Jared Oyston)

Tel: (+44) 20 7456 5469  
Fax: (+44) 20 7456 2222  
Solicitors for the Joint Administrators



GLC 74/16

**Waterfall III Application**

**No. 7942 of 2008**



**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**BETWEEN:**

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)**

**Applicants**

**-and-**

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)**

**(2) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN  
ADMINISTRATION)**

**(3) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS EUROPE LIMITED (IN  
ADMINISTRATION)**

**Respondents**

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**APPLICATION**

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**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration) ("LBIE") (the "Joint Administrators"), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:-

Take notice that an appointment to fix a date  
for the Application has been made:

Date: 5/5/16

Time: 11am

In Interview Room 2 Ground Floor Rolls Building  
London EC4A 1NL

Date: ..... 2016

Time: .....

Place: Court , 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

For directions, pursuant to paragraph 63 of Schedule B1 of the Insolvency Act 1986, determining the following issues:

1. Whether the obligations of:

- (i) LB Holdings Intermediate 2 Limited (in administration) ("**LBHI2**"); and/or
- (ii) Lehman Brothers Limited (in administration) ("**LBL**")

to contribute to the assets of Lehman Brothers International (Europe) (in administration) ("**LBIE**") pursuant to Section 74 of the Insolvency Act 1986 ("**Section 74**") include an obligation to contribute to the assets of LBIE to the extent necessary to enable LBIE to pay sums owed to LBHI2 pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the "**Sub-Debt**").

2. Whether any claim of LBIE against LBHI2 and/or LBL under Section 74 (a "**Contribution Claim**") in respect of the Sub-Debt (a "**Sub-Debt Contribution Claim**") is to be included in the insolvency set-off account in LBIE's administration as against the provable claims of:

- (i) LBHI2; and/or
- (ii) LBL.

3. Whether the value of the Sub-Debt Contribution Claim, for the purposes of proof and set-off, is:

- (i) for the full amount of the Sub-Debt;
- (ii) limited to the estimated value that is applied to LBHI2's claim for the Sub-Debt for the purposes of proof; or

- (iii) some other value.
4. To the extent that insolvency set-off has already taken effect, in the administration of LBIE, between LBHI2's claim in respect of the Sub-Debt and LBIE's Sub-Debt Contribution Claim (if any) against LBHI2, what effect (if any) such set-off has on LBIE's ability to make a Sub-Debt Contribution Claim against LBL.
  5. In circumstances where insolvency set-off in LBIE's administration took effect on 4 December 2009, whether insolvency set-off in a subsequent distributing administration or liquidation of LBHI2 and/or LBL is of any application in respect of those companies' claims against, and liabilities to, LBIE.
  6. In circumstances where insolvency set-off in the administration of Lehman Brothers Europe Limited ("LBEL") took effect on 11 July 2012, whether insolvency set-off in a subsequent distributing administration or liquidation of LBL is of any application in respect of LBL's claims against, and liabilities to, LBEL.
  7. In light of the fact that LBL owns one ordinary share of \$1 in LBIE, and LBHI2 owns 2 million 5% redeemable Class A preference shares of \$1000 each, 5.1 million 5% redeemable Class B shares of \$1000 each and 6,237,113,999 ordinary shares of \$1 each in LBIE:
    - (i) whether their obligations to contribute to the assets of LBIE pursuant to Section 74 are joint and several, joint, several or otherwise as against LBIE;
    - (ii) whether they are entitled to a contribution or indemnity from one another in respect of:
      - a. any payments made pursuant to any such obligation; and/or
      - b. any set-off pursuant to any such obligation,and, if so, the nature and extent of such right of contribution or indemnity;
    - (iii) whether, in addition to or instead of any right of contribution or indemnity (as referred to in sub-paragraph (ii) above), LBL or LBHI2 are liable to contribute to LBIE's assets to



any amount sufficient for the adjustment of the rights of the contributories among themselves and what the effect of such adjustment is;

- (iv) to what extent any right to contribution or indemnity (as referred to in sub-paragraph (ii)) and/or adjustment (as referred to in sub-paragraph (iii)) above is affected by any other claims which LBHI2 and LBL have against one another or any other party;
- (v) whether the Joint Administrators of LBIE should be directed to assert less than 100% of the Contribution Claim against LBL and/or LBHI2 and, if so, by how much the Contribution Claim should be reduced as against LBL and/or LBHI2 and what factors should the Court take into account in reaching this decision.

8. How, if at all, any claim for a contribution or indemnity as referred to in paragraph 7(ii) above and/or any adjustment as referred to in paragraph 7(iii) above would be affected by the rule against double-proof in circumstances where LBIE had not yet been paid in full in respect of a Contribution Claim.
9. Whether and to what extent LBL is entitled, under the terms of the Service Agreement between LBL and LBIE dated 20 May 2004 or otherwise, to recover from LBIE:
- (i) sums paid or payable by it to LBIE in respect of a Contribution Claim;
  - (ii) sums claimed by LBL from insolvent members of the [UK ]Lehman group of companies, but not ultimately recovered by LBL from such companies ("**Bad Debt Claims**"); and
  - (iii) certain (and if so, which) expenses of LBL's administration.
10. If the answer to the issue at sub-paragraph 9(i) above is yes, whether LBL's recharge claim against LBIE in respect of the Sub-Debt Contribution Claim and LBHI2's claim in respect of the Sub-Debt are to be paid *pari passu* and, if not, in what order or priority.
11. Whether and to what extent LBL is entitled, under the terms of the Service Agreement between LBL and Lehman Brothers Europe Limited ("**LBEL**") dated 20 May 2004 or otherwise, to recover from LBEL:



- (i) sums paid or payable by it to LBIE in respect of a Contribution Claim;
- (ii) Bad Debt Claims claimed by LBL; and
- (iii) certain (and if so, which) expenses of LBL's administration.


12. If the answer to the question set out at sub-paragraph 11(i), 11(ii) or 11(iii) above would otherwise be in the affirmative, is it impacted (and if so, to what extent) by any set-off occurring in LBIE's administration as between (i) the Contribution Claim; and (ii) provable claims of LBL against LBIE.

13. Whether the share register of LBIE ought to be rectified:

- a) on the basis that LBL did not hold a share in LBIE; or
- b) on any other basis;

or LBL should, on any other basis, not have the liabilities of a member of LBIE, notwithstanding its holding of a LBIE share.

**Dated this 22nd day of April 2016**

Signed:  EUAN CLARKE

Joint Administrators' solicitors: Linklaters LLP

Position held: Partner

The Joint Administrators' address for service is:

Linklaters LLP, One Silk Street, London EC2Y 8HQ

Reference: Tony Bugg / Euan Clarke / Jared Oyston

It is intended to serve this Application on:

**The Joint Administrators of Lehman Brothers Limited (in administration), c/o Dechert LLP**

**The Joint Administrators of LB Holdings Intermediate 2 Limited (in administration), c/o Dentons UKMEA LLP**

**The Joint Administrators of Lehman Brothers Europe Limited, c/o Linklaters LLP, Reference: Rory Conway / Matthew Harding**

**IF YOU DO NOT ATTEND, THE COURT MAY MAKE SUCH ORDER AS IT THINKS FIT.**

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY  
ACT 1986

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**APPLICATION**

---

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ  
(Ref: Tony Bugg / Euan Clarke / Jared Oyston)

Tel: (+44) 20 7456 5469  
Fax: (+44) 20 7456 2222  
Solicitors for the Joint Administrators

## Update on various items including Waterfall I - 23 June 2017

This is an interim update from the Joint Administrators in respect of various activities and initiatives undertaken following the Supreme Court's judgment on Waterfall I handed down on 17 May 2017.

### Supreme Court judgment on Waterfall I

A copy of the Supreme Court's judgment can be found [here](#) and a copy of its statement of conclusions can be found [here](#).

The judgment has, among other things, determined that:

- the subordinated debt ranks below Statutory Interest and non-provable liabilities;
- currency conversion claims do not exist;
- LBIE is not able to make a claim against its contributories under s74 of the Insolvency Act 1986 (a "contribution claim") while it remains in administration (even on a contingent basis) – any such claim may only be brought by a future liquidator of LBIE;
- a contribution claim will not cover any shortfall in respect of Statutory Interest; and
- any Statutory Interest to which creditors have become entitled in LBIE's administration (that remains unpaid) may not be claimed in a subsequent liquidation (an issue colloquially referred to as the "Statutory Interest Lacuna").

The judgment represents a material deviation from the decisions reached in the lower Courts and has a significant financial impact on the claims that may now be made against the Surplus realised in the administration and the resulting level of certain creditors' entitlements. It also has an impact on how, if at all, contribution claims against LBIE's shareholders might be made to reduce any potential deficiency. In particular, all other things being equal, the "base case" illustrative outcome of £0.1bn (in our last Progress Report) being available to pay a dividend against the subordinated debt claim and shareholder claims has now increased to an amount in the region of £2.6bn, calculated as follows:

£bn	Progress Report @15/03/17	Updated @23/06/17
Assumed Surplus	7.8	7.8
Statutory Interest	(5.2)	(5.2)
CCCs	(1.9)	-
Interest on CCCs	(0.6)	-
<b>Remaining balance</b>	<b>0.1</b>	<b>2.6</b>

The Joint Administrators have been considering the impact of the Supreme Court judgment on the Waterfall II and the Waterfall III proceedings (and the planned related Contribution Reserve transaction announced to creditors on 29 March 2017).

### Waterfall IIA and B

The hearing before the Court of Appeal took place in April 2017, with judgment reserved pending the Waterfall I judgment being handed down by the Supreme Court. A further hearing has now been set for 25 July 2017, to consider oral arguments and written submissions arising out of the Supreme Court judgment that the Respondents believe are relevant to the matters being dealt with in the Waterfall IIA and B proceedings. The Court of Appeal has itself convened this hearing for a date prior to its Summer recess. As a result, it is possible that the Court of Appeal's judgment might be handed down in the Autumn, bringing more of the important disputed matters concerning Surplus entitlements closer to final resolution.

### Waterfall IIC

The Waterfall IIC (Cost of Funding) hearing before the Court of Appeal is currently scheduled for July 2018 but might be brought forward to March 2018 (if Counsel are available), now that the duration of the hearing has been shortened following elimination of the German law issues by the Respondents. In the meantime, on 31 May 2017, the Joint Administrators published on their website their preliminary guidance for creditors who might wish to make a certification for a contractual interest rate that will apply to admitted claims arising under an ISDA Master Agreement or similar agreement. That guidance is based on the Joint Administrators' interpretation of the High Court's first instance judgment. Feedback has been received from a number of creditors and this is being considered.

### **Waterfall III**

On 29 March 2017, the Joint Administrators posted to their website an update in respect of the further progress made with interested parties concerning the commercial terms upon which the Waterfall III proceedings might be settled. This transaction would have resulted in LBIE having access to a Contribution Reserve which would act as a substitute for the value that would likely otherwise be recovered by LBIE in respect of its contribution claims (up to a maximum of £913m).

Following the Supreme Court judgment on Waterfall I, there is no longer any appetite among interested parties for the transaction to proceed in the form originally envisaged. LBIE and the relevant affiliates have recently resumed discussions around a revised transaction. In light of the Supreme Court judgment, LBIE cannot pursue contribution claims against its contributories while it is in administration. The withdrawal of such claims would enable the other affiliates to significantly advance the distributions in their estates. As part of the proposed revised transaction, the Waterfall III proceedings would be concluded. There would also be a resolution on a number of other less significant affiliate related-issues. A fuller commentary will be provided in due course.

As to the Waterfall III proceedings themselves (and absent any settlement), consideration has been given to how the Waterfall III proceedings should be taken forward in light of the Supreme Court's decision in Waterfall I and a hearing took place on 19 June 2017 at which it was directed that the substantive hearing scheduled for September 2017 should proceed but with reference only to the issues relating to the recharge claim raised by LBL.

### **Withholding Tax**

The HMRC appeal on withholding tax remains scheduled for a hearing at the end of October 2017 before the Court of Appeal. Any distribution of Statutory Interest to creditors will be affected by the outcome of this hearing. Accordingly, as matters stand and pending the outcome of the appeal, any distributions of Statutory Interest to the vast majority of creditors will be subject to tax reserving of at least 20%. Further guidance will be given at the appropriate stage.

### **Interim Distribution of Statutory Interest**

On 29 March 2017, the Joint Administrators posted to their website information relating to a proposal to distribute all or a significant part of creditors' basic (Judgments Act rate) Statutory Interest entitlements in the near future. The Joint Administrators emphasised the need for all of the Respondents to the Waterfall II proceedings to approve such a proposal in order for it to be successfully implemented. The Joint Administrators have been informed by Wentworth that it will not approve the proposal and it will therefore no longer be pursued.

### **Alternative Distribution Options**

Three broad approaches continue to be contemplated, as follows:

- a) an interim partial distribution of Statutory Interest on alternative terms to those of 29 March 2017 (with majority creditor approval including the support of all of the Respondents to the Waterfall II proceedings);
- b) an interim partial distribution of Statutory Interest (without the need for majority creditor approval); and
- c) overall resolution of all material disputed matters, implemented through a company voluntary arrangement or scheme of arrangement.

The Joint Administrators will explore creditor appetite for each of these approaches, while continuing to marshal the ongoing Waterfall proceedings, in the hope that agreement can eventually be reached between the Respondents to the Waterfall II proceedings to enable all or a substantial part of the realised Surplus to be

distributed sooner rather than later. While the Waterfall II A and C proceedings remain ongoing and absent agreement on a cap on higher-rate Statutory Interest entitlements, any interim partial distribution would require a level of reserves that would result in distributions of a very small sum (if a reserve could be calculated such that a distribution is even possible).

### **Statutory Interest Lacuna**

As a result of the Supreme Court's judgment in the Waterfall I proceedings, unpaid Statutory Interest could be lost if LBIE entered liquidation prior to such interest being paid. The Joint Administrators will object to any attempt by any party to force the premature liquidation of LBIE, as they consider that this would not be in the interests of LBIE's creditors as a whole.

In taking this position, the Joint Administrators are mindful of many matters, including the following:

- in 2016, the Court extended the term of LBIE's administration to 2022 and in doing so noted that, unless some specific advantage of a liquidation is shown over distribution in an administration, the implication of the Court having granted permission to distribute is that an administration should be maintained for as long as is reasonably necessary to complete the process of distribution;
- the Court in that extension application, was clear that the Joint Administrators should be allowed to "complete their mandate" in administration, in a context that clearly envisaged the distribution of Statutory Interest;
- there is currently Statutory Interest of around £5.2bn payable in the administration (but potentially not in a liquidation) with a large enough realised Surplus to pay this subject to the ongoing Waterfall proceedings;
- the Supreme Court has confirmed that the subordinated debt is subordinated to Statutory Interest;
- the Supreme Court has noted that "*forcing an administrator to move the company into liquidation would potentially wreak real unfairness on all the other creditors of the company*"; and
- there are a number of other adverse consequences of going into liquidation, some of which are referred to either in the latest Progress Report or the Joint Administrators' post on their website of 29 March 2017.

### **Other matters**

The Joint Administrators have reviewed the headcount and resource reduction scheduled to be completed by 31 July 2017 and concluded that these arrangements should continue as planned.

An offer (described in the last Progress Report as the Small Deed Offer) for approximately 160 counterparties to sell their admitted unsecured claims was launched at the end of March. The terms of the offer, when assessed against the elimination of currency claims, means the offer is no longer viable from LBNL's perspective as the purchaser. Accordingly, it has been withdrawn. 24 counterparties had already been accepted and received value amounting to just over £2m for their Surplus entitlements on admitted claims amounting to £4.2m. 6 counterparties had rejected the offer.

As advised in the [website announcement](#) of 22 May 2017, the estate's hedging strategy has been revised with consequences that estate currencies are being converted to GBP, other than a minimum expected amount needed to meet remaining non-GBP obligations.

The Joint Administrators are always interested to hear creditors' views on the matters they are dealing with in the administration and invite any feedback that creditors would like to provide on the matters referred to in this update.

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#### LBIE

Resolution Initiatives

Waterfall I Application

Waterfall II Application

Waterfall III Application



***Lehman Brothers International  
(Europe) (in administration)  
Progress Report***

Other Surplus Litigation

LBIE Other Items

Contact details

***Lehman Brothers International  
(Europe) (in administration)  
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Non LBIE Companies in administration

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## Announcement on Proposed Settlement of Waterfall III Proceedings - 29 March 2017

The Joint Administrators are pleased to set out below an update in respect of the further progress made with interested parties concerning the commercial terms upon which the Waterfall III proceedings might be settled.

This proposal is entirely separate and is **not** conditional on the other announcement of today's date concerning the outline terms for an interim interest distribution.

The Joint Administrators would like to receive creditor feedback concerning these outline terms. In summary, if these terms are finalised and appropriate directions are handed down by the High Court, LBIE will have achieved a resolution of its relationship with its shareholders on terms that will provide a reserve fund (based on maximum projected recoveries from its shareholders of £913m) that would be available in the event of a shortfall in respect of the claims against LBIE's surplus for statutory interest and non-provable liabilities.

A general update on progress in the Administration will be made in our creditors' webinar scheduled for 27 April 2017 and in our Seventeenth Progress Report (for the period 15 September 2016 to 14 March 2017) which will be published in April. If appropriate, we will make reference to creditors' feedback (if any) during the webinar.

### Settlement of the Waterfall III proceedings

In their Sixteenth Progress Report dated 7 October 2016, the Joint Administrators noted various discussions had taken place with LB Holdings Intermediate 2 Limited (in administration) ("**LBHI2**") and Lehman Brothers Holdings Inc. ("**LBHI**") to consider the basis upon which the Waterfall III proceedings might be settled. The scope of the settlement arrangements envisaged has now widened to include certain other UK estates.

The key outline terms of the proposed arrangements are as follows:

#### Contribution Reserve

- In place of its contribution claims against its unlimited liability shareholders, LBL and LBHI2 (the "**Contribution Claims**"), LBIE would establish a "**Contribution Reserve**" which would act as a substitute for the value that would likely otherwise be recovered by LBIE in respect of the Contribution Claims. In order to achieve this, LBIE would enter into an agreement with (i) LBHI (ii) the holders of claims against LBIE referred to as "**Retained Funding Claims**" (see below) and (iii) the holders of other claims against LBIE referred to as "**Standby Funding Claims**" (also see below).
- The Contribution Reserve would be used by LBIE to fund a shortfall (if any) that might arise in relation to "**Third Party Creditors**" (i.e. all LBIE's unsecured creditors other than (i), (ii) and (iii) above), between (a) the amount that would have been distributed to Third Party Creditors in respect of post-administration interest and non-provable liabilities if the Contribution Claims had in fact been made against LBIE's unlimited liability shareholders and an appropriate recovery received; and (b) the amount that will in fact be distributed to them in respect of post-administration interest and non-provable liabilities, without the Contribution Claims being made.
- The value of the Contribution Reserve would at all times be at least equal to the Third Party Creditors' proportionate share of LBIE's projected recovery from its unlimited liability shareholders in respect of the Contribution Claims. This projected recovery is tied to LBIE's potential shortfall in respect of all post-administration interest and non-provable liabilities, in the following manner:

Final shortfall £'m	Projected recovery* £'m
0-500	0-500
700	645

900	771
1,100	838
1,300	880
1,500	913
1,500+	913

\*This table represents a summary

- The Contribution Reserve would comprise the following components:
  - the notional value of all projected future distributions due to the holders of Retained Funding Claims in respect of (i) post-administration interest and (ii) non-provable liabilities; and
  - all distributions (in respect of (i) post-administration interest and (ii) non-provable liabilities) actually made to the holders of Retained Funding Claims which, in the first instance, will not be paid to the claim holder but will instead be retained by LBIE.
- Holders of Standby Funding Claims would agree that no payments would be made to them from the Contribution Reserve in respect of their Standby Funding Claims.
- The Contribution Reserve would only be used to fund payments to Third Party Creditors as described above, and would not be available for any other purpose. In the event that some or all the Contribution Reserve is not required to fund payments to Third Party Creditors, such funds will be returned to the Retained Funding Creditors and / or LBHI.

#### **Avoiding a liquidation of LBIE**

- LBIE and the Joint Administrators would undertake not to place LBIE into liquidation without the prior written consent of LBL and LBHI2 and to take steps both to maintain LBIE's administration and to resist any application by any other person to place LBIE into liquidation.
- The Joint Administrators consider that a liquidation of LBIE would be unnecessary if the proposed settlement agreement is completed because the contractual arrangements described above are designed to replicate the inherent value to LBIE arising from the Contribution Claims that would otherwise flow to it in liquidation.
- LBIE's administration has already been extended to 30 November 2022, allowing sufficient time to make further significant progress to conclude various key matters, including those relating to the Waterfall II proceedings.
- A liquidation of LBIE may in any event trigger certain adverse consequences for ongoing asset recovery and tax planning.

#### **Supreme Court decision on Waterfall I**

- Whilst recognising that there may be a number of possible outcomes, the arrangements described in this announcement are predicated upon the assumption that the existing Waterfall I Appeal Court decision will be unchanged by the Supreme Court. However, the complexity of issues at play means that settlement terms can only be finalised once the Supreme Court judgment has been delivered.

#### **Waterfall III proceedings**

- The relevant parties are continuing to discuss the nature of the proposed stay of the Waterfall III proceedings. An agreed position will need to be reached prior to the finalisation of the settlement.

#### Claims between LBIE and its unlimited liability shareholders

- LBIE and Lehman Brothers Limited (“**LBL**”), and separately, LBIE and LBHI2, would need to agree the nature and scope of releases between themselves, including in relation to the Contribution Claims.

#### Inter affiliate arrangements

- Other arrangements involving various of the other UK domiciled Lehman affiliates would be entered into at the same time, in order to allow for timely distributions from the Administrations of certain of these affiliates, including from LBIE’s unlimited liability shareholders.

#### Omnibus application

- All relevant UK affiliates, including LBIE, are working together to finalise the transaction documentation and prepare an application to the High Court seeking appropriate directions in relation to the proposed arrangements.

Notwithstanding the continuation of the other Waterfall proceedings and the attendant appeals later this year and beyond, there would be considerable benefit to LBIE’s creditors in LBIE entering into the proposed arrangements. In particular:

- the proposed arrangements would expedite the recovery of the inherent value in the Contribution Claims (without affecting the position of Third Party Creditors) and would give LBIE control of the resulting funds;
- the £913m maximum projected recovery represents a level of recovery that is near to the upper limit of what might otherwise be recovered in due course, through a Court-contested pursuit of Contribution Claims against both shareholders; and
- the proposed arrangements would avoid the uncertainty and costs incurred by LBIE in continuing with the Waterfall III proceedings and potentially having to enter liquidation to secure a recovery from the Contribution Claims.

The Joint Administrators will update creditors on these discussions in the coming weeks, and more particularly once the judgment has been handed down by the Supreme Court in the Waterfall I proceedings and has been fully considered by the Joint Administrators.

Should you have any queries regarding this update, please contact LBIE’s Communications and Counterparty Management team at [generalqueries@lbia-eu.com](mailto:generalqueries@lbia-eu.com).

LBIE and its Joint Administrators, and their respective officers, employees and agents disclaim any liability which may arise from this communication, or any other written or oral information provided in connection herewith, and any errors and/or omissions herein or therein.

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LBIE

Resolution Initiatives

Waterfall I Application

Waterfall II Application

**Waterfall III Application**

Other Surplus Litigation

LBIE Other Items



***Lehman Brothers International  
(Europe) (in administration)  
Progress Report***

Contact details

Non LBIE Companies in administration

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# KIRKLAND & ELLIS INTERNATIONAL LLP

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30 June 2017

## BY EMAIL

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ

Attention: Tony Bugg (tony.bugg@linklaters.com) and Euan Clarke  
(euan.clarke@linklaters.com)

Dear Sirs,

### **Lehman Bros. International (Europe) (In Administration) - Resolution of the LBIE administration**

Following the recent judgment of the Supreme Court in Waterfall I, the number of outstanding issues in LBIE's estate has reduced substantially. Although there are remaining issues subject to appeals, the terms of the Supreme Court judgment and the focus on simplicity in the insolvency process make it extremely unlikely, in our view, that the High Court's decision in Waterfall IIA on *Bower v Marris* and compounding will be overturned. We also maintain that it is extremely unlikely that the High Court's decision in Waterfall IIC on the calculation of ISDA interest will be overturned and, in any event, there is no real basis for believing that a material number of creditors would be able to establish interest claims in excess of 8% p.a.

With this in mind, the administrators' attention should now be turned to an overall resolution of the LBIE estate that would settle the remaining Waterfall issues and allow for a distribution that goes well beyond the interim distribution of statutory interest previously contemplated by the administrators. Wentworth is the largest creditor and would therefore be most prejudiced by further delays to finalising LBIE's estate.

Wentworth would be amenable to discussing a final resolution which provides for the payment of statutory interest without credit for *Bower v Marris* or for the ISDA interest arguments that failed in Waterfall IIC, subject to a discount to account for the accelerated distribution to senior creditors and the risk that LBIE may enter liquidation (on which, see further below). Such a resolution of the estate and distribution of the surplus would be in the best interests of LBIE's creditors as a whole.

Letter to Linklaters re Lacuna:102351916\_4 KIRKLAND & ELLIS INTERNATIONAL LLP

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## KIRKLAND & ELLIS INTERNATIONAL LLP

30 June 2017

Page 2

If the administrators choose not to take these steps, or if other creditors of LBIE should oppose them such that they fail, Wentworth would have to look to alternative approaches to finalising the LBIE estate, including compelling an application to court to be made for the termination of the administrators' appointment.

In light of the Supreme Court's decision that creditors' rights to interest for the administration period terminate upon the company's entry into liquidation, the remaining issues in dispute would fall away entirely if LBIE were to enter liquidation.

We note the interim update published on the PwC website on 23 June 2017, which stated that "the Joint Administrators will object to any attempt by any party to force the premature liquidation of LBIE, as they consider that this would not be in the interests of LBIE's creditors as a whole."

As you are aware, the administrators would be obliged to make an application to court for their appointment to cease if a creditors' decision required them to do so (paragraph 79(2)(c) of Schedule B1). The administrators would also be obliged to seek such a decision if requested to do so by creditors holding at least 10% by value of the total debts of the company (para 56(1) of Schedule B1). We believe that Wentworth is in a position to require the administrators to seek such a decision.

If the administrators sought such a decision, creditors' votes would be calculated according to the amount of each creditor's claim as at the date on which LBIE entered administration, less any payments made to the creditor after that date (rule 15.31). Since the majority of claims into LBIE have been paid dividends of 100p in the £, and since the right to statutory interest had a £nil value on the administration date, most creditors' votes would be valued at £nil. Indeed, Wentworth is one of the few creditors to hold valid claims which have not yet been paid at all, namely the senior and subordinated claims that were assigned by LBHI2. On Wentworth's analysis, it would be able to require the administrators to apply to court to request that their appointment be terminated and that liquidators be appointed in their place. Our clients reserve their rights to require the administrators to seek a decision from the creditors on this issue.

There are reasons why the administrators should consider a liquidation to be preferable to an extended administration, not least of which because it would ensure a swifter resolution of the remaining LBIE estate. The administrators are subject to a duty to perform their functions as quickly and efficiently as reasonably practicable (para 4 of Sch B1), and that translates into a duty to distribute as soon as they reasonably can: "*As it seems to me, it is the duty of the office holder to proceed to make distributions as soon as he reasonably can*" (per David Richards J at para 105 of Waterfall I).

We request that the administrators publish a copy of this letter on the PwC website. Wentworth, as always, remains available for further discussions. In the meantime, all of Wentworth's rights are reserved.

KIRKLAND & ELLIS INTERNATIONAL LLP

30 June 2017

Page 3

Yours faithfully,

*Kirkland & Ellis International LLP*

**Kirkland & Ellis International LLP**



Kirkland & Ellis International LLP  
30 St Mary Axe  
London  
EC3A 8AF

**By Email**

23 August 2017

Your Ref            Partha Kar/Kon Asimacopoulos  
Our Ref             Tony Bugg/Euan Clarke/Jared Oyston

Dear Sirs

**Lehman Brothers International (Europe) (in administration)**

We refer to your letter dated 30 June 2017.

In your letter, you state your (and/or your client's) view that:

1. in light of the Supreme Court judgment in the Waterfall I Application, it is extremely unlikely that the High Court's decision that statutory interest under IR2.88 is not to be calculated on the *Bower v Marris* basis will be overturned on appeal;
2. it is highly unlikely that the decision of the High Court in relation to the calculation of default interest under the ISDA Master Agreement will be overturned on appeal; and
3. there is a prospect of LBIE being wound up, giving rise to the "lacuna" in relation to statutory interest.

You go on to say that, in light of this, the LBIE Administrators' attention ought to turn to an overall resolution of the remaining issues in the outstanding Waterfall litigation in order to facilitate further distributions in the LBIE estate, which resolution should, you suggest, effectively assume that your stated view on each of these issues is correct.

The *Bower v Marris* and ISDA interest issues referred to above are issues under appeal in proceedings which your clients assisted in formulating and in which they remain active participants. Most recently, in relation to Waterfall IIA, there was a hearing on 25 July, and judgment from the Court of Appeal is awaited. The LBIE Administrators – and indeed all relevant parties – are aware of your clients' position in relation to the issues in those appeals. Your suggestion that a resolution of the LBIE estate should proceed on the basis that your clients' position on those issues is correct of course begs the questions which the LBIE Administrators have – with your clients' cooperation – asked the Court and which remain unresolved pending the Court of Appeal's decisions.

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You go on to say that, if the LBIE Administrators do not (or if other creditors of LBIE ensure that they do not) proceed in the way you suggest, Wentworth may seek to require the LBIE Administrators, under paragraph 79(2)(c) of Schedule B1 of the Insolvency Act 1986, to apply to Court seeking the termination of their appointment. As your clients are aware, further to the Supreme Court judgment in *Waterfall I*, the effect of any such termination of the administration would be to extinguish creditors' rights to statutory interest accrued but unpaid in the administration. As you are aware, the LBIE Administrators have been facilitating exchanges between Wentworth and the Senior Creditor Group in relation to potential options for resolving the LBIE estate and, as they have been throughout, the LBIE administrators remain willing to continue those efforts.

In the circumstances, therefore, your client's threat to seek the termination of the LBIE Administrators' appointment is unwelcome and unwarranted. Notwithstanding this, we address certain aspects of the remainder of your letter below, to ensure that the LBIE administrators' position is clear.

The LBIE Administrators remain of the view, as explained in their update to creditors dated 23 June 2017 (the "**Update**"), that it is in the interests of LBIE's creditors as a whole for LBIE to remain in administration. They take the view that the purpose of LBIE's administration (achieving a better result for LBIE's creditors as a whole) continues to be the achievable objective, and they continue in that pursuit, including proceeding to distribute statutory interest (and other entitlements) from the surplus when that is possible.

In this regard we note that, while your letter refers to "reasons" why a liquidation should be considered preferable to an extended administration, the only reason you identify is that it would ensure a swifter resolution of the LBIE estate. In addition to the points made by the LBIE administrators in the Update as to the reasons for LBIE remaining in administration, we note the following:

1. In its *Waterfall I* judgment the Supreme Court observed that forcing an administrator to move a company into liquidation without having first paid accrued statutory interest "*would potentially wreak real unfairness on all the other creditors of the company*".
2. The time taken so far in resolving the issues that stand in the way of the distribution of the surplus in the LBIE administration is entirely reasonable given the complexity of the issues, the sums at stake and the fact that, with the active involvement of the major stakeholders in the LBIE administration, it has required multiple sets of legal proceedings that have proceeded to appeals (where your client has of course itself been both appellant and respondent).
3. The LBIE Administrators do not consider that any swifter resolution that a liquidation might offer would justify the injustice of the loss of rights to statutory interest that would result.
4. Whilst your letter states that Wentworth would have sufficient votes to require the LBIE Administrators to make an application under paragraph 79(2)(c) (as to which the LBIE Administrators express no view), it says nothing about the approach the Court would take to such an application. The LBIE Administrators consider it inherently unlikely that the Court would, on such an application, view the LBIE Administrators' willingness (if necessary) to await the outcome of issues which are currently before the Courts as a compelling (or any) reason why the LBIE Administrators' appointment should be brought to an end.
5. In relation to the Court's likely approach on any such application, it is worth noting Mr Justice Hildyard's comments in his judgment dated 3 August 2017, giving permission for the Backstop settlement to go ahead: "*In light of the Supreme Court's decision in the Waterfall I appeal, any entitlement to statutory interest during the period of LBIE's administration would come to an end*".



## Linklaters

*upon LBIE moving into liquidation. For that reason alone, it would be very difficult to justify moving LBIE into liquidation until such statutory interest (the precise quantum of which will not be known until the Waterfall II proceedings are finally determined) is paid in full." (emphasis added).*

Finally, we note your request that your letter be posted on the LBIE administration website. The LBIE Administrators are not minded to use the administration website as a noticeboard on which to display creditor correspondence but they have informed your clients that the underlying content of your letter has been communicated to members of the SCG.

Yours faithfully

A handwritten signature in blue ink that reads "Linklaters LLP". The signature is written in a cursive, professional style.

Linklaters LLP

**Wentworth Sons Sub-Debt S.à r.l.**  
*Société à responsabilité limitée*  
**Registered office: 6, rue Eugène Ruppert, L-2453 Luxembourg, Grand Duchy of  
Luxembourg**  
**R.C.S. Luxembourg: B 179.351**

**BY POST AND EMAIL**

The Joint Administrators of Lehman Brothers  
International (Europe) (In Administration)  
Level 23, 25 Canada Square  
London E14 5LQ

**Attn:** Anthony Victor Lomas, Steven Anthony Pearson,  
Russell Downs, and Julian Guy Parr

**WITH A COPY TO:**

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ

**Attn:** Tony Bugg, Euan Clarke, and Jared Oyston

24 October 2017

Dear Sirs,

**Lehman Brothers International (Europe) (In Administration) (“LBIE”)**

1. We, Wentworth Sons Sub Debt S.à r.l. (“**Wentworth**”), hereby request that, pursuant to paragraph 56(1)(a) of Schedule B1 of the Insolvency Act 1986, the joint administrators of LBIE seek a creditors’ decision on the matter described below. We request that a creditors’ decision is sought by the joint administrators as soon as possible.
2. The matter we request is put to a creditor vote is: “whether the joint administrators of LBIE should be required, pursuant to a creditors’ decision in accordance with paragraph 79(2)(c) of Schedule B1 of the Insolvency Act 1986, to apply to the Court to terminate their appointment.”
3. The purpose of this request for a creditors’ decision is to facilitate the termination of the joint administrators’ appointment and to facilitate the appointment of a liquidator of LBIE.
4. Wentworth confirms, for the purposes of this request, that it holds over 10% of the total claims in LBIE. Wentworth holds £1,242,162,409.78 in subordinated debt claims in LBIE.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jérôme Devillet', written over a horizontal line.

On behalf of Wentworth Sons Sub Debt S.à r.l.

Name: **Jérôme Devillet**

Title: Authorised signatory

Kirkland & Ellis International LLP  
30 St Mary Axe  
London  
EC3A 8AF

## F.A.O. Partha Kar and Kon Asimacopoulos

### By Email

30 October 2017

Your Ref            Partha Kar/Kon Asimacopoulos  
Our Ref             Tony Bugg/Euan Clarke/Jared Oyston

Dear Sirs

## Lehman Brothers International (Europe) (in administration) ("LBIE")

We refer to your letter dated 30 June 2017 and to our letter in response dated 23 August 2017. We also refer to the letter dated 24 October 2017, from Wentworth Sons Sub-Debt S.a.r.l. ("**Wentworth**") to the Joint Administrators (the "**Administrators**") of Lehman Brothers International (Europe) ("**LBIE**"), a copy of which you have also provided to us.

Your 30 June letter referred to what has become known as the "statutory interest lacuna" – the loss of statutory interest that has not yet been paid in the LBIE administration – that could result from LBIE going into liquidation. You went on to threaten, on behalf of your client, to take steps designed to bring about a liquidation of LBIE, so triggering the statutory interest lacuna.

### 1. Previous Correspondence and the Administrators' Position

In our letter of 23 August, we made a number of observations on behalf of the Administrators in relation to your client's position. Without repeating the contents of that letter, we would emphasise certain points in particular:

1. It is in the interests of LBIE's creditors as a whole for LBIE to remain in administration. Conversely, it would be contrary to those interests to take steps that would have the effect of depriving LBIE's creditors of their unpaid statutory interest entitlements.
2. The Administrators have been seeking to achieve the purpose of administration with the objective of achieving a better result for LBIE's creditors as a whole than would be likely if LBIE were wound up (without first being in administration). That objective is capable of further achievement, in particular, by the Administrators distributing the surplus in accordance with the insolvency waterfall – which involves distributing more than £5 billion (based on the current position, pending appeals

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A35236962 / 30 Oct 2017



in the ongoing Waterfall II proceedings) by way of paying statutory interest on the debts proved in the administration.

3. Indeed, Hildyard J, on an application to extend the Administrators' term of office to 30 November 2022, reached precisely that view. The Judge stated ([2016] EWHC 3379 (Ch) at [9]) "*Whilst the [A]dministrators have things to do to complete their mandate and effect the final distribution, the working assumption, at least, should be that, unless good cause is shown for some specific advantage of the liquidation route over the administration distribution route, the implication of the courts granting the distribution status is that the administration should be maintained for as long as is reasonably necessary to complete the process of distribution*". Hildyard J further noted (at [7]) that "*unless there is good reason shown why in those circumstances or envisaged circumstances a liquidation process is or may become more appropriate in the interests of creditors, the prima facie approach should be that the distributing administrators should be permitted the extension to enable them to complete the job with which they have been entrusted*".
4. Any perceived advantage of placing LBIE into liquidation – of bringing a swifter end to the administration – is clearly outweighed by the injustice that would be caused by it triggering the statutory interest lacuna.
5. Your letter of 30 June made no attempt to explain on what basis you or your client considers that the Court, on any application made pursuant to paragraph 79(2)(c) of Schedule B1 to the Insolvency Act 1986 ("**Schedule B1**"), would conclude that to bring the administration to an end would be in the interests of LBIE's creditors or otherwise appropriate.
6. In fact, the Court has already specifically indicated that it would be wrong to place LBIE into liquidation before statutory interest is paid. At paragraph [185] of Lord Neuberger PSC's judgment in Waterfall I ([2017] UKSC 38), he said that LBIE going into liquidation without having paid statutory interest "*would potentially wreak unfairness on all the other creditors of the company*". On the application to approve the recent Waterfall III settlement, Hildyard J stated that "*any entitlement to statutory interest during the period of LBIE's administration would come to an end upon LBIE moving into liquidation. For that reason alone it would be very difficult to justify moving LBIE into liquidation until statutory interest [...] is paid in full*" ([2017] EWHC 2032 (Ch) at [48]). Those remarks are plainly right.

You have not responded to our 23 August letter; neither has your client, in the intervening period, or in its letter of 24 October, made any attempt to engage with these points, less still to explain why what it proposes would not be contrary to the interests of LBIE's creditors as a whole. In fact, the objective of your client's intended action is to bring about a situation in which the Sub-Debt is repaid in full and the members of LBIE receive billions of pounds at the expense of the general body of creditors and notwithstanding that your client and the members of LBIE rank below the creditors in the insolvency waterfall – not only as regards provable debts but also as regards statutory interest.

### 2. Purported Paragraph 56(1) Request

Your client's 24 October letter purports to be a request pursuant to paragraph 56(1) of Schedule B1 to seek a creditors' decision, i.e. to call a creditors' meeting, or otherwise invite LBIE's creditors, to vote upon a resolution designed to bring about the termination of the administration of LBIE and the commencement of a liquidation. In other words, your client wishes to take action to bring about the very injustice identified in our letter and by the Courts.

As you may be aware, although the Insolvency Act imposes upon officeholders in certain circumstances a duty to convene creditors' meetings (or otherwise seek a creditors' decision), that obligation is not an



absolute one. For instance, in *Re Barings Plc; Hamilton v Law Debenture Trustees Ltd* [2001] 2 B.C.L.C. 159, the liquidators sought an order that they were not obliged to comply with a request to convene a creditors' meeting, which certain creditors had made for the purposes of removing the liquidators from office. The liquidators considered that such a step would not be in the best interests of all the estate's creditors. The Judge in that case (Morritt VC) applied a two-stage process to consider whether the meeting should be convened, assessing: (1) whether the requested meeting would further the proper operation of the liquidation; and (2) whether such meeting would be conducive to the aim of doing justice as amongst all parties interested in the insolvency. He concluded that the proper operation of the process of the liquidation, and justice to all those interested in its assets, required him to direct the liquidators not to convene the requested meeting.

While creditors (holding a sufficient percentage of the total debts of the company) have the power to request the Administrators to seek a creditors' decision, that power is qualified and cannot be exercised other than for a proper purpose. The Court will not insist on the office holder seeking such creditors' decision where the request has not been made for a proper purpose.

It is the Administrators' view that the creditors' decision, and the steps that Wentworth is seeking to take as a result thereof, would neither further the proper operation of the LBIE administration, nor be conducive to the aim of doing justice among those interested in the LBIE administration. As noted above, a strategy that resulted in forcing LBIE into liquidation prior to the distribution of statutory interest would "*wreak unfairness*" on all of LBIE's other creditors and is improper.

Further, even if an application were made for an order terminating the appointment of the Administrators and bringing the LBIE administration to an end, it is inconceivable that the Court would conclude that it is in the interests of LBIE's creditors for such an order to be made.

Indeed, if the Administrators were themselves to seek to put LBIE into liquidation, with the purpose (or even merely the effect) of triggering the statutory interest lacuna, those creditors adversely affected by such action (i.e., broadly, all ordinary unsecured creditors) would doubtless argue that the Administrators should be directed not to do so because it would unfairly harm their interests within the meaning of paragraph 74 of Schedule B1.

In those circumstances, the Administrators are not prepared to accede to your client's request without first seeking directions from the Court. On such an application, the Administrators would contend that the Court should direct them not to accede to the request.

### 3. Wentworth's Standing and Related Issues

The Administrators would, on such an application, also raise, as additional issues for determination, the following subsidiary issues (which will be academic in the event that the Court agrees with the Administrators' position on the primary issue):

#### a. Paragraph 56 of Schedule B1

The 24 October letter states that Wentworth holds over 10% of the total claims in LBIE, being the subordinated debt (the "**Sub-Debt**"). Presumably that statement is intended to satisfy Rule 15.18(3)(b) of the Insolvency Rules 2016 (the "**Rules**") and demonstrate Wentworth's entitlement pursuant to paragraph 56 of Schedule B1. It is not immediately clear by reference to what sum it is said the quantum of the Sub-Debt (said to be some £1.242 billion) exceeds 10% of the total claims in LBIE. That sum is less than 10% of the total debts of LBIE.

Although Rule 15.11 of the Rules excludes from those to whom notice of a decision procedure is to be given those creditors who have been paid in full (and leaving aside the true meaning of that

provision), that rule does not apply to paragraph 56 of Schedule B1. Please explain on what basis it is said that Wentworth is entitled to request the Administrators to seek a creditors' decision.

*b. Breach of the Sub-Debt Agreement*

Clauses 7(d) and (e) of the agreement constituting the Sub-Debt provide that steps shall not be taken without the consent of the FSA to "attempt to obtain repayment of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement" or to "take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected". Having held that the Sub-Debt is subordinated to statutory interest, the Supreme Court in *Waterfall I* (*supra*) agreed with the decision of David Richards J at first instance that the lodging of a proof in respect of the Sub-Debt prior to the payment in full of the Senior Liabilities (including statutory interest) is precluded by Clauses 7(d) and/or (e).

It seems to the Administrators that the steps currently sought to be taken by Wentworth – the purpose (and in any event effect) of which is to cause the Sub-Debt and, thereafter LBIE's members, to be paid out of the surplus out of funds currently otherwise payable to unsecured creditors by way of statutory interest – would similarly fall foul of those provisions of the Sub-Debt agreement (we assume that no consent has been sought from the FCA). The steps precluded by those provisions would include a request to call for a creditors' decision in the terms your client proposes, your client voting in favour of a resolution that the Administrators apply to the Court under paragraph 79(2)(c) of Schedule B1 and your client taking steps on any such application to trigger the statutory interest lacuna. The Administrators will, if necessary, invite the Court to determine this issue on their application for directions.

*c. Rights of Sub-Debt Holder*

Whether or not Wentworth is entitled to request the Administrators to seek a creditors' decision (or the other steps that might follow thereafter), there is doubt as to whether the Sub-Debt, being a claim in respect of which (pursuant to the Supreme Court's decision in *Waterfall I* (*supra*)) its holder is not entitled to prove, is in any event capable of founding a right to request the Administrators to seek a creditors' decision (for the purpose of paragraph 56 of Schedule B1) and/or to vote in respect of such creditors' decision. This would have to be resolved by the Court.

*d. Wentworth as a Connected Party*

Rule 15.34(2) of the Rules provides that a creditors' decision "is not made if those voting against it include more than half in value of the creditors to whom notice of the decision procedure was delivered who are not [...] connected with [LBIE]". A connected party for these purposes includes one under common control with LBIE. In circumstances where Wentworth is part of a joint venture structure that includes the holder of 100% of the shares in LBIE, it appears that Wentworth would constitute a person connected with LBIE. Whether or not Wentworth is a connected person may therefore also need to be determined.

#### 4. Conclusion

It is clear that there is considerable doubt not only about the propriety of what your client is seeking to do but also, putting that to one side, whether it is entitled to take the actions it has taken and proposes to take.

The Administrators consider that it would not be appropriate for them to accede to the request made by Wentworth in its 24 October letter and they invite Wentworth to withdraw its request by 4pm on Friday 3 November 2017.



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In the event that Wentworth is not prepared to withdraw the request, the Administrators invite Wentworth, by that same date, instead to explain:

- i. on what basis Wentworth says that placing LBIE into liquidation would be in the best interests of LBIE's creditors as a whole and/or would further the operation of the administration or be conducive to the aim of doing justice as amongst all parties interested in the LBIE estate;
- ii. if it would not be in the best interests of LBIE's creditors, on what basis it is said that an application pursuant to paragraph 79(2)(c) would succeed;
- iii. how it is said that the Sub-Debt constitutes 10% or more of the total value of the debts of LBIE;
- iv. on what basis it is said that Wentworth is entitled to make the request and take the further steps envisaged by it notwithstanding clauses 7(d) and (e) of the Sub-Debt agreements;
- v. whether, and on what basis, Wentworth considers it is entitled to vote in respect of the Sub-Debt where it is not entitled to prove in respect of it; and
- vi. whether Wentworth accepts that it would be a connected party for the purposes of Rule 15.34(2) and, if not, on what basis it rejects that analysis.

If the request is not withdrawn by that date:

- absent an adequate and timely explanation, the Administrators anticipate applying to Court, on notice to LBIE's creditors generally, for directions in respect of your client's request, including a direction that the Administrators should not be obliged to seek a creditors' decision; and
- the Administrators intend to ensure that all of LBIE's creditors are fully aware of the position by placing an update on the LBIE website, including Wentworth's letter, this response and the other correspondence referred to above.

All of LBIE's and the Administrators' rights are expressly reserved and nothing in this letter waives any such rights.

Yours faithfully

Linklaters LLP

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6 November 2017

## BY EMAIL

**Linklaters LLP**  
One Silk Street  
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**Attention: Tony Bugg (tony.bugg@linklaters.com) and Euan Clarke  
(euan.clarke@linklaters.com)**

Dear Sirs,

### **Lehman Brothers International (Europe) (In Administration)**

We refer to your letter of 30 October 2017.

The Joint Administrators (“**the Administrators**”) of Lehman Brothers International (Europe) (“**LBIE**”) are in receipt by letter of 24 October 2017 of a request by our client Wentworth Sons Sub-Debt S.a r.l (“**Wentworth**”) to convene a meeting of the creditors of LBIE. The proposed meeting would enable LBIE’s creditors to consider whether to require the Administrators to request the Court to terminate LBIE’s administration pursuant to paragraph 79 of Schedule B1 to the Insolvency Act 1986 (references to “**Paragraphs**” are to Paragraphs of this Schedule) and place it in winding-up. Having received this request, it is now incumbent upon the Administrators pursuant to Paragraph 56(1) to call the meeting as requested.

We are therefore disappointed to learn by your letter of 30 October 2017 that the Administrators refuse to call the requested meeting, and propose instead to add to the already extensive litigation in which they have engaged to date by applying to the Court for directions.

You put several questions to us in your letter. We address these below in the hope that instead of incurring further costs and delay, the Administrators may be persuaded to comply with the mandatory requirement of Paragraph 56(1), thereby facilitating (among other things) a duly quick and efficient conclusion to LBIE’s administration: see Paragraph 4.

Wentworth’s position, in brief, is that the administration should be brought to a conclusion since its continuation does not help achieve a better result for creditors as a whole compared to

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6 November 2017

Page 2

a winding-up commencing at this time. In the context of a solvent administration such as LBIE's, a better result for creditors as a whole is achieved when a greater proportion of them receive payment on a greater proportion of the principal amount of their claims. Continuation of administration is no longer in creditors' interests in this sense, and they should have the opportunity of considering whether to require the Administrators to seek to bring it to an end.

### **1. Continuation of administration is not in the interests of creditors as a whole**

You ask us to specify the basis on which placing LBIE in liquidation would be in the best interests of LBIE's creditors as a whole. This wrongly reverses the statutory burden of justification. LBIE's administration is being undertaken with the objective of achieving a better result for its creditors as a whole than would be likely if LBIE were to be wound up (Paragraph 3(1)(b)). Pursuit of this objective is the administration's *sine qua non*, and without it, continuation of the administration is not justifiable. This is reinforced by the Administrators' "overriding legal obligation" to perform their functions in the interests of LBIE's creditors as a whole (Paragraph 3(2) and *Key2Law v De'Antiquis* [2011] EWCA Civ 1567, [101]). The onus is thus on the Administrators to justify the continuation of the administration by reference to the interests of creditors as a whole, and in particular, to whether continuation would achieve a better result for creditors as a whole than would occur if the administration were now to be concluded and LBIE placed in winding-up.

You also ask how placing LBIE in liquidation "*would further the operation of the administration or be conducive to the aim of doing justice as amongst all parties interested in the LBIE estate*". You purport to derive this requirement from *Hamilton v Law Debenture Trustees Ltd* [2001] 2 BCLC 159. That judgment, on an application to convene a meeting to consider removal of liquidators, is manifestly inapposite here. It could not be a requirement for a party seeking to bring an administration to a conclusion to demonstrate that to do so would "*further the operation*" of the very administration sought to be concluded. Nor is there any room for the Judge-made requirement of "*doing justice as amongst all parties*", since the statute itself provides a framework setting out the correct approach.

The contents of your 23 August 2017 letter, rehearsed in your 30 October letter, suggest that the Administrators believe that the fact that certain creditors would not receive statutory interest to which they are only entitled in administration means that termination of administration would not be in creditors' interests until those creditors have received that interest. This is a misunderstanding of the statutory imperative, endemic in administration, to promote the interests of creditors as a whole, which may necessitate some creditors being less well off (e.g. *O'Connell v Rollings* [2014] EWCA Civ 639, [70]), harmed (e.g. *In re Coniston Hotel (Kent) LLP* [2013] 2 BCLC 405, [36]), or even legally wronged (e.g. *BLV Realty Organisation v Batten* [2009] EWHC 2994 (Ch), [20]). It is only if a creditor satisfies the Court that the harm it would suffer is unfair that it may have a remedy: see Paragraph 74.



6 November 2017

Page 3

The requirement to promote creditors' interests as a whole also governs the decision whether creditors' claims should be addressed in administration or winding-up. The mere fact that a class of claim enjoys explicit statutory priority in one proceeding that it would lose if dealt with in another is not decisive. This is *a fortiori* in relation to the priority of the claim for statutory interest in administration, which derives from judicial interpretation of the relevant Insolvency Rules ('IRs') stated by Lord Neuberger in "*a generalised summary of the distribution priorities in insolvency*" and "*not intended to be treated as some sort of quasi-statutory statement of immutable legal principle*"; *Waterfall I* [2017] UKSC 38, [17]. What matters to the question whether administration should be continued is overall value returned to creditors as a whole, and the value that in administration would be paid to one subcategory of creditor (statutory interest) would simply be distributed amongst others (including to subordinated creditors). LBIE's exit from administration and entry into winding-up would thus not cause any net loss of value on this account to creditors as a whole.

This conclusion is supported by the observation that in identifying the creditors whose interests should be taken into account in ascertaining what best serves creditors' interests as a whole, a discount should be applied *pro tanto* for payments received on the debts proved for. This holds with particular force in relation to those who have been paid in full on the debts for which they proved: "*a proving creditor should be treated as having had his contractual rights fully satisfied once he is paid out in full on his proof*"; *Waterfall I* [2017] UKSC 38, [105] (Lord Neuberger).

Parliament has expressly set this out in IRs 15.11(1) and 15.31: creditors can only vote to the extent of their unpaid principal. That this is a clear expression of Parliamentary intention as to the way in which to measure creditors' interests for voting purposes is further supported by the fact that the same approach was extended by the 2016 IRs to CVAs (IR 15.31(d)(ii)), when there was no similar provision in the 1986 IRs.

Bearing these points in mind, therefore, your question as to "*the propriety*" of what Wentworth is seeking to do has to be considered in the context of the Act and Rules that Parliament has enacted (in line with the approach of the Supreme Court in *Waterfall I*). The Act and Rules:

- a) permit creditors to require the administrators to apply to court to end the administration;
- b) provide that creditors should vote on any such resolution according only to the extent of their unpaid principal; and
- c) provide that upon entry into liquidation any unpaid administration statutory interest will be lost.

It would be wrong to use a general concept of fairness, or an interpretation of the general provisions in Paragraph 3 of Schedule B1, to second-guess these specific provisions in the Act and Rules.

6 November 2017

Page 4

The Supreme Court's *Waterfall I* judgment, together with that of the Court of Appeal in *Waterfall II*, have significantly reduced the number of outstanding issues preventing an overall resolution of LBIE's estate. The remaining issues are already subject to first instance or appellate decisions, so that there is judicial guidance on how they ought to be addressed. Most of these issues would be as readily susceptible to settlement or final judicial resolution in LBIE's winding-up as in the administration. Indeed, the requisitioning of a decision regarding a move from one to the other would likely focus minds and heighten the appetite for bringing them to commercially reasonable conclusions. It is unfair to permit speculative appeals by erstwhile creditors who have received payment in full on their claims and who now seek to maximise their statutory interest recoveries at the expense of subordinated creditors yet to be paid anything on their principal. This speculative extension of the duration of administration proceedings is eroding value to the detriment of the interests of creditors as a whole.

## 2. Wentworth has standing to call a meeting

We do not understand your objection to Wentworth's standing to call a meeting. Wentworth estimates LBIE's currently outstanding total debts (i.e. unpaid principal) to be between £1.39 billion and £1.82 billion. Of that, Wentworth holds the £1.242 billion in subordinated debt, which far exceeds the 10% threshold.

Pursuant to Paragraph 56(1)(a), the Administrators must summon a meeting if requested to do so by "creditors" whose debts amount to at least 10% of LBIE's "total debts". Since LBIE's total debts undoubtedly include its subordinated debt, its subordinated creditors are "creditors" for this purpose.

It is trite that a discharged debt is no longer a debt, so that creditors who have received payment on their claims are not, *pro tanto* to the extent of the payment, "creditors". Any suggestion to the contrary would be inconsistent with Lord Neuberger's observation in *Waterfall I* [2017] UKSC 38, [105], as to the effect of payment of proved debts on creditors' rights, and would fly in the face of the statutory scheme.

In this regard, the reference to "total debts" in Paragraph 56 has to be read in light of IR 15.18(3)(b), which implements it. IR 15.18(3)(b), in turn, has to be read consistently with IR 15.31, which provides for creditors' votes to be calculated according to their notional value, less payments since the administration date. In order for these provisions to work together in a rational way, they must all be referring to the value of creditors' claims less payments since the administration date. Otherwise:

- a) a creditor could requisition a decision even if he had been paid statutory interest and had no further interest in the administration at all (and could not vote); and
- b) a late-proving creditor might fail to reach the 10% threshold for calling for a creditor decision by virtue of the nominal claim values of creditors who had already been paid and who thus retain no economic stake in LBIE or in its administration.



6 November 2017

Page 5

In the event that the Court holds that Wentworth does not have standing to requisition a creditor decision, however, Wentworth reserves its right to arrange for other creditors to join it in the requisition.

### **3. No violation of the subordinated debt agreements**

You express the view that Clauses 7(d) and (e) of the agreements (“**the Agreements**”) pursuant to which Wentworth’s subordinated claims arise would be breached by Wentworth’s request to call a meeting and its voting in favour of the making of a Paragraph 79 application, among other steps.

Your interpretation of the Agreements is mistaken. As we have noted above, Wentworth considers that continuation of administration no longer serves the interests of LBIE’s creditors as a whole. Wentworth therefore seeks a creditors’ decision in order to ascertain whether fellow creditors are of the same view.

Wentworth has an undeniable and legitimate interest in a duly speedy and efficient conclusion to the administration so it may, in LBIE’s winding-up, obtain timeous payment of the principal sums it is owed.

In seeking a creditors’ decision and proposing to vote in favour of the making of a Paragraph 79 application, Wentworth pursues this legitimate interest in timely repayment of (on any view) substantial sums. Nothing in the Agreements precludes it from doing so. To the contrary, in seeking to place LBIE in winding-up, Wentworth is acting according to Clauses 4(4) and (7) of the Agreements, which require it to seek to enforce payment only through insolvency proceedings.

### **4. Wentworth’s entitlement to prove and to vote**

You assert that Wentworth is not entitled to prove or vote in right of its subordinated claims. You rely on Lord Neuberger’s judgment in *Waterfall I*. You misunderstand the statutory scheme, which recognises that creditors may have interests in influencing the course of the administration by voting at a meeting which are not identical with their interests in receiving payment.

In his judgment in *Waterfall I* [2017] UKSC 38, [68] to [72], Lord Neuberger was concerned solely with proof for the purpose of payment from the administration estate. Proof for this purpose bears no necessary connection with proof for the purposes of voting at a creditors’ meeting, as is clear, for example, from the fact that creditors can file proofs for the purposes of voting in an administration which is not a distributing administration. Indeed, this is almost invariably what happens for the purposes of voting on the administrators’ proposals. This is a clear demonstration that all creditors, including subordinated creditors, can prove for the purposes of voting even when they are not entitled to prove for the purposes of payment.

## KIRKLAND & ELLIS INTERNATIONAL LLP

6 November 2017

Page 6

The provision relevant to the present matter, IR 15.28(1), explicitly restricts itself to the entitlement to vote. The correct approach would be for the Administrators to admit Wentworth's proof for the purposes of voting pursuant to this provision. If "in any doubt" on this score, the Administrators "*must mark [Wentworth's proof] as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained*"; IRs, 15.31(4) and (5).

### **5. Wentworth is not a connected party**

Your reasoning and question regarding IR 15.34(2) are puzzling. Prior to the commencement of LBIE's administration, Wentworth had no relevant connection with LBIE's shareholders. Subsequent to commencement, LBIE is controlled by the Administrators, not by those holding its shares. It is thus quite obvious that Wentworth is not a connected party for the purposes of IR 15.34(2).

In light of these comments and observations, we trust that the Administrators will reconsider their position and call a meeting as required by Paragraph 56(1). The question whether the time has now come for LBIE's administration to be brought to a conclusion has not been considered by the Court with the benefit of full, or indeed any, adversarial argument. Wentworth's request for a creditors' meeting is intended to enable the Court to do precisely that, with the added benefit of the views of the requisite majority of the very parties in whose interests the administration is being conducted (assuming, of course, that the majority does vote in favour of the making of a Paragraph 79 application).

You have indicated an intention to post the correspondence relating to this issue. Wentworth has no objections to this.

Yours faithfully,

*Kirkland & Ellis International LLP*

**Kirkland & Ellis International LLP**



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EC3A 8AF

**F.A.O. Partha Kar and Kon Asimacopoulos**

**By Email**

10 November 2017

Your Ref            Partha Kar/Kon Asimacopoulos  
Our Ref             Tony Bugg/Euan Clarke/Jared Oyston

Dear Sirs

## **Lehman Brothers International (Europe) (in administration) ("LBIE")**

We refer to your letter dated 6 November 2017 and the previous correspondence in relation to the statutory interest lacuna. Unless otherwise defined in this letter, capitalised terms bear the same meaning as in that previous correspondence.

In your 6 November letter, you express disappointment that the Administrators do not agree to accede to Wentworth's request to seek a creditors' decision. Our 30 October 2017 letter clearly explains the issues that arise in relation to that request (none of which is adequately addressed by your response). You and your clients should have been in no doubt for several months that the Administrators consider the steps that you wish to take to be contrary to the interests of LBIE's creditors as a whole. In the circumstances, and where your letter is unpersuasive on each point raised, it can have come as no surprise that the Administrators remain of that view.

You refer in your letter to the Administrators adding "*to the already extensive litigation in which they have been engaged to date by applying to the Court for directions*". To the extent that is intended to be a criticism of the Administrators' decision to apply for directions in relation to previous issues, that criticism is unwarranted and is rejected. In several of those applications, your clients (and the parties associated with the Wentworth joint venture) have actively participated in, and have of course themselves contributed to the length and complexity of, those proceedings by seeking the inclusion of issues (some of which were not ultimately pursued), and appealing decisions, including to the Supreme Court. In any event, your clients have not suggested before – nor could they sensibly have suggested – that any such proceedings were unnecessary or that the Administrators could reasonably have proceeded without the Court's directions given the differences in views expressed on key issues by the different constituencies among LBIE's creditors, including your clients themselves.

This communication is confidential and may be privileged or otherwise protected by work product immunity.

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A35312056 / 10 Nov 2017

To the extent those comments are intended to be a criticism of the Administrators' decision to apply for directions in relation to the present issues, that too is without justification. It is clear from the correspondence between us that there are issues that arise in relation to: (i) the appropriateness of any creditors' decision being sought; (ii) Wentworth's standing to request such a decision; and (iii) the conduct of the voting in respect of any such decision.

In circumstances where your 6 November letter did not dissuade the Administrators of the need to seek the Court's directions – rather it served to illustrate the nature and extent of the issues that arise – we do not propose to continue the debate in correspondence on each of the issues. Indeed, as noted previously and explained further below, the Administrators intend now to issue an application for directions. However, there are certain matters arising from your letter that we note below, to ensure that the position is clear:

### 1. The Interests of LBIE's Creditors as a Whole

You suggest that our request that your client explains the basis upon which placing LBIE into liquidation would be in the best interests of LBIE's creditors as a whole "*wrongly reverses the statutory burden of justification*". We do not agree. Where your client seeks to take steps that to any objective observer would have the effect of damaging the interests of all of LBIE's un-subordinated creditors in their capacity as such, it is clearly appropriate for your client to explain, if it can, why it considers the position is otherwise; that it cannot adequately do so is of course telling. In any event, when this matter comes before the Court (which even on your client's case it must do at some stage), in circumstances where the Court relatively recently concluded that a continuation of the LBIE administration to 2022 to complete the outstanding tasks including the distribution of the Surplus was in the interests of LBIE's creditors, it is implausible to imagine that the Court will not look to Wentworth to explain precisely this point.

You refer to a number of cases said to substantiate the notion that promoting the interests of creditors as a whole may necessitate some creditors being less well off. While true as an abstract proposition in certain circumstances, none of the cases referred to assists with your client's arguments in this case. Indeed, you accept that the issue of unfairness is relevant, seemingly however ignoring the tension inherent in the fact that what your client is suggesting is designed to assist only it (and its associated companies), to the detriment of all of LBIE's un-subordinated creditors in their capacity as such.

You go on to cite extracts from certain cases (including the Supreme Court's decision in *Waterfall I*) apparently to support your client's position, but none of them in fact does so and you conspicuously ignore the statements – relating directly to the impact of the statutory interest lacuna, and referred to in our previous correspondence – of both the Supreme Court (LBIE going into liquidation without having paid statutory interest "*would potentially wreak unfairness on all the other creditors of the company*") and Mr Justice Hildyard ("*any entitlement to statutory interest during the period of LBIE's administration would come to an end upon LBIE moving into liquidation. For that reason alone it would be very difficult to justify moving LBIE into liquidation until statutory interest [...] is paid in full.*")

You note, towards the end of section 1 of your letter, that the Act and the Rules (a) permit creditors to require the Administrators to apply to Court to end the administration, (b) provide that creditors should vote to the extent of their unpaid principal and (c) have the effect that on going into liquidation unpaid statutory interest will no longer be payable. What (among other things) you fail to note in that regard is the requirement for a creditor with standing to be able to seek a creditors' decision, the limitations on voting and, most importantly, that the Court is bound to reject any attempt to force LBIE into liquidation prior to the payment of statutory interest.



Your comment in relation to "speculative" appeals ignores the fact that appellants have to obtain permission to appeal before they can proceed and, of course, the repeated (and unsuccessful) appeals by your own client and its associated companies, for instance in Waterfall I (e.g., the arguments on the priority of the Sub-Debt), and in Waterfall II (e.g., the date issue).

In short, nothing in your letter explains on what basis it can reasonably be said that Wentworth's proposed course of action would be in the interests of LBIE's creditors in any relevant sense. The objective of the LBIE administration remains that of achieving a better result than would have been achieved on a winding up of LBIE. That objective will not be fully achieved until the statutory interest to which LBIE's creditors are entitled is paid, and would be thwarted by putting LBIE into liquidation at this stage. Had LBIE's insolvency instead been conducted in a liquidation, any surplus would have been applied in paying statutory interest, in precisely the way it will be in administration (the only difference having been the loss of the advantages of administration). Going into liquidation now would do nothing but prevent the full achievement of the statutory objective and materially harm the interests of LBIE's ordinary unsecured creditors.

## **2. Wentworth's Standing – Paragraph 56 of Schedule B1**

We asked in our 30 October letter on what basis it is said that Wentworth is entitled to request the Administrators to seek a creditor decision in light of the claim it holds (in the value of some £1.24bn) relative to the total debts of LBIE. We note your response, which appears to suggest not that your client holds a sufficient proportion of the debts, but instead that the Administrators should ignore the fact that your client does not hold 10% of the total debts of LBIE, and take what seems to be a purposive approach to statutory interpretation based on some alleged general principles about the nature of creditors' rights.

There are provisions of the Rules (for instance Rules 15.11 and 15.31) that make express reference to taking into account payments received by creditors during the administration for certain purposes in specific circumstances. There is no such provision that relates to the entitlement of a creditor to request the Administrators to seek a creditors' decision (see Paragraph 56 and Rule 15.18). While you refer, again, to the decision of the Supreme Court in Waterfall I (but not for any relevant support) you fail, again, to note what the Supreme Court relevantly held in relation to attempts to argue that the Court should find in the Act or the Rules guidance that is not expressly set out therein. Where the Rules expressly make provision in respect of a matter in certain circumstances, but do not in others, the Court cannot be expected to fill in what one party argues is a gap or to achieve some perceived (but at best implicit) purpose; indeed, quite the contrary.

## **3. Breach of the Sub-Debt Agreement**

In our 30 October letter, we noted the effect of Clauses 7(d) and (e) of the Agreement constituting the Sub-Debt, which prohibit steps to "*attempt to obtain repayment of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement*" or to "*take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected*".

In response, you suggest that Wentworth is acting in accordance with Clauses 4(4) and (7) of the Agreement, which refer to enforcement of payment by instituting insolvency proceedings. However, you once more fail to take into account relevant aspects of those Agreements, and the Supreme Court's decision in relation to them. In particular, you omit any reference to (and fail completely to deal with) the fact that Clause 4 is itself expressly subject in all respects to Clause 5, i.e. the subordination provisions themselves.



#### 4. Rights of Sub-Debt Holder

We note what you say in relation to the entitlement of a holder of the Sub-Debt to vote where that holder is not entitled to prove. You point to Rule 15.28(1) for support, noting that it is restricted to entitlements to vote (albeit it does of course refer to the requirement to deliver a proof, which must be a reference to a valid proof). You, once again, fail to note the more relevant aspect of the provision, i.e. Rule 15.28(3), which refers to debts claimed (being those in respect of which the holders of such claimed debts can vote) as being those "*claimed as due from [LBIE]*" (emphasis added).

The Supreme Court's decision in *Waterfall I* in respect of the Sub-Debt, including that the holder of the Sub-Debt is not entitled to prove, is based on the fact that the Sub-Debt is not due until the Senior Liabilities (as defined in the Sub-Debt Agreement) have been paid in full. On any view, therefore, and in light of the terms of Rule 15.28, it is not accepted that someone claiming to be a creditor in respect of a debt which is not yet due from LBIE, and in respect of which it cannot lodge a proof, is entitled to vote at all in respect of a creditors' decision.

We assume your reference to Rule 15.31 is intended to be to Rule 15.33. In the light of the uncertainty as to whether Wentworth's claim should, for the purposes of voting, be admitted at all, such that the issue would need to be determined if a creditors' decision is sought, and where other issues are to be referred to the Court for determination in any event, it is plainly appropriate to seek the Court's directions in this regard at this stage rather than having to make a further application at a future point.

#### 5. Wentworth as a Connected Party

You suggest that what we say about Rule 15.34(2) is "puzzling". You refer to the situation prior to the commencement of LBIE's administration and to the fact that LBIE is "*controlled by the Administrators*". We do not understand your contentions which appear to be incorrect.

As to the first point, Rule 15.34(2) makes no reference to the position prior to administration; it simply provides that a creditors' decision "*is not made if those voting against it include more than half in value of the creditors to whom notice of the decision procedure was delivered who are not [...] connected with [LBIE]*" (emphasis added). The words are in the present tense; in other words, the issue of connection is assessed at the point of the relevant vote (it would otherwise have used the words "*were not at the date of administration connected with...*").

As to the second point, if the appointment of administrators to administer a debtor's estate (with the "control" that such administration involves over its property and affairs) means that the debtor's 100% shareholder (and those associated with that shareholder) is not connected to that debtor, that would mean that Rule 15.34(2) would have no application in any administration. That is clearly nonsensical where Rule 15.34(2) only applies in an administration.

We note that you do not otherwise suggest that Wentworth is not connected to LBIE in the sense required by the Rules, e.g. being under common control.

#### 6. Conclusion

The Administrators' concerns, explained in our letter of 30 October 2017, have not been addressed. Accordingly, and as explained in that letter, the Administrators intend:

- to place an update on the LBIE website, including this exchange of correspondence; and
- to issue an application to Court for directions in respect of your client's request, including a direction that the Administrators should not be obliged to seek a creditors' decision.

## Linklaters

As to the application for directions, please confirm that your firm is instructed to accept service on behalf of Wentworth.

All of LBIE's and the Administrators' rights remain expressly reserved and nothing in this letter waives any such rights.

Yours faithfully

A handwritten signature in black ink that reads "Linklaters LLP". The signature is written in a cursive, slightly stylized font.

Linklaters LLP



## *Update – Statutory Interest Lacuna - 10 November 2017*

The Joint Administrators provide below an update in respect of their commitment to complete and achieve the objectives of the Administration including the payment of interest once those amounts are capable of definitive calculation. The Joint Administrators set out at a high level in their recent webinar a new development in that regard and are now able to give fuller details.

In the Supreme Court’s judgment in Waterfall I, it was held that any statutory interest to which creditors have become entitled in LBIE’s administration (that remains unpaid) may not be claimed in a subsequent liquidation (known as the “**Statutory Interest Lacuna**”). On 23 June 2017 the Joint Administrators posted an update in which they stated that they “will object to any attempt by any party to force the premature liquidation of LBIE, as they consider that this would not be in the interests of LBIE’s creditors as a whole.”


On 24 October 2017, Wentworth Sons Sub-Debt S.a r.l. (“**Wentworth**”), a creditor of LBIE, wrote to the Joint Administrators, purportedly pursuant to paragraph 56(1) of Schedule B1 to the Insolvency Act 1986, to seek a creditors’ decision to bring about the termination of the administration of LBIE and the commencement of a liquidation (the “**paragraph 56(1) request**”). This followed earlier correspondence with their legal representatives in relation to the question of winding up LBIE in advance of completing the on-going litigation in respect of the Surplus.

The Joint Administrators’ response on both occasions was consistent with the position explained in the 23 June update. They have made clear that they would not accede to the paragraph 56(1) request without first seeking directions from the Court on the basis that it would not be in LBIE’s creditors’ interests. Moreover, they consider there to be significant legal questions arising in respect of the paragraph 56(1) request. They invited an immediate withdrawal of the paragraph 56(1) request and if this was not forthcoming, the Joint Administrators indicated to Wentworth that they would seek the Court’s directions.

Below is the correspondence with Wentworth and its legal representatives, a link to which can be found here:

1. Letter from Kirkland & Ellis International LLP to Linklaters LLP dated 30 June 2017;

2. Letter from Linklaters LLP to Kirkland & Ellis International LLP dated 23  
st 2017;

 **pwc** | **UK**  
3. Letter from Wentworth Sons Sub-Debt S.a r.l. to the Joint Administrators dated  
24 October 2017;

4. Letter from Linklaters LLP to Kirkland & Ellis International LLP dated 30  
October 2017;
5. Letter from Kirkland & Ellis International LLP to Linklaters LLP dated 6  
November 2017; and
6. Letter from Linklaters LLP to Kirkland & Ellis International LLP dated 10  
November 2017.

In light of Wentworth's refusal to withdraw the request, the Joint Administrators are preparing an application to the Court for directions pursuant to paragraph 63 of Schedule B1 to the Insolvency Act (the "Application"). Wentworth will be named as respondent to the Application.

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

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14 November 2017

## BY EMAIL

**Linklaters LLP**  
One Silk Street  
London EC2Y 8HQ

**Attention: Tony Bugg (tony.bugg@linklaters.com) and Euan Clarke (euan.clarke@linklaters.com)**

Dear Sirs,

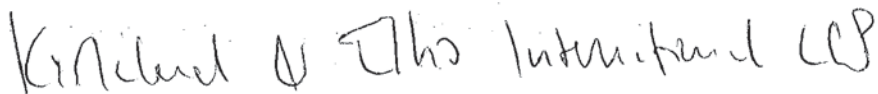
**Lehman Brothers International (Europe) (In Administration) ("LBIE")**

We refer to your letter dated 10 November 2017 in relation to the statutory interest lacuna.

You have raised no new points and accordingly our clients maintain their position. We see no need for further correspondence on the issue and have no objections to the publication of this correspondence, including this letter. It is clear to us that the issues raised in this correspondence will be of wider interest to the creditors of LBIE.

This firm is instructed to accept service on behalf of Wentworth.

Yours faithfully,



**Kirkland & Ellis International LLP**

KIRKLAND & ELLIS INTERNATIONAL LLP

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ASSOCIATED OFFICES

Beijing Chicago Hong Kong Los Angeles Munich New York Palo Alto San Francisco Shanghai Washington, D.C.



November 2006

**LB HOLDINGS INTERMEDIATE 2 LTD**

**AND**

**LEHMAN BROTHERS INTERNATIONAL (EUROPE)**

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**AGREEMENT**

**FOR**

**€ 3,000,000,000**

**LONG TERM**

**SUBORDINATED LOAN FACILITY**

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## Long-Term Subordinated Loan Agreement

### A. Front Page

**THIS AGREEMENT** is made on the date set out in the Variable Terms (as set out in Schedule 1 to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

**BETWEEN -**

- (1) the Lender (as defined in the Standard Terms set out in Schedule 2 to this Agreement), and
- (2) the Borrower (as defined in the Standard Terms).

**WHEREAS** the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

**IT IS AGREED THAT** this Agreement shall comprise the Variable Terms set out in Schedule 1 to this Agreement and the Standard Terms set out in Schedule 2 to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

## Schedule 1

### B. Variable Terms

1. <b>Date of Agreement</b>	1 November 2006
2. <b>Effective Date</b>	1 November 2006
3. <b>Lender</b>	LB Holdings Intermediate 2 Ltd
4. <b>Address of Lender</b>	A company registered in England and Wales under number 5957878 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Lender") which term includes its permitted successors and assigns.
5. <b>Borrower</b>	Lehman Brothers International (Europe)
6. <b>Address of Borrower</b>	A company registered in England and Wales under number 2538254 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.

7. **The Facility**  
With reference to paragraph 2 of the Standard Terms,

(1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in

Euros to the Borrower.

- (2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed Euro 3,000,000,000 (Three Thousand Million Euros) or such other amount as may be agreed between the Borrower and Lender from time to time.

**8. Interest**

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

- (1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.

- (2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.

- (3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.



## 9. Repayment

With reference to paragraph 4 (2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are -

(1) The Borrower may at any time prepay in whole or in part being an amount or integral multiple of Euro 25,000,000 (twenty five million Euros) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.

(2) The Borrower may reborrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.

(3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.

(4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.

(5) No amount may be drawn down under this Facility after the fifth anniversary of the Effective Date of this Agreement.

(6) The Repayment Date shall be the tenth anniversary of the Effective Date of this Agreement.

### Notes to paragraph 9--

1. The repayment date for the Loan must be one or more of -

- a date not less than five years from the date of drawdown,
  - a date not less than five years from the Borrower giving notice in writing to the Lender and the FSA,
- or
- a date not less than five years from the Lender giving notice in writing to the Borrower and the FSA.

2. Whereas this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.

**10. Additional terms**

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

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**11. Jurisdiction**

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

For the attention of the Legal Director
---

Of

Lehman Brothers Limited
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(b) by the Borrower -

For the attention of the Legal Director
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Of

Lehman Brothers Limited
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## Schedule 2

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### C. Standard Terms

#### Interpretation

1 (1) In this Agreement -

**"Advance"** means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

**"Borrower"** means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

**"Business Day"** means any day except Saturday, Sunday or a bank or public holiday in England;

**"Effective Date"** means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

**"Excluded Liabilities"** means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

**"Facility"** means the loan facility referred to in paragraph 2(2);

**"Financial Resources"** has the meaning given in the Financial Rules;

**"Financial Resources Requirement"** has the meaning given it in the Financial Rules;

**"Financial Rules"** means the rules in IPRU(INV) 10 in the FSA handbook;

**"Insolvency"** means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

**"Insolvency Officer"** means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

- 1 (1) "Lender" means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"Loan" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"Partner" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"Senior Liabilities" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"the FSA" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

- (2) Any reference to any rules of the FSA is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

## The Loan or Facility

- 2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –

- (a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;
- (b) the Facility will be available until the last available date specified in the Variable Terms; and

- (c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.
- (3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

### Interest

- 3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

### Repayment

- 4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -
- (3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.
- (b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.
- (c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where -
- (i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or
- (ii) before payment, the Insolvency for the Borrower commences,
- no such payment may be made without the prior written consent of the FSA.
- (4) If in respect of the Loan or any Advance default is made for a period of -
- (a) seven days or more in the payment of any principal due, or
- (b) 14 days or more in the payment of any interest due,



the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days's prior written notice to the FSA of its intention to do so.

- (5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
- (6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -
  - (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
  - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
  - (c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.
- (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

#### **Subordination**

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- (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
  - (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that -
    - (i) paragraph 4(3) has been complied with; and
    - (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and

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- (1) (b) the Borrower being "solvent" at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be "solvent".
- (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be "solvent" if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding -
  - (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
  - (b) the Excluded Liabilities.
- (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
- (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FSA, shall in the absence of proven error be treated and accepted by the FSA, the Lender and the Borrower as correct and sufficient evidence of the Borrower's solvency or Insolvency.
- (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
  - (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
  - (b) where such payment is prohibited under paragraph 4(3),
- (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.
- (7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
- (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

#### **Representations and undertakings of Borrower**

6

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -

- (a) secure all or any part of the Subordinated Liabilities;

- 6.
- (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
  - (c) amend any document evidencing or providing for the Subordinated Liabilities;
  - (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
  - (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
  - (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

#### Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

7 other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

#### **Borrower being a partnership**

8 Where the Borrower is a partnership –

(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –

(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and

(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;

(b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

#### **Partial invalidity**

9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### **The FSA and indemnity**

10 The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

#### **Additional terms**

11 Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.



### **Entire agreement**

- 12 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

### **Amendments**

- 13 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

### **Notices to the FSA**

- 14 A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

### **Law**

- 15 This Agreement is governed by English law.

### **Jurisdiction**

- 16 For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

### **Rights of the FSA.**

- 17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

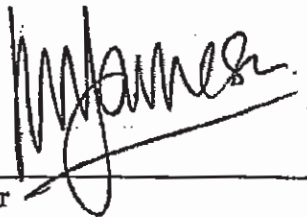


# Subordinated Loan Agreement

## D. Signature Page

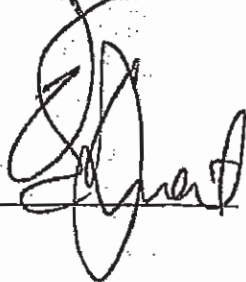
SIGNED for and on behalf of  
LB HOLDINGS INTERMEDIATE 2 LTD

By

  
\_\_\_\_\_  
Director

SIGNED for and on behalf of  
LEHMAN BROTHERS INTERNATIONAL (EUROPE)

By

  
\_\_\_\_\_  
Director

NOVEMBER 2006

LB HOLDINGS INTERMEDIATE 2 LTD

AND

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

---

AGREEMENT

FOR

\$4,500,000,000

LONG TERM

SUBORDINATED LOAN FACILITY

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## Long-Term Subordinated Loan Agreement

### A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in Schedule 1 to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

- (1) the Lender (as defined in the Standard Terms set out in Schedule 2 to this Agreement), and
- (2) the Borrower (as defined in the Standard Terms).

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in Schedule 1 to this Agreement and the Standard Terms set out in Schedule 2 to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

## Schedule 1

### B. Variable Terms

1. Date of Agreement	1 November 2006
2. Effective Date	1 November 2006
3. Lender	LB Holdings Intermediate 2 Ltd.
4. Address of Lender	A company registered in England and Wales under number 5957878 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Lender") which term includes its permitted successors and assigns.
5. Borrower	Lehman Brothers International (Europe)
6. Address of Borrower	A company registered in England and Wales under number 2538254 whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.
7. The Facility	With reference to paragraph 2 of the Standard Terms,  (1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in

United States Dollars to the Borrower.

- (2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed \$4,500,000,000 (Four and a Half Thousand Million United States Dollars) or such other amount as may be agreed between the Borrower and Lender from time to time.

8. **Interest**

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

(1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.

2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.

(3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.



## 9. Repayment

With reference to paragraph 4 (2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are -

- (1) The Borrower may at any time prepay in whole or in part being an amount or integral multiple of \$25,000,000 (twenty five million United States Dollars) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.
- (2) The Borrower may reborrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.
- (3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.
- (4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.
- (5) No amount may be drawn down under this Facility after the fifth anniversary of the Effective Date of this Agreement.
- (6) The Repayment Date shall be the tenth anniversary of the Effective Date of this Agreement.

### Notes to paragraph 9 -

1. The repayment date for the Loan must be one or more of -

- a date not less than five years from the date of drawdown,
  - a date not less than five years from the Borrower giving notice in writing to the Lender and the FSA,
- or
- a date not less than five years from the Lender giving notice in writing to the Borrower and the FSA.

2. Whereas this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.

10. **Additional terms**

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

--

**11. Jurisdiction**

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

For the attention of the Legal Director

Of

Lehman Brothers Limited

(b) by the Borrower -

For the attention of the Legal Director

Of

Lehman Brothers Limited

## Schedule 2

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### C. Standard Terms

#### Interpretation

1 (1) In this Agreement -

“Advance” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Borrower” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“Business Day” means any day except Saturday, Sunday or a bank or public holiday in England;

“Effective Date” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“Facility” means the loan facility referred to in paragraph 2(2);

“Financial Resources” has the meaning given in the Financial Rules;

“Financial Resources Requirement” has the meaning given it in the Financial Rules;

“Financial Rules” means the rules in IPRU(INV) 10 in the FSA handbook;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

- 1 (1) "Lender" means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"Loan" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"Partner" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"Senior Liabilities" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"the FSA" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

- (2) Any reference to any rules of the FSA is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

### The Loan or Facility

- 2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –

- (a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;
- (b) the Facility will be available until the last available date specified in the Variable Terms; and



(c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.

- (3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

### Interest

3

Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

### Repayment

4

- (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -
- (3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.
- (b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.
- (c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where -
- (i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement;  
or
- (ii) before payment, the Insolvency for the Borrower commences,  
no such payment may be made without the prior written consent of the FSA.
- (4) If in respect of the Loan or any Advance default is made for a period of -
- (a) seven days or more in the payment of any principal due, or
- (b) 14 days or more in the payment of any interest due,

the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days' prior written notice to the FSA of its intention to do so.

- (5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
- (6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -
  - (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
  - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
  - (c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.
- (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

#### Subordination

- 5 (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
  - (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that -
    - (i) paragraph 4(3) has been complied with; and
    - (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and

- 5
- (1) (b) the Borrower being "solvent" at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be "solvent".
  - (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be "solvent" if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding -
    - (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
    - (b) the Excluded Liabilities.
  - (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
  - (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FSA, shall in the absence of proven error be treated and accepted by the FSA, the Lender and the Borrower as correct and sufficient evidence of the Borrower's solvency or Insolvency.
  - (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
    - (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
    - (b) where such payment is prohibited under paragraph 4(3),
  - (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.
  - (7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
  - (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

#### **Representations and undertakings of Borrower**

- 6
- From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -
- (a) secure all or any part of the Subordinated Liabilities;

- 6
- (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
  - (c) amend any document evidencing or providing for the Subordinated Liabilities;
  - (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
  - (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
  - (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

#### Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower; and



7 other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

#### **Borrower being a partnership**

8 Where the Borrower is a partnership –

(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –

(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and

(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;

(b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

#### **Partial invalidity**

9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### **The FSA and indemnity**

10 The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

#### **Additional terms**

11 Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.



### **Entire agreement**

- 12 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

### **Amendments**

- 13 This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

### **Notices to the FSA**

- 14 A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

### **Law**

- 15 This Agreement is governed by English law.

### **Jurisdiction**

- 16 For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

### **Rights of the FSA**

- 17 Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

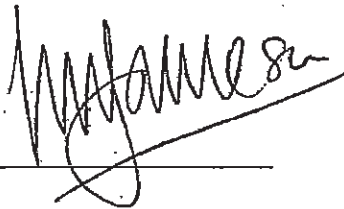
# Subordinated Loan Agreement

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## D. Signature Page

SIGNED for and on behalf of  
LB HOLDINGS INTERMEDIATE 2 LTD

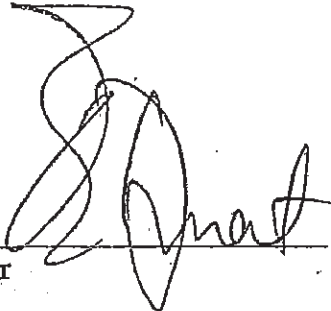
By



\_\_\_\_\_  
Director

SIGNED for and on behalf of  
LEHMAN BROTHERS INTERNATIONAL (EUROPE)

By



\_\_\_\_\_  
Director

November 2006

LB HOLDINGS INTERMEDIATE 2 LTD

AND

LEHMAN BROTHERS INTERNATIONAL (EUROPE)

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AGREEMENT

FOR

\$ 8,000,000,000

SHORT TERM

SUBORDINATED LOAN FACILITY

## Short-Term Subordinated Loan Agreement

### A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in Schedule I to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

#### BETWEEN -

- (1) the Lender (as defined in the Standard Terms set out in Schedule 2 to this Agreement),  
and
- (2) the Borrower (as defined in the Standard Terms)

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) 10-63 and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in Schedule 1 to this Agreement and the Standard Terms set out in Schedule 2 to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms

## Schedule 1

### B. Variable Terms

1. Date of Agreement	1 November 2006
2. Effective Date	1 November 2006
3. Lender	LB Holdings Intermediate 2 Ltd
4. Address of Lender	A company registered in England and Wales whose registered office is situated at 25 Bank Street, London E145LE ("the Lender") which term includes its permitted successors and assigns
5. Borrower	Lehman Brothers International (Europe)
6. Address of Borrower	A company registered in England and Wales whose registered office is situated at 25 Bank Street, London E14 5LE ("the Borrower") which term includes its permitted successors and assigns.



## 7. The Facility

With reference to paragraph 2 of the Standard Terms,

- (1) The Facility hereby offered is a revolving credit facility under which the Lender will, subject to the terms of this Agreement, make Advances in United States Dollars to the Borrower.
- (2) The maximum aggregate principal amount of all Advances outstanding at any time under the Facility shall not exceed \$8,000,000,000 (Eight Thousand Million United States Dollars) or such other amount as may be agreed between the Borrower and Lender from time to time.

## 8. Interest

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

- (1) Until repayment of all Advances in full the Borrower will pay to the Lender interest on Advances or on any part or parts thereof for the time being remaining due hereunder such interest to be calculated and to be payable as hereinafter provided.
- (2) The Borrower agrees to pay to the Lender interest computed on the basis of a 360 (three hundred and sixty) day year on the principal amount of the Advance at the rate per annum specified in sub-clause (3) on the last business day of each month for the periods ending on that date and to pay interest at the same rate per annum on any overdue principal from the due date thereof until the obligations of the Company in respect of such payment shall be discharged.
- (3) The Borrower agrees to pay to the Lender a rate of one week LIBOR plus Lehman Brothers Holdings Inc.'s prevailing long term debt spread (as determined on an annual basis by Lehman Brothers Holdings Inc). The rate shall be set two Business Days prior to the commencement of each new interest period using the then prevailing LIBOR and Lehman Brothers Holdings Inc.'s long term debt spread. Such interest rate may be changed from time to time by mutual agreement of the parties taking into consideration rates generally applicable between affiliates to subordinated debt.

### 9. Repayment

With reference to paragraph 4(2) of the Standard Terms and subject always to 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are –

1) The Borrower may at any time prepay in whole or in part being an amount or integral multiple of \$25,000,000 (twenty five million United States Dollars) any Advance made to it upon giving not less than two Business Days notice to the Lender having first complied with the requirements of paragraph 4 of the Standard Terms.

(2) The Borrower may re-borrow amounts prepaid pursuant to sub-paragraph (1), subject always to the terms and conditions of this Agreement.

(3) The Borrower shall not be entitled to prepay any amounts advanced hereunder except at all times and in the manner expressly provided in this Agreement.

(4) Any notice served on the Lender pursuant to sub-paragraph (1) above shall be ineffective if the insolvency of the Borrower commences before the date on which such notice expires.

(5) No amount may be drawn down under this Facility after the first day of the third month prior to the fifth anniversary of the Effective Date of this Agreement.

(6) The Repayment Date shall be the fifth anniversary of the Effective Date of this

	Agreement.
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Notes to paragraph 9.

1. The repayment date for the Loan must be one or more of--
  - a date not less than two years from the date of drawdown,
  - a date not less than two years from the Lender giving notice in writing to the Borrower and the RSA, or
  - a date not less than two years from the Borrower giving notice in writing to the Lender and the RSA.
2. Where the Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than two years from the date of drawdown, or be subject to not less than two years' notice or have and be subject to both.

**10. Additional terms**

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are --

This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement

**11. Jurisdiction**

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process

(a) by the Lender -

For the Attention of the Legal Director

Of Lehman Brothers Limited

(b) by the Borrower -

For the Attention of the Legal Director

Of Lehman Brothers Limited



## Schedule 2

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### C. Standard Terms

#### Interpretation

(1) In this Agreement –

“Advance” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Borrower” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“Business Day” means any day except Saturday, Sunday or a bank or public holiday in England;

“Effective Date” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“Facility” means the loan facility referred to in paragraph 2(2);

“Financial Resources” has the meaning given in the Financial Rules;

“Financial Resources Requirement” has the meaning given it in the Financial Rules;

“Financial Rules” means the rules in IPRU(INV) 10 in the FSA handbook;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

- (1) "Lender" means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

"Loan" means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

"Partner" means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

"Senior Liabilities" means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Lender in respect of each Advance made under this Agreement and all interest payable thereon.

"the FSA" means The Financial Services Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

- (2) Any reference to any rules of the FSA is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

## the Loan or Facility

- (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby acknowledges its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.
- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility –
  - (a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the

Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

- (b) the Facility will be available until the last available date specified in the Variable Terms; and
  - (c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.
- (3) The Lender and the Borrower undertake to provide the FSA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FSA in the request.

### **Interest**

Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

### **Repayment**

- (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3) -
- (3) (a) Except where the FSA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.  
  
(b) At the request of the Borrower, the FSA may permit the early repayment of the Loan or any Advance may be made, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.

(c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FSA, except that where -

(i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

(ii) before payment, the Insolvency of the Borrower commences,

no such payment may be made without the prior written consent of the FSA.

(4) If in respect of the Loan or any Advance default is made for a period of -

(a) seven days or more in the payment of any principal due, or

(b) 14 days or more in the payment of any interest due,

the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days' prior written notice to the FSA of its intention to do so.

(5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

(6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -

- (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
  - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
  - (c) the Lender has given seven Business Days' prior written notice to the FSA of its intention to institute such proceedings.
- (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

#### **Subordination**

- (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
- (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that --
    - (i) paragraph 4(3) has been complied with; and
    - (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and



- (1) (b) the Borrower being "solvent" at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be "solvent".
  
- (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be "solvent" if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding -
  - (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
  - (b) the Excluded Liabilities.
  
- (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
  
- (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FSA, shall in the absence of proven error be treated and accepted by the FSA, the Lender and the Borrower as correct and sufficient evidence of the Borrower's solvency or Insolvency.
  
- (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
  - (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
  - (b) where such payment is prohibited under paragraph 4(3),
  
- (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.

- (7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
- (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

### **Representations and undertakings of Borrower**

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FSA -

- (a) secure all or any part of the Subordinated Liabilities;
- (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
- (c) amend any document evidencing or providing for the Subordinated Liabilities;
- (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and

other than as disclosed in writing to the FSA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

### **Representations and undertakings of Lender**

From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without prior written consent of the FSA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

other than as disclosed in writing to the FSA, the Lender represents that it has done so before the date of this Agreement (or the Effective Date if earlier).

### **Borrower being a partnership**

Where the Borrower is a partnership –

- (a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption to new Partners or by a change of name PROVIDED THAT –
  - (i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from these obligations and the FSA has agreed in writing to release; and
  - (ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FSA may consider necessary;
- (b) the obligations and undertaking of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

### **Partial invalidity**

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

### **The FSA and indemnity**

) The FSA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FSA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FSA as a consequence of it having rights, or taking action under this Agreement.

### **Additional terms**

) Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

### **Entire agreement**

) This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

### **Amendments**

) This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.



### **Notices to the FSA**

A notice given to the FSA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FSA has given to the sender written confirmation of its receipt.

### **Law**

This Agreement is governed by English law.

### **Jurisdiction**

For the benefit of the FSA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

### **Rights of the FSA**

Although not a party to the Agreement, the FSA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FSA a benefit.

**Short-Term Subordinated Loan Agreement**

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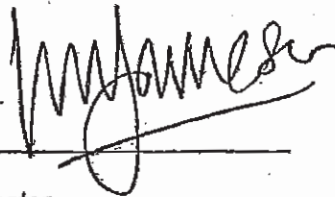
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SIGNED for and behalf of

**LB HOLDINGS INTERMEDIATE 2 LTD**

By



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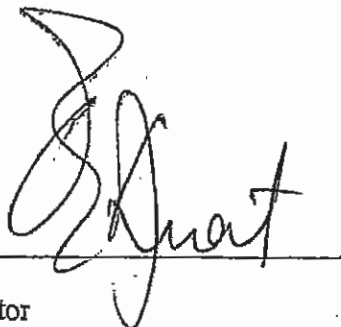
Director

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SIGNED for and on behalf of

**LEHMAN BROTHERS INTERNATIONAL (EUROPE)**

By



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Director

**SUMMARY OF CERTAIN MATERIAL COMMERCIAL TERMS OF ECONOMICS, FUNDING AND TRANSFERS<sup>1</sup>**

Defined terms have the meaning in the Schedule.

1.	Parties	LBHI2 Administrators, LBHI2, LBHI, Elliott and KS
2.	Other entities	LBL, LBIE
3.	Cash Consideration	The Funds shall pay (a) the LBHI Consideration to LBHI and (b) the LBHI2 Sub Debt Consideration plus the LBHI2 Senior Claims Consideration plus the LBHI2 Equity Claims Consideration to LBHI2 on the Effective Date by way of a capital contribution to be made to the Cayman LP, being approximately GBP 650 million in total.
4.	Recovery Pool	The Parties shall contribute into the Recovery Pool:  (a) the KS Contribution;  (b) the Elliott Contribution; and  (c) the LBHI2 Contribution.
5.	Distributions (and Repayments)	Distributions shall be made quarterly, and, in the case of LBHI2 only, deferred consideration payable, (subject to certain adjustments, based on certain contingencies and outstanding disputes, payment of interest to LBHI2 in certain circumstances, and the retention of amounts to meet certain payment obligations, by way of distributions on various classes of interests in the Cayman LP, and payments in respect of other contractual obligations between the Parties and their Affiliates), in the order set out below:  (a) 100% to the Funds until the Funds receive the Tier 1 Pool Threshold Amount;  (b) 70% to the Funds and 30% to LBHI2 until the Funds and LBHI2 have received, in aggregate, the Tier 2 Pool Threshold Amount;  (c) 50% to the Funds and 50% to LBHI2 until the Funds and LBHI2 have received, in aggregate, the Tier 3 Pool Threshold Amount; and  (d) all surplus above the Tier 3 Pool Threshold Amount to be paid 75% to LBHI2 and 25% to the Funds.  Proceeds from the portion of economic interests represented by the Preferred Equity sub-participated to the Equity Claims SPV will be distributed to the Funds.  Proceeds from recoveries in respect of Future Claims will be distributed to

<sup>1</sup> This summary is qualified in its entirety by the terms and conditions of the Material Commercial Terms of Economic Interests, Funding and Transfers (the “**Term Sheet**”) and is intended to be used for information purposes only and shall not in any way affect the meaning or interpretation of Term Sheet. The terms of the Term Sheet control to the extent that there is any conflict or inconsistency between the summary and said terms. This summary is published for information purposes only and should not be relied upon for any purpose. This summary shall be inadmissible as parole evidence in any suit, action or proceeding that may arise out of or in connection with the Term Sheet.

		participating Parties by reference to their interests in those Future Claims.
6.	Funding	<p>Expenses in respect of matters other than Future Claims will be funded by loans from the partners of the Cayman LP based on the voting interests held (e.g., initially 1/3, 1/3, 1/3 for each of Elliott, KS and LBHI2). These loans will be required to fund expenses in an amount equal to GBP 10 million in the first year of operations, GBP 5 million in the second and third years of operations and GBP 2.5 million in each of the fourth and fifth years of operations. These loans will be contributed equally by LBHI2 and the Funds. Usage of these amounts will be pre-agreed between the partners.</p> <p>The majority of Voting Shareholders may cause the Cayman LP to enter into loans with interest at 3 month Libor + 3 year HY CDX spread plus 1% p.a. not to exceed GBP 25 million in the aggregate for the purpose of funding expenses, provided that loans with parties other than partners or LBHI will require unanimous consent of the Voting Shareholders.</p> <p>Additional funding (including the terms of interest thereon) above GBP 25 million in aggregate for the expenses of the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) shall be subject to the unanimous consent of the Voting Shareholders. If any partner determines that it shall not make a loan, the other Voting Shareholders can choose to lend in an amount equal to the deficit on a pro rata basis, provided that in the event that LBHI2 declines to lend, LBHI may assume LBHI2's rights and responsibilities with respect to such additional funding, and shall be entitled to lend as if it were a Voting Shareholder for that purpose on the same terms as would otherwise have applied to LBHI2. For the avoidance of doubt, no shareholder or LBHI shall be required to provide any loan to the Cayman LP (other than the loans described in the first paragraph of this Section 6).</p> <p>Loan Amounts shall first be repaid out of proceeds from the Recovery Pool, and may only be repaid out of other Loan Amounts if all Voting Shareholders agree that there is sufficient funding remaining in the Cayman LP, the Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs).</p> <p>All proceeds received in the Recovery Pool on and after such time as any partnership loan is made shall first be used to discharge the Loan Amounts before distributions are made to the partners pursuant to Sections 5(a), (b), (c), and (d). For the avoidance of doubt, payments in respect of the Loan Amounts shall not count towards the amount of distributions payable to partners pursuant to Section 5(a) – (d) (or the determination of the Tier 1 Pool Threshold Amount, the Tier 2 Pool Threshold Amount or Tier 3 Pool Threshold Amount or payment of amounts in respect thereof or otherwise).</p> <p>A form of the loan agreement shall be attached as an exhibit to the Partnership Agreement.</p> <p>All loans to the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) shall be limited recourse loans. All loans down the corporate chain shall also be limited recourse. This is to ensure that the Cayman LP, Cayman GP and their direct or indirect subsidiaries (including the Recovery SPVs) are insolvency remote.</p> <p>Each Party shall have full visibility into reserve accounts, which accounts shall be established with a third party custodian. Until Cause has occurred, the administrator of the Cayman LP, Cayman GP, and/or a direct or indirect subsidiary of the Cayman LP and Cayman GP (including the</p>

		<p>applicable Recovery SPV) shall be entitled to withdraw from such account to fund pre-agreed expenses incurred by the relevant Recovery SPV. Upon Cause, no withdrawals may occur from any account without the unanimous written consent of the Voting Shareholders.</p>
7.	Future Claims	<p>The Funds and LBHI2<sup>2</sup> shall economically participate 100% of Future Claims which are acquired by them to the Future Claims SPV.</p> <p>Each of the Parties may participate (subject to eligibility) in the purchase and economics of such Future Claims. To the extent that LBHI2 declines to participate but is otherwise eligible to participate, LBHI may participate instead of LBHI2 to the same extent LBHI2 could have so participated. Participation by the Parties shall be determined as follows:</p> <p>(a) If at such time LBHI2 is a Voting Shareholder and wishes to participate in respect of that Future Claim, it must fund 25% of the purchase price (and 75% of the purchase price will be split among the other Voting Shareholders who elect to participate in such Future Claim based on the proportion of the voting interests in the Cayman GP held by such Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2), subject to adjustment based on the Option; or</p> <p>(b) if either (x) LBHI2 declines to participate in respect of that Future Claim (and LBHI declines to participate in that Future Claim to the extent LBHI was entitled to participate in the amount of that Future Claim which LBHI2 declined to participate in) or (y) LBHI2 is not at such time a Voting Shareholder, 100% of the purchase price will be funded by the other participating Voting Shareholders, split among them based on the proportion of the voting interests in the Cayman GP held by such participating Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2 or a non-participating Voting Shareholders, subject to adjustment based on the Option.</p> <p>If an entity offering its Future Claim is a Voting Shareholder, it shall have the right to exercise the Option, in which case all the interests of the other participating Voting Shareholders (other than LBHI2, if then a participating Voting Shareholder or, as the case may be, LBHI) shall in respect of such Future Claim be reduced based on the voting interests in the Cayman GP held by such Voting Shareholders and excluding any voting interests in the Cayman GP held by LBHI2 and the offeror.</p> <p>Partners with an interest in a Future Claim will receive a new class of interests (the Future Claim Interests) in the Cayman LP representing such interest. Recoveries in respect of such Future Claims shall be distributed to participating partners by reference to the Future Claim Interests held by them.</p> <p>For the avoidance of doubt, loans made to fund the acquisition and expenses of a Future Claim and the Future Claims SPV shall be repaid from proceeds of the applicable Future Claim and distributions to holders of the Future Claim Interests in the Cayman LP representing a Future Claim will be made solely with respect to distributions received in respect of such Future Claim, and not from distributions received from the Recovery Pool.</p>

<sup>2</sup> The LBHI2 Administrators have indicated that they do not propose to participate in Future Claims.



		<p>A form of the loan agreement in respect of Future Claims, which form shall be substantially similar for loans in respect of the expenses associated with the Recovery Pool, shall be attached as an exhibit to the Partnership Agreement.</p> <p>Any loan made to the Cayman LP in order to fund the acquisition of Future Claims shall be limited recourse with recourse being limited to the amount of any proceeds received by the Cayman LP in relation to such Future Claims.</p>
8.	LBHI2 Contribution	<p>On the Effective Date, LBHI2 will in each case with no title guarantee:</p> <p>(a) assign to the Senior Claims SPV its right, title and interest in the LBHI2 Senior Claims pursuant to the Senior Claims Assignment Agreement;</p> <p>(b) assign its right, title and interest in the LBHI2 Sub Debt to the Sub Debt SPV pursuant to the Sub Debt Assignment Agreement; and</p> <p>(c) transfer by a sub-participation a portion of the economic interests represented by the Preferred Equity directly to the Equity Claims SPV, with the contractual payment obligations of LBHI2 being an expense of its administration,</p> <p>For the avoidance of doubt, other than as expressly set out in the transaction documentation, no claims or rights of LBHI2 including (i) under any guarantee given by LBHI and (ii) in respect of sums owed by LBL to LBHI2 will be assigned, transferred, conveyed or otherwise participated under any of the agreements listed above.</p>
9.	Synthetic Conveyances	<p>On the Effective Date, LBHI, LBHI2, the Funds, and certain of their Affiliates intend that contractual arrangements will be entered into by certain of those Parties in order that, combined with distributions from the Recovery Pool, the Parties receive the distributions to which they are entitled pursuant to section 5 hereof.</p>
10.	Elliott Contribution and KS Contribution	<p>On the Effective Date, each of Elliott and KS will enter into a swap or other agreement to grant a contractual interest to the Claims SPV in the Elliott Contribution or the KS Contribution, as the case may be, in respect of the Elliott Pooled Claims or the KS Pooled Claims, as the case may be.</p> <p>The Elliott Pooled Claims and the KS Pooled Claims represent all of the non-preferential unsecured claims held by Elliott or KS, as the case may be, against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims.</p> <p>The Estimated Allowed Claims Amount (on an aggregate basis) of the claims comprising the Elliott Pooled Claims and the KS Pooled Claims as of September 30, 2013 was approximately GBP 2.6 billion.</p>
11.	Guarantee and Indemnity	<p>Each of the Funds shall arrange for a payment guarantee and a performance guarantee to be provided by certain of its Affiliates (the "<b>Guarantors</b>"), on a several but not joint basis, for the benefit of the Cayman LP, Cayman GP, the Future Claims SPV and the Claims SPV, which guarantee shall be in form and substance reasonably acceptable to the other Parties, in respect of its and its Affiliates' obligations and liabilities pursuant to the applicable transaction agreements and to the transactions to which it and its Affiliates are a party.</p>

		<p>In addition, the Guarantors will agree to indemnify, on a several but not joint basis, the other Fund and its Affiliates, LBHI and its Affiliates that become a party to the transaction documents and LBHI2 for any losses suffered by such party or parties arising from the non-performance by it and its Affiliates of the relevant Fund of their obligations, including, for the avoidance of doubt, all payment and non-payment obligations, pursuant to the applicable transaction agreements and the transactions to which it or any of its Affiliates are a party.</p> <p>For the avoidance of doubt, notwithstanding any guarantee or indemnity obligations of the Guarantors (a) no Fund (or Affiliate thereof) shall be liable to fund expenses or costs of the Cayman LP or Cayman GP or any SPV without its consent save for the partnership loans referred to in the first paragraph of Section 6 (<i>Funding</i>), (b) enforcement of the indemnity is subject to the provisions of the Partnership Agreement, and (c) no Fund (including its Affiliates) shall be liable for the same loss more than once.</p>
12.	Side Agreements	<p>Save as otherwise agreed between the Parties, the Parties and their respective Affiliates agree that they have not entered into and will not enter into any side agreements or arrangements that (a) are intended, or are reasonably likely, to provide any Party with any economic advantage with respect to the transactions over any other Party who is not a party to such agreement or arrangement; (b) are not consistent with the Underlying Principle and the arrangements referred to in Section 16; (c) affect the terms of the participation agreements, assignment agreement or other agreements between any partner (or its Affiliate) and any of the SPVs; or (d) other than in the case of LBHI2, provide for any benefit, advantage or other collateral interest to any party (beyond the terms offered to the majority of creditors), in relation to any settlement between LBIE's creditors and (as necessary) the administrators of LBIE, including in connection with the formulation of any plan with LBIE to effect such settlement (whether by way of a scheme of arrangement, voluntary arrangement, consensual deal, court application or otherwise).</p> <p>Notwithstanding the foregoing, the partners that hold Future Claim Interests (and, if applicable, LBHI) may enter into loans, as described in Sections 6 (<i>Funding</i>) and 7 (<i>Future Claims</i>), and may enter into transfers, assignments or participations of the relevant assets with their Affiliates so long as the relevant transferee or assignee accedes to the transaction agreements (such as the Claims Participation Agreement) as appropriate.</p>
13.	Transfer Restrictions	<p>There are restrictions on transfer by the partners of their interests in or obligations to the Cayman LP, Cayman GP and any interests in the partnership loans made by them, subject to limited exceptions. These restrictions include limitations on disclosure to prospective transferees of information relating to the Transaction.</p> <p>In addition, each of Elliott, KS and LBHI2 have a tag-along right to participate in any proposed sale by one of the others of its interests in the Cayman LP and the Cayman GP.</p>
14.	Taxes	<p>In connection with the assignment, transfer, participation of or contractual obligation to fund equivalent amounts in respect of the Elliott Contribution and the KS Contribution, it is expected that the parties transferring, assigning or participating such assets or undertaking such payment obligations, as the case may be, shall remit amounts received (whether directly or indirectly) in respect of distributions and other amounts as if no deduction or withholding is required to be made in respect of any such receipt (whether direct or indirect) or remittance.</p>

		In the event that any deduction or withholding is required to be made in respect of any payments to be made by LBHI2 to the Equity Claims SPV, Sub Debt SPV or Senior Claims SPV in respect of the Preferred Equity, LBHI2 Sub Debt or LBHI2 Senior Claims, then such payments shall be made net of such withholding tax or deduction and LBHI2 shall be under no obligation to gross up such payments, except that adjustment shall be made to the distributions received by LBHI2 in certain circumstances to reflect such withholding or deductions (subject to certain exceptions).
15.	Corporate Governance	<p>LBHI, LBHI2, the LBHI2 Administrators, Elliott and KS (or their respective Affiliates) will enter into a Partnership Agreement with such governance arrangements as may be mutually agreed among the parties. Voting rights in relation to the Cayman LP shall be held by each of LBHI2, Elliott and KS on a 1/3:1/3:1/3 basis initially. The Partnership Agreement shall contain market standard provisions for transactions of this type, and will contain a covenant by the parties thereto to comply with the Underlying Principle (provided that LBHI and/or LBHI2 may be released from such covenant to comply with the Underlying Principle in certain circumstances).</p> <p>LBHI will have a non-voting interest in the Cayman GP (the Class H Share) which will not convey any economic interest in the Cayman LP or Cayman GP, but will give LBHI the right to attend and speak at meetings and information rights.</p>
16.	Conduct Regarding Recovery Pool	<p>The power and authority of the relevant SPVs to deal with the Recovery Pool and related matters shall be set out in various protocols.</p> <p>The Parties have agreed to assist and co-operate fully with the SPVs and each other in the above actions, to act in good faith in their dealings with each other and to conduct themselves on terms that are consistent with the Underlying Principle (save, in the case of LBHI and LBHI2 only, to the extent agreed otherwise by the Funds).</p>
17.	Governing law and Jurisdiction	<p>The Term Sheet, the Senior Claims Assignment Agreement, Equity Claims Participation Agreement, Sub Debt Assignment Agreement and Partnership Agreement shall be governed by English law. A person who is not a party to such agreements shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of such agreements.</p> <p>The Claims Participation Agreement, the Future Claims Participation Agreement shall be governed by New York law.</p> <p>Each agreement shall have a jurisdiction clause which provides for the exclusive jurisdiction of the English courts where the governing law is English or the non-exclusive jurisdiction of the English courts where another law is the governing law.. The governing law and jurisdiction provisions will provide that all English law governed agreements will be subject to the exclusive jurisdiction of the English courts and all New York law governed agreements will be subject to the non-exclusive jurisdiction of New York courts and English courts, and that any dispute which involves agreements with different governing laws can only be resolved before the English courts.</p>
18.	Cleansing	Each of Elliott, KS, LBHI and LBHI2 agree that, on the Effective Date, LBHI and/or LBHI2 will make public the material non-public information in respect of the transactions contemplated in the Term Sheet by way of a public statement or announcement and the form of such announcement will be subject to reasonable review and agreement by the Funds prior to it

		being made.
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## SCHEDULE – DEFINITIONS

Admitted Claim	A non-preferential unsecured claim of a creditor of LBIE in respect of which the LBIE Administrators or, as the case may be, liquidators of LBIE have admitted such creditor's proof of debt for dividend, either for the whole amount claimed or for part of that amount, payable from the estate of LBIE available to its unsecured creditors pursuant to the Insolvency Rules or the Insolvency Act (or, if applicable, as amended, compromised, satisfied or discharged pursuant to the terms of, inter alia, a scheme of arrangement pursuant to the U.K. Companies Act of 2006 (as amended) or a company voluntary arrangement pursuant to the Insolvency Act or other binding arrangement or compromise of an Admitted Claim by the LBIE Administrators or the liquidators of LBIE pursuant to their powers under the Insolvency Act.
Admitted Claim Amount	The amount for which any proved debt is admitted in the LBIE Administration or, as the case may be, a subsequent liquidation of LBIE.
Affiliates	(i) A "parent undertaking" or "subsidiary undertaking" (as defined in section 1162 of the Companies Act 2006 (as amended)) of a person together with any other subsidiary undertakings of the parent undertaking of that person, or (ii) an "Affiliate" as defined in Rule 405(1) of the Securities Act of 1933 (as amended); provided that, in the case of LBHI2, "Affiliate" shall not include LBIE.
Cause	To include a material breach by the administrator of any administration agreement, any insolvency or bankruptcy or similar proceeding or procedure in any jurisdiction of the administrator or a termination of the administrator pursuant to the Partnership Agreement and such other terms to be agreed between the Parties.
Cayman GP	An exempted company formed in the Cayman Islands acting as general partner of the Cayman LP.
Cayman LP	An exempted limited partnership formed in the Cayman Islands acting as sole shareholder of the Cayman Company.
Cayman Company	The proposed exempted company to be formed in the Cayman Islands, which company shall be the sole shareholder of the Cayman Holding Company and limited partner of the Luxembourg Holding Company.
Cayman Holding Company	The proposed exempted company to be formed in the Cayman Islands, which company shall be the sole shareholder and 100% direct owner of the general partner of the Luxembourg Holding Company.
Claims Participation Agreement	The agreement to be entered into between the Claims SPV and KS or Elliott (and any relevant affiliates) relating to the participation in the Elliott Contribution and the KS Contribution.
Claims SPV	A Luxembourg securitisation vehicle that will enter into the Claims Participation Agreement.
Future Claim Interests	Interests in the Cayman LP to be issued on the acquisition of a Future Claim, representing the right to receive distributions from recoveries in respect of such Future Claim. Future Claim Interests will be issued to participating partners.



Currency Loss Payments	The aggregate of all payments made by LBIE from the LBIE Assets to a creditor in relation to the difference between (i) the sum for which LBIE is liable to the creditor under or in respect of the contracts and agreements underlying a provable claim in the relevant contractual currency; and (ii) the aggregate sum received by the creditor in respect of its Admitted Claim Amount in relation to such claim, converted into the relevant contractual currency in (i) above as at the date of payment from LBIE.
Effective Date	The date on which all the transaction agreements have been executed and all conditions precedent to each such agreement satisfied or effectively waived.
Elliott	Certain funds controlled or managed by Elliott Management Corporation which have or acquire an interest in non-preferential unsecured claims against LBIE.
Elliott Contribution	The aggregate amount of all distributions paid by LBIE in respect of the Elliott Pooled Claims in excess of the Funds Contribution Threshold, without deductions for any Elliott Excluded Risks.
Elliott Excluded Risks	With respect to the Elliott Pooled Claims, any matter that results in Elliott, or its Affiliates, failing to receive any amount in respect of any distribution on the Elliott Pooled Claims (whether from LBIE, any intermediate seller and/or any other counterparty).
Elliott Pooled Claims	All rights (whether actual or contingent or held directly or indirectly) of Elliott to receive distributions from LBIE in respect of the claims to be listed in a schedule to the Claims Participation Agreement to be entered into by Elliott (which claims represent all of the non-preferential unsecured claims held by Elliott against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims, including the right to receive distributions in respect of Provable Sums, Post Administration Interest and/or Currency Loss Payments in relation to such claims.
Equity Claims SPV	A Luxembourg securitisation vehicle that will enter into the Equity Claims Participation Agreement.
Equity Claims Participation Agreement	The agreement to be entered into between the Equity Claims SPV and LBH12 relating to the proceeds of the Preferred Equity.
Estimated Allowed Claims Amount	Means, in respect of the KS Pooled Claims or Elliott Pooled Claims (a) which are Admitted Claims, the aggregate Admitted Claim Amounts in respect of such Admitted Claims in the LBIE Administration and (b) which are not Admitted Claims, the aggregate offer amount (if applicable) in respect of such claims, or, if no offer amount is applicable, the claim amount in respect of such claims.
Funds	KS and Elliott
Funds Contribution Threshold	For the KS Pooled Claims and the Elliott Pooled Claims, as the case may be, an amount equal to the aggregate of: (a) the Admitted Claim Amounts in respect of all of the claims, and (b) interest on the amounts of those Admitted Claim Amounts which are outstanding from time to time from 15 September 2008, calculated at the simple rate of 8% p.a., up to a limit of 5.375 years average weighted distribution life (for the avoidance of doubt, total interest is limited to 43% of each Admitted Claim Amount).

Future Claims	Any non-preferential unsecured claim against LBIE to be acquired after September 30, 2013 by KS, Elliott or LBHI2.
Future Claims Participation Agreement	The agreement to be entered into between the Future Claims SPV and the contributing partner relating to a Future Claim, in a form substantially similar to the Claims Participation Agreement.
Future Claims SPV	A Luxembourg securitisation vehicle that will enter into a Future Claims Participation Agreement.
Insolvency Act	The U.K. Insolvency Act of 1986 (as amended).
Insolvency Rules	The U.K. Insolvency Rules 1986 (as amended).
KS	Certain funds controlled or managed by King Street Capital Management, L.P. which have or acquire an interest in non-preferential unsecured claims against LBIE.
KS Contribution	The aggregate amount of all distributions paid by LBIE in respect of the KS Pooled Claims in excess of the Funds Contribution Threshold, without deductions for any KS Excluded Risks.
KS Excluded Risks	With respect to the KS Pooled Claims, any matter that results in KS, or its Affiliates, failing to receive any amount in respect of any distribution on the KS Pooled Claims (whether from LBIE, any intermediate seller and/or any other counterparty).
KS Pooled Claims	All rights (whether actual or contingent or held directly or indirectly) of KS to receive distributions from LBIE in respect of the claims to be listed in a schedule to the Claims Participation Agreement to be entered into by KS (which claims represent all of the non-preferential unsecured claims held by KS against LBIE (including by way of participation, assignment or any other arrangement) that are not Future Claims, including the right to receive distributions in respect of Provable Sums, Post Administration Interest and/or Currency Loss Payments in relation to such claims.
LBHI	Lehman Brothers Holdings Inc.
LBHI Consideration	The amount of consideration paid to LBHI or any of its affiliates in respect of any conveyance of the Preferred Equity (including by way of a Synthetic Conveyance referred to in Section 9 ( <i>Synthetic Conveyances</i> )).
LBHI Contribution	An amount equal to all proceeds, distributions, interest, expenses, penalties and other amounts received (or receivable by it but for its actions or omissions or the actions or omissions of any of its subsidiaries controlled (directly or indirectly) by it), (directly or indirectly) by LBHI from LBHI2 to the extent such amounts have not been otherwise contributed to the Recovery Pool.
LBHI2	LB Holdings Intermediate 2 Limited
LBHI2 Administrators	The joint administrators appointed in respect of LBHI2 pursuant to the U.K. Insolvency Act 1986 (as amended) from time to time, being (at the date of the Term Sheet), Derek Anthony Howell, Anthony Victor Lomas, Julian Guy Parr, Steven Anthony Pearson and Gillian Eleanor Bruce, together with any persons appointed as additional or replacement administrators.

LBHI2 Contribution	The aggregate of all amounts contributed by LBHI2 to the Sub Debt SPV, Equity Claims SPV or Senior Claims SPV in respect of (a) the LBHI2 Sub Debt, (b) the Preferred Equity and (c) the LBHI2 Senior Claims.
LBHI2 Equity Claims Consideration	The amount (if any) of the GBP 627,082,799.24 cash element of part of the Purchase Price which the Parties shall have allocated in respect of the Preferred Equity as adjusted to reflect any Synthetic Conveyances referred to in Section 9 ( <i>Synthetic Conveyances</i> ).
LBHI2 Scheduled Creditors	Lehman Brothers Holdings PLC Lehman Brothers Holdings Scottish LP 3 Luxembourg Finance SARL
LBHI2 Senior Claims	The unsecured claim of LBHI2 against LBIE for the amount of GBP 38,089,911.30.
LBHI2 Senior Claims Consideration	The amount equal to GBP 22,917,200.76.
LBHI2 Sub Debt	The sum of GBP 1,254,165,598.48 plus interest due from LBIE to LBHI2 pursuant to 3 subordinated loan facility agreements each dated 1 November 2006 in the amounts of €3 billion, \$4.5 billion and \$8 billion, respectively, together with such rights and benefits of LBHI2 (but not obligations of LBHI2 in connection with such facility agreements) as further set out in the Sub Debt Assignment Agreement.
LBHI2 Sub Debt Consideration	The amount of the GBP 627,082,799.24 cash element of part of the Purchase Price which the parties shall have allocated in respect of the LBHI2 Sub Debt.
LBIE	Lehman Brothers International (Europe) (in administration).
LBIE Administration	The administration of LBIE commenced on 15 September 2008 pursuant to the Insolvency Act.
LBIE Administrators	The joint administrators appointed in respect of LBIE pursuant to the Insolvency Act from time to time, being (at the date of the Term Sheet), Anthony Victor Lomas, Paul David Copley, Russell Downs, Steven Anthony Pearson and Julian Guy Parr, each a licensed insolvency practitioner of PricewaterhouseCoopers LLP, 7 More London, Riverside, London SE1 2RT, together with any persons appointed as additional or replacement administrators.
LBIE Assets	The assets of LBIE.
LBL	Lehman Brothers Limited.
Loan Amounts	The principal amount of any loan made by a Voting Shareholder or LBHI to fund expenses of the Cayman LP, Cayman GP or any other subsidiary of the Cayman LP (other than the Future Claims SPV) and the Recovery SPVs, plus interest on such loan and reasonable legal fees, if any, in connection with obtaining the loans and shall exclude any partnership loans made to fund the acquisition of any Future Claims.
Luxembourg Holding Company	The proposed Luxembourg holding company of the SPVs.

Option	An option exercisable by a Voting Shareholder that is offering its Future Claim to the Future Claims SPV to increase its participation in the Future Claim (which will be reflected by increasing the Future Claim Interests issued by the Cayman LP to such Voting Shareholders in respect of such Future Claim) by up to 10% of such Future Claim.
Partnership Agreement	(i) the shareholders' agreement by and among the Cayman GP and the shareholders in the Cayman GP, which shall initially be LBHI, LBHI2, KS, and Elliott, setting forth the corporate governance amongst the parties, in the form to be agreed by each of Elliott, KS, LBHI2 and LBHI, in their reasonable discretion; and (ii) the limited partnership agreement by and among the Cayman GP, LBHI and the limited partners of the Cayman LP, which shall initially be LBHI, LBHI2, KS and Elliott, setting forth the corporate governance amongst the parties, in the form to be agreed by each of Elliott, KS, LBHI2 and LBHI, in their reasonable discretion.
Post Administration Interest	Interest payable on proved debts pursuant to Rule 2.88(7) of the Insolvency Rules (and, if applicable, section 189(2) of the Insolvency Act.
Preferred Equity	All preferred equity held by LBHI2 in LBIE.
Provable Sums	The elements of claims against LBIE which are (or would be) provable in the administration or a subsequent liquidation of LBIE pursuant to Chapter 10 of Part 2 or Chapter 9 of Part 4 of the Insolvency Rule 1986, respectively or finally determined pursuant to a settlement agreement, scheme, voluntary arrangement or a consensual deal in relation to LBIE.
Purchase Price	The aggregate of the LBHI2 Sub Debt Consideration, the LBHI2 Equity Claims Consideration and the LBHI2 Senior Claims Consideration.
Recovery Pool	The recovery pool consisting of all the assets in, or deriving from, the LBHI2 Contribution, the KS Contribution and the Elliott Contribution (as adjusted to include the LBHI Contribution, to the extent required).
Recovery SPVs	Sub Debt SPV, Equity Claims SPV, Senior Claims SPV and Claims SPV (or any of them).
Senior Claims Assignment Agreement	The agreement to be entered into between the Senior Claims SPV and LBHI2 relating to the LBHI2 Senior Claims.
Senior Claims SPV	A Luxembourg securitisation vehicle that will enter into the Senior Claims Assignment Agreement.
SPVs	Any of (or all, as the case may be) of the Cayman GP, the Cayman LP and the subsidiaries of the Cayman LP including the Cayman Company, Cayman Holding Company, the general partner of the Luxembourg Holding Company, Luxembourg Holding Company, the Recovery SPVs and Future Claims SPV.
Sub Debt Assignment Agreement	The agreement to be entered into between the Sub Debt SPV and LBHI2 relating to the LBHI2 Sub Debt.
Sub Debt SPV	A Luxembourg securitisation vehicle that will enter into the Sub Debt Assignment Agreement.

Term Sheet	The Material Commercial Terms of Economics, Funding and Transfers setting out the key terms of the Transaction.
Tier 1 Pool Threshold Amount	An amount equal to the GBP 650 million cash element of the Purchase Price.
Tier 2 Pool Balance	The Tier 2 Pool Threshold Amount minus the distributions received prior to distributions equaling the Tier 2 Pool Threshold Amount.
Tier 2 Pool Threshold Amount	GBP 1.3 billion plus interest calculated at the simple rate of 2.25% p.a. applied to the Tier 2 Pool Balance on and after the earlier of the Effective Date and 30 November 2013.
Tier 3 Pool Balance	The Tier 3 Pool Threshold Amount minus distributions received by the parties prior to distributions equaling the Tier 3 Pool Threshold Amount.
Tier 3 Pool Threshold Amount	Means, on any date, GBP 2.2 billion plus interest accrued on the Tier 3 Pool Balance calculated daily on the basis of a year of 365 days and at the simple rate of 4.25% p.a. for the period from and including the earlier of the Effective Date and 30 November 2013 until such date.
Transaction	Means the Transaction as contemplated by the Term Sheet.
Underlying Principle	<p>The parties (i) shall act or, to their knowledge, omit to act in accordance with the underlying principle of enhancing the recoveries for the Recovery Pool and the Preferred Equity and (ii) shall not act in a manner adverse to the economic interests of the LBHI2 Scheduled Creditors (in their capacity as such), in each case in light of the circumstances and facts at such time, PROVIDED THAT this underlying principle shall not:</p> <ul style="list-style-type: none"> <li>(a) apply to actions or omissions of Lydian Overseas Partners Master Fund, Ltd. (or the investment manager of the liquidator of the Lydian Overseas Partners Master Fund, Ltd. vehicle and to the extent that the liquidator is not approved by the applicable court, any alternative liquidator) in connection with Lydian Overseas Partners Master Fund, Ltd.'s position as a party to the Waterfall Application;</li> <li>(b) apply to actions or omissions of LBHI in connection with matters not the subject matter of the Transaction and the Waterfall Application; or</li> <li>(c) prevent a party from taking any action to enhance the recoveries for the Recovery Pool by reducing the level of claims against LBIE of parties other than those of LBHI2, LBHI, Elliott or KS against LBIE (save insofar as such actions might indirectly increase claims against LBHI2).</li> </ul>
Voting Shareholder	Each of KS, Elliott and LBHI2, to the extent that such parties are not subject to an event of default (as described and determined in accordance with the Cayman GP shareholders' agreement).
Waterfall Application	The joint application dated 14 February 2013 by the joint administrators of LBIE, the LBHI2 Administrators and the joint administrators of LBL for directions in relation to various issues concerning the respective rights and obligations of LBIE, LBHI2 and LBL.



# Linklaters

