

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.**

If you have sold or otherwise transferred any or all of your interests as an OSA Eligible Offeror (as defined in the proposed Omnibus Settlement Agreement (the “OSA”)) or a CRA Omnibus Beneficiary (as defined in the Resolution (as defined below)), please send a copy of this document as soon as possible to the transferee and notify Lehman Brothers International (Europe) (in administration) (the “Company”) of such transfer and any other change in your circumstances. Both the OSA and the Resolution are available on the Client Asset Portal (“Portal”) of the Company at: [https://dm.pwc.com/LBIE\\_CIP/](https://dm.pwc.com/LBIE_CIP/).

Further copies of this document may be downloaded from the PricewaterhouseCoopers LLP website at <http://www.pwc.co.uk/business-recovery/administrations/lehman/lehmans-stakeholder-client-assets.jhtml>.

The information used by or relied upon by the Company for the purpose of determining whether the relevant threshold of aggregate Best Claims (as defined in Part I) of all OSA Eligible Offerors whose OSA Offers have been accepted by the Company has been met, or the resolution (the “Resolution”) to amend the Claim Resolution Agreement dated 29 December 2009, as amended and restated on 8 December 2011 (the “CRA”), has been passed, is not determinative of any rights or claims of any person and should not be used or relied upon by such person for that or any other purpose. This information is not an indication of any allocation or distribution of assets or calculation of claims or liabilities that a person may receive or have under the OSA, the CRA or otherwise.

You should read the whole of this document and the documents incorporated herein by reference. In particular, your attention is drawn to Part V (Taxation) and Part VI (Risk Factors associated with the Proposals) of this document.

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Information Memorandum in relation to a proposed

**OMNIBUS SETTLEMENT AGREEMENT and RESOLUTION (AMENDING AND  
RESTATING THE CLAIM RESOLUTION AGREEMENT)**

between

**LEHMAN BROTHERS INTERNATIONAL (EUROPE)**

(in administration)

and

**OSA ELIGIBLE OFFERORS (in relation to the Omnibus Settlement Agreement)**

and

**CRA OMNIBUS BENEFICIARIES (in relation to the Resolution)**

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The procedure for an OSA Eligible Offeror making an OSA Offer (as defined in the OSA) in respect of the OSA Invitation (as defined in the OSA) is set out in the OSA which is available on the Portal. The procedure for CRA Omnibus Beneficiaries approving the Resolution is set out in the notice of the Resolution which is available on the Portal.

## Important Notices

This document has been prepared solely in connection with the OSA and the Resolution.

The information contained in this Information Memorandum has been prepared by the Company based upon information available to it and has not been independently verified by any other person. The statements contained in this Information Memorandum are made as at the date of this Information Memorandum, unless some other time is specified in relation to them, and delivery or service of this Information Memorandum shall not give rise to any implication that there have been no changes in the facts set out in this Information Memorandum since such date or that the information in this Information Memorandum is correct as at any time subsequent to such date.

Nothing contained in this Information Memorandum shall constitute any admission of any fact or liability on the part of the Company or the joint administrators of the Company (the “**Joint Administrators**”) with respect to any asset to which it, they or any person may be entitled or any claim against it, them or any person.

The summary of the principal provisions and effect of the OSA and the Resolution set out in **Part III** of this Information Memorandum, and the information and explanations set out in **Part I** of this Information Memorandum, should be read alongside the OSA, the full text of which can be found on the Portal, and the Resolution, the full text of which can also be found on the Portal. In the event of any discrepancy or inconsistency between the provisions of the OSA, the Common Terms and/or the Resolution and any information or statement set out elsewhere in this document, the provisions of the OSA, the Common Terms and/or the Resolution (as applicable) shall prevail. Each recipient of this Information Memorandum is advised to read and consider carefully the text of the OSA and/or the Resolution and to make an independent decision in relation to the OSA or the Resolution (as applicable). Nothing in this Information Memorandum should be relied upon or treated as a recommendation or an inducement to enter into the OSA or approve the Resolution.

This Information Memorandum has been prepared solely to assist OSA Eligible Offerors and CRA Omnibus Beneficiaries in relation to the Proposals (as defined in **Part I**). This Information Memorandum does not purport to be comprehensive or to contain all the information that a recipient may need in order to evaluate the Proposals. No representation or warranty, express or implied, is given and, so far as is permitted by law and except in the case of fraud, no responsibility or liability is accepted by any person, with respect to the accuracy or completeness of this Information Memorandum or its contents or any oral or written communication in connection with the Proposals. Nothing in this Information Memorandum should be relied upon for any other purpose, including, without limitation, in connection with the purchase or sale of any asset or liability of the Company.

No person has been authorised by the Company or any of the Joint Administrators to make any representations or give any information other than the statements contained herein, and, if given or made, such representations or information must not be relied upon as having been authorised by the Company or any of the Joint Administrators.

The Joint Administrators are acting as agents for and on behalf of the Company and none of the Joint Administrators, their advisers or their firm or in each case their or their firms’ advisers, members, agents, partners, officers, directors, employees or representatives shall incur any personal liability whatsoever in respect of any of the information contained in this Information Memorandum, obligations undertaken or assumed by the Company, or in respect of any failure on the part of the Company, in relation to the OSA or the Resolution. The exclusion of liability set out in this paragraph shall arise and continue notwithstanding the termination of the agency of the Joint Administrators and shall operate as a waiver of any claims in tort as well as under the laws of contract or otherwise. The Joint Administrators, their advisers and/or their firm and/or in each case their or their firms’ advisers, members, agents, partners, officers, directors, employees or representatives shall be entitled to rely on, enforce and enjoy the benefit of this paragraph as if they were a party to this Information Memorandum.

Recipients of this Information Memorandum should not construe the contents of this Information Memorandum as legal, tax or financial advice.

Terms used in this Information Memorandum have the meanings ascribed to them herein, or otherwise as defined in the OSA, Common Terms, CRA or the Resolution.

NONE OF THIS INFORMATION MEMORANDUM, THE OSA, THE NOTICE OF THE RESOLUTION, THE RESOLUTION, OR ANY OTHER DOCUMENT RELATING TO THE OSA OR THE RESOLUTION HAS BEEN PREPARED FOR THE PURPOSES OF ANY SOLICITATION OR OFFER TO THE PUBLIC IN ANY JURISDICTION OR TERRITORY AND THIS INFORMATION MEMORANDUM AND SUCH OTHER DOCUMENTS MAY NOT BE DISTRIBUTED OR MADE AVAILABLE FOR SUCH PURPOSE. NEITHER THIS INFORMATION

MEMORANDUM, THE OSA, THE RESOLUTION NOR ANY OTHER DOCUMENT RELATING TO THE OSA OR THE RESOLUTION HAS BEEN SUBMITTED FOR CLEARANCE TO ANY REGULATORY AUTHORITY.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF US FEDERAL TAX ISSUES IN THIS INFORMATION MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY YOU FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON YOU UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS INCLUDED HEREIN BY THE COMPANY IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE COMPANY OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) YOU SHOULD SEEK ADVICE BASED ON YOUR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.

IF YOU ARE IN ANY DOUBT ABOUT ANY OF THE CONTENTS OF THIS INFORMATION MEMORANDUM, YOU SHOULD OBTAIN INDEPENDENT PROFESSIONAL ADVICE.

Dated 28 February 2013

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## KEY ACTIONS

You should read this Information Memorandum as a whole, including all documents scheduled to it.

**If you are a CRA Omnibus Beneficiary**, your attention is drawn to Section 1 (*Key terms of the Proposals*) and Section 3 (*The Amended and Restated CRA and the Resolution*) of Part III as well as the notice of the Resolution, the Common Terms, the Resolution and the Amended and Restated CRA which are available on the Portal. **If you are not a CRA Omnibus Beneficiary and are an OSA Eligible Offeror**, your attention is drawn to Section 1 (*Key terms of the Proposals*) and Section 2 (*The OSA*) of Part III as well as the OSA and the Common Terms which are available on the Portal.

**OSA Eligible Offerors who wish to participate** in the Proposals must make an OSA Offer to the Company through the Portal.

**CRA Omnibus Beneficiaries who wish to approve** the Resolution must do so through the Portal.

If you are a CRA Omnibus Beneficiary, even if you choose not to approve the Resolution, if you wish to dispute your Best Claim (as defined in Part I) you must do so by the last date for approval of the Resolution or, if the Resolution is approved by the requisite majority, you will lose your right to do so. Also, if the Resolution is approved, you will be required to make certain representations.

**Customers with LBI Asset Claims** (as defined in Part I) are requested to submit US tax forms appropriate to their circumstances (which may from time to time need to be updated). The current applicable US tax forms are available via the Portal or from the IRS website. Customers must send two hard copies of the original signed forms to the Company for the attention of the Tax Department. Failure to submit the relevant tax forms may affect the amount that a Consenting Beneficiary or Non-Consenting Beneficiary (each as defined in Part I) will receive.

If you authorise a third party to make an OSA Offer or approve the Resolution (as applicable) on your behalf, you should ensure that evidence of the third party's authority to bind you (for example a power of attorney) is provided through the Portal.

## PART I: LETTER FROM THE JOINT ADMINISTRATORS

To: The OSA Eligible Offerors and CRA signatories with LBI Asset Claims

Date: 28 February 2013

Dear Sirs

### 1 Introduction

The purpose of this letter is to introduce and provide an explanation of the proposals (the "**Proposals**") that are being made by the Joint Administrators of the Company to a discrete population of its customers. Such customers (where applicable, invited by the Company) are those with claims (other than simply unsecured creditor claims) in relation to securities and/or cash positions which are recorded in the Company's books and records as being held for the benefit or account of such customers of the Company by Lehman Brothers Inc. ("**LBI**") at 19 September 2008 (each an "**LBI Asset Claim**"). The Proposals are to settle on a consensual basis the claims of the relevant customers against the Company in respect of such securities and/or cash positions. In settlement of the claims, each customer that becomes a party to the Proposals will be entitled to have allocated to it a share of the proceeds of the securities and cash received by the Company from LBI.

Since the commencement of the administration of the Company, one of the principal objectives of the Joint Administrators has been to recover and return customers' assets. Where these assets were held through the Company's own custodians, clearing systems, depositories or nominees rather than elsewhere within the Lehman group of companies, the Company has now, to a very substantial extent, managed to recover and return those assets to customers. However, the collapse of the Lehman group resulted in the insolvency of key affiliates of the Company, including, in particular, the US broker-dealer, LBI. LBI was the entity that acted as custodian of North American securities held by the Company for its customers. LBI's insolvency is being conducted in the United States of America ("**US**") in accordance with the Securities Investor Protection Act of 1970 ("**SIPA**").

As a result of the insolvency of LBI, up until now it has not been possible for the Company to recover customers' assets held through LBI. However, as indicated in earlier communications with you, the Company has now entered into a settlement agreement (the "**Settlement Agreement**") with the SIPA trustee of LBI (the "**LBI Trustee**"). Under the Settlement Agreement, if and when it becomes effective, all of the Company's claims against LBI including the claim made by the Company in respect of LBI Asset Claims of its customers (the "**Omnibus Claim**") will be settled and LBI will distribute in one or more distributions to the Company cash and securities in settlement of the Omnibus Claim (the "**LBI Distribution**"). It is a condition of the Settlement Agreement that LBI will be making a distribution of 100 per cent. in respect of all customer claims made against it which LBI has allowed. If the Settlement Agreement becomes effective, there will therefore be no unsecured shortfall claims by customers against LBI.

Following receipt of the LBI Distribution by the Company, the Company wishes to allocate that LBI Distribution and make onward distributions out of those allocations to its customers in settlement of their respective entitlements. The purpose of the Proposals is to agree the basis on which the allocations and those distributions will be made so that distributions can be made earlier than would be the case if no agreement was reached.

The receipt of the LBI Distribution will give rise to a number of potentially complex matters which in the absence of the Proposals being accepted will require clarification through the English courts. That process will lead to disputes, delay and significant further expense. There is, therefore, a substantial risk that even if the Company recovers the LBI Distribution under the Settlement Agreement if the Proposals are not accepted, distribution to customers will, in such circumstances, be delayed and the value to be distributed to any individual customer is unlikely to be ascertained for some time pending appropriate determination of the nature of those individual entitlements.

The Company is, therefore, making the Proposals set out in this Information Memorandum in order to expedite and facilitate the resolution of the claims of its customers in respect of their LBI Asset Claims and to effect a distribution of the LBI Distribution to relevant customers more efficiently and speedily than would otherwise be the case.

The details of the processes to implement these Proposals and the full terms and conditions of the documents giving effect to these Proposals are available on the Portal. The description of them in this letter is provided only by way of summary. It is essential for you to read this Information Memorandum and the documents on the Portal in full, in order to properly assess these Proposals and their possible impact upon you. If there is any conflict between those terms and conditions and this summary, then those terms and conditions shall prevail.

## **2 Certain key aspects of the Proposals**

The Proposals are based on a number of basic propositions concerning customers' trust claims to assets held through LBI. These propositions can be summarised as follows:

- customers who become bound by the documents giving effect to the Proposals ("**Consenting Beneficiaries**") should all receive the same commercial treatment under the Proposals;
- the LBI Distribution, when recovered by the Company from LBI in settlement of the Omnibus Claim, will be held on trust for the Company's relevant customers collectively. Accordingly, each Consenting Beneficiary will have a beneficial interest in the LBI Distribution for its respective share of that common pool of property, but no Consenting Beneficiary will have any beneficial interest in any specific individual asset comprised in that pool;
- the LBI Distribution comprises a mixed pool of trust property and in order to effect distributions to Consenting Beneficiaries efficiently and fairly as between Consenting Beneficiaries, the trust property will, to the extent that it comprises assets other than US dollar cash, be liquidated and distributions will only be made in US dollars;
- the Company will, subject to certain rights to withhold and deduct certain amounts and to retain amounts due to it or which are, or are anticipated to be, required to be deducted or withheld or due, distribute the entire LBI Distribution to its relevant customers;
- claims against the Company with respect to the LBI Distribution from relevant customers who do not accept the Proposals will remain unaffected, although claims against LBI from customers may be subject to an expungement order that has been sought by LBI; and



- the Proposals are subject to the conditions set out in paragraph 9 below.

### 3 Mechanisms

The terms and conditions governing the Proposals are set out in the Common Terms, the notice of the Resolution, the Resolution, the Amended and Restated CRA and the OSA (available on the Portal). The process for becoming bound by the Common Terms will be through two parallel mechanisms depending upon whether or not a customer is a party to the CRA.

#### **CRA Omnibus Beneficiaries**

Customers who are signatories to the CRA and who have LBI Asset Claims are invited to approve the Resolution (available on the Portal). If the Resolution is approved by at least 75 per cent. of the aggregate voting value of CRA Omnibus Beneficiaries then, subject to the conditions set out in the Resolution, it will result in an amendment to the CRA to give effect to the Common Terms (the “**Amended and Restated CRA**”). The Amended and Restated CRA is available on the Portal.

***If you are a CRA Omnibus Beneficiary and wish to see the Proposals become effective you must approve the Resolution through the Portal. Abstentions will count as non-approval of the Resolution.***

***If you are a CRA Omnibus Beneficiary and do not approve the Resolution, but the Resolution is approved by the requisite majority and the other conditions of the Resolution are satisfied, then the Amended and Restated CRA will, notwithstanding your non-approval, be effective and binding upon you.***

#### **OSA Eligible Offerors**

OSA Eligible Offerors are invited to make an offer to the Company on the Portal to enter into the OSA (which is available on the Portal). The Common Terms are incorporated into the OSA. Both the Company and the OSA Eligible Offeror whose OSA Offer is accepted by the Company will be bound by the OSA together with each other OSA Eligible Offeror whose OSA Offer is accepted by the Company. Upon the conditions to the Common Terms being satisfied, such OSA Eligible Offeror bound by the OSA will also be bound by the Common Terms. If the Common Terms do not come into effect the OSA will lapse. As a condition to the Common Terms becoming effective, customers representing at least 40 per cent. of the Best Claims held by OSA Eligible Offerors will need to make OSA Offers which are accepted by the Company.

Customers whom the Company considers do not have LBI Asset Claims will not be invited to make an OSA Offer to the Company and will not, therefore, become parties to the OSA.

***If you are an OSA Eligible Offeror and wish to benefit from the Proposals, it is essential that you make an OSA Offer via the Portal to the Company. Failure to make an OSA Offer will mean that you will not become a party to the OSA and the Common Terms and will be (together with any customer other than a CRA signatory that has LBI Asset Claims but is not a party to the OSA) a “Non-Consenting Beneficiary”.***

#### **4 Why are the Proposals being made?**

The legal analysis applicable to determine the entitlements of the Company's customers with LBI Asset Claims in respect of the LBI Distribution is unusually complex. The Company is in an English administration procedure, while the assets it is seeking to recover are held by an entity subject to a US SIPA insolvency procedure and the original underlying contractual arrangements with customers are governed by a variety of laws (principally English and New York law) and the customers are based in a variety of jurisdictions.

The LBI Trustee made a determination with respect to the Omnibus Claim which, whilst having an overall aggregate value approaching the aggregate LBI Asset Claims of the Company's customers, comprised cash and securities that in material respects differed from the LBI Asset Claims of the Company's customers. As a result of disputes with the LBI Trustee regarding his determination, including the mismatch issue (referred to in paragraph 4 of Part II), the Company commenced litigation against LBI regarding the Omnibus Claim. That litigation has been resolved under the Settlement Agreement. However, the resolution under the Settlement Agreement does not eliminate the mismatch issue. The LBI Distribution, therefore, continues to differ in material respects in its composition from the cash and securities claimed in the Omnibus Claim and in respect of which customers may have claims against the Company but, in overall terms, remains near to the aggregate LBI Asset Claims of the Company's customers.

As assets held by LBI for the Company's customers were held in the Company's omnibus accounts at LBI, LBI and the Company share the view that LBI's customer, for the purposes of its SIPA liquidation, is the Company. In effecting the LBI Distribution, LBI does not intend to allocate specific securities to the Company's customers with LBI Asset Claims.

It is therefore a matter for the Company and not LBI to arrange for the distribution of the LBI Distribution in accordance with the respective rights of its customers.

At the time that the CRA was put in place, given the complexities outlined above, it was not clear on what basis LBI would ultimately be making distributions in respect of the LBI Asset Claims of the Company's customers. The CRA contains provisions which would have been applicable if assets held through LBI had been allocated by LBI to individual customers of the Company. However this is not, in fact, the methodology that is being applied under the Settlement Agreement. As a result, the provisions in the CRA for dealing with the LBI Distribution and matters arising from it are incapable of being readily applied to the LBI Distribution as it will be constituted under the Settlement Agreement. Accordingly, in order to enable CRA signatories with LBI Asset Claims to have clarity as to their respective entitlements in respect of the LBI Distribution, an amendment to the CRA is both necessary and desirable. The Proposals, once they become effective, effect that amendment.

Customers who are not parties to the CRA currently have whatever rights they may have at law. Again, the Proposals are intended to remove the uncertainties that exist in respect of that position.

In order to ensure so far as practicable a common treatment as between all customers who become Consenting Beneficiaries, the Common Terms will apply to both non-CRA signatories and (through an amendment to the CRA) CRA signatories.

Therefore, in order to enhance certainty and accelerate distribution and having regard to all the relevant factors, including the level of the overall value of the LBI Distribution, the Company is making these Proposals in order to settle the entitlements of its customers with LBI Asset Claims in respect of the LBI Distribution and to expedite the onward distribution to Consenting Beneficiaries. The Proposals aim to avoid the need for a lengthy court process involving a large number of customers and the associated time and expense that would otherwise be necessary to resolve all of the relevant issues before assets could be distributed.

## 5 What do the Proposals do?

The Proposals are designed to provide a solution for defining Consenting Beneficiaries' entitlements to a share in the LBI Distribution. Under the Proposals, each Consenting Beneficiary will be entitled to have allocated to it a share of the cash and the proceeds of sale of the securities received in the LBI Distribution. That allocation will, subject to applicable deductions, be distributed to it. The allocation will be made rateably as between Consenting Beneficiaries on the basis of each Consenting Beneficiary's "Best Claim". In respect of each Consenting Beneficiary, the "**Best Claim**" is the amount which is the greater of:

- (i) the value of its LBI Asset Claim against the Company on 19 September 2008 (the "**19/9 Value**"); and
- (ii) the aggregate market value of its LBI Asset Claim against the Company (this includes accrued distributions on securities) on 30 November 2012 (the "**Aggregate Market Value**"), being the last reasonably practicable date prior to the date of making the Proposals on which the LBI Asset Claims of all customers could be valued by the Company.

Customers are receiving statements of their Best Claims in their Information Packs as described in paragraph 10 below. The basis of calculation used in preparing those statements is described in the explanatory notes to the Information Packs.

No Consenting Beneficiary will have any proprietary interest in or be entitled to receive any specific security or the proceeds of liquidation of any specific security in the LBI Distribution.

The entire LBI Distribution received from LBI will be held by the Company on trust for all of the customers with LBI Asset Claims. The cash and the proceeds of sale of securities in the LBI Distribution, after such securities have been liquidated, will only be used to make distributions to customers with LBI Asset Claims either as compromised under these Proposals in the case of Consenting Beneficiaries or, to the extent they are claims of a Non-Consenting Beneficiary, in or towards discharge of those claims as they may exist, or, in either case, towards discharge of certain obligations of those customers (in each case, including any applicable costs, taxes or other liabilities associated with the receipt or distribution of such assets).

The Company will, so far as practicable, liquidate any securities received in the LBI Distribution and convert all cash into US dollars. By agreeing to the Proposals, all Consenting Beneficiaries consent to such liquidation and currency conversion. Distributions will be made to Consenting Beneficiaries periodically and will be made only in US dollars.

The Company will not distribute, but will be entitled to hold in reserve on a prudent basis part of the LBI Distribution (“**Reserves**”) to meet, amongst other things: (a) the Best Claims of any Consenting Beneficiary who is not participating in any distribution for any reason (including because the amount of its Best Claim is disputed) - that Consenting Beneficiary will participate in later distributions to catch-up on its rateable share of all distributions; (b) the potential trust entitlements of Non-Consenting Beneficiaries; and (c) amounts that the Company anticipates may be withheld, deducted or otherwise required to be paid on account of taxes. As part of its Reserving strategy, the Company may decide not to liquidate and instead to Reserve specific securities received in the LBI Distribution. The Company may apply amounts Reserved in or towards discharge of the obligations for which these Reserves were set aside.

The Company will so far as practicable attribute Reserves and payments made out of Reserves to individual customers and the amounts so attributed and paid will be taken into account in calculating a Consenting Beneficiary’s entitlement to receive a distribution. The Company will review the level of Reserves each time a distribution to Consenting Beneficiaries is made. Reserves which the Company considers are no longer required will be available for distribution to Consenting Beneficiaries.

The Company will be able to deduct from and retain certain amounts that would otherwise be distributed to a Consenting Beneficiary on account of, amongst other things: (a) indebtedness of the Consenting Beneficiary to the Company, and certain other indebtedness to third parties; (b) any other amounts that the Consenting Beneficiary has agreed to pay to the Company or third parties; (c) limited costs to be charged by the Company; and (d) amounts in respect of taxes to the extent not already paid out of Reserves.

## **6 Shortfall claims**

If the aggregate gross value allocated to and distributed to or on behalf of a Consenting Beneficiary (before taking into account any amounts deducted or withheld and any other reductions of that value) is less than its 19/9 Value, it is proposed that Consenting Beneficiaries will have an unsecured shortfall claim against the Company for the difference. If a Consenting Beneficiary has an outstanding financial obligation owing to the Company, or which the Company is obliged to recover, then the full amount of this shortfall claim may be set-off against such obligation. The aggregate of all shortfall claims under this Proposal (after the application of the set-off described in the previous sentence) will be capped at an amount of US\$200 million. If the aggregate would exceed this cap (after the application of such set-off), then the shortfall claims will be abated rateably so that the aggregate amount of the shortfall claims equals US\$200 million.

Apart from: (i) its right to have allocated to it its share of the LBI Distribution based on its Best Claim and to receive a distribution in respect of such allocation; and (ii) its unsecured shortfall claim (if any) as described above, each Consenting Beneficiary will release, to the extent permissible in law, its claims against the Company, the Joint Administrators and LBI in respect of the LBI Assets, the LBI Distribution and the Omnibus Trust (as defined in the Common Terms).

The extent of the legal liability (if any) of the Company for shortfall claims with respect to LBI Asset Claims is unsettled. As part of the overall compromise agreement as set out in the Proposals, the Company is proposing that it will combine the offer of an allocation made on the Best Claims methodology with an unsecured shortfall claim for Consenting

Beneficiaries whose aggregate distributions are less than their 19/9 Values (as defined in the Common Terms). However the Company considers that the risk of an inability to pay the 19/9 Value in full from the LBI Distribution is primarily driven by the risk of volatility in the value of the securities comprised in the LBI Distribution and that this risk is ultimately a risk for customers. Accordingly, the Company will cap its unsecured liability for shortfall claims at a figure of US\$200 million. Taking the value of the securities as at 30 November 2012 the amount of such potential shortfall claims would be significantly smaller than this shortfall claims cap (assuming full acceptance of the Proposals).

## **7 What is the estimated recovery under the Proposals?**

The ultimate gross value of the share of the LBI Distribution allocated to each Consenting Beneficiary is dependent upon a number of factors including: (i) the value realised upon liquidation of the equity and fixed income securities comprised in the LBI Distribution; (ii) the aggregate Best Claims of all the Consenting Beneficiaries after resolution of any disputes as to the quantum of the Best Claims; and (iii) the value which needs to be distributed in respect of the trust claims of those customers with LBI Asset Claims who for any reason are Non-Consenting Beneficiaries.

The Company has prepared an indicative statement of the estimated level of recovery which customers may expect in respect of their LBI Asset Claim should they become Consenting Beneficiaries.

Whilst there are many factors which will affect the final recovery, absent adverse market movements, the Company estimates a range of recovery outcomes with a high probability that a Consenting Beneficiary's gross recovery will exceed 90 per cent. of its Best Claim. The "Fifth Announcement in Respect of the Proposed Settlement of the Omnibus Claim" dated 27 February 2013 provides customers with an update as to the composition of the portfolio of securities that the Company expects to recover from LBI and some illustrative recovery scenarios.

The cash amount distributed to a Consenting Beneficiary will also be affected by Reserves, deductions and withholdings on account of liabilities of that Consenting Beneficiary. Your particular attention is drawn to the risks relating to the taxation of distributions you may receive out of the LBI Distribution and of the trust in respect of the LBI Distribution and proceeds thereof as set out in in Part V (Taxation).

## **8 Why is the Best Claim being used?**

The Joint Administrators have given careful consideration as to how the share of each Consenting Beneficiary should be calculated.

Given the interval of time from September 2008 to the current day, the fluctuations in value of the securities included in each customer's LBI Asset Claim, the lack of precedent for determining an appropriate date for valuation and SIPA's guiding principle of returning securities to the fullest extent practical (made more complicated here given the mismatch of securities), the Company undertook a detailed review of alternative methods for calculating each Consenting Beneficiary's share. In this review, consideration of the merits of each method was undertaken and of the losses that customers might suffer under each of them. Consideration was also given to the impact of different possible legal analyses and to expectations of customers. In addition, consideration was given to the desirability of putting forward a Proposal which had the broadest appeal to customers. The result of this

careful review was that, in all the circumstances, basing the share of each Consenting Beneficiary on the concept of Best Claim was considered to be most appropriate and a better overall option than any of the alternatives. The Company discussed fully with members of the Creditors' Committee the reasoning behind this conclusion.

In particular, and having regard to the value of the LBI Distribution, by allocating shares in the LBI Distribution rateably by reference to each Consenting Beneficiary's Best Claim and offering, in limited circumstances, a shortfall claim, the Joint Administrators consider that the Proposals offer the best prospect of achieving a result which is likely to be acceptable to the broadest cross section of customers with LBI Asset Claims, and that achieving the broadest possible consensus is in the interests of all customers with LBI Asset Claims.

## **9 The conditions to the Proposals**

The Proposals will become effective if and when certain conditions are met. The main conditions are that:

- (i) all conditions to the effectiveness of the Settlement Agreement have been satisfied or waived in accordance with the terms thereof, provided that the "100% Condition" as defined in the Settlement Agreement must be satisfied rather than being waived. The conditions to full effectiveness of the Settlement Agreement include the making of final orders by the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") approving the Settlement Agreement, the approval of a settlement between LBI and Lehman Brothers Holding Inc., the expunging of all duplicate claims made against LBI by customers of the Company in respect of property held through LBI and the obtaining of an order of the English court; and
- (ii) the Proposals have been approved by sufficient customers to meet the threshold conditions. These are: (a) that the Resolution has been passed as an Extraordinary Resolution under the CRA. That means it has been approved by CRA Omnibus Beneficiaries with at least 75 per cent. of the aggregate voting value; and (b) that customers representing at least 40 per cent. of the Best Claims held by OSA Eligible Offerors (as calculated by the Company) have made OSA Offers that have been accepted by the Company.

The threshold condition referred to in paragraph (ii)(a) above must be satisfied and any OSA Offer made for the purpose of the threshold condition in (ii)(b) above must be made before 5.00 p.m. (New York time) on 26 March 2013, subject to extension by the Company at its discretion. The Company has a further 28 days to accept any OSA Offer of an OSA Eligible Offeror. The conditions to full effectiveness of the Settlement Agreement must be met (or waived) by 21 August 2013 (or such later date as may be agreed by the LBI Trustee and the Company) or the Settlement Agreement is capable of then being terminated by either the LBI Trustee or the Company. Prior to termination of the Settlement Agreement (assuming the threshold conditions referred to in (ii) above have been met), the Consenting Beneficiaries will remain bound by the OSA and the Resolution.

## **10 The Information Pack**

In connection with this Information Memorandum you will have received via the Portal a package of information ("**Information Pack**") which sets out, among other things:

- (i) an individual statement showing the Company's view of your LBI Asset Claim as at 19 September 2008, the value of the positions in your LBI Asset Claim on 19 September 2008, the value of the relevant positions as at 30 November 2012 and the income attributable to those positions arising and the effect of Corporate Actions between 15 September 2008 and 30 November 2012; and
- (ii) an individual statement of your Best Claim, the aggregate of the Best Claims of all customers with LBI Asset Claims and an illustration of your potential aggregate gross distribution depending on a range of potential recoveries from the LBI Distribution and on the basis of certain assumptions set out in the explanatory notes accompanying that Information Pack.

By becoming a Consenting Beneficiary you will be deemed to have agreed and accepted the information set out in your Information Pack, including your Best Claim, unless you take steps to dispute the amount of your Best Claim in your Information Pack.

If you are a CRA Omnibus Beneficiary (whether you approve or do not approve the Resolution), and the Resolution is passed, you will not have another opportunity to dispute your Best Claim figure. Also, if you are an OSA Eligible Offeror such a dispute must be raised at the time of making your OSA Offer to the Company. If you are an OSA Eligible Offeror and decide to raise a dispute in respect of your Best Claim figure, you should note that the Company reserves the right, in its absolute discretion, to decide not to accept your OSA Offer.

The validity of any dispute raised by a Consenting Beneficiary will be determined under a dispute resolution process set out in the Common Terms which will be non-appealable and binding on the Company and you.

## **11 Advantages and disadvantages of the OSA and the Resolution**

The Joint Administrators consider that the Proposals have a number of advantages over the alternative approaches they have considered. The principal advantages in the approach taken in the Proposals are summarised at paragraphs (i) to (vii) below. The principal disadvantages are summarised at paragraphs (viii) to (ix) below.

### ***Advantages for all customers with LBI Asset Claims***

#### **(i) *Faster release of funds***

By eliminating uncertainty and the need to seek judicial determination of issues as a precondition to distribution, the Proposals will result in a significantly speedier distribution of value to Consenting Beneficiaries than would otherwise be the case.

#### **(ii) *Certainty of approach to sharing LBI Distribution***

By removing the uncertainty which currently exists as to the outcomes of determining the competing claims in the LBI Distribution, the Proposals will result in Consenting Beneficiaries having clarity and certainty about their respective entitlements. Whilst the exact value to be distributed to them can only be estimated at this time, the nature and extent of their legal entitlements will be clear.

#### **(iii) *Shortfall Claim***

The Proposal provides for each Consenting Beneficiary to have a (potentially capped) unsecured shortfall claim against the Company. This unsecured shortfall claim offers some

protection against the risk that, although LBI will be making a 100 per cent. distribution in respect of its allowed customer property claims, the ultimate value available for allocation to a Consenting Beneficiary may be less than the amount of the 19/9 Value of its LBI Asset Claims.

(iv) *Reduction in costs*

If the Proposals are not implemented the Joint Administrators are likely to need to obtain a judicial determination of numerous points of law involving potentially significant expense as well as delay. The total cost of implementing the Proposals should be lower than if alternative approaches were adopted. This is because the Joint Administrators consider that the Proposals represent the consensual route most likely to achieve a sufficiently high acceptance rate, meaning that the significant costs of wide-ranging litigation can be avoided. Given the unprecedented nature of the facts relating to, and scale of, the LBI Distribution and the wider Lehman collapse, the large variety of different factual and legal circumstances relating to each individual customer, the substantial mismatch between the assets comprised in the LBI Distribution and those comprised in the Omnibus Claim and the issues regarding the operation of the CRA in respect of the LBI Distribution, any such proceedings would likely be complex and expensive and any outcome could be delayed for a number of years whilst appeals processes are followed through.

(v) *Smaller Reserve*

The Proposals have been designed to attract a high level of acceptance from customers with LBI Asset Claims, notwithstanding differences in their individual circumstances, and the actual amount of Reserves which will need to be retained to deal with the claims of Non-Consenting Beneficiaries is as a result not expected to be significant when compared with the monies available for distribution.

(vi) *Increased prospect of approval of LBI Settlement*

It is a condition precedent to the Settlement Agreement becoming effective that all duplicate claims made against LBI by customers of the Company in respect of assets held through the Company with LBI are waived or expunged by order of the Bankruptcy Court. Consenting Beneficiaries are bound under the Proposals once effective, to give up any duplicate claims they have made against LBI. By Consenting Beneficiaries approving the Resolution and agreeing to the OSA (as applicable) the Joint Administrators believe there will be a greater prospect of obtaining that order and the other required orders from the Bankruptcy Court which are conditions precedent to the Settlement Agreement becoming effective.

***Advantages specific to customers who are also debtors to the Company***

(vii) *Discharge of liabilities of debtors to the Company*

For customers who are also debtors to the Company the share of the LBI Distribution allocated to that Customer and any shortfall claim (on an uncapped basis) will be available to facilitate the discharge of their liabilities.

***Disadvantages for all customers with LBI Asset Claims***

(viii) *Other approaches to sharing LBI Distribution*

If the Proposals are implemented, then the Best Claim and capped shortfall approach will be adopted in respect of Consenting Beneficiaries. If matters were, instead, to be tested in



Court, it is possible that the Court's decision would mean that an individual customer who was not a Consenting Beneficiary could be entitled to a share or a claim based on some other basis which might be greater than their share or claim if they had been a Consenting Beneficiary and the Proposals were implemented.

(ix) *Customers do not receive specific securities*

If the Proposals are implemented, Consenting Beneficiaries will not receive specific securities and securities within the LBI Distribution will be liquidated. Further, the liquidation of such securities and/or the receipt of a cash distribution by a Consenting Beneficiary may represent a disposal of securities for tax or other purposes, which may result in additional tax or other costs as compared to receiving securities.

Part III (*The Proposals*) provides further detail of the Proposals.

## **12 What happens if the OSA and/or the Resolution fail?**

If the OSA and/or the Resolution fail, then there could be a greater risk that the Bankruptcy Court might not grant the requisite orders to enable the conditions to the effectiveness of the Settlement Agreement to be met. In those circumstances, the Settlement Agreement would lapse and the amount, process and timing of recovery by the Company from LBI would be thrown back into uncertainty and the stayed litigation may recommence. This would have a consequential impact as to the amount, process and timing of any onward distribution by the Company to its customers.

However, even if the Settlement Agreement becomes effective and the LBI Distribution (or a lower sum) is received by the Company, in the absence of a broad consensus as to the entitlements of customers with LBI Asset Claims, the Company will have no certainty as to the basis on which it should make onward distributions to those customers. In those circumstances before making onward distributions it is very likely that the Joint Administrators would need to seek guidance from the English courts as to, amongst other things: (i) the entitlements of its customers; (ii) what obligations (if any) the Company may have in respect of unsecured shortfall claims; and (iii) the manner in which the Company should discharge its duties as trustee in respect of the LBI Distribution. Given the multitude of issues involved and the range of parties and different interests at stake, customers should be aware that the Joint Administrators would expect such proceedings to be lengthy, complex and costly and that they may well involve multiple appeals. The Joint Administrators consider that those proceedings, whilst continuing and unresolved, could present them with substantial legal and practical difficulties which may well impair their ability to effect distributions to customers for some considerable period of time whilst such proceedings were ongoing.

### **13 Recommendation to make an OSA Offer/approve the Resolution**

The Joint Administrators are of the opinion that for the reasons set out in this letter the advantages of the Proposals outweigh their disadvantages. In particular, based on their knowledge accrued during the Company's administration, it is the Joint Administrators' opinion that the Proposals represent the best prospect of putting in place an arrangement with the broad level of support necessary to expedite the onward distribution to relevant customers of the LBI Distribution. You must take your own professional advice on the Proposals and consider whether or not you wish to participate in them.

You are strongly advised to review and consider carefully the Proposals. You are reminded that failure to gain sufficient support for the Proposals before 5.00 p.m. (New York time) on 26 March 2013 will result in the Proposals (unless extended by the Company) lapsing with the potentially adverse consequences described above.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'R. Downs', is centered on the page. The signature is fluid and cursive, with a small dot at the end.

Russell Downs  
Joint Administrator  
Lehman Brothers International (Europe) (in administration)  
as agent and without personal liability

## **PART II: BACKGROUND TO THE LBI ASSET CLAIMS**

### **1 Introduction**

Anthony Victor Lomas, Steven Anthony Pearson, Dan Yoram Schwarzmann and Michael John Andrew Jervis of PricewaterhouseCoopers LLP were appointed to act as Joint Administrators of the Company pursuant to an order of the English High Court dated 15 September 2008 made under Paragraph 12 of Schedule B1 of the Insolvency Act 1986 (the “**Administration Order**”). Derek Anthony Howell was appointed as a further Joint Administrator on 30 November 2009 and Paul David Copley and Russell Downs were both appointed as additional Joint Administrators on 2 November 2011. Michael John Andrew Jervis and Dan Yoram Schwarzmann resigned as Joint Administrators of the Company on 2 November 2011.

The Administration Order was made, among other things, to achieve a better result for the Company’s creditors as a whole than would have been likely if the Company had been wound up (without first being in administration).

On 19 September 2008 (the “**SIPA Filing Date**”), the United States District Court for the Southern District of New York entered an order granting the application of the Securities Investor Protection Corporation for issuance of a protective decree adjudicating that the customers of LBI were in need of protection afforded by SIPA and appointing James W. Giddens of Hughes Hubbard & Reed LLP, as LBI Trustee. The liquidation of LBI (the “**SIPA Liquidation**”) is being administered under the auspices of The Honorable James M. Peck, United States Bankruptcy Court of the Southern District of New York (Case No. 08-01420 (JMP) (SIPA)).

This Part II contains background information on the relationship between the Company, LBI and the SIPA Liquidation as they relate to the Omnibus Claim, the Settlement Agreement and the LBI Distribution.

Creditors of the Company can find further details of the Administration to date in the progress reports produced by the Joint Administrators and sent to all known creditors and counterparties of the Company. The latest progress report covers the period from 15 March 2012 to 14 September 2012 (dated 12 October 2012).

### **2 Pre-administration relationship between the Company and LBI (prime brokerage clients)**

Prior to the making of the Administration Order and the commencement of the SIPA Liquidation, LBI and the Company functioned as part of an integrated, international financial group. The Company was the principal trading company and broker-dealer within the Lehman group in Europe. LBI was the principal trading company and broker-dealer within the Lehman group in the US.

As the Lehman group’s regulated broker-dealer in Europe, one of the Company’s major business areas was prime services, which involved the Company acting as prime broker to institutional clients, mostly hedge funds. In order to conduct its various businesses, the Company needed access to exchanges, clearing systems and depositories in other jurisdictions, directly or through other financial institutions. In particular, when the Company’s customers sought to gain exposure to securities listed in the US or to have

their US assets held for safekeeping, LBI acted as the Company's primary clearing broker and custodian providing such clearing and custody services to the Company for its customers.

LBI maintained various accounts on its books and records for the Company, including recording securities held by LBI for the Company's custody and charge clients (the "**Client Securities**") and the Company's proprietary positions (the "**House Securities**"). LBI, in turn, custodied the Company's House Securities and Client Securities at Depository Trust Company and, in some instances, with other custodians.

LBI has stated that it did not record in its books and records whether Client Securities held in an omnibus client account were held for any particular customer of the Company. Instead, each omnibus client account was recorded in LBI's books and records as simply being an account in which property was held for customers of the Company.

The integrated nature of the business conducted by LBI and the Company and the rest of the Lehman group was facilitated by common access to shared platforms of IT recording data. Prior to the entry of the Administration Order, these IT data platforms were accessible to both the Company and LBI personnel and they recorded and displayed LBI's and the Company's proprietary and customer trading positions. Immediately after the Administration Order, the Company's access to these systems was dramatically reduced.

### **3 Post-administration transactions relating to assets held through LBI**

In the period beginning 15 September 2008 (when the Company entered administration) through to the SIPA Filing Date (referred to as "**Lehman Week**" in this Information Memorandum), LBI continued to operate notwithstanding the failure of Lehman Brothers Holdings Inc. ("**LBHI**"), the Company and many of their affiliates.

While LBI continued to settle trades to the extent possible, the Company no longer had access to the shared data, IT systems and resources that it relied upon in order to monitor and record its and its customers' trading positions. As a result, the Company's visibility into LBI's books and records, including positions in US securities and related cash that LBI and/or its sub-custodians held for the benefit of the Company and/or its customers, which had been an integral part of the Company's ability to conduct its day-to-day business, effectively ceased and the Company was not able to record the status of those trades settled by LBI in its own books and records. This included losing the ability to view the real-world settlement activity that occurred during Lehman Week with respect to trades in US securities that were pending as of the close of business on 12 September 2008. Instead, the Company could rely only upon the internal (rather than shared) system of record keeping to determine its holdings.

The disconnection of the integrated IT data platform across former members of the Lehman group made it extremely difficult for the Company to identify its or its clients' interests in US securities that may have been held by LBI. Under SIPA (as discussed further below) the operative date for determining claims is the SIPA Filing Date – 19 September 2008. The Company and LBI have expended significant effort over the past several years "rolling forward" and reconciling the Company's and LBI's books and records to account for the settlement activity undertaken by LBI on behalf of the Company and its customers during Lehman Week.

#### **4 Summary of the mismatch issue**

A significant issue in the litigation between LBI and the Company was the so-called “mismatch” between the securities claimed by the Company in respect of its customers and those actually held by LBI.

When the Company went into administration on 15 September 2008, there were over 195,000 pending trades which remained open and subject to settlement by LBI during Lehman Week. During Lehman Week, LBI settled most of these pending trades. The effect of the settlement of these pending trades was to change substantially the amounts and composition of securities and cash held by LBI in the omnibus accounts.

In order to recover the assets held in the omnibus accounts, the Company submitted the Omnibus Claim to LBI based on its records of each customer’s position as at close of business on 12 September 2008, together with a claim in respect of failed and pending trades as at that date.

Subsequent reconciliation work between the Company and LBI enabled the Company, based on information provided by LBI, to identify which pending trades did in fact settle and which failed. As a result, the Company has been able on a customer by customer basis to establish what securities and cash should have been held for each underlying customer at LBI as at 19 September 2008 after taking account of these movements. This information forms the basis of the Information Pack.

However, despite this pending trade reconciliation work, LBI’s books and records reflected different aggregate stock and cash balances in the omnibus accounts than those reflected in the books and records of the Company. The reasons for this are complex, but relate in part to the fact that, in settling many of the trades during Lehman Week, LBI utilised cash or securities held in the books of the Company for one party (including LBIE House and, importantly, other Company customers) to settle trades for the benefit of another (including LBIE House and other Company customers), rather than following the practice of borrowing securities as required for short sales and recalling rehypothecated securities to settle orders for the sale of such rehypothecated securities. As a result, on a stock line by stock line basis LBI did not record in the omnibus accounts the same aggregate quantity of stock as the Company was claiming on the basis of its adjusted books and records.

#### **5 Background to the SIPA Liquidation**

SIPA affords a trustee the power, among other things, to administer a US broker-dealer’s assets for the benefit of customers and ordinary creditors. The primary purpose of SIPA is to protect qualifying “customers”, and not parties who are ordinary unsecured creditors of the US broker-dealer. In order to qualify as a customer, an investor must have entrusted cash or securities with the insolvent US broker-dealer. In addition, the investor must demonstrate that any cash deposited was for the purpose of purchasing securities or the proceeds of securities sales. The same investor may have a customer claim for certain transactions, but an unsecured claim for other, non-qualifying transactions.

SIPA provides for the creation of two distinct estates – the pool of customer property and the pool of general estate property. The customer property pool generally consists of cash and securities (and their proceeds) received, acquired or held by the US broker-dealer in connection with the securities trading activity of its customers, whereas the general property pool mostly consists of other assets. The pool of customer property may also be augmented by general estate assets to correct pre-liquidation regulatory compliance

failures. A general unsecured claim may only be satisfied against the US broker-dealer's general property pool.

All customers sharing in the customer property pool do so on a pro rata basis proportional to each customer's "net equity". In short, this is the dollar value of a customer's account(s) determined by: (i) calculating the sum of the liquidated value of such customer's long securities positions plus securities-related cash balances credited to that customer's account(s); and (ii) deducting from this sum any indebtedness owing by that customer to the broker dealer, in each case valued as of the SIPA filing date. In satisfying a customer's claims for securities, the trustee has a duty to return securities to customers to the maximum extent practicable.

## 6 Outline of the Omnibus Claim and litigation

On 30 January 2009, the Company filed an omnibus customer claim against LBI, in respect of its customers (as amended, the "**Omnibus Claim**"), together with a claim on its own behalf (as amended, the "**LBIE House Claim**"), to recover "customer property" as defined in SIPA. In addition, the Company simultaneously filed a failed trades claim with respect to over 100,000 "failed to deliver to LBI" trades and over 95,000 "failed to receive from LBI" trades (the "**Failed Trades Claim**"). Both the Omnibus Claim and the LBIE House Claim were subsequently amended on 29 May 2009 and 10 September 2010.

The primary purpose of the Omnibus Claim was to recover securities and cash positions that were, or should have been, sub-custodied by LBI for the Company's customers with LBI Asset Claims. The Omnibus Claim that was the subject of the litigation against LBI was for cash and securities valued at approximately US\$15.1 billion, comprised as follows:

- (i) a cash claim in the amount of US\$4.653 billion; and
- (ii) a securities claim in the amount of US\$10.514 billion.

It should be noted that all values referenced here in connection with the Omnibus Claim and the Failed Trades Claim are stated as at 19 September 2008. The Omnibus Claim included several items that were duplicative of the LBIE House Claim and certain items that were filed as a protective measure at the time, pending further assessment.

On 19 May 2011, the LBI Trustee issued a Notice of Trustee's Determination of Claim with respect to the Omnibus Claim and the Failed Trades Claim (the "**Letter of Determination**"). With respect to the Omnibus Claim and the Failed Trades Claim as it related to accounts covered by the Omnibus Claim, the LBI Trustee allowed, as part of this Letter of Determination, a claim comprising of:

- (i) a specified list of securities; and
- (ii) US\$2.2 billion with respect to the cash component of the Omnibus Claim, but subject to significant distribution restrictions.

The Letter of Determination was made without differentiating securities and cash positions on a client by client basis.

In the Letter of Determination, the LBI Trustee reserved the right to reduce further the amount allowed in the Letter of Determination for amounts owed to LBI by customers, and stated that, in the event of a shortfall in the LBI customer property pool, the recovery would be less than the entitlement noted. The LBI Trustee did not provide any information on which securities were actually held by it, how the amount allowed in the Letter of

Determination would be settled (through release of securities or cash in lieu), nor did it provide valuation data for individual securities. The LBI Trustee stated that distributions to the Company would be conditional on the Company obtaining a release in favour of the LBI Trustee from the Company's customers to whom the LBI Distribution would be made.

The LBI Trustee disallowed certain direct claims made by the Company's customers against LBI, on the grounds that those claims properly should be made through the Company.

For the reasons set out in the Joint Administrators' seventh progress report for the period from 15 September 2011 to 14 March 2012, on 31 October 2011, the Company filed an objection (the "**Objection**") to the Letter of Determination with the Bankruptcy Court. The filing of the Objection commenced a litigation process in the Bankruptcy Court, and the Company and LBI agreed a scheduling order, which was approved by the Bankruptcy Court, under which, as amended, the Omnibus Claim would be ready for trial in April 2013. The parties had substantially completed document production, and commenced depositions, by July 2012 with respect to this litigation. On 4 October 2012, LBI and the Company signed a non-binding heads of terms pursuant to which they proposed to settle the litigation (as discussed in more detail in paragraph 7 below) and consequently the Company and LBI, with the Bankruptcy Court's approval, agreed to suspend the litigation between them until 14 December 2012 (later extended to 15 January 2013). Upon execution of the Settlement Agreement (described in more detail below) by LBI and the Company on 21 February 2013, the Company and LBI agreed to take such action as necessary to stay the litigation during the approval process.

## **7 Settlement Agreement between the Company and LBI**

The Settlement Agreement effects a global resolution of disputes between the Company and LBI, providing the Company with certainty regarding the securities, cash and post-filing income that will be allowed in respect of the Omnibus Claim, flexibility to return the LBI Distribution to its customers with LBI Asset Claims and affording the Company allowed customer and general unsecured claims in respect of claims asserted on behalf of its general estate. In addition, the Settlement Agreement provides for the assignment of LBI's inbound trust property and client money claims to the Company and the Company's nominee, respectively, effects the disallowance of LBI's inbound unsecured claims and obligates LBI to indemnify the Company for up to US\$777 million of liability the Company may have to Barclays, depending on the outcome of ongoing litigation in the U.S. between LBI and Barclays regarding the sale of LBI's business to Barclays. In short, the Settlement Agreement achieves a favourable result for the Company's customers and its unsecured creditors that avoids the uncertainty, attendant costs and delay of prolonged litigation in the U.S. on numerous issues of first impression.

### **7.1 LBI Distribution and related post-filing income**

With respect to the Company's Omnibus Claim, assuming the conditions to the Settlement Agreement, discussed below, are satisfied or waived, the Company will receive in respect of the Omnibus Claim: (i) an allowed claim of identified securities; (ii) an allowed claim of cash in lieu of certain securities in the amount of US\$1,573,858,096, as of September 30, 2012; (iii) an allowed claim of cash in the amount of US\$2,323,900,665; and (iv) allowed post-filing income in an amount equal to US\$614,235,817 as of 30 December 2012 (less any applicable taxes imposed, or withheld on or from such amounts), plus additional amounts attributable to the Company's allowed securities thereafter. Under the terms of

the Settlement Agreement, LBI will in certain circumstances, be allowed to make a withholding or deduction for or on account of US federal income tax from the entire LBI Distribution.

## **7.2 Distributions to customers**

The Settlement Agreement requires the Company to distribute the LBI Distribution to customers, subject to several exceptions discussed below. The Settlement Agreement, however, leaves the manner in which such distributions will be passed through to customers for the Company to determine.

Under the Settlement Agreement, the Company will pass through the LBI Distribution to its customers, subject to: (i) satisfaction of client indebtedness to the Company; (ii) client agreement or instruction; (iii) deductions for reasonable costs and expenses incurred by the Company, not to exceed, the lesser of (I) one per cent. (1%) of the aggregate amount that otherwise would be distributed to a customer by the Company (plus any applicable VAT on the underlying costs and expenses) and (II) US\$2.5 million (plus any applicable VAT on the underlying costs and expenses); (iv) valid third party security interests and liens; and (v) certain tax withholdings or deductions and other tax costs.

If, after all disputes relating to the Company's distribution of the LBI Distribution and related post-filing income to customers are resolved and all such distributions have been made, the Company is unable to distribute any remaining property (likely to be comprised of illiquid securities) to its customers, the Settlement Agreement obligates the Company to return such undistributed surplus property to LBI.

## **7.3 Conditions to settlement**

LBI and the Company have agreed that the effectiveness of the Settlement Agreement will be conditional upon, among other things:

- a finally approved and effective settlement agreement between LBI and LBHI;
- entry by the Bankruptcy Court of an order which disallows and expunges with prejudice all duplicate claims, which are claims that were filed against LBI by the Company's customers arising from trading, financing, custody, clearing, settlement and/or other similar activities conducted by the claimant with or through the Company, rather than LBI;
- a determination by LBI and notification to the Company that the property in LBI's estate will permit LBI to effect a 100 per cent. distribution on all allowed customer claims (including, without limitation, the allowed Omnibus Customer Claim (the "100% Condition");
- a determination by the Company and notification to LBI that the LBI Distribution and related post-filing income will not be subject to any material encumbrance or any risk of material loss that would inhibit the Company's ability to make distributions to its customers;
- entry by the Bankruptcy Court, in a form and substance reasonably acceptable to LBI and the Company, of:
  - (i) the proposed Approval Order, which authorises and approves the Settlement Agreement;



- (ii) the proposed Allocation Order/Post-Filing Income Order, which provides for the allocation by LBI of cash and securities to the fund of customer property that permits a 100 per cent. distribution on all allowed LBI customer claims and the allocation and/or distribution methodology for the distribution of Post-Filing Income; and
- entry by the English High Court of an order procuring the Company's compliance with its obligations under the Settlement Agreement.

#### **7.4 Approval process**

The Settlement Agreement must be approved by the Bankruptcy Court. On 26 February, 2013, LBI filed a motion seeking approval of the Settlement Agreement and expungement of duplicate claims. On the same date, LBI filed motions to approve the allocation of property to LBI's customer and general estates, the methodology for computing and distributing post-filing income and entry into a Settlement Agreement between LBI and LBHI. A hearing date for the approval of the Settlement Agreement and all other related motions has been scheduled for 16 April 2013, with an objection deadline of 3 April 2013. The Settlement Agreement provides that the Company and LBI may terminate the agreement if the effective time does not occur on or before 21 August 2013 (or such later date as the parties may agree).

## PART III: THE PROPOSALS

### Section 1: Key terms of the Proposals

#### 1 Introduction

- 1.1 Pursuant to the Proposals, each Consenting Beneficiary will be entitled to have allocated to it a share of the cash and proceeds of liquidation of securities received by the Company from LBI. Each Consenting Beneficiary will be entitled to receive a distribution out of its share.
- 1.2 The Proposals will be effected by the Amended and Restated CRA and the OSA (both of which will incorporate the Common Terms).
- 1.3 Part I (*Letter from the Joint Administrators*) provides the background to and a summary of the Proposals. Section 1 of this Part III provides further detail on the Proposals and should be read in conjunction with the Common Terms. The Common Terms can be found on the Portal.
- 1.4 Section 2 of this Part III provides further detail on the OSA and should be read in conjunction with the OSA itself. The OSA can be found on the Portal.
- 1.5 Section 3 of this Part III provides further details on the Amended and Restated CRA and should be read in conjunction with the Amended and Restated CRA itself. The Amended and Restated CRA can be found on the Portal.

#### 2 Trust Entitlement

- 2.1 The Company will hold the LBI Distribution received by it on trust for the customers with LBI Asset Claims.
- 2.2 Each Consenting Beneficiary will agree that its only claims against the Company with respect to its LBI Asset Claims are its Proprietary Claim (as defined in the Common Terms) and, if applicable, a shortfall claim (as described below) pursuant to the Common Terms (its "**Common Terms Claims**"). The Proprietary Claim of each Consenting Beneficiary is a beneficial interest in a share of the LBI Distribution as determined in accordance with the Common Terms. The share of the LBI Distribution to be allocated to each Consenting Beneficiary will be determined pro rata according to its Best Claim.
- 2.3 No Consenting Beneficiary shall have any claim to any specific asset received or held by the Company as part of the LBI Distribution. The interest of the Consenting Beneficiaries in the Omnibus Trust is an interest in a share in the pool of property comprised in that trust, such share being as determined under the Common Terms.
- 2.4 All income arising on the LBI Distribution held by the Company on trust will also be held for the benefit of all customers who have LBI Asset Claims.

#### 3 Reserves

The Company shall be entitled to Reserve (and consequently not allocate (except as described below) or distribute) such amounts as it considers prudent including in respect of: (i) the claims of customers who have or may, or claim to, have an interest in the LBI Distribution, including amounts for Consenting Beneficiaries who are not participating in

that particular distribution as well as Non-Consenting Beneficiaries; and (ii) in respect of amounts that the Company anticipates may be withheld or deducted on account of, or for the payment of, taxes.

Where a Reserve is determined by the Company to be attributable to a particular Consenting Beneficiary or group of Consenting Beneficiaries, that Reserve shall be treated as part of the allocation to that Consenting Beneficiary or group and taken into account in the calculation of what is allocable and distributable to that Consenting Beneficiary, or each Consenting Beneficiary in the group.

#### **4 Distributions to Consenting Beneficiaries**

- 4.1** The Company may make a distribution to Consenting Beneficiaries at such time and from time to time as it considers (in its absolute discretion) that a meaningful distribution can be made to them. The distribution will consist of the amount of cash in US dollars then held by the Company from the LBI Distribution which is not then being held in a Reserve or is otherwise unavailable for distribution (the “**Available Funds**”).
- 4.2** The amount to be distributed to or applied in respect of each Consenting Beneficiary (its “**Gross Distribution**”) when a distribution is made out of the LBI Distribution will be determined as a portion determined by reference to the Best Claim of that Consenting Beneficiary compared to the Best Claims of all Consenting Beneficiaries participating in that distribution of the Available Funds and after taking into account (amongst other things): (i) all Reserves attributable to the Consenting Beneficiaries participating in that distribution; (ii) all payments (other than Gross Distribution) made out of the Omnibus Trust attributable to such Consenting Beneficiaries; and (iii) the previous Gross Distributions to such Consenting Beneficiaries.
- 4.3** The distribution mechanics will provide that, if a Consenting Beneficiary participating in a distribution has not previously participated in full in all earlier distributions, then the distribution to be made to it may be adjusted so as to result in it (and any other Consenting Beneficiary participating in that distribution and entitled to a “catch-up” distribution) being brought up to the same proportionate return of its Best Claim as compared to other Consenting Beneficiaries participating in that distribution, before any further distribution of Available Funds is made.
- 4.4** The Company shall determine whether a Consenting Beneficiary shall participate in any particular distribution and may exclude from participation in a distribution (amongst others): (i) any Consenting Beneficiary in respect of whom certain permitted deductions remain uncertain or unascertained; (ii) any Consenting Beneficiary who has any claim against or liability to the Company the existence or quantum of which is not determinable, including because of the underlying contract remaining untermiated; (iii) in relation to any CRA Omnibus Beneficiary, that CRA Omnibus Beneficiary if the condition of clause 56.1.1 of the Amended and Restated CRA have not been satisfied; (iv) any Consenting Beneficiary who has raised a dispute under or in connection with the Common Terms which has not been finally determined or agreed; (v) any Consenting Beneficiary who has granted a security interest affecting the LBI Distribution which might in the opinion of the Company prevent or restrict a distribution; (vi) any Consenting Beneficiary in respect of whom there is a continuing breach of any obligation under the OSA or Amended and Restated CRA by that Consenting Beneficiary; and (vii) any Consenting Beneficiary in respect of whom the Company has not received any documentation which the Company or its agents considers

necessary for compliance with anti-money laundering, tax information reporting or similar laws or regulations applicable to the Company.

- 4.5 The Company may deduct, withhold or appropriate from distributions to a Consenting Beneficiary any amounts permitted to be deducted, withheld or appropriated from distributions as described under paragraph 10.10 below.
- 4.6 All distributions to Consenting Beneficiaries shall be made in cash in US dollars.
- 4.7 No Consenting Beneficiary shall have any claim against the Company for interest or compensation by reason of the timing of the payment of any distribution.
- 4.8 Unless expressly notified to the contrary by the Company, it shall be assumed that distributions made to a Consenting Beneficiary pursuant to the Common Terms by the Company shall first be made in settlement of claims for cash (if any, other than Income Amounts), then claims for securities (if any), and lastly Income Amounts (if any), in each case by reference to the basis upon which a Consenting Beneficiary's Best Claim is calculated.

## 5 Shortfall Claims

- 5.1 Once all distributions have been completed, the Company will admit, as an unsecured claim, a claim by any Consenting Beneficiary whose aggregate gross distributions (which will include any amounts which have been deducted or withheld and any other reductions attributable to that Consenting Beneficiary) are less than its 19/9 Value, for the amount of that shortfall (its "**19/9 Shortfall Claim**").
- 5.2 If a Consenting Beneficiary has a 19/9 Shortfall Claim, then the full amount of the 19/9 Shortfall Claim shall be available: (i) in the case of any OSA Consenting Beneficiary, to be set-off against its indebtedness at the time the 19/9 Shortfall Claim is determined; and (ii) in the case of any CRA Omnibus Beneficiary, to be appropriated against its Net Financial Liability as defined in and in accordance with the Amended and Restated CRA.
- 5.3 If, after the application of that set-off, there remains some 19/9 Shortfall Claim for a Consenting Beneficiary, then that Consenting Beneficiary shall have an unsecured claim against the Company for the remaining net 19/9 Shortfall Claim. However, this claim may be reduced if the cap described in the next sentence applies. The aggregate amount of all such remaining net 19/9 Shortfall Claims of all Consenting Beneficiaries shall be capped at US\$200,000,000. To the extent that the aggregate amount exceeds this cap then all such net remaining 19/9 Shortfall Claims of all Consenting Beneficiaries shall be abated rateably so that the aggregate equals that cap. This means that no unsecured shortfall claim will be capable of being determined until after all distributions to Consenting Beneficiaries have been completed, which may only happen once the entitlements of Non-Consenting Beneficiaries have also been determined.

## 6 Claims Given Up

- 6.1 A Consenting Beneficiary is required to release all its claims to the fullest extent permitted by law: (i) to or arising out of or in respect of the assets underlying the basis of its LBI Asset Claim, the LBI Distribution and the Omnibus Trust; or (ii) arising out of or in connection with the preparation, negotiation, entry into, execution, operation, performance or content of any Consenting Beneficiary Agreement, the Resolution, the Information Memorandum, any Information Pack or the Settlement Agreement. Such releases are in

favour of the Company, LBI, other Consenting Beneficiaries, the Administrators, their advisers, the Creditors' Committee (and various related parties).

- 6.2** However, a Consenting Beneficiary does not release its Common Terms Claims, claims against Non-Consenting Beneficiaries, claims against the Company for fraudulent breaches of any Consenting Beneficiary Agreement, certain unsecured guarantee claims against LBHI or CAPCO and certain unsecured claims against the Company in respect of pending transactions.
- 6.3** Each Consenting Beneficiary will release: (i) all claims to the legal or beneficial ownership of any asset comprised in the LBI Distribution or which is the basis of a LBI Asset Claim, except for its Proprietary Claim; and (ii) all personal claims against the Company or the Joint Administrators in respect of or derived from LBI Assets and/or the LBI Distribution save for any shortfall claim as described in paragraph 5 above and certain unsecured claims against the Company in respect of pending transactions.
- 6.4** Each Consenting Beneficiary will give up all direct claims made by it against LBI whether as: (i) customer claims to the extent that such customer claims: (a) relate to the trading, financing, custody, clearing settlement and/or other similar activity conducted with or through the Company; and (b) have been rejected by LBI; or (ii) general estate claims arising from the same transactions or activity as the customer claims referred to in paragraph 6.4(i) above.
- 6.5** Each Consenting Beneficiary will give up any right to dispute: (i) its securities and cash position as at 19 September 2008 as shown in the Information Pack; (ii) any adjustments made in arriving at the securities position in the Information Pack; (iii) the terms of the Corporate Actions policy used to determine Aggregate Market Value; and (iv) any information in or relating to the Information Pack of any other person.

## **7 Non-Consenting Beneficiaries**

Nothing in the Common Terms shall affect any claim which a Non-Consenting Beneficiary may have in respect of the LBI Distribution. The Company shall be entitled to distribute at any time and from time to time to Non-Consenting Beneficiaries cash or securities held in the Omnibus Trust in or towards satisfaction of the Trust Entitlements (as defined in the Common Terms) of those Non-Consenting Beneficiaries. The Company shall be entitled but not obliged to seek to agree Trust Entitlements with Non-Consenting Beneficiaries or to seek a final determination of a court of competent jurisdiction (a "**Final Order**") by a ruling binding upon the Company as to whether the Company has to make a distribution to a Non-Consenting Beneficiary.

## **8 Management of the distributions from LBI**

### **8.1 Process for liquidating**

The Company may sell any securities in the LBI Distribution at such times as it sees fit and hold the sale proceeds on trust as part of the Omnibus Trust.

The Company shall have no liability (absent fraud) to any Consenting Beneficiary for any loss attributable to a security not being liquidated during the period when that security is held by the Company prior to being liquidated.

### **8.2 Reserving securities**

In general, Reserves will be held in cash but in certain circumstances the Company may decide to Reserve securities including if the Company decides it may be necessary or desirable to deliver any such reserved Securities to a Non-Consenting Beneficiary or a Tax Authority.

## **9 Taxation matters**

- 9.1** The Company, or its agents, shall be entitled to Reserve for, or deduct or withhold from distributions to customers, amounts in respect of any taxes and duties (including any interest or penalties) arising (or which the Company reasonably anticipates may arise or that it is otherwise obliged to Reserve for, or deduct and withhold or which, in the reasonable opinion of the Company, the Company deems it prudent, to deduct, withhold or Reserve) in respect of any property received or held by the Company for the benefit of customers or otherwise arising in the process of implementing and operating the OSA, Amended and Restated CRA, Resolution or Common Terms (or otherwise administering the Trust Financial Assets), including taxes assessed or levied with respect to any LBI Asset Claim, customer or the Company (in any capacity, including as trustee of the Omnibus Trust), or which the Company reasonably anticipates may arise, as a result of receiving, holding or causing to be distributed any part of that property (including any income or gains thereon), other than any taxes for which the Company is liable and which are imposed on the Company's actual net income, profits or gains beneficially earned and received by the Company (as opposed to by the Omnibus Trust or the Company's agents).
- 9.2** Any such Reserve, withholding or deduction will reduce the amounts distributed to customers (including in circumstances where a payment is made, or treated as being made, because a liability of the Company is set off against a liability owed to the Company).
- 9.3** For any such taxes (or anticipated taxes) in respect of which Reserves, are made and which the Company reasonably considers can be attributed to a particular Consenting Beneficiary or group of Consenting Beneficiaries, the Company shall allocate such Reserves as an Attributable Reserve to that Consenting Beneficiary or group of Consenting Beneficiaries. Similarly, where the Company makes a withholding or deduction for taxes (or anticipated taxes) which the Company reasonably considers can be attributed to a Consenting Beneficiary or group of Consenting Beneficiaries, the Company shall attribute such withholding or deduction to be allocated accordingly.
- 9.4** Amounts that the Company has Reserved, or withheld or deducted on account of taxes or anticipated taxes may (to the extent such amounts were Reserved by the Company) be released from Reserves to the extent the Company then considers such release prudent.
- 9.5** Each Consenting Beneficiary is required (but, in the case of withholding tax forms only to the extent a Consenting Beneficiary would like to claim relevant exemptions from or reductions in the rate of withholding) to complete and deliver to the Company on becoming a Consenting Beneficiary, and as soon as practicable following a written request by the Company, any information or forms which might enable the Company or its agents or any other Consenting Beneficiary to mitigate any tax or reclaim tax assessed, deducted or withheld, whether by the Company or any other person (these forms may include US withholding tax forms, for example, Internal Revenue Service Forms W-8 BEN or W-9).

- 9.6** The Company may appoint a financial institution or “qualified intermediary” to serve as withholding and reporting agent in respect of any US taxes to be withheld, deducted, Reserved or paid over to a taxing authority or to effect any reporting to a taxing authority.
- 9.7** The Company may make any disclosures or reports to any taxing authority which it considers to be necessary or desirable in respect of any matters which are the subject of, or arise as a result of, the implementation and operation of the OSA, CRA, Resolution or Common Terms.
- 9.8** The Company will, at the additional expense of the relevant Consenting Beneficiary, pass on to that customer any non-confidential information within the Company’s control which that customer might reasonably request to assist that customer in reclaiming any tax deducted by the Company or any other person.

## **10 Other terms**

- 10.1** The 19/9 Value and Aggregate Market Value for each Consenting Beneficiary will be calculated in US dollars. The Company may convert liquidation proceeds or cash (as applicable) into US dollars at a rate of exchange for the purchase of US dollars with such currency available to the Company at the time of receipt of such proceeds or cash (as applicable), or on such other date as the Company may select at its absolute discretion.
- 10.2** The Company shall be entitled at its absolute discretion to allow Non-Consenting Beneficiaries to accede to the OSA after the end of the OSA Offer Period.
- 10.3** The Company may confirm its obligations under the OSA in the form of a deed poll including any declaration of trust required to constitute or evidence the trusts in the Common Terms.
- 10.4** The Company shall act in accordance with the standard of care imposed on a trustee, but shall not be liable for losses save as caused by its fraud. The Company shall be relieved to the maximum extent permitted by law from the statutory duty of care arising under section 1 of the Trustee Act 2000. The Company shall exclude to the maximum extent permitted by law any liability in respect of the management of the LBI Assets or the LBI Distribution save in respect of its own fraud.
- 10.5** The Company shall be entitled to take, pay for and rely upon professional advice and to appoint custodians, nominees and agents. Custodians, nominees and agents will benefit from similar protections to the Company and references to the Company are generally treated as also referring to such custodians, nominees and agents.
- 10.6** The consent of (i) the Company, (ii) the majority of Consenting Beneficiaries (representing at least 75% of the Best Claims of the relevant Consenting Beneficiaries) and (iii) an Extraordinary Resolution under the Amended and Restated CRA shall be required to amend, modify or waive any of the Common Terms, save for amendments of the Common Terms made by the Company which in its opinion are of a formal, minor or technical nature or to correct a manifest error or to enable compliance with a Final Order or which are not materially prejudicial to the interests of any Consenting Beneficiaries.
- 10.7** The consent of (i) the Company, (ii) the majority of Consenting Beneficiaries (representing at least 75% of the Best Claims of the relevant Consenting Beneficiaries) and (iii) an Extraordinary Resolution under the Amended and Restated CRA (or a Final Order) shall be required to modify the Settlement Agreement after the Common Terms Effective Date in a

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

- 10.8** The Company acquired before the date of this Information Memorandum certain LBI Asset Claims and associated interests and may acquire after this date from any person, upon such terms and at such a price as the Company and such person may agree, all or any part of such person's LBI Asset Claims, Common Term Claims or any other related interest therein. The Company shall not be subject to any of the obligations of a Consenting Beneficiary but shall benefit from the rights of a Consenting Beneficiary including to distribute to itself for its own account, enforce, preserve and vote any such acquired interest. However, the Company's interest in any Common Terms Claims will not count towards any Best Claim threshold for the purpose of satisfying any condition to the Common Terms Effective Date.
- 10.9** Generally costs and expenses with respect to the administration, custody and distribution of LBI Assets will be borne by the Company. However, the Common Terms and Amended and Restated CRA will permit the Company to deduct and retain for its own benefit from (and prior to) distributions to Consenting Beneficiaries, an amount equal to: (a) in respect of OSA Consenting Beneficiaries, the lesser of: (i) 1 per cent. of the allocation of that OSA Consenting Beneficiary's recoveries (plus any applicable VAT on the underlying costs and expenses); and (ii) US\$2.5 million (plus any applicable VAT on the underlying costs and expenses), in each case taking into account costs and expenses already recouped by the Company from that Consenting Beneficiary; and (b) in respect of CRA Omnibus Beneficiaries, the amounts permitted to be deducted on a similar basis in respect of fees and costs under the Amended and Restated CRA.
- 10.10** The Company may Reserve for or deduct and withhold amounts owed to others (or, as applicable, appropriate amounts owed to it for its own benefit) out of (and prior to) distributions to Consenting Beneficiaries including: (i) tax liabilities as described in paragraph 9 above; (ii) certain turnover recoveries already made; and, (iii) in the case of OSA Consenting Beneficiaries, (a) the costs amount referred to in paragraph 10.9 above; (b) the final ascertained amount of the outstanding indebtedness (if any) of such Consenting Beneficiary owing to the Company; (c) any amount which the Company is under a legal obligation to retain out of the Gross Distribution of the Consenting Beneficiary for the account of any other person claiming by or through such Consenting Beneficiary; and (d) any other outstanding liabilities which such Consenting Beneficiary from time to time agrees with the Company that it may deduct; and (iv) in the case of CRA Omnibus Beneficiaries, the appropriations described in paragraph 1.5.3 of Section 3 of this Part III below.
- 10.11** Consenting Beneficiaries who are CRA Omnibus Beneficiaries and who have Net Financial Liabilities (as defined in the Amended and Restated CRA) will be allowed a collateralisation election as described in paragraph 1.5.2 of Section 3 of this Part III below.
- 10.12** It is not intended to offer Consenting Beneficiaries any other collateralisation elections and the Company shall be free to appropriate from any distribution, including interim



distributions, any sum in respect of indebtedness or other amounts as described in paragraph 10.10 above.

- 10.13** The Common Terms include provisions for:
- 10.13.1** a moratorium on claims by Consenting Beneficiaries;
  - 10.13.2** bi-annual statements concerning the Omnibus Trust;
  - 10.13.3** representations and warranties by Consenting Beneficiaries against which disclosure may be made if accepted by the Company;
  - 10.13.4** further assurances on the part of the Consenting Beneficiaries in relation to the Settlement Agreement and the Consenting Beneficiary Agreements;
  - 10.13.5** a detailed dispute resolution mechanism which restricts the manner in which any Consenting Beneficiary may take legal action in relation to the Consenting Beneficiary Agreements; and
  - 10.13.6** the Common Terms to be governed by English law.
- 10.14** The Consenting Beneficiaries consent to the Company's provision of information to LBI, the LBI Trustee and SIPC in connection with the Settlement Agreement, and other disclosures to the extent the Company is required to disclose, or considers it necessary to disclose, to enable the OSA and Amended and Restated CRA to be administered effectively.
- 10.15** If a Consenting Beneficiary at any time receives any payment or payment-in-kind, including any distribution or other value or consideration from any person (other than from the Company under the Common Terms, from LBHI or CAPCO (as defined in the Common Terms) under any guarantee or from any other credit support provider up to an aggregate limit equal to the amount of the original claim) that satisfies any obligation the Company would otherwise have under the Common Terms to make a distribution to such Consenting Beneficiary in respect of an LBI Asset Claim, the Company reserves the right (subject to any excess recovery provisions in the Settlement Agreement) either to reduce the distribution to such Consenting Beneficiary under the Common Terms by the amount that has been satisfied by such payment or payment-in-kind or, where the Company has already made a distribution to such Consenting Beneficiary under the Common Terms, to recover and/or to assist LBI in recovering from such Consenting Beneficiary the amount distributed to that Consenting Beneficiary that has been satisfied by such payment or payment-in-kind.
- 10.16** Notwithstanding any of the other terms of the Consenting Beneficiary Agreements (including any of the Common Terms), nothing in such terms is intended to or shall have the effect of or be deemed to have the effect of requiring the Company to act, or refrain from acting, in breach of any law (including any Final Order).
- 10.17** The 19/9 Value is based on information available to the Company and has previously been communicated to customers in their LBI omnibus customer position statements. However, the Company is aware that, in limited circumstances, income, other cash and securities resulting from certain corporate actions accrued between 15 September 2008 and 19 September 2008 are not included in the 19/9 Value. The Company estimates that these items equate to an aggregate value not exceeding US\$15 million. These items are included in the Aggregate Market Value, however due to operational issues and complexities, the Company has been unable to include these items in the 19/9 Value, and

the 19/9 Value in any Information Pack will be final and binding despite this disclosed inconsistency.

**10.18** In the case of approximately 13 stocklines which have been included in a number of customers' Information Packs, some securities of those stocklines (with an approximate value of US\$30 million at 30 November 2012 values) may not be LBI Assets because the securities were never delivered to, or acquired, by LBI. In respect of such securities, the Company may reduce the relevant customers' securities position as at 19 September 2008 and consequently their Best Claims, to reflect that those securities were not in fact held by LBI, but only subject to the Company accepting that the relevant customers have claims against the Company, outside the scope of these Proposals, in respect of the relevant securities.

## **Section 2: The OSA**

### **1 Key terms of the OSA**

Any OSA Eligible Offeror (defined below) who makes an OSA Offer may become party to the Proposals (once its OSA Offer is accepted by the Company) as described in more detail in Section 1 of this Part III.

### **2 Who is eligible to become a party to the OSA?**

Any customer of the Company who has an LBI Asset Claim (but who does not hold such claim in its capacity as a signatory to the CRA) and who receives an invitation by the Company (an “**OSA Eligible Offeror**”) is eligible to become a party to the OSA. It may become party to the Proposals referred to in this Part III by making an OSA Offer to the Company to enter into the OSA and the Company accepting such OSA Offer.

### **3 Making an OSA Offer to the Company**

**3.1** Each OSA Eligible Offeror must submit an OSA Offer to the Company via the Portal.

**3.2** The Company has absolute discretion to accept or reject any OSA Offer made by any OSA Eligible Offeror.

**3.3** OSA Eligible Offerors which make an OSA Offer which is accepted by the Company will be bound by the same OSA as the other OSA Eligible Offerors whose OSA Offers may from time to time be accepted by the Company.

**3.4** If the Settlement Agreement is terminated before the full conditions to its effectiveness have been satisfied (or waived) or if the conditions set out in paragraph 9(ii) of the Letter from the Administrators are not met within 28 days of the end of the OSA Offer Period, then any OSA Offer made (whether accepted or not) will terminate in accordance with the OSA.

**3.5** If any Revised OSA Invitation is issued, then any OSA Offer made prior to the issue of such revised invitation may be revoked by the OSA Eligible Offeror which made it.

**3.6** The Company shall notify each OSA Eligible Offeror of its acceptance or rejection of that OSA Eligible Offeror’s OSA Offer and may do so via the Portal.

**3.7** As set out in set out in paragraph 9 (ii) of the Letter from the Administrators, OSA Eligible Offerors representing at least 40 per cent. of the Best Claims of OSA Eligible Offerors will need to make an offer to the Company which the Company accepts for the Proposals to become effective.

**3.8** Following the acceptance of its OSA Offer by the Company and in advance of the Common Terms Effective Date, each OSA Consenting Beneficiary will be subject to a moratorium on litigation arising out of or in connection with its LBI Asset Claims.

**3.9** The last date for making an OSA Offer is 26 March 2013 unless extended to a date on or prior to 30 June 2013 at the Company’s discretion.

**3.10** The OSA is governed by English law.

### **4 Transfer of LBI Asset Claims**

**4.1** Transfers of LBI Asset Claims are not permitted under the OSA except for (i) a transfer of a complete position (including any liabilities owed to the Company) between OSA Consenting Beneficiaries with the consent of the Company (not to be unreasonably

withheld); or (ii) a transfer of a complete position from a third party to an OSA Consenting Beneficiary with the consent of the Company. However, the restriction on transfers in the previous sentence will not apply so as to require an agreed claim under a CDD to be transferred with the LBI Asset Claims.

**4.2** Any complete positions transferred to an OSA Consenting Beneficiary shall be treated separately and not be aggregated with any of the other claims and liabilities of such Consenting Beneficiary. Such complete position may subsequently be transferred separately.

**5 When will the OSA be effective?**

Each OSA Eligible Offeror who has submitted an OSA Offer to the Company will be bound by the OSA from the date on which its OSA Offer to the Company is accepted by the Company. However, even after any OSA Eligible Offeror is bound by the OSA, it will not generally be bound by or benefit from the Common Terms until the OSA has become unconditional.

## **Section 3: The Amended and Restated CRA and the Resolution**

### **1 Amendments to the Existing CRA**

#### **1.1 General (clause 3.3 of the CRA)**

1.1.1 The Amended and Restated CRA incorporates the Common Terms (at schedule 5 of the Amended and Restated CRA) which, in relation to LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of clause 13.1.3(ii) of the Common Terms only, prevails over the pre-existing provisions of the CRA.

1.1.2 The amendments made under the Amended and Restated CRA only relate to LBI Asset Claims, Common Terms Claims and Legal Claims and Legal Liabilities affected by the provisions of clause 13.1.3(ii) of the Common Terms and the Amended and Restated CRA retains the original provisions of the CRA in relation to all other assets, claims and liabilities.

#### **1.2 Modification of claims (clause 4 of the CRA and clauses 3 to 5 of Common Terms)**

1.2.1 LBI Asset Claims of the CRA Omnibus Beneficiaries, which had previously been modified under clause 4 of the CRA, are further modified by part 2 of the Common Terms (see clause 4.4.1 of the Amended and Restated CRA).

1.2.2 Under part 2 of the Common Terms, such claims are modified as set out in paragraph 2 of Section 1 of this Part III.

#### **1.3 Releases (clauses 4.2 and 9 of the CRA and clause 6 of Common Terms)**

1.3.1 In addition to the releases granted by the CRA Omnibus Beneficiaries under clauses 4.2 and 9 of the CRA, under the Amended and Restated CRA (by incorporation of clause 6 of the Common Terms), each CRA Omnibus Beneficiary makes further waivers and releases.

1.3.2 Such releases under the Common Terms are in addition to those previously made under the CRA. The claims released under the CRA have already been, and remain, released.

#### **1.4 Management of LBI Assets**

1.4.1 Management of assets prior to distribution (clause 15 of the CRA and part 8 of the Common Terms):

The Amended and Restated CRA disapplies clauses 15 and 16 of the CRA in relation to any Omnibus Settlement Asset and instead applies part 8 of the Common Terms. Under clause 22 of the Common Terms, the Company may but shall be under no obligation to take any corporate actions or events in relation to Securities then held as part of the Omnibus Trust. If any Derived Financial Assets are received by the Company such Derived Financial Assets will be held in the Omnibus Trust.

1.4.2 Liquidation (clause 45.4 of the CRA and clause 20 of Common Terms)

Under the Amended and Restated CRA the Company may, to the extent that it is practicable for it to do so, liquidate assets held in the Omnibus Trust in order to

realise US dollar denominated cash. Clause 20 of the Common Terms sets out further details (see paragraph 8 of Section 1 of this Part III).

The liquidation provisions under clause 45.4 of the Amended and Restated CRA do not apply as no Multiple Stock Line Pool will be formed in respect of LBI Assets.

## **1.5 Distribution of assets**

For the purposes of the Amended and Restated CRA, LBI is deemed not to be an Affected Intermediary and the provisions of the CRA relating to Affected Intermediaries therefore do not apply to the distribution of LBI Assets.

### **1.5.1 Allocations (part 10 of the CRA)**

Under the Amended and Restated CRA, the concept of “Allocation” in part 10 of the CRA will not apply in relation to Trust Financial Assets. Each CRA Omnibus Beneficiary is entitled to a share of the Omnibus Trust by reference to its Best Claim, and there will be no allocation to any CRA Omnibus Beneficiary of particular assets on a stock-line by stock-line basis or using the concept of pools.

### **1.5.2 Collateralisation (part 11 of the CRA)**

Under the CRA, a CRA signatory with a Net Financial Liability can elect to make one or more collateralisation elections. Under the Amended and Restated CRA, none of the existing collateralisation elections are applicable in respect of LBI Assets (although a CRA Omnibus Beneficiary with a Net Financial Liability will still be able to make these elections if it has a Pre-Administration Admitted Client Money Amount, a claim to an Asset Pool where a shortfall can arise and elects to make a payment to create a Deferral Cash Amount or elects to make a payment to create a Cash Payment Amount).

The Amended and Restated CRA introduces an LBI Appropriation Deferral Election which is similar to an Appropriation Deferral Election. The LBI Appropriation Deferral Election allows a CRA Omnibus Beneficiary to defer the exercise of the Company’s rights to appropriate a Reduced Gross Distribution to reduce its Net Financial Liability until its 19/9 Shortfall Claim has been determined. The CRA Omnibus Beneficiary must make such election prior to the Cut-Off Date nominated in the first Notice of Intended Distribution.

### **1.5.3 Appropriations (part 11 of the CRA and part 4 of Common Terms)**

Under the Amended and Restated CRA, part 4 of the Common Terms will be the starting point for the determination of Gross Distributions and deductions and withholdings to be made in respect of a Gross Distribution. Part 4 of the Common Terms provides for the Company to make a distribution out of Available Funds on a Distribution Date to a Consenting Beneficiary who meets the conditions to participate in a distribution (a Qualifying Consenting Beneficiary). See paragraph 4 of Section 1 of this Part III for more information.

Part 11 of the CRA remains applicable (with modifications) introducing the concept of “Reduced Gross Distribution” and “19/9 Shortfall Claim”.

In clause 60 of the CRA, new waterfalls, reflecting the structure of the existing waterfalls, have been introduced in relation to Reduced Gross Distributions and the 19/9 Shortfall Claim. These new waterfalls broadly reflect the existing waterfalls,

the main difference being the limitation on the ability to deduct costs in relation to LBI Assets once the ceiling of the lower of: (i) 1 per cent. of the sum of the value of all Asset Allocations and the Cumulative Gross Allocation to the relevant CRA Omnibus Beneficiary (plus any applicable VAT on the underlying costs and expenses); or (ii) US\$2.5 million (plus any applicable VAT on the underlying costs and expenses) has been reached due to the agreement with LBI made in the Settlement Agreement. This costs limitation only applies in relation to allocations and distributions from the Omnibus Trust.

The new waterfalls apply as follows:

- (i) Clause 60.9: applies where the CRA Omnibus Beneficiary has a Net Financial Claim.
- (ii) Clauses 60.10: applies where there is a Reduced Gross Distribution to a CRA Omnibus Beneficiary who has a Net Financial Liability.
- (iii) Clause 60.11 applies where a 19/9 Shortfall Claim is determined in respect of a CRA Omnibus Beneficiary who has a Net Financial Liability.

#### 1.5.4 Distributions (part 11 of the CRA and parts 4 and 5 of Common Terms)

The conditions to being a Qualifying Consenting Beneficiary are set out in clause 9.5 of the Common Terms (see paragraph 4.4 of section 1 of Part III above) and clause 56, other than clause 56.1.1, of the Amended and Restated CRA does not apply to Net Distributions.

CRA Omnibus Beneficiaries should note that they will not receive a Distribution and Appropriation Notice under the Amended and Restated CRA in relation to Gross Distributions and Net Distributions. Instead, CRA Omnibus Beneficiaries will receive a Notice of Distribution (clause 14 of the Common Terms). The process for disputing the Notice of Distribution is set out in Part 10 of the Common Terms and the Dispute Resolution Mechanism in Part 16 of the Amended and Restated CRA does not apply to these disputes.

Net Distributions will be delivered according to the provisions of the Common Terms. Part 12 of the Amended and Restated CRA does not apply in relation to a Net Distribution made in accordance with the Common Terms.

## 1.6 Other amendments

### 1.6.1 Post-administration client money (clause 4.8 of the CRA and clause 6.4 of the Common Terms)

Under the CRA, each CRA Omnibus Beneficiary assigned all Post-Administration Client Money Claims which comprise Derived Assets and all of its rights with respect thereto to Laurifer Limited.

Under clause 6.4 of the Common Terms, each CRA Omnibus Beneficiary additionally waives, renounces and surrenders all rights it might otherwise have for any LBI Asset Claim or Trust Financial Asset or any part of the Omnibus Trust, any LBI Distribution or its Gross Distribution to be treated as client money (whether held at the Time of Administration or received thereafter) or proceeds of client money and any beneficial interest it may have in respect thereof under the statutory trust of client money under Chapter 7 of the CASS Rules.

Laurifer Limited will waive in favour of the Consenting Beneficiaries its right under any claims assigned to it that might otherwise entitle it to a share in the LBI Distribution.

**1.6.2 Transfers (clause 6 of the CRA and clause 28 of the Common Terms)**

Transfers under the CRA will remain governed by the Amended and Restated CRA and there will be no amendments to the transfer provisions under the CRA.

However, further provisions confirming that there are no restrictions on transfers to the Company and providing for the treatment of the Company in respect of transfers to the Company of Transferrable Interests (clause 28 of the Common Terms) are incorporated into the Amended and Restated CRA.

**1.6.3 Representations and Warranties (part 14 of the CRA and part 6 of the Common Terms)**

Additional representations (under part 6 of the Common Terms) are given by all CRA Omnibus Beneficiaries (regardless of whether such CRA Omnibus Beneficiary approved or did not approve the Resolution). Certain representations and warranties (clause 17.1 and clauses 17.2.1(i) (where applicable) to 17.2.1(iii)) are made on the date on which the Resolution is passed, and CRA Omnibus Beneficiaries should note these. The representations and warranties are similar to those representations and warranties which were or are provided under the CRA however some amendments of note in the Common Terms are that each CRA Omnibus Beneficiary is to represent and warrant:

- (i) clause 17.1.6: as at the Date of the Resolution, that it has made any statements and/or certifications required to be made by it on any tax form or document delivered by it under clause 18.5 of the Common Terms and all such statements and/or certifications made by it pursuant to clause 18.5 are true and correct and not misleading in any way;
- (ii) clause 17.2.1(ii): as at the Date of the Resolution, that it is the legal owner of each LBI Asset Claim set out in its Information Pack and the beneficial owner, or acting with the authority of the beneficial owner, of each LBI Asset Claim set out in its Information Pack, free of any Security Interest (other than a Security Interest (if any) in favour of the Company or any of its Affiliates);
- (iii) clause 17.2.1(iii): as at the Date of the Resolution, that it has received no recoveries from or on behalf of LBI in respect of or in connection with its LBI Asset Claims or Trust Entitlements; and
- (iv) clause 17.2.2: it has validly released or will have validly released by the Common Terms Effective Date irrevocably and unconditionally any LBI Duplicate Claim which it has or may have remaining as of the Common Terms Effective Date.

On the Date of the Resolution, all CRA Omnibus Beneficiaries are also deemed to make the acknowledgement in clause 17.8 of the Common Terms in relation to taxes and tax forms.

If any CRA Omnibus Beneficiary believes that it will be unable to make the representations and warranties at clauses 17.1 and clauses 17.2.1(i) (where



applicable) to 17.2.1(iii) of the Common Terms at the Date of the Resolution it must notify the Company as soon as possible, and in any event in advance of the Date of the Resolution in accordance with clause 89 of the CRA.

**1.6.4 Notices (clauses 89-91 of the CRA and clause 42 of Common Terms)**

The notice provisions under the Amended and Restated CRA will be disappplied and instead the notice provisions under clause 42 of the Common Terms will apply in respect to notices to be given pursuant to the Common Terms.

**2 Voting value for the purpose of the Resolution**

Each CRA Omnibus Beneficiary's voting value is set out in the voting value certificate that each CRA Omnibus Beneficiary has received via the Portal.

In accordance with paragraph 1.6 of schedule 4 of the CRA, the voting value for each CRA Omnibus Beneficiary is the value (in US dollars) which the Company determines for the date of the proposed resolution, of the CRA Omnibus Beneficiary's Distribution Assets (as defined in the CRA) (not just in respect of LBI Assets) less its Distribution Liabilities (as defined in the CRA), subject to a minimum of US\$1.00.

The voting value is valid only with respect to the Resolution and will be used by the Company only for the purpose of determining the level of acceptances of the Resolution. The voting value is not determinative of any rights or claims of any person and does not constitute an acknowledgement of any claim or an admission of liability or offer for settlement by the Company.

**3 Action to be taken prior to the approval of the Resolution**

The notice of the Resolution available on the Portal sets out, under the headings "Disputes", "Representations and Warranties" and "Instructions for Signing and Submission of Resolution", the actions that CRA Omnibus Beneficiaries need to take prior to approval of the Resolution.

**4 Approval of the Resolution**

If the Resolution is approved by CRA Omnibus Beneficiaries with 75 per cent. of the aggregate voting value, the Company shall give notice of the approval of the Resolution to CRA signatories within fourteen days, but failure to do so shall not invalidate the Resolution.

If the Resolution is approved, all CRA Omnibus Beneficiaries will be bound by the Resolution and, once the conditions of the Resolution, as set out in paragraph 9 of Part I (*Letter from the Joint Administrators*) have been satisfied, the Amended and Restated CRA, regardless of whether they approved the Resolution. The Resolution and Amended and Restated CRA will also be binding on all other CRA signatories but will not affect them unless they subsequently obtain any LBI Asset Claims.

If the Resolution is not approved, the Resolution will lapse and the Common Terms will not become effective.

## **5 When will the Amended and Restated CRA become effective?**

Although the Amended and Restated CRA will only become effective when the conditions to the Resolution have been satisfied, clause 17.1, clauses 17.2.1(i) (where applicable) to 17.2.1(iii) and clause 17.8 of the Common Terms will become effective and binding on all CRA Omnibus Signatories from the Date of the Resolution.

If the Amended and Restated CRA does not become effective the provisions listed above will cease to be effective.

Once the conditions to the Resolution have been satisfied and the Amended and Restated CRA has become effective, the Company shall notify all CRA signatories of such occurrence.

## **PART IV: CONSEQUENCES FOR AN OSA ELIGIBLE OFFEROR OF NOT PARTICIPATING IN THE PROPOSALS**

The consequences for an OSA Eligible Offeror of not participating in the Proposals may include the following.

### **1 Reserves**

Whilst the Company expects to be in a position to make interim distributions to Consenting Beneficiaries in relatively short order once the Common Terms come into effect, there can be no guarantee of the timing with which distributions will be made to Non-Consenting Beneficiaries. That is because Non-Consenting Beneficiaries' entitlements will need to be substantively determined by the court, if not agreed between the Company and the Non-Consenting Beneficiary. As set out below, it is anticipated that any required court process (including appeals) may take a number of years to complete.

In the meantime, the Company will establish a Reserve out of the LBI Distribution to meet, in due course, amongst other things, the claims agreed or determined by a court in respect of Non-Consenting Beneficiaries. The Company may decide to set aside (and not liquidate) certain securities matching those that have been claimed by Non-Consenting Beneficiaries. The portion of the LBI Distribution that is not Reserved for Non-Consenting Beneficiaries or otherwise may be distributed to Consenting Beneficiaries and will not be available to satisfy the claims of Non-Consenting Beneficiaries.

Ultimately, a Non-Consenting Beneficiary's claim as determined by the courts may be less or more than what they may have received had they accepted the Proposals.

### **2 Dispute Resolution**

It is likely that the entitlements of Non-Consenting Beneficiaries will in due course fall to be dealt with by means of court proceedings, possibly in the form of an application in the Company's administration applicable to all, or a number of, Non-Consenting Beneficiaries (similar to the client money application that concluded before the Supreme Court in 2012).

In that context, it is likely that the Joint Administrators would identify the list of issues to be determined in relation to distributions to Non-Consenting Beneficiaries. The Joint Administrators would likely seek to ensure that all key legal and factual permutations in respect of Non-Consenting Beneficiaries are resolved by the application. Depending upon the number of Non-Consenting Beneficiaries, any such application may involve consideration of a significant number of issues.

The entire process (including appeals) may take a number of years.

### **3 Costs**

The terms of the Common Terms provide that, in respect of Consenting Beneficiaries, the Company may make limited deductions from distributions in order to compensate it for its costs associated with recovering and dealing with the LBI Distribution for the benefit of its customers generally. The Company intends that Non-Consenting Beneficiaries should also bear their share of such costs and there will be no limit applicable to that costs liability. For these purposes, the costs associated with distributions to Non-Consenting Beneficiaries will include the costs of the above referenced court proceedings and the Company is likely to seek an order that the associated costs be borne by Non-Consenting Beneficiaries.

Further, to the extent that additional costs are occasioned to the Company by individual Non-Consenting Beneficiaries having asserted claims that ultimately prove to be ill-founded or result in an entitlement of a lower value than that currently available to OSA Eligible Offerors, the Company is likely to seek additional costs orders against such Non-Consenting Beneficiaries in order to recover the same.

#### **4 Taxes**

The Company's ability to reduce distributions to Non-Consenting Beneficiaries on account of taxes will be such as is required or permitted by law or as is otherwise provided in the relevant final court determination or agreement by the Company as to a Non-Consenting Beneficiary's Trust Entitlement. Part V (*Taxation*) below describes certain possible tax consequences of the Proposals, some of which may be relevant to Non-Consenting Beneficiaries.

## PART V: TAXATION

*The comments below are of a general nature and are not intended to be exhaustive. Customers with LBI Asset Claims are advised to consult their own professional tax advisers.*

### **1 Withholding taxes and reporting to tax authorities**

The Company (which, for the purposes of this Part V, includes the Company's withholding agent, if any) may be obliged or entitled to withhold or reserve for any tax payable or required (or anticipated to be required) to be withheld or accounted for, or deemed applicable, in relation to any appropriation, receipt, distribution or other payment which, as a result of the administration of the OSA or the Resolution, the Company makes or is treated as receiving or making for tax purposes.

The Company may also make any disclosures to any tax authorities in respect of any matters which are the subject of, or arise as a result of the implementation and/or operation of, the OSA or the Resolution, including regarding payments to any Consenting Beneficiaries or Non-Consenting Beneficiaries.

Amounts of income, or other items subject to tax which are received by the Company as part of the LBI Distribution, or subsequently, may be subject to withholding or other taxes in the US or in any other relevant tax jurisdiction. The Company may not be able to obtain, or pass on, any credit or refund of such withholding or other taxes to Consenting Beneficiaries or Non-Consenting Beneficiaries.

### **2 Payments made by LBI to the Company or made by the Company to Consenting Beneficiaries or Non-Consenting Beneficiaries may be subject to US withholding tax**

The proper US federal income tax treatment of the payment of the LBI Distribution to the Company and payments by the Company to Consenting Beneficiaries or Non-Consenting Beneficiaries is unclear.

The extent to which Consenting Beneficiaries or Non-Consenting Beneficiaries will be subject to US federal income tax on the payments and the extent to which the Company may correspondingly be required to withhold US tax from such payments will depend on a number of factors, including (but not limited to) the source and character of the payments for US federal income tax purposes, receipt by the Company of originals of valid US Withholding Tax Forms in advance of such payments and the tax residency of the relevant customer.

In general, distributions of gross proceeds from the sales of securities by an agent to the owner of such securities (including any proceeds from the liquidation of securities) and any income on such securities may be subject to 28 per cent. "backup" withholding unless that customer provides valid original US Withholding Tax Forms evidencing an exemption from backup withholding.

A Consenting Beneficiary's or Non-Consenting Beneficiary's entitlement may be subject to this backup withholding. Such backup withholding is eliminated if the Consenting Beneficiary or Non-Consenting Beneficiary provides duly-completed originals of valid US Withholding Tax Forms evidencing an exemption from backup withholding prior to the relevant payment.

Additionally, payments from US sources received by non-US persons that are fixed, determinable, annual or periodic (“**FDAP income**”) may be subject to 30 per cent. withholding tax, unless the rate is reduced by an income tax treaty or other applicable exemption. FDAP income includes interest, dividends and certain other types of income. The withholding tax on payments of FDAP income is generally required to be withheld at source by a US withholding agent or any other person that makes the payment. A Consenting Beneficiary’s or Non-Consenting Beneficiary’s entitlement will be subject to withholding tax of 30 per cent. to the extent such entitlement is considered to be FDAP income, although such withholding may be reduced or eliminated where the recipient is (i) a US person or (ii) a non-US person that is eligible for and claims applicable treaty reliefs (if available) or any US domestic exemptions and in each case completes and delivers to the Company valid original US Withholding Tax Forms prior to the relevant payment.

In addition to the withholding requirements referred to above, the Company may be required to withhold 30 per cent. on payments representing FDAP income made after 31 December 2013 to Consenting Beneficiaries or Non-Consenting Beneficiaries who are not US persons under the Foreign Account Tax Compliance Act (“**FATCA**”) rules of Chapter 4 of the US Internal Revenue Code. FATCA withholding will also be imposed on payments of gross proceeds from the disposition of stock or debt of a US company paid after 31 December 2016. Whether such withholding is imposed depends on the classification of the Consenting Beneficiaries or Non-Consenting Beneficiaries under Chapter 4 of the US Internal Revenue Code and whether relevant US Withholding Tax Forms have been provided to the Company. Treaty and other US domestic exemptions mentioned above in the discussion of FDAP income would not reduce any FATCA withholding taxes, though refunds of amounts withheld on account of FATCA may be available.

The Company has approached the IRS with a view to formally obtaining confirmation of the treatment of all payments related to the LBI Distribution. Whilst the Company is optimistic that the IRS will provide guidance, there is no guarantee that any guidance issued will conform to the Company’s expected withholding methodology. Further, such guidance may result in US federal income taxes being imposed on the Omnibus Trust or on other amounts related to the LBI Distribution. In addition, there is a risk that the IRS may decline to provide any guidance, although the Company does not expect this to be the case.

In the event that no guidance is obtained from the IRS, the potential US withholding tax treatment on distributions to Consenting Beneficiaries or Non-Consenting Beneficiaries will depend on, *inter alia*, the Company’s determination of what constitutes a payment subject to withholding for US federal income tax purposes. The Company may withhold and/or reserve US federal income tax of 30 per cent. plus estimated interest and penalties, if any, from all Consenting Beneficiaries’ and Non-Consenting Beneficiaries’ entitlements when the settlement payment is received from LBI on the basis that the portion of the entitlement payment that is considered income subject to US withholding tax is not determinable at that time. In such circumstances, a Consenting Beneficiary’s or Non-Consenting Beneficiary’s entire distributions made pursuant to the Proposal ultimately may be reported to the Consenting Beneficiary or Non-Consenting Beneficiary and the IRS as either FDAP income (for non-US persons) or gross income (for US persons).

If a Consenting Beneficiary or a Non-Consenting Beneficiary believes that amounts withheld from its Gross Distribution were in excess of any US federal income taxes it actually owed, or that the characterisation of the payment was incorrect, that Consenting

Beneficiary or Non-Consenting Beneficiary may be entitled to file a US tax return claiming a refund or a recharacterisation of such amounts.

Any US federal income tax return filing would be entirely the Consenting Beneficiary's or Non-Consenting Beneficiary's responsibility, and the Consenting Beneficiary or Non-Consenting Beneficiary would be required to determine the amount of distributions made to them pursuant to the Proposals, if any, that is not FDAP income or otherwise is not subject to US federal income tax as gross income. **Consenting Beneficiaries and Non-Consenting Beneficiaries are encouraged to seek their own independent tax advice about whether and how to file any such US federal income tax return.**

### **3 The entering into of the OSA and passing of the Resolution may give rise to unanticipated tax consequences**

Where property is held on trust, a "settlement" may in some circumstances be created for UK tax purposes. The trustee of a settlement may be liable to UK income tax, capital gains tax and inheritance tax charges in relation to the property it holds on trust. The Company's view, based on the advice it has received, is that no such settlement should be created for UK tax purposes by the arrangements in place following receipt of the LBI Distribution and described in this Information Memorandum and that consequently it should not be liable to such UK tax charges as trustee. In the event that Her Majesty's Revenue & Customs disagrees with the Company's analysis (including circumstances where the Company deems it appropriate to pursue that disagreement through litigation and where a contrary position is upheld by an English court), charges to income tax, capital gains tax and inheritance tax on the Company might arise which would reduce net distributions made to customers pursuant to the Proposals.

Similarly, the arrangements could constitute a separate entity for US federal income tax purposes. If the arrangements were deemed to be a separate entity for US federal income tax purposes, the income of such entity could, in certain circumstances, be subject to US tax, which would reduce the amounts available for distribution to Consenting Beneficiaries and Non-Consenting Beneficiaries.

### **4 Reserving for tax liabilities may affect the size of distributions**

The Company is entitled to establish Reserves in respect of actual or anticipated tax liabilities as further discussed in paragraph 9 of Section 1 of Part III (*The Proposals*) of this Information Memorandum. Refer to Part VI (*Risk Factors Associated with the Proposals*) below for a risk factor exploring the possible effect of Reserving on the size of distributions.

## **PART VI: RISK FACTORS ASSOCIATED WITH THE PROPOSALS**

See Part V (*Taxation*) above for risks related to taxation. You should consider carefully the risks described below together with all other information in this Information Memorandum. Additional risks and uncertainties may also be relevant to the Proposals and those noted below should not be seen as exhaustive.

### ***The LBI Distribution may not satisfy in full Consenting Beneficiaries' Best Claims***

The share of the LBI Distribution to be distributed to each Consenting Beneficiary will be determined on the basis of each Consenting Beneficiary's Best Claim. There is no guarantee that the LBI Distribution will be sufficient to satisfy each Consenting Beneficiary's Best Claim.

The Company will establish Reserves, in respect of various matters, which will not be available for distribution and which cannot be individually allocated to any Consenting Beneficiary or to any sub-set of them. One example of this is Reserves set aside to meet the possible Trust Entitlements of Non Consenting Beneficiaries. Any such Reserve will, for so long as Reserves exist or if such Reserves are paid away, reduce the funds available for allocation and distribution to Consenting Beneficiaries.

In any event, if the Trust Entitlements of Non Consenting Beneficiaries amount in aggregate to more than what would be the aggregate of the Best Claims of the Non Consenting Beneficiaries and these Trust Entitlements are satisfied out of the LBI Distribution, then there will be a dilution in the recovery of the Consenting Beneficiaries.

### ***Reserving may affect the size of distributions***

To the extent the Company makes Reserves in respect of any liabilities (including in respect of tax liabilities or anticipated tax liabilities) which may be incurred in relation to any particular Consenting Beneficiary or particular Consenting Beneficiaries, or in relation to any sub-set of Consenting Beneficiaries or generally, such Reserves will reduce the amount available to distribute to all Consenting Beneficiaries who, at the relevant time, participate in a particular distribution. To the extent that it is subsequently determined by the Company that any such Reserve is insufficient, for whatever reason, to cover all or any of such liabilities, then any resultant increase in Reserves, or the payment of any increased liability, may have the effect that a Consenting Beneficiary who participates in any subsequent distributions may receive smaller total net distributions than it would have received had the relevant Reserve been sufficient from the outset. This may particularly be the case where any insufficient Reserve relates to other Consenting Beneficiaries, and those other Consenting Beneficiaries have received higher net distributions than they would have received had the relevant Reserve been sufficient, as any such over-distribution is only recoverable out of future distributions made to the relevant Consenting Beneficiaries and if there are none or they are inadequate, then the over-distribution is not recoverable.

### ***The value of securities in the LBI Distribution may vary between 30 November 2012 and the time of their liquidation by the Company and this risk is borne by Consenting Beneficiaries***

In so far as the LBI Distribution funds comprise securities, they are susceptible to fluctuations in the markets (for example as a result of financial markets disruption, geopolitical, or other such events) in which they exist and the economic prospects of their issuer. Should the relevant markets and/or economic conditions take a downturn, this could have a negative effect on the value of the LBI Distribution.

In so far as the value of Securities rises, then any increase in value captured on liquidation will form part of the Omnibus Trust but there will be no increase in any customer's *pro rata* share



which will be established by reference to their Best Claim which is computed as at a fixed date being either 19 September 2008 or 30 November 2012.

***The LBI Distribution under the Settlement Agreement may give a lower return to customers than a court claim for the same assets***

Customers who are not CRA Signatories and who do not make an OSA Offer remain entitled to whatever rights and recoveries they are entitled to in law in respect of the LBI Distribution once those have been agreed with the Company or finally determined by a court. A customer may as matter of law be entitled to have an award made to it by a court of an entitlement in a greater amount in respect of their LBI Asset Claim than the value of what is being offered pursuant to the Proposals. To the extent that greater entitlement is satisfied out of the LBI Distribution that will result in Consenting Beneficiaries receiving a lesser proportion of the LBI Distribution.

***Certain of the securities forming part of the LBI Distribution are illiquid***

Certain of the securities forming part of the LBI Distribution are illiquid and the Company may not, in a timely manner, be able to realise cash for those assets.

***Litigation risk***

Certain customers may seek to challenge the Proposals or their effectiveness or the process which the Company intends to undertake in order to give effect to the Proposals. Any such litigation could delay and interfere with the execution of the Proposals, and, if adversely determined, could have an economic impact on the value of the Proposals to Consenting Beneficiaries.

***Basis of preparation of Information Packs***

The Information Packs prepared by the Company are binding both on the Company and Consenting Beneficiaries except in certain limited respects. Whilst the Company has made extensive efforts to ensure the accuracy of Information Packs if it transpires that there is an inaccuracy, then unless it is one which can be the subject of a change permitted under the Proposals it will nevertheless have binding effect.

***Any return of funds under the LBI Distribution will be in US dollars***

The LBI Distribution will be in US dollars. Distribution to a customer whose principal currency is not US dollars exposes the customer to foreign currency exchange risk. Any depreciation of US dollars in relation to such foreign currency will reduce the value of the LBI Distribution payment to that customer and any appreciation of US dollars will increase such value in foreign currency terms.

***Expungement of claims against LBI***

By accepting the Proposals a customer agrees, to the maximum extent possible, that any duplicate claim against LBI will be expunged. However, the expungement order may be entered even if the Proposals are not accepted.

***Shortfall claims may exceed the shortfall claims cap***

In the event that, after taking into account any set-off against indebtedness applied against shortfall claims, the aggregate remaining shortfall claims exceed the shortfall claims cap, then the remaining shortfall claims of affected Consenting Beneficiaries will be abated rateably, so that the aggregate amount of the shortfall claims equals US\$200 million.

***Shortfall claims are against a company in administration***

The shortfall claim offered in the Proposals is against a company that is in administration. Customers should review the publicly available materials provided by the Joint Administrators, and make such other enquiries as they see fit, in order to assess for themselves the risks associated with recovery of an unsecured claim against the Company.